



“We Can Arrest Anyone We Want”

Widespread Human Rights Violations Under El Salvador’s “State of Emergency”

HUMAN
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Derechos Humanos



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Summary

Between March 24 and 27, 2022, 92 people were killed in El Salvador, seemingly by gangs. The killings, which amounted to the deadliest peak in lethal violence in the country's recent history, were a bleak reminder of El Salvador's failure to take sustainable and rights-respecting measures to fulfill its duty to protect the population from chronic gang violence.

In response, and at the request of President Nayib Bukele, the Legislative Assembly promptly adopted a 30-day "state of emergency," suspending a range of constitutional rights, including the rights to freedom of association and assembly, to privacy in communications, and to be informed of the reason for arrest, as well as the requirement that anyone be taken before a judge within 72 hours. The Assembly, where President Bukele's New Ideas (Nuevas Ideas) party has a two-thirds majority, also expanded counterterrorism legislation in ways that violate basic rights, including by allowing judges and prosecutors to try to jail children ages 12 and above.

Between March and November, police officers and soldiers have conducted hundreds of indiscriminate raids, particularly in low-income neighborhoods, arresting over 58,000 people, including more than 1,600 children. Officers have often targeted communities where people have, for years, suffered insecurity and lack of economic and educational opportunities.

This joint report by Human Rights Watch and Cristosal documents widespread human rights violations committed during the state of emergency, which the Assembly has extended eight times and remains in place at time of writing. These human rights violations include arbitrary arrests, enforced disappearances, torture and other ill-treatment of detainees, and significant due process violations. In addition, the circumstances of many deaths in custody during the state of emergency suggest state responsibility for those deaths.

Between March and November 2022, Human Rights Watch and Cristosal interviewed more than 1,100 people from all 14 states in El Salvador, including during a Human Rights Watch visit to San Salvador in October. Interviewees included victims of abuse, their relatives and

lawyers, witnesses, prosecutors, judges, journalists, human rights defenders, and government officials. Whenever possible, researchers also reviewed relevant case files, medical records, and death certificates, and in some cases consulted international forensic experts.

We found that human rights violations were not isolated incidents by rogue agents. Rather, similar violations were carried out repeatedly and across the country, throughout a period of several months, by both the military and the police.

Official policies and the rhetoric of high-level government authorities, including President Bukele, who commands the National Civil Police and the armed forces, have in some cases incentivized abuses.

Between March and late September, some police commanders appear to have established a policy of quotas, requiring officers to arrest a given number of people daily. Instead of taking measures to prevent abusive arrests, the president has publicly backed the security forces and acted in intimidating ways toward the few remaining independent judges and prosecutors in the country who could investigate violations. He has also promoted dehumanizing rhetoric against detainees and their families, and stigmatized independent journalists and civil society groups that document abuses.

Despite this record, President Bukele remains very popular, largely because some indicators of violence appear to have improved in the short term. Homicides, which have been decreasing in El Salvador since 2015, have fallen further, although government restrictions on accessing homicide and other data and changes in the ways killings are counted make it harder to estimate the true extent of the reduction and the prevalence of other crimes.

The authorities' campaign of mass, indiscriminate arrests has led to the detention of hundreds of people with no apparent connections to gangs' abusive activity. In many cases, detentions appear to be based on the appearance and social background of the detainees, or on questionable evidence, such as anonymous calls and uncorroborated allegations on social media. In these cases, police and soldiers did not show people a search or arrest warrant, and rarely informed them or their families of the reasons for their

arrest. A mother who witnessed the detention of her son said that police officers told her, “We can arrest anyone we want.”

In some cases of people detained by security forces, officers refused to provide information about the detainees’ whereabouts, in what amount to enforced disappearances under international law. Authorities left such victims defenseless and caused their family members inhumane and abusive uncertainty and suffering.

Lack of information about detainees’ whereabouts and their conditions in detention drove hundreds of people, mostly women, to sleep outside detention facilities in the hope of receiving some information about their loved ones. In many cases, the seemingly arbitrary arrest of breadwinners severely curtailed the income of families already suffering from poverty and lack of economic opportunities.

As of November 2022, judges had charged over 51,000 people arrested during the state of emergency with gang membership and sent them to pretrial detention, often appearing to apply a recent and abusive amendment to the Criminal Code that expanded mandatory pretrial detention. Two thousand people, less than 4 percent of those detained during the state of emergency, had been released from prison, often on bail.

The prison population increased from 39,000 in March 2022 to an estimated 95,000 detainees as of November. The latest public figures, from December 2020, indicate that prisons in El Salvador have capacity for 27,000, less than one-third of the number actually detained at the end of 2022. Thousands were held incommunicado for weeks or months or were only allowed to see their lawyer for a few minutes before their hearings. At time of writing, many continue in incommunicado detention.

This mass incarceration has aggravated historically poor conditions in detention, including extreme overcrowding, violence, and poor access to goods and services essential to rights, such as food, drinking water, and health care. Some of the few people who were released from detention reported inhumane conditions and, in some cases, torture and other forms of ill-treatment.

According to Salvadoran authorities, 90 people have died in custody during the state of emergency. Authorities have failed to meaningfully investigate these deaths. In some

cases, detainees who died in prison did not receive access to the medication they needed, family members said.

Judges and prosecutors repeatedly and impermissibly infringed on due process protections under international law, violating detainees' human rights and making it difficult, if not impossible, for them to adequately defend themselves during criminal proceedings. Most detainees had public defenders who faced an immense workload and often failed to provide an adequate defense.

Hearings were conducted in groups that were at times massive, with up to 500 detainees participating, often virtually, in each. Such conditions make it difficult or nearly impossible for judges, prosecutors, and detainees' lawyers to fairly assess or present evidence and arguments related to each individual detainee.

These widespread human rights violations were enabled by President Bukele's swift dismantling of democratic institutions since taking office in 2019, which has left virtually no independent government bodies that can serve as a check on the executive branch or ensure redress for victims of abuse.

Since President Bukele's party obtained a two-thirds majority in the Legislative Assembly in May 2021, legislators from his party have severely undermined the separation of powers. They have summarily removed and replaced all five judges of the Constitutional Chamber of the Supreme Court, as well as the Attorney General, and have passed laws that allow the Supreme Court and the Attorney General to arbitrarily transfer or dismiss independent lower-level judges and prosecutors.

In September 2022, President Bukele announced he will seek re-election in 2024, relying on a 2021 ruling by the new Constitutional Chamber that departed from longstanding jurisprudence interpreting the Constitution as forbidding immediate re-election.

The Bukele administration has also undermined transparency and accountability, including by weakening the agency in charge of ensuring access to public information. It has created a hostile environment for journalists and civil society members, who have become targets of digital and physical harassment, surveillance, seemingly spurious criminal investigations, and other attacks in response to their work on corruption and

human rights violations. President Bukele and other authorities have assaulted the credibility of independent media and civil society groups, accusing them, without any evidence, of being “gang supporters.”

President Bukele has tried to justify human rights violations as supposedly acceptable “errors” committed during what the government calls a “war against gangs.” He also said that the government will be “watching judges who favor criminals,” in what appears to be an effort to intimidate judges and prosecutors from investigating human rights violations or releasing people who are arbitrarily detained.

There are serious reasons to question the long-term effectiveness of President’s Bukele security measures. Iron-fist strategies attempted by prior governments have proven to be ineffective and have at times led to more violence. Gangs have in the past benefited from policies of mass incarceration by using prisons to recruit new members. Failure to invest meaningful resources in prevention and rehabilitation policies, as well as to address illegal economies and the lack of legitimate economic opportunities that allow gangs to thrive, have contributed to the spiraling of atrocious cycles of violence.

At the same time, the dismantling of judicial independence in El Salvador means that victims of gang violence or human rights violations by security forces will have little, if any, access to meaningful remedy.

The administration of President Bukele should ensure Salvadorans’ safety by taking sustainable and rights-respecting steps to protect the population and dismantle gangs, which continue to be responsible for heinous abuses. This requires developing and implementing a new security policy that promotes strategic criminal prosecutions focused on prosecuting higher-level gang leaders and investigating violent crimes, as well as addressing the illegal economies that allow these groups to thrive, including extortion, money laundering, and contraband in weapons. To do so, having a truly independent judiciary is key.

Additionally, the government should bolster efforts to reduce gang membership by taking steps to address the structural causes that push people, particularly children and youth, into gangs. These include lack of economic opportunities, social marginalization, and abusive and ineffective security policies.

The government should also expand current programs, such as the “Urban Centers of Wellbeing and Opportunity” (Centros Urbanos de Bienestar y Oportunidades, CUBO), that seek to prevent violence by increasing economic and educational opportunities for youth in vulnerable communities, and it should strengthen reintegration programs for former gang members.

International action is needed to protect the country’s rapidly deteriorating rule of law and prevent further human rights violations. Despite his enormous popularity in El Salvador, President Bukele is not totally immune to international pressure.

The administration of United States President Joe Biden and the European Union should rally multilateral pressure, including from governments in Latin America, to focus attention on the situation in El Salvador, including at the United Nations Human Rights Council.

Foreign governments and international financial institutions, in particular the Central American Bank for Economic Integration (CABEI), should suspend any existing loans or donations to government entities directly involved in abuses, including the Justice and Public Safety Ministry, the National Civil Police, the Ministry of Defense, the prison system, and the Attorney General’s Office, and condition any further cooperation with these institutions on significant human rights progress.

The US government has adopted positive steps by redirecting some funding away from Salvadoran institutions such as the National Civil Police and toward civil society groups. The European Union has redirected its funding of the National Civil Police toward the Ministry of Education.

Meanwhile, in recent years, the Central American Bank for Economic Integration approved significant funding to the National Civil Police, the Ministry of Defense, the prison system, and the Attorney General’s Office. Several funds had not been disbursed at time of writing and the Bank’s authorities said that some of the loans were being “reformulated” to replace the National Civil Police, Ministry of Defense, and the prison system as the entities charged with executing the funds. Its board of directors, composed of representatives from Central American governments, as well as Mexico, Taiwan, Argentina, Colombia, Spain, Dominican Republic, and the Republic of Korea, should condition programs on the

Salvadoran government taking concrete steps to prevent and investigate torture, deaths in custody, enforced disappearances, and arbitrary detentions.

Foreign governments should also step up efforts to support independent journalists and civil society groups, which remain virtually the sole check on abuse of power and human rights violations in El Salvador.

The international community should redouble its efforts to support the rule of law in El Salvador and help ensure that Salvadorans are safe from heinous crimes by gangs, human rights violations, and other abuse of power.

Recommendations

To the Bukele administration

- Work with the Attorney General's Office and security forces to develop and implement a new, rights-respecting security policy to dismantle gangs and protect the population from their abuses, including by promoting strategic criminal prosecutions, focused on prosecuting higher-level gang leaders and investigating violent crimes, as well as curbing extortion, money laundering, and contraband weapons.
- Prioritize efforts to address the root causes of gang membership, such as lack of economic and educational opportunities, including by expanding violence-prevention strategies that increase opportunities for children and youth, such as the "Urban Centers of Wellbeing and Opportunity," as well as legal and safe paths for former gang members to reintegrate.
- End the state of emergency absent credible evidence that its restrictions on fundamental rights are proportionate and strictly necessary to respond to situations that genuinely threaten the life of the nation.
- Ensure that police officers' performance is not measured by the number of arrests or other criteria that could incentivize arbitrary arrests and other human rights violations.
- Take progressive steps to eliminate the role of the armed forces in public safety tasks.
- Refrain from posting on social media photos of detained people and prejudging them as criminals based on their clothing, where they live, their tattoos, or their family relationships before they have had a fair trial.
- Take immediate steps to reduce prison overcrowding, including by applying alternatives to imprisonment for people with disabilities or with underlying health conditions and for older people, and by using, when appropriate, reporting requirements and other less-restrictive measures.
- End incommunicado detention and ensure that detainees can communicate and receive visits from their families and lawyers.

- Take meaningful steps to comply with the United Nations Standard Minimum Rules for the Treatment of Prisoners, including by ensuring access to adequate and timely medical care, adequate food, water, and sanitation in prisons.
- Ensure that prison authorities comply with judicial decisions ordering the release of detainees.
- Allow international humanitarian organizations and the Human Rights Ombudsperson's Office to have unimpeded access to prisons, including by allowing them to conduct private and confidential meetings with detainees.
- Refrain from harassing and stigmatizing independent journalists and civil society members, including on social media.
- Ensure that any negotiation with gangs is conducted in a transparent and inclusive manner and prioritizes human rights, including the right of equal access to justice.
- Work with the Legislative Assembly to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.
- Comply fully with the 2011 Law on Access to Public Information, including by publishing public interest information, such as homicide rates, information on the implementation of the Territorial Control Plan, and the prison population, as well as by responding in a timely and fair manner to public information requests.
- Increase funding to the Public Defender's Office to ensure it is able to provide adequate and timely defense.

To the Legislative Assembly

- End the state of emergency.
- Increase the age of criminal responsibility to 14 or above, consistent with international human rights standards.
- Derogate the 2022 reforms to the Special Law Against Terrorist Acts, the Juvenile Criminal Law, and the Law Banning Gangs, Bands, Groups, Associations and Organizations, and bring these laws and the Criminal Code and the Code of Criminal Procedure in line with international standards, including by eliminating mandatory pretrial detention and narrowing the definitions of terrorism and "unlawful association."

- Repeal the 2021 reforms to the Judicial Career Law and the Organic Law of the Attorney General's Office.
- Reform the Penitentiary Law to ensure that it complies with international legal standards, including by ensuring that detainees have access to family visits and private meetings with their lawyers.
- Refrain from adopting the 'foreign agents' bill or any other law that could be used to restrict the work of civil society groups and independent media outlets.
- Increase the funding and staffing of the Public Defender's Office to ensure that it can provide adequate legal assistance to all detainees.

To the Attorney General's Office

- Develop and implement a policy of strategic criminal prosecutions to address gang violence by improving prosecutors' technical capacity to gather credible evidence, prioritizing the prosecution of higher-level gang leaders, investigating violent crimes, as well as curbing extortion, money laundering, and contraband in weapons.
- Promptly initiate thorough, impartial investigations into unlawful connections between gangs, government officials, and security forces.
- Conduct prompt, thorough, and impartial investigations into allegations of human rights violations, including instances of arbitrary detention, enforced disappearances, and torture and other ill-treatment of detainees, as well as into circumstances such as suspicious deaths in custody.
- Conduct swift, impartial, and thorough investigations into the arrest quota in the police and whether it has incentivized arbitrary detention and other human rights abuses.
- Conduct prompt, thorough, and impartial investigations into government officials who may have failed to comply with court decisions ordering the release of detainees.

To the Constitutional Chamber of the Supreme Court

- Reach and announce timely decisions on habeas corpus petitions from or on behalf of people detained in the context of the state of emergency.

To the Public Defender's Office

- Increase staffing and ensure that the legal assistance provided to people guarantees due process rights.

To the Human Rights Ombudsperson's Office

- Conduct swift investigations into allegations of human rights violations and report on the office's findings in a transparent and periodic manner.
- Investigate abuses by gangs in El Salvador and provide concrete recommendations to the government on how to protect the population from these groups in a sustainable and rights-respecting manner.
- Work with the National Penitentiary Office, the Attorney General's Office, and the Public Defender's Office to ensure respect for the rights of people who have been detained.
- Continue monitoring prison conditions, including by seeking private and confidential meetings with detainees, and releasing comprehensive reports of the visits, including on allegations of ill-treatment, overcrowding, lack of access to adequate or timely medical care, and poor sanitary conditions.

To the Institute of Legal Medicine

- Conduct autopsies for everyone who dies in custody and ensure that family members have access to such documentation.
- Ensure that investigations into deaths in custody adhere to internationally accepted medical practices and international standards as outlined by the Minnesota Protocol on the Investigation of Potentially Unlawful Death.

To the Central American Bank for Economic Integration and the members of its Board of Directors including Costa Rica, Panama, Honduras, Mexico, Taiwan, Argentina, Colombia, Spain, Dominican Republic and the Republic of Korea

- Suspend current loans benefiting El Salvador's National Civil Police, Ministry of Defense, prison system, and Attorney General's Office and develop specific and

measurable human rights benchmarks to condition future financial support to these institutions, such as:

- o Concrete steps toward eliminating torture and other forms of ill-treatment in detention;
 - o Reductions in reports of arbitrary detentions and due process violations reported by detainees;
 - o Evidence of credible and timely criminal investigations of abuses committed by members of the armed forces and the National Civil Police;
 - o Reforms of legal frameworks adopted in the context of the current state of emergency that severely undermine human rights;
 - o Improvements in detention conditions, including reduction of overcrowding and increased access to medical care; and
 - o Increased access of independent monitors to interview detainees in Salvadoran detention centers.
- Closely monitor the situation in El Salvador, including by conducting regular meetings with civil society groups, to verify human rights conditions and ensure that the bank's funding is not enabling further abuses.

To Members of the United Nations Human Rights Council

- Bring attention to the situation in El Salvador and raise human rights concerns during Council meetings and debates, including during Interactive Dialogues with relevant Special Procedures mandate-holders or in their statements under item 4.

To the UN High Commissioner for Human Rights

- Closely monitor the human rights situation in El Salvador and publicly condemn human rights violations in the country.

To Relevant UN Special Procedures including the Working Group on Arbitrary Detention, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on torture and other cruel, inhumane or degrading treatment or punishment, the Special Rapporteur on the independence of judges and lawyers, and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism:

- Conduct visits to El Salvador, as permitted under the country's 2010 standing invitation, to document human rights violations within their mandates, and report to the Human Rights Council on the situation in the country.

To the governments of the United States, Canada, and Latin American countries, the European Union, and EU member states:

- Publicly and privately oppose human rights violations committed by Salvadoran security forces and press, in a multilateral manner, Salvadoran authorities to ensure respect for human rights and the rule of law.
- Refrain from providing loans or other economic support to El Salvador's police, army, prison system, and Attorney General's Office until there are meaningful human rights improvements, and condition any future aid or loans to these entities on human rights benchmarks.
- Increase support for independent media outlets and civil society groups in El Salvador, including through financial assistance.
- Press Salvadoran authorities to progressively restore judicial independence including by conducting, at the appropriate time, independent, fair, and transparent processes for the selection of Supreme Court justices and the attorney general, and abrogating laws that undermine judicial independence.
- Impose or maintain targeted sanctions, including travel bans and asset freezes, on senior government officials who bear responsibility for the human rights violations documented in this report, including:
 - o Gustavo Villatoro, the minister of justice and public safety, who oversees the National Civil Police and the prison system.

- o Mauricio Arriaza Chicas, the director of the National Civil Police, which has been responsible for widespread human rights violations during the state of emergency.
- o René Francis Merino Monroy, the minister of defense, who oversees the work of the army, which has been involved in multiple human rights violations in the context of the state of emergency.
- o Osiris Luna Meza, head of the prison system and vice minister of justice and public safety. Luna Meza has adopted extraordinary measures in detention facilities that violate international standards and has openly supported and publicized ill-treatment of detainees and overcrowding.

To the Inter-American Commission on Human Rights:

- Closely monitor the human rights situation in El Salvador and publicly condemn human rights violations in the country.
- Closely monitor the ongoing constitutional reform process to verify its consistency with international human rights standards, including on judicial independence, as well as with the Inter-American Court of Human Rights' Advisory Opinion 28/2021 regarding the incompatibility of indefinite presidential re-election with the American Convention on Human Rights.

Methodology

This joint report by Human Rights Watch and Cristosal is based on both organizations' research between March and November 2022 on abuses committed during the state of emergency.

Over 2,900 people completed an online form created by Cristosal and advertised on their social media to report on cases of abuses. Out of these cases, as well as others referred to Cristosal by other non-governmental organizations and others, Cristosal selected a subset of cases on the basis of the gravity of the allegations and their consistency with other reports. In total, Cristosal interviewed over 1,100 victims or their relatives.

Human Rights Watch interviewed over 140 people, including victims of abuse, their relatives and lawyers, witnesses, independent journalists, prosecutors, judges, and government officials. While most of the interviews were conducted by phone, some were carried out during a visit to San Salvador in October 2022.

Most of the interviewees feared for their security and only spoke to researchers on condition that we withhold their names and other identifying information. Details about their cases or the individuals involved, including the location of the interviews, have also been withheld when requested or when Human Rights Watch and Cristosal believed that publishing the information would put someone at risk. In footnotes, we may use the same language to refer to different interviewees to preserve their security.

Interviews with victims, their relatives, or witnesses were conducted in confidential settings or through secure means of communication. We informed all participants of the purpose of the interview, its voluntary nature, and how the information would be used. Each participant orally consented to be interviewed.

Human Rights Watch and Cristosal did not make any payments or offer other incentives to interviewees. Care was taken with victims of trauma to minimize the risk that recounting their experiences could further traumatize them. Where appropriate, the organizations provided contact information for organizations offering legal, social, or counseling services, or linked those organizations with survivors.

Whenever possible, Human Rights Watch and Cristosal also reviewed case files, medical records of victims and death certificates, and obtained expert opinion on some cases of abuse from the Independent Forensic Expert Group (IFEG) of the International Rehabilitation Council for Torture Victims (IRCT), an international group of prominent forensic experts.

Human Rights Watch and Cristosal sent multiple information requests to government authorities for this report. These include:

- On April 29, July 27, September 26, and November 7, 2022, Cristosal or Human Rights Watch asked the National Civil Police for information regarding people detained under the state of emergency, their gender and age, and the crimes of which they were accused, as well as whether police officers were required to arrest a number of people per day. The National Civil Police replied on May 5, August 15, October 11, and November 25, indicating that all the information requested, with the exception of the total number of people detained, was “classified.”
- On November 7, 2022, Human Rights Watch asked El Salvador’s Armed Forces for information, including the number of people arrested and of confrontations between the soldiers and gangs. The Armed Forces had not responded at time of writing.
- On April 29, July 12 and July 27, 2022, Cristosal or Human Rights Watch asked the Attorney General’s Office for information regarding people detained under the state of emergency, their gender and age, and the crimes of which they were accused, as well on whether prosecutors were investigating members of the security forces for human rights violations. Authorities replied on May 17, August 12, and September 9, indicating in all cases that the information requested was either “non-existent” or “classified.”
- On April 29, July 12, July 27, and September 20, 2022, Cristosal or Human Rights Watch asked the Public Defender’s Office for information on people detained under the state of emergency, their health conditions, age, and gender, the crimes of which they were accused, the status of the investigations against them, and the number of officials in the Public Defender’s Office, and inquired about documentation requested of detainees’ relatives. The Public Defender’s Office replied on July 7, July 25, August 31, and October 19, providing large parts of the information requested and indicating that other information, such as on the status of investigations, was “classified.”

- On April 29, 2022, Cristosal asked the Human Rights Ombudsperson’s Office for information on people detained under the state of emergency, their age and gender, and the crimes of which they were accused. On May 25, the Human Rights Ombudsperson’s Office replied by providing information on the number of complaints received by the agency.
- On July 27 and November 7, 2022, Cristosal or Human Rights Watch asked the General Directorate of Penal Centers for information on the number of detainees under the state of emergency, the total prison population, the number of people in pretrial detention, and the number of people convicted, among others. At time of writing, Cristosal and Human Rights Watch had not received a response.
- On September 26, 2022, Cristosal asked the Institute of Legal Medicine for information on the number of deaths in custody during 2022. The Legal Medicine Institute replied on October 6 that the institution “lacked the authority” to respond and that a request should be made to the Attorney General’s Office and the National Civil Police.

Background: Chronic Gang Violence in El Salvador

Gang Violence

Widespread violence and soaring crime rates have affected Salvadorans for decades, ranking El Salvador as one of the most violent countries in the world.¹

During the 1980s, thousands of Salvadorans fled to the United States, escaping the violence of a brutal 1980-1992 civil war between a civilian-military dictatorship and the leftist guerrilla group known as the Farabundo Martí National Liberation Front (Frente Farabundo Martí para la Liberación Nacional, FMLN).² The war led to more than 75,000 deaths.³

As they struggled to navigate US asylum and immigration laws and to build a new life in the US, some Salvadorans formed gangs that provided a sense of community, as well as protection from rival groups, and that engaged in a range of criminal acts from very minor to brutally violent.⁴ Youth under 18 and adults were involved in these gangs.

US criminal and immigration laws became increasingly harsh in the 1990s and thereafter.⁵ Authorities in many US states and localities established databases of alleged gang members, which were notoriously vague and thus ripe for arbitrary and discriminatory application.⁶ In most cases, after a criminal conviction US laws mandated deportation

¹ Robert Muggah and Katherine Aguirre, “The Good News About El Salvador,” *Americas Quarterly*, January 15, 2018, <https://www.americasquarterly.org/article/the-good-news-about-el-salvador/> (accessed September 13, 2022).

² Ignacio Martín-Baró, “El Salvador Civil War” (“La guerra civil en El Salvador”), *Colección Digital Ignacio Martín-Baró*, vol. 36 (1981), <https://www.uca.edu.sv/coleccion-digital-IMB/articulo/la-guerra-civil-en-el-salvador/> (accessed September 13, 2022).

³ Arturo Villeda, “The Attorney General’s Office Launches a Policy to Prosecute War Crimes and Crimes Against Humanity Committed in the Context of the Armed Conflict in El Salvador” (“FGR lanza Política de Persecución Penal de Crímenes de Guerra y Lesa Humanidad en el contexto del conflicto armado en El Salvador”), December 11, 2018, <https://www.fiscalia.gob.sv/fgr-lanza-politica-de-persecucion-penal-de-crimenes-de-guerra-y-lesa-humanidad-en-el-contexto-del-conflicto-armado-en-el-salvador/> (accessed December 2, 2022).

⁴ John Raphling (Human Rights Watch), “On Immigrant Policies, Unintended Consequences,” April 17, 2017, <https://www.hrw.org/news/2017/04/17/immigrant-policies-unintended-consequences>; Human Rights Watch, *Closed Doors: Mexico’s Failure to Protect Central American Refugee and Migrant Children* (New York: Human Rights Watch, 2016) <https://www.hrw.org/report/2016/03/31/closed-doors/mexicos-failure-protect-central-american-refugee-and-migrant>.

