



BEHIND THE VEIL OF POPULARITY:

REPRESSION AND REGRESSION OF HUMAN RIGHTS IN EL SALVADOR

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1. INTRODUCTION



Nayib Bukele assumed the presidency of El Salvador on June 1, 2019, in an election where he obtained 53% of the votes.¹ His electoral promises were focused on effective attention to the main problems and frustrations of the Salvadoran population, including a comprehensive human rights agenda aimed at generating transformations in people's lives.²

However, once in office, his government has been characterized by a dominating presence of the presidential figure; the adoption of actions aimed at restricting open and inclusive debate on matters of public interest, and interference in the proper functioning of other branches of government.³

This report, through the systematization of 83 testimonies and the documentation of 62 cases of human rights violations, as well as the review and analysis of other relevant information, demonstrates how, after more than four years, the narrative, strategies, and measures promoted by the Bukele government have deviated from its initial commitment to respect and promote human rights in the country.⁴ Instead, it has identified the privileging of a discourse that presents false dilemmas, such as the supposed need to restrict certain rights to enjoy others; to dismantle or reform institutions and control mechanisms to efficiently address the demands of the population, and to concentrate power to ostensibly facilitate the governance of the country.

The report highlights how state actions promoted and supported by these messages have created in the last presidential term a context whose primary characteristics include: the deepening of a punitive and repressive approach to public security; the adoption of a legal framework that jeopardizes due process; the systematic use of torture and other ill-treatment against individuals deprived of liberty in penal institutions; and the deployment of a series of actions that restrict the civic space. In this regard, the report highlights a noticeable regression in the sphere of civil and political rights, i.e., those that protect individual freedoms and ensure people's participation in the public life of the country.

The organization also verified the prevalence of factors that increase the vulnerability of individuals, such as the weakening of judicial independence; the misuse of the criminal process; the concealment of public information and the inefficiency of accountability and investigative mechanisms in the face of human rights violations committed by state agents.

1. Supreme Electoral Tribunal, "2018-2019 Election Report," July 2019.

2. In May 2019, one month before Nayib Bukele assumed the Presidency of the Republic, the population believed that, in general terms, security (58.3%) and the economy (34.2%) were the main issues in the country. Source: LPG DATA. View at: <https://infogram.com/opinion-sobre-la-situacion-general-del-pais-1g0gmj1v969om1q>

3. El Faro. Bukele brings the Army into the Assembly and threatens to dissolve it within a week. February 9, 2020. View at: https://elfaro.net/es/202002/el_salvador/24008/Bukele-mete-al-Ej%C3%A9rcito-en-la-Asamblea-y-amenaza-con-disolverla-dentro-de-una-semana.htm

4. See at: <https://www.amnesty.org/es/latest/news/2019/06/el-salvador-amnistia-internacional-se-reune-con-presidente-bukele-2/>

In terms of public security, the report recounts and analyzes changes in legislation, practices, and policies that have occurred in the last presidential term, leading to the conclusion that Salvadoran authorities have continued to favor a punitive and repressive approach to combating violence and crime. The main characteristics of this approach include: the deepening of militarization, the suspension of rights and procedural guarantees, mass incarceration, and the worsening of conditions for individuals deprived of liberty.

The report, which covers up to November 30, 2023, includes a section that analyzes in-depth the 21 months of implementation of the state of emergency⁵ and the different patterns of human rights violations that have occurred during the cycles of detention, processing, and incarceration. The main manifestations have been: mass arbitrary detentions; forced disappearances; the commission of torture and cruel, inhuman, and degrading treatment against individuals in detention centers; and deaths—some violent resulting from torture and others due to a lack of timely medical attention—of individuals in state custody.

In the application of this measure, which, according to international human rights standards, is extraordinary and temporary in nature, Amnesty International has identified three alarming characteristics: 1) the massiveness of human rights violations; 2) the high degree of state coordination in the design and implementation of this policy; and 3) a state-response that tends to conceal, minimize, and delegitimize these facts, refusing to acknowledge and diligently investigate abuses.

The report emphasizes the danger posed by permanent legal reforms that have been approved under the pretext of facilitating the implementation of the state of emergency, which allow and lend an appearance of legality to the suspension of a set of rights and due process guarantees.⁶

The main changes introduced include: concealing the identity of judges; the automatic application of pretrial detention for crimes related to gangs or criminal organizations, without individual analysis of the necessity of this measure—for example, to prevent a serious crime or the risk of flight—and the removal of time limits for pretrial detention for offenses associated with terrorist or illegal groups. The latter allows for indefinite use and undermines the right to be tried or released within a reasonable time. In this regard, Amnesty International warns that even if the Legislative Assembly decides not to extend the state of emergency, the risk of a deepening human rights crisis and the vulnerability of individuals will persist unless the reforms undermining due process guarantees are reversed.

The document also reveals how the state of emergency has disproportionately impacted people living in poverty, particularly those with low educational levels, precarious employment, and residing in areas stigmatized by exclusion or gang control.

On the other hand, the report highlights how the ineffectiveness of investigation, control, and accountability mechanisms is promoting impunity for actions that have led to serious human rights violations in this context.

Finally, regarding the impact on human rights resulting from the context generated by the state of emergency, the report concludes that all the conditions described above are fostering the resurgence of a new cycle of violence, this time coming from the state, in which the right to access to justice and the state's obligation to prevent serious human rights violations are difficult to guarantee.

5. In March 2022, at the request of President Bukele, the Legislative Assembly declared a state of emergency that suspended certain constitutional rights, such as freedom of association and assembly, privacy of communications, and the right to be informed of the reason for an arrest, as well as the requirement to present the detained person before a judge within 72 hours of the detention. The measure has been in place for 21 months and remains in effect.

6. Since March 27, 2022, as part of the implementation of the state of emergency, the Legislative Assembly has issued 23 opinions in which it has permanently amended articles of various legal bodies—mostly related to criminal and criminal procedural matters—that undermine the right to a fair trial.

Regarding the conditions of the civic space, the document notes an increase in state actions that undermine freedom of expression and association. Likewise, it includes documented cases of obstacles to the exercise of the right to peaceful assembly, participation in public affairs, and access to information.

Among the main tactics used by authorities for these purposes are: i) the use of state media discourse aimed at stigmatizing the work of human rights defenders and transparency; ii) harassment of journalism and any form of dissent or criticism; iii) the concealment and manipulation of public information; iv) the use of vague criminal typologies that could put human rights defenders and/or journalists at risk; v) the invocation of reasons of public order or national security to violate or hinder the exercise of human rights; and vi) the instrumentalization of the powers of some ministries and excessive controls on media and civil society organizations.

The main targets of these tactics have been human rights defenders, independent media, civil society organizations, and justice operators who have shown independence and adherence to the principles of legality and respect for the rule of law. It is important to note that these strategies have differential impacts, especially on women and community leaders, whose most extreme cases have involved the use of the state of emergency to criminalize them. To date, the most affected individuals have been those linked to the defense of land, territory, natural resources, labor rights, and the strengthening of community social cohesion.

All these elements have created an environment that favors an institutional discourse that promotes discrimination, hostility, and violence as responses to dissent and an increase in disinformation. Additionally, patterns of self-censorship and self-exile among those who, as victims of rights violations, do not find a response to guarantee their protection within state institutions are on the rise. In this regard, the report collects the opinions of local organizations, who state that among the conditions that have contributed to the loss of trust in the institutions, the lack of independence between state bodies and other entities such as the Attorney General's Office⁷ and the Human Rights Ombudsman's Office stands out.⁸

From this perspective, they make special mention of the inability of the Judicial Branch to make decisions without being subject to external influence or control, which worsened with its restructuring⁹ and the creation of a legal framework that contradicts international human rights standards. This has resulted in multiple irregularities that have affected due process guarantees and the principle of legality.

7. As a result of the elections held on February 28, 2021, the Nuevas Ideas (NI) party, founded by a movement led by President Bukele, gained absolute control of the Legislative Assembly with the election of 56 deputies.

Then, on May 1 of that same year, during the first plenary session of this new legislature, five magistrates of the Supreme Court of Justice and the Attorney General of the Republic were illegally removed from their positions. In response to these actions, various international human rights mechanisms issued condemnations and demanded the reinstatement of the judges and the prosecutor by the Salvadoran State. Some examples of these statements include:

United Nations High Commissioner for Human Rights. El Salvador: Removal of the Constitutional Chamber and the Attorney General seriously undermines the rule of law - Bachelet. May 4, 2021. View at: <https://www.oacnudh.org/el-salvador-destitucion-de-la-sala-de-lo-constitucional-y-del-fiscal-general-socava-gravemente-el-estado-de-derecho-bachelet/>

Special Rapporteur on the Independence of Judges and Lawyers. El Salvador: UN expert condemns the removal of top magistrates and the Attorney General. May 5, 2021. View at: <https://www.oacnudh.org/el-salvador-experto-de-la-onu-condena-la-destitucion-de-principales-magistrados-y-del-fiscal-general/>

8. Regarding the Human Rights Ombudsman (PDDH), universal human rights oversight mechanisms have pointed out the progressive loss of the institution's independence and have expressed their concern about the entity's lack of response to human rights violations. Committee on Economic, Social, and Cultural Rights. Concluding observations on the sixth periodic report of El Salvador. November 9, 2022

9. In September 2021, the Legislative Assembly carried out an amendment to the Judicial Career Law, which resulted in the removal of one-third of the judges in the country and personnel from the Public Ministry. International mechanisms condemned the reform: IACHR and UN Expert reject legislative reforms that remove judges and prosecutors in El Salvador and call for respecting guarantees for judicial independence. September 7, 2021. View at: <https://www.oas.org/es/cidh/jsForm/?File=/es/cidh/prensa/comunicados/2021/234.asp>

Given this scenario, Amnesty International draws attention to the human rights crisis that El Salvador is currently facing, which is likely at one of its most critical points since the end of the internal armed conflict. Under these circumstances, international scrutiny is imperative to promote that national authorities resume a path that guarantees respect for human rights and the restoration of conditions that promote an unrestricted civic space.

Among its recommendations, Amnesty International urges the Salvadoran State to put an end to repressive security policies. This includes ending human rights violations resulting from the application of the state of emergency and repealing legal reforms that undermine due process and nullify judicial guarantees. Under international human rights law, Amnesty International reminds Salvadoran authorities that the right to life, the absolute prohibition of torture and cruel, inhuman, or degrading treatment or punishment, and the right to liberty and personal integrity, among other rights, can never be suspended. The organization also recommends ensuring an orderly withdrawal of the armed forces from public security duties and strengthening the capacities of the National Civil Police.

Amnesty International reminds the State of the need to ensure that judicial institutions operate with full independence and autonomy, guarantee the rights to freedom of expression and peaceful assembly, and cease any form of restriction, stigmatization, or criminalization of critical and dissenting voices.

Furthermore, the organization calls on the international community to maintain a firm and sustained position regarding the setbacks in human rights that are occurring in El Salvador, urging authorities to comply with the recommendations issued by the Inter-American Commission on Human Rights and other special mechanisms of the United Nations, as well as facilitating the work of these mechanisms in monitoring the country's situation.

2. METHODOLOGY



To prepare this report, an Amnesty International team conducted three fact-finding missions between May 2022 and July 2023. They identified and documented 62 cases of human rights violations and other emblematic events, such as the trend towards restricting civic space.

To substantiate the report's findings, the team conducted 83 face-to-face and remote interviews with victims of the state of emergency and their families, as well as with human rights defenders, journalists and former justice operators. They also held a meeting with technical staff from the Office of the Public Defender.

In addition, the team reviewed available court records and analysed national laws and other official information obtained through access to information requests, as well as databases of Salvadoran civil society organizations. Amnesty International also consulted other relevant publications and conducted a systematic exercise to monitor social media¹⁰ and press sources.

Amnesty International's ability to further investigate certain issues addressed in this report, as well as to cross-check information from other sources, was somewhat limited by the lack of official data with basic disaggregation, by requests for access to information that were denied or only partially fulfilled¹¹, and by the lack of openness of institutions and officials to meeting with the organization.¹² Despite these circumstances, the methodology Amnesty International used allows it to draw strong conclusions from the facts it documented.

10. The accounts included in the monitoring exercise belonged to:

Government officials: 1) Nayib Bukele, President of the Republic, @nayibbukele; 2) Felix Ulloa, Vice President of the Republic, @fulloa51; 3) Gustavo Villatoro, Minister of Security, @Vi11atoro; 4) René Francis Merino Monroy, Minister of Defence, @merino_monroy; 5) Rodolfo Delgado, Attorney General, @FiscalGeneralSV; 6) Mauricio Arriaza Chicas, director of the National Civil Police (PNC), @Director_PNC; 7) Ernesto Castro, president of the Legislative Assembly, @EcastroES; 8) Christian Guevara, head of the Nuevas Ideas parliamentary group @ChrisGuevaraG; 9) Osiris Luna Meza, director general of Penal Centres, @osirislunameza. Public institutions: 1) Office of the President of the Republic, @presidenciaSV; 2) Office of the Vice President of the Republic, @VcpresidenciaSV; 3) Legislative Assembly, @AsambleaSV; 4) Ministry of Security, @SeguridadSV; 5) Ministry of Defence, @DefensaSV; 6) Office of the Attorney General of the Republic, @FGR_SV; 7) National Civil Police, @PNCSV. The monitoring period ran from June 2019 to October 2023

11. In May 2022 and September 2023, the organization sent requests for information to the National Civil Police, Ministry of Defence, Office of the Attorney General, Supreme Court of Justice, Attorney General's Office, General Directorate of Penal Centres, and the Office of the Public Defender for Human Rights.

12. On 24 March 2023, Amnesty International issued formal written requests to meet with staff from the Office of the Attorney General, the Office of the Public Defender and the Office of the Public Defender for Human Rights. As of the completion of this report, it had received no response from the authorities.

Amnesty International is grateful to the individuals and organizations that provided information for this mission, some of whom have requested that their identities be withheld for fear of reprisals.¹³ The organization especially commends the critical work being done by human rights defenders, civil society organizations, victims' movements, journalists and independent media in an antagonistic, highly stigmatizing and hostile environment with few or no effective national mechanisms to help protect and guarantee their human rights.

13. This report identifies people who have requested anonymity with an asterisk (*) to indicate use of a pseudonym.

3. CONSOLIDATION OF THE STATE'S PUNITIVE MODEL



3.1. ABANDONING A COMPREHENSIVE APPROACH TO PUBLIC SECURITY

a) Background

For over two decades, El Salvador's government administrations have taken a predominantly punitive approach to insecurity and crime, particularly gang-related crime. Some of its measures violated international human rights standards. These included:

- Militarizing public security: Since 1993, the Armed Forces of El Salvador (FAES) have gradually increased their involvement in public security tasks, which conflicts with the institution's constitutional role, which is limited to national defence.¹⁴ The Inter-American Court of Human Rights has ruled that the participation of military agents in public security actions must be limited. One of its arguments is that members of the armed forces are trained to defeat the enemy, not to maintain order and protect civilians as police forces are.¹⁵
- Excessive use of force by law enforcement agencies: State agents used practices that frequently subjected the population to cruel and inhuman treatment, injuries and even extrajudicial executions, as pointed out by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions in her visit to El Salvador in 2018.¹⁶ Regarding this issue, the Inter-American Court of Human Rights has called on states to use force "*in keeping with the principles of legality, absolute necessity and proportionality*".¹⁷

14. Plataforma por la Seguridad Ciudadana. "Plan Control Territorial: Los peligros de la militarización de la seguridad pública". 26 July 2021

15. Inter-American Court of Human Rights. *Case of Montero Aranguren et al. (Detention Center of Catia) V. Venezuela*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of 5 July 2006, para. 78; "Any involvement of the Armed Forces in law enforcement tasks needs to be extraordinary, temporary, subordinate, and supplementary to the work of civilian institutions". IACHR. *Report on Citizen Security and Human Rights*. 2009.

16. *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on Her Mission to El Salvador*. 07 December 2018 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/359/08/PDF/G1835908.pdf?OpenElement>

17. Quote from IACHR. *Case of Nadege Dorzema et al. V. Dominican Republic*. Merits, Reparations and Costs. Judgment of

- Adopting a legal framework that compromises due process: Since 2006,¹⁸ there has been a trend toward legislation allowing the use of broad and vague statutory definitions of criminal offences to prosecute criminal groups and punish mere membership in those groups. That is, the focus is on prosecuting people for who they are rather than what they have done.¹⁹ The mere application of these statutory definitions entails recurring violations of the right to personal liberty and the right to a fair trial.
- Patterns of mass arrests and mass incarceration, and increasingly precarious prison conditions: These trends have exposed those deprived of liberty to conditions that compromise their dignity and health and pose a substantial obstacle to actions to rehabilitate and reintegrate them into society and prevent recidivism.²⁰

By implementing policies focused primarily on prosecuting and punishing crime, successive administrations neglected to develop strategies to address the root causes of violence. These strategies could have included tackling structural and systemic problems, such as limited job creation, high school dropout and youth unemployment rates, lack of resources and expertise in the police and an overburdened judicial system.²¹ This neglect ultimately resulted in a resurgence of violence and in stronger criminal structures.²²

Civil society organizations and security experts have warned about and documented how such strategies have limited effectiveness and sustainability, and also lead to multiple human rights violations.²³ The Inter-American Commission on Human Rights (IACHR) has reiterated that states have an international obligation to protect human rights against violence and crime. Their responsibility lies in developing, applying and constantly reviewing comprehensive and sustainable public policies that are focused on protecting the human rights of all people.²⁴

b) The Nayib Bukele administration

Bukele's campaign messaging in 2018 seemed to incorporate these analyses and recommendations, at least in theory, when he announced that his government would combat violence – particularly gang violence – through a comprehensive approach to public security.

24 October 2012. Paras 85 to 90. See also: Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. 7 September 1990

18. 2006: Special Law against Acts of Terrorism, Article 4: "[offences that], due to the way they are committed means and methods employed, demonstrate an intent to provoke a state of alarm, fear or terror in the population" This clause allows authorities to prosecute, as terrorist acts, certain conduct that is intended to instil fear but could just be committed inadvertently or negligently.

2010. Law on the Prohibition of Maras, Gangs, Groups, Associations and Organizations of a Criminal Nature. This law banned criminal gangs, groups, associations and organizations.

2015. The Supreme Court of Justice issued a ruling classifying MS-13, Barrio 18 and other gangs as "terrorists", allowing the Special Law against Acts of Terrorism to be applied to suspected gang members.

19. Cristosal: *La excepción se volvió la norma. Una mirada a las reformas penales y su impacto en las garantías ciudadanas*. October 2023.

20. The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) Rule 4. "The purposes of a sentence of imprisonment or similar measures deprivative of a person's liberty are primarily to protect society against crime and to reduce recidivism".

21. *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on Her Mission to El Salvador*. 7 December 2018 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/359/05/PDF/G1835905.pdf?OpenElement>.

22. See: Jeannette Aguilar and the Heinrich Böll Stiftung Foundation, *Políticas de seguridad pública en El Salvador*. January 2019; Sonja Wolf, *Mano Dura: The Politics of Gang Control in El Salvador*. Austin: University of Texas Press, 2017.

23. IACHR, 174th Special Period of Sessions, Audiencia Violencia y Seguridad Ciudadana en El Salvador in El Salvador, 11 November 2019.

24. Inter-American Commission on Human Rights. *Report on Citizen Security and Human Rights*. OEA/Ser. LV/II. Doc. 57. 31 December 2009.

“First we’ll work on prevention... We’ll make inroads with art, culture, sport, education and scholarships. And reintegration... We’re going to improve conditions in the prison system so that they aren’t subhuman”.

Nayib Bukele, as a presidential candidate presenting Plan Cuscatlán. 2018.²⁵

Then in 2019, after taking office as president, he reiterated his preference for this type of approach to the IACHR during its on-site visit. At that time, he reported the creation of the Plan Control Territorial,²⁶ a seven-phase strategy that, according to the scant public information available, appeared to represent a break with the purely punitive and repressive approach of the past.

However, in its preliminary observations from the same visit, the IACHR echoed the concerns expressed by civil society organizations about what they considered to be the continuation of a repressive approach to security, the first sign of which was the increased use of military forces in public security tasks.²⁷



During the Covid-19 pandemic, Amnesty International confirmed the presence of armed military personnel in operations to contain the virus. This led to numerous allegations of excessive use of force and unlawful detentions involving members of the armed forces.²⁸

The Inter-American Court has established that, *“maintaining internal public order and public safety should, above all, be reserved to civil police agencies”*. Therefore, the armed forces’ involvement in security tasks should, as a general rule, be exceptional, subordinated, supplementary, regulated and supervised by competent, independent and technically capable civilian authorities.²⁹

However, the current administration has taken decisive steps to further militarize public security, a trend evident from both the president’s public statements³⁰ and from changes in the

25. See: https://www.facebook.com/nayibbukele/videos/plan-cuscatlan%C3%A1n/517516945402322/?locale=es_LA

26. As of November 2022, the government had shared information about implementing five phases of the plan: phase 1 “Preparedness”, phase 2 “Opportunities”, phase 3 “Modernization”, phase 4 “Incursion”, phase 5 “Extraction”. See: <https://www.presidencia.gob.sv/en-el-tiempo-que-lleva-el-gobierno-del-presidente-nayib-bukele-el-plan-control-territorial-es-la-mejor-defensa-del-pueblo-ante-la-agresion-de-las-pandillas/>

On 15 September 2023, Bukele announced the start of phase 6, “Integration”. See: <https://www.seguridad.gob.sv/presidente-nayib-bukele-anuncia-fase-vi-del-plan-control-territorial/>

27. Organizations also raised concerns about the lack of information, transparency, accountability, as well as their lack of involvement in designing the Plan Control Territorial. “IACHR presents its preliminary observations following its in loco visit to El Salvador”. https://www.oas.org/en/iachr/media_center/PReleases/2019/335.asp

28. Amnesty International “Some things never change: repression and the militarization of public security in El Salvador”. <https://www.amnesty.org/en/latest/news/2020/10/repression-militarizacion-seguridad-publica-el-salvador/>

29. Inter-American Court of Human Rights. *Case of Alvarado Espinoza et al. V. Mexico. Merits, Reparations and Costs*. Judgment of 28 November 2018, paras 178 and 182.

30. Ministry of Justice and Public Security. “Presidente Nayib Bukele anuncia IV Fase del Plan Control Territorial ‘Incursión’”.

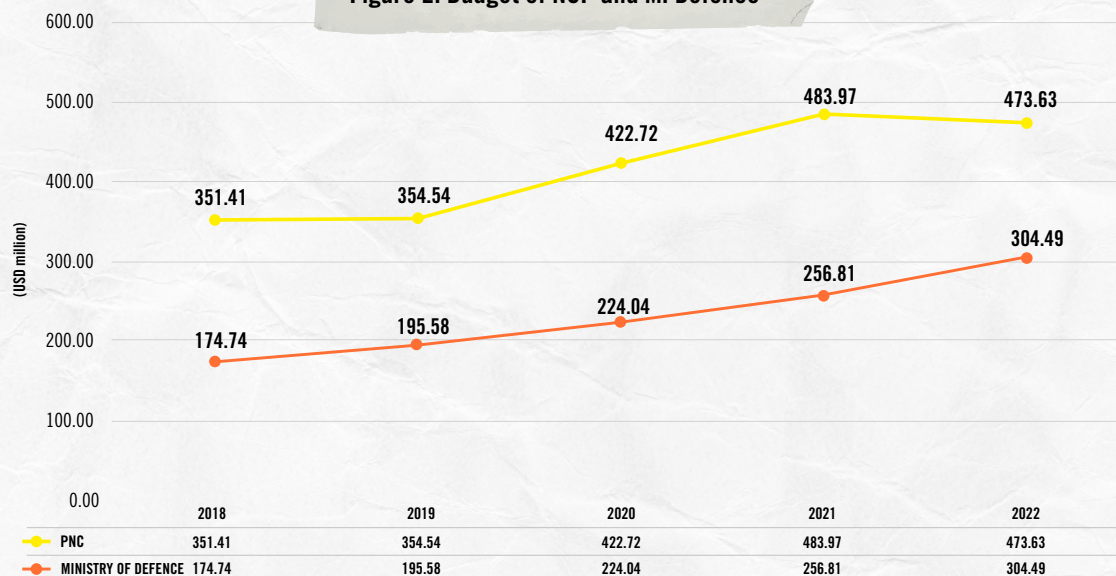
“In order to achieve this objective, the president announced that the number of military personnel, which at the moment is more

Figure 1: Defence and public security budget distribution (USD millions)



*Prepared by Amnesty International based on published accrued general budgets, 2018-2022

Figure 2: Budget of NCP and M. Defence



*Prepared by Amnesty International based on published accrued general budgets, 2018-2022

Ministry of Defence's budget over time.

This ministry's budget has slowly but steadily grown, expanding by 57% between 2018 and 2022. Meanwhile, the gap between the funds allocated to the National Civil Police (PNC) and the Ministry of Defence has shrunk. In 2018, the budget for the Ministry of Defence was about half of the PNC's budget, but by 2022 it had increased to about 65% of that budget. This is a sign that the government's strategy to combat crime and violence does not involve a plan to phase out the armed forces' involvement in public security tasks in a gradual and orderly way, at least not in the short term (Figures 1 & 2).

Meanwhile, an evaluation of government investment in punitive measures, compared to investment focused on preventing violence, rehabilitation and assisting victims, shows that the current administration has dispensed with its initial commitments and has instead re-doubled its repressive and punitive approach. In doing so, it continues to make the mistake of neglecting the root causes of the problem of violence and crime, disregarding essential strategies of prevention, reintegration and rehabilitation.

Finally, according to press reports, the 2024 budget proposal does not include reintegration and rehabilitation programmes but does include a counter-terrorism fund, which suggests that the security approach will continue to be exclusively repressive.³¹

“The mass imprisonment of alleged gang members, the normalization of emergency decrees, the imposition of the extraordinary security measures and the application of terrorism laws to gang activities are unlikely to address the root causes of violence and gang existence, or respond to the evident need for accountability.”

Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on Her Mission to El Salvador.
7 December 2018

than 20,000, will be doubled to 40,000. more than 20,000 elements; in other words, it will reach 40,000.” See at: <https://www.seguridad.gob.sv/presidente-nayibbukele-anuncia-iv-fase-del-plan-control-territorial-incursion/>

31. LPG: Salvadoran government re-creates fund to combat terrorism. See at: <https://www.laprensagrafica.com/elsalvador/Gobierno-salvadoreno-vuelve-a-crear-fondo-para-combate-al-terrorismo-20231017-0093.html>

3.2. SUSPENSION OF RIGHTS: THE NEW MODEL FOR MANAGING PUBLIC SECURITY

During the Covid-19 pandemic in 2020, Nayib Bukele's government resorted to using a state of emergency for the first time as a tool to deal with an extraordinary situation. In enforcing the legislative decree³² that declared the state of emergency, the government ended up restricting and violating rights that, according to international standards,³³ cannot be curtailed under any circumstances, such as the right to life, the prohibition of torture and ill-treatment, the principle of legality and the principle of non-discrimination.³⁴

At that time, organizations such as the IACHR reminded states of their obligation to design and implement measures to address the pandemic while ensuring full respect for people's human rights at all times³⁵.

