

# Executive Summary

## One Year Under State of Exception:

A Permanent Measure of Repression and Human Rights Violations



**Cristosal**

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**On March 26, 2022, at 8:04 p.m.**, the president of El Salvador, Nayib Bukele posted to his Twitter account. He ordered the Legislative Assembly to declare a “STATE OF EXCEPTION, under Article 29 of the Constitution of the Republic”. Then, five minutes later, the president of the Legislature, Ernesto Castro, “urgently” summoned “the legislators of all the political parties to an extraordinary plenary session” that very evening at 11:00 p.m.

**The following day, March 27, Decree No. 333 was published establishing the nationwide “State of Exception”.** The decree contained five articles granting full powers “to the institutions of Public Security, the National Civil Police and the Armed Forces of El Salvador, to reestablish order and citizen security and territorial control” (art. 1), and to “suspend the constitutional guarantees regulated in articles 7, 12 second paragraph, 13 second paragraph, and 24, in relation to article 131 ordinal 27, and article 29 all of the Constitution of the Republic” (art. 4). Through another Twitter post, right after the announcement of the approval and publication in the Official Gazette of the decree, President Bukele affirmed that “For the vast majority of people, life goes on as normal”.

But **life did not continue as normal for many people in El Salvador.** More than 13 months have passed since those messages were posted on social media and the state of exception began. The aftermath of these measures continues to impact thousands of Salvadoran men and women whose fundamental and constitutional rights have been violated. Cristosal, despite the paucity of official data, has compiled an extensive number of documents and audio recordings of courageous testimony from victims that serve as evidence of the Salvadoran State’s systematic violation of human rights.

The Bukele administration presented the state of exception as a necessary set of measures to end an unprecedented wave of violence that had claimed the lives of 87 Salvadoran men and women in the three days prior to its implementation. Since then, tens of thousands of people have been arrested with no prior investigation and subjected to torture, cruel, inhuman, and degrading treatment in an already collapsing prison system or prisons created to enforce the regime. The end result is that the terror of the gangs has been replaced by the systematic violence of the State.

### **A Permanent State of Repression and Violations of Constitutional and Human Rights**

The research presented in the report contains both a systematic analysis of the legal implications of the state of exception as well as extensive empirical evidence of the principal human rights violations committed during the first year of its implementation. The majority of direct victims of arbitrary arrests, police brutality, and inhuman prison conditions are from poor families who then become victims within a system that targets and stigmatizes them as well. The systematic elimination of Constitutional

guarantees and human rights protections more broadly make victims of Salvadoran society as a whole. The preponderance of evidence demonstrates that this repression is not a series of isolated events but rather a strategy for control.

### **Punitive Populism and the Propaganda Strategy Behind It**

The first section of the report describes how the state of exception regime is an example of “punitive populism” and of a government propaganda strategy aimed at gaining electoral advantage and consolidating control over the State. This punitive populism, understood as the gaining electoral advantage from the State's punitive policies, is supported by the propaganda machine. Messaging from the highest levels is spread across media created by or financed with public funds. The rhetoric is polarizing, dividing society into opposing camps: good-bad, friends-enemies, us-them. This authoritarian type of populism is a recycling of the “iron fist” policies of previous administrations that spread gang violence at the same time it increased the electoral capital of the political parties in power.

One of the new features of the state of exception, however, is how propaganda is spread using social media to reach large segments of the population. This propaganda emphasizes that the regime is the best anti-crime policy in the history of El Salvador and goes so far as to claim that is a model for the region and the world. But, it doesn't simply focus on the success of the measures, the propaganda messaging goes further. It regularly denies the serious violations of human rights, contributes to the harassment of human rights defenders, manipulates and suppresses the official statistics on the number of violent deaths and other crimes such as forced disappearance and extortion, withholds public information, and places the blame for the serious crime in the country on “political opposition”.

