

Grave Human and Civil Rights Abuses under El Salvador's State of Emergency: Is This the New Normal?

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Background

Salvadorans are headed into a full year of living under a state of emergency. The state of emergency was approved initially in March 2022 after a killing spree by gang members killed at least 90 people over three days. According to a May 17, 2022 [article in El Faro](#), the violence followed the collapse of secret negotiations between the government and the gangs. To date, over 62,000 people have been imprisoned for alleged ties to gangs, 1,979 of them minors ([21 between 12 and 13 years of age](#)), and at least 90 have died in detention. The state of emergency has resulted in the arbitrary arrests of innocent people, and the torture and ill-treatment of detainees, along with the erosion of due process guarantees and penal reforms that unjustly criminalize journalists and human rights defenders. While crime has plummeted since the state of emergency was decreed, the apparent success masks violations of constitutional guarantees and of human rights, the extremely precarious fiscal and economic situation, the destruction of democratic institutions and the dangerous remilitarization of Salvadoran society. By normalizing the state of exception, President Bukele is creating the conditions to remain in power despite constitutional prohibitions.

Moreover, mass incarceration will not be a long-term, sustainable solution to El Salvador's historic problems with gangs and gang violence. The [International Crisis Group](#) (ICG) argues that the Salvadoran government should create a legal and programmatic framework that will reintegrate incarcerated gang members into society with the help of nongovernmental and religious organizations.

The U.S. government and international community must act quickly to prevent El Salvador from descending into autocracy and the rolling back of modest democratic gains made since the civil war. Actions should include demanding that the Salvadoran government: 1) end the sweeping arbitrary arrests of people; 2) guarantee swift due process of detainees; 3) adopt rights-protecting strategies to end gang-violence and reintegrate former gang-members into society; and 4) abolish/reverse legislation that punishes the press and restricts access to information.

Salvadoran Legislature Passes State of Emergency after Peak in Violence

Over a three-day period, from March 24 to 27, 92 people were killed in El Salvador, [62 in one day](#). This was a noticeable increase in what had been a downward trend in gang killings over the last decade. The response of the government was swift and draconian. The Nuevas Ideas party of President Nayib Bukele ("New Ideas"), which controls 2/3 of the National Assembly, decreed a temporary, 30-day state of emergency that suspended numerous constitutionally guaranteed rights. These include the right to freedom of association and assembly, the right to privacy in communications, the right to know why you have been arrested, and the right to be brought before a judge within 72 hours. The National Assembly also expanded counter-terrorism legislation to allow for the prosecution of children 12 years of age and

older, extended administrative detentions from 3 to 15 days, increased the maximum prison sentence from 5 to 15 years for gang-related offenses, and passed legislation preventing the media from reporting on any gang-related activity.

Since the anti-gang decree went into effect, over 62,000 people have been detained and imprisoned, including the 1,979 minors, and 90 people have died while incarcerated under suspicious circumstances. The police and military have arrested innocent people, mostly young men, without any evidence and based on suspicion. Those detained were taken from their homes, their places of employment, on their way to work or off the street. Reports from several media outlets reveal that the government has imposed daily [quota systems](#) that police and military forces [must meet](#). According to journalist [Hector Silva of Infobae](#), quotas were originally set at 1,000 per day and is now down to 500 per day.

In her statement during a September 2022 Tom Lantos Human Rights Commission hearing, Tamara Taraciuk of [Human Rights Watch](#) testified that numerous detentions were carried out “in large measure, if not exclusively, based on the age of the people, their physical appearance, or the fact that they live in an area controlled by gangs.” Similarly, according to other data collected by [Cristosal](#), people were also detained for reasons such as not carrying IDs, carrying IDs with incorrect addresses, carrying uncharged cellphones, having photos of themselves wearing caps like gang members, having any kind of tattoo, or having previous history of arrest. The majority detained live in poor rural and urban, working-class communities that are marginalized and victimized by gangs. El Faro describes the horrific [arbitrary detention and tortuous arrest](#) of 8 young men in the Bajo Lempa region in El Salvador.

In a later report published jointly in December 2022 by [Cristosal](#)^[4] and Human Rights Watch (HRW) titled “[We Can Arrest Anyone We Want: Widespread Human Rights Violations under El Salvador’s ‘State of Emergency,’](#)” the two groups document in detail the violations including arbitrary arrests, enforced disappearances, torture, and ill-treatment of detainees. The report, based on over eleven hundred interviews with victims, family members, lawyers, and judges in all 14 states in El Salvador, shows that these violations were not carried out by “rogue” policy or military officers but were routine abuses carried about by both forces throughout the country. To date, despite the massive arrests, no one has been held individually responsible for the killings at the end of March that was used to justify the state of emergency.

In the September 2022 [hearing by the Tom Lantos Human Rights Commission](#), Committee Co-Chair Jim McGovern denounced the draconian measures taking place in El Salvador, stating that the number of those detained is “a number that brings to mind Turkey under Erdogan or Egypt under al-Sisi or other supposedly ‘democratic’ states whose elected leaders have turned sharply towards authoritarianism.”