Two years later, in March 2022, after a spike in homicides in which 87 people were killed in a single weekend³⁶ – due to the alleged breakdown of the government's purported pact with the gangs³⁷ – the Salvadoran state again resorted to declaring a state of emergency to handle the situation.

However, this time, since the composition of the Legislative Assembly³⁸ gave the executive branch absolute control over the legislature, the very wording of the decree³⁹ failed to meet the standards set by international human rights instruments for this type of measure. It allows the suspension of due process and judicial guarantees such as short time limits for administrative detention and the right to defence; freedom of association and assembly; and the inviolability of correspondence and telecommunications.⁴⁰

32. Legislative Assembly of the Republic of El Salvador. Decree no. 594. 14 March 2020 https://www.transparencia.gob.sv/system/documents/documents/000/355/172/original/Decreto_Legislativo_N%C2%B0_594_Coronavirus_14_03_2020.pdf?1585091424

33. Article 4 of the International Covenant on Civil and Political Rights (ICCPR). Article 27 of the American Convention on Human Rights (ACHR).

34. According to public data, under the state of emergency during the Covid-19 health crisis, hundreds of people were illegally detained, often using excessive force and for subjective reasons, such as not wearing face masks.

The Office of the Public Defender for Human Rights counted 1,637 cases linked to the emergency measures, 622 of which were possible infringements of the right to liberty for failing to adhere to the quarantine.

According to civil society sources, as of 28 August 2020, 16,780 people had been quarantined under state supervision for various reasons, including return from abroad and contact with Covid-19 cases. IACHR. *The Human Rights Situation in El Salvador*. 14 October 2021 https://www.oas.org/en/iachr/reports/pdfs/2021_ElSalvador-EN.pdf

35. IACHR, Press Release 76/20–“IACHR Calls on the OAS States to Ensure That the Emergency Measures They Adopt to Address the COVID-19 Pandemic Are Compatible with Their International Obligations”. Washington, D.C., 17 April 2020; IACHR, Resolution No. 1/2020, Pandemic and Human Rights in the Americas, adopted by the IACHR on 10 April 2020.

36. El Mundo newspaper. Spike in homicides left 87 dead in El Salvador this weekend. 28 March 2022.

Available at <https://diario.elmundo.sv/nacionales/repunte-de-homicidios-dejo-87-muertes-en-el-salvador-este-fin-de-semana> El Faro. The victims of the most violent day of the century. 3 April 2022. Available at: https://elfaro.net/es/202204/el_salvador/26107/Las-v%C3%ADctimas-del-d%C3%ADa-m%C3%A1s-violento-del-siglo.htm

37. Journalistic investigations indicated that Nayib Bukele's government maintained a pact with the country's main gangs to achieve a decrease in homicides to achieve a drop in homicides in exchange for certain benefits for their leaders. See at: https://elfaro.net/es/202301/el_salvador/26676/Cronolog%C3%ADa-del-pacto-entre-el-Gobierno-de-Bukele-y-las-pandillas.htm; and <https://www.laprensagrafica.com/elsalvador/Corte-Suprema-atiende-la-extradicion-de-cabecilla-MS-13-20210715-0114.html>

38. In the election on 28 February 2021, the New Ideas (NI) party, founded by a movement led by President Bukele, gained absolute control of the Legislative Assembly with the election of 56 deputies. It assumed that control in May 2021.

39. Legislative Assembly of the Republic of El Salvador. Decree no. 333. 27 March 2023 <https://www.asamblea.gob.sv/sites/default/files/documents/decretos/336D2998-E5BB-4CAF-87DA-46BDBABF5522.pdf>

40. Paragraph 11 of the UN Human Rights Committee's General Comment No. 29 states that even in times of emergency, states should not deviate from certain fundamental legal principles, such as the right to a fair trial and the presumption of innocence. It also emphasises that the prohibition against arbitrary deprivation of liberty must be respected, ensuring that all detainees have access to effective and prompt legal and judicial procedures.

“In recent months, several members of my family have been detained, and I don’t know why. All of them have always been hard-working, honest people who have never gotten into trouble. All of this came out of the blue (...)

I never imagined I would end up with my whole family in jail [three sons, a daughter-in-law and a son-in-law] (...) The police never once explained to us why they were arresting them in all the times they came for one of them. We never saw a warrant from a judge or any document from any other authority that you could read and find out who was giving the order and why.

The police and soldiers just told them to come with them to the police station where they would ask them some questions. But then they never let them go. Afterwards, I learned that they had all been charged with that damned word we’re all now afraid of: ‘unlawful association’. I don’t really understand what that means, because when they took my children, they were not part of a group. But people say that if they slap that offence on you, you’ll never get out of prison.”

Maria*, a woman who told Amnesty International how in the space of two months five members of her family were arbitrarily arrested by a joint task force made up of police and members of the armed forces. February 2023.

Overnight, rights like the presumption of innocence and the right to be informed of the crime for which one is being detained were suspended “nationwide” in order to “restore order, public safety and territorial control”.

The circumstances of detention described by María* reflect what many of the over 73,800 people arrested⁴¹ in the last 21 months have likely experienced: arrests with no warrant from the court or prosecutor, with no flagrancy and with no evidence of prior investigation. The maximum duration of administrative detention was extended to 15 days,⁴² and the authorities have used suspected gang membership as the sole argument for prosecuting people, charging most of them with the crime of “unlawful association”.⁴³

Due to the high volume of detentions, court hearings – where the legality of an arrest is assessed – have been massive, involving up to 500 people. Additionally, the identity of the judges has been concealed and those arrested have generally been given pretrial detention. These actions have violated personal liberty and the right to a proper defence, as well as other due process guarantees.⁴⁴

41. Legislative Assembly. Decree No. 843. 12 September 2023 Recital VIII: “[...] As part of the actions carried out to achieve this purpose, over 72,600 people have been arrested during the state of emergency [...]”

42. International standards require that anyone arrested or detained be brought promptly before a judge. The Human Rights Committee has expressed concern about laws in a number of countries that allow detention for at least 72 hours without bringing the detainee before a judicial authority. A deadline that is extended to up to 15 days would be well above the limit considered appropriate by instruments such as the ACHR and ICCPR. See: Concluding Observations of the Human Rights Committee: Uzbekistan, Doc. UN: CCPR/CO/83/UZB (2005), para. 14, Ukraine, Doc. UN: CCPR/C/UKR/CO/6 (2006), para. 8, Moldova, Doc. UN: CCPR/C/MDA/CO/2 (2009), para. 19.

43. This offence is defined in Article 345 of the Criminal Code and is used to prosecute members of gangs and other criminal groups. According to human rights organizations, the description of the offence is vague and ambiguous, allowing the authorities to interpret and apply it arbitrarily. These organizations also believe that the crime’s definition focuses on prosecuting people for who they are rather than what they have done. See Cristosal, “La excepción se volvió la norma. Una mirada a las reformas penales y su impacto en las garantías ciudadanas”, October 2023.

44. Amnesty International “President Bukele engulfs the country in a human rights crisis after three years in government”. 2 June 2022. Available at: <https://www.amnesty.org/en/latest/news/2022/06/el-salvador-president-bukele-human-rights-crisis/>

UN special mandates have pointed out to the Salvadoran state that its suspension of judicial guarantees exceeds the limits allowed by international human rights obligations related to the use of extraordinary measures such as states of emergency. They have especially highlighted concerns about the use of the term “ongoing flagrancy”⁴⁵ to justify arbitrary arrests and the suspension of fair trial guarantees.

“Despite its obligation to protect citizens from such atrocious acts, the Government cannot trample on fair trial rights in the name of public safety [...] We urge the authorities in El Salvador to ensure that people are not arrested on mere suspicion of gang membership or association without sufficient legal authorization, that detainees are afforded all fundamental safeguards required under international human rights law and guaranteed due process.”

Joint press release. United Nations Special Mandates–El Salvador: Extended state of emergency undermines right to fair trial. 22 May 2023⁴⁶

Likewise, the UN Human Rights Committee has also emphasised that even during a state of emergency, the prohibition against arbitrary deprivation of liberty must be respected, ensuring that all detainees have access to effective and prompt legal and judicial procedures.⁴⁷

Meanwhile, the Inter-American Court of Human Rights has clearly established that while a state needs to take measures to maintain order and security, it cannot do so at the expense of people’s human rights. It has therefore insisted that, even in emergency scenarios, essential judicial safeguards must be kept in place to ensure that any measures adopted comply with the principles of necessity, reasonableness, proportionality and non-discrimination, while respecting the rule of law at all times.⁴⁸

Local civil society organizations have stated that even though the state of emergency does not meet international standards, it has been continuously extended through legislative processes that have not analysed necessity or proportionality.⁴⁹

45. “It should be noted that, since September 2010, El Salvador has had the “Law on the Prohibition of Maras, Gangs, Groups, Associations and Organizations of a Criminal Nature”, which in articles 1 and 2 establishes that these groups constitute criminal structures and declares membership in these groups to be illegal. Therefore, as of the entry into force of this special rule, the concept of ‘ongoing flagrancy’ applies any person who is a member of such groups, due to the fact that, as they constitute crimes of mere activity, they are being committed continually as long as the person is part of the criminal organization. And in this context, no written warrant is required to arrest such persons”. Response of the Salvadoran State to the joint communication of the United Nations Special Procedures on allegations of human rights violations or the possible risk of such violations in the context of a state of emergency and amendments to criminal legislation. 29 July 2022 Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=37045>

46. <https://www.ohchr.org/en/press-releases/2023/05/el-salvador-extended-state-emergency-undermines-right-fair-trial-un-experts>

47. United Nations Human Rights Committee. General Comment No. 29 on Article 4 of the ICCPR. Para. 11.

48. Article 27.1 of the American Convention on the Rights and Duties of Man allows state obligations to be suspended “to the extent and for the period of time strictly required by the exigencies of the situation” in question, and provided that these suspensions are compatible with international obligations and do not entail discrimination. See also: Inter-American Court of Human Rights. *Caso de las Penitenciarías de Mendoza vs. Argentina*; *Case of Almonacid Arellano et al. V. Chile*; Advisory Opinion OC-20/09.

49. Hearing before the IACHR: The human rights situation in El Salvador. 23 June 2022.

Regional and universal human rights mechanisms⁵⁰ have thus expressed concern about the prolongation of the measure, which in their view could violate the standards of exceptionalness and temporariness for invoking states of emergencies, especially given factors such as the public statements by government officials themselves about the change in the country's security situation.⁵¹

“I am concerned about the excessive duration of the current state of emergency, and mass detentions which have occurred in this context, as well as unacceptable prison conditions, and restrictions of civic space and due process.”

Volker Türk, United Nations High Commissioner for Human Rights. 54th session of the Human Rights Council. 11 September 2023⁵²

The IACHR has reminded the Salvadoran state that suspending rights and guarantees is a measure for exceptional circumstances and not a means of combating common crime. Additionally, the commission has urged El Salvador on several occasions to end the state of emergency, stressing that essential judicial safeguards cannot be omitted.⁵³

“Does the State of El Salvador consider the prolonged state of emergency – in other words, a situation that is no longer an exception but rather a continued reality – to be a tool of its policy to control the widespread crime in El Salvador?”

Commissioner for El Salvador Julissa Mantilla, during her intervention. Hearing before the IACHR: Human rights and states of emergency in El Salvador. 14 July 2022⁵⁴

50. Joint press release. United Nations Special Mandates: “El Salvador: Extended state of emergency undermines right to fair trial”. <https://www.ohchr.org/en/press-releases/2023/05/el-salvador-extended-state-emergency-undermines-right-fair-trial-un-experts>

51. “El Salvador went from being the homicide capital of the world and literally the most dangerous country on the planet, to the safest country in Latin America”. Nayib Bukele, speech during the 78th UN General Assembly. 19 September 2023

52. <https://www.ohchr.org/en/statements/2023/09/turk-human-rights-are-antidote-prevailing-politics-distraction-deception>

53. Press release. “Seven Months into the Exceptional Framework, the IACHR Reminds El Salvador That It Must Comply with its Obligations Concerning Human Rights”. 11 November 2022 https://www.oas.org/en/iachr/jsForm?File=/en/iachr/media_center/preleases/2022/254.asp

Press release. “IACHR Calls on El Salvador to Reestablish Rights and Guarantees Suspended a Year Ago Under the State of Emergency”. 06 April 2023 https://www.oas.org/en/iachr/jsForm?File=/en/iachr/media_center/preleases/2023/058.asp

54. Hearing before the IACHR: Human rights and states of emergency in El Salvador. 14 July 2022. <https://www.oas.org/en/iachr/sessions/default.asp?S=187>

a) From crisis to norm: institutionalization of the state of emergency and permanent suspension of judicial guarantees

In the context of the state of emergency, the Legislative Assembly has issued 51⁵⁵ legislative decrees, 24 of which have modified or created new criminal and criminal procedure rules, most of them permanent, in the name of creating the necessary conditions to make the state of emergency operational. However, these measures would remain in force even if the measure were no longer extended.⁵⁶

The initiative for most of the reforms came from the executive branch, and they have been passed without proper legislative debate or the participation of civil society.

“In this regard, permanent reforms were deemed necessary to help combat these terrorist groups, not only in this emergency situation, but also over time”.

Permanent Mission of El Salvador to the United Nations and other international organizations. Response of the Salvadoran State to the joint communication of the United Nations Special Procedures on allegations of human rights violations or the possible risk of such violations in the context of a state of emergency and amendments to criminal legislation. 29 July 2022

The permanent adoption of this new legal framework authorizes, and lends a veneer of legality to, the suspension of a set of rights and judicial safeguards that, according to international instruments, cannot, under any circumstances, be curtailed in any way whatsoever. The main changes include: (i) concealing the identity of judges, a measure criticized in similar contexts by the Inter-American Court of Human Rights as undermining fair trials⁵⁷; (ii) automatically applying pretrial detention to crimes linked to *maras* or gangs, disregarding the international standards requiring an individual analysis of proportionality and necessity when considering such measures; iii) eliminating time limits for pretrial detention for crimes associated with terrorist or illegal groups, which violates the right to be tried or released within a reasonable period of time;⁵⁸ and iv) lowering the minimum age for criminal prosecution of children to 12 years for offences related to organized crime, well below the international standard of 14.⁵⁹

The reforms also affect the principles of legality, proportional punishment and public trial; and compromise fundamental safeguards such as judicial independence and impartiality.

The defencelessness of people detained and prosecuted under this new legal framework is aggravated by situations such as: i) overburdened justice institutions; ii) erosion of the judiciary's independence; iii) misuse of the criminal process; and iv) inefficient mecha-

55. 24 decrees have amended or created new rules for criminal and criminal procedure matters; another 20 extended the state of emergency; and six more amended the budget law for the justice, security and defence sectors to provide exemptions from regular legal procedures and requirements for state purchases and make it easier to procure goods and services.

56. The criminal and criminal procedure reforms were adopted in three periods: in March and April 2022, in September and October 2022, and, finally, in July and August 2023.

57. Inter-American Court of Human Rights. *Case of the Constitutional Court v. Peru*, Judgment of 31 January 2001, Series C No. 71.

71. The Inter-American Court of Human Rights ruled that the use of faceless judges in Peru for a period of time was incompatible with the essential judicial guarantees protecting the rights that ensure a proper defence for anyone accused of a crime.

58. Article 14(3)(c) of the ICCPR. Right to be tried without undue delay Article 8 of the ACHR. Right to a fair trial. Point 5 affirms the right of everyone to be tried within a reasonable time or to be released.

59. Committee on the Rights of the Child. Convention on the Rights of the Child. General Comment No 24 (2019) on children's rights in the child justice system: *States parties are encouraged... to increase their minimum age accordingly, to at least 14 years of age... the Committee commends States parties that have a higher minimum age, for instance 15 or 16 years of age, and urges States parties not to reduce the minimum age of criminal responsibility under any circumstances, in accordance with article 41 of the Convention”.*

nisms for investigating abuses and arbitrary acts by state agents and holding them accountable for those acts.

“I was suddenly and violently arrested in my home by police officers. I remember that, at the time, no one explained why I was being arrested. They took me to a police station, assuring me that they would merely ask me a few questions. When we got there, they confiscated my mobile phone and put me in a cell with 15 other women. When I asked what I was accused of, one of the women told me: ‘We are all in here for unlawful association, because supposedly we are gang members’.

From then on, I had no way to communicate with my family, who, I later learned, spent weeks trying to find out where I was.

Almost two weeks later, I was taken to a virtual hearing where I was prosecuted along with 300 other people. At no time before or during the hearing was I able to speak to or have access to the public defender that the ‘Procu’ [Office of the Public Defender] had assigned to me. At the trial, I had no chance to speak, and I never saw the judge’s face. It all happened very fast. I was shocked when they said we would all remain in detention for 6 months for allegedly being part of a gang. It made no sense! Never in my life had I seen any of these people, and now the judge was saying I had committed crimes with them”.

Johanna*, a woman who was arbitrarily detained by the police and who, after five months in prison, was granted an alternative to pretrial detention in late 2022. Amnesty International interviewed her in February 2023.

There have been thousands of unjust cases like Johanna’s* under the state of emergency. The authorities themselves have admitted these abuses, describing them as a “margin of error”.⁶⁰ However, the alarming trend moving forward is the legalization of state conduct that violates human rights. Even if the legislature decides not to extend the state of emergency, the risk of a growing human rights crisis will persist if reforms that undermine judicial guarantees and due process are not reversed.

Multiple international human rights mechanisms have issued statements on these reforms and have called on the Salvadoran state to fulfil its obligation to align its domestic legislation with international human rights standards.⁶¹

60. Gato Encerrado. “In every war there are innocent victims... There is a natural margin of error”. Vice President Ulloa, referring to the arrest of innocent people under the state of emergency. 15 August 2022 <https://gatoencerrado.news/2022/08/15/ulloa-justifica-los-atropellos-a-los-derechos-humanos-en-el-regimen-de-excepcion/>

61. United Nations Special Mandates. Letter to Bukele that sets out various concerns about the state of emergency, including amendments to criminal law. 1 June 2022. <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27299>

United Nations Special Mandates. “The prolonged state of emergency, together with legislation allowing for greater surveillance, broader prosecution, and faster determination of guilt and sentencing, carries the risk of mass violations of the right to a fair trial”. 22 May 2023 <https://www.ohchr.org/en/press-releases/2023/05/el-salvador-extended-state-emergency-undermines-right-fair-trial-un-experts>

3.3. MAIN PATTERNS OF HUMAN RIGHTS VIOLATIONS

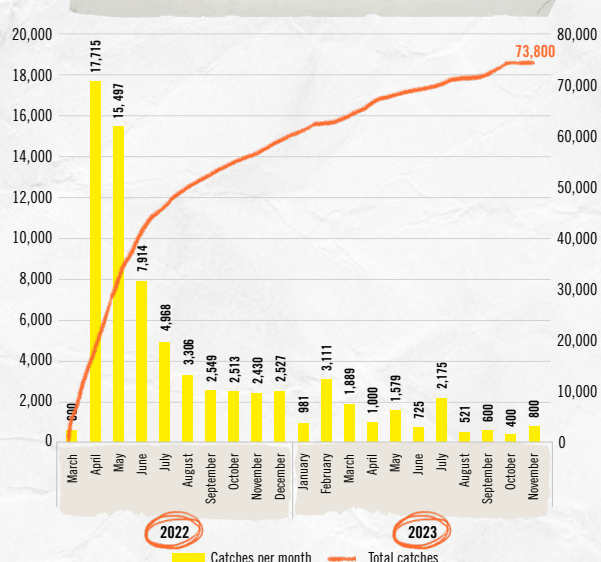
The extended state of emergency, coupled with permanent legal reforms that are regressive in terms of human rights, have unleashed an alarming crisis in El Salvador. Local organizations have reported thousands of abuses and violations by the authorities.⁶²

In 20 months, Amnesty International documented 62 cases, identifying recurring patterns of violations during cycles of arrest, prosecution and imprisonment of victims. These violations include mass arbitrary arrests; torture and cruel, inhuman and degrading treatment of persons in detention centres; and enforced disappearances and deaths of people in state custody.

These findings match reports from both local and international human rights organizations that warn of a process whereby state violence is gradually replacing gang violence, and the primary victims are still people from marginalized communities that are already beset by crime and extreme poverty.⁶³

a) Mass arbitrary arrests

Figure 3: Captures during the derogation regime



The first pattern in the series of abuses and violations that the state of emergency has given rise to is arbitrary detention, which has been marked by a lack of administrative or judicial arrest warrants, and arrests with an absence of flagrancy and a failure to inform those arrested why they are being arrested. To date, over 73,000 “captures” (the government’s term for the arrests) have been recorded (Figure 3).

In June 2022, the Minister of Security, Gustavo Villatoro, announced that it planned to “capture” a projected 80,000 people.⁶⁴

Those arrested have been rendered even more defenceless by the move to expand the time limit for administrative detentions from 72 hours to 15 days.

Most have been arrested in raids that seem to have the primary objective of making “captures” and that occurred mainly in the first months of the state of emergency (Figure 3).

In at least five of the cases documented by Amnesty International, arrestees said that the officers who arrested them confessed that they knew they had no criminal record or other reason to arrest them, but that they had orders to meet a daily quota.

62. As of October 2023, local human rights organizations, such as Amate, Red Salvadoreña de Defensoras de Derecho Humanos, Instituto de Derechos Humanos de la UCA, Fundación de Estudios para la Aplicación del Derecho, Servicio Social Pasionista, Azul Originario and Cristosal, had documented a total of 5,490 victims of human rights abuses and violations, mostly due to arbitrary detentions (5,200).

63. Cristosal: *Un año bajo el régimen de excepción: una medida permanente de represión y de violaciones a los derechos humanos*. May 2023.

64. <https://x.com/PNCSV/status/1537600914172821510?s=20>



"When they asked me for my identity card, one of the police officers radioed in to ask about my criminal record, and I heard very clearly what they told him: 'she's clean'. But the police officer still told me I had to come with him. On the way, he told me not to worry, that since I had no criminal record, the longest I would be detained would be 15 days, but that he could not let me go because they had a daily quota to meet [...] I ended up being detained for seven months". Julia, a victim of an arbitrary "capture", was prosecuted for unlawful association and is currently released under an alternative to pretrial detention. Interview with Amnesty International in February 2023.*

Other people were arbitrarily arrested because they were accused by a third party, usually anonymously, of alleged gang ties. In these cases, the accuser may have received financial compensation.⁶⁵

Civil society organizations have serious concerns about anonymous complaints in a context of high social conflict and weakening community cohesion. The result is a high risk of false accusations motivated by personal vendettas, especially against a backdrop of weakened judicial safeguards.

"This is how people in El Salvador settle their differences now – by making anonymous phone calls and accusing each other of being gang members or collaborators [...] If someone dislikes you, they threaten you by saying: 'I'm going to call and sic the police on you as part of the state of the emergency' [...] And since the police don't even investigate and there are no checks, that's all it takes [...]"

People who know you prefer to say nothing to stay out of trouble, so they don't get involved. So suddenly you are condemned to live in a hellish jail and have your [police record] ruined just because someone was envious of you or disliked you and made up a lie. A lie that in my case affected the rest of my life."

Carlos*, a man arbitrarily arrested in April 2022 and accused of unlawful association, who after seven months in pretrial detention was granted alternative measures, pending the conclusion of the legal proceeding against him. Interview with Amnesty International in July 2023.

Most people arrested in this context have been accused of unlawful association and are in pretrial detention, as a result of the legal reform that excludes the possibility of granting alternatives to pretrial detention in cases related to gang activity and membership.⁶⁶

65. Office of the President of El Salvador: "El Gobierno pone a disposición de la ciudadanía el número de teléfono 123 para dar información de forma confidencial sobre el accionar de grupos criminales." <https://www.presidencia.gob.sv/el-gobierno-pone-a-disposicion-de-la-ciudadania-el-numero-de-telefono-123-para-dar-informacion-de-forma-confidencial-sobre-el-accionar-de-grupos-criminales/>

66. Reforma al Código Procesal Penal: Sustitúyase el inciso segundo del Artículo 331. Legislative Decree No. 339. 30 March 2022

However, starting in late 2022, civil society organizations and the media began to document people being released under alternatives to pretrial detention. By January 2023 the authorities were reporting over 3,000 people who had been “released”,⁶⁷ and by August the official figure was around 7,000.⁶⁸

“After five months in prison, a guard took me out of the cell and told me: ‘You’ll be leaving today. Your letter has arrived’. I was shocked because after the hearing I had never seen the lawyer again, nor had I been taken out for another hearing. In fact, a couple of days ago, the lawyer from the Office of the Public Defender called my dad to ask him for more documents, telling him that he was going to try to request a hearing on alternatives to pretrial detention. The lawyer must have been quite taken aback when my dad told him I had already come home.

So to this day I don’t know why they put me in jail, or how they released me. It’s all a huge mess that I was unlucky enough to get caught up in. I lost my job. I now have a criminal record. I have to report to the court every 15 days, and, to tell the truth, I don’t know what my future holds. I don’t know if I have a future after this. I’d like to think I’ll regain my freedom at the end of the proceeding, but it is still up in the air”.

Elisa*, a woman who was arbitrarily arrested by the police and who, at the end of 2022, after five months in prison, was granted alternatives to pretrial detention. Interview with Amnesty International in February 2023.

Importantly, the authorities misrepresent the legal status of these people to the public. They do not mention that many are still in the midst of a court proceeding that does not offer all the protections of a fair trial and will probably involve trying them in mass hearings that preclude an effective technical defence,⁶⁹ among other aspects that, in the end, will increase their risk of not ultimately being acquitted.

A journalistic investigation revealed that as of July 2023, 85% of those who had been “released” were subject to ongoing criminal proceedings and were serving alternative measures while awaiting trial.⁷⁰

Amnesty International interviewed 28 people whom the authorities had granted alternative measures after an average of seven months in pretrial detention. All said that they did not know how they had obtained this privilege and that they were afraid of being “captured” again or of being convicted at the end of the proceeding, despite never having had ties to gangs or a criminal record of any kind.⁷¹

67. *Voz de América*. “El 5 % de los detenidos en el régimen de excepción ha sido puesto en libertad”. <https://www.vozdeamerica.com/a/detenidos-el-salvador-regimen-de-excepcion-/6904278.html>

68. “To date, a little over 7,000 people have been released... This means that the justice system is working”. Statements by the Minister of Justice and Security referring to the number of people who have been granted alternatives to pre-trial detention, after who have been granted alternatives to pre-trial detention, after having been victims of arbitrary arrests and having been incarcerated arbitrary arrests and imprisonment, some of them for more than a year. See at: <https://twitter.com/dialogo21/status/1693980751161639369?s=12&t=MsX970vhNNW0VpbKJM3r4Q>

69. LPG. Each public lawyer attends to 219 persons captured under the exceptional regime in El Salvador. 22 October 2023. See at: <https://www.laprensagrafica.com/elsalvador/Cada-abogado-atende-a-219-personas-capturadas-en-el-regimen-de-excepcion-en-El-Salvador-20231020-0074.html>

70. LPG. “La mayoría de los liberados durante el régimen de excepción en El Salvador siguen procesados”. <https://www.laprensagrafica.com/elsalvador/La-mayoria-de-los-liberados-durante-el-regimen-de-excepcion-en-El-Salvador-siguen-procesados-20231023-0017.html>

71. A journalistic investigation found that 69% of the people to whom the authorities had granted alternatives to pretrial detention as of July 2023 had never been profiled as gang members or as having ties to gangs. <https://www.laprensagrafica.com/elsalvador/Presuntos-sicarios-y-jefes-de-pandillas-entre-liberados-por-el-regimen-de-excepcion-en-El-Salvador-20231023-0016.html>

“I’m terrified that I will be captured again, because now I already have a criminal record [...] Since I was captured when I had done nothing, now every time I leave my house and see a police officer or soldier, I freeze up [...] I have little idea of what comes next because the lawyer from the Office of the Public Defender doesn’t give me information [...]