⁵ Scott H. Decker and David C. Pyrooz, eds., *The Handbook of Gangs* (West Sussex: Wiley Blackwell, 2015), p. 482.

⁶ Human Rights Watch, “Groups Urge US End Discriminatory ICE ‘Gang’ Prioritization,” April 1, 2021, <https://www.hrw.org/news/2021/04/01/groups-urge-us-end-discriminatory-ice-gang-prioritization>.

once people completed their sentences, which often separated family members and further destabilized communities.⁷ Some Salvadorans were deported after serving their sentences for criminal offenses involving extreme violence and others were deported for minor offenses linked to poverty and the circumstances of their lives in the US.⁸ These laws were applied to all non-citizens in the US, including Salvadorans, and in many respects also violated international human rights law.⁹

El Salvador, struggling to recover from the war, was ill-prepared to deal with the arrival of large numbers of people deported from the US.¹⁰ The country's socio-political instability, coupled with high levels of poverty, helped push many young people into the gangs that had formed in the US.¹¹ The circumstances surrounding young people's decisions to join gangs often prompted questions about the voluntariness of these decisions.¹² Gang membership spread throughout El Salvador.

Gangs, locally known as “maras,” are generally viewed as one of the main sources of violence in El Salvador. The most notorious gangs—Mara Salvatrucha (MS-13) and the Eighteenth Street Gang (Barrio 18), which has divided into the Eighteenth Street Gang “Southerners” (Sureños) and the Eighteenth Street Gang “Revolutionaries” (Revolucionarios)—effectively exercise territorial control over specific areas in rural and

⁷ Human Rights Watch, *Forced Apart (By the Numbers): Non-Citizens Deported Mostly for Nonviolent Offenses* (New York: Human Rights Watch, 2009), <https://www.hrw.org/report/2009/04/15/forced-apart-numbers/non-citizens-deported-mostly-nonviolent-offenses>; Human Rights Watch, “Groups Urge US End Discriminatory ICE ‘Gang’ Prioritization,” April 1, 2021, <https://www.hrw.org/news/2021/04/01/groups-urge-us-end-discriminatory-ice-gang-prioritization>.

⁸ Decker and Pyrooz, eds., *The Handbook of Gangs*, p. 482; John Raphling (Human Rights Watch), “On Immigrant Policies, Unintended Consequences,” Human Rights Watch, April 17, 2017, <https://www.hrw.org/news/2017/04/17/immigrant-policies-unintended-consequences>; Human Rights Watch, *Forced Apart (By the Numbers)*; Human Rights Watch, *A Price Too High: US Families Torn Apart by Deportations for Drug Offenses* (New York: Human Rights Watch, 2015), <https://www.hrw.org/report/2015/06/16/price-too-high/us-families-torn-apart-deportations-drug-offenses>.

⁹ “US: 20 Years of Immigrant Abuses,” Human Rights Watch news release, April 25, 2016, <https://www.hrw.org/news/2016/04/25/us-20-years-immigrant-abuses>; Human Rights Watch, *Forced Apart (By the Numbers)*, pp. 79-88.

¹⁰ International Crisis Group, *El Salvador’s Politics of Perpetual Violence* (Brussels: International Crisis Group, 2017), <https://www.crisisgroup.org/latin-america-caribbean/central-america/el-salvador/64-el-salvadors-politics-perpetual-violence> (accessed August 19, 2022).

¹¹ Oscar Martínez, “A Brief History of El Salvador, Gangs, the U.S., and The Difficulties of Empathy,” *New American Story Project*, <https://newamericanstoryproject.org/context/brief-history-of-el-salvador/> (accessed September 3, 2022).

¹² Human Rights Watch, *Closed Doors*, p. 21.

urban settings throughout the country, using brutal violence to extort and intimidate residents.¹³

These gangs obtain funding from a range of illegal activities, including most prominently extortion, and, to a lesser extent, drug trafficking.¹⁴ They are also widely believed to participate in contraband of weapons.¹⁵

Gangs continue to participate in numerous and serious criminal activities that violate human rights, including recruitment of children, rape and other sexual assault, killings, abductions, and displacement of people from their homes.¹⁶ Gang members sexually assault people on the basis of their gender and real or perceived sexual orientation or gender identity.¹⁷ Many of those who are abducted are later found dead or are never heard from again.¹⁸

The International Crisis Group estimated in 2017 that the country had suffered “at least 93,000 murders since 1993, over half of which can be attributed to gangs.”¹⁹ El Salvador’s per capita homicide rate fluctuated but was for years among the highest in Latin America.²⁰

Disappearances—meaning, in El Salvador and elsewhere in the region, the taking of people against their will, their fate and whereabouts unknown, committed by any

¹³ International Crisis Group, *A Remedy for El Salvador’s Prison Fever* (Brussels: International Crisis Group, 2022), <https://www.crisisgroup.org/latin-america-caribbean/central-america/el-salvador/96-remedy-el-salvadors-prison-fever> (accessed August 19, 2022), p. 4.

¹⁴ International Crisis Group, *El Salvador’s Politics of Perpetual Violence*, p. 9.

¹⁵ Walter Murcia, *El Salvador’s Gangs: Proposals and challenges to socially include youth in contexts of urban violence* (“Las pandillas en El Salvador: Propuestas y desafíos para la inclusión social juvenil en contextos de violencia urbana”) (Santiago: Economic Commission for Latin America, 2015), https://www.cepal.org/sites/default/files/publication/files/39362/S1501050_es.pdf (accessed November 26, 2022); Arron Daugherty and Elyssa Pachico, “El Salvador Gangs Involved in Arms Trafficking Network,” *Insight Crime*, June 19, 2015, <https://insightcrime.org/news/brief/el-salvador-gangs-involved-arms-trafficking-network/> (accessed October 17, 2022).

¹⁶ Diana Roy, “Why Has Gang Violence Spiked in El Salvador?,” *Council on Foreign Relations*, May 4, 2022, <https://www.cfr.org/in-brief/why-has-gang-violence-spiked-el-salvador-bukele> (accessed November 25, 2022).

¹⁷ Human Rights Watch, *Deported to Danger: United States Deportation Policies Expose Salvadorans to Death and Abuse* (New York: Human Rights Watch, 2020), <https://www.hrw.org/report/2020/02/05/deported-danger/united-states-deportation-policies-expose-salvadorans-death-and>.

¹⁸ Ibid.

¹⁹ International Crisis Group, *El Salvador’s Politics of Perpetual Violence*, p. 1.

²⁰ United Nations Office on Drugs and Crime (UNODC), “Intentional Homicide,” n.d., <https://dataunodc.un.org/dp-intentional-homicide-victims> (accessed November 25, 2022).

perpetrator—have also been a grave concern.²¹ In addition to kidnappings to increase control in gang-dominated areas, gangs appear to use disappearances to continue killing while lowering official homicide counts including during negotiations with governments. Some studies indicate that during the 2012 truce between the government and gangs, disappearances rose by a number almost identical to the decline in homicides.²²

There is no single registry of missing people nationwide. Figures vary by institution, for example, between the Attorney General's Office and the National Civil Police.²³ The Attorney General's Office registered more than 22,000 reports of missing people between 2014 and 2019.²⁴ According to the Foundation for the Study and Application of Law (Fundación de Estudios para la Aplicación del Derecho, FESPAD), a Salvadoran nongovernmental organization, the National Civil Police registered over 12,000 reports in the same period,²⁵ more than the estimated 8,000 to 10,000 disappeared during the 12-year civil war.²⁶ Between January and May 2022, FESPAD counted 500 cases of disappearances registered by the National Civil Police.²⁷

²¹ "Disappearance" used in this sense is distinct from an "enforced disappearance," which requires the involvement of state agents, either directly or indirectly through authorization, support, or acquiescence. See, for example, Human Rights Watch, *Mexico's Disappeared: The Enduring Cost of a Crisis Ignored* (New York: Human Rights Watch, 2013), p. 14, <https://www.hrw.org/report/2013/02/20/mexicos-disappeared/enduring-cost-crisis-ignored>; FESPAD, "Disappearances in El Salvador" ("Desaparición de personas en El Salvador"), April 2021, https://drive.google.com/file/d/1U6d8M8hoRgZmZojx4gdhnAeu-pn_03CN/view (accessed September 1, 2022).

²² Carlos Carcach and Evelyn Artola, "Disappeared persons and homicide in El Salvador," *Crime Science Journal*, vol. 5 (2016).

²³ Jeannette Aguilar et al., *The Situation of Security and Justice 2019-2014* ("La situación de la seguridad y la justicia 2009-2014") (San Salvador: Instituto Universitario de Opinión Pública, 2014), https://www.uca.edu.sv/iudop/wp-content/uploads/libro_la_situaci%C3%B3n_de_la_seguridad.pdf (accessed November 25, 2022), p. 3.

²⁴ FESPAD, "Disappearances in El Salvador" ("Desaparición de personas en El Salvador"), April 2021, https://drive.google.com/file/d/1U6d8M8hoRgZmZojx4gdhnAeu-pn_03CN/view (accessed September 1, 2022), p. 42.

²⁵ *Ibid.*

²⁶ "Salvadoran Commission Close to Resolving First Case of Disappearance in War" ("Comisión salvadoreña cerca de resolver primer caso de desaparición en guerra"), *La Prensa Gráfica*, August 31, 2019, <https://www.laprensagrafica.com/elsalvador/Comision-salvadorena-cerca-de-resolver-primer-caso-de-desaparicion-enguerra-20190831-0264.html> (accessed September 1, 2022); Celia Medrano, "El Salvador Criminalizes its Disappeared Women" ("El Salvador criminaliza a sus desaparecidas"), *El Faro*, July 14, 2021, https://elfaro.net/es/202107/columnas/0000025601-el-salvador-criminaliza-a-sus-desaparecidas?u=st-full_text=all&tpl=11&utm_source=farotext&utm_medium=initdocu&utm_campaign=text-0000025601-el-salvador-criminaliza-a-sus-desaparecidas (accessed September 1, 2022).

²⁷ FESPAD, "Statement in commemoration of the International Day of Missing Persons" ("Comunicado en conmemoración del Día Internacional de las Personas Desaparecidas"), August 30, 2022, <https://www.fespad.org.sv/comunicado-en-conmemoracion-del-dia-internacional-de-las-personas-desaparecidas/> (accessed September 1, 2022).

Family members of victims face significant obstacles to filing complaints regarding their loved ones who have gone missing, the Inter-American Commission on Human Rights (IACHR) reported in 2021, and delays in investigations—including failure to respond in the critical first hours after a disappearance—are common.²⁸ Few cases are investigated, FESPAD found, so information on who is responsible for the disappearances is limited.²⁹

Gang membership appears to have significantly increased in recent decades. According to unverified figures that Minister of Justice and Public Safety Gustavo Villatoro shared during an interview, there are 76,000 gang members in El Salvador.³⁰ In 2003, a Central American University (UCA) study estimated the figure to be 20,000.³¹ Some studies suggest that, prior to the state of emergency, the gangs were present in 90 percent of the country's municipalities.³² Root causes of gang membership, particularly among children and young people, include poverty, social marginalization, ineffective police and justice systems, and poor security policies.³³

While gangs are responsible for egregious crimes and Salvadorans suffer violations of their human rights as a result, individuals who have been deported from the US are themselves targeted by gangs and by Salvadoran police and security forces for abuse and even killings, a problem that Human Rights Watch and other experts have investigated.³⁴

²⁸ Inter-American Commission on Human Rights, *Situation of Human Rights in El Salvador* (Washington: Inter-American Commission on Human Rights, 2021), http://www.oas.org/en/iachr/reports/pdfs/2021_ElSalvador-EN.pdf (accessed December 5, 2022), p. 31.

²⁹ FESPAD, “Disappearances in El Salvador” (“Desaparición de personas en El Salvador”), April 2021, https://drive.google.com/file/d/1U6d8M8hoRgZmZojx4gdhnAeu-pn_03CN/view (accessed September 1, 2022), p. 112.

³⁰ “Interview with the justice and public safety minister,” *Frente a Frente*, November 7, 2022, <https://www.facebook.com/frenteafrenteTCS/videos/446467967423582> (accessed November 14, 2022).

³¹ Universidad Centroamericana José Simeón Cañas, Center for Information, Documentation, and Support to Investigations, “The Unresolved Problem of Gangs,” August 2003, <https://www.uca.edu.sv/publica/proceso/proc1059.html> (accessed November 15, 2022).

³² International Crisis Group, *A Remedy for El Salvador's Prison Fever*, p. 4.

³³ Max G. Manwaring, *A Contemporary Challenge to State Sovereignty: Gangs and Other Illicit Transnational Criminal Organizations in Central America, El Salvador, Mexico, Jamaica, and Brazil* (Indiana: Strategic Studies Institute, U.S. Army War College, 2007), p. 14.

³⁴ See Human Rights Watch, *Deported to Danger*; Harvard Law School Human Rights Clinic, *No Place to Hide: Gang, State, and Clandestine Violence in El Salvador*, February 2007, <https://static1.squarespace.com/static/5b3538249d5abb21360e858f/t/5cabca6ce4966bf580ea3471/1554762350561/No+Place+to+Hide+Cavallaro+2007.pdf> (accessed November 15, 2022), p. 95.

Salvadoran Security Forces

The National Civil Police, created in 1992 by the peace accords that ended the civil war, is responsible for El Salvador's public safety. It reports to the Ministry of Justice and Public Safety, and was created to be a civilian, apolitical, and professional force.³⁵

The peace accords stipulate that the armed forces, under the authority of the Ministry of Defense,³⁶ are responsible for the country's "national defense" and can play a role in public safety "only under very exceptional circumstances."³⁷ But successive governments have repeatedly involved them in the maintenance of order and public safety.

No "proper legal framework that determines the specific role of the military units involved in public security tasks" has been invoked for such operations, according to a report by the United Nations Special Rapporteur on extrajudicial, summary, or arbitrary executions, who visited El Salvador in early 2018.³⁸ Increasingly, governments have deployed joint police-military forces in gang-affected communities and during confrontations.³⁹

Security forces, including members of the police and the military, have long been responsible for rights violations, including arbitrary detentions, excessive use of force, extrajudicial killings, and the formation of so-called "death squads," which have committed abuses with either the participation or acquiescence of members of security forces.⁴⁰

³⁵ Organic Law of the National Civil Police of El Salvador (Ley Orgánica de la Policía Nacional Civil), Decree 269, signed into law on December 6, 2001, <https://www.transparencia.gob.sv/institutions/igsp/documents/201877/download> (accessed August 24, 2022).

³⁶ Organic Law of the Armed Forces of El Salvador (Ley Orgánica de la Fuerza Armada de El Salvador), Decree 353, signed into law on July 18, 1998, http://www.vertic.org/media/National%20Legislation/El_Salvador/SV_Ley_Organica_de_la_Fuerza_Armada.pdf (accessed August 24, 2022).

³⁷ "El Salvador: Peace Agreement," U.N. Doc. A/46/864-S/23501, January 16, 1992, https://peacemaker.un.org/sites/peacemaker.un.org/files/SV_920116_ChapultepecAgreement.pdf (accessed August 24, 2022), p. 3.

³⁸ United Nations Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to El Salvador, U.N. Doc. A/HRC/38/44/Add.2, December 7, 2018, <https://digitallibrary.un.org/record/1663022?ln=en> (accessed August 22, 2022), p. 6.

³⁹ International Crisis Group, *El Salvador's Politics of Perpetual Violence*, p. 16.

⁴⁰ Inter-American Commission on Human Rights, *Situation of Human Rights in El Salvador*, p. 8.

Widespread impunity exacerbates the problem. For example, between 2014 and 2018, police officers committed 116 extrajudicial killings, the Human Rights Ombudsperson's Office reported.⁴¹ The Office found that only two had resulted in convictions as of late 2018.⁴² The legal framework, including a 2013 reform to the Code of Criminal Procedure granting judges overbroad powers to dismiss charges against officers when they commit crimes “during the fulfillment of their duties,” has contributed to impunity.⁴³

Human rights monitors have also expressed concern that extrajudicial executions of alleged gang members are being portrayed as killings during clashes between security forces and gang members. The UN Special Rapporteur on extrajudicial, summary, or arbitrary executions noted, in her report on El Salvador, that during armed confrontations, “alleged gang members were reportedly killed execution-style and the crime scene tampered with by those responsible or others, including by placing weapons and drugs alongside the dead bodies.”⁴⁴

Past Responses to Gang Violence

Authorities in El Salvador have historically been largely heavy handed and ineffective in protecting the population from gang violence.

Iron-fist public safety policies that rely on mass detention and incarceration of suspected gang members have been common. Politicians appear to have deployed such measures in part to gain popular support and enhance their party's appeal during electoral campaigns.⁴⁵

⁴¹ Human Rights Ombudsperson's Office, “Special Report by the Human Rights Ombudswoman Raquel Caballero de Guevara, on Extralegal Executions attributed to the National Civil Police, in El Salvador, 2014-2018” (“Informe especial de la señora Procuradora para la Defensa de los Derechos Humanos, licenciada Raquel Caballero de Guevara, sobre las Ejecuciones Extralegales atribuidas a la Policía Nacional Civil, en El Salvador, período 2014-2018”), August 2019, https://elfaro.net/attachment/1076/Informe%20especial%20sobre%20ejecuciones%20extralegales.%20PDDH.pdf?g_download=1 (accessed November 23, 2022), p. 22.

⁴² Ibid., p. 87.

⁴³ United Nations Special Rapporteur for Extrajudicial, Summary or Arbitrary Executions, “El Salvador End of Mission Statement,” February 5, 2018, <https://www.ohchr.org/en/statements/2018/02/el-salvador-end-mission-statement> (accessed August 22, 2022).

⁴⁴ United Nations Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to El Salvador, U.N. Doc. A/HRC/38/44/Add.2, December 7, 2018, <https://digitallibrary.un.org/record/1663022?ln=en> (accessed August 22, 2022), para. 39.

⁴⁵ Sonja Wolf, *Mano Dura: The Politics of Gang Control in El Salvador* (Austin: University of Texas Press, 2017), p. 51.

The governments of Presidents Francisco Flores (1999-2004) and Antonio Saca (2004-2009) launched anti-gang plans in El Salvador. The “Iron Fist Plan” (Plan Mano Dura) of 2003 and the “Super Iron Fist Plan” (Plan Súper Mano Dura), in 2004, mostly deployed joint police and military anti-gang squads to patrol the streets.⁴⁶ Mass arrests of alleged gang members reportedly relied on insubstantial evidence, including tattoos and the overall appearance of detainees.⁴⁷

In October 2003, authorities passed an anti-gang law (Ley Anti Maras) with a six-month sunset clause, criminalizing gang membership and lowering the age of legal responsibility to 12.⁴⁸ The Supreme Court declared it unconstitutional in early April 2004, before its intended expiration date.⁴⁹

But in the meantime, more than 19,000 people were arrested between July 2003 and August 2004, FESPAD reported in 2005.⁵⁰ Around 84 percent of those detained were later acquitted by Salvadoran judges, in most cases, due to lack of evidence.⁵¹ Other studies report similar rates.⁵²

Punitive security policies encouraged police and military crackdowns that, in turn, contributed to mass imprisonment, aggravating overcrowding in the prison system. Gangs consolidated their power within several prisons across the country.⁵³ Enabled by prison policies that segregated detainees according to their membership, gangs were able to strengthen their structures from within the prisons.⁵⁴

The administration of President Mauricio Funes (2009-2014), representing a party going by the same name as the former guerilla group —the FMLN— launched a process of

⁴⁶ Ibid.

⁴⁷ Ibid., p. 51.

⁴⁸ Anti-Gangs Law (Ley Anti Maras), Decree 158, signed into law on October 10, 2003, <https://www.refworld.org/es/type,LEGISLATION,,,57f7956f6f,o.html> (accessed September 21, 2022).

⁴⁹ FESPAD, *Annual Report on Juvenile Criminal Justice 2004* (Informe Anual Sobre Justicia Penal Juvenil 2004), January 31, 2005, <https://www.fespad.org.sv/informe-anual-sobre-justicia-penal-juvenil-el-salvador-2004/> (accessed October 25, 2022), p. 29.

⁵⁰ Ibid., p. 28.

⁵¹ Ibid.

⁵² Wolf, *Mano Dura: The Politics of Gang Control in El Salvador*, p. 51.

⁵³ Inter-American Commission on Human Rights, *Situation of Human Rights in El Salvador*, p. 18.

⁵⁴ Wolf, *Mano Dura: The Politics of Gang Control in El Salvador*, p. 72.

negotiation, in 2012, with gang leaders from the MS-13 and both factions of the Eighteenth Street Gang to reduce killings in exchange for better conditions in prisons.⁵⁵ The process, commonly referred to as “the truce” (la tregua), reportedly included cash payments to gang leaders and several transfers of gang leaders from maximum security prisons to less restrictive detention facilities.⁵⁶

Homicide rates declined significantly between 2011 and 2013: from 64 and 70 per 100,000 people in 2010 and 2011, respectively, to 41 and 40 per 100,000 in 2012 and 2013.⁵⁷ But disappearances surged and numerous studies showed that, throughout the process, gangs continued exerting control over local territory and were involved in other crimes, including extortion and threats.⁵⁸

In May 2014, the truce broke down, generating a surge of gang violence.⁵⁹ By 2015, El Salvador had the highest homicide rate in the hemisphere, with 105 murders per 100,000 people.⁶⁰

The truce also had the unintended consequence of increasing gangs’ awareness of their political power.⁶¹ Repeatedly, they have unleashed waves of violence, seemingly to push governments into making concessions.⁶²

In 2014, Salvador Sánchez Cerén (2014-2019), also from the FMLN, won the presidency. In mid-2016, as the murder rate escalated, the Legislative Assembly adopted “urgent” and “provisional” measures for a maximum period of one year in seven detention centers to

⁵⁵ José Miguel Cruz, “The Politics of Negotiating with Gangs: The Case of El Salvador,” *Society for Latin American Studies*, vol. 38 (2019), p. 7.

⁵⁶ Oscar Martínez et al., “Government Negotiates Reduction in Homicides with Gangs,” *El Faro*, March 14, 2012, <https://www.elfaro.net/es/201203/noticias/8061/> (accessed August 22, 2022); Wolf, *Mano Dura: The Politics of Gang Control in El Salvador*, p. 232.

⁵⁷ United Nations Office on Drugs and Crime, “Homicide Country Data,” n.d., <https://dataunodc.un.org/content/data/homicide/homicide-rate> (accessed August 19, 2022).

⁵⁸ Cruz, “The Politics of Negotiating with Gangs: The Case of El Salvador,” *Society for Latin American Studies*, p. 7; International Crisis Group, *El Salvador’s Politics of Perpetual Violence*, p. 10; Carcach and Artola, “Disappeared persons and homicide in El Salvador,” *Crime Science*.

⁵⁹ United Nations Office on Drugs and Crime, “Homicide Country Data,” n.d., <https://dataunodc.un.org/content/data/homicide/homicide-rate> (accessed August 19, 2022).

⁶⁰ Ibid.

⁶¹ Manuel Meléndez-Sánchez, “What’s Behind the Spike of Violence in El Salvador?,” *Lawfare*, <https://www.lawfareblog.com/whats-behind-spike-violence-el-salvador> (accessed August 22, 2022).

⁶² Ibid.

“ensure the effectiveness of the prison system” and “protect society from criminal actions” occurring in prisons.⁶³ The measures included 24-hour confinement of prisoners to their cells, suspension of all family visits, and denial of access by national and international organizations to certain prisons.⁶⁴

The measures, reportedly adopted to regain control over prisons, exacerbated deplorable conditions.⁶⁵ Although adopted as temporary, they have been used repeatedly, subjecting thousands of people to prolonged detention in isolation, including prolonged solitary confinement and other inhumane conditions that violate the international prohibition on torture and other ill-treatment.⁶⁶

Additionally, in 2018, the Legislative Assembly amended the Penitentiary Law to allow the directors of detention facilities to impose extraordinary measures on a permanent basis as, according to lawmakers, they had become a critical tool used to control the penitentiary system.⁶⁷ Extraordinary measures included conducting online hearings for detainees at proceedings, granting discretionary powers to prison directors to restrict visits for up to 30 days, and transferring detainees from and to different prisons.⁶⁸

⁶³ Special, Transitory and Extraordinary Provisions in Penitentiary Centers, Penitentiary Farms, Intermediary Centers, and Temporary Confinement Centers (Disposiciones especiales, transitorias y extraordinarias en los centros penitenciarios, granjas penitenciarias, centros intermedios y centros temporales de reclusión), Decree 321, signed into law on April 1, 2016, https://www.asamblea.gob.sv/sites/default/files/documents/decretos/171117_073652826_archivo_documento_legislativo.pdf (accessed August 26, 2022).

⁶⁴ United Nations Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to El Salvador, U.N. Doc. A/HRC/38/44/Add.2, December 7, 2018, <https://digitallibrary.un.org/record/1663022?ln=en> (accessed August 22, 2022), p. 5.

⁶⁵ *Ibid.*, p. 10.

⁶⁶ Inter-American Commission on Human Rights, *Situation of Human Rights in El Salvador*, p. 68; Jeannette Aguilar et al., “Extraordinary measures: the narratives of the dehumanization” (“Medidas extraordinarias: las narrativas de la deshumanización”), Instituto Universitario de Opinión Pública, Universidad Centroamericana José Simeón Cañas, January 2020, <https://uca.edu.sv/iudop/wp-content/uploads/LIBRO-MEDIDAS-EXTRAORDINARIAS-IUDOP-Term-client-1.pdf> (accessed November 15, 2022), p. 7.

