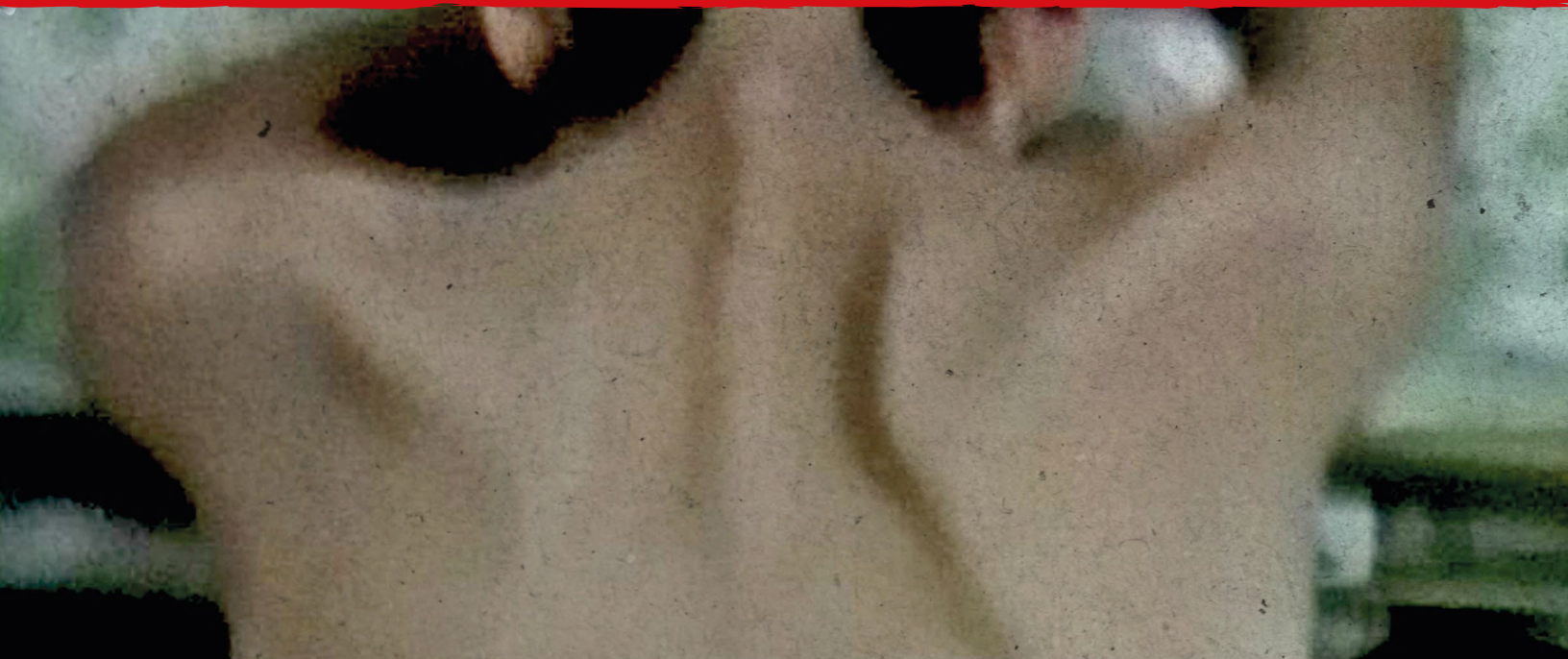




One Year
Under the State of Exception:
A Permanent a Measure of Repression and Human Rights
Violations



One Year Under the State of Exception:

A Permanent a Measure of Repression and Human
Rights Violations

Situation Report: March 27, 2022 - March 27, 2023

***The images on the cover have been provided by relatives of victims who, having been arbitrarily detained during the state of exception, died without trial due to inhumane conditions and torture in El Salvador's prisons.**

San Salvador, May 12, 2023

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Introduction

The reason for the division, according to Mons. Romero, are people “who are obstinate in their capricious way of thinking, [who] want to build peace on the basis of injustice, on selfishness, on repression, on violations of rights”.

Homily of August 14, 1977

One year after the beginning of the state of exception, which the Legislative Assembly decreed on March 27, 2022, it is clear that there are serious contradictions in the intent of the measure: both its permanent nature, which lacks legitimacy and has no constitutional basis, and, especially, its impact on the human rights of thousands of Salvadoran families. This is in contrast with the popularity of the measure and the official discourse leading people to believe the measure is a necessary solution to put an end to gangs.

The report presented here, the product of systematic analysis of the information Cristosal has gathered through monitoring of the situation and the invaluable testimonies of the victims, highlights how irrational and inhumane the application of the measure has been in the face of human pain. As the quote from Monsignor Romero says, it is the result of the obstinacy of those who think that peace can only be built with the trampling of rights.

During this year, the absence of a public security policy has become obvious, as it has been limited only to the regime of exception used as a model for punitive populism. This strategy has dismantled judicial guarantees and eliminated the independence of judicial authorities, so that the majority of arrests are carried out without any previous investigation, and without regard to the fact that thousands of people detained are not linked to gangs.

Added to the lack of transparency in the process are the negotiations with gangs, failure to inform family members, the secrecy, concealment, and alteration of data on homicides and extortions statistics (and even information about the construction of the so-called largest prison in the world). It becomes clear that the whole scenario does not fit with the government's claims attempting to see it as a successful model for combating crime.

As has been presented in previous reports, this document outlines the principal patterns of human rights violations that occurred during the first year in which the state of exception was in effect. There are two sections depicting the serious and painful ordeal many families have lived through: prison conditions and the initial findings on the deaths of people in State custody. The identities of the victims have been withheld for security reasons. We are grateful to the families and victims for their contributions to this report, and to the organizations that support them and have provided information.

I. The state of exception is a permanent policy of repression, violation of human rights and the Salvadoran Constitution

March 27th marked the first anniversary of the implementation of the state of exception regime in El Salvador. It is a security measure based on repression which includes massive arrests without previous investigation and the systematic and continuous violation of the fundamental rights of detainees and their families. The implementation of this measure has been accompanied by an intense national and international publicity campaign promoting the image of President Nayib Bukele with the so-called "war against gangs", the purported dismantling of gang structures and the reduction of homicides in the country. The government claims that within one year of the state of exception regime, it has made 66,417 arrests.¹

The Legislative Assembly has approved twelve extensions to Decree No. 333 of 2022, which regulates the state of exception. The last one, Decree No. 687², which like previous ones, suspends the right to be informed of the reasons for arrest and to not be forced to testify and to have immediate access to legal defense, increases the period for administrative detention to 15 days, and renders void the guarantee of privacy of correspondence and telecommunications (arts. 12, paragraph 2, 13, paragraph 2 and 24 of the Constitution)³.

This is a permanent suspension of these rights and guarantees, as well as of other rights not formally suspended under this regime, including the presumption of innocence and the sanctity of the home. The suspension includes the entire Salvadoran population -although it has been applied exclusively to people in conditions of poverty-. Moreover, we are looking at an ongoing violation of the rule of Art. 30 of the Salvadoran Constitution which dictates that the suspension of constitutional guarantees cannot exceed 30 days, "which may be extended for an additional 30 days if the circumstances that originated it continue." In other words, the extension can only be made once.

As has been previously reported, the Legislative Assembly (LA), has committed constitutional violations with the approval of Decree No. 333 and its extensions because it violated the principles of democracy, pluralism, publicity, contradiction, free debate, and discussion (Articles 85 and 135 of the Constitution, paragraph b). Even though they were approved by an extraordinary, qualified majority (three quarters of the total number of legislators), the decrees were not discussed and substantiated prior to their approval. The extension decrees approved since September 2022 (No. 476 and following) are not in substance extensions of Decree No. 333, because the content of the latter was altered when it repealed the suspension of the right of assembly and association. Neither is there any objective reason to justify the extension of the regime as required by Article 29, paragraph 1 of the Constitution: "... cases of war, invasion of the territory, rebellion, sedition, catastrophe, epidemic or other general calamity, or serious disturbances of public order...". On the contrary, in the preamble of each of the decrees, there is mention of the increase of arrests as a result of enforcing the regime and a reduction in the number of homicides.