All this has taken its toll on me in several ways: I lost my job, and my health has deteriorated a lot because of the things I suffered in prison and now because of the stress of not knowing if I’ll be put back in prison. I don’t want to go back to that hell and leave my children all alone for something I never did”.

Carmen*, a woman who was arbitrarily arrested by police officers and who, at the end of January of 2023, after eight months in prison, was granted alternatives to pretrial detention. Interview with Amnesty International in February 2023.

According to the documents these people provided, those released on alternatives to pretrial detention have an obligation to report to the court where the case is being tried every 15 days. They are prohibited from leaving the country and changing their place of residence, and they are banned from communicating or meeting with, assembling or forming part of terrorist groups.

According to civil society organizations, many people in this situation have been made to take polygraphs or have managed to demonstrate sufficient proof that they will not leave the jurisdiction, leading judges to grant them alternatives to pretrial detention. But in reality, there is little information on the criteria that the authorities use when deciding whether to grant the measure.⁷²

Investigative reporting even revealed that the authorities had ordered alternatives to provisional detention for people who, before the state of emergency, had already been profiled as gang members by intelligence units of the National Civil Police (PNC).

This shows how the authorities operate using an arbitrary pattern that departs from the principle of legality, both in making arrests and in granting alternative measures, which would be contrary to international instruments such as the ACHR and the ICCPR. It also portends unpredictable conduct by the authorities during the other stages of the legal proceedings that these people must navigate. All of these factors critically undermine the right to fair trial.

b) Impact on people and communities living in poverty and marginalization

Based on complaint fielded by local organizations and cases documented by Amnesty International, many of the over 73,000 arbitrary detentions could have been motivated by discriminatory reasons, such as having tattoos, being a relative of a gang member, having a previous criminal record of any kind, or simply living in an area with high levels of marginalization and state neglect.

Upon analysing the databases of three local human rights organizations,⁷³ Amnesty International found that the majority of the arbitrary detention cases it examined shared three socio-economic characteristics: low level of education, precarious work and residence

72. Cristosal: *One year under emergency rule: a permanent measure of repression and human rights violations*. May 2023

73. Amnesty International queried the databases of Cristosal, the Instituto de Derechos Humanos de la UCA and the Servicio Social Pasionista. It conducted this analysis between late March 2022 and late August 2023.

in areas stigmatized⁷⁴ by poverty or gang control (Figures 4, 5 and 6).⁷⁵ These findings show how this measure is disproportionately affecting people in situations of economic exclusion and precariousness.⁷⁶

Figure 4: Victim's level of education

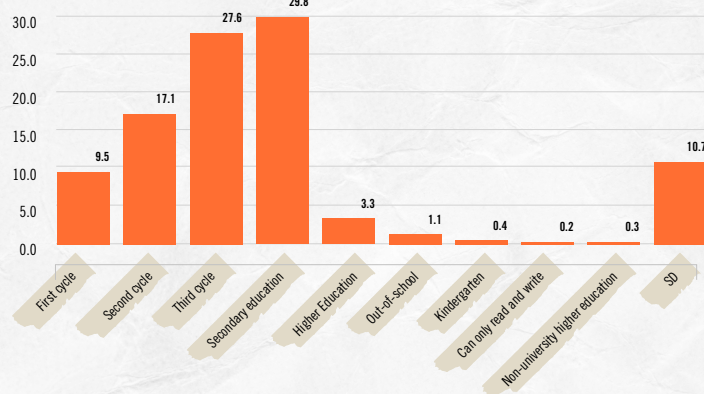


Figure 5: Occupation or trade of victims

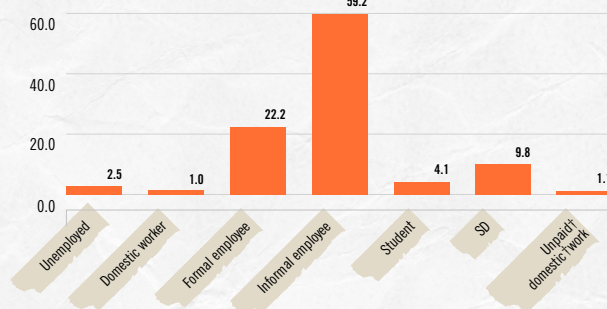
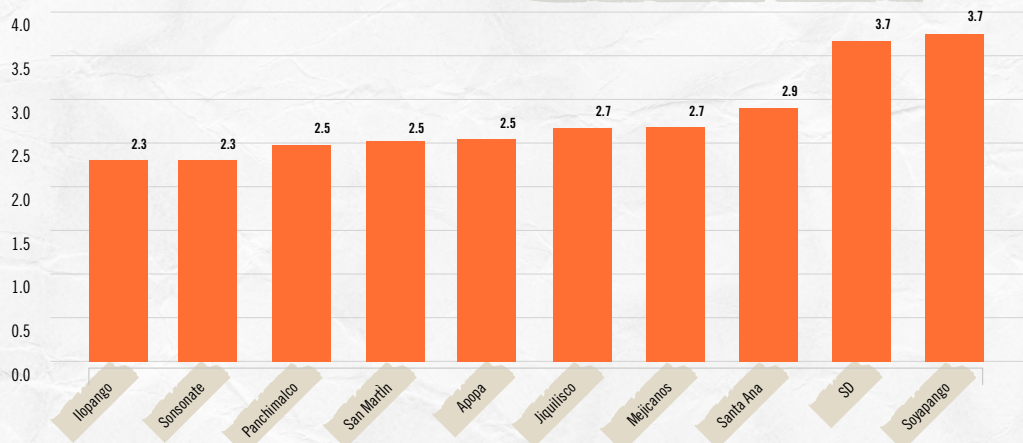


Figure 6: Top 10 municipalities with the highest number of reports of arbitrary arrests



*Prepared by Amnesty International with information from the databases of civil society organizations.

74. Nine of the ten municipalities with the highest reported arbitrary "capture" (arrests) rates recorded in these databases coincide with the municipalities that different administrations have prioritized in the first stages of their public security plans. https://x.com/raudaz_/status/1141813792696950784?s=20

75. It is important to note that the cases reported to civil society organizations represent only a small fraction of the overall crisis, for two main reasons: 1) the organizations' offices are located in San Salvador and most people outside of the capital do not know that they exist or have difficulty travelling; and 2) the organizations themselves have limited capacity to handle the recent flood of cases.

76. Committee on Economic, Social and Cultural Rights: "Poverty may be defined as a human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights." E/C.12/2001/10, para. 8. <https://www2.ohchr.org/english/bodies/cescr/docs/statements/e.c.12.2001.10poverty-2001.pdf>

Amnesty International also became aware of the case of Víctor Barahona,⁷⁷ a community leader and journalist who was arbitrarily arrested in his home in the community of Valle del Sol, municipality of Apopa.⁷⁸ The arrest occurred during a police operation called “safe home”,⁷⁹ a common practice in areas stigmatized by high gang presence and activity.

According to the civil society databases that Amnesty International consulted, Apopa reports the sixth highest number of arbitrary arrests of any municipality in El Salvador.

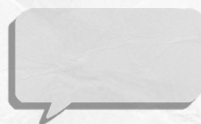
During his arrest, Barahona showed his journalist credentials and questioned the reasons for his arrest.

“I asked them why they were taking me. I have no criminal record, I live alone, the tattoo on my arm is of a rose, and it’s all faded now. For years, I have been a leader in sport and in the community, and, in my view, my job is also of social value.

*But they just handcuffed me and said: ‘You are under arrest under the rules of the state of emergency’. At that point I imagined the worst [...] I’m not sure why they took me away. I think it might have been because of my work as a journalist, because on my programmes there were criticisms of government policies. But it could also have been because of my role as a community leader, as a peace builder [...] It is true that living in these areas has always come with a stigma”.*⁸⁰

“Persons living in poverty are often exposed to both institutional and individual risks of violence and threats to their physical integrity from State agents and private actors, causing them to live in constant fear and insecurity (...) Law enforcement agents often profile and deliberately target persons living in poverty”.

Human Rights Council. The Guiding Principles on Extreme Poverty and Human Rights. A/HRC/21/39. 18 July 2012



77. Víctor Barahona was released under an alternative to pretrial detention after spending almost a year in prison and suffering cruel and inhuman treatment, which seriously affected his health to the point of endangering his life. Upon his release, he denounced the human rights violations he suffered, with support from the Asociación de Periodistas de El Salvador. As a result of the media coverage of his case, he began receiving threats and stigmatizing messages on social media that linked him to gangs. Judicial authorities have forbidden him to make public statements about the judicial process, reminding him that his case, along with all others related to arrests under the state of emergency for crimes of unlawful association, is confidential. See: <https://especiales.elfaro.net/es/testimonios/audios/26984/victor-barahona-los-chacales-llegaban-a-la-celda-y-daban-unas-tundas-horribles>

78. During the truce that the Mauricio Funes administration (2009-2014) negotiated with gangs, many local authorities and community leaders in the areas battered by these criminal structures took steps to dialogue with these actors to foster better conditions for coexistence and security. Valle del Sol was one such community. See: <https://elfaro.net/es/201307/noticias/12688/Cero-homicidios-en-la-Valle-del-Sol-desde-que-inici%C3%25B3-la-tregua.htm>

79. “Safe home”, a practice implemented by joint task forces of members of the PNC and FAES, consists of searching homes to verify the legality of their occupancy and utilities and to find people with outstanding arrest warrants. Journalistic records show that this practice has been carried out since 2014, primarily in areas prioritized by the security plans due to high gang presence.

80. Víctor Barahona, in an interview with Amnesty International. June 2023.

Meanwhile, personal accounts and information from local civil society organizations show that the wave of detentions has worsened not only the lives of the those deprived of liberty, but also the standard of living of their families, putting them in an even more precarious socio-economic position and in many cases revictimizing them.

Many families, following the arrest of their main provider, have to bear the additional costs of defending their family members and ensuring their well-being in prison, which further worsens their financial situation. Documented cases and information from organizations and the media show how this situation has led to deteriorating conditions for children and women, with a rise in child labour, school dropouts and mental health problems.⁸¹ Local organizations have also reported patterns of forced displacement,⁸² families splitting apart and women being overburdened with care responsibilities.⁸³

“Since [the police] took my husband away, for no reason, everything has changed for the worse. Between the two of us, we were able to pay the household expenses, but now, without him, everything is more difficult. With five children, food and rent, my load is so much heavier. On top of it all, I have to leave a package for him at the prison that costs me about USD 75.00 each month. All on my own! I can’t make ends meet.

My eldest daughter has kidney problems and needs expensive medicine that I can no longer afford. My eleven- and nine-year-old kids have dropped out of school to work and help me. My youngest, who’s only two, asks for his father every day. It breaks my heart to see my children working when they should be playing or studying. I don’t know much about law and stuff, but I know this isn’t right. All I ask is that you help us and that my husband be released”.

Marta*, a woman whose partner was arbitrarily detained in June 2022. Interview with Amnesty International in February 2023.



81. Azul originario. “La salud mental en tiempos de régimen de excepción en El Salvador”. <https://www.youtube.com/watch?v=uVCOevven6A>; Alharaca. “Niñez sufre los efectos del régimen de excepción”. <https://www.alharaca.sv/actualidad/ninez-sufre-los-efectos-del-regimen-de-excepcion/>; Cristosal.

82. FOCOS. “El régimen de excepción incrementó casos de desplazamiento forzado provocado por agentes estatales de seguridad”. 24 January 2023 <https://focostv.com/el-regimen-de-excepcion-incremento-casos-de-desplazamiento-forzado-provocado-por-agentes-estatales-de-seguridad/>

LPG. “El régimen de excepción alteró las causas del desplazamiento forzado”. 20 March 2023 <https://www.laprensagrafica.com/elsalvador/El-regimen-de-excepcion-altero-las-causas-del-desplazamiento-forzado-20230319-0077.html>

LPG. The organizations Cristosal, IDHUCA and Servicio Social Pasionista report 223 cases of forced internal displacement caused by PNC or FAES agents. 28 September 2023 See: <https://www.laprensagrafica.com/elsalvador/Informe-senala-a-PNC-y-FAES-como-principales-actores-del-desplazamiento-forzado-interno-durante-regimen-de-excepcion-20230928-0021.html>

83. Cristosal: “Un año bajo el régimen de excepción: una medida permanente de represión y de violaciones a los derechos humanos”. May 2023. <https://x.com/PNCsv/status/1537600914172821510?s=20>

Furthermore, it is unclear whether the state is designing reparation processes⁸⁴ for the arbitrarily detained people who are released at the end of their criminal proceeding. This considering that the authorities themselves already recognized the persons “released” under alternative measures as a “margin of error”, and those same people have reported a number of violations of their rights.

In the context of the state of emergency, there is also no evidence of special measures taken by the PNC and the FAES to effectively prevent, investigate and punish the abuses committed by their agents, which include extortion, threats and even rape.⁸⁵

During the 187th period of sessions, the IACHR asked the Salvadoran state for information on these issues but did not receive a clear response.

“While I am very grateful for your presence and the information you have given us, I am surprised that you have made no mention of the state of emergency [...] Civil society has submitted some statistics that I was hoping the state could clarify [...] What is happening with the women and families of the detainees? What is going on? [...] When civil society says that over six thousand people have been released because of what was termed a ‘margin of error’, I would like to know if the Salvadoran state has initiated reparation processes for those who were detained in error”.

Commissioner for El Salvador Julissa Mantilla, during her intervention. Hearing before the IACHR: Human rights and states of emergency in El Salvador. 14 July 2023.⁸⁶

84. With regard to the state's obligation to make full reparation for human rights violations, the Inter-American Court holds that: “Reparation of harm brought about by the violation of an international obligation consists in full restitution (*restitutio in integrum*), which includes the restoration of the prior situation, the reparation of the consequences of the violation, and indemnification for patrimonial and nonpatrimonial damages, including emotional harm”. Inter-American Court of Human Rights. *Case of Velásquez Rodríguez V. Honduras. Reparations and Costs*. Judgment of 21 July 1989. Series C No. 7, para. 26. The court adds that: “[When there are violations of the right to life and certain other rights (personal liberty and integrity, judicial guarantees and judicial protection)] *restitutio in integrum* is not possible; therefore, bearing mind the nature of the juridical right affected, reparation is made, *inter alia*, according to international case law, by means of fair indemnity or pecuniary compensation. It is also necessary to add any positive measures that the State must adopt to ensure that the harmful acts, such as those that occurred in this case, are not repeated”.

Inter-American Court of Human Rights. *Case of the 19 Merchants v. Colombia. Merits, Reparations and Costs*. Judgment of 05 July 2004. Series C No. 109, para. 222.

85. INFOBAE. “Al menos 14 policías de El Salvador fueron detenidos por cometer abusos durante el régimen de excepción de Bukele”. 27 December 2022 <https://www.infobae.com/americas/america-latina/2022/12/27/al-menos-14-policias-de-el-salvador-fueron-detenidos-por-cometer-abusos-durante-el-regimen-de-excepcion-de-bukele/>

El Diario de Hoy. “Aumentan casos de policías acusados de extorsionar con el régimen de excepción”. 27 August 2023 <https://www.elsalvador.com/noticias/nacional/aumentan-casos-policias-acusados-extorsion-regimen-excepcion/1085855/2023/>

INFOBAE. “Abuso sexual de soldados a menores en El Salvador, el otro monstruo oculto bajo el régimen de excepción”. 08 October 2023 <https://www.infobae.com/americas/america-latina/2023/10/08/abuso-sexual-de-soldados-a-menores-en-el-salvador-el-otro-monstruo-oculto-bajo-el-regimen-de-excepcion/>

86. Hearing before the IACHR: Human rights and states of emergency in El Salvador. 14 July 2022. <https://www.oas.org/en/iachr/sessions/default.asp?S=187>

c) Enforced disappearances

Salvadoran civil society organizations filed a staggering 327 complaints with the IACHR on behalf of individuals subjected to forced disappearances, detailing how authorities either refused or provided false information about their whereabouts for periods of up to eight months.

In the 35 cases of arbitrary detention documented by Amnesty International, the family members of the detainees said that immediately following their detention by security officers, they had no communication with the detainee and the authorities did not tell them which prison they were being held at. Some spent weeks, even months requesting information from different institutions to determine the whereabouts of their family members.

“Concurrent and constitutive elements of forced disappearance are pointed out: a) the deprivation of liberty; b) the direct intervention of state agents or their acquiescence, and c) the refusal to acknowledge the detention and to reveal the situation or the whereabouts of the interested person”.

Inter-American Court of Human Rights. *Case of Chitay Nechy et al. V. Guatemala. Preliminary Objection, Merits, Reparations, and Costs.* Judgment of 25 May 2010. Para. 85.

In three cases documented by the organization, families reported that they had no knowledge of the whereabouts of their detained relative for several months until they were notified of their death through a third party – for example, an anonymous phone call or a funeral home.

In response to this situation, thousands of people have filed habeas corpus petitions with the Constitutional Chamber of the Supreme Court of Justice in the last 21 months. However, human rights organizations report that the proceedings have not progressed due to a persistent backlog of cases, which has undermined the remedy's effectiveness.

In its most recent annual report, the Office of the Public Defender for Human Rights reported a notable increase in verification requests for people deprived of their liberty. These requests rose from 625 in 2021-2022 to 8,988 in 2022-2023.

According to the official report, one of the main reasons for this request was the need to know the prison centre where a family member was being held, given the scant information provided by the General Directorate of Penal Centres (DGCP). However, in the same document, the institution acknowledges that its power to monitor the rights of people deprived of their liberty has been limited by the state of emergency.⁸⁷

Indeed, information access requests filed by local organizations reveal that from 28 October 2021 onward, the DGCP declared all information relating to people deprived of their liberty in penal centres to be confidential.⁸⁸

Human rights organizations have denounced this pattern to the Committee on Enforced Disappearances and the UN Working Group on Enforced or Involuntary Disappearances.⁸⁹

87. Informe de labores de la PDDH. 2022-2023. June 2023, pp. 74-76. <https://www.pddh.gob.sv/portal/wp-content/uploads/2023/09/memoria-de-labores-22-23.pdf>

88. See response to information access request by the Servicio Social Pasionista on 25 January 2023 <https://drive.google.com/file/d/1VTnCWDeBG-fbqY5BvgRgeOuiEQBOWf/-view>

89. Aportes para el Comité contra la Desaparición Forzada (CED) y el Grupo de Trabajo sobre las Desapariciones Forzadas

d) Prison conditions and differentiated effects on vulnerable groups

With a figure that exceeds 100,000 prisoners, representing 1.14% of its general population, El Salvador currently has the highest incarceration rate in the world: 1,600 per 100,000 inhabitants.

Before the state of emergency was declared in 2020, the prisons were already at 109% capacity and compromised in their ability to provide essential services such as water, food, and medical care for the prisoners.

The prolongation of the state of emergency, which has led to the consolidation of institutional practices such as massive “captures” (detentions) and the indiscriminate use of pretrial detention, has drastically worsened the crisis of overcrowded jails, leading to further degrading the prisons’ precarious conditions and inhumane detention.

According to data from the media, in January 2023 the prison occupancy rate reached a high of 300%.⁹⁰ However, after the Anti-Terrorism Incarceration Centre (*Centro de Confinamiento Contra el Terrorismo*–CECOT)⁹¹ was opened and 12,500 prisoners were transferred to it, civil society organizations calculate that the prison occupancy rate has decreased to 236%.⁹²

Personal accounts gathered by Amnesty International from former detainees detail crowded cells, a lack of essential services, and unhealthy conditions that could cause diseases to spread and, in some cases, might be linked to prisoner deaths.

They also report mistreatment consisting of physical and verbal abuse, disproportionate use of pepper spray, and severe restrictions on basic aspects of daily life such as food, water and using the toilet, as well as a lack of access to open-air spaces.

“There were more than 200 women in the cell. We were like canned sardines, with five of us sleeping in each cot, all crammed together, and those who didn’t fit slept on the floor, without a mat, back-to-back to take up as little space as possible... We didn’t leave the cell at all during the day. They never let us out, only to go to the toilet and at mealtime. They only gave us two ‘guacaladas’ [gourd-fulls] of water and the food was bad, sometimes perished. There were no doctors or medicine when someone fell ill.”

Claudia*, a woman freed under alternative measures after having been imprisoned for seven months, in an interview with Amnesty International in July 2023.

o *Involuntarias (WGEID) de Naciones Unidas sobre desapariciones de corta duración*. https://www.dplf.org/sites/default/files/contribuciones_a_desapariciones_de_corte_duracion_en_el_salvador.pdf

90. LPG. “El Salvador llegó a 97 mil 525 reos en 2022”. <https://www.laprensagrafica.com/elsalvador/El-Salvador-llego-a-97-mil-525-reos-en-2022-20230116-0099.html>.

91. According to official statements, CECOT has the capacity to house 40,000 prisoners. However, the centre’s official statements, together with the information revealed by investigative journalism, point to a dismal outlook for prisoners, suggesting that the detention conditions and treatment of prisoners could continue to fall below applicable international standards. See CECOT opening ceremony: https://youtu.be/TBQv4pNxU_Y

BBC Mundo [BBC World]. El secretismo que rodea al CECOT, la megacárcel símbolo de la guerra de Bukele contra las pandillas”. 4 July 2023. <https://www.bbc.com/mundo/resources/ids-051ab38e-b7d2-44ce-b40f-80d5b51f7db2>.

92. LPG: <https://www.laprensagrafica.com/elsalvador/Tasa-de-privados-de-libertad-en-El-Salvador-ya-supera-los-1600-por-cada-100000-habitantes-20231018-0065.html>.

These deplorable conditions violate the principles of international instruments to which El Salvador is a party, which also call for the rehabilitation and reintegration of prisoners.⁹³

Furthermore, articles in the media confirm that according to official data, the number of imprisoned women has doubled as a result of the state of emergency.⁹⁴

This data is borne out by the reports of overcrowding in women's prisons from 12 women who spoke with Amnesty International. The women also said that to improve this situation, DGCP had fitted out areas for women in prisons for men. However, the authorities had failed to adapt the spaces to meet the specific needs of incarcerated women, such as separate procedures for admitting and registering them.⁹⁵

In addition, those women described situations of gender-based violence, neglect of their sexual and reproductive health needs, no availability of personal hygiene products like feminine napkins and a prison infrastructure that disregards the specificities of gender and family dynamics of imprisoned women. This final problem was especially evident for pregnant and breastfeeding women. These conditions also impact minors who are imprisoned with their mothers and babies born behind bars.⁹⁶

“During my pregnancy, I was only provided prenatal care on one occasion, and the vitamins they gave me were expired. I was forced to perform physically demanding tasks, such as hauling water and hanging up clothes to dry. The guards humiliated me... and demanded that I wait on them as if I were their servant. If I refused, they threatened to punish me, leaving me out in the sun in a squatting position... I shared my cell with 200 other pregnant women who were victims of the same abuse as I experienced.

“The day I gave birth to my baby in the hospital, they never removed my handcuffs and no one notified my family. I was there all alone. La Granja [the penal centre] did not send me any diapers, moist towelettes, or any of the things babies need to be clean and that my mom had sent me some weeks earlier.”

Alicia,* who was arbitrarily detained and realized one-and-a-half months after being imprisoned that she was pregnant. During her 13 months in pretrial detention, she was held in two different prisons. Interview with Amnesty International in August 2023.

A woman told Amnesty International that during her imprisonment, she saw another female prisoner give birth in her cell with only the assistance of other female prisoners. She also witnessed the death of a four-month-old baby⁹⁷ after the prison authorities failed to provide the medical care the child needed. Another woman interviewed knew of a different prisoner who hung herself after learning that her six-month-old baby had died.

93. International Covenant on Civil and Political Rights (ICCPR), United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), Basic Principles for the Treatment of Prisoners, adopted by the UN.

94. LPG. “Población femenina carcelaria se duplicó en el régimen de excepción”. 14 August 2023. <https://www.laprensagrafica.com/elsalvador/Poblacion-femenina-carcelaria-en-El-Salvador-se-duplico-en-el-regimen-de-excepcion-20230813-0072.html>.

95. United Nations General Assembly. United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules). 16 March 2011. A/RES/65/229.

96. These conditions are contrary to what was established by the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules). See: https://www.unodc.org/documents/ropan/Reglas_de_Bangkok/Reglas_Bangkok_y_Comentarios.pdf.

97. To date, civil society organizations have recorded the deaths of 10 women and two babies in prisons. See: <https://www.divergentes.com/mujeres-embarazadas-bebes-en-situacion-critica/>.

Another woman described how a prisoner miscarried as a result of being beaten by other women, with no intervention from the guards. Lastly, one of the interviewees said that her most difficult experience while imprisoned was the illness of her son, who – along with other babies – contracted scabies.⁹⁸

“His entire back was covered with a rash. They didn’t give us medicine until 15 days later, and the medicine disagreed with him, because he got worse. I was so tormented I invented a remedy by mixing amoxicillin, loratadine, acetaminophen, vaginal cream, and diaper rash cream to make a special cream. And that’s how I was able to get my son’s rash to clear up.”

Alicia,* who was arbitrarily detained and realized one-and-a-half months after being imprisoned that she was pregnant. During her 13 months in pretrial detention, she was held in two different prisons. Interview with Amnesty International in August 2023.

Carious human rights mechanisms and civil society organizations have warned about the unique consequences for families when a female member is imprisoned. The principal repercussions include more precarious living conditions for children, twice as much caregiving work for other female relatives, and higher chances of family disintegration.⁹⁹

“Civil society has spoken to us, and it also can be found in the press, about the situation of women and children... I wanted to mention the case of Izalco [prison], where there is information on two babies who have died. So what is the situation in Izalco, and in general about the [detained] pregnant women and girls?”