⁶⁷ “El Salvador: Regime and Conditions of People Deprived from Liberty. Impact and Effect on their Human Rights” (“El Salvador: Régimen y Condiciones de las Personas Privadas de la Libertad. Impactos y Efectos en sus Derechos Humanos”), report by civil society organizations at the 178 session period of the Inter-American Commission on Human Rights, December 3, 2020, https://www.dplf.org/sites/default/files/informe_audiencia_cidh_el_salvador_regimen_y_condiciones_de_las_ppl.pdf (accessed September 4, 2022).

⁶⁸ Reforms to the Penitentiary Law (Reformas a la Ley Penitenciaria), Decree 93, signed into law on August 31, 2018, <https://www.transparencia.gob.sv/institutions/dgcp/documents/257288/download> (accessed September 1, 2022).

As a part of their anti-gang strategy, authorities have also pursued criminal groups through repressive anti-gang legislation, criminalizing gang membership, and toughening penalties.

In 2006, legislators enacted the Special Law against Acts of Terrorism, defining “terrorist organizations” broadly. The law imposes harsh punishments for acts committed by organizations that “by their form of execution, or means and methods employed, evidence the intention to provoke a state of alarm, fear or terror in the population.”⁶⁹ Among other concerns, that definition allows acts to be criminalized as terrorist for causing “fear,” a relatively low threshold. Moreover, although the law requires intent to cause alarm, fear or terror within the public, it does not require intent to endanger lives, physical or mental integrity, or other harms, thereby allowing the authorities to prosecute as terrorism certain acts that intend to provoke fear but that otherwise may be unintentional or reckless.

In 2010, during the Funes administration, the Legislative Assembly passed a law banning gangs and criminal groups, associations, and organizations.⁷⁰ In 2015, the Supreme Court issued a ruling classifying MS-13, the Eighteenth Street Gang and other gangs as “terrorists” due to their attempts to “arrogate the exercise of legal authority” from the state.⁷¹

The enforcement of counterterrorism laws against alleged gang members has led to charges of terrorism against thousands of people, many of whom have been detained but never convicted. The IACHR reported that between 2016 and September 2019, over 18,000 persons were charged for their alleged “involvement in terrorist organizations,” including more than 3,000 who were convicted and over 6,900 who were acquitted after spending “approximately two years in pretrial detention.”⁷² The UN Special Rapporteur on

⁶⁹ Special Law against Acts of Terrorism (Ley Especial contra Actos de Terrorismo), Decree 108, signed into law on September 21, 2006, <https://www.acnur.org/fileadmin/Documentos/BDL/2016/10430.pdf> (accessed August 25, 2022), art. 4; “El Salvador: Terrorism Law Misused Against Protesters,” Human Rights Watch news release, July 30, 2007, <https://www.hrw.org/news/2007/07/30/el-salvador-terrorism-law-misused-against-protesters>.

⁷⁰ Law Banning Gangs, Bands, Groups, Associations and Organizations of a Criminal Nature (Ley de Proscripción de Maras, Pandillas, Agrupaciones, Asociaciones y Organizaciones de Naturaleza Criminal), Decree 458, signed into law on September 10, 2010, <https://www.refworld.org/docid/56a24bd4.html> (accessed August 25, 2022), art. 1.

⁷¹ Constitutional Chamber of the Supreme Court, resolution 22-2007AC, August 24, 2015, <https://www.jurisprudencia.gob.sv/DocumentosBoveda/D/1/2010-2019/2015/08/B254E.PDF> (accessed August 26, 2022).

⁷² Inter-American Commission on Human Rights, “IACHR presents its preliminary observations following its in loco visit to El Salvador,” December 27, 2019, https://www.oas.org/en/iachr/media_center/PReleases/2019/335.asp (accessed September 26, 2022).

extrajudicial, summary, or arbitrary executions noted that the “disparity” between the number of people charged and those convicted “could indicate that the charges are used primarily for the purpose of (arbitrary) detention.”⁷³

In 2016, the Legislative Assembly further expanded the definition of “terrorist organization” to include not only those organizations that seek to “provoke a state of alarm, fear or terror in the population,” but also those that have the intention of “assuming the exercise of powers that belong to the sovereignty of the states or systematically affecting the fundamental rights of the population or part of it.”⁷⁴

Another Way Forward?

There is wide consensus among independent security experts that past iron fist strategies in El Salvador have proven counterproductive to addressing gang violence and have led to mass human rights violations.⁷⁵ In turn, truces between the government and gangs have often caused only a short-term reduction of killings, followed by long-term surges in gang violence.⁷⁶

Historically, authorities have measured their success in lowering homicide rates as the main indicator of a reduction of gang violence.⁷⁷ Although lowering homicide rates is an

⁷³ United Nations Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to El Salvador, U.N. Doc. A/HRC/38/44/Add.2, December 7, 2018 <https://digitallibrary.un.org/record/1663022?ln=en> (accessed August 22, 2022), para. 31.

⁷⁴ Amendments to the Special Law Against Terrorist Acts (Reformas a la Ley Especial contra Actos de Terrorismo), Decree 348, signed into law on May 3, 2016, <https://www.diariooficial.gob.sv/seleccion/29285> (accessed November 15, 2022).

⁷⁵ Moritz Schuberth, “Beyond Gang Truces and Mano Dura Policies: Towards Substitutive Security Governance in Latin America,” *Stability: International Journal of Security and Development*, vol. 5 (2016), p. 5; Wolf, *Mano Dura: The Politics of Gang Control in El Salvador*, p. 147; David Brotherton et al., *Large-scale Rehabilitation and Reentry of Incarcerated Persons in El Salvador* (Washington: World Bank, 2021), p. 23; Robert Muggah et al., “Iron-Fist”: *The Costs of Repression and the Benefits of Prevention for the Latin American Youth* (“La ‘Mano Dura’: Los costos de la represión y los beneficios de la prevención para los jóvenes en América Latina”) (Rio de Janeiro: Instituto Igarapé, 2018), <https://idpc.net/es/publications/2018/08/la-mano-dura-los-costos-de-la-represion-y-los-beneficios-de-la-prevencion-para-los-jovenes-en-america-latina> (accessed November 16, 2022), p. 10; Oliver Jütersonke et al., “Gangs, Urban Violence, and Security Interventions in Central America,” *Security Dialogue*, vol. 40 (2009), p. 10.

⁷⁶ Schuberth, “Beyond Gang Truces and Mano Dura Policies: Towards Substitutive Security Governance in Latin America,” *Stability: International Journal of Security and Development*, p. 6; Cruz, “The Politics of Negotiating with Gangs: The Case of El Salvador,” *Society for Latin American Studies*, p. 9.

⁷⁷ “In the UN, Funes Highlights Reduction in Homicides Thanks to a Truce Between Gangs” (“Funes destaca ante ONU reducción de homicidios gracias a tregua entre pandillas”), *AFP – El Faro*, September 25, 2012, <https://elfaro.net/es/201209/noticias/9760/Funes-destaca-ante-ONU-reduccion-de-homicidios-gracias-a-tregua-entre-pandillas.htm> (accessed November 27, 2022); Office of the President, “Forcefulness of the War Against Gangs is

extremely important part of improving security, a successful security plan should also include assessments of impact on gangs' territorial control and membership and data on other offenses, such as sexual violence, disappearances, and extortion.⁷⁸

To dismantle gangs and prevent further cycles of violence, El Salvador's government should develop a comprehensive policy that tackles the root causes of gang violence, including in particular high levels of poverty and social exclusion and limited economic and educational prospects.⁷⁹ The government should also examine ways of more effectively addressing the illegal economies that allow gangs to thrive and entrench their control over territorial enclaves, most notably through extortion.⁸⁰ It should also prioritize strategic criminal investigations over mass arrests and prosecutions.

Security experts have found that a large part of people who join gangs in El Salvador do so at age 15 or younger, and come from underprivileged backgrounds, with little access to education and economic opportunities.⁸¹

Just over 30 percent of the population in El Salvador was living in poverty in 2020 and over 8 percent in extreme poverty.⁸² According to UNICEF, multidimensional poverty in El

Reflected in the 204 Days Without Homicides During the Administration of President Nayib Bukele" ("Contundencia de la Guerra contra las pandillas se refleja en los 204 días sin homicidios en la administración del Presidente Nayib Bukele"), September 29, 2022, <https://www.presidencia.gob.sv/contundencia-de-la-guerra-contra-las-pandillas-se-refleja-en-los-204-dias-sin-homicidios-en-la-administracion-del-presidente-nayib-bukele/> (accessed November 27, 2022).

⁷⁸ Francisco Gutiérrez-Sanín and Elisabeth Jean Wood, "What Should We Mean by 'Pattern of Political Violence'?" Repertoire, Targeting, Frequency, and Technique," *Perspectives on Politics*, vol. 15 (2017), p. 29; Juan Carlos Garzón-Vergara, *Which is the relationship between organized crime and homicide in Latin America?* ("¿Cuál es la relación del crimen organizado y el homicidio en América Latina?") (Rio de Janeiro: Instituto Igarapé, 2016), <https://storage.ideaspaz.org/documents/576973cc56899.pdf> (accessed November 16, 2022), p. 13.

⁷⁹ Manwaring, *A Contemporary Challenge to State Sovereignty: Gangs and Other Illicit Transnational Criminal Organizations in Central America, El Salvador, Mexico, Jamaica, and Brazil*, p. 14.

⁸⁰ International Crisis Group, *Mafia of the Poor: Gang Violence and Extortion in Central America*, April 6, 2017, <https://www.crisisgroup.org/latin-america-caribbean/central-america/62-mafia-poor-gang-violence-and-extortion-central-america> (accessed November 15, 2022); Brotherton et al., *Large-scale Rehabilitation and Reentry of Incarcerated Persons in El Salvador*, p. 25.

⁸¹ Sonja Wolf, "Mara Salvatrucha: The Most Dangerous Street Gang in the Americas?," *Latin American Politics and Society*, vol. 54 (2012); José Miguel Cruz et al., "The New Face of Street Gangs: The Gang Phenomenon in El Salvador," *Florida International University*, <https://lacc.fiu.edu/research/the-new-faces-of-street-gangs-in-central-america/the-new-face-of-street-gangs-the-gang-phenomenon-in-el-salvador-eng.pdf> (accessed November 17, 2022); Alberto Martínez Reyes and José Javier Navarro Pérez, "Attraction or Recruitment? Causes that Motivate Salvadoran Adolescents to Join Gangs" ("¿Atracción o Reclutamiento? Causas que Motivan el Ingreso en Las Pandillas de los/as Adolescentes Salvadoreños/as"), *Revista Prisma Social*, vol. 23 (2018), <https://revistaprimasocial.es/article/view/2732> (accessed November 16).

⁸² Economic Commission for Latin America (ECLA), Statistical Databases and Publications, https://statistics.cepal.org/portal/cepalstat/dashboard.html?indicator_id=3289&area_id=935&lang=en (accessed November 17, 2022).

Salvador is concentrated in families with children, where its “incidence is twice that of adult-only households.”⁸³ UNICEF estimates that six out of ten schools in the country are ill-prepared to face environmental risks and disasters. According to UNICEF, El Salvador’s out-of-school rate for lower secondary school in 2020 was 11.5 percent, compared to an average rate of 6.8 percent across Latin America.⁸⁴

El Salvador’s government should prioritize addressing the socioeconomic conditions that drive children and young people to join gangs in the first place, including low school attendance and early dropout, poverty, and lack of access to economic opportunities, as well as violence at home or at school.⁸⁵ Independent security experts across the globe have consistently found that programs designed to prevent the involvement of young people in crime have had a positive impact in curbing violence.⁸⁶

Experts on crime and security have noted that criminal investigations are likely to be more effective in addressing organized crime when they strategically prioritize violent crimes by higher-level or chronic perpetrators, instead of heavily criminalizing broad types of behavior.⁸⁷ Such strategies can help ensure meaningful justice for victims, reduce prison overcrowding, and prevent a sense of widespread impunity that can foster additional violence in the longer-term.⁸⁸

⁸³ UNICEF, “Country Office Annual Report 2021. El Salvador,” 2021, <https://www.unicef.org/media/116261/file/El-Salvador-2021-COAR.pdf> (accessed November 17, 2022), p. 1.

⁸⁴ UNICEF, *Education in Latin America at a crossroads*, 2022, <https://www.unicef.org/lac/media/37791/file/Education%20in%20Latin%20America%20and%20the%20Caribbean%20at%20a%20crossroads.pdf> (accessed November 24, 2022), pp. 25, 55.

⁸⁵ Erika Gebo et al., eds., *Looking Beyond Suppression: Community Strategies to Reduce Gang Violence* (Lanham: Lexington Books, 2019), p. 47.

⁸⁶ Muggah et al., “*Iron-Fist: The Costs of Repression and the Benefits of Prevention for the Latin American Youth*” (“La ‘Mano Dura’: Los costos de la represión y los beneficios de la prevención para los jóvenes en América Latina”), p. 14; Organisation for Economic Co-operation and Development (OECD), “Reducing violence in El Salvador: What it will take,” January 17, 2018, <https://oecd-development-matters.org/2018/01/17/reducing-violence-in-el-salvador-what-it-will-take/> (accessed November 15, 2022).

⁸⁷ Miguel Emilio La Rota and Carolina Bernal Uribe, *Irrational Efforts: Criminal investigation of Homicide and Other Complex Crimes* (“Esfuerzos Irracionales: Investigación penal del homicidio y otros delitos complejos”) (Bogotá: Dejusticia, 2014), <https://www.dejusticia.org/publication/esfuerzos-irracionales-investigacion-penal-del-homicidio-y-otros-delitos-complejos/> (accessed November 15, 2022), pp. 27-28; Vanda Felbab-Brown, “Focused Deterrence, Selective Targeting, Drug Trafficking and Organized Crime: Concepts and Practicalities,” *International Drug Policy Consortium*, vol. 2 (2013), p. 4.

⁸⁸ La Rota and Bernal Uribe, *Irrational Efforts: Criminal investigation of Homicide and Other Complex Crimes* (“Esfuerzos Irracionales: Investigación penal del homicidio y otros delitos complejos”), p. 66.

Conversely, policies that target low rank-and-file members have been found to be “the least efficacious strategy” as these “rarely alter[] the behavior of organized crime groups or incapacitate[] them.”⁸⁹ Such overbroad criminalization strategies, on the contrary, undermine the legitimacy of authorities’ efforts and lead to prison overcrowding, which creates conditions for gangs to strengthen their criminal capacity.⁹⁰

This analysis suggests that rather than engaging in mass arrests and prosecutions, El Salvador should prioritize strategic criminal investigations—something it has not done. Efforts to reduce corruption and links between the police and gangs, and to ensure accountability for police abuses, including excessive use of force and extrajudicial executions, are also critical to build trust between law enforcement and local communities, which is necessary for more effective policing.⁹¹

To implement any such policies, El Salvador needs to bolster the capacity of judicial officers to conduct serious criminal investigations, as well as to take serious steps to protect prosecutors and judges and ensure that they are free from undue interference with their independence.⁹² Additionally, authorities would need to review the country’s laws and policies and reform them to encourage a focus on criminal prosecutions of violent abuses, particularly those committed by senior or chronic perpetrators, as opposed to a broad focus on gang membership.

A large number of gang members in El Salvador are believed to be interested in leaving their gangs.⁹³ However, meaningful state action is needed to make such disengagement viable and safe, including by finding legal paths to actively reintegrate and protect people

⁸⁹ Felbab-Brown, “Focused Deterrence, Selective Targeting, Drug Trafficking and Organized Crime: Concepts and Practicalities,” *International Drug Policy Consortium*, p. 12.

⁹⁰ Jonathan D. Rosen, “Understanding support for tough-on-crime policies in Latin America: The cases of Mexico, El Salvador, and Honduras,” *Latin American Policy*, vol. 12 (2021), p. 5. See also, Francis T. Cullen et al., “Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science,” *The Prison Journal*, vol. 91 (2011); Benjamin Lessing, “Counterproductive punishment: How prison gangs undermine state authority,” *Rationality and Society*, vol. 29 (2017). See also, Jütersonke et al., “Gangs, Urban Violence, and Security Interventions in Central America,” *Security Dialogue*.

⁹¹ International Crisis Group, *El Salvador’s Politics of Perpetual Violence*, p. iii.

⁹² Guillermo Trejo and Camilo Nieto Matiz, “Containing Large-Scale Criminal Violence through Internationalized Prosecution,” *Comparative Political Studies*, vol. 0 (2022), p. 18; Mauricio Rivera, “The sources of social violence in Latin America: An empirical analysis of homicide rates, 1980-2010,” *Journal of Peace Research*, vol. 53 (2015), p. 95.

⁹³ Adrian Bergmann, “Shut In, Shut Out: Barriers and Opportunities for Gang Disengagement in El Salvador,” *Critical Criminology*, vol. 30 (2022).

who want to leave organized crime and do not have pending charges for serious abuses.⁹⁴ This includes establishing programs to address social stigma, including through tattoo removal, access to work and educational opportunities, protection, and psychosocial assistance.⁹⁵

⁹⁴ Ibid.

⁹⁵ Wolf, *Mano Dura: The Politics of Gang Control in El Salvador*, p. 14; Sonja Wolf, “El Salvador’s Pandilleros Calmados: The Challenges of Contesting Mano Dura through Peer Rehabilitation and Empowerment,” *Latin American Research*, vol. 31 (2012), p. 198.

The Bukele Administration's Assault on the Rule of Law

In the run-up to the 2019 elections, President Bukele campaigned on an anti-establishment platform and won more than 53 percent of the vote.⁹⁶ Since his inauguration in June 2019, he has used his overwhelming popularity to undermine democratic checks and balances, limit transparency and accountability, and attack independent journalists and civil society groups.

Dismantling Democratic Institutions

The Bukele administration has undermined the independence of virtually all government bodies that could serve as check to the executive branch.

Shortly after taking office, President Bukele aggressively confronted the legislature and the Supreme Court over funding for his security plan and his harsh enforcement of a Covid-19 quarantine. In particular:

- In February 2020, President Bukele entered the Legislative Assembly, where his party held a minority, with armed soldiers, in an apparent effort to intimidate legislators into approving a \$109 million loan from the Central American Bank for Economic Integration (CABEI) for security forces.⁹⁷ After occupying the chair of the Assembly's president, he announced he would give it "a week to approve the loan." He threatened to remove lawmakers from the Assembly, if needed.
- The government repeatedly defied court rulings related to its response to the Covid-19 pandemic, including on its arbitrary detention of hundreds of people in containment centers where there was an increased risk of spreading Covid-19.⁹⁸ After the Constitutional Chamber of the Supreme Court issued rulings in March and April 2020 that limited the government's ability to detain people under the lockdown, President Bukele called on law enforcement personnel to ignore the

⁹⁶ Supreme Electoral Tribunal, "Report on 2018-2019 Elections" ("Informe elecciones 2018-2019"), July 2019, <https://www.tse.gob.sv/documentos/memoria-de-elecciones/informe-elecciones-2018-2019.pdf> (accessed September 1, 2022), p. 92.

⁹⁷ See, for example, José Miguel Vivanco (Human Rights Watch), "President Bukele, Brute Force Is Not the Way Forward for El Salvador," *New York Times*, February 14, 2020, <https://www.nytimes.com/2020/02/14/opinion/bukele-el-salvador.html> (accessed October 20, 2022).

⁹⁸ "El Salvador: Police Abuses in Covid-19 Response," Human Rights Watch news release, April 15, 2020, <https://www.hrw.org/news/2020/04/15/el-salvador-police-abuses-covid-19-response>.

rulings.⁹⁹ He used social media to lash out against judges and accused them of being “genocidal.”¹⁰⁰

- In the months prior to the February 2021 legislative elections, President Bukele intensified attacks against the Supreme Electoral Tribunal (Tribunal Supremo Electoral, TSE), the institution overseeing the elections. He repeatedly accused the TSE, without evidence, of planning “electoral fraud” to defeat his party.¹⁰¹

In the legislative elections of February 2021, President Bukele’s party, New Ideas (Nuevas Ideas), and its allies won a supermajority of over two-thirds of the seats (56 out of 84).¹⁰² In the year and a half since the new Legislative Assembly took office, lawmakers have taken drastic steps to undermine judicial independence and limit accountability. For example:

- On May 1, 2021, the same day that new legislators took office, they summarily removed and replaced all five judges of the Constitutional Chamber of the Supreme Court for supposedly inhibiting the government’s pandemic response.¹⁰³ The same night, legislators dismissed the attorney general, who had been investigating corruption allegations against high-level government officials and reports of a pact between President Bukele’s administration and gangs.¹⁰⁴ The removals violated international human rights standards that removals of judges (and by analogy, removals of prosecutors) should be determined in accordance with established

⁹⁹ See, for example, “El Salvador: President Defies Supreme Court,” Human Rights Watch news release, April 17, 2020, <https://www.hrw.org/news/2020/04/17/el-salvador-president-defies-supreme-court>.

¹⁰⁰ See, for example, Tweet by President Nayib Bukele, June 26, 2020, https://twitter.com/nayibbukele/status/1276700212204101633?s=20&t=TQLJ8z_LKoXPBJQ6XXSvtA (accessed September 2, 2022).

¹⁰¹ Tweet by President Nayib Bukele, November 22, 2020, <https://twitter.com/nayibbukele/status/1330350253980213248?s=20&t=kfm3uEnhRt2q2YG9QVg7XA> (accessed September 2, 2022); Tweet by President Nayib Bukele, November 19, 2020, <https://twitter.com/nayibbukele/status/1329563062215598086?s=20&t=tazj1l4qWGdHUPRaPjzNtw> (accessed September 2, 2022).

¹⁰² Supreme Electoral Tribunal, “Final Scrutiny 2021” (“Escrutinio Final 2021”), March 12, 2021, <https://www.tse.gob.sv/2021/escrutinio-final/asamblea/nacional> (accessed September 2, 2022).

¹⁰³ Office of the High Commissioner For Human Rights (OHCHR), “El Salvador: Dismissal of Constitutional Chamber and Attorney General seriously undermines the rule of law,” May 2, 2021, <https://www.ohchr.org/en/2021/05/el-salvador-dismissal-constitutional-chamber-and-attorney-general-seriously-undermines-rule?LangID=E&NewsID=27053> (accessed September 2, 2022).

¹⁰⁴ Jimmy Alvarado, “Bukele’s Legislative Assembly Ousts Supreme Court Magistrates and Attorney General,” *El Faro*, May 2, 2021, https://elfaro.net/en/202105/el_salvador/25452/New-Legislative-Assembly-Ousts-Supreme-Court-Magistrates-and-Attorney-General.htm (accessed September 2, 2022). See also, José Miguel Vivanco and Juan Pappier (Human Rights Watch), “The U.S. can stop El Salvador’s slide to authoritarianism. Time to act,” *Washington Post*, May 18, 2021, <https://www.washingtonpost.com/opinions/2021/05/18/bukele-el-salvador-biden-human-rights-watch-authoritarianism/> (accessed October 20, 2022).

standards of conduct, should be subject to independent review, and should take place “only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.”¹⁰⁵

- On June 30, 2021, the Assembly appointed five new judges to the Supreme Court, in violation of the process established in the Constitution and the Assembly’s own internal rules. Salvadoran law allows each newly constituted legislative body to appoint five Supreme Court judges, but the Assembly has appointed 10 of a total 15.¹⁰⁶
- In September 2021, lawmakers passed laws allowing the Supreme Court and the attorney general to dismiss judges and prosecutors over 60 years of age and expanding their authority to transfer judges and prosecutors to new posts.¹⁰⁷ The laws run counter to international human rights standards on judicial independence¹⁰⁸ and have been used to dismiss and transfer independent judges or prosecutors.¹⁰⁹

On September 3, 2021, the Constitutional Chamber of the Supreme Court, whose members have been named by the pro-Bukele legislature, ruled that the Constitution allows for immediate presidential re-election.¹¹⁰ El Salvador’s Constitution forbids “any individual

¹⁰⁵ See Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985, U.N. Doc. A/CONF.121/22/Rev.1 at 59 (1985), <http://www2.ohchr.org/english/law/indjudiciary.htm> (accessed September 26, 2022), para. 18. See also International Association of Judges, The Universal Charter of the Judge, November 17, 1999, <https://www.icj.org/wp-content/uploads/2014/03/IAJ-Universal-Charter-of-the-Judge-instruments-1989-eng.pdf> (accessed September 26, 2022); Statute of the Iberoamerican Judge (Estatuto del Juez Iberoamericano), adopted by the VI Iberoamerican Meeting of Supreme Court Presidents (VI Cumbre Iberoamericana de Presidentes de Cortes Supremas y Tribunales Supremos de Justicia) on May 23-25, 2001, http://www.cidej.org/c/document_library/get_file?uuid=oddb8eba-4802-461e-b997-5441coe37a7f&groupId=10131 (accessed September 26, 2022).

¹⁰⁶ Gabriela Cáceres and Roxana Lazo, “New Ideas Appoints its Supreme Court for 9 Years” (“Nuevas Ideas nombra a su Corte Suprema para nueve años”), *El Faro*, June 30, 2021, https://elfaro.net/es/202106/el_salvador/25581/Nuevas-Ideas-nombra-a-su-Corte-Suprema-para-nueve-a%C3%B1os.htm (accessed November 27, 2022).

¹⁰⁷ “El Salvador: New Laws Threaten Judicial Independence,” Human Rights Watch news release, September 2, 2021, <https://www.hrw.org/news/2021/09/02/el-salvador-new-laws-threaten-judicial-independence>; Inter-American Commission on Human Rights, “IACHR and UN expert reject legislative reforms that remove judges and prosecutors in El Salvador and calls for respect of guarantees for judicial Independence,” September 7, 2021, <https://www.oas.org/es/cidh/jsForm/?File=/es/cidh/prensa/comunicados/2021/234.asp> (accessed September 29, 2022).

¹⁰⁸ Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985, U.N. Doc. A/CONF.121/22/Rev.1 at 59 (1985), para. 18.

¹⁰⁹ Phone interview with judge, February 7, 2022; phone interview with judge, October 21, 2022; phone interview with prosecutor, January 20, 2022.