¹ Ministry of Justice and Public Security, "El régimen de excepción no fue una decisión fácil ni antojadiza", March 27, 2023, <https://www.seguridad.gob.sv/el-regimen-de-excepcion-no-fue-una-decision-facil-ni-antojadiza-gustavo-villatoro-ministro-de-seguridad/>.

² Legislative Decree 687, March 15, 2023, published in the Diario Oficial. 52, T. No. 438, March 15, 2023.

³ As of the fifth extension of Decree No. 333 - Decree No. 476, approved on August 16, 2022 - the suspension of the rights of association and assembly (Article 7 of the Salvadoran Constitution) was not included.

The first decrees that extended the regime (April-September) claimed - as one of the justifications - that the approval was allowed by Article 27 of the American Convention on Human Rights (ACHR). However, while this provision admits the possibility that States may adopt a suspension of guarantees in “times strictly limited to the demands of the situation”, the same article clarifies that in such a case, the Convention “does not authorize the suspension of certain rights or of the judicial guarantees essential for the protection of such rights”.

The Inter-American Commission on Human Rights (IACHR) has been categorical in its consultative opinion OC-9/87, in which it held that habeas corpus, amparos or “any other effective remedy before the appropriate judges or courts (art. 25.1), designed to ensure respect for the rights and freedoms the suspension of which is not authorized by the Convention must be considered as indispensable judicial guarantees not subject to suspension”; also “those judicial procedures inherent to the representative democratic form of government” may not be suspended. Likewise, the guarantees mentioned must be “exercised within the limits of and in accordance with the principles of due process of law, as set forth in Article 8 of the Convention”.⁴ However, this was deleted from the following extensions (October 2022 onwards).

The ruling of unconstitutionality (21- 2020AC of June 8, 2020) has been misrepresented as well, arguing that this precedent set forth the terms of legitimacy related to the extension of the state of exception regime referred to in art. 30 of the Constitution, specifically by holding that “the suspension is not limited to a single time, nor in any way should it be understood that successive extensions are prohibited, because these are admissible as long as the circumstances that motivated the suspension of rights continue, and as long as there is an extraordinary need for the state of exception regime”. Contrary to the position of the legislators, the referenced judgment sets a precedent establishing clear limits for the renewal of the state of exception regime, limits that the Legislative Assembly has violated by not showing the continuance of the circumstances that motivated the suspension of constitutional rights, nor providing justification for the “extraordinary need” for its prolongation.

The prolongation of the state of exception in El Salvador, has become indefinite, thus constituting a violation of articles 30, 85, 131, section 27, and 135, paragraph b, of the Salvadoran Constitution.

1.1 Lack of comprehensive security, prevention, criminal investigation, and social reintegration policies.

On June 20, 2019, President Nayib Bukele announced the “Territorial Control Plan” presenting it as the government’s security strategy, which would be implemented in several phases; however, beyond the announcement of each of these phases, the content of said plan has not been published⁵ and was declared under reserve for seven years. The government attributes the abrupt decline in homicides to this plan that occurred as of the month following its announcement. However, as developed below, it is known that these results are more linked to an illicit negotiation between the government and Salvadoran gangs.

Even though the National Public Security Policy was approved in 2021, this brief nine-page instrument does not govern the actions of the institutions responsible for security in the country. It lists the following strategic pillars: crime prevention and control; Social crime prevention and reconstruction of the social fabric; institutional modernization; access to and administration of justice; rehabilitation and social reintegration. The document mentions a system of indicators for monitoring and evaluation, but it does not develop any of them. Neither the Institutional Strategic Plan of the Ministry of Justice, nor the operational plans of the National Civil Police (PNC)

⁴ Cristosal, “Violaciones a los derechos humanos durante el régimen de excepción en El Salvador. Informe situacional período de junio a septiembre de 2022”, 19 de octubre de 2022, <https://cristosal.org/wp-content/uploads/2022/10/4Cuarto-Informe-Situacional-sobre-DDHH-durante-el-re%CC%81gimen-de-excepcio%CC%81n.pdf>.

⁵ Phases of the Territorial Control Plan: 1) Territorial Recovery; 2) Opportunities; 3) Modernization; 4) Incursion; and 5) Extraction of criminals, this last phase was announced in November 2022.

are governed by this policy, despite reporting results attributed to the Territorial Control Plan; however, their actions and results are very similar to those reported by the previous administration: intervention in municipalities with the highest crime rates, patrols, arrests, seizures of firearms, among others. In other words, no substantial difference is evident in police operations prior to the approval of the exception regime, and the strategies in the operational plans do not include any difference that could explain such a significant drop in crime in the country based solely on its application.

It is evident that the permanent suspension of constitutional guarantees under the figure of the exception regime is, for now, the only public policy tool implemented by the government of President Nayib Bukele in terms of security; this has been acknowledged in the recitals of the decrees: “The continuity of the extraordinary measures referring to the rights established in articles 12, paragraph 2, 13, paragraph 2 and 24 of the Constitution are still necessary to carry out the appropriate operational actions and to continue providing security against the threat of criminal organizations and their members; who, although weakened thanks to the actions of the security forces, still have members and leaders who have fled the country, modified their modes of operation and hidden their identity, to avoid being captured for their crimes.... “

The strategy is simple: mass arrests without prior investigation. Thousands of people have been detained and are being held in custody for having been previously filed by the PNC; or for being reported through anonymous calls; or for being tattooed; for personal quarrels and to meet the detention quotas required by the police and the Armed Forces of El Salvador (FAES); and for having served a sentence for crimes that are commonly attributed to gang members.

1.1.1 Comprehensive prevention and re-socialization are absent from the government’s security strategy

Without exception, every security policy must include actions that cause an impact on the set of social, economic, political, and cultural factors and conditions that determine conflicts, acts of violence and crimes. In this context, primary, secondary and tertiary prevention become essential elements of an effective and sustainable security policy, with less economic and social costs than repressive responses.

However, it is evident that prevention, victim assistance, social insertion, and rehabilitation are not part of the security strategy of the current Government. Although the Territorial Control Plan includes Social Prevention in phase II, there are no documents showing the content, focus, actions or goals in this area. The Department for the Rebuilding of Social Cohesion - whose director, Carlos Marroquín, has been accused of being one of the main people behind the negotiations between the government and the gangs⁷ - has only reported actions in the area of prevention by means of the Urban Centers for Wellbeing and Opportunities (CUBOS),⁸ according to the MJSP. As of 2022, there were 5 “CUBOS” in operation, serving 64,457 people. In January 2023, 6 more CUBOS⁹ were inaugurated, making a total of 11, even though President Bukele announced that 64 would be built.¹⁰

⁶ The Ministry of Justice and Public Security's annual reports under the current administration and the previous administration show results using the same indicators; these are not different strategies different from those previously implemented, which is evident when comparing the 2021-2022, 2020-2021 reports with those issued in 2017-2019 and 2018-2019, although the latter was presented by the current administration, the period reported on is from the previous administration.

See: <https://www.transparencia.gob.sv/institutions/mjssp/documents/memorias-de-labores>

⁷ Carlos Martínez, Gabriela Cáceres y Óscar Martínez, “Gobierno de Bukele negoció con las tres pandillas e intentó esconder la evidencia”, El Faro, 23 de agosto de 2027, https://elfaro.net/es/202108/el_salvador/25668/Gobierno-de-Bukele-negoci%C3%B3-con-las-tres-pandillas-e-intent%C3%B3-esconder-la-evidencia.htm

⁸ Ministry of Justice and Public Security (2022).