Statement by the Commissioner for El Salvador, Julissa Mantilla, during the IACHR hearing: Derechos humanos y estados de excepción en El Salvador, 14 July 2023. IACHR 187th Period of Sessions.¹⁰⁰



98. Scabies, also known as mange, is a skin disease caused by the tiny parasitic mite *Sarcoptes scabiei*. This condition is highly contagious and can be transmitted through direct contact with the skin of an infected person, or through contact with bedsheets, towels, or clothing that has been contaminated by the mite.

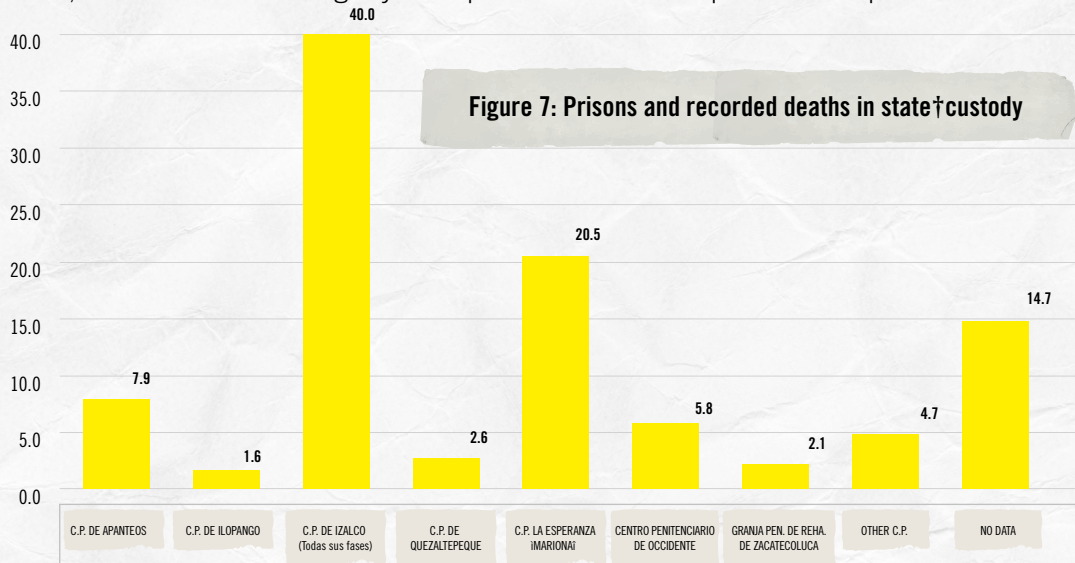
99. IACHR. *Women Deprived of Liberty in the Americas*. OAS/Ser.LV/II Doc. 91/23 8 March 2023.

100. Available at: <https://www.oas.org/es/cidh/sesiones/?S=187>.

e) Torture and deaths in State custody

Through November 2023, the Movimiento de Víctimas del Régimen de Excepción (MOVIR)¹⁰¹ had recorded 190 deaths of people in state custody (Figure 7). However, MOVIR concurs with the opinion of other Salvadoran human rights organizations, such as Socorro Jurídico Humanitario, that these deaths are underreported, as suggested by mass graves have been exhumed after their relatives learned of the death of the deceased months later from non-state parties.¹⁰²

Civil society organizations and media outlets indicate that a considerable number of these deaths have been due to torture and other cruel, inhuman, and degrading treatment, including physical assaults of various kinds by state agents¹⁰³ during the phases of arrest and imprisonment, or as a result of beatings by other prisoners with the acquiescence of prison authorities.



Information recorded by MOVIR and published on its social media accounts.

Reports by national organizations that support and care for victims report cases recorded as violent deaths with a common pattern of signs of torture and other cruel, inhuman, and degrading treatment, including lacerations, hematomas that indicate beatings, injuries from sharp or blunt objects, strangulation, [and] hanging, among others.¹⁰⁴

Amnesty International has documented 12 cases of deaths under state custody in this context. In three of its interviews on these cases, the families of those who died showed official certificates issued by the Institute of Forensic Medicine or hospitals where the victims received care prior to dying, wherein the principal cause of death is listed as “mechanical asphyxia”, “multiple unidentified traumas”, and “badly beaten”. To date, none of the inter-

101. MOVIR is a collective of victims that emerged in August 2002 with the initial goal of managing and supporting requests for humanitarian assistance from detainees and their families. As the months passed, they also began to pursue advocacy actions, requests for information and denunciations before national authorities. To date, they have appeared before PDDH, Supreme Court of Justice, COPINA, and the Presidential Commissioner for Human Rights and Freedom of Expression.

102. INFOBAE. “Cuatro de los detenidos bajo el régimen de excepción de Bukele en El Salvador aparecieron muertos en una fosa común”. 26 February 2023. <https://www.infobae.com/americas/america-latina/2023/02/26/cuatro-de-los-detenido-bajo-el-regimen-de-excepcion-de-bukele-en-el-salvador-aparecieron-muertos-en-una-fosa-comun/>.

103. El Faro. “Montaña: el custodio señalado como torturador de Mariona”. 2 October 2023. https://elfaro.net/es/202310/el_salvador/27076/montana-el-custodio-senalado-como-torturador-de-mariona.

104. Cristosal. *Un año bajo el régimen de excepción: una medida permanente de represión y de violaciones a los derechos humanos*. May 2023.

viewees has been contacted by the authorities to inform them about investigations into the circumstances of the deaths and determine who is responsible for them.

Everyone interviewed by Amnesty International who was imprisoned during this period affirms that torture and cruel, inhuman, and degrading treatment have become habitual practice rather than isolated incidents in the prisons.

The interviewees described having suffered and witnessed situations where guards and police beat detainees to get them to “confess” to being members of a gang structure, or in which they dealt out supposed punishments or took similar actions simply “*because they could and wanted to*”, for no apparent reason beyond the purpose of inflicting pain or suffering.

“One early morning in mid-September, I got a phone call from someone who told me he had shared a cell with my brother. He advised me to go to the Institute of Forensic Medicine, because he believed that my brother had died from beatings inflicted on him by the guards when he was admitted into the jail. He told me, ‘After they beat us, your relative vomited blood from his mouth and nose. I think he died, because some days later he was taken to the hospital and they never brought him back’”.

Account of a relative of a person who died in state custody in 2022, in an interview with Amnesty International in February 2023.

These descriptions line up with the public statements from top authorities at the General Directorate of Penal Centres, who suggest a policy of systematically torturing everyone who is detained under the state of emergency because they are suspected of being gang members.¹⁰⁵

Osiris Luna Meza
@OsirisLunaMeza

El Presidente @nayibbukele me ha dado una serie de indicaciones para hacer cambios severos y aumentar el régimen dentro de las prisiones.

#GuerraContraPandillas



07:50 · 4/4/22 desde Earth

Osiris Luna Meza
@OsirisLunaMeza

Todo el sufrimiento que le han hecho estos bastardos a la población nosotros se lo vamos a hacer pasar en las cárceles y seremos muy contundentes con esto.

Están sin ver la luz del sol, la alimentación es racionada, solo son 2 comidas al día, antes eran 3.



07:57 · 4/4/22 desde Earth

Osiris Luna Meza
@OsirisLunaMeza

Ellos están durmiendo en el suelo porque es lo que se merecen por lo que le han causado a la población.

Se les está cortando el pelo, van a ser tratados todos con la misma medida.

Ahí lloran cuando van entrando a la cárcel y andan pidiendo disculpas.



08:41 · 4/4/22 desde Earth

105. A set of messages from the General Director of Penal Centres, Osiris Luna Meza, five days after the state of emergency was declared. See: <https://x.com/OsirisLunaMeza/status/1510963084394995718?s=20>.

Other people have died from a lack of medicine and proper medical care for controlling chronic diseases such as diabetes, high blood pressure [and] cancer, among others. On certain occasions, prisoners have been taken to hospitals during medical emergencies, though sadly some have died en route or upon arrival, without having received attention. In other cases detainees did receive medical care, but the state of their health was so critical that they died shortly after being admitted.¹⁰⁶

Amnesty International documented the case of a 49-year-old street vendor, who at the time of his arrest already had a cardiac condition and diabetes. After six months in two separate prisons, he was transferred to a hospital where he had surgery for trauma resulting from beatings and died the following day.

“If you wanted to ask, there wasn’t anyone who could fill you in on his health status. So I didn’t know that my son’s condition had worsened and that additionally, they had beaten him... When I saw him [in the hospital], I couldn’t believe it... How is it possible for me to have found him like that [in that condition]? They had him handcuffed, beaten, and he was ill. I say that they finished off my son in that place. Who knows if the police tortured him, and he was so ill that he couldn’t withstand it.”

Account of an 81-year-old mother of a person who died in state custody in 2022 in an interview with Amnesty International in February 2023.

On 26 June 2023, the Attorney General of the Republic announced in an interview with a media outlet that he had ordered the closure of 142 cases of people detained under the state of emergency who died in prison. *“Based on our investigations, these cases are not crimes. We have scientifically verified the causes of the deaths with assistance from the Institute of Forensic Medicine”*.¹⁰⁷

On 14 July of the same year, the IACHR asked the State of El Salvador about the possible causes of the deaths: *“Were all of them sick prior to their imprisonment, and if so, why weren’t they taken to a hospital instead of a prison?... I would like to know the precise reasons why the Office of the Attorney General decided to close the cases of those 142 deaths, considering them natural deaths”*.¹⁰⁸

In response, the Presidential Commissioner for Human Rights and Freedom of Expression categorically assured the IACHR that there is no torture in the country.¹⁰⁹ Nonetheless, some weeks after this declaration, during an interview with a media outlet, the official acknowledged that when he had made that statement, he had not visited any prison, spoken with anyone who had been “captured” or asked the Office of the Attorney General to see the reports on those who had died in state custody.¹¹⁰

106. Cristosal. *Un año bajo el régimen de excepción: una medida permanente de represión y de violaciones a los derechos humanos*. May 2023.

107. See: <https://apnews.com/world-news/general-news-d5b114d180b5cb24a6dc6a31e8650c23>.

108. IAHCR hearing: Derechos humanos y estados de excepción en El Salvador. 14 July 2023. IACHR 187th Period of Sessions

109. IAHCR hearing: Derechos humanos y estados de excepción en El Salvador. 14 July 2023. IACHR 187th Period of Sessions

110. El Faro. Commissioner Guzmán: *“I haven’t spoken with anyone who has left prison under the state of emergency”*. 7 August 2023.

Meanwhile, the Attorney General of the Republic responded to the commissioners' concern by saying, "Currently, the Office of the Attorney General of the Republic has received no reports of torture or degrading human treatment against any Salvadoran. Bear in mind that my institution is the one constitutionally mandated to direct any type of investigation according to the parameters of objectivity and without any discrimination whatsoever. I should also mention that there has been a 50% drop in deaths inside the prisons since 2019...."¹¹¹

In its most recent annual report, PDDH reported an increase in verification requests for people deprived of their liberty. However, in the same document,¹¹² the institution acknowledges that its power to monitor the rights of people deprived of their liberty has been limited by the state of emergency.

Amnesty International remind the Salvadoran state that under international human rights standards, it has a duty to investigate deaths under state custody rapidly, impartially, effectively and exhaustively to establish the circumstances and causes of those deaths and ensure that those responsible are brought to justice.

Instruments such as the Minnesota Protocol also highlight certain specific requirements that states must comply with in these types of cases, such as independent investigations; autopsies and forensic exams; transparent investigations; and reports and files that make it possible to verify the processes and their results.¹¹³

f) The state of emergency as a tactic for persecuting dissident voices

In El Salvador, human rights defenders have become considerably more vulnerable due to the prolongation of the state of emergency, suspension of judicial guarantees, and increase in the arbitrary application of vague or imprecise definitions of offenses – such as illegal association and terrorist groups – which since 2006 have been used to prosecute the actions and assembly of gangs.

In the four arbitrary detentions of defenders under the state of emergency documented by Amnesty International, the available information indicates that state agents could be using the state of emergency to limit their activities to defend or promote human rights, or as reprisals.¹¹⁴

"We had already been in discussions for several months with the mayor's office, because they refused to deliver the new uniforms and work tools that they are supposed to give us at the start of the year.

In early May, after meeting with the labour union's board of directors, we analysed the situation and concluded that the negotiation option had been exhausted. So I told our colleagues, 'we have to take action'. We never reached a decision regarding the date or logistics for the action because I was out sick, so I thought the best thing to do would be to resume the plan when I was feeling better.

111. IAHCR hearing: Derechos humanos y estados de excepción en El Salvador. 14 July 2023. IACHR 187th Period of Sessions

112. Informe de labores de la PDDH. 2022-2023. June 2023, pp. 74-76. <https://www.pddh.gob.sv/portal/wp-content/uploads/2023/09/memoria-de-labores-22-23.pdf>.

113. Minnesota Protocol on the Investigation of Potentially Unlawful Deaths. https://www.ohchr.org/sites/default/files/Documents/Publications/MinnesotaProtocol_SP.pdf.

114. "States... enable themselves to jail human rights defenders by passing vague laws, often in the name of national security or countering terrorism, by staging sham trials that fail meet international standards, by torturing defenders into making false confessions and by lying about the work of human rights defenders". Report of Mary Lawlor, UN Special Rapporteur on the Situation of Human Rights Defenders. A/76/143 19 July 2021.

But the next day, the rumour was already circulating throughout the mayor's office that the labour union was preparing a shutdown. That day a municipal representative asked me: 'Is it true that Monday you guys are going to close down the mayor's office?'...

"The surprise for me came the next day, when five police officers showed up at my home and told me to come with them to the precinct office. When we were leaving the passageway, one of the officer said to me: "Let's see you make threats now, since you're such a threatener.' At first I laughed, and I thought that it was a way of intimidating me for the action we were preparing to take with the labour union, but I always thought that the longest they'd detain me would be 72 hours.

"After a couple of days of being held in dark cells, I learned that they were charging me with extortion and unlawful association. I was detained for seven months, and I saw and experienced many, many things I'd like to forget, all for defending my own and my colleagues' rights. Now no one wants to raise their voice. No one wants to go to jail."

Dolores Almendáriz, member of the board of directors of the labour union of the Municipal Mayorality of Cuscatancingo, in an interview with Amnesty International in August 2023

Based on the accounts of victims of arbitrary detentions and their lawyers, the assumption is that the authorities could have deliberately skewed the offenses in El Salvador's laws linked to prosecuting gang activity¹¹⁵ to counteract people's actions to demand justice, particularly those related to defending the land, territory, natural resources, labour rights, and the rights of people associated with strengthening societal cohesion at the community level.

Another example of this pattern is the case of land defender Benjamín Amaya, a 62-year-old farmer who in recent years has supported his community's fight win recognition of its own-ership over state lands where they have lived and farmed since March 2021. Throughout this process, Amaya has led legal and public actions that – prior to the state of emergency – appeared to be leading toward a favourable outcome for the group of farmers of which he was a member.

However, 10 months after the state of emergency was declared, in the middle of a court-ordered topographic survey, the PNC and FGR charged Amaya and 35 other farmers of unlawful association and obstruction of traffic, two crimes generally attributed to gangs. Additionally, the authorities exposed the farmers on social media.¹¹⁶



116. See: <https://x.com/FiscalGeneralSV/status/1630918166292443136?s=20>.

“Their aim with that action was to stigmatize us, delegitimize our struggle and divide the movement of rural people that had begun to coalesce to confront the predatory capital and the state that is being cynically used as a tool...”

These aren’t gang members trying to retain control over an area, as they have made them out to be. My father is fighting to defend the land where he grows corn and beans for his subsistence. But the people, leaders and residents of the area are being charged with crimes that have nothing to do with defending the land.

And this is happening in many municipalities around the country, where the government or people close to it have interests or plans to build megaprojects – some associated with tourism and others with extracting resources.

The persecution and criminalization of defenders of the land, territory, and natural resources isn’t new. But it has deepened with this government, and the state of emergency has become the infallible tool for achieving that end”.

Carolina Amaya,¹¹⁷ daughter of Benjamín Amaya, in an interview with Amnesty International in July 2023

Based on the accounts of his daughter and one of his lawyers, the charge is based on anonymous testimony – a common technique in the context of the state of emergency – that accuses him of threatening people with weapons so that they would pay protection fees or leave the disputed lands.

Since his detention in February 2023, Carolina has not been able to see or speak with her father, which has increased her concerns regarding the state of his health. Despite her fear of reprisals – especially against her father – Carolina decided to publicly expose and denounce the case in an article in the press, wherein she recounted the incidents in detail.¹¹⁸

“It is unusual to see this charge [restriction of movement] outside the context of gangs. The truth is, I’d never seen it applied to anyone outside of that context. It therefore appears to be a strategy to criminalize his work to defend the land”.

Mr. Amaya’s defence lawyer, in an interview with Amnesty International in July 2023.

International human rights standards recognize the vital role played by defenders.¹¹⁹ The IACHR has on many occasions called on states to abstain from interfering with or violating their rights. On the contrary, states are obligated to take proactive measures to guarantee that defenders are able to carry out their work without fearing reprisals or acts of violence.¹²⁰

117. Carolina Amaya is a journalist and director of the independent media outlet Malayerba, which has covered the environment since 2019.

118. El Faro. “El Estado ocupó el régimen para criminalizar a mi papá, un líder campesino”. 31 August 2023. <https://elfaro.net/es/202308/columnas/27036/el-estado-ocupo-el-regimen-para-criminalizar-a-mi-papa-un-lider-campesino>.

119. Declaration regarding the right and duty of individuals, groups, and institutions to promote and protect universally recognized human rights and fundamental freedoms. United Nations A/RES/53/144 (1998).

120. IACHR. Situation of Human Rights Defenders in the Americas, OAS/Ser.LV/II, Doc. 66, 29 December 2011. Available at: <https://www.oas.org/es/cidh/defensores/docs/pdf/defensores2011.pdf>.

g) The state response: failure to investigate and lack of access to information

In response to the gravity of the incidents, various United Nations Special Procedures and the IACHR have questioned the Salvadoran state about the lack of detailed information on the number of arbitrary detentions and deaths in state custody, as well as their causes and corresponding investigations.¹²¹

“What is the mechanism for accessing information on the state of emergency?... Where is the permanent repository of this information?... And for information on the prison system, what are the sources that can be consulted?”

Commissioner for Freedom of Expression Pedro Vaca during his participation in the IACHR hearing, Human Rights and States of Emergency in El Salvador, 14 July 2023¹²²

Despite the extensive information that has been periodically published by civil society organizations and media outlets regarding the conditions of detainees and how their human rights have been violated, the state's response has tended to minimize and delegitimize these incidents.

The IACHR has thus repeatedly asked the Salvadoran state for authorization to conduct a visit to verify the conditions under which the state of emergency is being implemented and the state of human rights, but no visit has been finalized as of the writing of this report.¹²³

Meanwhile, the public statements and actions of the senior officials¹²⁴ responsible for investigating and preventing these cases have tended to deny, conceal,¹²⁵ or distort the incidents. This demonstrates the lack of will to recognize the abuses and take steps to ensure access to truth, justice and reparations for victims, as well as take measure to make sure the abuses are not repeated.

The state's failure to investigate and later punish officials and agents suspected of having committed human rights violations – such as torture, cruel, inhuman, and degrading treatment, arbitrary detentions and deaths while in state custody – have created an environment of heightened impunity in the face of gross human rights violations, making it

121. Permanent Mission of El Salvador to the United Nations and other international bodies. *Response of the Salvadoran State to the joint communication of the United Nations Special Procedures on allegations of human rights violations or the possible risk of such violations in the context of a state of emergency and amendments to criminal legislation*. July 2022. Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=37045>

122. IACHR hearing: Human Rights and States of Emergency in El Salvador. 14 July 2023. <https://www.oas.org/es/cidh/sesiones/?S=187>.

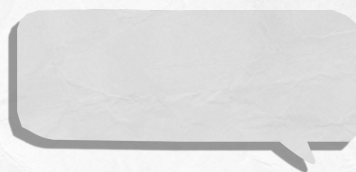
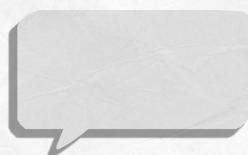
123. IACHR hearing: Human Rights and States of Emergency in El Salvador. 14 July 2023. <https://www.oas.org/es/cidh/sesiones/?S=187>.

124. “We have closed 142 cases of people detained under the state of emergency who died in prison. They do not constitute crimes according to our investigations. We have scientifically verified the causes of the deaths with assistance from the Institute of Forensic Medicine”. Statement by the Attorney General of the Republic. 13 June 2023. <https://apnews.com/world-news/general-news-d5b114d180b5cb24a6dc6a31e8650c23>. “To date, just over 7,000 people have been released... This means that the justice system is working.” Statement by the Minister of Justice and Security, wherein he references the number of people who have been granted alternatives to pretrial detention after having been the victims of arbitrary arrest and having been detained for as long as a year or more. <https://twitter.com/dialogo21/status/1693980751161639369?s=12&t=MsX970vhNNW0VpbKJM3r4Q>.

125. Between September and October 2023, Amnesty International filed requests for access to public information with several authorities to ascertain the number of people detained under the rules of the state of emergency, the number of people prosecuted for the offense of unlawful association, and of those, the number of people against whom the court has issued precautionary measures and the number of people whose cases have been permanently dismissed. Amnesty International also requested data on how many members of the police and armed forces are being investigated for abuses committed during this period, as well as on the number of ongoing investigations into the deaths of people in state custody in prisons. The only response to all of these requests was that the information is confidential or non-existent.

more likely that the violations will be repeated.¹²⁶

The IACHR underscores that states have a duty to exhaustively and objectively investigate all actions that violate human rights. It also emphasizes that state inaction can lead to the recurrence of human rights violations, leaving victims and their families completely defenceless. Victims and their relatives have the right to know the truth, be guaranteed justice, and receive just reparations. Furthermore, the authorities are obligated to take measures to keep the incidents that generated the human rights violations from reoccurring.¹²⁷



126. Inter-American Court of Human Rights. *Case of Zambrano Vélez et al v. Ecuador*. Judgement of 4 July 2007. https://www.corteidh.or.cr/docs/casos/articulos/seriec_166_ing.pdf.

127. IACHR. Guarantees for the Independence of Justice Officials. OAS/Ser.LV/II, Doc. 20, 5 December 2013. <https://www.oas.org/es/cidh/defensores/docs/pdf/justice-operators-2013.pdf>.

4. RESTRICTIONS OF CIVIC SPACE AND ATTACKS AGAINST FUNDAMENTAL FREEDOMS



Civic space is the set of conditions that are necessary for people to participate freely and without fear in actions and discussions that affect their lives and the structure of society. This milieu entails respect for and guarantees of fundamental freedoms, such as the freedom of expression, peaceful assembly, association, and access to information.

“Society is stronger and more resilient when women and men can play a meaningful role in political, economic and social life, contributing to policy-making that affects their lives, including by accessing information, engaging in dialogue, expressing dissent and joining together to express their views.”

António Guterres, Secretary-General of the United Nations, as part of the 75th anniversary of the United Nations.
The Highest Aspiration: A Call to Action for Human Rights.

El Salvador, as a signatory to the International Covenant on Civil and Political Rights (ICCPR) and American Convention on Human Rights (ACHR), has the obligation to create a legal and institutional framework that promotes and guarantees a public milieu that enables people to express their opinions, meet, interact, and dialogue with one another and with authorities on matters that impact their lives, and do so freely, safely, and without being the target of any discrimination whatsoever.¹²⁸

Nonetheless, since 2019, international human rights bodies such as the IACHR have observed a worrisome trend toward restricted civic space in El Salvador.¹²⁹ This trend

128. ACHR: Art.13 (freedom of thought and expression); Art. 15 (right of assembly), and Art. 16 (freedom of association). ICCPR: Art. 19 (freedom of expression); Art. 21 (right of peaceful assembly); Art. 22 (freedom of association); Art. 25 (participation in political affairs).

129. “IACHR presents its preliminary observations following its *in loco* visit to El Salvador”. 27 December 2019. “*The IACHR encouraged the state to make the contents of the Territorial Control Plan public and underlined the importance of re-establishing spaces for citizen participation, such as the now-defunct Citizen Security Council.*”

initially took the form of the elimination and restriction of spaces for dialogue and citizen participation.¹³⁰

This phenomenon not only symbolizes one of the first signs of the authorities discrediting the voices of civil society, but it also limits the exercise of civil and political rights in the country, thereby compromising the progress of human rights.¹³¹

Various Salvadoran civil society organizations attest that currently their capacity to influence the design and implementation of public policies, as well as the process of crafting laws, is practically non-existent.¹³²

One of the most emblematic cases is the creation of the Transitional Justice Law. The National Assembly has not included victims in this new lawmaking process,¹³³ despite international standards¹³⁴ that require their involvement.

Both the IACHR and United Nations Committee on Economic, Social, and Cultural Rights have expressed to the Salvadoran state the importance of reestablishing spaces for open and constructive participation and dialogue with all actors nationwide, including representatives of civil society, the academic and private sectors, Indigenous representatives and leaders and human rights defenders.¹³⁵

Nayib Bukele @nayibbukele · 7/4/21
Con solo ver esos logos de la **ONGs** que están detrás de esta "propuesta" y ver los "medios" que la están publicando, estoy seguro que sería lo peor que pudiéramos hacer.

Además, ya no insistan, nada de lo que apruebe la @AsambleaSV saliente entrará en vigencia jamás.

Revista GatoEncerrado · 7/4/21

El representante de @FundacionDTJ, @MarineroJose, considera que la aprobación de esta propuesta es una oportunidad para el presidente @nayibbukele de demostrar que está contra la corrupción y para cumplir su promesa de tener una @OEA. CICES independiente.

@KarenMorenoPala



Message on X from President Nayib Bukele, about civil society organizations.

Ver en: <https://x.com/nayibbukele/status/1379812039988817936?s=20>

130. Among the spaces for dialogue and citizen participation discontinued by the Bukele government are the National Council for Citizen Security and Coexistence (CNSCC); National Education Council (CONED); National Council on Environmental Sustainability (CONASAV); Roundtable on Police Actions; [and] Board of Directors of the Registry of Victims of Grave Human Rights Violations, among others.

131. The IACHR has declared citizen participation in public administration to be a civil and political right: IACHR, *Violence, Childhood, and Organized Crime*. OAS/Ser. L/V/II. Doc. 40/15, 11 November 2015; IACHR, *Citizen Security and Human Rights*. OAS/Ser. L/V/II. Doc. 57, 31 December 2009.

132. In May 2021, the committees of the Legislative Assembly shelved more than 300 bills, some of which had to do with creating a legal framework to ensure human rights and which civil society had helped to draft. These bills included a Law on Gender Identity; Law on the Recognition and Comprehensive Protection of Human Rights Defenders; Law on the Protection of Journalists; Law against Discrimination; reforms to the Comprehensive Special Law on a Violence-Free Life for Women; [and] Law against Illegal Human Trafficking. Over two years later, no committee has resumed discussion on any of these issues.

