

NEW REPORT: Visible and Invisible Bars



FREEDOM IN THE WORLD 2023

El Salvador

PARTLY FREE

56
/100

<u>Political Rights</u>	25/40
<u>Civil Liberties</u>	31/60

LAST YEAR’S SCORE & STATUS

59 /100 **Partly Free**

Global freedom statuses are calculated on a weighted scale. See the methodology.



Overview

Elections in El Salvador are largely credible and free. However, widespread corruption undermines democracy and the rule of law, and lack of physical security remains a grave problem. Authorities have pursued a harsh, militarized response to the country's powerful criminal gangs, resulting in extrajudicial killings, mass arbitrary arrests, and other abuses. Members of the active civil society sector and dynamic press risk harassment and violence in connection with coverage of organized crime, corruption, and criticism of government policy.

Key Developments in 2022

- Following rumors that informal agreements between President Nayib Bukele's government and the leaders of criminal gangs had broken down, in March the government instituted an open-ended, unconstitutional state of exception. Along with the state of exception, authorities suspended constitutional protections of assembly and association and routinely violated citizens' privacy by allowing law enforcement to access and surveil individuals' communications without a court order. Further, the criminal code was amended to mandate pretrial detention for charges of gang membership, homicide, and extortion, and to remove the limit on the duration of pretrial detention in these cases, effectively establishing unlimited incarceration without a conviction.
- The government used the state of exception to carry out a staggering crackdown beginning in March, indefinitely and arbitrarily arresting more than 60,000 people by the end of the year, all to allegedly prevent gang-related activity. Authorities eliminated arrested people's due process guarantees and quashed access to public information regarding the crackdown. Criminal courts have remanded virtually all detainees to indefinite custody, without individual scrutiny or respect for due process.
- A January report published by multiple human rights and research groups found that at least 35 Salvadoran journalists had been targeted with Pegasus spyware in 2020 and 2021, allegedly by the Salvadoran government, although the researchers could not definitively prove this. In July, the Inter-American Commission on Human Rights (IACHR) granted protection measures to

more journalists in El Salvador who had owned devices that were compromised by Pegasus surveillance; the IACHR also provided protections to journalists in February 2021.

Political Rights

A. Electoral Process

A1 0-4 pts

Was the current head of government or other chief national authority elected through free and fair elections?	4/4
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El Salvador’s president is directly elected for a five-year term. In 2019, Nayib Bukele won the presidential election in the first round with 53 percent of the vote and was inaugurated that June. Voter turnout was 52 percent. Organization of American States (OAS) observers called the election free and generally fair and praised the peaceful transfer of power.

A2 0-4 pts

Were the current national legislative representatives elected through free and fair elections?	3/4
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The 84-member, unicameral Legislative Assembly is elected for three years. The Nationalist Republican Alliance (ARENA) and Farabundo Martí National Liberation Front (FMLN) dominated Salvadoran politics since the first postwar election in 1994. However, in the February 2021 legislative elections, ARENA was reduced to 14 seats and the FMLN to 4, while the newly constituted party of President Bukele, New Ideas (NI), won a supermajority with 56 seats. The remaining 10 seats went to smaller parties.

European Union (EU) and Latin American election observers attested that the results reflected the popular will but found that the campaign environment was flawed in favor of NI, with violations of electoral law including the use of significant state resources to favor the party.

A3 0-4 pts

Are the electoral laws and framework fair, and are they implemented impartially by the relevant election management bodies?	3/4
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El Salvador’s electoral framework is designed by the Legislative Assembly and administered by the Supreme Electoral Tribunal (TSE).

In September 2021, the Constitutional Chamber of the Supreme Court of Justice (CSJ), dominated by unconstitutionally appointed magistrates allied with Bukele, ruled that the president may serve two consecutive terms, in contravention of several articles of the constitution. The Constitutional Chamber directed the TSE to allow the change, which the TSE did, saying that the ruling could not be appealed. In September 2022, President Bukele announced he would run for reelection in 2024.

In March 2022, the FMLN-nominated TSE magistrate Julio Olivo claimed that a group of four government-aligned magistrates had effectively taken control of decision-making processes within the institution, excluding the other six members.

B. Political Pluralism and Participation

B1 0-4 pts

Do the people have the right to organize in different political parties or other competitive political groupings of their choice, and is the system free of undue obstacles to the rise and fall of these competing parties or groupings?	3/4
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Salvadorans have traditionally been free to organize in different political parties or groupings. However, in 2021, politically motivated corruption charges resulted in raids on opposition party offices, and figures from ARENA and FMLN were arrested or had arrest warrants issued against them. Meanwhile, the Legislative Assembly set up commissions to investigate past bonus payments to politicians and public funding of nongovernmental organizations (NGOs) during the year.