⁹ Government of El Salvador, "Presidente Nayib Bukele afirma que crean condiciones para que el problema de las pandillas no vuelva a ocurrir", Presidency of the Republic, January 17, 2023, <https://www.presidencia.gob.sv/presidente-nayib-bukele-afirma-que-crean-condiciones-para-que-el-problema-de-las-pandillas-no-vuelva-a-ocurrir/>.

¹⁰ Government of El Salvador, "Se construirán 64 CUBOS en diferentes comunidades del país como parte del Plan Control Territorial y las políticas de prevención de la violencia", Presidency of the Republic, July 21, 2021, <https://www.presidencia.gob.sv/se-construiran-64-cubos-en-diferentes-comunidades-del-pais-como-parte-del-plan-control-territorial-y-las-politicas-de-prevencion-de-la-violencia/>.

In terms of victim assistance, the Ministry of Justice and Public Security reported that services were given to 4,976 victims of violence,¹¹ in both cases the coverage is extremely limited; no link exists with social programs aimed at dismantling the factors and conditions that generate violence.

The foregoing is confirmed upon analyzing the MJSP's budget allocation and execution for prevention, care for victims, and social reintegration and rehabilitation programs.¹²In 2021, the budget allocated for the first two was reduced, and the execution of the budget in reinsertion and rehabilitation was only 0.88%. By 2022, although the budget for prevention programs and victim care was increased, the execution of the prevention budget did not reach 29% and less than 35% of the budget was allocated to victim care. Even though \$9,335,480.00 was assigned for reinsertion and rehabilitation, the budget amount was not actually spent on this area.

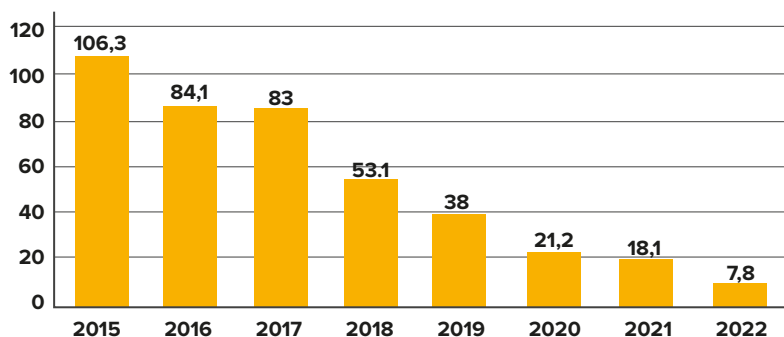
Table 1: MJSP Budget Implementation						
Budget Categories	January to December 2021			January to May 2022		
	Voted on	Amended	Accrued	Voted on	Amended	Accrued
Special Prevention Programs	\$1,237,610.0	-\$92,626.10	\$1,144,687.90	\$2,035,110.00	\$234,669.41	\$644,073.03
Comprehensive Victim Assistance	\$139,510.00	-\$51,936.38	\$87,571.16	\$154,467.00	\$44,090.62	\$69,204.74
Investment development for reinsertion and rehabilitation	\$13,112,590.00	\$5,499,062.98	\$163,745.52	\$9,335,480.00	\$0.00	\$0.00

Source: based on data obtained from the MJSP's Annual Report for the period June 2021 to May 2022.

1.1.2 Data tampering and concealment of homicide figures

Although the decrease in serious crimes—mainly homicides in recent years—is relevant and reassuring for the Salvadoran population, it is important to note that since 2016 there has been a continually drop in homicides in the country, which remained constant until mid-2019 and then was followed by a dramatic decrease starting in July of that year, allegedly due to negotiations between the government and the gangs. This scenario followed until March 2022, when 87 people were executed, allegedly by gang members, causing the breakdown of that negotiation. According to figures published by the PNC, in 2022 there were 495 homicides, and the homicide rate per 100,000 inhabitants went from 18.1 in 2021 to 7.8 in 2022¹³, as shown in the following graph:

**Graph 1:
Annual Homicide Rate**



Source: from data of the PNC. As of May 2021,¹⁴ skeletal remains found were excluded from the government's daily violent deaths data, as they were supposed to have occurred in other years; deaths caused by the PNC and the FAES were also no longer reported as homicides.

¹¹ Ministry of Justice and Public Security (2022).

¹² Ministry of Justice and Public Security (2022).

¹³ National Civilian Police, Accomplishments and Annual Report 2022. Retrieved from <https://www.pnc.gob.sv/logros-y-memorias>.

¹⁴ David Bernal, "Autoridades decidieron excluir personas halladas en fosas clandestinas de cifras de homicidios," La Prensa Gráfica, November 11, 2021, <https://www.laprensagrafica.com/elsalvador/Mesa-Tecnica-decidio-excluir-osamentas-de-cifras-de-homicidios-20211110-0090.html>.

In its most recent report, the University Observatory of Human Rights of the Central American University (OUDH) reports that in 2022 the PNC registered a total of 171 armed confrontations, resulting in 82 deaths of people classified by the authorities as gang members. This figure is higher than in 2021, when 105 armed confrontations were reported, resulting in 49 deaths.¹⁵ Therefore, it is not possible to compare the record of violent deaths or homicides that occurred before 2020 with those recorded by security forces in 2021 and 2022 meaning there is no reliable number for the actual drop in homicides.

In recent years, as part of a policy of concealing what should be public information, data on missing persons has been withheld from institutional sources. This could have an impact on the numbers of violent deaths or homicides. The PNC declared that detailed information on homicides, disappearances, people incarcerated, among others, is confidential, according to resolution PNC/DG/COP.11-A-001-05-2022.¹⁶ In 2023, the FGR stated, in response to a request for disaggregated information on missing persons, that the information did not exist.¹⁷ For these reasons, it is not possible to identify how many of the people reported missing have been victims of homicide.

Government figures also mask the levels of extortion which, even during the state of exception, showed an increase of 3% from January to September 2022 compared to the same period in 2021. The crime of burglary also increased by 2 percentage points¹⁸; However, neither of these crimes is included in the annual reporting on crime from the PNC.¹⁹

The Magazine Elementos revealed in its March edition that “Secret reports prepared by the Intelligence Department of the National Civil Police (PNC) show that the government lied about the number of murders from the beginning of the state of exception: the figures were reduced by almost half”.²⁰ According to Elementos, with information obtained from official documents leaked by the organization Distributed Denial of Secrets (DDoSecrets), through the hacker group Guacamaya, in April 2022, it was not 22 people who were killed, but 38, in addition to 12 cases of gang members who supposedly died in confrontations with police. It is also reported that in the same month, 45 people disappeared and their cases were not solved.

The same issue allegedly occurred again in May of that year, when the government reported 17 homicides, but the leaked documents reveal that there were 29 homicides that month. It is also alleged that 79 persons were reported missing in the same month, but the government did not report them.

Both the exclusion of records and the concealment of the number of homicides and missing persons create an important variation in the figures presented by the government. The fact that the government has declared data on homicides and other crimes as confidential makes it clear that this is a case of data and statistics manipulation in favor of the government.

1.2 Illicit Negotiation between the Government and Gangs

Negotiations between political parties and governments with gangs have been a constant in recent decades in El Salvador. Political parties have offered reduced security measures in the prison system, reinsertion programs and softer laws to ensure the votes of gang members and their collaborators, as well as to be able to carry out their electoral campaigns and enter gang-controlled territories. Different administrations have negotiated concessions in prisons, offered reinsertion programs, and paid gangs in exchange for a drop in homicides and their electoral support.