133. Organizations for victims and human rights have reacted by proposing their own bill and demanding to participate; however, to date this bill has not been given consideration by the Legislative Assembly's Justice Committee. In addition, although a promise was made in 2022 to establish a permanent dialogue roundtable, after a series of hearings with victims and veterans, the organizations and collectives have not been officially convened to discuss the content of the proposal, despite their repeated requests. See the Work Reports of the Legislative Assembly's Commission on Justice and Human Rights, in particular the Second Quarterly Report, 2021-2024, for the period of August, September, and October 2021; Third Quarterly Report, 2021-2024, for the period of November and December 2021 and January 2022; [and] Fourth Quarterly Report, 2021-2024, for the period of February, March, and April 2022. All reports are available at: <https://www.asamblea.gob.sv/asamblea/comisiones/informes/2021-2024/75291F8C-605A-4DA5-A505-D783C807CD83>.

134. According to the principle of centrality of the victim, the state must promote and guarantee the active participation of victims in the processes that affect them, ensuring that their opinions and concerns are an integral part of the solutions and decisions made. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. United Nations General Assembly. A/60/509/Add.1.

135. IACHR: "IACHR presents its preliminary observations following its *in loco* visit to El Salvador". 27 December 2019. https://www.oas.org/en/iachr/media_center/PReleases/2019/335.asp. United Nations: Economic and Social Council. Committee on Economic, Social, and Cultural Rights. *Concluding observations on the sixth periodic report of El Salvador*. 9 November 2022.

The state's stance of dismissing the participation of civil society, minimizing its contributions in matters of national interest, and rejecting constructive channels for dialogue with those actors was a harbinger of the profound deterioration of civic space in the country.

After the state adopted this position, local organizations have reported a sustained increase in actions that violate freedom of expression and association, which primarily affect defenders, journalists, activists, labour union members, and community leaders. These actions have created a context of extreme hostility.¹³⁶

Among the most frequent types of attacks verified by Salvadoran organizations are public statements by governmental officials to stigmatize and discredit, attacks on social media and inappropriate limits on holding peaceful protests. There have also been attacks against peoples' physical integrity and freedom.¹³⁷

The most alarming incidents related to the suspension of rights have involved using the state of emergency to criminalize critical voices.

Amnesty International has verified an increase in the risk faced by human rights defenders, journalists, and civil society in general. The patterns observed suggest that the rollback of civic space and subsequent human rights violations are the result of deliberate and coordinated actions by the principal state authorities with the aim of silencing critical voices and managing societal discontent through repressive tactics.¹³⁸

“Civic space is a human rights issue, it is a peace issue, it is a development issue. It is key for sustainable and resilient societies, yet it is under increasing pressure from undue restrictions and repressive laws. From threats and attacks on journalists and human rights defenders, online bullying and harassment, crackdowns on peaceful assembly, to internet shutdowns”.

United Nations High Commissioner for Human Rights Volker Türk, Geneva, 26 May 2023¹³⁹



136. “There continues to be a pattern of attacks against human rights defenders, organizations, and journalists in El Salvador that directly impact work to defend human rights and jeopardize the physical integrity and lives of those who do that work.” Informe de agresiones contra personas defensoras y periodistas: análisis de casos 2022. Mesa por el Derecho a Defender Derechos. May 2023.

137. Mesa por el Derecho a Defender Derechos. Defendiendo derechos humanos en contextos de crisis: análisis de casos de agresiones contra personas defensoras y periodistas, 2021-2022. <https://im-defensoras.org/wp-content/uploads/2022/09/Resumen-ejecutivo-informe-Mesa-El-Salvador.pdf>.

138. According to the Mesa por el Derecho a Defender Derechos, between January 2021 and May 2022, three out of every four attacks against defenders and journalists came from the Presidential Palace and Legislative Assembly. Defendiendo derechos humanos en contextos de crisis: análisis de casos de agresiones contra personas defensoras y periodistas, 2021-2022. <https://im-defensoras.org/wp-content/uploads/2022/09/Resumen-ejecutivo-informe-Mesa-El-Salvador.pdf>.

139. See: <https://hchr.org.mx/comunicados/el-alto-comisionado-de-derechos-humanos-de-la-onu-hace-un-llamamiento-para-proteger-y-ampliar-el-espacio-civico/>.

4.1. FREEDOM OF EXPRESSION UNDER ATTACK

States have the positive obligation to create an environment that favours freedom of expression. To achieve that environment, they must take measures such as abstaining from participating in and financing operations on social media, such as coordinated ingenuous behaviour or other online influence campaigns meant to sway the opinions or attitudes of the general public for partisan political ends.¹⁴⁰

In El Salvador, however, various articles in the media describe the powerful digital communication apparatus that the Executive Branch has created. Reporting by journalists describes how troll farms and YouTube channels try to control the narrative, praise governmental policies, promote disinformation, and attack and stigmatize their critics.¹⁴¹

a) Social media: the megaphone of campaigns to discredit and stigmatize critical voices

In its 2019 onsite visit to El Salvador, the IACHR was able to verify various actors' concerns about a stigmatizing discourse on social media and in the media against human rights defenders, journalists and independent media, a discourse coming from the highest state authorities.¹⁴²

Faced with this increase and at the request of several members of El Salvador's legislature, the Legislative Assembly (2018-2021 session) created a Special Commission to investigate these incidents.¹⁴³ The scope of the investigation included both the attacks suffered by the media due to its work and editorial line, and the use of public resources against them.¹⁴⁴ The commission's final report concluded that the Executive Branch harassed journalists, inappropriately utilized state resources, and extended its intimidation into online domains.¹⁴⁵

“The IACHR has established that the discrediting of the work of human rights defenders through the pronouncements of state officials creates a stigmatization which in turn can generate a climate of hostility and intolerance from various sectors of the populace that hinders the legitimate enjoyment of freedom of association of human rights defenders”.

IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OAS/Ser. L/V/II. Doc. 66, 31 December 2011, para. 125

140. United Nations Special Rapporteur on the Promotion and Protection of Freedom of Opinion and Expression. Representation of the Organization for Security and Cooperation in Europe (OSCE) for Freedom of the Media, Special Rapporteur for Freedom of Expression (RELE) of the Organization of American States (OAS), and the Special Rapporteur of the African Commission on Human and Peoples' Rights (ACHPR) for Freedom of Expression and Access to Information. 2021 “Joint Declaration on Politicians and Public Officials and Freedom of Expression”. <https://www.oas.org/en/iachr/expression/showarticle.asp?artID=1214&IID=1>

141. Reuters. “Trolls, Propaganda, and Fear Stroke Bukele's Media Machine in El Salvador”. 29 November 2022. <https://www.reuters.com/investigates/special-report/el-salvador-politics-media/>. Factum. “El ejército de troles pro Nayib tuitea hasta 20 horas diarias”. See: <https://www.revistafactum.com/el-ejercito-de-troles/>. *Revista Disruptiva*. “Los evangelistas de Bukele”. 19 May 2023. <https://www.disruptiva.media/los-evangelistas-de-bukele/>. El Faro. “El factor YouTube en la estrategia viral de Bukele”. 25 August 2023. https://elfaro.net/es/202305/el_salvador/26855/El-factor-YouTube-en-la-estrategia-viral-de-Bukele.htm.

142. “IACHR presents its preliminary observations following its *in loco* visit to El Salvador”. 27 December 2019. See in: https://www.oas.org/en/iachr/media_center/PReleases/2019/335.asp

143. Legislative Assembly of El Salvador. Legislative Decree N° 690. 13 August 2020.

144. Previously cited. Footnote 145.

145. Legislative Assembly of El Salvador. *Informe de la Comisión especial para la investigación de acoso que están sufriendo periodistas de diferentes medios de comunicación debido a su trabajo y línea editorial y el uso de recursos públicos en contra de opositores*. Drafted on 4 November 2020 and approved by 58 votes by the Plenary of the Legislative Assembly, 12 November 2020.

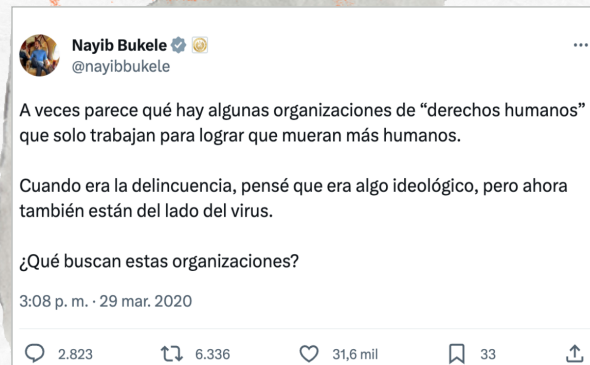
“Since the context of the COVID-19 pandemic, we human rights organizations in El Salvador have denounced a notable increase in attacks against defenders, particularly in the digital realm, which created a hostile environment that hindered our work.

We discovered that the smear campaigns appeared to originate from accounts associated with Executive Branch officials or major public figures with ties to the government, and even President Bukele’s own account.”

Member of civil society in an interview with Amnesty International in July 2023

In its 2020 annual report, the IACHR noted that it had knowledge of the digital attacks against female defenders who had denounced irregularities in how the state managed COVID-19. These attacks included intimidating messages and misogyny on social media. It also noted that high-level authorities were stigmatizing female defenders in order to discredit their denunciations. The IACHR urged the state to *“publicly and unequivocally recognize the fundamental role played by human rights defenders in guaranteeing democracy and the rule of law.”*¹⁴⁶

But the opposite has happened. With the new makeup of the Legislative Assembly in 2021, there has been an increase in stigmatizing discourse from officials at various state agencies, who attempt to discredit the role and work of a variety societal entities that act as watchdogs over state policies.



Message on X from President Nayib Bukele, about civil society organizations
<https://x.com/nayibbukele/status/1244370925815988226?s=20>

146. IACHR. 2020 Annual Report. Cap. IV-A, para. 354. <https://www.oas.org/en/iachr/docs/annual/2020/Chapters/IA2020cap.4A-en.pdf>

“And for you ‘journalists’, certain representatives of the ‘international community’ and well-to-do and elitist academics: There you have your children, the ones you defend, your youth, your ‘journalistic sources’! There you have your wretched murderers”.

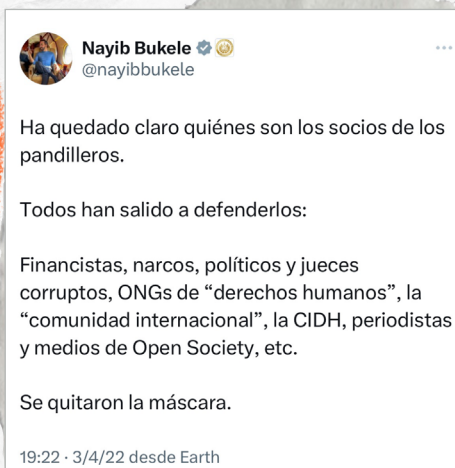
Ernesto Castro, President of the Legislative Assembly¹⁴⁷

“The goal of this strategy is to delegitimize and discredit the organizations and media outlets that work to defend human rights and monitor public administration.

But it also seeks to dissuade and promote self-censorship. Several civil society organizations continue working on issues linked to fighting corruption and promoting transparency, but they have decided to be less visible in their actions.

At some point, everyone fears being targeted by these attacks that incite hatred. It makes you think twice about things”.

Member of civil society in an interview with Amnesty International in July 2023



Message on X from President Nayib Bukele, about civil society organizations.

<https://x.com/nayibbukele/status/1510774785227296786?s=20>

In monitoring the social media platform X (formerly Twitter), Amnesty International analysed the content of nine accounts of state officials and seven institutional accounts¹⁴⁸ to determine the prevalence of stigmatizing messages targeting human rights defence organizations, journalists and independent media outlets.¹⁴⁹

This analysis corroborated that many acts take the form of inciting bullying, harassment, and attacks on the reputation and credibility of the targeted individuals and organizations. The tone of these message is aggressive, sarcastic, threatening, defamatory and disdainful.

The posts also tend to associate the targeted people with actions described as destabilizing government plans and therefore contrary to the wellbeing of the country.

147. See: <https://x.com/ECastroES/status/1658620044601966594?s=20>.

148. The accounts included in the monitoring exercise belonged to: Government officials: 1) Nayib Bukele, President of the Republic, @nayibbukele; 2) Felix Ulloa, Vice President of the Republic, @fulloa51; 3) Gustavo Villatoro, Minister of Security, @Villatoro; 4) René Francis Merino Monroy, Minister of Defence, @merino_monroy; 5) Rodolfo Delgado, Attorney General, @FiscalGeneralSV; 6) Mauricio Arriaza Chicas, director of the National Civil Police (PNC), @Director_PNC; 7) Ernesto Castro, president of the Legislative Assembly, @ECastroES; 8) Christian Guevara, head of the Nuevas Ideas parliamentary group @ChrisGuevaraG; 9) Osiris Luna Meza, director general of Penal Centres, @osirislunameza.

Public institutions: 1) Office of the President of the Republic, @presidenciaSV; 2) Office of the Vice President of the Republic, @VcpresidenciaSV; 3) Legislative Assembly, @AsambleaSV; 4) Ministry of Security, @SeguridadSV; 5) Ministry of Defence, @DefensaSV; 6) Office of the Attorney General of the Republic, @FGR_SV; 7) National Civil Police, @PNCSV. The monitoring period ran from June 2019 to October 2023

149. To determine whether a message on “X” was stigmatizing, a list of terms commonly used to discredit persons or groups by assigning them negative stereotypes was created. The analysis also considered the context and intention of the term’s usage. The messages created by the accounts included in the analysis were filtered based on this list. It is important to note that the list of words was not fixed but was adapted and expanded throughout the period of analysis.

Within the context of the state of emergency, they are even linked to criminal groups, heightening the risks for the victims of these attacks. The comments in these posts reflect growing animosity and hostility toward defenders, journalists, and any other critical voice, discrediting and insulting them, and threatening them with criminalization and even death.

“In the context of a prolonged suspension of rights and of state co-optation, I have noticed a significant increase in the risks we defenders face.

Even though I do not maintain a very active profile on social media, any action I take there triggers an avalanche of insults and threats, which often have a heavily misogynistic component. I can understand having criticisms levelled against me, but under no circumstance should expressions of violence be tolerated.

“And the origin of the attacks is what makes this situation more dire. They are not isolated individuals; they are coordinated groups that are backed or instigated by the state. And to feel that high-level officials are behind these social media attacks that stigmatize, defame and threaten us and even call for us to be seen as criminals makes us feel that all of the state’s power is arrayed against us”.

Zaira Navas, Coordinator of the Rule of Law Program, Cristosal, in an interview with Amnesty International in August 2023



A sample of over 300 comments received after an interview with Zaira Navas was published on the El Faro online news site.

See: https://x.com/_elfaro_/status/1665828120920748032?s=20

In its 2022 report, the monitoring centre Association of Journalists of El Salvador (*Asociación de Periodistas de El Salvador* – APES) recorded 136 cases of attacks against the press in the line of duty, involving 147 violations and affecting 161 individuals.¹⁵⁰ Those mentioned most frequently included stigmatizing digital attacks and statements made primarily by state agents (six out of every 10) and anonymous profiles on social media.¹⁵¹

“Now it is without question a systematic attack. There are public officials who actively attack, incite, or promote a discourse of hate, ranging from the president to his ministers to members of Congress”.

Bryan Avelar, journalist, in an interview with Amnesty International in September 2023

In July 2022, the IACHR extended the precautionary measures that had been granted one year prior to 31 Salvadoran journalists, in light of the ongoing and accelerated publication and dissemination of stigmatizing and harassing messages aimed at them on social media, including threats [and] dissemination of private information, such as their photos and habits, and even those of family members.¹⁵²

In general, when the messages include women, the comments and responses also contain a high degree of misogyny and expressions of violence against women, including threats of rape or other types of sexual assault.¹⁵³

States are obligated to address gender-based violence in spaces where people interact, ensuring safe work environments for women – journalists as well as defenders – by establishing concrete mechanisms for recording cases and taking specific measures to prevent and protect them from the violations committed by state or private agents.

Amnesty International notes with concern how the top state authorities incite certain behaviour in the digital realm, which is later replicated by their high-profile allies and sympathizers.

As has journalists have revealed in their reporting, they amplify these messages using bots and troll farms¹⁵⁴ to disseminate a discourse that stigmatizes, disparages, and even incites violence against those who question, criticize, or denounce particular governmental actions, decisions, or policies.¹⁵⁵

150. The difference in the data can be explained by the fact that some cases identify more than one violation or attack against a journalist or information worker, and based on different restrictions. Similarly, the number of people affected is greater than the number of cases and violations recorded because there are records of cases that are collective and/or involve more than one person.

151. APES—“Informe sobre la libertad de prensa en El Salvador”. 2022. <https://apes.org/sv/informe-sobre-libertad-de-prensa-en-el-salvador-2022/>.

152. IACHR. 8 July 2022. *Precautionary Measures No. 1051-20 (Follow-up, Extension, and Lifting). Identified members of the digital newspaper El Faro regarding El Salvador. Resolution 32/2022*. https://www.oas.org/en/iachr/decisions/mc/2022/res_32-22_mc_1051-20_sv_en.pdf.

153. “In our view, the attacks following our article on the high cost of living and its impact on the populace are brought on by an intolerance of criticism, rejection of dialogue, and misogyny. We demand an end to these sexist attacks that use women’s physical appearance as a way to discredit their opinions and knowledge.” Pronouncement by the Alharaca digital media outlet regarding the attacks against its female contributors in October 2023. Available at: https://twitter.com/alharaca_sv/status/1710387554023874673.

154. El Diario de Hoy. “Ola de críticas por ‘granja de troles’ al servicio de Bukele”. 4 December 2022. <https://www.elsalvador.com/noticias/nacional/redes-sociales-nayib-bukele-propaganda-electoral-/1021584/2022/>.

155. Using bots and troll farms to amplify messages on social media involves coordinated and strategic use of automated accounts and others managed by humans to broadly promote or disseminate a specific narrative. Bots can auto-generate content, likes, and rapidly share messages, while the troll farms use humans to manage multiple accounts to actively participate in discussions and promote specific content. Together, they work to manipulate public perceptions and influence the discourse, as well as artificially increase the popularity or visibility of specific messages or topics. See: Samuel C. Woolley and Philip N. Howard. *Political Bots and the Manipulation of Public Opinion in Venezuela*. 2015; and P. W. Singer and Emerson T. Brooking.

The IACHR has stated that when stigmatizing messages come from officials or powerful sectors of society, they can be interpreted as a license to commit acts that compromise the security and rights of defenders, thereby heightening their vulnerability.¹⁵⁶

Through its sustained engagement in these practices, the state has exacerbated a climate of animosity and hostility toward critical voices, impacting their rights and putting their lives and physical integrity in danger.

b) From apparent risk to real threat

In September 2021, the IACHR granted precautionary measures to lawyer Bertha María DeLeón, due to denunciations of stigmatization and attacks on social media related to her criticism of the government.

Those attacks included violent messages and threats of attacks. The IACHR found that influential persons and public officials were involved in disseminating those messages, and concluded that the harassment campaign sought to damage her credibility, call into question the integrity of her work, and create a hostile environment toward her.

Furthermore, the IACHR confirmed that the state had not effectively implemented the precautionary measures that had been granted by El Salvador's court system to protect the lawyer's physical, psychological and emotional integrity.

Together, these factors created a context rife with animosity against her, placing her in a situation of exceptional vulnerability that put her life and physical integrity at risk.¹⁵⁷

Before she was granted international protective measures and under the constant threat of being criminalized, the lawyer decided to flee the country. This had a significant impact on her life plans, as it cut her off from her family and social circle and also interrupted her career and professional goals.¹⁵⁸

Others who have been targeted by campaigns of stigmatization and systematic harassment on social media that are similar to what this lawyer experienced have shared with Amnesty International how this practice – with the participation of prominent public officials and influential individuals, sustained over time, and carried out with a high degree of impunity – can tangibly affect people's lives and violate multiple rights.

For example, after he began to take legal action in defence of judicial independence and to criticize government decisions, lawyer Salvador Enrique Anaya Barraza¹⁵⁹ began to gain considerably more public attention. Public officials and government sympathizers began targeting him with attacks and harassment on social media and other digital platforms.

LikeWar: *The Weaponization of Social Media*. 2018.

156. IACHR, Criminalization of the Work of Human Rights Defenders, OAS/Ser. LV/II, Doc. 49/15, 31 December 2015, paras 78-92.

157. IACHR. Resolution 76/2021. Precautionary measure No. 475-21 Bertha María DeLeón Gutiérrez regarding El Salvador. 19 September 2021. https://www.oas.org/en/iachr/decisions/mc/2021/res_76-21_mc_475-21_sv_en.pdf.

158. DeLeón, in written communication addressed to Amnesty International. October 2023.

159. Constitutional lawyer with 30 years of experience; specialist in strategic litigation in the area of public law.

“Some of the messages have mentioned acts of violence such as: ‘We are going to put a bullet in your head’. This, together with being followed and messages from colleagues warning me that the government supposedly intended to harm me, increased my sense of insecurity.

To protect myself, I’ve had to take additional security measures that have ranged from simple things like blocking social media accounts that insult or threaten me to changing the routes I take to get to places and deciding to limit my social and family life.

“This situation has had negative repercussions on my professional life. I have noticed a reluctance from colleagues and other professionals in the judicial realm to work with me, as they’ve been warned that associating with me could lead to negative consequences for them. This attitude has not only impacted my professional development and prospects but has also influenced the perceptions of those who seek my legal services, which has led my portfolio of clients at the local level to shrink.”¹⁶⁰

Lawyer Salvador Enrique Anaya Barraza, in an interview with Amnesty International in July 2023

Another case is that of journalist Mariana Belloso,¹⁶¹ who after President Bukele took office was the target of a series of smear campaigns on social media due to her work as a journalist.

“In June 2019, while covering the launch of the Territorial Control Plan, I tweeted that in the president’s speech, he urged people not to pay ‘the rent’ (extortion) to gang members. That night, the president quoted me, accusing me of having said ‘half-truths’, which unleashed a brutal wave of hostility on social media. In the messages they accused me of being a journalist who wanted the plan to fail and who sympathized with the gangs.

The stigmatization campaign lasted several months. I seriously considered fleeing the country due to the violence of the attacks. I had never faced threats of that magnitude: sharing photos of me and my daughters with chilling messages, wishing for us to be attacked by gang members or found dead.

This avalanche was fuelled not only by the president’s comments, but also by other influ-



President Nayib Bukele’s social network publication “X”.

See in: <https://x.com/nayibbukele/status/1145563030438195200?s=20>

160. In August 2021, the Supreme Court of Justice initiated a proceeding to suspend Anaya’s license to practice law, arguing that he employed malicious practices in the exercise of his profession. The proceeding is currently paused, despite the procedures the law establishes for continuing to process it. Anaya has thus been left vulnerable in legal limbo, with the constant threat of having his professional license suspended. For more information: FOCOS. “Abogado Anaya denuncia ‘represión judicial’ por la Corte Suprema”. 7 July 2021. Available at: <https://focostv.com/abogado-anaya-denuncia-represion-judicial-por-la-corte-suprema/#:~:text=Anaya%20inform%C3%B3%20en%20una%20conferencia,interpuesto%20en%20noviembre%20de%202020.>

161. Salvadoran journalist with more than 20 years of professional experience; specialist in economic affairs. She has worked in radio and for various print media outlets at the national as well as regional levels, in some of these serving as editor-in-chief in her specialty area. Currently she works for the Alharaca digital media outlet and since 2022 resides outside of El Salvador.

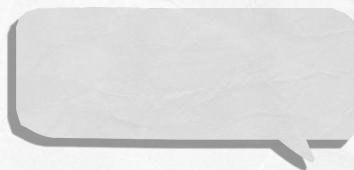
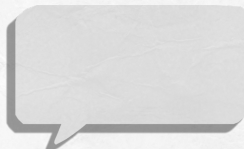
ential people and public figures who used my own photos and videos, regarding which their followers would make sexualized comments.

Articles about me with intentional disinformation also appeared and were disseminated on digital platforms. People close to me, such as members of my family, questioned my actions: 'Why do you get involved in politics? Why do you face off with the President?'

"It wasn't a question of simple errors or misunderstandings; there was a clear intention to paint me as a political opponent instead of a journalist. Not only did this online campaign stigmatize me, it also has hindered my career. In the years since I've had to deal with reprimands for 'having upset the president', censorship, and even unfair dismissals for having questioned the government as part of my journalistic work.

"My sources, fearful of reprisals, started to avoid me. Representatives of several labour unions no longer wanted to speak with me. Those who say that harassment on social media has no repercussions in real life are profoundly mistaken. It impacts my personal, familial, and professional life."¹⁶²

The above cases illustrate how these campaigns of stigmatization and disparagement are paired with steps to spread biased or false information that tends to brand the person as an opponent of the government. This move has the potential to drastically alter the public's perception of the person who is the target of the harassment, which harms their development and wellbeing in both the personal and professional spheres, exposing them to risks; affecting their physical integrity, personal security, dignity and working conditions; and making them the object of discrimination.



162. Mariana Belloso in an interview with Amnesty International in August 2023.

4.2. RESTRICTIONS OF PEACEFUL ASSEMBLY

The right of peaceful assembly is protected by various international human rights instruments. Ultimately, there is an intrinsic relationship between the exercise of this right and freedom of expression and association, as well as the right to defend rights.

Thus, the right of peaceful assembly is considered a fundamental tool for demanding the realization of social, cultural, and environmental rights, as well as being a means for expressing criticism of power.

The IACHR has indicated that without exercising the right of peaceful assembly, it is very hard to defend human rights and, consequently, states are obligated to ensure that no defender is subject to unnecessary or disproportionate restrictions of his or her right of peaceful assembly.¹⁶³

“The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights of freedom of others”.

American Convention on Human Rights, Article 15

In El Salvador over the last two years, there has been an increase in social demonstrations and protests related to human rights violations under the state of emergency; demands for respect for economic, social, and cultural rights; and the defence of land and territory. These protests are driven by various social collectives, especially organized movements of victims, labour unions, defenders, and community leaders.¹⁶⁴

Unfortunately, there is a trend toward undue interference by state agents in the exercise of this right. The most recurrent state practices are: i) mockery, stigmatization, and delegitimization by high-level state officials of all types of expressions of social discontent; ii) intimidation and threats towards organizers and protesters, and excessive surveillance of them; iii) restrictions of freedom of movement in



Comment by Congressman Christian Guevara about the peaceful protest on 15 September 2023.
<https://x.com/ChrisGuevaraG/status/1702705299927216570?s=20>

163. IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 54.

164. Diario de Hoy, “Salvadoreños marchan contra abusos del régimen de excepción”, 15 September 2022. Available at: “No queremos un país que va rumbo a la dictadura”: Salvadoreños marcharon contra abusos en régimen de excepción–Noticias de El Salvador”. El Faro, “Una multitud marcha contra las detenciones arbitrarias en San Salvador”, 19 July 2022. https://elfaro.net/es/202207/ef_foto/26281/Una-mulitud-marcha-contra-las-detenciones-arbitrarias-en-San-Salvador.htm?ref=home. El Faro, “Los defensores del agua que acabaron presos por denunciar a una empresa sin permisos”, 26 January 2022. https://elfaro.net/es/202201/el_salvador/25972/Los-defensores-del-agua-que-acabaron-presos-por-denunciar-a-una-empresa-sin-permisos.htm. Diario de Hoy, “Feministas expresan que el régimen de excepción les afecta más a las mujeres”, 27 November 2022. <https://www.elsalvador.com/noticias/nacional/feministas-manifestaciones-politicas-el-salvador-regimen-de-excepcion/1019793/2022/>.

the form of blockades or checkpoints on roads and access points for specific areas to keep people from participating in these activities; and iv) arbitrary detention of protesters, and even criminalization of some of them.