¹¹⁰ Constitutional Chamber of the Supreme Court, ruling 1-2021, September 3, 2021 <https://www.jurisprudencia.gob.sv/portal/apls/2021/09/1-2021PerdidaDerechosCiudadania.pdf> (accessed September 2, 2022).

who served for at least six months, consecutive or not, in the previous presidential term” from running for president.¹¹¹ The court had previously interpreted this provision to forbid immediate re-election.¹¹² President Bukele himself said during a TV interview in 2013 that there was “no re-election in El Salvador” and that the constitution “does not allow the same person to be president twice in a row.”¹¹³

In one example of retaliation against a judge who ruled against government interests, on April 1, 2022, the Supreme Court transferred Judge Godofredo Salazar, only seven hours after President Bukele tweeted that he had asked the Attorney General’s Office to “investigate [the judge’s] possible links with organized crime.”¹¹⁴ Salazar had acquitted 42 alleged gang members who, he said, had been charged with insufficient evidence.¹¹⁵

In May 2021, after five Supreme Court judges and the attorney general were ousted, a pro-Bukele legislator threatened to oust then-Human Rights Ombudsperson Apolonio Tobar, who had been a vocal critic of the government’s human rights policies.¹¹⁶ Tobar then changed his position toward the government and began using euphemistic language to avoid criticizing human rights violations committed during the state of emergency.¹¹⁷ In August 2022, Tobar announced he was seeking re-election, but in October the pro-

¹¹¹ Constitution of the Republic of El Salvador, art 152. See also arts. 75, 88, and 154.

¹¹² Constitutional Chamber of the Supreme Court, resolution 163-2013, June 25, 2014, https://archivo.tse.gob.sv/laip_tse/documentos/Amparos/163-2013-Inc.pdf (accessed August 26, 2022).

¹¹³ “Nayib Bukele Nueva Esparta Mayor” (“Nayib Bukele Alcalde salvadoreño de Nueva Esparta”), *El Bar de Patito*, October 12, 2013, <https://www.youtube.com/watch?v=fwTjXBs4C74> (accessed September 29, 2022).

¹¹⁴ Tweet by President Nayib Bukele, April 1, 2022, <https://twitter.com/nayibbukele/status/1509902540833538049?s=20&t=IOVqhmaRenmdy4Jsz2h8Dw> (accessed October 17, 2022); Supreme Court of Justice, “Mailgram” (“Correograma”), April 1, 2022 (on file with Human Rights Watch).

¹¹⁵ “Court transfers specialized judge after accusations by Bukele” (“Corte traslada a juez especializado tras señalamientos de Bukele”), *El Mundo*, April 1, 2022, <https://diario.elmundo.sv/nacionales/corte-traslada-a-juez-especializado-tras-senalamientos-de-bukele> (accessed November 24, 2022).

¹¹⁶ Alexander Pineda, “Global human rights body asks El Salvador to seek judicial independence” (“Organismo global de Derechos Humanos pide a El Salvador procurar por independencia judicial”), *El Mundo*, May 3, 2021, <https://diario.elmundo.sv/politica/organismo-global-de-derechos-humanos-pide-a-el-salvador-procurar-por-independencia-judicial> (accessed October 20, 2022); Karen Moreno, “An absent human rights ombudsperson in times of authoritarianism” (“Un procurador de derechos humanos ausente en tiempos de autoritarismo”), *Gato Encerrado*, January 15, 2022, <https://gatoencerrado.news/2022/01/15/un-procurador-de-derechos-humanos-ausente/> (accessed September 26, 2022).

¹¹⁷ See, for example, Tweet by the Human Rights Ombudsperson’s Office, June 29, 2022, <https://twitter.com/PDDHEISalvador/status/1542299913874284544/photo/2> (accessed August 8, 2022); Tweet by the Human Rights Ombudsperson’s Office, July 12, 2022, <https://twitter.com/PDDHEISalvador/status/1546702554620387328?s=20&t=MZNUfQJHjnRiIMDYyUv6zA> (accessed August 8, 2022).

government legislators in the Legislative Assembly named Raquel Caballero de Guevara, who had been the ombudsperson between 2016 and 2019.¹¹⁸

In September 2021, Vice President Félix Ulloa made public a draft proposal to revise the Constitution, proposing more than 200 changes,¹¹⁹ including to extend the presidential term from five to six years and to overhaul institutions such as the Supreme Court's Constitutional Chamber, the Supreme Electoral Tribunal, and the Court of Accounts (which audits public funds). Under Salvadoran law, the reform needs to be approved by the current Assembly and ratified by the next one, which will be elected in 2024. It has not been discussed at time of writing.

Security Policies

President Bukele campaigned on the promise of reforming the country's security policies and ensuring safety for Salvadorans. He said that he would promote education and economic opportunities to “take away from the gangs the breeding ground that is Salvadoran youth” and criticized the country's prisons, which he described as “crime universities.”¹²⁰

Yet, since he took office, his policies have oscillated between closed-door negotiations with gangs and iron fist measures that took his predecessors' policies of mass incarceration to unprecedented levels.

The digital media outlet *El Faro* has published extensive evidence showing that, at the beginning of his term, the Bukele government negotiated a “truce” with gangs, offering privileges to imprisoned gang members and employment opportunities to those outside in

¹¹⁸ “The Salvadoran human rights ombudsperson seeks re-election despite criticism” (“El procurador de DD.HH. salvadoreño busca la reelección pese a las críticas”), *Infobae*, August 15, 2022, <https://www.infobae.com/america/agencias/2022/08/16/el-procurador-de-ddhh-salvadoreno-busca-la-reeleccion-pese-a-las-criticas/> (accessed September 26, 2022); Tweet by the Legislative Assembly, October 14, 2022, https://twitter.com/asambleasv/status/1581090277615288321?s=48&t=k6zcL_dJlZqBGtoz8k7RHQ (accessed October 20, 2022).

¹¹⁹ Ad Hoc Team for the Study and Proposal of Reforms to the Constitution, “Constitutional Reform Project” (“Proyecto de Reforma Constitucional”), September 15, 2021, <https://www.presidencia.gob.sv/proyecto-de-reforma-constitucional/> (accessed September 2, 2022).

¹²⁰ See, for example, Facebook Live by Nayib Bukele, November 13, 2018, <https://www.facebook.com/nayibbukele/videos/178455249767054/> (accessed October 20, 2022).

exchange for the gangs' commitment to lower homicide rates and provide political support during 2021 legislative elections.¹²¹ President Bukele has denied these allegations.¹²²

In June 2019, President Bukele announced the Territorial Control Plan, a multi-step initiative to address gang violence and improve security in the country.¹²³

The administration has described the plan as involving modernizing El Salvador's security forces; increasing their presence across the country, with a particular focus on gang strongholds; declaring a state of emergency in the penitentiary system; and certain initiatives to support underprivileged communities.¹²⁴ Under the plan, the military has been deployed to support police in public safety operations.¹²⁵ However, details about the plan and its implementation have not been made public. In May 2021, the Minister of Justice and Public Safety broadly classified all information and documents related to the plan for seven years.¹²⁶

The government has expanded the budget, recruitment, and tasks of the military. The Ministry of Defense has increased its budget from US\$145 million in 2019 to over \$284 million in 2022, and over 11,000 soldiers are estimated to be patrolling neighborhoods

¹²¹ Carlos Martínez et al., "Bukele Has Been Negotiating with MS-13 for a Reduction in Homicides and Electoral Support," *El Faro*, September 6, 2020, https://elfaro.net/en/202009/el_salvador/24785/Bukele-Spent-A-Year-Negotiating-with-MS-13-for-a-Reduction-in-Homicides-and-Electoral-Support.htm (accessed September 1, 2022); Carlos Martínez et al., "Criminal Investigation Found the Bukele Administration Hid Evidence of Negotiations with Gangs," *El Faro*, August 23, 2021, https://elfaro.net/en/202108/el_salvador/25670/Criminal-Investigation-Found-the-Bukele-Administration-Hid-Evidence-of-Negotiations-with-Gangs.htm (accessed September 2, 2022).

¹²² Tweet by President Nayib Bukele, September 4, 2020, <https://twitter.com/nayibbukele/status/1301754301065433088?s=20&t=XuaocETAcxBfml8BhtJ1pg> (accessed September 1, 2022).

¹²³ Tweet by President Nayib Bukele, June 19, 2019, <https://twitter.com/nayibbukele/status/1141238625667047424?s=20&t=gsD6ktbCZABVKPljrIOaYA> (accessed September 4, 2022).

¹²⁴ International Crisis Group, *Miracle or Mirage? Gangs and Plunging Violence in El Salvador*, July 8, 2020, <https://www.crisisgroup.org/latin-america-caribbean/central-america/el-salvador/81-miracle-or-mirage-gangs-and-plunging-violence-el-salvador> (accessed September 1, 2022).

¹²⁵ Office of the President, "President Nayib Bukele launches Phase IV of the Territorial Control Plan with the incorporation of 1,046 military elements" ("Presidente Nayib Bukele lanza Fase IV del Plan Control Territorial con la incorporación de 1,046 elementos militares"), July 19, 2021, <https://www.presidencia.gob.sv/presidente-nayib-bukele-lanza-fase-iv-del-plan-control-territorial-con-la-incorporacion-de-1046-elementos-militares/> (accessed September 1, 2022).

¹²⁶ Ministry of Justice and Public Safety, "Classified Information 2022" ("Índice de información reservada 2022"), July 27, 2022, <https://www.transparencia.gob.sv/institutions/mjisp/documents/498411/download> (accessed September 1, 2022).

along with the police.¹²⁷ The army has also expanded its tasks beyond those of public safety, including by providing food during the pandemic and supporting the work of the Institute of Legal Medicine, the national forensic body tasked with conducting autopsies and analyzing crime scenes.¹²⁸

After waves of gang violence in 2020, the government ordered a state of emergency at maximum security prisons. President Bukele said he had received reports that homicides outside had been orchestrated by gang members inside the prisons. During a subsequent lockdown that the president ordered, authorities held prisoners in inhumane conditions that may amount to torture or other cruel, inhuman, or degrading treatment or punishment under international law.

Measures included lockdowns of prisoners in cells for 24-hour periods; what President Bukele described as solitary confinement of alleged gang leaders for undefined periods; and placement of members of various gangs in shared cells, a practice that foreseeably increased the risk of violence in these cells.¹²⁹ Authorities also forbade visits to prisons, blocked networks in and around prisons, and transferred prisoners to more secure facilities.¹³⁰

The IACHR noted in its 2021 report that “100 percent of the population deprived of liberty remains isolated from the outside world” and “procedures in maximum-security prisons are against what is suggested by international standards” for the treatment of detainees.¹³¹

¹²⁷ See Ministry of Economy, “Report on follow-up and evaluation of the financial results of the central government by September 2022” (“Informe de seguimiento y evaluación de los resultados presupuestarios del Gobierno Central al mes de septiembre de 2022”), n.d., <https://www.transparenciafiscal.gob.sv/downloads/pdf/700-DGP-IF-2022-ISS22.pdf> (accessed November 26, 2022), p. 29; Ministry of Economy, “2019 Budget: Ministry of Defense” (“Presupuesto 2019: Ramo de la Defensa Nacional”), n.d., <https://www.transparenciafiscal.gob.sv/downloads/pdf/PROPRESU2019-20327.pdf>, p. 2. As of writing, the Legislative Assembly was discussing a 2023 budget proposal introduced by the Ministry of Economy, which included a US\$ 250 million budget for the Ministry of Defense. See Legislative Assembly, “2023 budget will strengthen the ability of the Armed Forces to provide security” (“Presupuesto 2023 fortalecerá capacidades de la Fuerza Armada para brindar seguridad”), October 19, 2022, <https://www.asamblea.gob.sv/node/12485> (accessed November 27, 2022).

¹²⁸ International Crisis Group, *A Remedy for El Salvador’s Prison Fever*, p. 7.

¹²⁹ See, for example, “El Salvador: Inhumane Prison Lockdown Treatment,” Human Rights Watch news release, April 29, 2020, <https://www.hrw.org/news/2020/04/29/el-salvador-inhumane-prison-lockdown-treatment>.

¹³⁰ Reforms to the Penitentiary Law (Reformas a la Ley Penitenciaria), Decree 93.

¹³¹ Inter-American Commission on Human Rights, *Situation of Human Rights in El Salvador*, p. 9.

Less prominently, the government has also taken some steps to prevent violence by improving opportunities for children and young adults. For example, President Bukele established “Urban Centers of Wellbeing and Opportunity” (Programa Centros Urbanos de Bienestar y Oportunidades, CUBO), a series of libraries and cultural centers in poor neighborhoods that seek to draw children away from gangs.¹³² As of April 2022, the government had built eight such centers and was building six others.¹³³

According to the government, homicides declined from about 36 per 100,000 people in 2019 to 17 per 100,000 in 2021.¹³⁴ There is no aggregated data on the number of homicides for 2022, and authorities have told journalists that such information is “classified.”¹³⁵ Human Rights Watch and Cristosal obtained a National Civil Police document indicating that 463 people were killed between January and the end of October 2022—a reported 50 percent decrease compared to the same months in 2021.¹³⁶ According to press reports, since July 2019, authorities have not included deaths resulting from encounters with security forces in the homicide data.¹³⁷ Authorities and some experts also report a decrease in extortion by gangs.¹³⁸

¹³² Ana Rivera, “CUBOS as part of Territorial Control Plan” (“CUBOS como parte del Plan Control Territorial”), Global Initiative against Transnational Organized Crime, 2020, https://globalinitiative.net/wp-content/uploads/2020/07/20200622_CUBOs-A4.pdf (accessed October 17, 2022).

¹³³ Office of the President, “The CUBO are a development alternative for communities that had been stigmatized” (“Los CUBO son una alternativa de desarrollo para las comunidades que habían sido estigmatizadas”), April 21, 2022, <https://www.presidencia.gob.sv/los-cubo-son-una-alternativa-de-desarrollo-para-las-comunidades-que-habian-sido-estigmatizadas/> (accessed October 17, 2022).

¹³⁴ Tweet by President Nayib Bukele, January 2, 2022, <https://twitter.com/nayibbukele/status/1477482985742123009?s=20&t=jB8AEBJo8cZ9YG4kFW6fg> (accessed September 1, 2022).

¹³⁵ Karen Moreno, “The Police Declares Information on Homicides and Disappearances as Classified” (“Policía reserva información sobre homicidios y personas desaparecidas”), *Gato Encerrado*, June 21, 2022, <https://gatoencerrado.news/2022/06/21/policia-reserva-informacion-sobre-homicidios-y-personas-desaparecidas/> (accessed September 29, 2022).

¹³⁶ National Civil Police report [identifying information withheld] (on file with Human Rights Watch). The report notes that 84 other people “died during legal interventions” (meaning, in confrontations with security forces) and 25 more deaths were “under investigation” to determine if they were “unlawful.” Separately, the Attorney General’s Office reports opening over 23,000 homicide investigations between 2014 and 2018, 5,200 between 2019 and March 2022, and 123 between April and September 2022. See UN Committee Against Torture (CAT), “1964th Meeting: Consideration of El Salvador,” November 17-18, 2022, <https://media.un.org/en/asset/k13/k13s023y30> (accessed November 24, 2022).

¹³⁷ Jorge Beltrán Luna, “The Police Does Not Include Homicides of Gang Members who Die during Clashes in the Homicide Rate” (“Policía separa de estadísticas de homicidios a pandilleros que mueren en enfrentamientos”), *El Diario de Hoy*, July 16, 2019, <https://historico.elsalvador.com/historico/621702/policia-segrega-de-estadisticas-de-homicidios-a-pandilleros-que-mueren-en-enfrentamientos.html> (accessed September 27, 2022).

¹³⁸ See International Crisis Group, *A Remedy for El Salvador’s Prison Fever*, p. 17. The Attorney General’s Office reports opening over 14,000 investigations into extortion between 2014 and 2018, 9,000 between 2019 and March 2022, and 1,200 between April and September 2022. See UN Committee Against Torture (CAT), “1964th Meeting: Consideration of El Salvador,” November 17-18, 2022, <https://media.un.org/en/asset/k13/k13s023y30> (accessed November 24, 2022).

The number of disappearances surged from 595 in 2020 to 832 in 2021, according to the Attorney General's Office.¹³⁹ The Attorney General's Office reported opening 212 investigations into disappearances between April and September 2022.¹⁴⁰

Attacks on Independent Media and Civil Society

Freedom of expression and of association have seriously deteriorated during the Bukele administration. Journalists and human rights defenders have been targets of digital and physical surveillance and harassment on social media, in response to coverage of corruption, concentration of power, and organized crime.¹⁴¹

President Bukele and his allies have assaulted the credibility of independent media, particularly digital outlets, including *El Faro*, *Revista Factum*, and *Gato Encerrado*, accusing them of spreading “fake news,” and being “gang supporters.”¹⁴² Government-run media outlets have repeatedly published articles that appear designed to damage the reputation of independent outlets.

In July 2020, authorities launched a tax audit of *El Faro* that appears selective and abusive.¹⁴³ After *El Faro* reported on a truce between the government and gangs, President

¹³⁹ Attorney General's Office, “Number of Records for the Crime of Disappearance of Persons (art. 148-A of the Criminal Code) at the national level between January 1, 2020 and December 31, 2020” (“Cantidad de registros por el delito de desaparición de personas (art. 148-A CP), a nivel nacional, del 01 de enero al 31 de diciembre 2020”), February 14, 2022, <https://portaldetransparencia.fgr.gob.sv/documentos/Desaparicion%20de%20Personas%20Art.%20148-A%20CP.%20A%C3%B1o%202020.xlsx> (accessed September 26, 2022); Attorney General's Office, “Number of Records for the Crime of Disappearance of Persons (art. 148-A of the Criminal Code) at the national level between January 1, 2021 and December 31, 2021” (“Cantidad de registros por el delito de desaparición de personas (art. 148-A CP), a nivel nacional, del 01 de enero al 31 de diciembre 2021”), February 14, 2022 (on file with Human Rights Watch).

¹⁴⁰ UN Committee Against Torture (CAT), “1964th Meeting: Consideration of El Salvador,” November 17-18, 2022, <https://media.un.org/en/asset/k13/k13s023y30> (accessed November 24, 2022).

¹⁴¹ Human Rights Watch, *World Report 2021* (New York: Human Rights Watch, 2021), El Salvador chapter, <https://www.hrw.org/world-report/2022/country-chapters/el-salvador>.

¹⁴² See, for example, Tweet by President Nayib Bukele, May 3, 2020, <https://twitter.com/nayibbukele/status/1257094989391245320?s=20&t=umKkpd1TgR53FKZsunZEhw> (accessed September 4, 2022); Tweet by Jorge Castro, November 18, 2022, https://twitter.com/jorgecastro_sv/status/1593593520388018177?s=46&t=WAEVzvi_iFXuTpKBHhfxLA (accessed November 26, 2022).

¹⁴³ See, for example, José Miguel Vivanco (Human Rights Watch), “Bukele's Legislative Victory Threatens Press Freedom in El Salvador,” March 17, 2021, <https://www.hrw.org/news/2021/03/17/bukeles-legislative-victory-threatens-press-freedom-el-salvador>. See also Constitutional Chamber of the Supreme Court, decision 393-2000, March 5, 2021, https://www.jurisprudencia.gob.sv/sctter/A_393-2020.pdf (accessed November 26, 2022).

Bukele announced criminal investigations, accusing the outlet of “money laundering” and “tax evasion.”¹⁴⁴

Government officials have also tried to intimidate journalists with possible criminal charges. In October 2021, Vice President Félix Ulloa said, “some journalists should be prosecuted on slander and defamation charges” for criticizing the government.¹⁴⁵ In June 2021, Justice and Public Safety Minister Gustavo Villatoro accused several journalists of “advocating the commission of crimes,” without providing any evidence for his claims.¹⁴⁶

In January 2022, Citizen Lab and Access Now found that Pegasus spyware, which enables surveillance of mobile phone users and their contacts, had been used to hack the phones of at least 35 Salvadoran journalists and civil society members.¹⁴⁷

In May 2021, legislators created a commission to investigate the allocation of public funds granted to nongovernmental organizations, in an apparent effort to intimidate civil society groups.¹⁴⁸ The commission, consisting of pro-government legislators and allies, has not announced any results, but some of its members have accused nongovernmental organizations of being “corrupt” without presenting evidence for those claims.¹⁴⁹

In November 2021, prosecutors raided the offices of seven non-governmental organizations to probe alleged irregularities in the allocation and management of public

¹⁴⁴ Press Conference by President Bukele, September 24, 2020, <https://www.facebook.com/nayibbukele/videos/3832941116721576> (accessed September 4, 2022).

¹⁴⁵ Tweet by DW Español, October 20, 2021, https://twitter.com/dw_espanol/status/1450946617150951431?s=20&t=YWgtuk4vl4jU35XKltuKHQ (accessed September 8, 2022).

¹⁴⁶ Óscar Romero, “Security Minister Says they Monitor Journalists for ‘Advocating for Crimes’” (“Ministro de Seguridad dice dan seguimiento a periodistas por ‘apología del delito’”), *El Mundo*, June 8, 2021, <https://diario.elmundo.sv/nacionales/ministro-de-seguridad-confirma-seguimiento-a-periodistas-por-supuesta-apologia> (accessed September 8, 2022).

¹⁴⁷ John Scott-Railton et al., “Extensive Hacking of Media and Civil Society in El Salvador with Pegasus Spyware,” *Citizen Lab*, January 12, 2022, <https://citizenlab.ca/2022/01/project-torogoz-extensive-hacking-media-civil-society-el-salvador-pegasus-spyware/> (accessed September 8, 2022).

¹⁴⁸ Legislative Assembly, “A Special Commission to Investigate Funds Granted to NGOs is Created” (“Conforman Comisión Especial para investigar fondos otorgados a ONG”), May 19, 2021, <https://www.asamblea.gob.sv/node/11238> (accessed September 29, 2022).

¹⁴⁹ Eugenia Velázquez, “The Assembly Reports, Without Providing Details, Corruption in NGOs” (“Asamblea denuncia, sin dar detalles, corrupción en ONG”), *El Diario de Hoy*, May 28, 2021, <https://historico.elsalvador.com/historico/843228/ongs-asamblea-legislativa-denuncia-sin-dar-detalles-corrupcion-de-el-salvador.html> (accessed September 2, 2022).

funds.¹⁵⁰ Some of the organizations have members of the opposition among their founders or have been otherwise linked to the opposition.¹⁵¹

Pro-Bukele legislators in the Legislative Assembly have also introduced or passed legislation that severely restricts freedom of expression and association.

In November 2021, the government proposed a Foreign Agents Law, requiring individuals and organizations that “directly or indirectly” receive funding from abroad, as well as those who work under the “control” of people abroad or represent their “interests,” to register as “foreign agents.” Failure to comply would be punishable, under the law, by fines and cancellation of legal status.¹⁵²

After several foreign governments criticized the bills and the German embassy said that it was considering ending its humanitarian programs in the country, the Bukele administration announced that it would delay voting on the law.¹⁵³ In August 2022, the speaker of the government’s party, Christian Guevara, said authorities would use the law, once passed, to punish *El Faro*.¹⁵⁴

In December 2021, the Legislative Assembly amended the Special Law Against Computer Crimes, defining new offenses in broad and vague terms. One amendment, for example, would criminalize the use of technology to obtain or distribute “confidential” information,

¹⁵⁰ “Salvadoran prosecutors raid seven NGOs in finance probe,” *Reuters*, November 22, 2021, <https://www.reuters.com/markets/rates-bonds/salvadoran-prosecutors-raid-seven-ngos-finance-probe-2021-11-22/> (accessed September 8, 2022).

¹⁵¹ Phone interview with a member of a community association, November 30, 2021; phone interview with a member of a humanitarian organization, November 29, 2021; phone interview with a member of a women’s rights organization, November 30, 2021.

¹⁵² “El Salvador: Shelve ‘Foreign Agents’ Bill,” Human Rights Watch news release, November 12, 2021, <https://www.hrw.org/news/2021/11/12/el-salvador-shelve-foreign-agents-bill>.

¹⁵³ Enrique Miranda, “German Embassy suspends ‘until further notice’ community projects by Foreign Agents Law” (“Embajada de Alemania suspende ‘hasta nuevo aviso’ proyectos comunitarios por Ley de Agentes Extranjeros”), *El Diario de Hoy*, November 17, 2021, <https://www.elsalvador.com/noticias/nacional/ley-de-agentes-extranjeros-alemania-suspende-ayuda-hasta-nuevo-aviso/901296/2021/> (accessed November 27, 2022).

¹⁵⁴ Tweet by El Faro, August 9, 2022, https://twitter.com/_elfaro_/status/1557125586367160322?s=24&t=fFrwK_UBeCtQfuLaUR4abA (accessed September 8, 2022).

a provision that could easily be misused against journalists, advocacy groups, and whistleblowers.¹⁵⁵

In February 2022, the Assembly approved an amendment to the country's Criminal Procedure Code that could lead to infringements on privacy and chill free expression and association. Under the amendment, agents operating under police control could conduct “necessary undercover digital operations” to investigate crimes under El Salvador's Special Law Against Computer Crimes and other “special laws.” The digital agents would operate with approval by the Attorney General's Office and without a court order, and the amendment is vague about the scope of the agents' operations, establishing no clear limits on the circumstances in which agents might be deployed.¹⁵⁶

Limiting Transparency and Accountability

The Bukele administration has dramatically undermined government transparency and accountability mechanisms, increasing the risk of corruption and abuse of power.

Soon after President Bukele took office, he disbanded the Agency for Transparency and Anti-Corruption (Secretaría de Transparencia y Anticorrupción), one of the main agencies charged with oversight of public spending.¹⁵⁷

In March 2020, the Legislative Assembly established a committee of six government officials and five civil society representatives to monitor and account for the use of pandemic-related funds. All five civil society members of the committee resigned in May 2020, saying the executive branch had failed to provide the reports that they were charged with auditing.¹⁵⁸

¹⁵⁵ Tamara Taraciuk Broner (Human Rights Watch), “El Salvador's Broad Computer Crime Laws Threaten Rights,” February 24, 2022, <https://www.hrw.org/news/2022/02/24/el-salvadors-broad-computer-crime-laws-threaten-rights>.