¹⁵ University Observatory of Human Rights of the Central American University (OUDH), Annual Report 2022: El estado de los derechos humanos en El Salvador (San Salvador: Universidad Centroamericana José Simeón Cañas, 2022), <https://oudh.uca.edu.sv/cms/publicaciones?lang=es>.

¹⁶ National Civil Police, Índice información reservada enero-20-octubre (2022), <https://transparencia.pnc.gob.sv/download/indice-de-informacion-reservada-ene-20-jun-2022>.

¹⁷ University Observatory of Human Rights (OUDH), Informe anual 2022: El estado de...,5.

¹⁸ USAID-PNUD-INFOSEGURA, Resumen de situación sobre seguridad ciudadana en El Salvador. Enero-diciembre 2022, 28 de febrero de 2023, <https://infosegura.org/sites/default/files/2023-03/OP-SLV-2022-ESP.pdf>.

¹⁹ See: Ministerio de Justicia y Seguridad Pública, Memoria de Labores (junio 2021-mayo 2022), <https://www.transparencia.gob.sv/institutions/mjssp/documents/memorias-de-labores>.

²⁰ Luis Canzales, “Informes confidenciales PNC comprueban que gobierno ocultó homicidios durante régimen de excepción”, Elementos, 28 de marzo de 2023, <https://revistaelementos.net/miscelanea/informes-confidenciales-pnc-comprueban-que-gobierno-oculto-homicidios-durante-regimen-de-excepcion/>.

In the last two decades there have been drastic drops in the number of homicides, which were linked to illicit negotiations between the different administrations and the gangs. In the period from 2012-2014, during the administration of Mauricio Funes, there was an unprecedented reduction: the rate per hundred thousand inhabitants dropped from 70.7 in 2011 to 41.8 in 2012, and to 40.4 in 2013. The government attributed this reduction to an alleged “truce between gangs”; however, journalistic investigations²¹ revealed that the government negotiated the reduction of homicides with the gangs, by releasing 30 gang members from the maximum-security prisons and taken to lower security facilities as well as other benefits granted by the government to gang leadership. The FGR confirmed this negotiation and is currently prosecuting former President Mauricio Funes, the former Minister of Justice and Security, David Munguía Payes, and others.²²

Both the press²³ and the FGR²⁴ documented the negotiations of government officials with gangs between 2014 and 2016 during the Salvador Sánchez Cerén administration. Members of the ARENA and FMLN political parties were also involved, for which several former government officials are being prosecuted. This is not a practice exclusive to the then-majority political parties, it has also been practiced by other political parties in order to win voters for legislators and mayors.

1.2.1 Negotiation between Nayib Bukele and members of his government with the gangs: internal investigations

In September 2020, former Attorney General of the Republic, Raúl Melara, stated in a press interview that he would open a criminal investigation for “the possible negotiation” between the government of President Bukele and the gangs.²⁵ These statements came after the digital newspaper, El Faro²⁶ published a report in which official documents were revealed recording negotiations between government officials and imprisoned MS-13 leaders aimed at reducing homicides. This had been going on since June 2019. These negotiations included granting prison benefits and obtaining electoral support for the Nuevas Ideas party in 2021. According to the article, the General Director of Prisons, Osiris Luna Meza, and the Director of Social Fabric, Carlos Marroquín, reportedly met with gang leaders in two maximum security prisons for such purposes.

Later investigative reporting documented that this negotiation included representatives of the country’s three main gangs: “In 2020, the government of President Nayib Bukele held negotiations with members of the three main gangs in the country who were in maximum security prisons, to ensure that the number of murders in El Salvador continues its historic decline. In exchange, the three organizations - considered terrorist groups under Salvadoran law - Mara Salvatrucha-13, Barrio 18 Revolucionarios and Barrio 18 Sureños, put forward a series of demands that included improved prison living conditions and benefits for their members on release.”²⁷

Between September 9 and 10, 2020 the FGR conducted a search and seizure in the offices of the Prison authorities (DGCP) and the Maximum- Security prisons of Zacatecoluca and Izalco.²⁸ It later became known as

²¹ Carlos Martínez, Gabriela Cáceres y Óscar Martínez, “Gobierno de Bukele negoció...”, <https://www.elfaro.net/es/201203/noticias/7985/>

²² Fiscalía General de la República, “FGR ordena la captura del exministro de Defensa David Munguía Payés”, Prensa, 24 de Julio de 2020, <https://www.fiscalia.gob.sv/fgr-ordena-la-captura-del-exministro-de-defensa-david-munguia-payes/>; y Fiscalía General de la República, “Fiscalía presentó requerimiento contra miembros de partidos políticos por Fraude Electoral y Agrupaciones Ilícitas”, Prensa, 2 de febrero de 2020, <https://www.fiscalia.gob.sv/fiscalia-presento-requerimiento-contra-miembros-de-partidos-politicos-por-fraude-electoral-y-agrupaciones-ilicitas/>.

²³ Juan Martínez d’Abuissou y Carlos Martínez, “FMLN ofreció a las pandillas un programa de créditos de 10 millones de dólares”, Revista Factum, 29 de octubre de 2016, <https://www.revistafactum.com/fmln-ofrecio-a-las-pandillas-un-programa-de-creditos-de-10-millones-de-dolares/>.

²⁴ Fiscalía General de la República, “La FGR presentó dictamen de acusación en contra de exfuncionarios, por los delitos de Agrupaciones Ilícitas y Fraude Electoral”, Prensa, 24 de Junio de 2021, <https://www.fiscalia.gob.sv/la-fgr-presento-dictamen-de-acusacion-en-contra-de-exfuncionarios-por-los-delitos-de-agrupaciones-ilicitas-y-fraude-electoral/>

²⁵ Beatriz Calderón, “Fiscalía investigará supuestas negociaciones entre Gobierno de Nayib Bukele y pandillas”, La Prensa Gráfica, 4 de septiembre de 2020, <https://www.laprensagrafica.com/elsalvador/Fiscalia-investigara-negociaciones-entre-Gobierno-de-Nayib-Bukele-y-pandillas-20200904-0018.html>.

²⁶ Carlos Martínez, Óscar Martínez, Sergio Arauz y Efrén Lemus, “Gobierno de Bukele lleva un año negociando con la MS-13 reducción de homicidios y apoyo electoral”, El Faro, 3 de septiembre de 2020, https://elfaro.net/es/202009/el_salvador/24781/Gobierno-de-Bukele-lleva-un-a%C3%B1o-negociando-con-la-MS-13-reducci%C3%B3n-de-homicidios-y-apoyo-electoral.htm.

²⁷ Carlos Martínez, Gabriela Cáceres y Óscar Martínez, “Gobierno de Bukele negoció...”, <https://www.elfaro.net/es/201203/noticias/7985/>.