Manuel and Carlos were arrested in May 2022, two of five humble fishermen who live on the island near Puerto El Triunfo in the department of Usulután. The island has not suffered from gang activity since 2007. After relieving Manuel and another boatman, Carlos, of their cell phones, the police requested a ride back to the Puerto El Triunfo – a port controlled by the Barrio 18 gang. Upon arrival, they were arrested. They were not told why but were told they would be detained for 15 days while the police carried out an investigation. The Armed Forces twitter page later accused Manuel, Carlos and the three others of being collaborators of the Mara Salvatrucha and drug traffickers. None of the five have criminal records or tattoos and are known as hard working people. They were transferred to a penal center where they continue to be detained while the investigation is supposedly being conducted.

Without the income of the fisherman, the families are suffering even greater poverty and food insecurity.

Crowded, Inhumane Detention Conditions

El Salvador has the highest level of incarceration in the hemisphere after the United States – an [estimated 2%](#) of the adult population are in prison^[2] -- exacerbating already inhumane conditions in the country's prisons. According to official statistics obtained by Cristosal and HRW, the prison capacity in El Salvador was 27,000 although the actual 2021 prison population was 39,000. Salvadoran newspaper *La Prensa Grafica* reports that the [prison system increased by 287 percent](#) in the first five months of the emergency decree and that 340 people were transferred to penitentiaries every day. The state of emergency has nearly doubled the prison population, overburdening an already strained system. Detainees are placed in overcrowded and violent prisons while they wait for court proceedings. They do not have access to counsel, are denied food and medicine, and are not told what they have been charged with. An [ABC news story](#) on the mounting prison deaths said that prisoners are “packed into cells and defecate in open receptacles that aren’t emptied until full... they subsist on a couple corn tortillas per day and lack clean drinking water.”

Of the 62,000 detained, at least 90 people have died while imprisoned. According to the ABC News story, the deaths were due to unattended injuries sustained at the hands of security forces during the arrests, the appalling conditions in the prisons, violence from other inmates or lack of access to medicines for chronic illnesses. Because the Salvadoran Attorney General's Office has yet to open an investigation into how the detainees died, it is difficult to say the exact cause of death. However, official reports state the cause of death is often “pulmonary edema,” according to [Noah Bullock of Cristosal](#), and families typically learned of the deaths of their loved ones from morgue employees, with many of the bodies showing signs of physical abuse characteristic of extrajudicial killings.

In El Salvador, construction teams are now hard at work building [a massive new jail](#) designed to house 40,000 prisoners. This prison will be the largest in the hemisphere.

Penal Reforms Leading to Further Undermining of Due Process

The Bukele government has used the state of emergency to justify stringent penal reforms that violate rights guaranteed by the constitution, weaken the rule of law and criminalize the press for reporting on gang activity. These will affect the rights to defense, the presumption of innocence, due process, and access to an independent judge. International human rights law does not allow these rights to be restricted, even under a state of emergency. In addition, [according to the HRW and Cristosal](#) report, Article 29 of the Salvadoran constitution states that a state of emergency may only be extended one time.

Reforms to the Criminal Code and Code of Criminal Procedure enacted by the National Assembly during the state of emergency have also weakened due process procedures. In his statement in the TLHRC hearing in September 2022, Noah Bullock stated that it was “impossible” to exercise the legal defense of Salvadorans accused of crimes under the state of emergency. According to the experience of Cristosal attorneys, detainees are prosecuted en masse (up to 600 people) and often the accused aren’t present in the courtroom -- the right to charge someone in absentia is permitted under the new reforms. The mass hearings take place in special tribunals with recently appointed judges whose identities are not revealed. The judges almost automatically order provisional detention for six-months without evidence

and generally do not make considerations for detainees with disabilities, chronic health issues or serious diseases. The right to see a judge within 72 hours is routinely violated and detainees are held for up to sixty days, if not longer, before they go before a judge.

In El Salvador today, children as young as 12 years old can be detained based solely on the suspicion that they are involved in gang activity. Cristosal and HRW report that as of December 2022, over 1600 children have been arrested, placed in the crowded prison cells. A recent statement by the two human rights groups based on a [leaked database](#) obtained by HRW, stated that “Salvadoran authorities have inhumanely packed detainees, including hundreds of children, in crowded detention sites, while doing very little to ensure victims’ access to justice for gang violence.”

In a severe attack on freedom of the press, the legislative body further passed laws on April 5 that criminalizes any reporting on gang activities, establishing penalties of 10 to 15 years in prison to anyone who reproduces or transmits messages or communications attributed to gangs or criminal groups. The penalties cover radio, television, written, and digital media outlets that “reproduce or transmit messages or statements originating or presumably originating from said criminal groups,” if those messages “could produce anxiety or panic,” according to [news reports](#), a statement by the [Salvadoran Journalists’ Association](#). The vague wording of the law inhibits journalists from publicizing accounts of arbitrary arrests or actions related to the state of emergency. Members of the press who have been critical of President Bukele and government policies since he took office in 2019, have [been threatened and attacked](#), forcing many journalists into exile.