As stated in the report, “the permanent suspension of constitutional guarantees under the state of exception is the only public policy tool implemented by the Bukele administration”. The suspension of rights has also meant ongoing human rights violations under each extension of the regime, with new measures being added that violate the Constitution, the legislation that protects people's rights, and international human rights treaties.

The Bukele administration has also used the number of arrests made during the regime as part of the propaganda strategy. The administration claims that more than 66 thousand people have been arrested during the first year of the regime (and has said publicly that there are 30 thousand more to come). The grounds used for the arrests and methods used to carry them out have been consistently concealed from the media campaigns. Thousands of arrests have been made without prior investigation, grounds for arrests include having a police record, anonymous tip-offs, having tattoos (gang-related or not), for quarrels, to meet arrest quotas, or for living in areas under siege by the gangs. Concealing these aspects of the arrests also obscures the State's responsibility for the incarceration of people who have no links to the gangs (perversely referred to as “collateral damage”) and who have been subjected to all kinds of abuses, including death.

## Evidence of Serious and Systematic Human Rights Violations

As noted in the second section of the report, Cristosal has received 3,275 reports of human rights violations during the first year of the regime, representing 3,403 people. Of this total, 85.5% identified as men and 13.9% as women. 55 people identified as belonging to the LGBTIQ+ community. It is an alarming fact that the largest victim age group is between 18 and 30 years old. This 58.7% of reported victims are of an age in which they are often economic providers for their families. The main perpetrators reported were the National Civil Police (PNC) and the Armed Forces of El Salvador (FAES), who have carried out arbitrary detentions and violated rights of the families of the detained.

Analysis of the cases reveals patterns of arbitrary actions committed during the state of exception: (a) lack of due process, (b) absence of prior investigation before arrests, (c) illegal detentions and cases of double jeopardy, (c) illegal search of the home or domicile, (d) detention based on anonymous allegations, (c) re-arrest of persons who have a court order for their release, (d) arrests based on the existence of criminal or police records, (e) the stigmatization of tattoos, (f) failure to inform families about the place of detention and absence of communication with the families. These practices are part of the policy of repression and terror and because they are systematic and generalized and cannot be seen as isolated behaviors, but rather the result of instructions issued at the highest level of governmental authority.

Victim testimonies demonstrate systematic human rights violations involving **arbitrary arrest procedures**. A young man of twenty recounted how he was apprehended at night from inside his home, to “investigate” him. Like the death squads and security forces that operated during the armed conflict, he was “put in a gray vehicle with private plates” and without telling him why they were detaining him, he was told only that he was “under investigation”.

Another serious violation of rights documented in the report are the number of individuals granted measures as an alternative to pretrial custody, but who were not released. Others were detained immediately upon leaving the prison or are re-arrested while still inside the prison. These are **illegal detentions and cases of double jeopardy**. A young man of 23 reported that "they carry out the release procedure, they search you and everything; but then you go out to the gate, where there is a booth near the entrance of the prison, that is where we saw the police and the guard handed them our papers, and then it was back inside again".

There are also records of cases of people who have been **detained but are still missing**. From the many cases recorded, we conclude that many of these **people have died while in custody** and were buried in mass graves. Without a doubt, the lack of information and the absence of registries of who is being held in custody constitute a deliberate practice of concealment preventing anyone from determining the whereabouts of the detainees and generating uncertainty and suffering for the families. This suffering is compounded when it is a third party who informs the relatives about the deceased family member.

The sister of a 23-year-old man reported that “I was told that a funeral home was asking for me. When we met, they asked me if this was my brother and showed me a photo of him... At that point I became upset. They just told me that he had died. Then they asked me if I wanted them to go and pick up the body. That's when I called my mother, and two more funeral homes came with the same information about him.” A relative of a 53-year-old man who died stated “I was in the field when I came back and found a bunch of girls crying, saying that their dad had died. Four funeral homes came to figure out who was going to pick him up. He was wearing handcuffs and a puncture like with a nail in his eye”.