²⁸ General Prosecutor’s Office, “Fiscalía inició investigación en torno a noticias sobre posibles negociaciones con pandillas”, Prensa, 10 de septiembre de 2020, <https://www.fiscalia.gob.sv/fiscalia-inicio-investigacion-entorno-a-noticias-sobre-posibles-negociaciones-con-pandillas/>.

the “Cathedral Case” named by the Prosecutor’s Office. The former head of the Anti-Corruption Unit of the FGR, German Arriaza, told Reuters that: “his team compiled documentary and photographic evidence that the Bukele government reached an agreement with [the] Mara Salvatrucha (MS-13) and Barrio 18 gangs in 2019 to reduce murder rates and help the ruling Nuevas Ideas party win the legislative elections in February.”²⁹

The former attorney general stated that his unit began the investigation in 2020 and produced a report based on “wiretaps, security camera footage, photographs, seized documents and hard drives, which he said showed how the vice-minister of Justice, Osiris Luna, and Carlos Marroquín visited the prisons to negotiate an undercover truce with the gangs”.³⁰

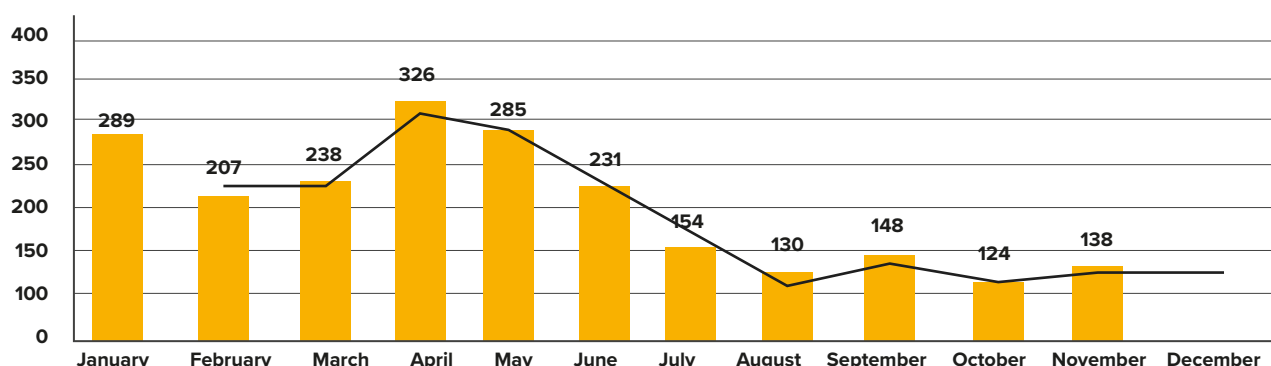
The newly elected attorney general, Rodolfo Delgado, closed this investigation just a few days after his unconstitutional appointment.³¹ He also transferred Arriaza on May 5th, 2021 which cut off his access to the files under investigation. Several of the prosecutors that made up the Special Anti-Mafia Group (GEA) of the Anti-Corruption Unit of the Attorney General’s Office were forced to leave the country, among them German Arriaza.

The General Director of Prisons tried to erase the evidence of these negotiations, an action documented by the FGR in the “Cathedral” case investigation. According to El Faro, “on September 5, 2020, Osiris Luna showed up at the Zacatecoluca prison accompanied by “IT personnel from the DGCP”. They entered at 18:45 to “remove hard drives from computers” and to “change disks”. These disks not only contained the videos of people leaving and entering the prisons, but also stored other types of information, such as images of wiretapped videos that the gang members intended to send to their street structures.”³²

As happened during the government of Mauricio Funes, the government of Nayib Bukele also saw a drastic reduction in homicides as a result of illicit negotiations with gangs, which was investigated and documented by the Attorney General’s Office; however, in the latter case, the prosecutorial investigation was suspended immediately after the appointment of the current Attorney General, Rodolfo Delgado.

As shown in the following table, between June and July 2019 there was a 44.1% decline in the number of homicides recorded per month (231 were recorded in June and 154 in July), from that date on, the rate decreased steadily in the subsequent months.

Graph 2: Homicides 2019



Source: Based on data obtained from Infosegura 2019.

²⁹ Sarah Kinoshian, “EXCLUSIVE Salvadoran ex-prosecutor says government quashed probe into pact with gangs”, REUTERS, 28 de diciembre de 2021, <https://www.reuters.com/world/americas/exclusive-salvadoran-ex-prosecutor-says-government-quashed-probe-into-pact-with-2021-12-28/>.

³⁰ Sarah Kinoshian, “EXCLUSIVE Salvadoran ex-prosecutor...”, <https://www.reuters.com/world/americas/exclusive-salvadoran-ex-prosecutor-says-government-quashed-probe-into-pact-with-2021-12-28/>.

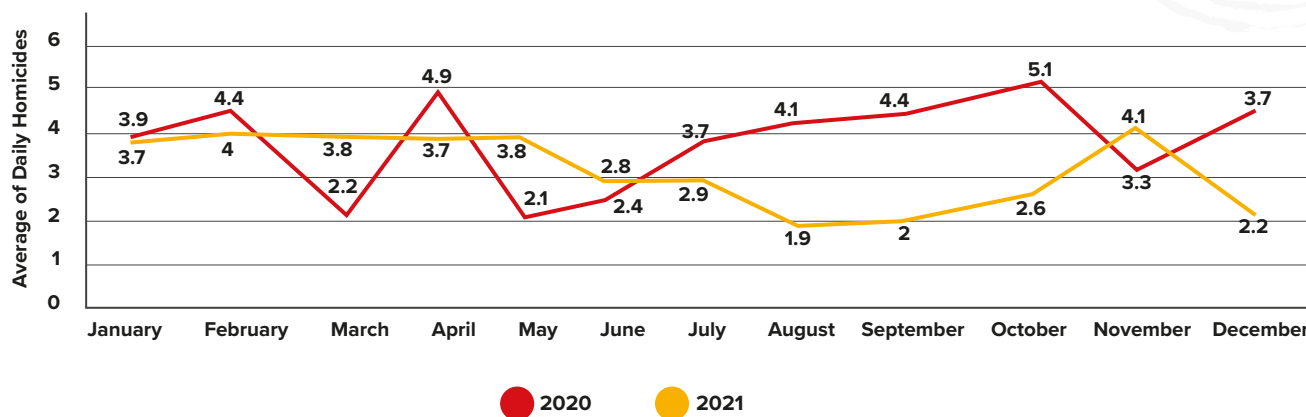
³¹ On May 2nd of 2021, The Legislative Assembly dismisses the Attorney General of the Republic, Raul Melara and appointed Rodolfo Delgado in his place, without meeting the requirements established by the Constitution of the Republic.

³² Carlos Martínez, Gabriela Cáceres and Óscar Martínez, “Gobierno de Bukele negoció...”, <https://www.elfaro.net/es/201203/noticias/7985/>.

The downward trend continued in the years 2020, 2021 and 2022, with three considerable increases, occurring in the months of April and October 2020; for example, between April 24 and 28 a total of 85 homicides were recorded in just five days³³; the same occurred in 9-11 November 2021, with 48 homicides³⁴. In both years, the following months showed a considerable drop in killings with respect to the month that presented the surge: in October 2020 there was a daily average of 5.1 homicides and in November it dropped to 3.3; in November 2021 there was an average of 4.1 homicides per day and in December 2.2.

These increases may be linked to tensions in the negotiation between the government and the gangs, and show a similar pattern to what occurred in March 2022, as shown in the following graph:

Graph 3: Daily Homicide average per month 2020 and 2021



Source: Based on data obtained from Infosegura 2021.

The daily homicide rate continued steadily downward in the first months of 2022, until between March 25 and 27 when there was an outbreak of homicidal violence that took the lives of 87 people, attributed to the breakdown of negotiations between the Bukele government and the gangs.³⁵ Despite the beginning of the State of Exception regime on March 27 of that year, the daily homicide average remained between 3.7 and 4 homicides until the month of May.

The government used the State of Exception to completely block access to information in the area of security, in violation of the Law on Access to Public Information, which it had already been violating. As of April 2022, all security institutions formally stopped publishing data on homicides³⁶ and other crimes. The last publication of the Mesa de Homologación de Muertes Violentas (Table of Homologation of Violent Deaths) - made up of the PNC, the Attorney General's Office (FGR) and the Institute of Legal Medicine (IML) - is the February 2022 report, which reports 79 homicides in that month.³⁷ The data later obtained by academic and analytical institutions such as Infosegura is from publications on social networks.³⁸ The PNC³⁹ published the reduction of homicides, which went from 1,177 in 2021 to 495 in 2022, among its achievements in 2022.

³³ OUDH, Annual report 2022: El estado de..., <https://drive.google.com/file/d/1FsHnmsSHovWNdiXU0GCtGPBm6ZZqXPDD/view>.