While these actions were all ostensibly linked to fighting alleged corruption, opposition parties, human rights groups, and other critics denounced them as political persecution and attempts to silence the opposition.

B2 0-4 pts

Is there a realistic opportunity for the opposition to increase its support or gain power through elections?

4/4

Opposition parties are legally able to increase support and gain power through elections. However, President Bukele's election marked a break in the executive dominance of ARENA and the FMLN, and both parties imploded in the 2021 legislative and municipal elections, when new parties gained representation. President Bukele's NI won 56 seats and 152 out of 262 mayors. Opposition parties Our Time (NT) and Vamos both secured one lawmaker and Vamos one mayor. FMLN and ARENA experience extreme pressure from the government and are seemingly incapable of mounting any viable electoral alternative for the presidential, legislative, and municipal elections scheduled for February and March 2024.

NI has also used state resources, including illegal surveillance technology, to undermine opposition members.

B3 0-4 pts

Are the people's political choices free from domination by forces that are external to the political sphere, or by political forces that employ extrapolitical means?

2/4

Gangs have threatened political candidates and elected officials, but their influence drastically diminished under the state of exception that began in March 2022.

Top-level politicians from all major parties have at different times been accused of links to organized crime. Journalists have regularly uncovered evidence of covert engagement between the Bukele government and gang leaders, chiefly to rein in gang-related crimes—especially homicides—in exchange for various concessions.

A criminal investigation into the government’s negotiations was shut down after the government-controlled legislature replaced the attorney general.

B4. Do various segments of the population (including ethnic, racial, religious, gender, LGBT+, and other relevant groups) have full political rights and electoral opportunities? 3 / 4

All citizens have full political rights and electoral opportunities under the law, regardless of gender, ethnicity, religion, or sexual orientation, but women and minority groups are underrepresented in the legislature and in high-level government positions. A 2013 statute requires that 30 percent of legislative and municipal candidates be women, but the proportion of women in the Legislative Assembly dipped under this threshold following the 2021 elections, and only 11 percent of mayors are women. Furthermore, women’s, LGBT+, and Indigenous peoples’ interests are poorly represented in practice.

C. Functioning of Government

C1 0-4 pts

Do the freely elected head of government and national legislative representatives determine the policies of the government?	2 / 4
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The Bukele administration repeatedly interfered with the legislature’s ability to determine policy until it gained a supermajority in the legislative session that commenced in May 2021, which enabled it to swiftly rubberstamp new laws and policies. The NI government has routinely denied opposition legislators access to key information, including draft legislation, inhibiting substantial deliberation of proposed laws. The government also makes record use of legislative process waivers, which expedites proposals for a vote within hours of submission to the legislature. Bukele has also harassed and bullied allied lawmakers from other parties who criticize NI policies or officials.

C2 0-4 pts

Are safeguards against official corruption strong and effective?	0 / 4
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Corruption including embezzlement, money laundering, and other forms of self-enrichment remains a problem in government, and anticorruption bodies and prosecutions are increasingly susceptible to politicization.

In November 2020, prosecutors launched a criminal investigation into the suspected misuse of COVID-19-related funds, including the awarding of public contracts to businesses linked to politicians. However, in May 2021, the NI-controlled legislature passed a law retroactively granting public officials and contractors immunity from any civil or criminal liability stemming from pandemic-related state expenditures. Since then, more cases of suspected graft involving COVID-related funds have emerged.

In 2021, the government shut down the International Commission against Impunity in El Salvador (CICIES), an OAS-supported anticorruption agency that assisted Salvadoran prosecutors.

Under the guise of the state of exception that began in March 2022, the NI government removed legal administrative regulations on the use of public funds and state contracts. Further, authorities restricted the right to access public information, impeding civil society's ability to expose corrupt actors, and passed a law that enables authority to manage public funds without adhering to the relevant law.

Score Change: The score declined from 1 to 0 because elected authorities suspended anticorruption laws that allowed scrutiny of government spending and contracts.

C3 0-4 pts

Does the government operate with openness and transparency?	1/4
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The 2011 Access to Public Information Law instituted strong mechanisms for transparency and oversight of public institutions. While there have always been issues with compliance, government bodies have been more resistant and less transparent since the beginning of the Bukele administration. Bukele has issued executive decrees impinging on the independence of the oversight and

enforcement body, the Access to Public Information Agency (IAIP), and has named partisan commissioners.