One of the main findings in the report is that of the investigation into the deaths of people held in custody and their causes. There have been various causes of death, including extrajudicial executions, by action or omission, because of the state responsibility implicit in the care of the body of a person held in state custody. Four categories of have been identified in relations to the causes of death: violent death, probable violent death, natural or pathological death, and suspicious death due to crime. The preliminary data from this investigation reveals that 139 people have died while in state custody between March 27, 2022, and March 27, 2023 (4 are female and 135 are male). The total is likely much higher, however. In the month of April 2023, 14 deaths of individuals in custody were reported, totaling 47 deaths during 2023. That is, **between March 27, 2022, and April 2023, 153 people have lost their lives in state custody under the state of exception.**

There were 30 recorded cases of death in state custody in which "edema" was reported as the cause of death, including 26 cases of pulmonary edema, three cases of cerebral edema, and one case of generalized edema, some of which included evidence of violence committed on the deceased. Similarly, four cases reported that the cause of death was a heart attack, and in two of those cases, medication required for pre-existing health conditions of the detainees had not been administered. There were 17 cases in which the State failed to fulfill its duty to provide adequate medical care or did not dispense the required medication to individuals in custody. In addition, two deaths were reported in which the cause of death was linked to anemia.

The testimonies include the voices of family members of deceased **victims of both gang and state violence**. For example, a 52-year-old man who owned a small store and a corn grinding mill, was being extorted by the gangs and then arrested because he was accused of collaborating with the gangs. This man died of cerebral edema. Another example involves a 30-year-old man who used his car to provide transport and was strangled to death while in detention. The arresting agents told him: “You aren't doing anything wrong, but orders are orders, and if we don't take you, others may come, they could beat you, and your family is here”.

Government authorities have not indicated whether they have opened investigation into any of these deaths. What law enforcement almost always indicates is that these are cases where people died due to an illness or medical condition, although the majority entered the prison system with no pre-existing medical issues. We can deduce that at least 28 people died violent deaths as a result of torture, beatings, strangulation, and injuries, among other causes, all of which were documented by

the Institute of Forensic Medicine (IML) and Cristosal was able to verify that their bodies presented signs of violence.

A 23-year-old man who died on April 18, 2022, showed signs of bruising on various parts of his body, fractures in feet and hands, elongated burn-like sores on his back, which indicate that he may have been a victim of torture. The body was released to the family in a closed coffin. The IML concluded that it was a case of "sudden death". Another 24-year-old man presented a puncture through one of his shoulders. One of the most frequent causes of death described in IML and hospital reports is mechanical asphyxiation.

With regard to **patterns of torture**, a man who was held in the "Mariona" prison reported the following: "[The cell] had sealed windows, made of iron and sealed like a metal can, no air comes in through those windows, the only air that comes in is through the cell door, the ceiling of the cell is made of a cemented structure. I was there until approximately August 25, during that time I saw that about ten people die of asphyxiation, in the cells in front of me I saw that other people died because the guards killed them. The guards would take them out of the cells, maybe because the guards came and the prisoner saw them, they would beat them in the middle of the yard and give them electric shocks".

The **use of torture, cruel, inhuman, and degrading treatment** has been a constant throughout the state of exception. Torture has included beatings and ill-treatment, threats, and even electric shocks. A young man of 24 years old reported that authorities "arrived at about half past four in the afternoon [...], they told them to get down, they pushed them in the entrance area of the prison, and for half an hour on a gravel floor, they could not move with their hands held behind their necks. Their knees began to bleed, the verbal violence from the guards began, calling them gang members and saying: "Come and drink some dirty water, you will never see the sun again". After having them on their knees, they made them walk and then they put them on their knees again, then they stopped him again... Then they took him to the place called "el Barco", there they hit someone with a club because he passed some people and got out of the line, and they hit him again and he got back in line".