³⁴ OUDH, Annual report 2022: El estado de..., https://drive.google.com/file/d/1pPKP5D6s_BZv2FYUKAd-R6q-P5ssXJz6/view.

³⁵ Carlos Martínez, "Audios de Carlos Marroquín revelan que masacre de marzo ocurrió por ruptura entre Gobierno y MS", El Faro, 17 de mayo de 2022, https://elfaro.net/es/202205/e_l_salvador/26175/Audios-de-Carlos-Marroquin-C3%ADn-revelan-que-masacre-de-marzo-ocurri%C3%B3-por-ruptura-entre-Gobierno-y-MS.htm.

³⁶ As mentioned in previous reports, Cristosal requested information on homicides and disaggregated data but the request was declared confidential for 7 years by the National Police, through a resolution dated August 15 2022, "Violaciones a los derechos humanos durante el régimen de excepción en El Salvador. Informe situacional periodo junio a septiembre de 2022", October 19 2022, <https://cristosal.org/cuarto-informe-situacional-de-violaciones-a-derechos-humanos-durante-el-regimen-de-excepcion/>.

³⁷ Ministry of Justice and Public Security, "Actas de la mesa de homologación de las muertes violentas", February of 2022, <https://www.seguridad.gob.sv/dia/estadisticas-homologadas/actas-de-la-mesa-de-homologacion-de-las-muertes-violentas/>.

³⁸ USAID-PNUD-INFOSEGURA, Resumen de situación sobre seguridad ciudadana en El Salvador. Enero-diciembre 2022, February 28 2023, <https://infosegura.org/sites/default/files/2023-03/OP-SLV-2022-ESP.pdf>.

³⁹ National Civil Police, Logros y Memorias, (2022), <https://www.pnc.gob.sv/logros-y-memorias>.

1.2.2 Investigations by the U.S. Treasury Department and the U.S. Attorney General for Eastern New York into negotiations between the Nayib Bukele's administration and gangs

The Office of Foreign Assets Control (OFAC), of the United States Department of the Treasury, issued a statement on December 8, 2021, reporting sanctions against officials from different countries in application of the Global Magnitsky Act of 2017.⁴⁰ Regarding organized crime in El Salvador, it says:

In 2020, the government of Salvadoran President Nayib Bukele (Bukele) provided economic incentives to Salvadoran gangs MS-13 and Calle 18 (Barrio 18) to guarantee low levels of gang violence and confirmed homicides. In the course of these negotiations with [Osiris] Luna and [Carlos] Marroquín, the gang leaders also agreed to provide political support to the Nuevas Ideas party in the upcoming elections. Nuevas Ideas is the political party to which the President belongs and won a two-thirds qualified majority in the 2021 legislative elections. Bukele's administration was represented in these transactions by Luna, general director of Prisons of El Salvador and vice minister of Justice and Public Security, and by Marroquín, head of the Unit for the Reconstruction of the Social Fabric. In addition to the economic allocations made by the Salvadoran government in 2020, the gangs also obtained benefits for leaders incarcerated in Salvadoran prisons, such as the provision of cell phones and prostitutes.

The statement further adds that "In the context of the COVID-19 pandemic, Luna also negotiated a deal with MS-13 and Barrio 18 gang leaders in exchange for their support for President Bukele's nationwide quarantine in gang-controlled areas."

On September 22, 2022, the U.S. Attorney for the Eastern District of New York filed an indictment in the U.S. District Court for the Eastern District of New York against ⁴¹13 MS-13 leaders-members of that gang's Ranfla Nacional⁴² alleging that:

Following the February 2019 presidential election in El Salvador, MS-13 leaders, including National Ranfla leaders Borrromeo Enrique Henriquez, also known by "Diablito de Hollywood," Elmer Canales-Rivera, also known by "Crook de Hollywood," and RAMIREZ VALLADARES, secretly met on numerous occasions with representatives of the government of El Salvador inside prisons in Zacatecoluca and Izalco and elsewhere. These meetings were organized by the government of El Salvador and prison authorities, including, but not limited to, the Director of Prisons and the Director of Reconstruction of the Social Fabric.

According to the indictment, both government officials and MS-13 members wore masks and long-sleeved shirts to conceal their tattoos and identities; they were given official identification cards as intelligence or police officers; prison officials facilitated the temporary transfers of MS-13 members, including Borrromeo Henriquez (alias Diablito de Hollywood), "to civilian hospitals for 'treatment' for non-existent medical conditions, which allowed these leaders to communicate with Ranfla members in the Streets and facilitate negotiations."

⁴⁰ U.S. Department of State, "El Departamento del Tesoro sanciona a más de 40 personas y entidades en nueve países por corrupción y violaciones de derechos humanos", December 9 2022, <https://www.state.gov/translations/spanish/el-departamento-del-tesoro-sanciona-a-mas-de-40-personas-y-entidades-en-nueve-paises-por-corrupcion-y-violaciones-de-derechos-humanos/>.

⁴¹ Sandy Pineda and EFE, "Bukele y las pandillas: informe de la fiscalía de Nueva York revelaría cómo dos funcionarios de El Salvador pactaron con la MS-13", Prensa Libre, February 28 2023, <https://www.prensalibre.com/internacional/bukele-y-las-pandillas-informe-de-la-fiscalia-de-nueva-york-revelaria-como-dos-funcionarios-de-el-salvador-pactaron-con-la-ms-13/>.

⁴² The accused members of gang MS-13 are: Vladimir Antonio Arévalo Chávez, "Vampiro de Monserrat"; José Wilfredo Ayala Alcántara, "Indio de Hollywood"; Edwin Ernesto Cedillos Rodríguez, "Renuente de Abriles Dangers"; Jorge Alexander de la Cruz, "Cruger de Peatonales"; Walter Yovani Hernández Rivera, "Baxter de Park View"; Juan Antonio Martínez Ábrego, "Mary Jane de Wollywood"; Marlon Antonio Menjivar Portillo, "Snayder de Pasadena"; Dany Fredy Ramos Mejía, "Cisco de Teclas"; Francisco Javier Román Bardales, "Veterano de Tribus"; Dany Balmore Romero García, "Big Bouy de Normandíes"; Rubén Antonio Rosa Lovo, "Chivo de Centrales"; y, Miguel Ángel Serrano Medina, "Cabro de Park View".

This indictment is compelling with respect to government negotiation with the gangs, noting that the national ranfla (gang leadership), street ranfla and prison ranfla negotiated with high-level government officials for financial benefits, territorial control, less restrictive prison conditions that would allow leadership and other MS-13 members greater communication to maintain control over this gang. Legislative and judicial changes were also called for, including the reduction of court sentences that would result in the early release of leaders from prison.

According to the Attorney General of Eastern New York, the national leadership of the gang demanded that the Government of El Salvador (GOES) refuse to extradite MS-13 leaders, including the national gang, to the United States for prosecution. In exchange for this request:

MS-13 leaders agreed to reduce the number of homicides in El Salvador, which politically benefited the government of El Salvador by creating the perception that the government was reducing the homicide rate. In reality, MS-13 leaders continued to authorize homicides in which the bodies of the victims were buried or otherwise hidden. MS-13 leaders also agreed to use MS-13's political influence to direct MS-13 members, friends and family of members, and residents of neighborhoods under MS-13 control to support Nuevas Ideas candidates in El Salvador's 2021 Legislative Assembly elections.⁴³

Although the Department of Justice submitted formal requests to GOES for the extradition of 12 members of the national ranfla in 2021 and 2022, the national ranfla and other MS-13 leaders demanded that GOES refuse to extradite those accused of crimes against the United States, and to date, the Supreme Court of Justice (CSJ) has denied the extradition of these gang members.