¹⁵⁶ Ibid.

¹⁵⁷ Melissa Pacheco, “Bukele Created Two New Agencies and Eliminated Five” (“Bukele creó dos nuevas secretarías y eliminó cinco”), *La Prensa Gráfica*, June 3, 2019, <https://www.laprensagrafica.com/elsalvador/Bukele-creo-dos-nuevas-secretarias-y-elimino-cinco-20190602-0448.html> (accessed September 8, 2022).

¹⁵⁸ María Clara Calle Aguirre, “El Salvador: half of the committee in charge of Covid-19 spending resigns” (“El Salvador: renuncia la mitad del comité que se encarga de los dineros del Covid-19”), *France 24*, May 13, 2020, <https://www.france24.com/es/20200513-el-salvador-renuncia-mitad-comite-dineros-covid19> (accessed September 8, 2022).

In June 2021, Rodolfo Delgado, the new pro-Bukele attorney general, ended a cooperation agreement with the International Commission Against Impunity in El Salvador (Comisión Internacional Contra la Corrupción en El Salvador, CICIES), a body backed by the Organization of American States to fight corruption in the country.¹⁵⁹ The commission had supported investigations into alleged corruption by high-level officials in the Bukele administration, including in connection with irregular purchases of equipment used to respond to the Covid-19 pandemic. Delgado also reportedly dismantled a prosecutors' unit that was investigating alleged negotiations between the administration and gangs.¹⁶⁰

The government has not disclosed public spending during the Covid-19 health crisis. Between March and June 2020, following a state of emergency invoked in response to Covid-19, the Access to Public Information Agency in El Salvador (Instituto de Acceso a la Información Pública, IAIP) —which is charged with implementing the Access to Public Information Law— suspended all hearings and processes.¹⁶¹ The suspension reduced citizen oversight of the pandemic response, including of emergency spending.¹⁶²

President Bukele's administration has weakened the role of the IAIP, including by reforming regulations under the Access to Public Information Law in ways that undermine the agency's autonomy.¹⁶³ In August 2020, President Bukele issued an executive decree

¹⁵⁹ Organization of American States (OAS), "Statement from the OAS General Secretariat on CICIES," June 7, 2021, https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-059/21 (accessed September 2, 2022); "Salvadoran Attorney General's Office ends agreement with OAS commission against impunity" ("La Fiscalía salvadoreña finaliza acuerdo con comisión anticorrupción de OEA"), *EFE*, June 4, 2021, https://www.swissinfo.ch/spa/el-salvador-corrupci%C3%B3n_la-fiscal%C3%ADa-salvadore%C3%B1a-finaliza-acuerdo-con-comisi%C3%B3n-anticorrupci%C3%B3n-de-oea/46678980 (accessed November 26, 2022).

¹⁶⁰ Carlos Martínez et al., "Criminal Investigation Found the Bukele Administration Hid Evidence of Negotiations with Gangs," *El Faro*, August 23, 2021, https://elfaro.net/en/202108/el_salvador/25670/Criminal-Investigation-Found-the-Bukele-Administration-Hid-Evidence-of-Negotiations-with-Gangs.htm (accessed September 2, 2022).

¹⁶¹ "El Salvador: Broad Powers Limit Accountability," Human Rights Watch news release, June 9, 2020, <https://www.hrw.org/news/2020/06/09/el-salvador-broad-powers-limit-accountability>.

¹⁶² *Ibid.*

¹⁶³ Mario González and Eugenia Velásquez, "Bukele Reforms the LAIP Regulations and Weakens Access to Public Information, Lawyer Says" ("Bukele reforma reglamento de la LAIP y debilita acceso de ciudadanos a información pública, denuncia abogada"), *El Diario de Hoy*, September 8, 2020, <https://www.elsalvador.com/noticias/nacional/bukele-reforma-reglamento-ley-acceso-a-la-informacion-publica/751332/2020/> (accessed September 8, 2022); Acción Ciudadana, *Is The Access to Public Information Agency in Favor of the Citizen?* (¿El Instituto de Acceso a la Información Pública en favor del ciudadano?), June 4, 2021, <https://accion-ciudadana.org/accion-ciudadana-presenta-el-informe-el-iaip-en-favor-del-ciudadano/> (accessed September 8, 2022).

changing the IAIP's procedures.¹⁶⁴ The decree restricted oversight and transparency, for example, by removing powers from the IAIP's four commissioners and giving them to its president. Between August and September 2019, President Bukele appointed three new IAIP commissioners and dismissed a commissioner who had been widely perceived as independent from the government.¹⁶⁵

The press has reported several allegations of government corruption during the pandemic. *El Faro* reported that, before Attorney General Melara was ousted in May 2021, prosecutors were investigating alleged irregular purchases by the Bukele administration.¹⁶⁶ In January 2022, Attorney General Delgado's office raided the offices of prosecutors who were investigating allegations of corruption and officials' negotiations with gangs.¹⁶⁷ At least four prosecutors fled the country, fearing persecution.¹⁶⁸

State of Emergency

On March 27, 2022, the Legislative Assembly passed a law declaring a broad "state of emergency" that suspended for 30 days the constitutional rights to freedom of association and assembly; privacy in communication; the rights to be informed of the reason for arrest, to remain silent, and to legal representation; and the requirement to bring anyone detained before a judge within 72 hours.¹⁶⁹

¹⁶⁴ Reforms to the Rules of the Access to Public Information Institute (Reformas al Reglamento de la Ley de Acceso a la Información Pública), Decree 34, signed into law on August 31, 2020, <https://www.diariooficial.gob.sv/seleccion/30342> (accessed September 8, 2022), p. 10.

¹⁶⁵ See, for example, Gabriel Labrador, "New Access to Information Institute Classifies Bukele's Probity Report" ("El nuevo Instituto de Acceso a la Información hace secreto el informe de Probidad de Bukele"), *El Faro*, October 30, 2020, https://elfaro.net/es/202010/el_salvador/24948/El-nuevo-Instituto-de-Accesso-a-la-Informaci%C3%B3n-hace-secreto-el-informe-de-Probidad-de-Bukele.htm (accessed September 8, 2022).

¹⁶⁶ Gabriela Cáceres, "The Attorney General's Office Starts an Investigation Against the Bukele Government for the Irregular Contracts during the pandemic" ("Fiscalía arranca investigación contra el Gobierno Bukele por los contratos irregulares de la pandemia"), *El Faro*, November 10, 2020, https://elfaro.net/es/202011/el_salvador/24986/Fiscal%C3%ADa-arranca-investigaci%C3%B3n-contra-el-Gobierno-Bukele-por-los-contratos-irregulares-de-la-pandemia.htm (accessed September 8, 2022).

¹⁶⁷ Gabriela Cáceres, "El Salvador Attorney General Raids Offices of Anti-Corruption Prosecutors," *El Faro*, January 19, 2022, https://elfaro.net/en/202201/el_salvador/25948/El-Salvador-Attorney-General-Raids-Offices-of-Anti-Corruption-Prosecutors.htm (accessed September 8, 2022).

¹⁶⁸ Phone interview with prosecutor, January 19, 2022; phone interview with prosecutor, January 20, 2022; phone interview with prosecutor, January 20, 2022; phone interview with prosecutor, January 21, 2022.

¹⁶⁹ "El Salvador: Broad State of Emergency Risks Abuse," Human Rights Watch news release, March 29, 2022; State of Emergency (Régimen de excepción), Decree 333, signed into law on March 27, 2022, <https://www.diariooficial.gob.sv/seleccion/30732> (accessed September 27, 2022).

President Bukele requested the suspension of rights, portraying it as necessary to address a spike in gang violence. Ninety-two people were killed, seemingly by gangs, between March 24 and 27 in El Salvador, with March 26 having the highest daily homicide rate in several years, according to official records.¹⁷⁰ Nobody had been convicted of the killings as of July.¹⁷¹

President Bukele also announced “maximum emergency” measures in the country’s prisons, ordering prison authorities to keep cells closed 24 hours a day. “Nobody is allowed out, not even to the patio,” he tweeted, while also sending “a message to the gangs” suggesting that the detainees were being punished for the conduct of gang members outside of prison.¹⁷²

According to *El Faro*, the wave of violence in March was the result of collapsed secret government negotiations with the MS-13 gang.¹⁷³

The state of emergency is based on article 29 of the Salvadoran Constitution, which allows the Legislative Assembly to suspend certain constitutional rights in extreme circumstances, such as a foreign invasion or “serious disturbances of public order.”¹⁷⁴ The 30-day state of emergency, which can be extended once for the same period under the Constitution, has been extended eight times.¹⁷⁵ But since August, the Assembly has

¹⁷⁰ Permanent Mission of El Salvador to the United Nations, “Report by the State of El Salvador in Response to the Joint Communication of Special Procedures regarding Allegations or Risks of Human Rights Violations in the Context of the State of Emergency and Reforms to the Criminal Legislation” (“Informe del Estado de El Salvador a la comunicación conjunta de los procedimientos especiales sobre alegaciones de presuntas violaciones de derechos humanos o el posible riesgo de ellas en el marco del régimen de excepción y reformas a la legislación penal”), July 29, 2022, <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=37045> (accessed August 16, 2022), p. 3.

¹⁷¹ In July 2022, the government reported that authorities had only charged people in connection with 5 of the 92 killings that initially led to the declaration of “state of emergency.” Permanent Mission of El Salvador to the United Nations, “Report by the State of El Salvador in Response to the Joint Communication of Special Procedures regarding Allegations or Risks of Human Rights Violations in the Context of the State of Emergency and Reforms to the Criminal Legislation,” July 29, 2022, p. 28.

¹⁷² Tweet by President Nayib Bukele, March 27, 2022, https://twitter.com/nayibbukele/status/1508103206232113164?s=20&t=XJ2anY_uKedYEoDwXNsgXw (accessed September 27, 2022).

¹⁷³ Carlos Martínez, “Collapsed Government Talks with MS-13 Sparked Record Homicides in El Salvador, Audios Reveal,” *El Faro*, May 17, 2022, https://elfaro.net/en/202205/el_salvador/26177/Collapsed-Government-Talks-with-MS-13-Sparked-Record-Homicides-in-El-Salvador-Audios-Reveal.htm (accessed September 27, 2022).

¹⁷⁴ Constitution of the Republic of El Salvador, art. 29.

¹⁷⁵ Legislative Assembly, “The Assembly Backs the Government in the fight against Gangs by Extending the State of Emergency” (“Asamblea respalda al gobierno en el combate a las maras al extender el régimen de excepción”), October 15, 2022, <https://www.asamblea.gob.sv/node/12408> (accessed September 27, 2022).

narrowed the state of emergency, eliminating the suspensions of the rights to freedom of association and assembly.¹⁷⁶

International law allows countries to temporarily derogate or suspend some of their human rights obligations only in very limited circumstances, which did not appear to apply to conditions in El Salvador in March 2022 or at the times of the subsequent extensions of the state of emergency.

Under article 4 of the International Covenant on Civil and Political Rights, which El Salvador has ratified, governments may derogate from some of their obligations under the covenant “in time of public emergency which threatens the life of the nation.”¹⁷⁷ Derogations should be only those “strictly required by the exigencies of the situation.”¹⁷⁸ The United Nations Human Rights Committee, which is charged with providing authoritative interpretations of the covenant, has made clear that states of emergency may not be used as a justification to violate peremptory norms of international law, for example through arbitrary deprivations of liberty or by deviating from fundamental fair trial principles.¹⁷⁹

Similarly, article 27 of the American Convention on Human Rights allows governments to derogate from some obligations in times of “war, public danger, or other emergency that threatens the independence or security” of the nation, provided that such measures are strictly required by the emergency and consistent with other obligations under international law.¹⁸⁰

¹⁷⁶ State of Emergency, Decree 476, signed into law on August 17, 2022, <https://www.diariooficial.gob.sv/seleccion/30822> (accessed November 15, 2022); State of Emergency, Decree 503, signed into law on September 14, 2022, <https://www.diariooficial.gob.sv/seleccion/30842> (accessed November 15, 2022); State of Emergency, Decree 530, signed into law on October 14, 2022, <https://www.diariooficial.gob.sv/seleccion/30864> (accessed November 15, 2022).

¹⁷⁷ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, 999 U.N.T.S. 171, entered into force March 23, 1976. El Salvador ratified the ICCPR on November 30, 1979.

¹⁷⁸ *Ibid.*, art. 4.

¹⁷⁹ UN Human Rights Committee, General Comment No. 29, States of Emergency, U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001), para. 11.

¹⁸⁰ American Convention on Human Rights (“Pact of San José, Costa Rica”), adopted November 22, 1969, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992). El Salvador ratified the American Convention on Human Rights on July 18, 1978.

Sweeping Criminal Amendments

On March 30 and April 5, 2022, the Legislative Assembly approved a series of gang-related criminal law amendments proposed by President Bukele that allow judges to imprison children as young as 12, restrict freedom of expression, and significantly expand the use of pretrial detention.¹⁸¹

A law passed on April 5 allows criminal charges against anyone who “participates in the creation, assists or creates” any type of publication, image, graffiti or other form of visual expression that “explicitly or implicitly” transmits “messages” about or that “allude to” the various types of gangs.¹⁸² The penalty is up to 15 years in prison. The law similarly allows criminal charges against people who use media outlets to “reproduce or transmit messages or statements created or allegedly created” by gangs that “could generate a state of anxiety and panic in the population in general.”¹⁸³

These provisions could potentially be used to target critics and journalists. They are inconsistent with international human rights protections for freedom of expression, which may only be restricted when necessary and proportionate to achieve a legitimate goal, such as to protect national security or the rights of others.¹⁸⁴

On March 30, the Legislative Assembly lowered from 16 years to 12 the age of criminal responsibility for children accused, amongst others, of the existing crimes of “terrorist

¹⁸¹ “El Salvador: Sweeping New Laws Endanger Rights,” Human Rights Watch news release, April 8, 2022; Amendments to the Criminal Code (Reformas al Código Penal), Decree 337, signed into law on March 30, 2022, <https://www.diariooficial.gob.sv/seleccion/30735> (accessed September 27, 2022); Amendments to the Code of Criminal Procedure (Reformas al Código Procesal Penal), Decree 339, signed into law on March 30, 2022, <https://www.diariooficial.gob.sv/seleccion/30735> (accessed September 27, 2022); Amendments to the Special Law Against Terrorist Acts (Reformas a la Ley Especial contra Actos de Terrorismo), Decree 341, signed into law on March 30, 2022, <https://www.diariooficial.gob.sv/seleccion/30735> (accessed September 27, 2022); Amendments to the Juvenile Criminal Law (Reformas a Ley Penal Juvenil), Decree 342, signed into law on March 30, 2022, <https://www.diariooficial.gob.sv/seleccion/30735> (accessed September 27, 2022); Amendments to the Criminal Code (Reformas al Código Penal), Decree 349, signed into law on April 5, 2022, <https://www.diariooficial.gob.sv/seleccion/30739> (accessed September 27, 2022).

¹⁸² Amendments to the Criminal Code, Decree 349, art. 1. See also Amendments to the Law Banning Gangs, Bands, Groups, Associations and Organizations of a Criminal Nature (Reformas a la Ley de Proscripción de Maras, Pandillas, Agrupaciones, Asociaciones y Organizaciones de Naturaleza Criminal), Decree 350, signed into law on April 5, 2022, <https://www.diariooficial.gob.sv/seleccion/30739> (accessed September 27, 2022).

¹⁸³ Amendments to the Criminal Code, Decree 349, art. 1.

¹⁸⁴ See, for example, UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, U.N. Doc. CCPR/C/GC/34 (2011).

organizations” and “unlawful association.”¹⁸⁵ The amendments allow prison sentences of up to 10 years for children ages 12 to 16 and up to 20 years for children over 16. Salvadoran law establishes that children have a right not to be held in adult detention sites.¹⁸⁶

The United Nations Convention on the Rights of the Child, to which El Salvador is a party, defines a child as anyone under age 18.¹⁸⁷ The UN Committee on the Rights of the Child, which interprets the convention, has called on countries not to set the age of criminal responsibility below 14, and has encouraged countries to progressively increase the age of criminal responsibility.¹⁸⁸

Other amendments dramatically increase sentences for alleged gang members in ways that could lead to disproportionate punishment.

El Salvador has broadly defined “terrorist organizations” to include those that use “violent or inhumane methods with the express purpose of instilling terror, insecurity, or alarm within the population,” or to “assume the exercise of powers that belong to the sovereignty of the states or systematically affect the fundamental rights of the population or part of it.”¹⁸⁹ The March 2022 amendments expanded the definition of “terrorist organizations” to explicitly include gangs, including Mara Salvatrucha (MS-13) and the Eighteenth Street Gang (Barrio 18), following the 2015 Supreme Court ruling mentioned above.¹⁹⁰

Sentences for people convicted of leading a “terrorist” gang were increased from 10 to 15 years to between 30 and 40 years in prison.¹⁹¹ The sentence for people who “take part” in

¹⁸⁵ Amendments to the Juvenile Criminal Law, Decree 342, art. 2; Juvenile Criminal Law (Ley Penal Juvenil), Decree 863, signed into law on April 27, 1994, <https://www.asamblea.gob.sv/sites/default/files/documents/decretos/8149596E-872F-4E5E-983C-5EF36B5F4080.pdf> (accessed November 29, 2022), art. 2.

¹⁸⁶ Juvenile Criminal Law, Decree 863, art. 119.

¹⁸⁷ Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49, entered into force September 2, 1990, art. 1. El Salvador ratified the CRC on July 10, 1990.

¹⁸⁸ UN Committee on the Rights of the Child, General Comment No. 24, Children’s Rights in the Child Justice System, U.N. Doc. CRC/C/GC/24 (2019), para. 33.

¹⁸⁹ Amendments to the Special Law Against Terrorist Acts, Decree 348, art. 1.

¹⁹⁰ Amendments to the Special Law Against Terrorist Acts, Decree 341, art. 1; Constitutional Chamber of the Supreme Court, resolution 22-2007AC, August 24, 2015, <https://www.jurisprudencia.gob.sv/DocumentosBodega/D/1/2010-2019/2015/08/B254E.PDF> (accessed August 26, 2022).

¹⁹¹ Amendments to the Special Law Against Terrorist Acts, Decree 348, art. 1; Amendments to the Special Law Against Terrorist Acts, Decree 341, art. 2.

these groups with the “intention of” carrying out “acts of terrorism” was increased to 15 to 20 years, up from 8 to 12.¹⁹²

Under legislation in effect since 2016, gang members in El Salvador can also be prosecuted for membership in “unlawful association” (*agrupaciones ilícitas*), under provisions that target anyone who “takes part” in gangs, is the “creator, organizer, chief, leader [or] financier” of a gang, or “promotes, helps, facilitates or favors the creation or presence” of these groups or, knowing that these groups are unlawful, “receives direct or indirect benefit” by having relations “of any nature” with gangs “even without being a part of them.”¹⁹³ Such a broad definition could be used to charge family members, lawyers, journalists, and civil society members.

The March amendments drastically increased the penalties for these crimes, regardless of whether an alleged member committed any other crime. Prison terms for “taking part” in gangs were increased to between 20 and 30 years, up from 3 to 5.¹⁹⁴ Terms for “supporting” gangs were also increased to between 20 and 30 years, up from 3 to 6.¹⁹⁵

The legislative changes also allow criminal courts to conceal the names and identities of judges to protect their safety and to “use necessary measures to make impossible their visual identification.”¹⁹⁶ While protecting a judge’s life and physical integrity is fundamental to ensuring the proper administration of justice, the Inter-American Court of Human Rights has ruled that “faceless judges” make it impossible for defendants to assess whether judicial authorities have a conflict of interest and are independent and impartial, violating due process protections under the American Convention on Human Rights.¹⁹⁷

The Legislative Assembly also expanded mandatory pretrial detention to apply to all crimes committed by members of gangs.¹⁹⁸ This provision is inconsistent with international

¹⁹² Ibid.

¹⁹³ Amendments to the Criminal Code, Decree 337, art. 2.

¹⁹⁴ Ibid.

¹⁹⁵ Ibid.

¹⁹⁶ Amendments to the Code of Criminal Procedure, Decree 399, art. 2.

¹⁹⁷ See, for example, Inter-American Court of Human Rights, Case of *J. v. Peru*, judgement of November 27, 2013, Corte I.D.H., Series C No. 275, para. 184.

¹⁹⁸ Amendments to the Code of Criminal Procedure, Decree 339, art. 5.

human rights standards requiring an individualized determination that pretrial detention is reasonable and necessary for purposes such as preventing flight, interference with evidence, or the recurrence of crime.¹⁹⁹

The legislature also modified El Salvador's Code of Criminal Procedure to allow for indefinite pretrial detention.²⁰⁰ Previously, the Code said pretrial detention should never exceed 12 months for "less serious crimes" or 24 months for "serious crimes." For defendants accused of being part of "terrorist or unlawful association," the new Code of Criminal Procedure eliminates any time limits, violating the right to trial within a reasonable time or to release under the International Covenant on Civil and Political Rights.²⁰¹ In addition, as the UN Human Rights Committee has noted, "[e]xtremely prolonged pretrial detention may also jeopardize the presumption of innocence."²⁰²

Additionally, in September, the Legislative Assembly passed a law allowing prosecutors and judges to try people in absentia.²⁰³ On its face, the International Covenant on Civil and Political Rights (ICCPR) does not appear to permit in absentia trials.²⁰⁴ Even so, the UN Human Rights Committee, which provides authoritative interpretations of the ICCPR, has clarified that in absentia proceedings may be permissible in limited circumstances, such as where the accused has been informed of the charges, the date, and the place of the hearing reasonably in advance but has declined to be present.²⁰⁵ The Human Rights Committee has called on courts to verify these circumstances before starting a trial in the absence of the accused.²⁰⁶ The apparent absence of this safeguard in El Salvador's in

¹⁹⁹ See, for example, UN Human Rights Committee, General Comment No. 35, Article 9: Liberty and security of person, U.N. Doc. CCPR/C/GC/35 (2014), para. 38.

²⁰⁰ Amendments to the Code of Criminal Procedure, Decree 339, art. 1.

²⁰¹ ICCPR, art. 9(3); UN Human Rights Committee, General Comment No. 35, Article 9: Liberty and security of person, U.N. Doc. CCPR/C/GC/35 (2014), para. 37.

²⁰² *Ibid.*

²⁰³ Amendments to the Code of Criminal Procedure (Reformas al Código Procesal Penal), Decree 507, signed into law on September 21, 2022, <https://www.diariooficial.gob.sv/seleccion/30849> (accessed November 27, 2022).

²⁰⁴ Article 14(3)(d) of the ICCPR provides that everyone charged with a criminal offense has the right to "be tried in his presence, and to defend himself in person...." ICCPR, art. 14(3)(d).

²⁰⁵ UN Human Rights Committee, General Comment No. 32: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007), paras. 36, 31; *Mbenge v. Zaire*, Communication No. 16/1977, U.N. Doc. CCPR/C/18/D/16/1977 (Human Rights Committee March 25, 1983), para. 14.1; *Salikh v. Uzbekistan*, Communication No. 1382/2005, U.N. Doc. CCPR/C/95/D/1382/2005 (Human Rights Committee March 30, 2009), para. 9.4.

²⁰⁶ *Maleki v. Italy*, Communication No. 699/1996, U.N. Doc. CCPR/C/66/D/699/1996 (Human Rights Committee July 27, 1999), para. 9.4.

absentia trials raises concerns about respect for due process rights, particularly in a context of widespread violations like El Salvador's.

International Funding

The Central American Bank for Economic Integration (Banco Centroamericano de Integración Económica, CABEL) has provided significant funding to Salvadoran government institutions.

In total, the CABEL has 13 “active loans” to fund El Salvador's government, with funds approved for a total of over US\$1.5 billion.²⁰⁷ For instance, in 2021, the CABEL Board of Directors –made up of the governments of Guatemala, El Salvador, Panama, Nicaragua, Costa Rica, Honduras, Mexico, Taiwan, Argentina, Colombia, Spain, Dominican Republic, and the Republic of Korea– approved loans to El Salvador for over \$884 million, the largest to any country in Central America.²⁰⁸

Part of the Bank's loans have been directed to state agencies that, as shown in this report, are implicated in human rights violations committed during the state of emergency. Although the disbursement of most of these funds has been postponed,²⁰⁹ El Salvador's budget for fiscal year 2022 (January-December) indicates that the government was

²⁰⁷ Central American Bank for Economic Integration, “Active operations in the public sector” (“Operaciones activas en el sector público”), November 10, 2022, <https://www.bcie.org/operaciones-y-adquisiciones/fichas-de-operaciones-activas/ficha-de-operaciones-del-sector-publico> (accessed December 2, 2022).

²⁰⁸ Central American Bank for Economic Integration, “CABEL strengthens its role as a leader for development in El Salvador” (“BCIE refuerza su rol como referente de desarrollo en El Salvador”), January 26, 2022, https://www.bcie.org/fileadmin/user_upload/Logros_2021_BCIE_El_Salvador.pdf (accessed October 18, 2022).