Popularity Masking Authoritarianism

Despite the overwhelming evidence of violations of due process and human rights violations mentioned in this report, the tough anti-gang strategy is hugely popular. Since the 1990s, Salvadorans have suffered violence, extortion, kidnapping, and sexual assault from the gangs. New outlets report that people are reclaiming their neighborhoods, reopening businesses shuttered due to extortions, painting over gang graffiti, and going to school without fear of being recruited into a gang, sexually harassed or worse. Recent polls place President Bukele’s popularity rating at 88 percent and he tops the [list of approval ratings](#) for all Latin American presidents.

Nonetheless, Bukele’s popularity or the approval rating of the state of emergency does not mask his growing autocracy, the undermining of the rule of law, the unsustainable remilitarization of Salvadoran society, the [ways in which lack of transparency is paving the way for corruption](#), the stifling of dissent or the looming fiscal crisis. Or the fact that he amended the Budget act to provide even greater resources for national defense, demonstrating his preference for the militarization of public security – a marked reversal from policies that have sought to strengthen the National Civilian Police since the end of the civil war.

Nor has the self-proclaimed [“coolest dictator”](#) promoted effective strategies to respond to the fundamental structural crises endemic in the country such as teetering insolvency, poverty, food insecurity and lack of opportunity—or addressed the root causes of why people continue migrating from El Salvador.

As of today, El Salvador’s state of emergency has been prolonged ten times despite the constitutional prohibition. What was exceptional (*estado de excepción*) is now the new normal.

Of equal concern is that other countries are also imposing state of emergencies in response to gang violence or conflict. On December 6, 2022, the [Honduran government of Xiomara Castro](#) imposed a state of emergency for 30 days to fight gang violence and extended it for another 45 days on January 7. Originally only in Honduras' two major cities, Tegucigalpa and San Pedro Sula, the extension has expanded from 235 to 298 of the municipalities. Castro's crackdown on gangs suspends some constitutional rights and allows the security forces to detain a person suspected of committing a crime. Similarly, the [Jamaican government](#) declared a widespread state of emergency (SOE) on December 7, 2022 to fight violent crime. Jamaica has the highest murder rate in the Caribbean. The SOE, also recently extended, allows police to arrest someone or enter a building without a warrant.

The expansion of El Salvador's state of emergency model should not be celebrated but understood as a dangerous trend for the hemisphere.

International Response

The international donor community criticized El Salvador's state of emergency at the start but later response has been muted. In April 2022, [Secretary of State Blinken](#) expressed concern about the violence and the reforms by the Legislative Assembly that censors and criminalizes the press, stating that journalists "must have the freedom to do their jobs without fear of violence, threats or unjust detention." The [UN High Commissioner for Human Rights](#) expressed concern about the decree including the excessive use of force, subjecting detained to inhumane treatment and the weakening of due process guarantees.

No one disputes that a government has the right to respond to gang violence, but the mass incarceration and multiple extensions of the state of emergency has created a humanitarian crisis and closes off avenues for rehabilitation and more sustainable, long-term crime reduction strategies. The human rights of people deprived of their liberty, including the right to physical integrity and freedom from torture and other cruel, inhumane, or degrading treatment or punishment, the right to counsel, and the freedom of the press must be guaranteed.

Policy Recommendations

The U.S. government should:

- Press the Salvadoran government to immediately lift the state of emergency and stop widespread human rights violations.
- Urge the Salvadoran government to respect due process rights of detainees and allow defense attorneys to represent their clients as required by law.
- Take these violations into account in policy decisions on aid, visa sanctions, and certification of whether the Salvadoran government is meeting the human rights and rule-of-law conditions the Congress placed on aid to central governments in northern Central America.
- Express strong concern about the human rights and civil rights violations under the state of emergency via social media, statements, and in conversations with Salvadoran government or embassy officials. In addition, the State Department and Embassy should express concern regarding attacks against and restrictions on journalists and civil society organizations and activists.

- Encourage violence reduction security programs that combine a rights-respecting crime-prevention strategy with a well-designed reintegration strategy, and that tackle the root causes of why young people join by increasing educational and job opportunities.
- As El Salvador enters the 2024 general electoral season, encourage conditions for free and fair elections without fear of reprisals, intimidation or unlawful detention of opposition parties or the media.

Resources:

1. [“‘We Can Arrest Anyone We Want’: Widespread Human Rights Violations Under El Salvador’s ‘State of Emergency.’”](#) Human Rights Watch and Cristosal. December 7, 2022.
2. Lisa Haugaard, Executive Director, LAWG Education Fund. [Written statement](#) for the Tom Lantos Human Rights Commission, U.S. House of Representatives, September 12, 2022.
3. [“A Remedy for El Salvador’s Prison Fever,”](#) International Crisis Group, October 2022.
4. [“Collapsed Government Talks with MS-13 Sparked Record Homicides in El Salvador, Audios Reveal,”](#) El Faro English. May 17, 2022.

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