The indictment states that in February 2021, INTERPOL issued a Red Notice for Elmer Canales Rivera (alias "El Crook"), and on approximately July 22, 2021, the United States formally requested his extradition. "Since then, the government of El Salvador released Canales Rivera from custody, despite the red notice issued by INTERPOL and the U.S. extradition request."

In fact, the United States requested the extradition of several historic MS-13 leaders for terrorism-related crimes committed in that country, including: Hugo Armando Quinteros, alias "Flaco de Fancis"; Elmer Canales Rivera, alias "Crook of Hollywood"; and Armando Eliú Melgar Díaz, alias "Blue". However, the Supreme Court of Justice of El Salvador denied the extradition of Armando Eliú Melgar Díaz "Blue", through the final judgement of September 2022,⁴⁴ in this case the Attorney General, Rodolfo Delgado, opposed the extradition request⁴⁵ and asked the justices to consider the constitutional guarantees of the accused, assuring that he could be tried in El Salvador.

However, the US has arrested several of the gang members that had been requested, but not because there was collaboration with the Salvadoran government, but because they were intercepted in the US while being deported from Mexico. One of these arrests was of José Wilfredo Ayala Alcántara, alias "Indio de Hollywood", detained at Houston's international airport while on a stopover flight to El Salvador in April 2023.⁴⁶ In 2022, Vladimir Antonio Arevalo Chavez, alias Vampiro de Monserrat Criminales; Walter Yovani Hernandez Rivera, alias Baxter de Park View and Bastard de Park View; and Marlon Antonio Menjivar Portillo, alias Rojo de Park View, were arrested when they were deported from Mexico to El Salvador.⁴⁷

⁴³ Sandy Pineda and EFE, "Bukele y las pandillas...", <https://www.prensalibre.com/internacional/bukele-y-las-pandillas-informe-de-la-fiscalia-de-nueva-york-revelaria-como-dos-funcionarios-de-el-salvador-pactaron-con-la-ms-13/>.

⁴⁴ Jessica Ávalos, "'Blue' será juzgado en El Salvador y no será extraditado a EUA", *Factum*, October 4 2022, <https://www.revistafactum.com/blue-no-extradicion/>.

⁴⁵ Javier Urbina, "Fiscal Delgado pidió a CSJ no extraditar al 'Blue'", *La Prensa Gráfica*, <https://www.laprensagrafica.com/elsalvador/Fiscal-Delgado-pidio-a-CSJ-no-extradir-al-Blue-20211107-0066.html>.

⁴⁶ David Bernal, "FBI capturó al 'Indio de Hollywood' cuando venía hacia El Salvador", *La Prensa Gráfica* April 21 2023, <https://www.laprensagrafica.com/elsalvador/FBI-capturo-al-Indio-de-Hollywood-cuando-venia-hacia-El-Salvador-20230420-0113.htm>.

⁴⁷ Luis Lozano and Margarita Funes, "Estados Unidos confirma el arresto de tres líderes salvadoreños de alto rango de la MS-13 buscados por cargos de terrorismo y extorsión", *La Prensa Gráfica*, February 24 2023, <https://www.laprensagrafica.com/internacional/Estados-Unidos-confirma-el-arresto-de-tres-lideres-salvadorenos-de-alto-rango-de-la-MS-13-buscados-por-cargos-de-terrorismo-y-extorsion-20230224-0012.html>.

The United States has sanctioned Salvadoran officials for acts of corruption and for negotiating with gangs and the release from prison of several members of the gangs following the extension of Executive Decree 13818, which expands the Global Magnitsky Human Rights Accountability Act.⁴⁸

Osiris Luna Mesa and Carlos Amilcar Marroquín Chica, Director General of Prisons and the Director of Reconstruction of Social Fabric, respectively; were sanctioned for negotiations with organized crime (MS-13). They are alleged to have facilitated several secret meetings with the participation of incarcerated gang leaders, in which members were allowed to enter the prisons and meet with gang leaders. “These meetings were part of the Salvadoran government’s efforts to negotiate a secret truce with gang leaders.”

The sanctions consist of property embargos, prohibition of transactions made by the individuals penalized or by third parties on their behalf. They also prohibit any contribution or provision of funds, goods, or services by, to or for the benefit of any blocked person or the receipt of any contribution or provision of funds, goods, or services from any person. The two officials were also included in the Engel List,⁴⁹ which resulted in the withdrawal of their U.S. visas.

1.2.3 Evidence of continuing negotiation: main gang leaders released from maximum-security prisons during the State of Exception

Although government data show that thousands of people were arrested under the State of Exception and the police highlight the arrest of 900 gang leaders among its main achievements, claiming to have captured 10 out of 15 national MS-13⁵⁰ leaders, most of them were incarcerated before the State of Exception came into effect.⁵¹

Both the U.S. Attorney General of Eastern New York, as well as journalistic investigations, have warned that before and during the state of exception, MS-13 leaders were released on several occasions from maximum-security prisons with the collaboration of government officials, allegedly to allow them to meet and give instructions to the gang members in the streets, while others were released and fled the country. These facts contrast with the government’s discourse of “war against the gangs” and suggest that the government will continue to negotiate with the gangs, likely under different modalities and conditions than before.

Élmer Canales Rivera, alias “Crook”, a member of the national ranfla of the MS-13, was released from the Maximum Security prison of Zacatecoluca in November 2021,⁵² despite the fact that in December 2019 he had been sentenced to 60 years⁵³ (this was modified to 40 years by the Specialized Criminal Chamber of San Salvador, which also warned that the term for provisional detention had been exceeded). He also had been prosecuted for other crimes so should not have been released.⁵⁴

⁴⁸ U.S. Treasury Department “Tesoro apunta a redes de corrupción vinculadas al crimen organizado transnacional”, Comunicado de prensa. Noticias, 8 de diciembre de 2021, <https://home.treasury.gov/news/press-releases/jy0519>.

⁴⁹ Center against Corruption and Impunity in the North of Central America (CCINOC), “Los actores corruptos y antidemocráticos en El Salvador, según la ‘Lista Engel’”, August 8 2022, <https://ccinoc.org/informe-externo/los-actores-corruptos-y-antidemocraticos-en-el-salvador-segun-la-lista-engel/>

⁵⁰ Civil National Police, Logros y Memorias 2022. Obtained from: <https://www.pnc.gob.sv/logros-y-memorias>.

⁵¹ Ricardo Flores, “Los crímenes de cabecillas MS-13 que EUA reclama por terrorismo”, La Prensa Gráfica, July 26 2021, <https://www.laprensagrafica.com/elsalvador/Los-crimenes-de-cabecillas-MS-13-que-EUA-reclama-por-terrorismo-20210725-0052.html>.

⁵² La Prensa Gráfica, “Cabecilla MS-13 extraditable sale libre de máxima seguridad”, La Prensa Gráfica, December 3 2021, <https://www.laprensagrafica.com/elsalvador/Cabecilla-MS-13-extraditable-sale-libre-de-maxima-seguridad-20211203-0050.html>.

⁵³ General Prosecutor of the Republic, “Fiscales lograron históricas condenas de prisión contra imputados de Operación Cuscatlán”, Prensa, December 13 2019, <https://www.fiscalia.gob.sv/fiscales-lograron-historicas-condenas-de-prision-contra-imputados-de-operacion-cuscatlan/>.

⁵⁴ This was stated by the Specialized Sentencing Judge “A” of San Salvador, by means of official letter 901 dated March 29, 2022, addressed to the director of the Zacatecoluca prison, in which he reports that he verified that the gang member had been released on June 3, 2021, despite the fact that in official letter No. 935 dated June 1 of that same year, he warned that he should continue in detention for being prosecuted for other crimes. Gabriela Cáceres, “Juez documentó que Crook fue liberado pese a tener procesos penales abiertos”, El Faro, April 5 2022, https://elfaro.net/es/202204/el_salvador/26113/Juez-document%C3%B3-que-Crook-fue-liberado-pese-a-tener-procesos-penales-abiertos.htm.