Government officials continue to withhold information on expenditures, even amid widespread allegations and indications of related corruption. No government minister has submitted their asset disclosures, as required by law to detect potential corruption.

NI has used its parliamentary supermajority to routinely pass laws with minimal information provided to opposition lawmakers, much less the public. Government plans are generally withheld from public access.

Civil Liberties

D. Freedom of Expression and Belief

D1 0-4 pts

Are there free and independent media?	2/4
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Despite a vibrant media space and constitutional protections, journalists have reported self-censoring in the face of harassment and violence in response to critical coverage of corruption and public policy. Access to the internet is not restricted, and online outlets are critical sources of independent reporting. However, most Salvadorans rely on social media and privately owned television and radio networks for news, and ownership in the broadcast sector is highly concentrated. Fake news and disinformation campaigns are widespread and fomented by key government officials, including through surrogate online media outlets.

A January 2022 report published by multiple human rights and research groups found that at least 35 Salvadoran journalists had been targeted with Pegasus spyware in 2020 and 2021, allegedly by the Salvadoran government, although the researchers could not definitively prove this. In February 2021 and July 2022, the

Inter-American Commission on Human Rights (IACHR) granted protection measures to dozens of journalists in the country, many of whom had owned devices that were compromised by Pegasus surveillance. In April 2022, the government passed a law threatening journalists who convey messages from gangs with 10 to 15 years in prison, and in August the Association of Journalists of El Salvador reported that nine Salvadoran journalists were living in exile due to government harassment.

D2 0-4 pts

Are individuals free to practice and express their religious faith or nonbelief in public and private?

4/4

Religious freedom is widely respected by state and nonstate actors. For several years, people in some communities have been unable to access their churches due to territorial disputes between gangs. Some religious leaders working with former gang members face harassment by gangs and police and the threat of violence. However, the mass arrests of people suspected of gang affiliation that began in March 2022 improved perceptions of security, and more individuals have attended religious services safely.

Score Change: The score increased from 3 to 4 because the government's severe crackdown on gang activity has resulted in a decline in violent territorial disputes between gangs, allowing people to more freely attend religious services.

D3 0-4 pts

Is there academic freedom, and is the educational system free from extensive political indoctrination?

3/4

Academic freedom is respected, and the educational system is generally free from extensive political indoctrination.

D4 0-4 pts

Are individuals free to express their personal views on political or other sensitive topics without fear of surveillance or retribution?

2/4

While private discussion and personal expression are generally free, the prevalence of gang activity has led many Salvadorans to curtail speech about criminal activity and other sensitive topics outside of their homes. The government has used illegal surveillance mechanisms as part of its crackdown on gang activity that began in March 2022. In February 2022, reforms to the criminal code permitted “necessary undercover digital operations” to investigate alleged crimes without a court order. In May, the government and legislature massively boosted the Prosecutor General of the Republic’s wiretap budget and in September removed legal restrictions on wiretapping.

On multiple occasions, authorities used these legal changes, which were allegedly passed to crack down on gang-related activity, to arrest private individuals who critiqued government figures or policy. In August, Luis Rivas was arrested and charged with contempt of the president for anonymously posting on Twitter stating that members of President Bukele’s family were at the beach with a large number of bodyguards. In early September, Rivas was released on bail for \$10,000, but immediately rearrested on new, undisclosed charges. Days earlier, police briefly and arbitrarily arrested citizen Mario Gómez after he criticized the Bukele government’s implementation of Bitcoin as legal tender online. Two weeks later, another six people were arrested for criticizing government officials on social media.

Score Change: The score declined from 3 to 2 due to increasing state surveillance and the arrests of government critics under the guise of the ongoing crackdown on gang activity.

E. Associational and Organizational Rights

E1 0-4 pts

Is there freedom of assembly?	3/4
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Freedom of assembly is generally upheld, and public protests and gatherings are permitted. However, the Bukele government has surveilled activists who organize such events, pushing some citizens to refrain from participating due to fear of potential repercussions. The 2022 state of exception has also limited freedom of assembly rights.

E2 0-4 pts

Is there freedom for nongovernmental organizations, particularly those that are engaged in human rights– and governance-related work?

2 / 4

NGOs have operated freely and played an important role in society and policymaking in the postwar era. However, they have largely been excluded from engagement with policymakers under the Bukele government and are frequently lambasted by the president and other officials over critical stances toward government policy.