States have the duty to respect, protect, and facilitate the exercise of peaceful protest. This means the authorities must: i) abstain from taking any action to prohibit, restrict, block, disperse, or disrupt peaceful assemblies without a pressing reason for doing so, as well as from punishing participants or organizations without legitimate cause; ii) protect protesters from external interference and violence and guarantee their security; and iii) promote an environment conducive to exercising the right to peaceful assembly without discrimination, and establish a legal and institutional framework that allows this right to be realized.¹⁶⁵

a) A police force that intimidates and surveils

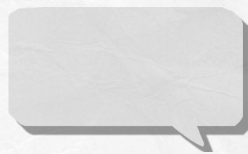
During the last two years, the National Civil Police (PNC) has replaced an approach centred on protecting and facilitating peaceful protests with a vision of its role focused on intimidating, surveilling, and ultimately preventing the participation of protesters in this type of collective action.

An example of how this new vision is being put into practice is the “Action Protocol for Police Intervention in the Face of Protests in the Form of Rallies and Mobilizations of Persons,” an instrument issued by the institution in October 2021 and in force until 31 December 2022.¹⁶⁶

The regulation orders police intelligence units to gather information, conduct surveillance using cameras and drones, set up vehicle checkpoints on roads, and search the vehicles transporting protesters at the various entrances to San Salvador.

“What [the police] is doing, basically, is trying scare the populace into not joining protests and public actions. It appears to be trying to sweep under the rug whoever is upset by or disagrees with what the government is doing.”

A person who tried to participate in a peaceful demonstration in 2023 and was detained for two hours at one of the checkpoints on the road by the PNC and FAES personnel. Interview with Amnesty International in August 2023



165. Human Rights Committee. ICCPR. General Comment No. 37 (2020) on the right of peaceful assembly (Article 21). Paras 21-35 CCPR/C/GC/37. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/232/15/PDF/G2023215.pdf?OpenElement>.

166. FOCOS. “PNC emite protocolo para vigilar y registrar a manifestantes en protestas contra el Gobierno”. <https://focostv.com/pnc-emite-protocolo-para-vigilar-y-registrar-a-manifestantes-en-protestas-contra-el-gobierno/>.

In that regard, the IACHR has established that in the protocols issued by national authorities to manage the actions of the police in contexts of protests, *“The police must... receive clear and unequivocal instructions that their job is to protect the participants in a public meeting or demonstration or mass gathering so long as they are exercising their right”*.¹⁶⁷

Coverage by various media outlets¹⁶⁸ and denunciations posted by the populace itself on social media have revealed the abuses committed by agents of the National Civil Police under this new repressive approach. The practices that have been denounced include: restrictions on the freedom of movement; police officers filming or photographing protesters during peaceful protests;¹⁶⁹ being followed; intimidation; and arbitrary arrests.



A grassroots movement's denunciation of PNC checkpoints set up to keep people from participating in a peaceful demonstration.
https://twitter.com/Bloque_RP/status/1449719935605870600

167. IACHR. *Report on Citizen Security and Human Rights*, 2009, para. 193; IACHR, *2015 Annual Report*, chapter IV A, para. 79.

168. Diario de Hoy. “Policías quitaron llaves a conductores y retienen a manifestantes que iban a marcha”. 1 May 2023. <https://www.elsalvador.com/noticias/nacional/policias-quitan-llaves-conductores-retienen-manifestantes-marcha/1057953/2023/>. Diario de Hoy. “Agentes de la Policía instalan retenes en diferentes puntos de San Salvador”. 15 January 2023. <https://www.elsalvador.com/fotogalerias/noticias-fotogalerias/policia-nacional-nayib-bukele-marcha/1032122/2023/>. YSUCA. “Pese a bloqueos de la PNC, salvadoreños marcharon”. 17 October 2021. <https://ysuca.org.sv/2021/10/pese-a-bloqueos-de-la-pnc-salvadorenos-marcharon/>.

169. The IACHR has expressed concern about these practices possibly leading to the collection of data individuals and organizations. These data could be utilized to create documents and databases in security intelligence and justice institutions. Without proper controls, there is a risk that political parties, organizations, and social movements will be stigmatized. IACHR/RELE. *Protest and Human Rights. Standards on the rights involved in social protest and the obligations to guide the response of the State*. September 2019, para. 236.

“To take advantage of the media attention because of the Central American Games, we decided to organize a peaceful protest to denounce the violations generated by the state of emergency.

The harassment was evident even before we arrived at the rally area. There were checkpoints, detentions prior to the march and a considerable presence of police agents and Public Order Maintenance Unit personnel throughout the protest. A colleague’s words perfectly described what happened: ‘Mr. Samuel, the police don’t want us to march here’.

At the end of the protest, 10 of us took a private minibus to return to our organization’s offices. Somewhere along the way, we realized that a patrol car was following us, and a couple of minutes later they blocked our way with a double-cabin pickup truck. Then, in an act of persecution, harassment, and intimidation, the police officers forced us to get out of the minibus and began asking us questions with a threatening tone: ‘Have any of you been released recently?’ and ‘Does the minibus have permission to transport you?’

I was scared, we were clearly being intimidated. And hearing someone say, ‘now we have them’, simply confirmed the sensation that they were looking for any excuse to arrest us. They asked all of us for our identity cards and began to take photos of them. I told them, ‘We aren’t criminals, we are peaceful demonstrators. Or is this the price we pay for raising our voices against the injustices of the state of emergency?’

Pressure from the media saved us. After journalists showed up and began recording [the incident], the police changed their tone, switching from accusations to assurances that it was simply a ‘routine procedure’. This persecution demonstrated that our voices had discomfited someone in power”.

Samuel Ramírez and Alfredo Molina, spokespersons of the Movimiento de Víctimas del Régimen de Excepción (MOVIR), in an interview with Amnesty International in September 2023¹⁷⁰

In relation to peaceful protests, police actions must have the primary goal of facilitation rather than containment of, or confrontation with, the protesters. As a general rule, they should be aimed at guaranteeing the exercise of this right and protecting those who protest and third parties present.¹⁷¹ In an environment marked by repression and the prolonged suspension of rights, ignoring international human rights standards for police actions toward peaceful protests can continue to devolve into a series of human rights violations.

b) Arbitrary detentions of labour unionists in connection with peaceful protests

The last year has seen a worrisome rise in criminal or administrative actions against individuals who participate in peaceful protests, especially in those led by labour unions in defence of their members’ labour rights.

This trend transpires within a broader context in which civil society organizations and la-

170. LPG. “Miembros del MOVIR denuncian persecución y acoso por miembros de la Policía Nacional Civil”. 21 July 2023. <https://www.laprensagrafica.com/elsalvador/Miembros-del-Movir-denuncian-persecucion-y-acoso-por-miembros-de-la-Policia-Nacional-Civil-20230721-0030.html>.

171. IACHR, 2015 Annual Report, chapter IV A, para. 68.

bour unions have documented over 20,000 layoffs in the public sector, the dissolution of nine labour unions due to the elimination of the same number of governmental agencies, and numerous violations of the freedom of association and collective bargaining, including difficulties in registering and obtaining credentials for labour union boards of directors¹⁷²; violation of the legal rights of organized labour; noncompliance with collective labour contracts; and actions that threaten public and municipal employees' job stability.¹⁷³

Faced with these challenges, labour unions, in an act of resistance and defence of labour rights, chose to mobilize and carried out peaceful protests and strikes.

“Strikes and peaceful protests have always been public actions that we labour unions have carried out to demand respect for workers’ rights. In most cases, we demand compliance with collective labour agreements and basic benefits granted by law, such as timely payment of salaries.”

Leader of a labour federation, in an interview with Amnesty International in September 2023

Legitimate labour union activities and protection from anti-labour union discrimination are rights recognized by international treaties ratified by El Salvador.¹⁷⁴ No one should face reprisals because of their affiliation with or activities in a labour union. The state is obligated to avoid such practices and effectively protect workers, punishing those who engage in harassment or intimidation.

However, the state’s response – especially at the municipal level – to these legitimate ways of defending human rights has been neither dialogue nor conciliation but rather repression of peaceful protests, which has taken the form of administrative punishments such as transfers, suspensions, and dismissals.

In the most extreme cases, the authorities have dealt with labour conflicts by arbitrarily detaining the leaders and protesters. According to the Movimiento de Trabajadores Despedidos and Fundación de Estudios para la Aplicación del Derecho, at least 16 labour unionists have been criminalized within the last year in connection with peaceful protests. These union members were arrested and tried for the crimes of violating public order laws and resisting arrest.¹⁷⁵

Furthermore, under the state of emergency, local organizations have recorded at least three arbitrary detentions of labour leaders who were charged with the offense of unlawful association. One of them died in state custody on the day the authorities granted that person an alternative to pretrial detention.¹⁷⁶

172. Informe de la Misión Tripartita de Alto Nivel de la OIT a El Salvador–Convenio Núm. 144 (San Salvador, 2 – 5 de Mayo 2022). https://www.ilo.org/wcmsp5/groups/public/—ed_norm/—relconf/documents/meetingdocument/wcms_846491.pdf.

173. Press release from the Movimiento de Trabajadores Despedidos. 15 September 2023. <https://voces.org.sv/denuncian-presunta-justicia-selectiva-para-otorgar-credenciales-a-sindicatos/>.

174. Right to Organise and Collective Bargaining Convention No. 98; ACHR, article 21; ICCPR, Article 22.

175. See: Press release from the Movimiento de Trabajadores Despedidos. 15 September 2023. Available at: <https://voces.org.sv/denuncian-presunta-justicia-selectiva-para-otorgar-credenciales-a-sindicatos/>. Press release from FESPAD. 1 May 2023. https://x.com/FESPAD_sv/status/1653022368795598848?s=20

176. Previously cited. Note 176.

“After a somewhat sizeable march, when we were gathering everything up and some media outlets were recording statements from some of our colleagues, out of the blue the police started getting rough. In the midst of everything, I shouted, ‘And what is it we want, colleagues? We want to be paid our salaries!’

Apparently, that irked them. Suddenly, a police officer grabbed me by the arm and bam! he handcuffed me. ‘What did I do? All we’re doing is asking for what is fair!’ They detained me and took me to the police precinct, where I was charged with violating public order laws and resisting arrest. I was in jail for 16 days”.

Amnesty International interview of a criminalized labour unionist, July 2023

A detention based exclusively on participation in a peaceful protest does not meet the requirements of reasonableness and proportionality set by international standards and is characterized as arbitrary. Furthermore, an arbitrary detention violates the right to freedom and personal security.¹⁷⁷

In addition, imprisonment while a peaceful protest is underway has the immediate effect of preventing the detained person from exercising their right of peaceful assembly and suppresses participation in peaceful public protests.

“The authorities have increasingly clamped down on peaceful protest through measures such as de facto dismissals and arbitrary detentions.

People are now scared not only of losing their jobs, but also of landing in jail just for having protested. So colleagues become withdrawn, hide, do not want to go out and participate in actions, leaving the leadership to go it alone”.

Leader of a labour federation in an interview with Amnesty International in September 2023

177. RELE, “RELE. *Protest and Human Rights. Standards on the rights involved in social protest and the obligations to guide the response of the State*, 2019, paragraph 228. Available at: <https://www.oas.org/es/cidh/expresion/publicaciones/ProtestayDerechosHumanos.pdf>.

Temporary and arbitrary detentions that are based on any type of criminal charges, just for having protested publicly and peacefully or having opposed governmental policies, can be considered a form of punishment, reprisal, or discrimination.

In the case of labour unions, arbitrary detention also seriously jeopardizes the free functioning and coordination of the labour union, thereby restricting the free defence of the collective interests of workers.

In El Salvador, these risks have deepened due to the state of emergency and misuse of the charge of unlawful association by the police, armed forces, and other security agents, as mentioned in earlier chapters.

“We were already experiencing a tense situation, enduring massive layoffs of up to 300 people. And then the delays in salary payment began. As a union, we began to take small actions: we carried posters and organized sit-ins, always peacefully. On one occasion, the police confronted us and told us: ‘We are going to arrest you for unlawful association’. And I responded: ‘A labour union is not an unlawful association. We are completely legal, we are not an illegal organization’”.

Labor unionist in an interview with Amnesty International, July 2023

Article 21 of the ICCPR guarantees the right to peaceful assembly, while Article 22 ensures the right to freedom of association with others, including people’s right to form and join labour unions to protect their interests.

Holding peaceful meetings, rallies, and protests is a central activity of many associations and organizations. States therefore have the obligation to take the necessary measures for them to freely carry out their activities; protect them to prevent attack against their lives and physical integrity when they are the targets of threats; abstain from imposing obstacles that hinder their work; and thoroughly and efficiently investigate any violations committed against them, fighting impunity.

Salvadoran authorities at all levels are obligated to give priority to dialogue and negotiation as they deal with any form of protest, ensuring that no one is criminalized or harassed simply for having exercised their rights as part of peaceful public protests.

4.3. RESTRICTIONS ON PUBLIC INFORMATION

Since the Law on Access to Public Information (LAIP) took effect in 2012, El Salvador had made efforts to implement a regulatory framework that would guarantee the exercise of the right of access to information. These steps included issuing operative criteria and guidelines based on the scope and content of this law through the Constitutional Chamber of the Supreme Court of Justice and the Institute for Access to Public Information (IAIP).¹⁷⁸

However, since 2019 civil society organizations and journalists have reported decisions by government authorities intended to undermine the regulations that guarantee access to public information and restrict the capacity of the institutions in charge of ensuring compliance with those regulations, which has led to serious concerns about transparency and accountability in the country.

The last evaluation of El Salvador performed by Transparency International attests to this trend. The organization gave the country a score of only 33 out of 100 on the Corruption Perceptions Index (CPI), a standard that classifies countries according to perceived levels of corruption in the public sector.¹⁷⁹ Thus, El Salvador is ranked 115th out of 180 countries analysed, dropping two points with respect to 2020 and obtaining 10 points less than the current regional average (43).¹⁸⁰

Likewise, in March 2023, the country was withdrawn from the Open Government Partnership to which it had belonged since 2011¹⁸¹ for failing to meet the eligibility requirements for three consecutive years.¹⁸² Civil society organizations saw the failure to comply with the recommendations made previously in 2022 as evidence of the current government's lack of political will with regards to transparency, accountability, and citizen participation.¹⁸³

Regarding this issue, Amnesty International has documented two specific state strategies that erode the right of access to public information: i) the weakening of both the IAIP and its independence [and] ii) the institutionalization of practices that are contrary to the principles of maximum dissemination, openness, and transparency as a guarantee of the right of access information held by the state.¹⁸⁴

These practices set the stage for illegal behaviour and human rights violations in impunity. The lack of access to public information restricts civil society oversight.¹⁸⁵

178. IACHR/RELE. 2019 *Annual Report*, paras 508, 531. 2014 *Annual Report*, para. 471. 2013 *Annual Report*, para. 376. 2012 *Annual Report*, para. 248. 2011 *Annual Report*, para. 228. Available at: <https://www.oas.org/en/iachr/expression/reports/annual.asp>

179. Transparency International. Corruption Perceptions Index (CPI) 2022. Available at: <https://www.transparency.org/en/cpi/2022>.

180. See: <https://www.transparency.org/en/blog/cpi-2021-corruption-watch-list-australia-austria-el-salvador-kazakhstan>.

181. The Partnership is comprised of 76 countries and 106 local governments and works with thousands of civil society organizations and the private sector to build governments that are more open, inclusive, and responsible.

182. Open Government Partnership. "El Salvador Exits International Partnership on Open Government". 28 March 2023. <https://www.opengovpartnership.org/news/el-salvador-exits-international-partnership-on-open-government/>.

183. Colectivo de Organizaciones de Sociedad Civil. Press release dated 28 March 2023. Available at: https://repo.funde.org/1932/1/OGP%20SV_VF.pdf.

184. To be compatible with the obligations under the American Convention on Human Rights, restrictions of the exercise of the right of access to information should be: a) established by law; b) for a legitimate purpose; c) necessary in a democratic society; d) written and properly justified; and e) temporary and/or based on the existence of specific conditions. IACHR, *Case of Claude Reyes et al*, para. 88.

185. LPG. "Con la reserva de información ha sido imposible mantener la contraloría social". 11 September 2023. <https://www.laprensagrafica.com/elsalvador/Con-la-reserva-de-informacion-ha-sido-imposible-mantener-la-contraloria-social-20230910-0055.html>.

a) Weakening of the IAIP

The measures taken by the President of the Republic to counteract the independence of the IAIP, with collaboration from the Legislative Assembly, have been obvious from the outset of the current governmental term.

Groups have denounced the appointment of commissioners as irregular,¹⁸⁶ as those placed in those position have ties to the party in power, allowing the government to secure total control over that entity (Table 2).

The Executive Branch also proposed a set of reforms to the Regulations of the Law on Access to Public Information,¹⁸⁷ which involve weakening the institution's oversight role, thereby favouring greater executive interference and reducing the state's obligations of transparency and accountability.¹⁸⁸

The backdrop to these measures has to do with a set of decisions that, between 2019 and 2021, the IAIP plenary made using the powers it was granted by the LAIP. The aim of these decisions was to promote and guarantee the right of access to information, even though they directly affected the government.¹⁸⁹

One of the officials who championed this set of actions within the IAIP at that time was former

Commissioner Liduvina Escobar, who also played an important role as spokesperson, publicly exposing the backpedalling occurring in the institution.¹⁹⁰

Because of her stance, the official was the victim of various intimidatory actions from within and from outside of the institution.¹⁹¹ In April 2021, the plenary of the IAIP, controlled by the ruling party, decided to suspend Escobar and initiate an administrative process to remove her from her post.¹⁹² In addition to publicly denouncing the incident, Escobar de-



President Nayib Bukele's social network publication "X".
See in: <https://x.com/nayibbukele/status/1235967425742540802?s=20>

186. El Diario de Hoy. "Organizaciones alertan a relator de la OEA sobre intento del Ejecutivo de controlar Instituto de Acceso a la Información". 24 July 2020. <https://historico.elsalvador.com/historico/735915/iaip-oea-ejecutivo.html>

Factum. "Presidencia elige a puerta cerrada al nuevo comisionado de transparencia". 3 September 2020. <https://www.revistafactum.com/presidencia-eleccion-secreta-iaip/>

187. Executive Decree 34 of 26 August 2020, published in *Official Gazette* Number 175, Volume 428, dated 31 August 2020. This decree centralizes power in the IAIP president, thereby reducing the importance of joint decision-making in the institution. It also eliminates the option that would permit citizens to challenge the candidacy of commissioners and complicates the process for requesting the declassification of confidential information.

188. El Faro. "Bukele confecciona un IAIP menos transparente vía decretos ejecutivos". 11 September 2020. https://elfaro.net/es/202009/el_salvador/24803/Bukele-confecciona-un-IAIP-menos-transparente-v%C3%ADa-decretos-ejecutivos.htm. Gato Encerrado. "Bukele excedió su potestad reglamentaria y aprobó una reforma disfrazada a la IAIP". 9 September 2020. <https://gatoencerrado.news/2020/09/09/bukele-excedio-su-potestad-reglamentaria-y-aprobo-una-reforma-disfrazada-a-la-iaip/>.

189. See timeline of IAIP actions and decisions that generated conflicts with the Executive Branch.

190. LPG/El Economista. "El Salvador: Instituto de Acceso a la Información dividido respecto a reformas hechas al Reglamento". 11 September 2020. <https://www.eleconomista.net/actualidad/El-Salvador-Instituto-Acceso-a-la-Informacion-dividido-respecto-a-reformas-hechas-al-Reglamento-20200911-0013.html>. LPG. "La tensión nos lleva a ser un instituto ineficiente". 19 February 2021. <https://www.laprensagrafica.com/elsalvador/Entrevista-La-tension-nos-lleva-a-ser-un-instituto-ineficiente-Claudia-Liduvina-Escobar-comisionada-del-IAIP-20210218-0110.html>. Factum. "El Instituto de Acceso a la Información está hundido en la opacidad". 22 April 2022. <https://www.revistafactum.com/el-instituto-de-acceso-a-la-informacion-esta-hundido-en-la-opacidad/>.

191. Denunciation posted by Liduvina Escobar on her social media account on X. 17 April 2021. <https://x.com/ClaudiaLiduvina/status/1383409668911812620?s=20>.

192. Gato Encerrado. "Remoción de comisionada del IAIP carece de fundamento". 24 April 2021. <https://gatoencerrado>.

cided to file a series of appeals to revoke the decision.¹⁹³ According to her testimony, this move intensified the monitoring and surveillance of her by state agents. In light of this, she decided to leave the country as a preventative measure.

“After the irregularities in the election of new commissioners in July 2020, there was serious regression with regard to the interpretive criteria for applying the law on key matters such as addenda to reports on integrity, refusal to approve and publish the report evaluating entities’ compliance in the area of transparency and documentary management and record-keeping, and the decision to reverse the agreement that allowed the plenary sessions to be recorded, among others.

Tensions within the jointly-run entity grew, and the environment was becoming more hostile for those of us who wanted to fully exercise our responsibilities in adherence with the law... In this context, I participated in a series of actions and decisions to defend the IAIP’s mission and character.

That, plus my statements to various media outlets about the institution’s lack of independence, were enough to make me the target of monitoring, surveillance, and harassment within the institution... When the new president [of the IAIP] took office and I filed an action challenging the constitutionality of the changes to the regulations, I was suddenly suspended and subsequently dismissed.”

Former commissioner of the IAIP Claudia Liduvina Escobar,¹⁹⁴ in an interview with Amnesty International in September 2023

Since the new makeup of the IAIP, which has allowed the government party to ensure its control over the institution, civil society organizations and journalists have documented a set of institutional practices and guidelines that undermine the right of access to information. Among the most important are: i) changes to the interpretive criteria for applying the law that are contrary to the standards of international law;¹⁹⁵ ii) a drop in the number of cases addressed; iii) a decrease in resolutions in favour of citizens (which fell from 44% in 2020 to 21% in 2022); and iv) an increase in the time it takes to reach decisions about cases.¹⁹⁶

[news/2021/04/24/remocion-de-comisionada-del-iaip-carece-de-fundamento-legal-segun-abogados/](https://focostv.com/bukele-ordena-la-suspension-de-la-comisionada-liduvina-escobar-del-iaip/). Focos TV. “Presidente Bukele ordena la suspensión de la comisionada Liduvina Escobar del IAIP”. 23 April 2021. <https://focostv.com/bukele-ordena-la-suspension-de-la-comisionada-liduvina-escobar-del-iaip/>. LPG. “Presidencia sanciona a comisionada del Instituto de Acceso a la Información Pública”. 24 April 2021. See: <https://www.laprensagrafica.com/elsalvador/Presidencia-sanciona-a-comisionada-del-Instituto-de-Acceso-a-la-Informacion-Publica-20210423-0106.html>.

193. The former commissioner filed her ‘amparo’ action [for protection of constitutionally-guaranteed fundamental rights and freedoms] with the Constitutional Chamber on 29 April 2021. In addition, she petitioned the plenary of the IAIP to revoke the resolution of 7 May 2021. Both actions were dismissed and on 3 February 2022 a final decision was issued ordering the immediate removal of Claudia Liduvina Escobar from office. Alharaca. “Bukele ordena destituir a Liduvina Escobar del IAIP”. 8 February 2022. <https://www.alharaca.sv/actualidad/bukele-ordena-destituir-a-liduvina-escobar-del-iaip/>.

194. Currently, the former official resides outside of El Salvador and has been given asylum to protect her and her family from the risk of being criminalized.

195. The law must guarantee the effective and broadest possible access to public information, and any exceptions must not become the general rule in practice. Also, the exceptions regime should be interpreted restrictively and all doubts should be resolved in favour of transparency and access. IACHR. Special Rapporteur on Freedom of Expression. *The Right to Access to Information in the Inter-American Legal Framework*. OAS/Ser. LV/II CIDH/RELE/INF. 1/09. 30 December 2009. Para. 48.

196. Acción Ciudadana. August 2022. *¿El IAIP a favor de los ciudadanos? Actualización 2022*. <https://accion-ciudadana.org/informes/El-IAIP-en-favor-de-los-ciudadanos.-Actualizacion-2022.-Accion-Ciudadana.-2022.pdf>.

These developments have all impacted the ability of the people of El Salvador to access information controlled by the state, which is a right protected by Article 13 of the ACHR.¹⁹⁷

Table 1: Timeline of key actions and decisions that led to the co-optation of the IAIP by the Executive Branch	
• 13 December 2019: IAIP orders the president to declassify information related to the state intelligence agency.¹⁹⁸ • 8 January 2020: IAIP orders a disciplinary procedure against the president for not having provided information on the state intelligence agency.¹⁹⁹ • 23 and 31 January 2020: IAIP demands the disclosure of information on the travel of Director of Penal Centres Osiris Luna and later initiates a disciplinary procedure against the official.²⁰⁰ • 27 February 2020: IAIP attempts to demand the provision of information regarding the travel of officials and fines housing minister Michelle Sol.²⁰¹ • 6 March 2020: IAIP faces obstacles while checking military files regarding a student massacre in 1975.²⁰²	• 11 September 2020: IAIP files action to challenge the constitutionality of the amendments with the Supreme Court of Justice, which finds in its favour.²⁰³ • 24 September 2020: President Bukele informs of the destruction of military files without verification from the IAIP. • 6 October 2020: IAIP requests clarification about the destruction of military files.²⁰⁴ • 26 October 2020: Internal debate in IAIP regarding the public nature of government officials' probity statements.²⁰⁵ • 1 December 2020: IAIP sets a deadline for Bukele to provide information regarding the president's legal secretary. • 3 December 2020: Bukele names a new IAIP Commissioner, ensuring a majority of votes.²⁰⁶

197. Inter-American Court of Human Rights: *Case of Herrera Ulloa v. Costa Rica. Preliminary Exceptions, Merits, Reparations, and Costs*. Judgment of 2 July 2004. Series C N°107, para. 108. *Case of Claude Reyes et al v. Chile. Merits, Reparations, and Costs*. Judgment of 19 September 2006, Series C, N°151 paragraphs 76 and 78.

198. Contrapunto. "IAIP ordena a presidencia desclasificar información relacionada con la OIE". 13 December 2019, <https://www.contrapunto.com.sv/iaip-ordena-a-presidencia-desclasificar-informacion-relacionada-con-la-oie/>.