²⁰⁹ Interview with high-level officials of the Central American Bank for Economic Integration, November 29, 2022. See also Ministry of Economy, “Report on follow-up and evaluation of the financial results of the central government by September 2022” (“Informe de seguimiento y evaluación de los resultados presupuestarios del Gobierno Central al mes de septiembre de 2022”), n.d., <https://www.transparenciafiscal.gob.sv/downloads/pdf/700-DGP-IF-2022-ISS22.pdf> (accessed November 26, 2022), p. 26. On October 8, 2022, the CABEL told the media outlet *Factum* that the funds for the “Territorial Control Plan” had not been disbursed because “none of the prior conditions for the disbursement of either of these loans have been fulfilled.” These conditions include, among others, that authorities explain in detail how the funds will be used. See “CABEL has not disbursed the \$109 million for which Bukele invaded the Assembly” (“El BCIE no ha desembolsado los \$109 millones por los que Bukele invadió la Asamblea”), *Revista Factum*, October 17, 2022, <https://www.revistafactum.com/bcie-prestamo-no/> (accessed November 24, 2022); “Loan Contract no. 2237 between the Central American Bank for Economic Integration and El Salvador's government” (“Contrato de Préstamo no. 2237 entre el Banco Centro Americano de Integración Económica y el gobierno de El Salvador”), May 12, 2021, <https://www.diariooficial.gob.sv/seleccion/30513> (accessed November 24, 2022), p. 82.

expecting to receive part of these funds this year and the 2023 proposed budget also includes these funds.²¹⁰ For example:

- In 2019, the Bank approved loans to support the Territorial Control Plan with \$200 million, including funds to the National Civil Police, the Ministry of Defense, and the Ministry of Public Works and Transportation.²¹¹ In November 2022, officials from the Bank told Human Rights Watch that these funds had not been disbursed and that the loans were being “reformulated” to replace the National Civil Police and the Ministry of Defense as the entities charged with executing the funds.²¹² However, El Salvador’s proposed 2023 budget indicates that the Ministry of Justice and Public Safety is expected to receive \$20 million from these loans to develop the police’s infrastructure in 2023, roughly 67 percent of the funds allocated for this purpose in the budget.²¹³ Similarly, the Defense Ministry’s proposed 2023 budget includes funds from one of these loans for \$17 million, roughly 7 percent of the ministry’s expected total budget.²¹⁴
- In 2014 and 2019, the Bank approved loans to build and equip new headquarters for the Attorney General’s Office, for a total of over \$70 million, which have yet to be disbursed.²¹⁵ The Attorney General’s Office budget indicates it expected to

²¹⁰ See Ministry of Economy, “2022 Budget: Income” (“Presupuesto 2022: Ingresos”), n.d., <https://www.transparenciafiscal.gob.sv/downloads/pdf/PROSUMARIO2022-21012.pdf> (accessed November 27, 2022), p. 3. As of writing, the Legislative Assembly was discussing a 2023 budget proposal introduced by the Ministry of Economy. Ministry of Economy, “Bill for 2023 budget” (“Mensaje de proyecto: ley de presupuesto 2023”), September 30, 2022 (on file with Human Rights Watch), p. 13.

²¹¹ Central American Bank for Economic Integration, “Operation data sheet: Program to Finance the Territorial Control Plan” (“Ficha de operación: Programa de Financiamiento al Plan de Control Territorial”), November 10, 2022, https://bi.bcie.org/t/publico/views/FichaProyectosPblica/FichaPblica?code=500451&%3AiframeSizedToWindow=true&%3Aembed=y&%3AshowAppBanner=false&%3Adisplay_count=no&%3AshowVizHome=no#3 (accessed November 27, 2022); Central American Bank for Economic Integration, “Operation data sheet: Program to Finance the Territorial Control Plan-Modernization of Security Institutions” (“Ficha de operación: Programa de Financiamiento PCT-Modernización Instituciones de Seguridad”), November 10, 2022, https://bi.bcie.org/t/publico/views/FichaProyectosPblica/FichaPblica?code=500459&%3AiframeSizedToWindow=true&%3Aembed=y&%3AshowAppBanner=false&%3Adisplay_count=no&%3AshowVizHome=no#3 (accessed November 27, 2022).

²¹² Interview with high-level officials of the Central American Bank for Economic Integration, November 29, 2022.

²¹³ Ministry of Economy, “Bill for 2023 budget” (“Mensaje de proyecto: ley de presupuesto 2023”), September 30, 2022 (on file with Human Rights Watch), pp. 13, 112.

²¹⁴ *Ibid.*, pp. 13, 74.

²¹⁵ Central American Bank for Economic Integration, “Operation data sheet: Construction, Equipment and Modernization of the Headquarters of the Attorney General’s Office” (“Ficha de operación: Construcción, equipamiento y modernización de las Oficinas Centrales de la Fiscalía General de la Nación”), November 10, 2022, https://bi.bcie.org/t/publico/views/FichaProyectosPblica/FichaPblica?code=500423&%3AiframeSizedToWindow=true&%3Aembed=y&%3AshowAppBanner=false&%3Adisplay_count=no&%3AshowVizHome=no#3 (accessed November 27, 2022); Central American Bank for Economic Integration, “Operation data sheet: Project for the Strengthening and Modernization of El Salvador’s Attorney General’s Office” (“Ficha de operación: Proyecto para el fortalecimiento y modernización de la Fiscalía

receive over \$35 million from this loan in 2022, which represents more than 30 percent of the office's total funding for the year.²¹⁶ The 2023 proposed budget notes that the office is expected to receive almost \$44 million from these loans in 2023, roughly 35 percent of the office's expected budget for the year.²¹⁷ In November 2022, an official from the Bank said that they expected to disburse funds from this loan in 2023.²¹⁸

- In 2012, the Bank approved a \$71 million loan to “strengthen the prison system” in El Salvador.²¹⁹ The Bank has already disbursed roughly \$57 million.²²⁰ In September 2022, the bank's directory approved a resolution replacing the Ministry of Justice and Public Safety with the Ministry of Public Works and Transportation as the entity charged with executing the funds.²²¹ The change was requested by Salvadoran authorities as a result of the December 2021 decision by the US Department of Treasury to sanction Osiris Luna Meza, the head of the prison system and vice minister of justice and public safety, due to his alleged involvement in closed-door negotiations with gangs.²²²

In May 2021, the US Agency for International Development (USAID) announced it was redirecting its funding away from Salvadoran government institutions, the police, and the

General de la República de El Salvador”), November 10, 2022, https://bi.bcie.org/t/publico/views/FichaProyectosPblica/FichaPblica?code=302443&%3AiframeSizedToWindow=true&%3Aembed=y&%3AshowAppBanner=false&%3Adisplay_count=no&%3AshowVizHome=no#3 (accessed November 26, 2022).

²¹⁶ Ministry of Economy, “2022 Budget: Attorney General's Office” (“Presupuesto 2022: Fiscalía General de la República”), n.d., <https://www.transparenciafiscal.gob.sv/downloads/pdf/LEYPRESU2021-21041.pdf> (accessed November 27, 2022), p. 4. See also, Ministry of Economy, “2022 Budget: Income” (“Presupuesto 2022: Ingresos”), n.d., <https://www.transparenciafiscal.gob.sv/downloads/pdf/LEYSUMARIO2021-21012.pdf> (accessed November 27, 2022), p. 4.

²¹⁷ Ministry of Economy, “Bill for 2023 budget” (“Mensaje de proyecto: ley de presupuesto 2023”), September 30, 2022 (on file with Human Rights Watch), pp. 13, 90.

²¹⁸ Interview with high-level officials of the Central American Bank for Economic Integration, November 29, 2022.

²¹⁹ CABEL, “Loan 2102: General Information on the Operation” (“Línea de crédito 2102: Datos Generales de la Operación”), n.d., https://www.bcie.org/operaciones-y-adquisiciones/operaciones-aprobadas/detalle-operaciones-aprobadas?tx_news_pi1%5Baction%5D=detail&tx_news_pi1%5Bcontroller%5D=News&tx_news_pi1%5Bnews%5D=4069&cHash=7fego44128ca52ef52edd777d5925e88 (accessed November 27, 2022).

²²⁰ Interview with high-level officials of the Central American Bank for Economic Integration, November 29, 2022.

²²¹ CABEL, “Decision to replace the body charged with implementing loan 2102, authorized to the Republic of El Salvador” (“Sustituye organismo ejecutor del préstamo No. 2102, autorizado a la República de El Salvador”), September 22, 2022, https://bcie2014.sharepoint.com/sites/DocPub/Doc_Pub/615/084.DI.133.2022%20-%20Sustituye%20organismo%20ejecutor%20del%20pr%20c3%a9stamo%20No.%202102,%20autorizado%20a%20la%20Rep%20c3%bablica%20de%20El%20Salvador.pdf?ga=1 (accessed November 27, 2022).

²²² Interview with high-level officials of the Central American Bank for Economic Integration, November 29, 2022. See also, US Department of the Treasury, “Treasury Targets Corruption Networks Linked to Transnational Organized Crime,” December 8, 2021, <https://home.treasury.gov/news/press-releases/jy0519> (accessed November 29, 2022).

Access to Public Information Agency and toward civil society and human rights groups.²²³ USAID said its decision was “in response” to the removal of the Attorney General and the judges of the Supreme Court’s Constitutional Chamber, as well as “larger concerns about transparency and accountability.” USAID has not publicly announced how much funding was redirected.²²⁴

The US government has taken additional steps to support civil society groups in El Salvador. This includes the Voices Initiative, launched in June 2022 by USAID, which will put approximately \$42 million toward activities that “protect, defend, and promote civic space in Central America.”²²⁵

In 2022, the European Union redirected \$8 million in support for El Salvador’s National Civil Police toward the Ministry of Education.²²⁶

²²³ United States Agency for International Development (USAID), “USAID Redirects Assistance for Salvadoran Government Institutions Civil Society Groups,” May 21, 2022, <https://www.usaid.gov/news-information/press-releases/may-21-2021-usaid-redirects-assistance-salvadoran-government-institutions-civil-society> (accessed November 26, 2022).

²²⁴ Information provided via email by a USAID official, November 15, 2022.

²²⁵ United States Agency for International Development (USAID), “USAID Announcements at The Ninth Summit of the Americas,” June 10, 2022, <https://www.usaid.gov/news-information/press-releases/jun-10-2022-usaid-announcements-ninth-summit-americas> (accessed October 19, 2022).

²²⁶ Information provided via Whatsapp by a member of the European External Action Service, October 18, 2022.

Widespread Abuses During the State of Emergency

Cristosal and Human Rights Watch documented widespread human rights violations committed during the state of emergency in El Salvador.

The National Civil Police and the army conducted dozens of raids, particularly in low-income neighborhoods, arresting thousands of people across El Salvador's 14 states over the eight-month period covered by this report. Over 58,000 people have been detained in the context of the state of emergency, according to official figures, including over 1,600 children.²²⁷ Additionally, the police and the army report killing at least 84 alleged gang members during “confrontations.”²²⁸

Human rights violations documented by Human Rights Watch and Cristosal include arbitrary arrests, short-term enforced disappearances, torture and other ill-treatment in detention, and due process violations. Ninety people detained during the state of emergency have reportedly died in custody.²²⁹ Authorities failed to meaningfully investigate these deaths and, in some cases, detainees who died in prison did not receive the medication they needed.

Many arbitrary arrests appear to have been driven by a policy of “quotas” imposed by commanders in the National Civil Police, according to police officers.²³⁰ Police officers told Human Rights Watch and Cristosal that between March and September, emergency officers were pressed to arrest a specific number of people per day. Witnesses said that during

²²⁷ Office of the President, “Press Release” (“Comunicado de Prensa”), September 19, 2022, <https://www.presidencia.gob.sv/durante-el-gobierno-del-presidente-nayib-bukele-se-contabilizan-199-dias-con-cero-homicidios/> (accessed September 22, 2022); information provided to Human Rights Watch via email by the Public Defender's Office, July 28, 2022 (on file with Human Rights Watch); information provided to Human Rights Watch via email by the National Civil Police, November 24, 2022 (on file with Human Rights Watch).

²²⁸ National Civil Police report [identifying information withheld] (on file with Human Rights Watch). See, similarly, Tweet by Roberto Valencia, December 1, 2022, <https://twitter.com/cguanacas/status/1598325925057372160?s=20&t=vQAogKtIjQXEH8NsBj1cg> (accessed December 1, 2022).

²²⁹ Facebook video, “Interview with the justice and public safety minister,” *Frente a Frente*, November 7, 2022, <https://www.facebook.com/frenteafrenteTCS/videos/446467967423582> (accessed November 14, 2022).

²³⁰ Phone interview with police officer, July 11, 2022; phone interview with police officer, July 21, 2022; phone interview with police officer, November 16, 2022. See also “Union: El Salvador police pressured to meet arrest quotas,” *Associated Press*, April 12, 2022, <https://apnews.com/article/nayib-bukele-san-salvador-el-arrests-526a1ad197d79ac9cc40e24c51d077d3> (accessed August 4, 2022).

raids in low-income neighborhoods security forces arrested people indiscriminately with the apparent purpose of filling their trucks to their full capacity.²³¹

High-level authorities, including President Bukele and Vice President Ulloa, have consistently tried to justify human rights violations as supposedly acceptable “errors” committed during what they called a “war against gangs.”²³² At the same time, President Bukele has signaled that security forces will be shielded from accountability if they engage in abuses and said that the government will be “watching judges who favor criminals,”²³³ in what appears to be an effort to intimidate judges and prosecutors and keep them from investigating human rights violations or releasing people who they consider arbitrarily detained.

Such rhetoric, coupled with the government’s control of courts and the Attorney General’s Office, appears to have created a widespread sense that security officers can commit human rights violations with impunity. A mother who witnessed the detention of her son said that police officers told her, “We can arrest anyone we want.”²³⁴ Another relative of a victim said that officers told her that “under the state of emergency, we can go as far as we want.”²³⁵

²³¹ Phone interview with victim, April 18, 2022; phone interview with police officer, April 20, 2022.

²³² Tweet by President Nayib Bukele, April 9, 2022, https://twitter.com/nayibbukele/status/1512889544403828743?s=20&t=WL2RBVxFKo4Ybh_4AXcKTQ (accessed August 4, 2022). See also Tweet by President Nayib Bukele, July 5, 2019, <https://twitter.com/nayibbukele/status/1147235985756958722?s=20&t=HhmANjnTrf4BMbOJia1yXw> (accessed August 4, 2022); Tweet by President Nayib Bukele, April 3, 2022, <https://twitter.com/nayibbukele/status/1510774785227296786?s=20&t=WhW5kmv1TqAaohb5oyfu5g> (accessed August 4, 2022); Tweet by President Nayib Bukele, April 1, 2022, <https://twitter.com/nayibbukele/status/1509902540833538049?s=20&t=oOBywnAwDErINFqqlER-4Q> (accessed August 4, 2022); Tweet by Vicepresident Felix Ulloa, July 12, 2022, https://twitter.com/fulloa51/status/1546833088868646913?s=20&t=jkW_YvHA8lQlYCVqI2gwOA (accessed October 20, 2022).

²³³ Tweet by President Nayib Bukele, March 26, 2022, https://twitter.com/nayibbukele/status/1507890917138653188?s=20&t=OSwNFgp1yGk3cEe7_FSPnw (accessed August 4, 2022).

²³⁴ Phone interview with victim’s relative, May 5, 2022.

²³⁵ Phone interview with victim’s relative, June 10, 2022.

Arbitrary Detention and Short-term Enforced Disappearances

Human Rights Watch and Cristosal gathered evidence of over 1,100 cases of arbitrary detention committed during the state of emergency and documented in detail 130 of them, including 12 that amount to short-term enforced disappearances.

In virtually all cases that Human Rights Watch and Cristosal documented, people were taken from their homes or work or picked up on the street without being shown a search or arrest warrant by security forces.

Salvadoran authorities argue that an arrest warrant is not required to arrest alleged gang members because, in their view, these people are in “permanent flagrancy” as gang membership is considered a “continuous offense.”²³⁶ Such a broad and vague standard makes it possible to arbitrarily detain anyone security forces claim belongs to a gang, bypassing the usual legal requirement to obtain an arrest warrant.

Many arrests appear to be based on the appearance or social background of the detainees, or on questionable evidence, such as anonymous calls and uncorroborated allegations on social media. “Being poor is now a crime in El Salvador,” a relative of two people detained in a low-income neighborhood said.²³⁷ Officers repeatedly searched for tattoos on people’s bodies while conducting arrests, presumably for evidence of gang affiliation, according to relatives of detained people and victims.

On August 8, the digital media outlet *El Faro* revealed records by the Attorney General’s Office suggesting that scores of arrests had been conducted based on questionable or no evidence. Out of 690 cases examined by *El Faro*, 160 detentions were purportedly based on detainees’ “suspicious appearance,” 73 others on “nervous appearance,” and 34 on “anonymous reports.”²³⁸

²³⁶ Permanent Mission of El Salvador to the United Nations, “Report by the State of El Salvador in Response to the Joint Communication of Special Procedures regarding Allegations or Risks of Human Rights Violations in the Context of the State of Emergency and Reforms to the Criminal Legislation,” July 29, 2022, pp. 11, 12.

²³⁷ Phone interview with a victim’s relative, May 13, 2022.

²³⁸ Efrén Lemus and Gabriela Cáceres, “State of Exception Files: Hundreds Arrested for Prior Convictions or ‘Looking Nervous,’” *El Faro*, August 8, 2022, https://elfaro.net/en/202208/el_salvador/26298/State-of-Exception-Files-Hundreds-Arrested-for-Prior-Convictions-or-%E2%80%99Looking-Nervous%E2%80%99D.htm (accessed August 22, 2022).

In the cases documented by Human Rights Watch and Cristosal, detainees were rarely informed of the reasons for their arrest. In some cases officers said they were “following the orders of their superiors” or “orders from the president.” In some others, security forces portrayed the arrests as “informal questioning.” However, many people taken for such “questioning” were later reported as being under arrest.

Witnesses said that in some cases police or soldiers hit people and family members during the arrest or threatened to arrest them as well. Cristosal reported 77 cases in which family members of those detained were beaten or threatened with being arrested.

On July 18, 2022, soldiers detained **Noemí Abrego** (pseudonym), 16, in the state of Sonsonate.²³⁹ Abrego works with her mother selling food at a market and was waiting for the bus outside of her home when four soldiers stopped her. They did not show her a warrant or explain the reason for the arrest.

Abrego’s sister, who witnessed the detention through a window, saw a soldier pushed Abrego to the ground and told her mother. Her mother went outside and told soldiers that Abrego was pregnant. One soldier replied that she should stop talking or he “was going to arrest her” as well.

Abrego was taken to a police station in Sonsonate. She was held there for five days and then transferred to a juvenile detention facility in the city of San Salvador.

Fifteen days after her arrest, Abrego was taken to a judge for the first time. She was accused of “unlawful association” and sent to pretrial detention, her mother, who attended the hearing, said.

On October 6, her mother went to the juvenile detention facility to leave her clothes and sanitary supplies. She was told by a prison guard that her daughter had had a

²³⁹ Unless otherwise noted, this case is based on an interview with a relative of the victim and her lawyer, San Salvador, El Salvador, October 20, 2022; and writ of Habeas Corpus, Constitutional Chamber of the Supreme Court, October 2022 [date withheld] (on file with Human Rights Watch).

miscarriage two months after her arrest. When the mother asked why she had not been informed, an officer said they “had forgotten to let her know.”

Abrego remained in detention as of November.

On April 30, police officers kicked and beat **Lucas Sánchez, 18**, and **Ricardo Marín, 28** (pseudonyms) as they were arrested at their home in Chalatenango state, a relative said.²⁴⁰ The police said they were arresting them because of the “state of emergency.” The relative, who was eight months pregnant at the time, tried to defend them, but a police officer pushed her against a police car, saying she could also be detained if she didn’t stop asking questions. The relative said she bled for a week and a health care worker told her the pregnancy was at risk. Sánchez and Marín remain imprisoned at time of writing.

Human Rights Watch and Cristosal gathered information about 14 cases in which people with psychosocial disabilities or mental health conditions were detained and documented five such cases in detail. These arrests can lead to damaging long-term consequences for their physical and mental health.

People with disabilities are entitled to due process safeguards and what are known as procedural accommodations—in this case to enable them to understand the reason for their detention and their rights—to ensure equality with other detainees.²⁴¹ Human Rights Watch and Cristosal have not been able to determine whether authorities have fulfilled these obligations in these cases or others. Failing to do so puts people with disabilities at risk of abuse.

²⁴⁰ Unless otherwise noted, this case is based on a telephone interview with a relative of the victim, May 5, 2022.

²⁴¹ Convention on the Rights of Persons with Disabilities, adopted 13 December 2016, U.N. Doc. A/RES/61/106, entered into force May 3, 2008, art. 14. El Salvador ratified the Convention on December 14, 2007.

On May 1, 2022, police officers detained **Roberto Ramírez** (pseudonym), 25, in the state of Chalatenango. Ramírez, who sold fruits at the local market and has a mental health condition, was stopped by police when he took the family's dogs out.²⁴²

Officers asked him for an identification document and, when he showed it, they said he was being detained for “collaborating with gangs.” They did not show an arrest warrant, a witness said. When the family told the officers that Ramírez had a mental health condition, one agent responded that “if [Ramírez] died, [the officer] would bring him to me dead,” a relative recalled.

The officers also arrested Ramírez's brother, who arrived at the house later when they were taking Ramírez to celebrate a relative's birthday party.

The brothers were sent to a nearby police station and, two days later, to the Mariona prison. They have been held incommunicado since their arrest. On May 13, a judge charged them with “unlawful association” and ordered their detention pending trial.

Police and soldiers detained **Edubai Molina** (pseudonym), 23, at his home in Cuscatlán state on April 12.²⁴³ A relative said that Molina has a condition that causes bone deformation.

Security forces did not tell him or a relative who was present why he was being detained; they only said it was “due to the state of emergency.” He was taken to a police station in the municipality of Santa Cruz Michapa, Cuscatlán state, and, a few hours later, moved to a police station in the municipality of Coatepeque, Santa Ana state. There, an officer told his family that he had to comply with an “arrest quota.” The officer acknowledged that the detention was unjust, his relative said, but alleged he could not do anything about it.

²⁴² Unless otherwise noted, this case is based on a telephone interview with a relative of the victim, May 13, 2022; Hospital, “Reference Card” (“Tarjetas de referencia”), December 2006 [name of hospital withheld] (on file with Human Rights Watch); and School, “School Record” (“Constancia”), May 9, 2022 [name of school withheld] (on file with Human Rights Watch).

²⁴³ Unless otherwise noted, this case is based on an interview with a victim's relative, San Salvador, El Salvador, October 20, 2022; and a phone interview with a lawyer with knowledge of the case, November 23, 2022.

Molina was transferred to the Mariona prison, but his family was not informed. Unaware of his whereabouts, his relatives looked for him for almost three months, until in July, a prison guard acknowledged that he was in Mariona.

A judicial document that Human Rights Watch reviewed indicates that on September 8 a judge ordered that Molina be released on bail.²⁴⁴ But as of November 23, he remained in detention, in apparent violation of the judge's decision. His family is not aware of any judicial orders overturning the release order.

After conducting the arrests, security forces systematically posted photographs of the detainees on the police's and army's institutional accounts on social media platforms, accusing them of being gang members or "terrorists."²⁴⁵ In some cases, the photos showed that the detainees had been injured, apparently during their arrest, and President Bukele minimized the incidents or made fun of them in an apparent attempt to justify possibly abusive behavior.²⁴⁶

²⁴⁴ Investigation Court of San Salvador, decision of September 2022 [name of court and date of the decision withheld] (on file with Human Rights Watch).

²⁴⁵ See, for example, Tweet by the National Civil Police, August 1, 2022, <https://twitter.com/PNCsv/status/1554183572516388864?s=20&t=43dna5wCsJV8JZKRT5jGZQ> (accessed August 4, 2022); Tweet by the National Civil Police, April 12, 2022, https://twitter.com/PNCsv/status/1513931835180564485?s=20&t=Ddquhnchi_UZjW-RXBuDPQ (accessed August 4, 2022); Tweet by the National Civil Police, May 21, 2022, <https://twitter.com/PNCsv/status/1528062146177019904?s=20&t=tpDgnrP3AllgSHt8yJmtUA> (accessed August 4, 2022); Tweet by the National Civil Police, June 5, 2022, https://twitter.com/PNCsv/status/1533584473144676352?s=20&t=aBap-CO_7KmPP1DcXcx8sw (accessed August 4, 2022); Tweet by the National Civil Police, July 27, 2022, <https://twitter.com/PNCsv/status/1552486027591401472?s=20&t=gsHAY9FjNHFjLHzWZiQFdw> (accessed August 4, 2022); Tweet by El Salvador's Armed Forces, July 1, 2022, <https://twitter.com/FUERZARMADASV/status/1542995389162438662?s=20&t=NR1Ku5QPog8YVpfl8TbiEw> (accessed August 4, 2022); Tweet by El Salvador's Armed Forces, April 21, 2022, <https://twitter.com/FUERZARMADASV/status/1517161371787485184?s=20&t=1p6gVimAugmG2jLhj-xTRA> (accessed August 4, 2022); Tweet by El Salvador's Armed Forces, May 6, 2022, <https://twitter.com/FUERZARMADASV/status/1522736472704667655?s=20&t=UAotxDdmF5N6vNrT9dXtZg> (accessed August 4, 2022).

²⁴⁶ See, for example, Tweet by President Bukele, April 9, 2022, https://twitter.com/nayibbukele/status/1512969182434009089?s=20&t=Ck9aabSzXoad6lvs_A7Z7A (accessed August 16, 2022); Tweet by President Bukele, April 1, 2022, https://twitter.com/nayibbukele/status/1509762961874858009?s=20&t=Ck9aabSzXoad6lvs_A7Z7A (accessed August 16, 2022); Tweet by President Bukele, April 1, 2022, https://twitter.com/nayibbukele/status/1509745949073190925?s=20&t=Ck9aabSzXoad6lvs_A7Z7A (accessed August 16, 2022).

Human Rights Watch and Cristosal received detailed reports of over 30 cases in which people were not informed of the whereabouts of their loved ones. Some have not been allowed to communicate with their relatives for days or weeks. In several cases, officers refused to provide information about the detainees' whereabouts, in what amounts to an enforced disappearance under international law.²⁴⁷

Lack of information about detainees' health conditions and, at times, about their whereabouts drove hundreds of family members, mostly women, to gather outside the Mariona prison for days or weeks between April and May.²⁴⁸

The police arrested **Tomás Rivera** (pseudonym), 21, a construction worker, on April 24, 2022, at his home in Chalatenango state.²⁴⁹ When his family asked why he was being detained, an officer said it was because “[I] do not like you,” a relative told Human Rights Watch. Rivera had an initial hearing on May 1, and he was charged with belonging to a “terrorist organization.”