In 2021, the Legislative Assembly set up a special commission to investigate NGOs, police and prosecutors raided the offices of seven NGOs on charges of embezzlement, and the government put forward a Foreign Agents Law requiring individuals and organizations to register as foreign agents if their activities “respond to the interests of, or are directly or indirectly funded by, a foreigner” and pay a 40 percent tax on foreign payments. Ruling-party legislators and government officials explicitly linked the law to funding given to investigative journalism that is critical of the government and recent protest marches. In the face of massive pressure, not least by the diplomatic corps and foreign donors, the government delayed voting on the law.

The government targeted several nongovernmental human rights organizations using Pegasus spyware in 2020 and 2021, according to a January 2022 report. Under the state of exception implemented in March 2022, authorities have clamped down on programs to support rehabilitation and reintegration of formerly incarcerated persons.

Score Change: The score declined from 3 to 2 because the government has investigated NGOs on dubious charges, surveilled activists and civil society groups.

E3 0-4 pts

Is there freedom for trade unions and similar professional or labor organizations?	2/4
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Labor unions have long faced obstacles in a legal environment that favors business interests, including by mandating only light penalties for employers who interfere with strikes. The law prohibits strikes in sectors deemed essential, and the designation is vaguely defined.

F. Rule of Law

F1 0-4 pts

Is there an independent judiciary?	0/4
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Judicial independence has long been under pressure, and the judicial system is hampered by corruption. Elected officials do not always observe judicial rulings and powerful individuals can evade justice by exerting pressure on the judiciary.

The Bukele administration repeatedly defied court orders related to its COVID-19 response during 2020. In the first session of the new legislature in May 2021, the government-aligned legislators removed all members of the CSJ's Constitutional Chamber, as well as the prosecutor general. Though the Constitutional Chamber immediately ruled that these actions were unconstitutional and a violation of judicial independence, the legislature went forward naming new members of the Constitutional Chamber and a new attorney general. In the next days, the ousted judges submitted their resignations, allegedly under duress, amid reports that the homes of some of deposed magistrates were being monitored by the police.

In August 2021, President Bukele announced a “purge” of the judiciary, and the legislature days later passed measures to dismiss judges and prosecutors over 60 years old or who had more than 30 years of service, impacting one in three judges and numerous prosecutors. The reforms also changed the mechanism for appointing and reassigning judges to a seemingly arbitrary process, which was

condemned by the UN Special Rapporteur on the Independence of Judges and Lawyers.

The government unconstitutionally instituted a state of exception in March 2022, and extended it on multiple occasions with parliamentary rubber-stamps. Yet the CSJ has failed to deliberate on the legality of the ongoing state of exception, resolve more than 1,300 petitions for habeas corpus, or address thousands of human rights violations linked to the near 60,000 arrests that authorities have carried out. Criminal courts have broadly failed to act independently from government pressure and defiant judges have been removed.

The Bukele administration continues to resist calls to cooperate in the ongoing El Mozote trial, in which 17 high-ranking military officers stand accused of massacring nearly 1,000 people in the northeastern town of El Mozote in 1981.

Score Change: The score declined from 1 to 0 because a generally pliant judiciary failed to address an unconstitutional state of exception and the accompanying mass arbitrary arrests that characterize the government's gang crackdown, and because the government has continued to remove any judges who challenge its policies.

F2 0-4 pts

Does due process prevail in civil and criminal matters?	0 / 4
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Since the end of the war in 1992, due process rights are constitutionally guaranteed but systematically violated. Human rights advocates report that police routinely carry out arbitrary arrests and fabricate and plant evidence, and defendants have long been provided inadequate access to effective legal counsel.

These long-standing challenges escalated sharply in March 2022, when the government instituted an indefinite state of exception, which led to the arbitrary arrests of over 60,000 people suspected of gang activity. Authorities suspended constitutional guarantees of freedom of assembly and association, eliminated various rights of people accused of crimes, and routinely violated citizens' privacy by allowing law enforcement to access and surveil individuals' communications

without a court order. Criminal courts have remanded virtually all detainees to indefinite custody, without individual scrutiny or respect for due process.

Furthermore, the government passed amendments in March 2022 to the criminal code to increase the maximum punishment for being a gang leader to 45 years' imprisonment and for being a gang member to 30 years' imprisonment. The criminal procedural code was also amended to mandate pretrial detention for charges of gang membership, homicide, and extortion, and to remove the limit on the duration of pretrial detention in these cases, effectively establishing unlimited incarceration without a conviction. The same loss of rights largely applies to minors.

Score Change: The score declined from 1 to 0 because the government's gang crackdown has featured the suspension of constitutional rights and the arbitrary arrest and incarceration of more than 60,000 individuals.