199. Diario el Mundo, "IAIP ordena proceso sancionatorio contra Presidente por no dar información de OIE". 8 January 2020, <https://diario.elmundo.sv/Pol%C3%ADtica/iaip-ordena-proceso-sancionatorio-contra-presidente-por-no-dar-informacion-de-oie>.

200. Diario de Hoy, "IAIP abre proceso sancionatorio contra funcionario". 31 January 2020, <https://amp.elsalvador.com/amp/noticias/682238/osiris-luna-viajes-iaip-sanciones.html>.

201. Derecho y Negocios, "IAIP impone multa máxima a Ministra de Vivienda por revelar datos confidenciales". 27 February 2020, <https://derechoynegocios.net/iaip-impone-multa-maxima-ministra-vivienda-revelar-datos-confidenciales/>.

202. See: https://x.com/iaip_elsalvador/status/1235958841189298176?s=20.

203. See: https://m.facebook.com/itvlsalvador/videos/interponen-demanda-de-inconstitucionalidad-contra-reformas-al-reglamento-del-iaip/700563167213514/?__so__=permalink&__rv__=related_videos&locale=hi_IN.

204. LPG, "IAIP pide aclarar destrucción de archivos militares". 6 October 2020,

<https://www.laprensagrafica.com/elsalvador/IAIP-pide-aclarar-destruccion-de-archivos-militares-20201005-0089.html>

205. Diario El Mundo, "El debate donde el IAIP cambió criterio sobre información de Probidad en El Salvador". 18 November 2020, <https://diario.elmundo.sv/Pol%C3%ADtica/el-debate-donde-el-iaip-cambio-criterio-sobre-informacion-de-probidad-en-el-salvador>.

206. Gato Encerrado, "Bukele nombra comisionada del IAIP a ex precandidata de Nuevas Ideas". 3 December 2020, <https://gatoencerrado.news/2020/12/03/bukele-nombra-comisionada-del-iaip-a-ex-precandidata-de-nuevas-ideas3/>.

• 11 March 2020: Government suspends the provision of public information due to the COVID-19 quarantine, through 12 June 2020.²⁰⁷ • 8 September 2020: Government amends regulations, limiting access to public information.²⁰⁸	• 23 April 2021: President Bukele suspends an IAIP commissioner.²⁰⁹ • February 2022: Permanent dismissal of the commissioner who was suspended in April 2021.²¹⁰
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b) Institutional practices that violate the right of access to information

According to the Open Budget Survey of the International Budget Partnership, El Salvador's transparency score dropped from 46 in 2019 to 41 in 2021. This means that the populace now has less access to the timely and/or complete information it needs to participate in decision-making and demand government accountability.²¹¹

Local organizations with expertise in matters of transparency²¹² told Amnesty International that access to public information has been eroded by a number of factors, including a set of governmental practices such as:

- specific difficulties in obtaining data and information at institutions that previously had reliable systems for generating and consolidating records in a timely fashion.
- excessive requirements for requesting information, even for information that previously had been easy to access through official portals.
- the abusive practice of constantly classifying information without grounds for doing so.
- failure to update information that government agencies are required by law to publish, even if no request for it has been submitted.

Journalists have reported how several ministries and the Legislative Assembly have systematically and in a discretionary manner classified information related to procurement of goods and services, minutes of the councils of ministers, strategic plans related to health and education, and information on travel and hiring of personnel.²¹³

In the area of security, Amnesty International reviewed the Servicio Social Pasionista's 2022 analysis of the requests for information sent to the public information access units (UAIP) of the FGR, PNC, PDDH, Institute of Forensic Medicine, Ministry of National Defence, DGCP, and Inspector General of Public Security. This analysis concluded that:

207. El Faro, "El Gobierno también puso en cuarentena el acceso a la información pública". 9 April 2020, https://elfaro.net/es/202004/el_salvador/0000024237-el-gobierno-tambien-puso-en-cuarentena-el-acceso-a-la-informacion-publica.

208. Focos, "División entre comisionados del IAIP por reformas al reglamento de la Ley de Acceso a la Información Pública". 10 September 2020, <https://focostv.com/division-entre-comisionados-del-iaip-por-reformas-al-reglamento-de-la-ley-de-acceso-a-la-informacion-publica/>.

209. Diario El Mundo, "Presidente ordena suspender a comisionada de acceso a información". 21 April 2021, <https://diario.elmundo.sv/Pol%C3%ADtica/presidente-ordena-suspender-a-comisionada-de-acceso-a-informacion>.

210. Gato Encerrado, "Bukele remueve del cargo a comisionada de transparencia que denunció ataques a su trabajo". 23 April 2022, <https://gatoencerrado.news/2021/04/23/bukele-remueve-del-cargo-a-comisionada-de-transparencia-que-denuncio-ataques-a-su-trabajo/>.

211. FUNDE, "Encuesta de presupuesto abierto 2021: Resultados para El Salvador". 31 May 2022, <https://repo.funde.org/1866/>.

212. Amnesty International interviews of three civil society organizations in June and September 2023.

213. Gato Encerrado, "Gobierno de Bukele esconde sus gastos, contratos, estadísticas y planes". 14 March 2023. <https://gatoencerrado.news/2023/03/14/gobierno-de-bukele-esconde-sus-movimientos-en-los-indices-de-informacion-reservada/>.

- It is no longer possible to obtain information from the DGCP, FGR, [or] Institute of Forensic Medicine, and less information can now be obtained from the National Civil Police.
- In 2022, the Minister of National Defence began declaring several types of information that were requested, such as the number of soldiers performing public security tasks and joint tasks with the PNC [and] the seizures of drugs, to be classified.
- It is not possible to obtain official statistics such as the number of prisoners, overcrowding rate at detention centres, deaths of prisoners, number of crimes, [and] whether abuses of force by public security agents are being recorded and disciplined, among other citizen security variables used to monitor and assess the security situation and state of emergency.
- Security is being cited as the reason for making information confidential, but the information requested is statistical and does not require revealing sensitive information such as names [and] unique identification documents, among others.

Additionally, the Legislative Assembly has established excessive use of the practice of *dispensa de trámite* [waiver of procedure] as a way to expedite the lawmaking process,²¹⁴ in some cases in a surprise manner without consultation, which prevents other legislative groups or organizations from having a true and free opportunity to communicate their points of view, ideas, or suggestions regarding a particular bill.²¹⁵

“... At the time, I remember that the parliament was analysing some homicide and violence statistics. I'd like to ask whether in extending the state of emergency, the legislature is deliberating on and analysing the available public information on the conditions that gave rise to the state of emergency?

“[I'd like to] also ask about the state of judicial information, sentences, ongoing cases – is there judicial information about them? For example, the denunciations of abuse and particularly the persons who allegedly have died in state custody... Information on the prison system – what are the sources being consulted?”

Commissioner for Freedom of Expression, Pedro Vaca, during his intervention in the IACHR hearing on Human Rights and States of Emergency in El Salvador, 14 July 2022²¹⁶

The Inter-American Court of Human Rights has established that *“the disclosure of information in the hands of the state must play a very important role in a democratic society, in that it enables civil society to control the actions of the government, to whom it has entrusted the protection of its interests.”* It also holds that Article 13 of the ACHR constitutes a positive obligation of states to provide access to the information under its control, in order to prevent abuse by government officials, promote accountability and transparency within the state and enable vigorous and informed public debate to ensure that there are effective recourses against such abuses.²¹⁷

214. The regulation on the waiver of procedure in the lawmaking process is contained in Article 76 of the Internal Regulations of the Legislative Assembly; *“In urgent cases and when so approved by the Assembly by request of a Member of Congress, the procedures established in this Regulation may be dispensed with, and the matter may be discussed in the same session in which the correspondence is made known, even without the opinion of the respective committee.”*

215. LPG. “Asamblea Legislativa supera las 300 dispensas de trámite”. 1 May 2023. <https://www.laprensagrafica.com/elsalvador/Asamblea-Legislativa-supera-las-300-dispensas-de-tramite-20230430-0076.html>.

216. IACHR hearing: Human Rights and States of Emergency in El Salvador. 14 July 2022. : <https://www.oas.org/es/cidh/sesiones/?S=187>.

217. Inter-American Court of Human Rights. *Case of Claude Reyes et al v. Chile. Merits, Reparations, and Costs*. 19 September

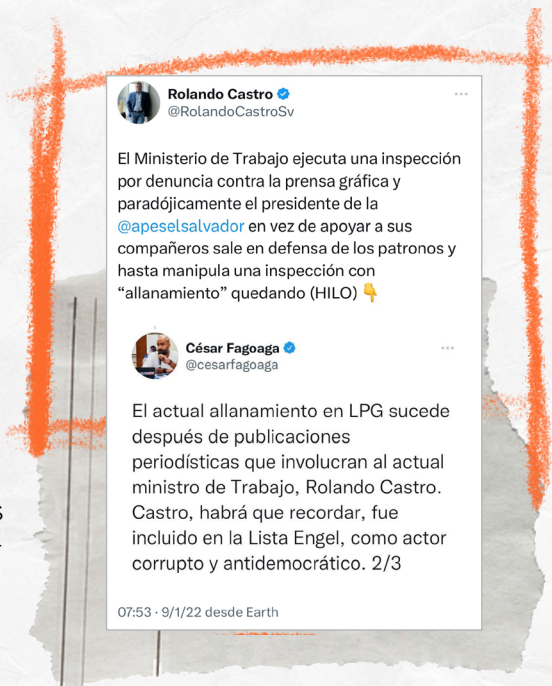
4.4. RESTRICTIONS OF FREEDOM OF ASSOCIATION AND THE RIGHT TO DEFEND RIGHTS

In November 2021, the Ministry of Governance and Territorial Development presented the Foreign Agents Bill to the Legislative Assembly. This bill proposed requiring all individuals or legal entities that perform activities that “*answer to interests controlled or financed, whether directly or indirectly, by a foreign principal*” to register as a “foreign agents” and prohibiting any activities that have “*political or other ends with the goal of disrupting the public order, or that threaten or jeopardize the country’s national security or social or political stability.*” Furthermore, the bill explicitly establishes a 40% tax on any financial transaction or donation coming from abroad, with some exceptions.²¹⁸

The IACHR and Special Rapporteur for Freedom of Expression voiced their concern that a failure to comply with these requirements could expose civil society organizations that defend human rights and independent journalism outlets to criminal and administrative liability, as well as cause them to cease their activities and dissolve their legal existence, restricting their legitimate operations, since these organizations on occasion receive resources from international aid agencies for their development and activities. In addition, they noted that the bill demands compliance with potentially arbitrary or disproportionate administrative and tax-related requirements within a short period of time, and it opens the door to applying severe penalties to individuals and entities that do not comply with these provisions. It would thus also impact the exercise of freedom of association and expression.²¹⁹

While the Foreign Agents Law has not been passed, there is a latent risk that it will be passed in the future. There are provisional reports of administrative practices that appear to constitute excessive controls over organizations and independent media outlets, as measures to silence their criticism of state policies.

These practices include what could be the use of the institutional powers of some ministries, such as the Ministries of Labour,²²⁰ Treasury, and Governance, to hinder the work of media outlets and civil society organizations.



Posting on social network “X” by the Minister of Labour, Rolando Castro
See in: <https://x.com/RolandoCastroSv/status/1480176012747063298?s=20>

2006, para. 58.

218.

219. IACHR, RELE [Published on 17 November 2021] Press release: “The IACHR and Its Special Rapporteurship for Freedom of Expression Urge the State of El Salvador to Not Pass the Foreign Agents Bill”. https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/308.asp.

220. In January 2022, the Ministry of Labour ordered a labour inspection of the print media outlet La Prensa Gráfica one day after it published an investigatory report tying the labour minister to activities to coordinate financial assistance for gang members. LPG. “La vendedora que hablaba de Rolando Castro”. 6 January 2022. See: <https://www.laprensagrafica.com/elsalvador/La-vendedora-que-hablaba-de-Rolando-Castro-con-pandilleros-20220105-0093.html>. See also the message sent by the Minister of Labour, Rolando Castro, on his social media account on X regarding this incident: <https://x.com/RolandoCastroSv/status/1480176012747063298?s=20>.

According to four civil society organizations that communicated with Amnesty International, these actions are not isolated or spontaneous events within the current context.

“This is all part of a deliberate strategy to silence critical voices and suppress journalism and work to defend rights.

I think that’s why they ultimately have not passed the Foreign Agents Law, because they don’t need to. They control the entire state apparatus. At least at this stage, I think the tactic will be to justify administrative penalties by seemingly legal means [and] continue to harass and intimidate those who speak up for others. There are even cases of community defenders who have been criminalized through the weaponization of transitional justice...

And there are already examples of excesses committed by [the Ministries of] Treasury and Governance; it’s an open secret that people avoid talking about. That’s why until now it hasn’t been possible to draw attention to and adequately evaluate those excesses. But there is a fear that the consequences of denouncing will be greater. The revocation of legal statuses, criminalization of those who speak out – if that moment arrives, who will you turn to? There is no longer any justice here beyond what they decree”.

Member of civil society in an interview with Amnesty International, July 2023

a) *Cristosal*: Revoked exemptions and threat of withdrawing permission to operate in El Salvador

In late December 2022, the General Tax Directorate of the Ministry of the Treasury informed the human rights organization *Cristosal*²²¹ that its tax-exempt status as a nonprofit organization had been revoked.

That decision followed a tax audit that lasted several months, for which the organization offered its full cooperation and which, according to what its representatives told Amnesty International, included 13 specific evaluations.²²²

Cristosal indicated that the final audit report contained no findings or legal causes that justified the revocation, based on the elements analysed. According to the organization, the only grounds articulated in the report – engagement in operations outside the scope of the purposes approved in its articles of incorporation – was not among the elements analysed in the administrative procedure.

Cristosal had incurred significant costs through September 2023 due to this revocation and had to implement administrative modifications.

Furthermore, the Ministry of Governance notified the organization of alleged breaches related to the submission of its financial statements for 2014-2020.

The organization has responded to and appealed these notifications, seeking to rectify the alleged breaches and continue its operations.

221. <https://cristosal.org/ES/about-us/>.

222. Noah Bullock, Director of *Cristosal*, in interviews with Amnesty International between July and September 2023.

“I’m troubled to see this set of systematic actions and schemes that seek to hinder and ultimately abolish [in El Salvador] the operations of human rights defence organizations like Cristosal.

This strategy appears to be meticulously orchestrated with the goal of imposing arbitrary financial and operational costs... The authorities appear determined to present a ‘track-record of non-compliance’ based on arbitrary accusations and requests, laying the groundwork for an eventual forced shuttering of our organization...

We know that other organizations in the country – especially small ones – are facing similar challenges but are scared to raise their voices and denounce the abuses. And even if we do all we can to exhaust the available legal avenues, we are well aware that the current system lacks impartiality... We have tried to maintain the integrity of our mission without politicizing our actions, but the time has come to draw attention to and defend civic space as the last bastion of democracy left in this country”.

Noah Bullock, Director of Cristosal, in an interview with Amnesty International in September 2023

The Salvadoran state has the obligation to fully respect and protect the right of association, as manifested in the right of nonprofit civil entities to carry out their work, which includes seeking, requesting, obtaining, and utilizing funding to achieve their objectives without illegitimate or arbitrary interference, as well as their right to receive tax benefits in keeping with their legal status, without discrimination.²²³

b) El Faro: Complaints of tax abuse

The El Faro newspaper reports that it has faced a series of audits by El Salvador’s Ministry of the Treasury, which the outlet characterizes as being abusive and a form of harassment as a result of its journalistic work. The newspaper states that in July 2020, the ministry opened four tax review procedures for 2014, 2016, 2017, and 2018.²²⁴

“During the audits, the demands for information were exceptionally high and excessive, including requests that went beyond what is normally required for tax matters, such as the minutes of Board of Directors meetings and first and last names and email addresses of readers in our membership program. We were also asked for information from dates that, according to the law, could no longer be audited.

“This harassment became more acute after we published a revealing investigation that exposed a pact between the Salvadoran government and MS-13 [gang]. As a result of that publication, President Nayib Bukele publicly accused us, suggesting that our newspaper was involved in money laundering activities and announced we were being investigated for that reason.”²²⁵

Carlos Salamanca, General Manager of the digital media outlet El Faro, in an interview with Amnesty International, September 2023

223. Inter-American Declaration of Principles on the Creation, Operation, Financing, and Dissolution of Nonprofit Civil Entities. https://www.oas.org/en/sla/iajc/docs/CJI-RES_282_CII-O-23_corr1_ENG.pdf

224. Amnesty International interview with Carlos Salamanca, General Manager of El Faro, in September 2023.

225. El Faro. “Bukele anuncia en cadena nacional que Hacienda investiga a El Faro por lavado de dinero”. 25 September 2020.

The media outlet indicated to Amnesty International that in November 2020 it had filed a request for ‘amparo’ [protection of Constitutionally-guaranteed fundamental rights and freedoms] with the Supreme Court of Justice for what they deemed to be excessive and abusive auditing practices by the Ministry of the Treasury. The court heard the appeal and on 5 March 2021 decreed precautionary measures prohibiting the Ministry of the Treasury from continuing to request information beyond the four audits that were underway.

On that account, the newspaper’s manager told Amnesty International that the findings of the audits have resulted in several legal charges of tax evasion, primarily based on assumptions about and misinterpretations of the newspaper’s sources of income.

In April 2023, El Faro publicly announced that due to the lack of institutional guarantees, as well as the harassment to which the press is subject, its administrative and legal operations would be transferred to Costa Rica.²²⁶ Other organizations and media outlets told Amnesty International they are considering taking similar measures to prevent and protect themselves against administrative harassment that aims to block their operations in El Salvador.

These actions could be considered direct state pressure to silence human rights organizations and independent media, which violates the state’s international obligations.

The Inter-American System has expressly emphasized that *“the imposition of direct or indirect pressure aimed at silencing the informative work of social communicators impedes the full functioning of democracy, inasmuch as the consolidation of democracy in the hemisphere is intimately related to the free exchange of ideas, information and opinions among individuals”*.²²⁷

While states have a responsibility to fight money laundering, that obligation must never be invoked as justification for undermining the credibility of an organization or arbitrarily hindering its legitimate activities.²²⁸

4.5. LAWS AND PRACTICES THAT CREATE A HOSTILE ENVIRONMENT FOR AND LIMIT THE EXERCISE OF FREEDOM OF THE PRESS

The right to freedom of expression encompasses seeking, receiving, and disseminating information of all kinds through any freely chosen procedure. The effective exercise of this right is especially important for guaranteeing the circulation of ideas and opinions on the level of the individual, as well as public, peaceful, and open deliberations on matters that concern society as a whole.²²⁹

Since President Nayib Bukele took office in 2019, El Salvador has been increasingly noted as a country that is hostile to the exercise of freedom of expression, in particular for journalists.

United Nations Special Procedures have indicated that particularly journalism and investigative journalism guarantee society’s right to know, highlighting the societal importance of free, independent, pluralistic, and diverse media as a public good and as tools for accountability, transparency, debate, and the exchange of ideas. Consequently, states must abstain

https://elfaro.net/es/202009/el_salvador/24855/Bukele-anuncia-en-cadena-nacional-que-Hacienda-investiga-a-El-Faro-por-lavado-de-dinero.htm

226. El Faro. <https://elfaro.net/es/202304/columnas/26804/el-faro-se-cambia-de-casa>.

227. IACHR. Background and Interpretation of the Declaration on the Principles of Freedom of Expression. Available at: <https://www.oas.org/en/iachr/expression/showarticle.asp?artID=132>.

228. Human Rights Council. *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai*. 21 May 2012. A/HRC/20/27. Para. 70.

229. IACHR, Special Rapporteur on Freedom of Expression. *Inter-American Legal Framework regarding the Right to Freedom of Expression*. <https://www.oas.org/en/iachr/expression/docs/publications/INTER-AMERICAN%20LEGAL%20FRAMEWORK%20OF%20THE%20RIGHT%20TO%20FREEDOM%20OF%20EXPRESSION%20FINAL%20PORTADA.pdf>

from arbitrarily restricting the work of journalists and are thus obligated to guarantee the conditions of freedom and independence required for them to fully realize their critical role, both within and outside of the digital realm.²³⁰

From 2020 to 2023, El Salvador dropped 41 places in the World Press Freedom Index of the organization Reporters Without Borders, and is now ranked 115 out of 180 countries.²³¹ In its report, Reporters Without Borders emphasizes the widespread violence toward the media, attacks and threats to journalists who are not allied with the government, and the criminalization of coverage of public security and gangs.²³²

Meanwhile, the 2023 Freedom House index, which measures the degree of democracy and freedom throughout the world, classified El Salvador as a “partially free” country, with as score of 56 out of 100 possible points, 11 less than when President Bukele took office in 2019.²³³ In both worldwide indices, El Salvador joined Nicaragua as the countries with some of the steepest declines in Latin America in recent years.

The IACHR has stated that journalists face challenging conditions in the country, which primarily take the form of harassment, attacks, restrictions, and intimidation, as well as obstructions of press coverage of public events, refusal to grant interviews and access to official sources, and a drastic decrease in regulatory efficacy and institutions related to access to public information.²³⁴

In addition, the organization Artículo 19 has stressed how the official narrative has been asserted as the only legitimate and accurate one and how government propaganda has been boosted by a permanent campaign of disinformation, which is achieved in particular by utilizing state media and bringing in YouTubers and influencers on social media who are close to the ruling party as new sources of information about and spokespersons for government actions.²³⁵

“Today, the @AsambleaSV will welcome all YouTubers, content creators on social media and journalists. From now on, no small group will be owner of the information.”

Ernesto Castro, President of the Legislative Assembly²³⁶

Amnesty International witnessed stigmatization on social media and other situations that limit the exercise of freedom of the press, such as abusive digital surveillance of journalists and independent media and approval of regulations of various kinds that restrict journalists’ work and could foment the abuse and criminalization of activities that constitute a legitimate exercise of rights.

The APES monitoring centre reported 11 cases of journalists who were forced to flee the country in 2022 out of fear of threats, intimidations, attacks and the risk of criminalization. In eight of these cases, the departures were temporary and preventive, while three were permanent moves. In an interview with Amnesty International, APES reported that six cases

230. Reinforcing media freedom and the safety of journalists in the digital age – Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. <https://www.ohchr.org/en/documents/thematic-reports/ahrc5029-reinforcing-media-freedom-and-safety-journalists-digital-age>.

231. Reporters Without Borders. World Press Freedom Index. Available at: <https://rsf.org/en/index>.

232. Reporters Without Borders. Country Analysis, El Salvador. Available at: <https://rsf.org/en/country/el-salvador>.

233. Freedom House. *Report on Freedom in the World, 2023*. <https://freedomhouse.org/country/el-salvador/freedom-world/2023>.

234. IACHR. 2022 Annual Report. Chapter on El Salvador. April 2023. Available at: https://www.oas.org/es/cidh/docs/anual/2022/capitulos/12-IA2022_Cap_5_El_Salvador_ES.pdf.

235. Artículo 19: “El estado de la libertad de expresión en Centroamérica y el Caribe: análisis trimestral abril-junio 2023”. <https://articulo19.org/el-estado-de-la-libertad-de-expresion-en-centroamerica-y-cuba-analisis-trimestral-abril-junio-2023/>.

236. <https://twitter.com/ecastroes/status/1648345497504030720?s=48>.

this nature had been recorded in the first half of 2023, including two permanent moves.²³⁷

“Once the ruling party gained a majority in parliament in 2021, a narrative of hate toward journalists took hold, with constant attacks by various officials. As long as this persists, people will keep reinforcing these ideas and continue to act accordingly. The ones instigating it are at fault.”

Angélica Cárcamo, President of APES, July 2023

Various human rights organizations describe these developments as an institutionalized dynamic that has been exacerbated by the state of emergency. APES published a report on impacts to freedom of the press under the state of the emergency, and according to its records, there were 222 cases of violations of freedom of expression and 385 attacks against journalists and media outlets between March 2022 and July 2023. These incidents followed the patterns of action described above.²³⁸

High-level authorities such as the Minister of Security²³⁹ and Director of the National Civil Police²⁴⁰ have threatened to initiate investigations or lawsuits against journalists matters related to their reporting activities. These authorities have argued that journalists, by reporting on criminal acts, especially those related to gang activity, are opening the door to those types of crimes.

“Let them be given asylum so they’ll get out of here! Because they don’t do any good here. If they want to leave, let them leave, because they think we’re going to be like, ‘oh no, please don’t go’. We don’t need you, leave”!

Ernesto Castro, President of the Legislative Assembly, in plenary session on Tuesday, 19 April 2022²⁴¹

According to international human rights standards, public officials have the role of guarantors of people’s rights, and, as such, their statements cannot repudiate this obligation, or constitute forms of interference or harmful pressure for those who contribute to deliberations on matters of public interest by expressing their ideas.²⁴²

237. APES. *Régimen de excepción y afectación a la libertad de prensa y libertad de expresión*. <https://apes.org.sv/wp-content/uploads/2023/07/Regimen-de-excepcion-y-afectacion-a-la-libertad-de-prensa-y-libertad-de-expresion-en-El-Salvador.-1.pdf>.

238. APES: <https://twitter.com/apeselsalvador/status/1683601760101752837/photo/1>.

239. LPG. “El ministro de Seguridad Villatoro acusó a los periodistas de cometer dicho delito”. 9 June 2021. <https://www.laprensagrafica.com/elsalvador/Que-es-la-apologia-del-delito-20210608-0101.html>.

240. El Diario de Hoy. “Director de PNC asegura que políticos y periodistas serán procesados por la tregua de 2012”. Article from 6 June 2023. <https://www.elsalvador.com/noticias/nacional/director-pnc-tregua-pandillas-periodistas/1066298/2023/>.

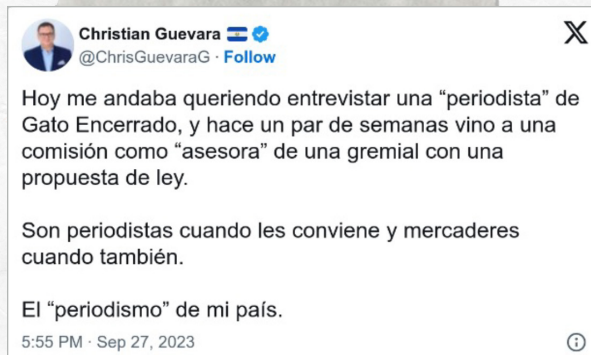
241. See: <https://x.com/AlexiaRivasG1/status/1516574209920712707?s=20>.

242. Inter-American Court of Human Rights. *Case of Ríos et al v. Venezuela. Preliminary Exceptions, Merits, Reparations, and Costs*. Judgment of 28 January 2009. Series C No. 194, para. 139; Inter-American Court of Human Rights. *Case of Perozo et al v. Venezuela. Preliminary Exceptions, Merits, Reparations, and Costs*. Judgment of 28 January 2009. Series C No. 195, para. 151.