On April 30, the police detained Tomás' brother, **Martín Rivera** (pseudonym), a 28-year-old mechanic, and his brother-in-law, **Juan González** (pseudonym), an 18-year-old construction worker. Officers did not provide a reason for the detention. A relative said three officers kicked and beat the two men.

Authorities did not give the family any information about the detainees' whereabouts. A family member spent 24 days sleeping outside the Mariona prison awaiting news about the three. She was pregnant and waited with her 2-year-old son and, for some days, other family members, including children.

²⁴⁷ An enforced disappearance is “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.” International Convention for the Protection of All Persons from Enforced Disappearance, December 20, 2006, 2716 U.N.T.S. 3. See also UN Working Group on Enforced or Involuntary Disappearances, General Comment on the Definition of Enforced Disappearance (2008), in Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances, U.N. Doc. A/HRC/7/2 (January 10, 2008), para. 26.

²⁴⁸ See, for example, Natalie Kitroeff, “Outside the Walls of a Salvadoran Prison, ‘We’re All Crying Mothers,’” *New York Times*, May 12, 2022, <https://www.nytimes.com/2022/05/12/world/americas/el-salvador-prison-gangs-bukele.html> (accessed August 17, 2022); interview with victim's relative, San Salvador, El Salvador, October 20, 2022; phone interview with victim's relative, April 4, 2022; phone interview with victim's relative, May 19, 2022.

²⁴⁹ Unless otherwise noted, this case is based on a phone interview with a victim's relative, May 19, 2022.

On the night of May 24, the police dispersed the crowds outside of the Mariona prison using what several witnesses believed to be tear gas and water cannons.²⁵⁰ Officers stated that they would “beat the bugs,” in an apparent threat of retaliation against their relatives in detention, the relative said.

On May 21, authorities established “information center[s]” outside prisons following what the government described as “challenges” in providing information to relatives about their loved ones.²⁵¹ The government described the purpose of these centers as providing information to relatives about detainees’ “whereabouts, pavilion and cell.”²⁵² Interviewees told Human Rights Watch and Cristosal that these centers did provide some information on detainees’ whereabouts including their pavilion and cell. One interviewee said, however, that when she asked about her relative, a person working at the center in the Mariona prison told her that if “she asked again she would be detained.”²⁵³

While establishing these centers is an important step toward fulfilling authorities’ obligations to provide information on detainees’ whereabouts, they do not address the fact that many victims have been held incommunicado. They also do not allow relatives to obtain other crucial information about their loved ones, including on their health. The centers were created two months into the state of emergency, when thousands had already been detained and hundreds of relatives were gathering outside of prisons to obtain information.

²⁵⁰ Phone interview with victim’s relative, May 24, 2022; phone interview with a victim’s relative, May 25, 2022; phone interview with a victim’s relative, May 26, 2022.

²⁵¹ Permanent Mission of El Salvador to the United Nations, “Report by the State of El Salvador in Response to the Joint Communication of Special Procedures regarding Allegations or Risks of Human Rights Violations in the Context of the State of Emergency and Reforms to the Criminal Legislation,” July 29, 2022, p. 18.

²⁵² Ibid.

²⁵³ Phone interview with victim’s relative, June 9, 2022.

Police officers detained brothers **Eric** and **Ricardo Gallegos** (pseudonyms), ages 23 and 26, on April 5 and 6, respectively, in Santa Ana state.²⁵⁴ Officers said the brothers were “gang members” and detained them without showing an arrest or search warrant, a relative said.

Officers arrested Eric in a food market and, a day later, took Ricardo from his home. Officers did not tell the family where they were taking Ricardo, so the family followed the police to a station in Santa Ana. On April 7, the family saw the brothers taken out of the station and placed on a bus, apparently to move them to another detention facility. When a relative asked where they were being taken, officers said they “could not provide information about their whereabouts.”

Their family was not aware of their whereabouts for two months. In June, when the government announced that relatives would be allowed to leave clothes and medicine for detainees, family members decided to visit the Izalco prison to see if the brothers were held there. Guards said that they were detained there and received the package, but relatives have not been able to see them since their arrest.

On the morning of April 16, police officers detained **William Gavidia** (pseudonym), 24, when he was heading to a bus station in Monteliz, in the state of San Salvador, according to his brother and a family friend.²⁵⁵

Officers asked for his phone and identification document, which he provided. They arrested him, saying he was in a different neighborhood than the one noted on his identification document, and accused him of being “a gang member hiding from justice.”

²⁵⁴ Unless otherwise noted, this case is based on interviews with the victims’ relative and a family friend, San Salvador, El Salvador, October 20, 2022; and General Directorate of Penal Centers, “Criminal Records” (“Constancia de antecedentes penales”), June 6, 2022 (on file with Human Rights Watch).

²⁵⁵ Unless otherwise noted, this case is based on phone interviews with a victim’s relative, April 19 and August 5, 2022.

Officers threatened his brother with arrest. “You can’t do anything,” one of them said, “and if you keep asking for his rights, I will detain you and take you to a police station.”

They did not say where they were taking him. His relatives and a friend, who is a lawyer, toured detention centers to try to find him. In one of them, known as “El Penalito,” they recalled seeing what they estimated to be more than one hundred women waiting outside to learn if their relatives were detained there.

After a six-hour search, officers told them that Gavidia was held in the San Marcos police station. A police officer told the lawyer that, “We did not find anything [to detain] him but we are not going to release him.” “There is nothing you can do now. We are in a ‘state of emergency,’” an officer told them, “We cannot release him, these are the orders from above.”

Gavidia has not been able to talk with his family since. On April 25, a judge charged him with “unlawful association” and sent him to pretrial detention.

In some specific cases, officers have arrested or threatened to arrest people in apparent retaliation for previous incidents involving those detained or their families, including reporting police conduct to the Attorney General’s Office or to the Human Rights Ombudsperson’s Office. In some cases, police harassment and fear of being arbitrarily arrested has forced people to move or hide in different places. Cristosal has documented over 50 cases of people who have fled their homes during the state of emergency, fearing arbitrary arrests.

In April 2022, the police arrived at the home of **Elbin Hernández** (pseudonym), a 26-year-old student, in the state of San Salvador and threatened to detain and kill him, a relative told Cristosal. He fled his house.²⁵⁶

²⁵⁶ Unless otherwise noted, this case is based on a phone interview with a victim’s relative, April 16, 2022; and a phone interview with a lawyer with knowledge of the case, November 21, 2022.

For over ten years, the relative said, police had repeatedly harassed Hernández, demanding that he provide information on gang members who operate in his community. The relative reported the officers to the Human Rights Ombudsperson's Office; one police officer was dismissed temporarily, and the harassment ended for some time.

But when Hernández turned 18, the same officer arrived at his home with an arrest order and accused him of murder. He was held in the Quezaltepeque prison for three years. He was acquitted and released in 2019. Soon after, officers arrested him again, this time accusing him of drug possession, but he was released on parole.

The relative said that during the state of emergency, police officers have repeatedly arrived at his home searching for him. Currently, Hernández is in hiding, fearing that officers will arrest him again.

Abusive Prison Conditions and Ill-Treatment in Custody

Prisons in El Salvador have for decades been overcrowded and marked by violence and poor access to basic services, such as food, drinking water, and health care.²⁵⁷

Overcrowding has been rooted in part in policies of mass incarceration implemented by previous governments in response to gang violence.²⁵⁸ By 2020, the official capacity of the prison system was about 27,000 detainees, but it housed over 39,000, according to official statistics.²⁵⁹

²⁵⁷ Inter-American Commission on Human Rights, "Annual Report of the Inter-American Commission on Human Rights 1990-1991," February 22, 1991, <https://www.cidh.oas.org/annualrep/90.91sp/Cap.4.htm#2> (accessed August 16, 2022); Inter-American Commission on Human Rights, "Preliminary Observations on the Visit to El Salvador by the Office of the Rapporteur on the Rights of Persons Deprived of Liberty," October 20, 2010, <http://www.cidh.oas.org/Comunicados/English/2010/ANNEX%20104-10.pdf> (accessed August 8, 2022).

²⁵⁸ See, for example, International Crisis Group, *El Salvador's Politics of Perpetual Violence*, p. 4; Inter-American Commission on Human Rights, *Situation of Human Rights in El Salvador*, p. 60.

²⁵⁹ Justice and Public Safety Ministry, "Existence of Detainees in the Penitentiary System as of December 31, 2020" ("Existencia de internos en el sistema penitenciario al 31/12/2020"), December 31, 2020, <https://www.transparencia.gob.sv/institutions/dgcp/documents/415755/download> (accessed August 16, 2022).

The excessive use of pretrial detention is another factor driving high levels of prison overcrowding.²⁶⁰ The Inter-American Commission on Human Rights has noted that authorities have routinely resorted to pretrial detention “based on the type of offense, with no sufficient and individualized consideration of each case to determine whether the necessary conditions for detention are met.”²⁶¹

However, overcrowding has seriously worsened during the state of emergency. Between late March and late November 2022, over 58,000 people have been detained, according to official figures, including over 51,000 who have been sent to pretrial detention.²⁶² Such mass imprisonment raised El Salvador’s prison population to an estimated 95,000 detainees, 68,000 more than the country’s prison capacity.²⁶³

According to the International Crisis Group, between March and October police detained over 7,500 women, over two times the number of women who were detained in El Salvador as of February 2021.²⁶⁴

On April 19, the Legislative Assembly passed a law authorizing the creation of new prisons.²⁶⁵ Months later, President Bukele announced the construction of a sprawling new prison with capacity for 40,000 detainees, which he said would be ready “in 60 days.”²⁶⁶ The United Nations Standard Minimum Rules for the Treatment of Prisoners, also known as

²⁶⁰ Inter-American Commission on Human Rights, *Situation of Human Rights in El Salvador*, p. 60.

²⁶¹ *Ibid.*, p. 61.

²⁶² Information provided to Human Rights Watch via email by the National Civil Police, November 24, 2022 (on file with Human Rights Watch); Ministry of Justice and Public Safety, “‘We are committed to completely eradicating gangs: Minister Villatoro’” (“‘Estamos comprometidos con erradicar por completo a las pandillas’: Ministro Villatoro”), November 29, 2022, <https://www.seguridad.gob.sv/estamos-comprometidos-con-erradicar-por-completo-a-las-pandillas-ministro-villatoro/> (accessed December 6, 2022).

²⁶³ Ministry of Justice and Public Safety, “Today, El Salvador is the safest country in the Americas: Gustavo Villatoro, minister for security” (“Hoy por hoy El Salvador es el país más seguro de América: Gustavo Villatoro, ministro de seguridad”), July 25, 2022, <https://www.seguridad.gob.sv/hoy-por-hoy-el-salvador-es-el-pais-mas-seguro-de-america-gustavo-villatoro-ministro-de-seguridad/> (accessed August 4, 2022); World Prison Brief, “El Salvador,” <https://www.prisonstudies.org/country/el-salvador> (accessed August 29, 2022).

²⁶⁴ International Crisis Group, *A Remedy for El Salvador’s Prison Fever*, p. 11; Ministry of Justice and Public Safety, “Annex to resolution 0009-2021,” February 16, 2021, <https://www.transparencia.gob.sv/institutions/dgcp/documents/415753/download> (consultado el 16 de agosto de 2022).

²⁶⁵ Legislative Assembly, “Assembly authorizes the executive branch to construct prisons to hold people arrested during the state of emergency” (“Asamblea autoriza al Ejecutivo la construcción de centros penales para alojar a reos capturados durante régimen de excepción”), April 20, 2022, <https://www.asamblea.gob.sv/node/12097> (accessed December 2, 2022).

²⁶⁶ Tweet by President Nayib Bukele, July 21, 2022, https://twitter.com/nayibbukele/status/1550300348073607168?s=20&t=n2_Uac9D_awob7HigldK1A (accessed August 5, 2022).

the “Mandela Rules,” recommend that the “number of prisoners in closed prisons should not be so large that the individualization of treatment is hindered,” noting that “in some countries it is considered that the population of such prisons should not exceed 500.”²⁶⁷ A prison complex designed to hold tens of thousands of people would be clearly inconsistent with this international standard.

Human Rights Watch and Cristosal interviewed eight people who have been released from prison. They reported poor conditions and degrading and inhumane treatment at police stations and at Mariona, Izalco, Ilopango, Quezaltepeque, and Jucuapa prisons, as well as cases of torture in the Mariona and Izalco prisons, including beatings and waterboarding.

Currently, overcrowding is so extreme that detainees barely have space to move, they said.²⁶⁸ One interviewee said that at the Jucuapa prison detainees had to “sleep standing” or “take shifts to sleep lying on the floor.”²⁶⁹

Such prison conditions, coupled in some cases with limited access to health services in detention, can seriously aggravate the health conditions of detainees. Human Rights Watch and Cristosal gathered evidence of over 240 cases of people detained with underlying health conditions, including diabetes, recent history of stroke, and meningitis.

The police detained **Esteban Guevara** (pseudonym), a 54-year-old Uber driver, on April 25, 2022, at his home in the state of San Salvador. According to a relative who spoke with Cristosal, officers said that they had received an “anonymous phone call” that accused him of “collaborating with gangs.”²⁷⁰

Guevara was taken to the Mariona prison, prison guards said to a relative. Two months after his detention, a person who did not identify himself arrived at Guevara’s

²⁶⁷ United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules), U.N. Doc. A/RES/70/175, January 8, 2016, https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-book.pdf (accessed October 20, 2022), rule 89 (3).

²⁶⁸ Phone interview with victim, April 4, 2022; phone interview with victim, July 4, 2022; phone interview with victim, July 27, 2022; phone interview with victim, May 25, 2022.

²⁶⁹ Phone interview with victim, July 7, 2022.

²⁷⁰ Unless otherwise noted, this case is based on a phone interview with a victim’s relative, June 26, 2022; and a phone interview with a lawyer with knowledge of the case, November 21, 2022.

house and told relatives that Guevara had been hospitalized at the National Hospital since May 3. An official in the Human Rights Ombudsperson's Office told a relative that Guevara had injured his left foot when he was taken to the Mariona prison, but he did not say how.

A relative who was able to visit Guevara briefly in the hospital learned that doctors amputated Guevara's right leg and a part of his left foot.

Guevara is diabetic. His relatives took his medication to the Mariona prison before the amputation but do not know if prison authorities gave him access to it. On July 8, Guevara was taken to the Quezaltepeque prison, where he remained as of November 24.

On June 29 and July 12, 2022, then-Human Rights Ombudsperson Apolonio Tobar Serrano conducted hours-long visits to the Mariona and Izalco prisons, along with each prison director.²⁷¹ He did not conduct private interviews with detainees.²⁷² He found overcrowding in both prisons as a consequence of the "increase in the number of detainees." His finding of overcrowding is consistent with tweets and videos published by President Bukele and other authorities that show thousands of detainees stripped to their underwear and jammed together on the floors inside prisons.²⁷³

Although Tobar Serrano also said that detainees were receiving three meals a day and had access to daylight as well as adequate access to health care, President Bukele and other authorities have announced that detainees' food would be "rationed" and they would not

²⁷¹ Phone interviews with then-Human Rights Ombudsperson, Apolonio Tobar Serrano, June 1 and July 6, 2022; Tweet by the Human Rights Ombudsperson's Office, June 29, 2022, <https://twitter.com/PDDHEISalvador/status/1542299913874284544/photo/2> (accessed August 8, 2022); Tweet by the Human Rights Ombudsperson's Office, July 11, 2022, <https://twitter.com/PDDHEISalvador/status/1546702554620387328?s=20&t=MZNUfQJHjnRiiMDYUv6zA> (accessed August 8, 2022).

²⁷² Phone interview with then-Human Rights Ombudsperson, Apolonio Tobar Serrano, July 6, 2022.

²⁷³ Tik Tok by Osiris Luna Meza, March 29, 2022, https://www.tiktok.com/@osirislunamezasv/video/7080562990541573382?_r=1&t=8Tu19icgwWs&is_from_webapp=v1&item_id=7080562990541573382 (accessed August 17, 2022); Tik Tok by Osiris Luna Meza, June 14, 2022, https://www.tiktok.com/@osirislunamezasv/video/7109312059598179589?_r=1&t=8Tu1OWvrTos&is_from_webapp=v1&item_id=7109312059598179589 (accessed August 17, 2022).

have access to sunlight.²⁷⁴ On April 3, President Bukele threatened to deny all prisoners food if the spike in murders in the country continued,²⁷⁵ an action that would amount to collective punishment prohibited under international human rights law.²⁷⁶ (As discussed earlier in this report, lawmakers repeatedly threatened to oust Tobar Serrano, a vocal critic of the government’s human rights policies between 2019 and mid-2021.)

Selected Cases of Abuses in Detention

Lucrecia López (pseudonym), 48, Cuscatancingo

On March 30, police arrested **Lucrecia López**, a 48-year-old fruit seller, in Cuscatancingo, San Salvador state.²⁷⁷ After raiding the house without showing a search warrant, officers told her they were detaining her because “[they] needed to make numbers,” she said, in an apparent reference to the police’s arrest quotas. Officers took López to a police station in Cuscatancingo where they told her she was detained for “unlawful association.”

Later that day, she was transferred to a police station in Sacamil. López said she was held in a small room with 45 women; many had to sleep standing. There were no beds or mattresses in the cell, she said.

On April 2, she was moved to the women’s prison in Ilopango. López said that she slept on the floor for several days until her family sent her a mattress and some blankets. She said there was no running water.

On April 17, she was charged with “unlawful association” and placed in pre-trial detention. Sixty-five other people were charged in that hearing; all of them participated virtually.

²⁷⁴ Tweet by President Nayib Bukele, March 28, 2022, <https://twitter.com/nayibbukele/status/1508543617970933761?s=20&t=HPvTRKRES-lBJ8BeuZ7Lxw> (accessed August 5, 2022).

²⁷⁵ Tweet by President Nayib Bukele, April 2, 2022, <https://twitter.com/nayibbukele/status/1510458427864199172?s=20&t=cVSxtq1croj3vKRmBBYltw> (accessed August 5, 2022).

²⁷⁶ See, for example, UN Human Rights Committee, General Comment No. 29, Article 4: States of Emergency, U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001), para. 11; United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules), U.N. Doc. A/RES/70/175, January 8, 2016, https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf (accessed October 20, 2022), rule 43 (e).

²⁷⁷ Unless otherwise noted, this case is based on a phone interview with the victim, July 27, 2022.

On May 11, López was transferred to the Jucuapa prison, where she said conditions were “worse.” She had to sleep standing due to overcrowding. Some women died while she was detained, and others got sick, she said. López said she has a colon disease and that she did not receive medical treatment while in detention. She was released on bail on July 8.²⁷⁸

Marcelo Gómez (pseudonym), 39, Cuscatancingo

Four police officers detained **Marcelo Gómez**, a 39-year-old taxi driver, outside his home in the municipality of Cuscatancingo, San Salvador state.²⁷⁹ After reviewing his ID card and phone, officers told Gómez’s partner that they were taking him to the police station as part of a “police routine” and that they would “release him soon.”

He spent three days at the police station, without knowing why he had been detained. He “cried all day.” The cell had capacity to house 25 people, but when he arrived, there were over 75 prisoners, he said. He slept on the floor next to “the bathroom,” a hole in the ground that smelled “terrible.”

He was sent to Izalco prison on the third day. During the transfer, officers tied his hands with plastic straps so tight that his fingers swelled: “I felt they were going to explode,” he said.

When they arrived, the prison’s guards ordered the group to take off their clothes. They were forced to kneel on the ground naked looking downwards for four hours in front of the prison’s gate, Gómez said. They were then forced to squat several times.

Guards took the group to a room with five barrels full of water with ice, he said. Fifteen guards forced him and others to go into the barrels for around two hours in total, as they questioned them about their supposed links with gangs.

He was forced into a barrel “around 30 times,” and was kept there for about a minute each time. Guards forced his head under water so he could not breathe. “I felt I was drowning,” he said. Guards repeatedly insulted them, calling them “dogs” and “scum” and saying they would “pay for what [they] had done.”

²⁷⁸ Arraignment record (“Acta de presentación del imputado”), July 2022 [date withheld] (on file with Human Rights Watch).

²⁷⁹ Unless otherwise noted, this case is based on a phone interview with the victim, July 7, 2022.

He was then taken to a cell along with 124 other people. Gómez said that the cell had capacity for 60 detainees. He had two meals per day, which normally “arrived dirty, and smelled bad.” Gómez said he lost 60 pounds in one month.

Some people were forced to sleep on the floor. Gómez said he had fever and pain in his ear. After eight days in pain, a guard took him to the infirmary where a health professional gave him two pills for an “ear infection” and sent him back to his cell. He also said he suffered from continuous coughs that were severe enough that he could not speak.

Around two weeks later, he was taken before a judge with around 400 other detainees. All of them participated virtually. In the hearing, he learned about the charges against him for the first time; authorities said they were accusing him of “unlawful association.” Gómez said he did not talk to his lawyer before or during the hearing. On June 2, he was released on bail.²⁸⁰

Marvin Argueta (pseudonym), 45, Ilopango

On March 27, police officers detained **Marvin Argueta** a 45-year-old professor and taxi owner, at his taxi shop in the state of San Salvador.²⁸¹ He was detained with seven other taxi drivers who were also there.

Officers asked Argueta to provide documentation of the taxis, which he did. But the police officer detained him, without showing an arrest warrant; according to Argueta the officer said it was due to the “state of emergency.”

He was taken to the Ilopango police station, where he was held for four days. It was the first time Argueta had been detained, he said. He received food once or twice a day. At the police station an officer told him he had been detained for “unlawful association.”

On March 30, Argueta was transferred, handcuffed, to the Izalco prison. He was forced to keep his head down during the transfer, Argueta said, and police officers kicked and beat up those who disobeyed. Before entering the prison, officers forced him to kneel on the

²⁸⁰ Investigation court of San Salvador, decision of October 2022 [name of court and date of decision withheld] (on file with Human Rights Watch).

²⁸¹ Unless otherwise noted, this case is based on an interview with victim, San Salvador, El Salvador, October 20, 2022.

ground for about two hours, under the sun, and to squat 25 times naked, Argueta said. “Welcome to hell,” prison guards said, according to Argueta.

As detainees walked to their cells, police officers stood on both sides and beat them, Argueta said. “We had to walk almost squatting, and without looking up,” he said. Argueta fell and officers kicked him repeatedly.

He said he vomited when he arrived in his cell and had fever for four days. The cell had capacity for 30 people but actually held 125, according to Argueta. He slept on the floor due to the overcrowding. There was no water or toilet paper in the cell. Guards told detainees they could not talk or pray, and threw tear gas in the cell every time someone disobeyed, Argueta said.

Argueta suffers hypertension and diabetes, but he said he did not receive health care while he was detained.

On April 14, he was taken to a virtual hearing with over 50 other people. The prosecutor accused all of them of belonging to a “terrorist organization.” Argueta told the judge that he was innocent. The judge charged him and sent him to pretrial detention.

On April 23, guards took him to the prison’s infirmary where they treated him for a severe flu. The next day he was sent to a hospital, where he spent one night, before being transferred to the Quezaltepeque prison.

In Quezaltepeque, food was only “tortillas and beans.” There were 90 people in the cell, which had capacity for 30, he said.

On September 8, he was taken to the Occidental Santa Ana prison, also known as “El Peñalón,” where he said conditions were better. He was taken to a health examination and had a bed. He also was able to be outside his cell and had three meals each day.

On September 22, he was released on \$3,000 bail.²⁸² He said he was held incommunicado during his entire time in detention.

Luis Orozco (pseudonym), 47, Ahuachapán

On April 20, police officers detained Luiz Orozco, a 47-year-old tractor driver, after they pulled over the bus he was using to go to work.²⁸³

Officials said he was detained due to the “state of emergency.” Orozco was taken to a police station in Ahuachapán, where he was held for a day, handcuffed and without food or water, he said.

He was then moved to a police station in the municipality of Atiquizaya. Orozco’s wife said she went to the police station to leave food and clothes, but officials said he was not there.

Orozco was moved to the Mariona prison on April 22. When he arrived, he said, a prison guard told him and other detainees, “welcome to Mariona, a hell for gang members like you.” Five prison guards beat him with batons on his leg and back for approximately 10 minutes while he was handcuffed, he said. The guards said he had to “acknowledge that he was a gang member.”

He was taken to a cell with capacity for 80 people that held over 200, according to Orozco. Officers gave him one tortilla twice a day, and he had to share with another detainee. Sometimes he was also given water, he said.

There was one toilet inside the cell, but some days it did not have water. He spent one month and 10 days in that cell. Guards did not allow them to go outside, and the cell had no natural light. Orozco said he did not receive any health care and that he saw three people die in the cell.

²⁸² Investigation court of San Salvador, decision of October 2022 [name of court and date of decision withheld] (on file with Human Rights Watch).

²⁸³ Unless otherwise noted, this case is based on an interview with the victim and a relative, San Salvador, El Salvador, October 19, 2022.

On June 7, he was taken to what he described as a “punishment cell.” He said officers moved him and others there to “make room for other detainees.” The new cell was constantly dark, and detainees had to sleep standing due to overcrowding. There was no regular access to drinking water, and he could not shower.

On June 28, he was taken to participate virtually in a hearing, where he first learned he was being accused of “unlawful association.” The prosecutor said he had been detained “at a market along with a gang member.” Orozco denies this charge, but in the hearing, he was not allowed to intervene. He could only communicate with his lawyer through a screen that allowed him to respond “yes” or “no.”