**Violations of the right to health** have also been a recurrent issue under the regime. Detainees have been denied medicine, food, or personal hygiene items, which makes the State directly responsible for resulting illness or death. There are reported cases of individuals who have died while being transported to health care facilities. These documented cases indicate that health care for the prison population is absent or appallingly inadequate, exacerbating any pre-existing illnesses while in detention. The unhealthy and overcrowded conditions cause further deterioration in people with chronic diseases and medical conditions, as well as predisposing them to the development of these conditions.

Those detained under the state of exception are subject to extreme overcrowding, insufficient food, medical attention, health services and medicines all of which are **hallmarks of prison conditions considered to constitute cruel, inhuman and degrading treatment**. In addition, they are subject to

torture, beatings, punishments, permanent confinement without access to sunlight; as well as a lack of water for consumption, personal hygiene, use of toilets or to clean their cells. This is a government policy of punishment and terror for those detained under the state of exception which impacts the entire Salvadoran population.

The Center for the Confinement of Terrorism (CECOT) was inaugurated with extensive media coverage. A video with features of an action-horror movie was released to publicize the completion of the construction of the CECOT and it has been described, with great pride, as the largest prison in the Americas. In a country like El Salvador, where education and public health are insufficient, the construction of a prison camp like the CECOT is a theatrical show of power to demonstrate strength, rather than resolving underlying issues, such as the need to build universities or hospitals. On top of that, procurement criteria for the construction of this prison facility have been concealed. This is evidence of another aspect of the state of exception: **the ability to use public funds without any oversight, through laws that open the doors to corruption.**

The CECOT does not represent anything new in terms of prison management in El Salvador. Between 2015 and 2019, nine penitentiary facilities were opened, continuing and deepening a model of an excessively punitive penal system where "maximum security" prisons have always been a priority. The CECOT is a scaled-up version of an old strategy of punishment that has dominated El Salvador for more than two decades and is now being used as a propaganda tool to legitimize the state of exception.

### **Situation of Women, Children, and Adolescents**

The report also includes an analysis of the situation of **women, children, adolescents and the LGBTIQ+ community under the state of exception.** One finding reveals the central role of women during the regime: 80% of the reports Cristosal received were filed by women. As the full report shows, women are responsible for searching for their detained relatives, providing food and medicine and, at the same time, for maintaining relationships with children and adolescents who have been abandoned when their fathers or mothers are detained. These women have experienced a deterioration in their living conditions, as portrayed in the report.

Women have been adversely affected in different ways under the regime, which can be classified as: a) Loss of economic means of subsistence for themselves and their dependent family members (sons and daughters and the elderly); b) deterioration of living conditions for women who were economically dependent on the detained family member; c) added responsibilities for child-rearing and care, particularly for elderly women, generally mothers and grandmothers of detainees without financial resources left in charge of young children; d) reduction of income because of the time invested in determining the whereabouts of their relatives, collecting documentation, and visiting the offices of the police, the public defender, and the prisons; e) negative impacts on physical, emotional and mental health; f) loss of a personal development plans, primarily when they give up their studies or lose their businesses or jobs to devote themselves to caregiving tasks and the search for justice for their detained family members.

Women who have been incarcerated during the regime have given testimonies of their experiences that reveal the inhumane and degrading conditions. These measures "violate their dignity, privacy, physical, psychological and sexual integrity, and rights to health and food". According to witness accounts, the number of women killed during the regime may be more than the four reported. A woman who was imprisoned in the women's prison outside of San Salvador described that: "... In some cells in the lower part of the prison there were thousands of women sleeping on the floor, without mattresses, without blankets, and since it was the rainy season, they got wet at night... And because there was no medical attention, I saw an old woman of 50 or maybe 56 years old die. I dare say it was a kind of pneumonia... Because she was sleeping on the floor and she started coughing, had a fever and finally was at the point where she couldn't breathe, when they removed her from the cell to take her to the health clinic... And the next day they told her daughter who was also there with us that her mother had died".