In August 2023, President Bukele singled out three Salvadoran journalists, insinuating that they had committed crimes because the allegedly had received classified information from a national security advisor as part of an a supposed anti-corruption plan.²⁴³

Governmental practices also affect public trust in journalists and influences how important it is to the public to have a free and independent press. On that score, a national survey identified that 49.2% of participants felt that the media were somewhat or very corrupt.²⁴⁴

In the current context of hostility, El Salvador does not have the necessary conditions for holding a participatory public discussion about adopting a proper legal framework for protecting journalists. In 2021, the Legislative Assembly shelved a bill that aimed to design and implement public actions to achieve that very objective.



Commentary by MP Christian Guevara on periodistas.

See in:

<https://x.com/ChrisGuevaraG/status/1707091574239248741?s=20>

a) Digital surveillance and its implications for freedom of expression

In early 2022, a joint investigation²⁴⁵ by Access Now and Citizen Lab confirmed 35 cases of journalists from various media outlets and members of civil society whose mobile phones had been infected with the NSO Group's spy program Pegasus between July 2020 and November 2021.

Amnesty International's Security Lab employed its technical expertise to confirm the abusive and persistent use of this program.²⁴⁶

"I began noticing strange things about my phone, like not being able to install new updates, and sometimes it restarted at night. After trying several times, I mentioned it to a friend, and he suggested I get my phone analysed.

We activated the Access Now Emergency Network and performed the first analysis, and it came out positive, which was later confirmed by Amnesty's lab. I was shocked and told a friend and colleague at another media outlet, who had her own mobile phone analysed, and it also came out positive, showing it had been infected.

Following these confirmations, and with guidance from Access Now, we spoke separately with our editors to propose that all of our colleagues at each of our media outlets have their mobiles checked, since if both of our phones were infected, it could point to an attack on the professional association.

243. <https://twitter.com/nayibbukele/status/1689392355239948288>.

244. IUDOP: "La población salvadoreña evalúa la situación del país al final del año 2022". Press bulletin. P. 8. Available at: <https://uca.edu.sv/iudop/wp-content/uploads/2023/01/Bol.-Eva-de-anio-2022-Instituciones-Publicas.pdf>.

245. Available at: <https://tspace.library.utoronto.ca/bitstream/1807/123609/1/Report%23148—project-torogoz.pdf>.

246. See: <https://www.amnesty.org/es/latest/news/2022/01/el-salvador-pegasus-spyware-surveillance-journalists/>.

Most of my colleagues at the media outlet had Android phones, and we were told that this type of analysis could only be performed on iPhones, so we were only able to analyse four mobiles, including my editor's and editorial coordinator's. All of them turned out to have been infected".

Xenia Oliva, former journalist at Gato Encerrado, in an interview with Amnesty International, July 2023

A significant number of these infections had occurred while the precautionary measures issued by the IACHR to protect the El Faro journalists had been in force, and some of these journalists also confirmed that their mobiles had been infected by the program.²⁴⁷ The joint investigation performed by Access Now and Citizen Lab determined that the targeting of the infections coincided with times when the affected persons were working on sensitive matters of public interest.²⁴⁸

While to date it has not been possible to confirm with certainty who was responsible for this surveillance, NSO Group has repeatedly claimed that it only sells the Pegasus technology to governments. Furthermore, the joint investigation performed by Access Now and Citizen Lab identified a user/client operating almost exclusively in El Salvador.²⁴⁹

Various international human rights bodies expressed their concern regarding the use of this type of software to conduct illegitimate surveillance and urged the state to effectively and impartially investigate the incidents reported and to safeguard the victims' physical integrity.²⁵⁰

In January 2022, APES filed two notices with the FGR to have it investigate reports of the use of the Pegasus spyware to conduct illegitimate surveillance on journalists, as well as the hacking of journalists' WhatsApp accounts and phone numbers to disseminate disinformation, attacks and pornographic material.²⁵¹

In a public IACHR hearing held in March 2022, representatives of the Salvadoran state denied any persecution, harassment, and stigmatization of people critical of the government's work and affirmed that the FGR was conducting the pertinent investigations.²⁵²

However, 21 months have passed since APES's notice, and there are no concrete, public results that would demonstrate immediate and proactive action by the authorities charged with carrying out the investigation.

Nor is there any evidence of the existence of the sort of specialized and multi-disciplinary team that would be needed to address the complexity of the case and specific context in which it occurred. Even though the incident is related to information technology crimes, to date the sole publicly-known measure taken to investigate the case is interviews of some journalists by the FGR's private assets unit.

247. IACHR: 2022 Annual Report of the Office of the Office of the Special Rapporteur for Freedom of Expression. 6 March 2023. Para. 569. <https://www.oas.org/en/iachr/expression/reports/IA2022ENG.pdf>.

248. Citizen Lab, "Torogoz Project: Extensive Hacking of Media and Civil Society in El Salvador with Pegasus Spyware". January 2022, <https://citizenlab.ca/2022/01/project-torogoz-extensive-hacking-media-civil-society-el-salvador-pegasus-spyware/>.

249. Citizen Lab. "Torogoz Project: Extensive Hacking of Media and Civil Society in El Salvador with Pegasus Spyware". January 2022 (previously cited).

250. Joint press release of the Inter-American Commission on Human Rights (IACHR), Special Rapporteur for Freedom of Expression (RELE), and Regional Office of the United Nations High Commissioner for Human Rights for Central America, Dominican Republic, and the Caribbean (OHCHR) regarding their concern about the findings on the use of Pegasus software to spy on journalists and civil society organizations in El Salvador, published on 31 January 2022.

251. Gato Encerrado. "APES presenta dos avisos a la Fiscalía para que investigue espionaje a periodistas". Article dated 15 January 2022. : <https://gatoencerrado.news/2022/01/15/apes-presenta-dos-avisos-a-la-fiscalia-por-espionaje-y-hackeo-a-periodistas/>.

252. IACHR. Public hearing: The Situation of Human Rights Within the Context of Cybernetic Surveillance in El Salvador, 16 March 2022. Available at: https://youtube/E77H2_4SSPk?list=PL5QlapyOGhXtc-qfEME39loCXnbBwD7op.

This lack of diligence upholds a generalized state of impunity that institutions have fostered and tolerated, deepening a profound distrust of independent journalism among the authorities charged with investigating these types of actions.

“When the prosecutor interviewed us, he asked us to tell him from the beginning everything that had happened in the case. He didn’t even know about the IACHR hearing at which an FGR representative appeared.

Then the head of the unit asked us questions that insinuated that our goal was to defame the government: ‘How can you guys attest to that? How can you be sure that those experts have done a good job?’

“In reality, I never felt that they wanted to gather evidence to investigate the case. That was in August 2022. After a year, they’ve never notified us of any progress on the case”.

Ezequiel Barrera, Editor of Gato Encerrado, in an interview with Amnesty International, July 2023

In late November 2022, 15 members of the digital newspaper El Faro, represented by Columbia University’s Knight First Amendment Institute, filed a lawsuit in federal court in the United States against NSO Group. The suit seeks recognition that the surveillance actions using Pegasus, an NSO Group product, constituted a violation of obligations under United States law, and seeks identification of the client that ordered the surveillance of the journalists.²⁵³

In the view of Amnesty International, the use of selective surveillance threatens the work and security of independent journalists in El Salvador, the right of their sources to confidentiality, and in general the rights to intimacy and privacy of those in their immediate circles. There is no question, given the current context of the country, that the use of information obtained illegitimately has a differentiated impact on and special risk for women, who face particularly aggressive attacks against their reputations and intimacy.

“When I realized that my mobile really had been infected and that they’d gotten access to all of my photographs, conversations and contacts, I felt responsible, first for the safety of my sources, and I wondered how much this could affect them. I then thought about how this could impact my family, my immediate circle . . . It was a shock. I had no idea what to do”.

Xenia Oliva, former journalist at Gato Encerrado, in an interview with Amnesty International in July 2023

Among the impacts described most frequently by the victims interviewed by Amnesty International for this investigation was the physical and emotional harm caused by fear, exhaustion and discouragement, or even as a result of constant efforts to resist and continue their work resiliently.

The accounts collected by Amnesty International reveal, in particular, measures such as self-censorship, in the form of limiting personal interactions and the free expression of ideas and opinions on social media, avoiding sensitive issues or matters of public interest,

253. *El Faro* [published on 30 November 2022]. “Quince miembros de El Faro demandan a NSO Group en EE.UU por espionaje con Pegasus”. https://elfaro.net/es/202211/el_salvador/26557/Quince-miembros-de-El-Faro-demandan-a-NSO-Group-en-EEUU-por-espionaje-con-Pegasus.htm.

and constantly developing and putting in place security measures that also hinder the work of investigating and publishing journalistic articles.

They also highlighted the problems of continuing to work freely and safely with various sources, detailing the growing difficulties in establishing, maintaining and protecting cooperation, trust and security in their communications.

They also noted that the media outlets and organizations they work for have put resources and efforts into providing legal counsel and support, offering training and capacity-building in digital security tools and services, and establishing their own protocols and special prevention and protection measures that require financial and technical management, which in many cases are limited and cannot be sustained over time, especially by editorial departments with few resources.²⁵⁴

“Mentally speaking, having concerns beyond those strictly related to work is definitively a drain on your time and headspace. It is one more obstacle, it takes a mental toll and it drives your stress through the roof.

“Sources who work at public institutions are extremely scared to talk. Many of them block us after we send them a message; others have been fired because it came out that they were speaking with journalists. There is a widespread sense of fear and that affects our work as journalists.”

Bryan Avelar, independent journalist, in an interview with Amnesty International in September 2023

b) Laws that restrict journalism

Since the ruling party gained an absolute majority in the Salvadoran Legislative Assembly, restrictive laws and legislative reforms have constantly chipped away at the safeguards for exercising the right to freedom of expression. This situation has been further aggravated by the state of emergency that has been in place since March 2022.

Of particular note are the reform of the Code of Criminal Procedure and Special Law against Cyber Crimes and Related Crimes, which some organizations view as ambiguous, imprecise, and overly broad, which could pave the way for abuse and criminalization of activities that constitute a legitimate exercise of rights.²⁵⁵

The most worrisome specific problems are the intention to punish the simple act of getting and transferring information considered to be confidential with a prison sentence of between five and eight years, as well as the legalization of investigative techniques and undercover operations that infringe on both privacy and the right to the protection of personal data by creating the position of “undercover digital agent” and authorizing the use of tools to extract information without a warrant.

Furthermore, in the context of the state of emergency, the legislature passed an amendment to the Criminal Code that punishes media outlets that reproduce and transmit messages or communiqués that “originated or presumably originated” from criminal groups that could “incite anxiety and panic” amongst the populace with [prison] sentences of 10 to 15 years. This provision was in force for 18 months and repealed on 1 November 2023.²⁵⁶

254. Between June and September 2023, Amnesty International spoke with 10 journalists from various media outlets.

255. Derechos Digitales. “Las reformas legales en El Salvador: un gran retroceso en los derechos humanos y el Estado democrático”. <https://www.derechosdigitales.org/17840/las-reformas-legales-en-el-salvador-un-gran-retroceso-en-los-derechos-humanos-y-el-estado-democratico/>.

256. The amendment to Article 345-C of the Criminal Code, as well as the final section of Article 1 of the Law on the Prohibition

This reform was also deemed to pose the risk of severe criminalization of legitimate activities such as journalism, due the broad and vague nature of the terms it uses describe prohibited behaviours, given that according to international standards, all limits on freedom of expression must be expressly laid out beforehand in an exhaustive and clear manner in the law.²⁵⁷

Furthermore, this new crime equated the work of those who inform people with the work of those who, through any form of visual expression, transmit messages that allude to criminal groups, warning that no wilful misconduct or intent to disturb public tranquillity is needed for the offense to apply.²⁵⁸

The reform was carried out two weeks after the digital newspaper El Faro published a series of articles confirming the existence of a pact between the central government and MS-13 gang, supported by audio messages provided by gang members. According to the analysis of civil society organizations and journalists, the intention of these provision was to place absolute limits on freedom of expression and information by creating prior censorship.²⁵⁹

When the provision was repealed, many actors in the international community and human rights mechanisms applauded the decision. However, they have urged the Salvadoran government to complement that action with other measures to help strengthen civic space.²⁶⁰ Meanwhile, the APES asserted that striking this article from Salvadoran law simply confirms that the state violated the right to freedoms of the press and expression in El Salvador.

“The ‘gag order reforms’ should never have been approved, since they violate the rights to freedom of the press and expression... Among the gravest effects of that measure was the movement of at least 15 journalists (two of whom are in permanent exile) between 2022 and 2023, out of fear of legal repercussions”.

Public statement by APES, 2 November 2023²⁶¹

Local organizations also identified the reform of the Telecommunications Law as a problem, due to the inclusion of measures that violate personal data and impact the right to informational self-determination.²⁶² Salvadoran organizations have said that the law does not regulate the requirements and formalities of informed consent, nor does it exhaustively establish which authorities will be legally responsible for each matter and the limits to how information will be processed. Lastly, it permits government access to personal data without judicial authorization or control, and ultimately enables the conditions for abusively monitoring citizen communications on a massive scale.²⁶³

of Maras, Gangs, Groups, Associations and Organizations of a Criminal Nature were repealed by the Legislative Assembly on 1 November 2023. <https://www.asamblea.gob.sv/sites/default/files/documents/correspondencia/48495CA2-676A-4B68-BDA8-C652F375F8F2.pdf>.

257. RELE. Press release: “The Office of the Special Rapporteur Warns of the Risk of Criminalization of Legitimate Exercises of Freedom of Expression in El Salvador as a result of Legislative Reforms”. 13 April 2022.

258. DPLF. (IN) *DEBIDO PROCESO: Análisis de las reformas que acompañan el régimen de excepción en El Salvador*. August 2023. <https://www.dplf.org/es/indebido-proceso-analisis-reformas-regimen-excepcion-el-salvador>.

259. Cristosal. *Informe: Un año bajo el régimen de excepción, una medida permanente de represión y de violaciones a los derechos humanos*. May 2023.

260. Press release of the United Nations Office of the High Commissioner for Human Rights, 3 November 2023, <https://www.oacnudh.org/comunicado-de-prensa-el-salvador/>.

261. Available at: <https://x.com/apeselsalvador/status/1720184510422069338?s=20>.

262. Informational self-determination is set forth in the Law on the Protection of Personal Data (LPDP), which was issued via Legislative Decree No. 1263 and published in the *Diario Oficial* [Official Gazette] No. 239, Volume 421 on 22 December 2011. The concept refers to the right of individuals to control their own personal information, centred on the idea that people should have control over information that concerns them and be able to decide which personal data can be collected. The LPDP’s goal is to guarantee and protect individuals’ right to their personal information by establishing principles and procedures for ensuring respect for privacy and the right to informational self-determination. Furthermore, the law details the rights of data holders, the obligations of those responsible for handling data, and penalties in the event of violations.

263. Cristosal. *Análisis de las recientes reformas penales: Un regreso al modelo inquisitivo y la desprotección de derechos de la*

5. CONCLUSIONS



From the results of its investigation, Amnesty International concludes that since the beginning of President Bukele's term in June 2019, El Salvador has experienced a marked regression in human rights that has opened the door to what could be one of the gravest crises since the end of the internal armed conflict.

A punitive model of public security has coalesced, with the blessing of the authorities' decisions. Within this context, there is an alarming trend of actions that restrict the exercise of civil rights, policies that strengthen militarization, repressive practices and permanent legal reforms that are contrary to international human rights standards, particularly standards for fair trials. These trends have created the conditions for grave human rights violations.

An analysis of the available information and cases documented in the context of the state of emergency attests to the fact that gross human rights violations – massive illegal and/or arbitrary detentions, enforced disappearances, torture, and death in state custody – are not isolated cases. They are the product of a high degree of state coordination and occur with the knowledge of the highest authorities, who often incentivize and justify them.

Similarly, the arbitrary detentions that have been carried out within this context have been characterized by a lack of either administrative or judicial arrest warrants, an absence of flagrancy, and failure to inform those being arrested why they are being arrested. This has resulted in massive, indiscriminate detentions that disproportionately affect people in situations of exclusion and precarity, since the victims tend to have low levels of education, precarious jobs, and live in areas stigmatized due to poverty or gang control.

Furthermore, detainees are subjected to conditions that flagrantly violate their right to a fair trial, such as the lengthening of the timeframe for administrative detention and indiscriminate use of pretrial detention, which is being applied as a general rule, without justification, for indefinite periods of time and without the possibility of being modified by other less harmful measures, thereby contravening international standards.

While Amnesty International verified cases of people, who after spending several months in prison, were granted alternatives to pretrial detention, the criteria for granting these measures and the manner in which they are implemented appear to follow a pattern that is just as arbitrary as the one used for arrests. Importantly, the public statements by the authorities regarding the legal situation of these individuals are misleading, in that they fail

población salvadoreña. September 2022. Available at:
<https://crisotal.org/ES/analisis-de-las-recientes-reformas-penales-un-regreso-al-modelo-inquisitivo-y-la-desproteccion-de-derechos-de-la-poblacion-salvadorena/>.

to mention that most people released under these measures are still in the midst of a court proceeding that, to make matters worse, does not offer all the protections of a fair trial, and instead features massive hearings that will preclude an effective technical defence, among other aspects that, in the end, will increase their risk of not ultimately being acquitted.

Furthermore, based on public statements by top state authorities and personal accounts regarding the status of people deprived of their liberty and conditions at detention centres, it can be concluded that the Salvadoran state has adopted a policy of systematic torture of all persons detained under the state of emergency because they are suspected of being gang members. Among the gravest consequences of applying this policy are the deaths in state custody, some of which show clear signs of violence while many others are a result of inhumane prison conditions or a refusal to provide medical care and medicine.

The prevailing impunity that has characterized the Salvadoran authorities' actions in implementing the state of emergency has been identified as a facilitator of repeated violations that has contributed to an environment of distrust and scepticism regarding the state's willingness to guarantee justice, truth and reparations for victims of human rights violations.

Additionally, the report's findings also illustrate a worrisome trend among state authorities of adopting policies that restrict civic space and erode the essential elements of the rule of law.

This has resulted in restrictions of freedom of expression, primarily through a pattern of stigmatization, attacks, and harassment of dissenting voices using social media and other digital platforms. Amnesty International has confirmed that the consequences and impacts of this repressive tactic have transcended the digital realm and have increased self-censorship by media outlets, journalists and civil society organizations.

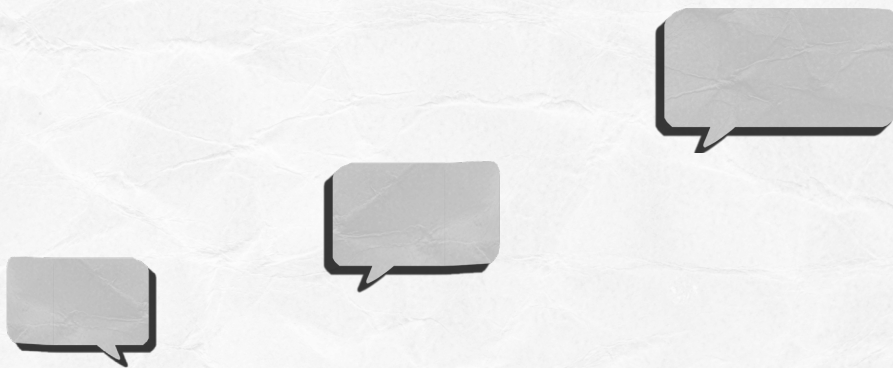
The right of peaceful assembly in the country has also been drastically eroded due to the change in approach at institutions such as the National Civil Police, which has adopted intimidatory practices and surveillance instead of discharging its duty to protect and facilitate peaceful protests. In addition, the authorities have largely moved away from dialogue and conciliation as mechanisms for managing conflict, and instead prefer intimidatory and repressive techniques – such as punishments, dismissals and even arbitrary detentions and criminalization – as responses to legitimate ways of defending human rights, with an especially marked impact on public-sector labour unionists.

Within this context, there is a worrisome lack of independence and autonomy at judicial institutions and other state bodies, which limits their capacity to act in accordance with the principles of legality and respect for human rights and comply with their constitutional mandates and international obligations.

These circumstances have led to a tendency towards self-exile among human rights defenders, journalists and former justice operators, which, together with the increase in obstacles to the right to access information and an institutional discourse that foments discrimination, hostility and violence toward these actors, has resulted in an increasingly restrictive climate for civic space.

Lastly, El Salvador has put up gradually increasing resistance to international scrutiny in the area of human rights, and particularly to the systematic analysis conducted by the IACHR, since the state of emergency was declared. The IACHR's express request for a visit to verify the conditions under which the country is implementing the state of emergency to date has not been answered by the Salvadoran state. This movement toward international isolation limits opportunities for constructive international collaboration, and for meeting the state's commitments in the area of human rights, presaging a distressing outlook for the country's future.

6. RECOMMENDATIONS



In response to this alarming situation, Amnesty International strongly and urgently calls on the Salvadoran state and international community to take immediate and effective measures to protect and promote human rights. Its recommendations are set out below.

a) To the Salvadoran state:

In relation to designing and implementing security strategies and policies:

- Terminate repressive security policies and legal reforms that threaten due process and abolish judicial safeguards. It is essential to implement a comprehensive public security strategy based on human rights that includes measures for guaranteeing the economic and social rights of the most marginalized individuals and communities, as well as measures to address the deep causes of violence, prevention, reintegration and rehabilitation. The state must include civil society and defenders in the process of both designing and monitoring these measures and policies.
- Guarantee an orderly withdrawal of the armed forces from public security tasks and strengthen the capacity of the PNC. Use of the armed forces must remain an extraordinary measure and there must be guarantees that their actions are fully in line with international standards on the use of force and firearms and are always subject to ordinary civilian jurisdiction and not any special jurisdiction, particularly the military courts.

With regard to the state of emergency:

- We urge the Salvadoran state to address the concerns of the United Nations High Commissioner for Human Rights, Inter-American Commission on Human Rights, and other United Nations special mechanisms regarding the extension of the state of emergency despite the lack of evidence provided by the authorities about the emergency situation and current need for the measure.
- Review and repeal the laws passed to facilitate the implementation of the state of emergency that permanently suspend due process guarantees, ensuring that the guarantees of a fair trial and rights to due process of all persons arrested under the state of emergency are respected and maintained.

- Limit the use of pretrial detention, applying it only as an exceptional measure and when strictly necessary, with appropriate justification and periodic judicial review. It is imperative to guarantee the fundamental rights of detainees, including access to a lawyer and the ability to challenge their detention, ensuring that the conditions of their detention accord with international human rights standards, and actively promoting alternatives to detention, such as release on bail and home arrest.
- Enforce the complete prohibition of torture and other cruel, inhuman and degrading treatment; investigate all credible allegations promptly, effectively and impartially; and ensure that all persons suspected of being responsible for such acts are subjected to fair legal proceedings.
- Ensure that all detainees are held in decent conditions, guaranteeing access to proper medical care and that they are not subject to any difficulties or restrictions beyond those required by their imprisonment. We also recommend, as a measure to reduce overcrowding, that the state take measures to reduce the rate of imprisoned persons, especially respect for the exceptional nature of pretrial detention.
- Verify that the conditions for imprisoned women and children comply with the requirements set by international standards for these population groups.
- Lift the restrictions imposed by the DGCP that prevent the PDDH from fulfilling its mandate of verifying the status of prisoners, and ensure it has access to all penal centres, particularly La Esperanza (known as Mariona) and all premises of the Izalco complex, in order to verify and guarantee the conditions of the prisoners.
- Ensure that the PDDH and Presidential Commissioner for Human Rights and Freedom of Expression act proactively, independently, and resolutely to address denunciations and demands for responses and information from the populace and victims movements regarding the many human rights violations occurring in the context of the state of emergency. Both agencies must effectively promote swift, practical, and appropriate actions in response to requests for information on the status of people who are detained, prosecuted, and imprisoned under this measure to ensure this information is available to their relatives as soon as possible.
- All pertinent state agencies must carry out effective, independent and impartial investigations of the conduct of PNC, FAES and DGCP personnel toward detainees, especially with regard to allegations of arbitrary detention; excessive use of force; cruel, inhuman, and degrading treatment; and death in state custody.
- Design and implement state measures to provide reparations to those whose rights have been violated in this context, and adopt all necessary actions to ensure these incidents will not occur again.

Rule of law and judicial independence:

- Guarantee that the judicial institutions operate fully independently and autonomously, and in accordance with the principles of legality and respect for human rights.

Protection of dissenting voices:

- Guarantee the rights of freedom of expression and peaceful assembly, in accordance with the ADHR and ICCPR.
- Immediately and unconditionally end the arbitrary detention of individuals for simply having exercised their right to freedom of expression or peaceful assembly, withdraw the charges against them, and terminate these practices.
- Cease all forms of restriction, stigmatization, or criminalization of critical and dissenting voices. It is essential to promote an environment in which the media, jour-

nalists and civil society are able to freely operate without fear.

- Ensure investigations into all reports of illegitimate targeted surveillance and use of spy software against journalists and human rights defenders are conducted with due diligence, exhaustively, transparently and independently, and ensure the victims have adequate access to effective remedies.
- Prohibit the use of highly invasive espionage software and place an immediate moratorium on the sale, transfer and use of spy programs until human rights safeguards and guarantees have been established.
- Pass national laws that provide safeguards against the violation and abuse of human rights through digital surveillance, and establish mechanisms of responsibility designed to provide the victims of surveillance abuse a method to access effective remedies and appropriate reparations.
- Disclose information regarding all prior, current and future contracts with surveillance companies by responding to requests for information or proactively disseminating it.

Guarantee international scrutiny:

- Effectively collaborate with regional and international accountability mechanisms and guarantee that entities such as the Inter-American Commission on Human Rights and United Nations Office of the High Commissioner for Human Rights, among other international bodies, have the necessary conditions to properly carry out their work.
- Provide and authorize access to all entities or procedures linked to regional and international mechanisms for the defence of human rights, including non-governmental organizations, that need to enter the country to evaluate and record the current state of human rights, with the goal of fostering constructive collaboration on issues of human rights, by ensuring a genuine commitment to regional and international human rights obligations. We especially urge the government to authorize the visit that the IACHR has requested on several occasions to verify the conditions under which the state of emergency is being implemented and its implications for the Salvadoran people's human rights.

Promote access to information:

- Guarantee and facilitate access to information by promoting transparency and open dialogue and eliminating all formal or practical institutional barriers that hinder people's access to information of public interest in state hands.

b) To the international community:

- Maintain a firm and constant position against regressions in the area of human rights in El Salvador, urging the authorities to follow the recommendations issued by the IACHR and other United Nations special mechanisms.
- Continue to actively promote all available diplomatic actions for facilitating the entrance of any international human rights entity or their respective procedures that request access to the country to supervise and document respect for and guarantees of human rights.
- Publicly back and support the important work performed by human rights organizations and independent media in El Salvador.
- Continue pressing for accountability for the human rights violations committed by the Salvadoran authorities and ensure they are included in discussions in existing multilateral spaces.

**AMNESTY INTERNATIONAL
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