F3 0-4 pts

Is there protection from the illegitimate use of physical force and freedom from war and insurgencies?

2 / 4

Crime and violence, much of which has long been linked to gangs, remain grave problems. Yet, homicides have declined sharply since mid-2019 under alleged secret agreements and negotiations between the Bukele government and the country's gangs, which the president denies. Reportedly, agreements broke down in March 2022, after which the government immediately implemented a state of exception that has kept homicide rates under control: government statistics claim a 50 percent drop in the murder rate for 2022.

Under the state of exception, the number of incarcerated persons has more than doubled, leading to acute overcrowding with wholly insufficient infrastructure and resources to guarantee basic rights, including food, water, and healthcare. People imprisoned are not allowed family visits and have limited access to lawyers.

Civilians in El Salvador are vulnerable to forced disappearances. The University Observatory of Human Rights (OUDH) reported that between January 2020 and June 2022, there were 4,060 forced disappearances, while police figures for that

period claim 692 people disappeared. Relatives of the disappeared often fear reprisals for discussing their cases publicly.

F4 0-4 pts

Do laws, policies, and practices guarantee equal treatment of various segments of the population?	2 / 4
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Men and women are granted equal rights under the law, but women are often subject to discrimination. Indigenous people disproportionately face poverty, unemployment, and labor discrimination. Certain other populations, particularly internally displaced persons and LGBT+ people, also have inadequate access to the justice system. Discrimination based on sexual orientation is prevalent, and LGBT+ people are often the targets of hate crimes and violence, including by state security agents.

The government restricted the rights of asylum seekers by signing an agreement with the United States in 2019, whereby El Salvador would accept asylum seekers trying to reach the United States and stop them from traveling north.

G. Personal Autonomy and Individual Rights

G1 0-4 pts

Do individuals enjoy freedom of movement, including the ability to change their place of residence, employment, or education?	3 / 4
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Freedom of movement within El Salvador has long been complicated by gang activity. People living in the turf of one gang may suffer threats or violence when entering the turf of another gang, making it dangerous to travel, work, and attend school, especially for young men. Internal displacement due to gang-related crime and violence is commonplace. However, the degree of gang territorial control dropped sharply after the government implemented a state of exception in March 2022. Conversely, certain population groups—and especially young men—limit their movements due to fear of police harassment or arbitrary arrest.

Score Change: The score improved from 2 to 3 because the government's severe crackdown on gang violence has improved individuals' ability to travel safely.

G2 0-4 pts

Are individuals able to exercise the right to own property and establish private businesses without undue interference from state or nonstate actors?	2 / 4
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The rights to property and to start and run a business enjoy legal and regulatory protections. Since the mid-2000s, many businesses and citizens have been subject to extortion, chiefly by gangs. However, the state of exception in effect since March 2022 vastly reduced the prevalence of extortion and gangs' broader impact on the operating environment of businesses.

Political favoritism, cronyism, and bribes affect the awarding of state contracts.

G3 0-4 pts

Do individuals enjoy personal social freedoms, including choice of marriage partner and size of family, protection from domestic violence, and control over appearance?	2 / 4
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Men and women have equal legal rights on matters such as marriage and divorce, and there are few formal restrictions on such decisions. However, same-sex marriage and adoption remain illegal in El Salvador. Abortion is punishable by imprisonment, including in cases where the pregnant person's life is at risk. Some women have been jailed despite credible claims that their pregnancies ended due to miscarriage.

The prevalence of adolescent pregnancy is a serious problem, accounting for approximately a third of all pregnancies, and many are the result of sexual assault. Female students with children often leave school, sometimes under pressure from their principals. Gender-based violence, including domestic violence, sexual violence, and femicide, is also common. El Salvador has one of Latin America's highest femicide rates.

G4 0-4 pts

Do individuals enjoy equality of opportunity and freedom from economic exploitation?

2/4

El Salvador remains a source, transit, and destination country for the trafficking of women, children, and LGBT+ people. There are instances of forced labor in the construction and informal sectors. According to the 2022 edition of the US State Department's *Trafficking in Persons Report*, there has been an increase in convictions of traffickers and 2019 legislation granted temporary residency rights to trafficking survivors, although none received "residency benefits" during the reporting period. However, the government reduced resources allocated for the antitrafficking prosecution team, and shelter and public services for survivors remain insufficient.

Children are vulnerable to economic exploitation, and child labor is a serious problem. Children perform dangerous jobs in agriculture and are recruited by gangs and other criminal elements to carry out illegal activities.



On El Salvador

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Country Facts

Global Freedom Score

56/100 Partly Free

Other Years

2022

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