Within this context of violence against the women in custody, **prison staff have played a major role in perpetrating abuses**. It is likely, for example, that men have been hired have no specialized training to deal with women. A woman who was held in the Apanteos prison in the Western part of the country reported the following: "So when we arrived there, most of the guards were men. The guards in the fase de confianza [low-security area reserved for trusted inmates] were men, the cooks were men. There were women, but when it was time for the night shift, for example, there would be two men and one woman. When it was time to bathe, there were only female guards. But otherwise, most of the time they were men".

In addition, these women never received the food packages and medicines that their relatives had brought them, meaning their rights to food and health also were violated. Lesbians suffer further discrimination and mistreatment. According to testimonies, these women were sent to torture cells or were beaten. Other testimonies mention the use of pepper spray thrown at the women during the night. The above abuses are a serious setback in compliance with special legislation in El Salvador and international treaties regarding the protection of women.

Children and adolescents have also suffered different types of violence. Paradoxically, the legislation aimed at child development] called the "Growing Together Act" which has been hailed as a great success by the government, has not been enforced. Adolescents also face the disruption of their life plans because they must take on responsibilities not appropriate for their age, such as providing food and basic services for their families as well as other responsibilities, and they were often forced to drop out of school.

### **Judicial Reforms and Loss of Fundamental Guarantees**

Another aspect of the human rights violations committed under the state of exception involves the dismantling of judicial guarantees and due process through the reforms made to **criminal justice**



**legislation. This has resulted in a body of criminal justice legislation based on an internal “enemy” to security and the state** and a lack of constitutional oversight.

The report concludes, precisely, with a technical-legal analysis of the list of reforms to the penal code designed to dismantle judicial guarantees. Starting with the reforms passed between April and March 2022, the report highlights the increase in sentences; the abolition of opportunities for benefits such as alternatives to pre-trial detention; the extension of administrative and pre-trial detention periods; the power to impose prison sentences on children and adolescents prosecuted as adults; the power to hold trials and impose sentences without the accused being present; secret identity of judges and judicial officers involved in the proceedings ("faceless judges"); the retroactive application of the reforms; and the power to validate second-hand testimony and substitute it for direct witnesses.

Measures were subsequently established to criminalize the work of journalists and special regulations were issued for the acquisition of public goods and services. As has already been mentioned, this last measure fosters corruption by bypassing the controls and transparency required in the management of public funds. A second block of reforms, enacted between September-November 2022, reformed the Criminal Procedural Code, the Telecommunications Law, the Law against Organized Crime, and the Organic Law of the Judiciary. These reforms demonstrate a regression in the criminal justice system led by the regime's judges. Cristosal has filed three lawsuits of unconstitutionality challenging some of these reforms; but as of the closing date of this report, none of these lawsuits have been settled.

One year into the state of exception, these reforms to criminal law have repealed, nullified, or curtailed judicial guarantees far beyond the limits allowed by the Constitution and the American Convention on Human Rights. Furthermore, these reforms have opened the way for judges and prosecutors to engage in arbitrary practices which are serious human rights abuses. Some of these practices involve actions or omissions that could be considered crimes.

### Conclusions

Cristosal concludes after one year under this regime, which is no longer exceptional, that this is a state policy designed to be punitive and that it has seriously and systematically violated human rights. It has become a regime of terror. It has normalized the use of torture, cruel, inhuman, and degrading treatment of people arrested under the regime, and this escalating violence is part of a deliberate policy of retribution driven by President Nayib Bukele himself and the officials who make up the security cabinet. The messages and orders that are repeated in public speeches, social media and commercial spots are adopted and executed by the authorities and prison staff, with the complicity of the Attorney General's Office, which fails to investigate reports of violence and deaths inside the prisons.

As Cristosal has pointed out in previous reports, the systematic perpetration of these human rights violations as public policy issued at the highest level, directed at a specific segment of the population (mostly young, poor people living in high-crime communities), constitute crimes against humanity under international law.