After the hearing he was returned to the “punishment cell” where he spent 25 more days. He was then transferred to another cell where the conditions were better, he said. He spent one month there, and was released on August 22 on a \$3,000 bail.²⁸⁴

Deaths in Custody

In November 2022, Salvadoran authorities confirmed that 90 people had died in custody since March.²⁸⁵

Deaths in prison in El Salvador are not new. In her last visit to El Salvador in 2018, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions reported that “the number of deaths in detention is alarming,” particularly in maximum-security prisons, in part due to outbreaks of tuberculosis.²⁸⁶

Cristosal has received reports of 86 deaths in custody since March. Human Rights Watch and Cristosal documented 11 cases in detail, based on interviews with victims’ relatives, medical records, analysis by forensic experts, and other evidence.

²⁸⁴ Investigation court of Santa Ana, decision of August 2022 [name of court and date of decision withheld] (on file with Human Rights Watch).

²⁸⁵ “Interview with the justice and public safety minister,” *Frente a Frente*, November 7, 2022, <https://www.facebook.com/frenteafrenteTCS/videos/446467967423582> (accessed November 14, 2022); UN Committee Against Torture (CAT), “1964th Meeting: Consideration of El Salvador,” November 17-18, 2022, <https://media.un.org/en/asset/k13/k13so23y30> (accessed November 24, 2022).

²⁸⁶ United Nations Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to El Salvador, U.N. Doc. A/HRC/38/44/Add.2, December 7, 2018, <https://digitallibrary.un.org/record/1663022?ln=en> (accessed August 22, 2022), p. 10.

In one case, a person who died in custody was buried in a mass grave, without the family's knowledge.²⁸⁷ This practice could amount to an enforced disappearance if authorities intentionally concealed the fate or whereabouts of the detainee.

In at least two other cases, officials appear to have failed to provide detainees the daily medication they required to manage underlying health conditions such as diabetes.²⁸⁸

In at least four of the eleven cases documented in detail, photographs of the bodies show bruises. Members of the Independent Forensic Expert Group (IFEG) of the International Rehabilitation Council for Torture Victims (IRCT), who reviewed the photos and other evidence in two of the cases, told Human Rights Watch and Cristosal that the deaths were “suspicious” given that the bodies “present multiple lesions that show trauma that could have been caused by torture or ill-treatment that might have contributed to their deaths while in custody.”²⁸⁹

Medical authorities reported some of these deaths as being the result of “pulmonary edema” and “cerebral edema.” But the IFEG noted that the death certificates “fail to meet internationally accepted medical practice and legal standards that require recording of not only immediate causes of death, but also all underlying causes and other significant conditions contributing to death.” In the experts’ view, Salvadoran authorities “failed to adhere to internationally accepted medical practices and legal standards as outlined by the Minnesota Protocol on the Investigation of Potentially Unlawful Death in its investigation into the suspicious deaths.”

In at least two cases, authorities did not conduct an autopsy, contrary to the international standard, in line with widely accepted medical practice, that autopsies should be carried out in almost all cases of potentially unlawful death.²⁹⁰

²⁸⁷ See case of Rafael López Castellón, described below.

²⁸⁸ Phone interview with victim’s relative, May 12, 2022; phone interview with a victim’s relative, August 11, 2022.

²⁸⁹ Independent Forensic Expert Group (IFEG), “Expert opinion on the suspicious deaths in custody of Mr. Jose Luis Moreno Teran and Mr. Romeo Mauricio Posada Urrutia,” September 16, 2022 (on file with Human Rights Watch).

²⁹⁰ OHCHR, *The Minnesota Protocol on the Investigation of Potentially Unlawful Death: The Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* (New York and Geneva: OHCHR, 2017), paras. 24-25, 148. See also “El Salvador: Evidence of Serious Abuse in State of Emergency,” Human Rights Watch and Cristosal news release, May 2, 2022, <https://www.hrw.org/news/2022/05/02/el-salvador-evidence-serious-abuse-state-emergency>.

Investigations into deaths in custody also appear to be slow. Salvadoran authorities say they are investigating these deaths, but as of mid-November, all such investigations appeared to be at an “initial phase.”²⁹¹ Human Rights Watch formally asked the Attorney General’s Office for information regarding these investigations, but the office responded that information on complaints of alleged human rights violations by security forces had been “classified” for two years.²⁹²

Saul Rivas (pseudonym), a 46-year-old construction worker, was detained on April 21 in San Salvador.²⁹³

The police raided Rivas’ home on April 21 without showing a search warrant. They told the family he was suspected of “unlawful association.” A relative went to a police station where officials had taken Rivas and told the officer that Rivas had diabetes and required daily medication. “We are not giving any [medication] right now,” the officer replied, saying that he should try again at the “El Penalito” police station, where they said Rivas would be transferred the next day.

On April 22, relatives went to “El Penalito,” but officers said they were not “receiving medication” either. They asked a prison guard at the gatehouse if Rivas was there. The guard said he “was not authorized to provide information” but assured them that he would receive any medication he needed.

On May 7, employees from a mortuary arrived at Rivas’ home, informing his family that he had died. According to the Institute of Legal Medicine, Rivas died from “pulmonary edema.” Authorities conducted an autopsy but had not provided a copy of the report to relatives at time of writing.²⁹⁴

²⁹¹ Permanent Mission of El Salvador to the United Nations, “Report by the State of El Salvador in Response to the Joint Communication of Special Procedures regarding Allegations or Risks of Human Rights Violations in the Context of the State of Emergency and Reforms to the Criminal Legislation,” July 29, 2022, p. 17; UN Committee Against Torture (CAT), “1964th Meeting: Consideration of El Salvador,” November 17-18, 2022, <https://media.un.org/en/asset/k13/k13so23y30> (accessed November 24, 2022).

²⁹² Information provided to Human Rights Watch via email by the Attorney General’s Office, August 17, 2022 (on file with Human Rights Watch).

²⁹³ Unless otherwise noted, this case is based on a phone interview with a victim’s relative, May 12, 2022.

²⁹⁴ Institute of Legal Medicine, “Death Certificate” (“Esquela”), May 2022 [date withheld] (on file with Human Rights Watch).

Police arrested **José Luis Moreno Terán**, 18, on April 2 in Atiquizaya, Ahuachapán.²⁹⁵

A relative told Human Rights Watch that the family learned about Terán's arrest after seeing a tweet by the police showing a picture of him.²⁹⁶ The tweet indicated that Terán had been arrested in "flagrant" commission of a crime and would "face more than 30 years in prison for "unlawful association" and 'extortion.'"

Authorities held Terán for three days at a police station in Atiquizaya. He was then moved to the Izalco prison, where he was held incommunicado.

On June 3, workers from a mortuary went to Terán's house and informed his family that he had died. A report by the Institute of Legal Medicine says he died due to "pulmonary edema."²⁹⁷ But photographs of his body show he had multiple bruises on his torso and arms.²⁹⁸ The injuries are not visible in the photograph published by the police during his arrest, which suggests they were caused during detention.²⁹⁹ As mentioned above, forensic experts who received the photos concluded that his body "present[ed] multiple lesions that evidence trauma that could have been caused by torture or ill-treatment that might have contributed to their deaths while in custody."³⁰⁰

Authorities conducted an autopsy but had not provided a copy of the report to relatives at time of writing.³⁰¹

²⁹⁵ Unless otherwise noted, this case is based on a phone interview with a victim's relative, July 7, 2022.

²⁹⁶ Tweet by the National Civil Police, April 2, 2022, <https://twitter.com/PNCSV/status/1510245531980869640?s=20&t=U3cvj1PY1eb3v1541bAdpQ> (accessed on September 23, 2022).

²⁹⁷ Institute of Legal Medicine, "Death Certificate" ("Esquela"), June 3, 2022 (on file with Human Rights Watch).

²⁹⁸ Photographs of Terán's injuries (on file with Human Rights Watch).

²⁹⁹ Tweet by the National Civil Police, April 2, 2022, <https://twitter.com/PNCSV/status/1510245531980869640?s=20&t=U3cvj1PY1eb3v1541bAdpQ> (accessed on September 23, 2022).

³⁰⁰ Independent Forensic Expert Group (IFEG), "Expert opinion on the suspicious deaths in custody of Mr. Jose Luis Moreno Teran and Mr. Romeo Mauricio Posada Urrutia," September 16, 2022 (on file with Human Rights Watch).

³⁰¹ Institute of Legal Medicine, "Death Certificate" ("Esquela"), June 4, 2022 (on file with Human Rights Watch).

Romeo Mauricio Posada, a 57-year-old agricultural worker, was arrested on April 5 in Guatajiagua, Morazán state.³⁰² A family member who was present during the detention said police officers did not show an arrest warrant.

“We are following orders from the president,” an officer responded when she asked in the police station why Posada had been detained. On April 8, he was transferred to Izalco prison, where he was held incommunicado.

On May 16, employees from a funeral home went to Posada’s home and told a family member that he had died. According to the Institute of Legal Medicine, Posada died from “cerebral edema.”³⁰³ Authorities conducted an autopsy but had not provided a copy to the family at time of writing.

Police arrested **Rafael López Castellón**, a 53-year-old mill worker, on April 8 in Jucuapa, Usulután state.³⁰⁴

A relative who witnessed the arrest said that police did not show an arrest warrant or explain the reasons for his arrest. When a relative asked why he was being detained, an agent threatened to detain him as well.

After two days in a police station in Usulután, López Castellón was moved to the Mariona prison. On April 21, López Castellón was taken to a hearing where he was charged with belonging to a “terrorist organization.” On May 31, a relative went to Mariona to leave medicine for López Castellón, who the relative says suffered from diabetes and a heart condition. Prison guards received it.

On August 8, the relative went to the Public Defender’s Office to request López Castellón’s criminal records. A staff member told him she could not provide the records because López Castellón was dead.

³⁰² Unless otherwise noted, this case is based on a phone interview with a victim’s relative, July 6, 2022.

³⁰³ Institute of Legal Medicine, “Death Certificate” (“Esquela”), May 16, 2022 (on file with Human Rights Watch).

³⁰⁴ Unless otherwise noted, this case is based on a phone interview with a victim’s relative, August 11, 2022.

The following day, a family member went to the Institute of Legal Medicine where authorities showed him photographs of López Castellón's torso and head, so he could recognize him. They said López Castellón had died of a "cardiomyopathy," a heart disease.³⁰⁵ The authorities did not conduct an autopsy, his relatives said, because they said he died from an underlying heart condition.

López Castellón had been transferred to the Zacamil hospital on May 27. Four days later, his relatives left him medicine in the Mariona prison, but prison authorities did not inform the family about the transfer. The Institute of Legal Medicine told a relative he was buried in a mass grave, without the family's knowledge or consent. In mid-September, his family was able to exhumate his body and bury him in a cemetery in their municipality.

Abusive Criminal Proceedings

Authorities repeatedly infringed due process guarantees established under international law, violating detainees' human rights, and making it difficult, if not impossible, for detainees to adequately defend themselves during criminal proceedings.

These violations have been taking place in a context in which there are few protections for judicial and prosecutorial independence from the executive branch.

Some due process protections established under the Salvadoran constitution have been suspended during the state of emergency, including the right to be informed about the reason of arrest, to remain silent, and to legal representation, and the requirement that all people who are detained be taken before a judge within 72 hours.³⁰⁶

As of mid-October, over 43,000 people have been arrested for "unlawful association" and over 7,000 for belonging to a "terrorist group."³⁰⁷ Under Salvadoran law, including recent

³⁰⁵ Institute of Legal Medicine, "Death Certificate" ("Esquela"), August 10, 2022 (on file with Human Rights Watch).

³⁰⁶ State of Emergency, Decree 333, art. 4.

³⁰⁷ Information provided to Human Rights Watch via email by the Public Defender's Office, October 19, 2022 (on file with Human Rights Watch). This figure reflects only the cases in which defendants had public defenders, and not those in which they had private lawyers. As described above, the crime of "unlawful association" (agrupaciones ilícitas), as established

reforms passed in the early days of the state of emergency, these crimes carry a range of legal consequences that run counter to international human rights law.³⁰⁸ For example:

- El Salvador’s law establishes that hearings concerning crimes related to “unlawful association” or “terrorism” should, as a general rule, be conducted virtually.³⁰⁹ Making virtual hearings the rule rather than the exception is inconsistent with the right to be present at one’s trial, does not afford a full opportunity to challenge the validity of pretrial detention, and is not an adequate safeguard for the right to security of person and the prohibition of torture and other ill-treatment.³¹⁰ These concerns are heightened in mass hearings. In many cases documented by Human Rights Watch and Cristosal, detainees participated in the hearings virtually, although prosecutors, judges, and the defendants’ lawyers were present physically in the court.
- Courts sent over 51,000 detainees to pretrial detention, seemingly applying a recent amendment to the criminal code that expanded mandatory pretrial detention to include all crimes committed by members of terrorist groups, gangs, and other criminal organizations.³¹¹ As explained above, this provision is inconsistent with international human rights standards requiring an individualized determination establishing that pretrial detention is necessary and proportionate for purposes such as preventing flight, interference with evidence, or the recurrence of crime.

At the same time, the mass arrests notably increased the workload of judges, prosecutors and lawyers, including from human rights groups who provided pro bono representation to victims. As a point of comparison, the number of cases handled by public defenders

under article 345 of the Criminal Code, punishes a range of different actions, ranging from creating or leading gangs, to obtaining indirect benefit from them.

³⁰⁸ Information provided to Human Rights Watch via email by the Public Defender’s Office, October 19, 2022 (on file with Human Rights Watch).

³⁰⁹ Code of Criminal Procedure (Código Procesal Penal), Decree 733, signed into law on October 22, 2008, <https://sv.vlex.com/vid/codigo-procesal-penal-631407931> (accessed September 30, 2022), art. 138.

³¹⁰ See ICCPR, arts. 14(3)(b), 9(3); UN Human Rights Committee, General Comment No. 35, para. 34; Basic Principles and Guidelines on Remedies and Procedures on the Right of Persons Deprived of Their Liberty to Bring Proceedings Before a Court, principle 11, in UN General Assembly, Report of the Working Group on Arbitrary Detention, U.N. Doc. A/HRC/30/37 (July 6, 2015), annex.

³¹¹ Office of the President, “Press Release” (“Comunicado de Prensa”), August 19, 2022, <https://www.presidencia.gob.sv/senador-de-colombia-destaca-estrategia-de-seguridad-publica-del-gobierno-del-presidente-nayib-bukele/> (accessed August 22, 2022); Amendments to the Code of Criminal Procedure, Decree 339, art. 5.

increased from 9,000 between early January and late-March to over 55,000 between late-March, when the state of emergency was passed, and July.³¹²

Detainees' lawyers said that in many cases they were notified of the hearings the same day, or the day before they took place, which undermined their capacity to provide an adequate defense, including to obtain relevant documents such as medical records or work references.³¹³

In the limited number of cases in which relatives had information about their family member's hearings, they say that detainees were normally taken to a judge within 15 days after their arrest, the maximum period allowed under the Salvadoran constitution when a state of emergency has been declared.³¹⁴

Thousands were held incommunicado for weeks or months or were only allowed to see their lawyer for a few minutes before their hearings.³¹⁵ Authorities have in many cases prohibited prison visits, including of the defendant's lawyers, allegedly because "they were conducting raids in prisons" or due to "increased Covid-19 cases."³¹⁶ They also denied detainees the right to make phone calls.³¹⁷

Most detainees had public defenders who faced an immense workload and often failed to provide an adequate defense. The Public Defender's Office hired 40 additional lawyers after the beginning of the state of emergency, but as of October, there were 287 public defenders in El Salvador, who were representing an average of 194 cases each.³¹⁸

³¹² Phone interview with high-level official in the Public Defender's Office, July 28, 2022.

³¹³ Ibid.; phone interview with a lawyer, May 6, 2022; interview with a lawyer, October 19, 2022.

³¹⁴ Constitution of the Republic of El Salvador, art. 29.

³¹⁵ Phone interview with high-level official in the Public Defender's Office, July 28, 2022; phone interview with then-Human Rights Ombudsperson, Apolonio Tobar Serrano, July 6, 2022.

³¹⁶ Ibid.

³¹⁷ Ibid.

³¹⁸ Phone interview with high-level official in the Public Defender's Office, July 28, 2022; information provided to Human Rights Watch by the Public Defender's Office via email, October 19, 2022 (on file with Human Rights Watch). In mid-November, an official of the Public's Defender's Office told the UN Committee Against Torture that during the state of emergency the Legislative Assembly had increased by US\$1 million the budget assigned to the Public Defender's Office. See UN Committee Against Torture (CAT), "1964th Meeting: Consideration of El Salvador," November 17-18, 2022, <https://media.un.org/en/asset/k13/k13so23y30> (accessed November 24, 2022).

Additionally, several relatives of detainees said that public defenders failed to provide them with sufficient information on their relative's case, or to inform them in a timely manner of the evidence required from them.³¹⁹

Private attorneys also faced daunting challenges to provide an adequate defense. Some said that their access to criminal files had been restricted and that they were denied access to critically important information, such as the court file number of their case.³²⁰

Initial hearings—where, under El Salvador's law, judges review the lawfulness of the arrest, decide on charges and rule on whether the detainee is sent to pretrial detention—were conducted in groups and at times with up to 500 people in each, severely curtailing the opportunity to present a defense and raising other serious due process concerns.³²¹ Public defenders said that, in some hearings, authorities gave public defenders “three or four minutes” to present their case for “400 or 500” detainees.³²²

As of October, none of the over 58,000 people detained during the state of emergency appeared to have been taken to trial.³²³

In over 17,000 cases, public defenders requested a “special review hearing” to consider alternative measures to imprisonment for detainees.³²⁴ Human Rights Watch and Cristosal documented four cases in which courts granted the release on bail but the penitentiary authorities did not release the detainees.³²⁵

³¹⁹ Phone interview with a victim's relative, May 25, 2022; phone interview with a victim's relative, April 4, 2022.

³²⁰ Phone interview with a lawyer, April 19, 2022; phone interview with a lawyer, May 5, 2022.

³²¹ Phone interview with high-level official in the Public Defender's Office, July 28, 2022.

³²² Ibid.

³²³ Information provided to Human Rights Watch via email by the Public Defender's Office, October 19, 2022 (on file with Human Rights Watch).

³²⁴ Ibid.

³²⁵ Investigation court of San Salvador, decision of September 8, 2022 [name of court withheld] (on file with Human Rights Watch); Investigation court of San Salvador, decision of October 14, 2022 [name of court withheld] (on file with Human Rights Watch); Investigation court of San Salvador, decision of October 14, 2022 [name of court withheld] (on file with Human Rights Watch); “Presentation Certificate of the Accused” (“Acta de presentación del imputado”), July 8, 2022 (on file with Human Rights Watch); interview with a relative and the victim's lawyer, San Salvador, El Salvador, October 19, 2022; interview with a relative and the victim's lawyer, San Salvador, El Salvador, October 20, 2022.

The Constitutional Chamber of the Supreme Court has addressed only a handful of the habeas corpus requests filed by lawyers representing detainees.³²⁶ As of November 29, Socorro Jurídico Humanitario, a human rights organization, had filed 611 habeas corpus requests; the Constitutional Chamber of the Supreme Court had only ruled on five.³²⁷

Lack of Accountability for Human Rights Violations

Human Rights Watch and Cristosal have not been able to identify any meaningful investigations into allegations of human rights violations committed during the state of emergency.³²⁸

On July 22, Human Rights Watch sent a letter to the Attorney General's Office requesting information on such investigations. But the Attorney General's Office responded that the information was "classified."³²⁹

On July 29, El Salvador's Permanent Mission to the United Nations in Geneva sent a communication to several UN Experts indicating that "the Human Rights Ombudsperson's Office has not learned about the existence or lack of existence of judicial or administrative investigations about arbitrary arrests, torture, or other cruel, inhumane or degrading treatment against people accused of crimes who remain under custody."³³⁰

On November 18, 2022, an official in the Attorney General's Office told the UN Committee Against Torture that the office had opened 90 investigations into deaths in custody. She said that there was "no evidence" that the deaths had been caused by a "disproportionate use of force by police, military or prison personnel."³³¹ She did not report any concrete progress in these 90 investigations, nor did she mention whether the office had opened

³²⁶ See, for example, UN Committee Against Torture, "Concluding observations on the third periodic report of El Salvador," November 25, 2022, U.N. Doc. CAT/C/SLV/CO/3, para. 10 (e).

³²⁷ Interview with members of Socorro Jurídico Humanitario, November 29, 2022.

³²⁸ See, similarly, UN Committee Against Torture, "Concluding observations on the third periodic report of El Salvador," November 25, 2022, U.N. Doc. CAT/C/SLV/CO/3, paras. 10 (g), 14 (c).

³²⁹ Information provided to Human Rights Watch via email by the Attorney General's Office, August 17, 2022 (on file with Human Rights Watch).

³³⁰ Permanent Mission of El Salvador to the United Nations, "Report by the State of El Salvador in Response to the Joint Communication of Special Procedures regarding Allegations or Risks of Human Rights Violations in the Context of the State of Emergency and Reforms to the Criminal Legislation," July 29, 2022, p. 25.

³³¹ UN Committee Against Torture (CAT), "1964th Meeting: Consideration of El Salvador," November 17-18, 2022, <https://media.un.org/en/asset/k13/k13so23y30> (accessed November 24, 2022).

investigations into other cases of possible human rights violations committed during the state of emergency.

The Attorney General's Office, which periodically tweets about arrests and other progress in criminal investigations, has not published any information on its social media accounts about investigations into police or army officers allegedly responsible for abuses committed during the state of emergency.

Salvadoran law requires the Human Rights Ombudsperson's Office to conduct non-judicial investigations into allegations of human rights violations to "promote" the end of violations and ensure victims' rights, as well as to provide recommendations to authorities on reforms to practices or laws that open the door to abuses.³³²

However, the Human Rights Ombudsperson's Office has so far failed to carry out serious investigations into abuses committed during the state of emergency. As of June, the Office had opened 24 files grouping over 700 allegations of abuses committed during the state of emergency.³³³ Although Salvadoran law requires that investigations be concluded within eight days,³³⁴ no investigation into alleged abuses committed during the state of emergency had been finished as of early June.³³⁵

³³² Law on the Human Rights Ombudsperson's Office (Ley de la Procuraduría para la Defensa de los Derechos Humanos), Decree 183, signed into law on February 23, 2001, https://www.pddh.gob.sv/portal/wp-content/uploads/2017/06/Ley_de_la_Procuraduria_para_la_Defensa_de_los_Derechos_Humanos.pdf (accessed October 18, 2022), art. 30.

³³³ Human Rights Ombudsperson's Office, "Verification report in the context of the extension of the state of emergency due to the increase in homicides and feminicides that took place on the last week of the month of March 2022" ("Informe de verificación en el contexto de la extensión del régimen de excepción producto del incremento de los homicidios y feminicidios acontecidos en la última semana del mes de marzo de 2022"), June 2022, p. 10 (on file with Human Rights Watch).

³³⁴ Law on the Human Rights Ombudsperson's Office, Decree 183, art. 29.

³³⁵ Human Rights Ombudsperson's Office, "Verification report in the context of the extension of the state of emergency due to the increase in homicides and femicides that took place on the last week of the month of March 2022" ("Informe de verificación en el contexto de la extensión del régimen de excepción producto del incremento de los homicidios y feminicidios acontecidos en la última semana del mes de marzo de 2022"), June 2022, p. 11 (on file with Human Rights Watch).

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The following Cristosal staff members reviewed the report: Noah Bullock, executive director; Abraham Abrego, director for strategic litigation; Rina Montti, director for human rights research; and Daniel Nieto, human rights researcher.

The report was also reviewed by the following Human Rights Watch staff members: Juanita Goebertus, Americas director; Tamara Taraciuk Broner, Americas deputy director; Kyle Knight, senior health and human rights researcher; Matt McConnell, economic justice and rights researcher; Margaret Wurth, senior children's rights researcher; Letta Tayler, associate director, Crisis and Conflict Division; Regina Tamés, deputy director, Women's Rights Division; Alison Leal Parker, managing director, US Program; Claudio Francavilla, senior EU advocate; Carlos Ríos-Espinosa, senior researcher, Disability Rights Division; Kate Waine, Washington advocacy coordinator; Floriane Borel, senior United Nations advocacy coordinator. María McFarland Sánchez-Moreno and Michael Bochenek García provided Human Rights Watch's program and legal review, respectively.

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Human Rights Watch is deeply grateful to the victims who, despite often incredibly difficult circumstances, shared their testimonies with us.

“We Can Arrest Anyone We Want”

Widespread Human Rights Violations Under El Salvador’s “State of Emergency”

In March 2022, El Salvador’s Legislative Assembly adopted a “state of emergency,” suspending rights in the name of fighting gang violence. Security forces have since conducted hundreds of raids, particularly in low-income neighborhoods, arresting over 58,000 people, including more than 1,600 children.

“We Can Arrest Anyone We Want” documents widespread human rights violations committed during the state of emergency. These violations include arbitrary arrests, enforced disappearances, torture and other ill-treatment of detainees, and due process violations. Many detainees have died in custody.

This joint report by Human Rights Watch and Cristosal shows that police and soldiers have carried out similar abuses repeatedly, across the country, and throughout a period of several months. President Nayib Bukele’s dismantling of judicial independence has enabled violations, and government policies and senior officials’ rhetoric have incentivized abuses.

El Salvador’s government should end ongoing human rights violations and hold those responsible to account. And it should adopt an effective and rights-respecting security policy that addresses the root causes of gang violence and protects the population from gangs.

Foreign governments and international financial institutions should attach human rights conditions to any loans or assistance to government entities directly involved in human rights violations.

Foreign governments should also increase attention to El Salvador’s human rights situation, including at the United Nations Human Rights Council, and robustly support the work of independent journalists and civil society groups.

As the human rights situation dramatically deteriorates in El Salvador, the international community should help ensure that Salvadorans are safe, both from heinous crimes by gangs and from human rights violations by security forces.



Bystanders wait as police inspect a bus during a patrol operation in search of gang members on June 30, 2022, in Santa Ana, El Salvador.

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