Although his definitive release date from the prison system is unclear,⁵⁵ as he was still being reported as an inmate in that prison at the end of 2021. If he was released in November, he obtained his freedom a few days after an increase in homicides (48 people were victims of homicide between November 9 to 11, 2021). Photographs published on social media and taken up by the media document that he left the country via Guatemala on his way to Mexico between November and December of that year.⁵⁶

The release of this gang member has been attributed to government officials, including the Prisons Director General, Osiris Luna, and the Director of Social Fabric, Carlos Marroquín, and has been documented through investigative journalism with access to audio recordings of conversations and copies of official documents.⁵⁷

Divergentes⁵⁸ investigated and published a report one year after the state of exception began which revealed that two of the MS-13 leaders left the Maximum Security Prison in Zacatecoluca several times during the days immediately following a spike in homicides in November 2021. According to the report “the top leader of the Mara Salvatrucha (MS-13) in El Salvador, Borrromeo Enrique Henríquez Solórzano, alias ‘Diablito de Hollywood’, was transferred on November 24, 2021 from the Zacatecoluca Maximum Security Facility to the Casa Linda⁵⁹ Holistic Care Center for the Elderly”. This center is a senior care facility where he was housed for 28 days. He had also left the prison nine times between 2019 and 2022, as documented by the PNC. This investigation looked at leaked official documents⁶⁰ and records that on January 26, 2022, Saul Antonio Turcios Angel, known as “Trece de Teclas,” was transferred to the senior care facility by police patrol car. This was allegedly his sixth such release from prison since Bukele took office as El Salvador’s president in June 2019.

This type of release of members of the national MS-13 gang was also documented by the U.S. Department of Justice, which, in a note dated April 4, 2022, informed the court handling the case in New York (Criminal Docket No. 20-577, JMA) that four of the gang members under investigation may have been released irregularly by the GOES. 20-577, JMA); they are Élmer Canales Rivera, “Crook”; Hugo Armando Quinteros Mineros, “Flaco de Francis”; Efraín Cortez, “Tigre de Park View”; and Eduardo Erazo Nolasco, “Colocho or Mustage de Western”, all members of the “Ranfla Nacional”.⁶¹

1.3 The State of Exception within the framework of a strategy of punitive populism and governmental propaganda

The State of Exception Regime in El Salvador is an extreme and typical example of punitive populism, an academic concept that describes “the electoral use of criminal law” arising from the predominance of neoliberal policies promoting the use of criminal legislation to address social problems.⁶²

The state of exception is an “authoritarian” model of punitive populism which “occurs when political leaders not only use rhetoric and tough-on-crime policies to win elections and popular support, but are also willing to allow high levels of police violence to fulfill this goal.” It can also use state mass media or state-censored media to unite the people behind them in a fight against a political enemy that can be framed as criminal.”⁶³

⁵⁵ Gabriela Cáceres, “Juez documentó que Crook...”, https://elfaro.net/es/202204/el_salvador/26113/Juez-document%C3%B3-que-Crook-fue-liberado-pe-se-a-tener-procesos-penales-abiertos.htm.

⁵⁶ Carlos García, “La huida de Crook: de la Escalón a México”, *El Faro*, July 11 2022, https://elfaro.net/es/202207/el_salvador/26263/La-huida-de-Crook-de-la-Escal%C3%B3n-a-M%C3%A9xico.htm.

⁵⁷ Carlos Martínez, “Audios de Carlos Marroquín revelan...”, https://elfaro.net/es/202205/el_salvador/26175/Audios-de-Carlos-Marroqu%C3%ADn-revelan-que-masacre-de-marzo-ocurri%C3%B3-por-ruptura-entre-Gobierno-y-MS.htm; Roman Gressier, “PNC supo de la liberación ilegal de Crook desde noviembre de 2021”, *El Faro*, October 26 2022, https://elfaro.net/es/202210/el_salvador/26443/PNC-su-po-de-la-liberaci%C3%B3n-ilegal-de-Crook-desde-noviembre-de-2021.htm.

⁵⁸ Carlos García y Jaime Quintanilla, “El líder de la MS13 vivió un mes en un asilo y salió nueve veces de prisión en el gobierno de Bukele”, *Divergentes*, March 27, 2023, <https://www.divergentes.com/diablito-de-hollywood-salio-prision/>.

⁵⁹ Carlos García y Jaime Quintanilla, “El líder de la MS13 vivió un mes...”, <https://www.divergentes.com/diablito-de-hollywood-salio-prision/>.

⁶⁰ Carlos García y Jaime Quintanilla, “El líder de la MS13 vivió un mes...”, <https://www.divergentes.com/diablito-de-hollywood-salio-prision/>.

⁶¹ The referenced note can be verified at the following link: <https://www.calameo.com/read/0061119310eea323a6171?page=1>.

⁶² Joan Antón Mellón, “Populismo punitivo, opinión pública y leyes penales en España (1995-2016)”, *Revista Internacional de Pensamiento Político*, vol. 12, (2017): 133-150, doi: <https://doi.org/10.46661/revintpensampolit.3230>.

⁶³ Michelle Bonner, “Qué es el populismo punitivo? Una tipología basada en la comunicación mediática”, *MATRIZes*, vol. 15, No 1, (2021): 77-102, doi: <http://dx.doi.org/10.11606/issn.1982-8160.v15i1p77-102>.

Following the usual practice of punitive populists, the communications policy of Bukele's administration presents a vague concept - "the war against gangs"- as a representation of the popular will that is at the basis of a solution to major national problems. It also seeks to divide society into two irreconcilable factions: honest citizens (friends) and criminals and friends of criminals (enemies). The rhetorical manipulation of this political strategy has been a success for this administration, seen in the acceptance of the state of exception in Salvadoran public opinion, in spite of human rights violations.

Reputable polling firms in El Salvador have reflected this acceptance. For example, the Guillermo Manuel Ungo Foundation's March 2023 survey showed 85.2% approval of the regime among those polled.⁶⁴ The Public Opinion Institute (IUDOP) of the Central American University also conducted a survey to evaluate the state of exception one year later, in which respondents gave the regime a favorable score of 7.92.⁶⁵

The acceptance of the state of exception is quite understandable considering that the drop in homicides and the evolving of the gangs' operations to more clandestine modes of operation, has created a perception of safety in communities who were victimized for many years with the atrocious violence of these groups and for which they are grateful.

Also contributing to this acceptance is the normalizing of state violence and human rights violations in El Salvador. There were, in fact, six administrations before Bukele's that also favored the "mano dura" or iron fist and punitive populism dating back to the Peace Accords [TN:1992], none of which produced positive long-term results, but did have electoral gains with these policies.

Bukele's punitive populism is, in fact, a continuation of these strong-arm security policies, although in a more drastic form using power arbitrarily -without limits- with the dismantling of democratic checks and balances in El Salvador. On the other hand, the country also has the legacy of decades of authoritarianism, militarism, armed conflict, human rights violations and even war crimes that remain in impunity.⁶⁶ This is a history that contributes to the normalizing of state abuses.

Another aspect that favors the acceptance of the state of exception is the Salvadoran people's widespread ignorance of what their rights are. The previously cited IUDOP survey revealed that 75 out of every 100 Salvadorans acknowledged that they did not know which constitutional rights and guarantees were suspended by the regime. The survey also asked about each of the rights suspended during the year of implementation of the state of exception, and more than 75% of the Salvadoran population did not know what they were.⁶⁷

It is also possible to assert that the acceptance of the "regime" is the result of another very important factor: the Government's extensive communications strategy. This strategy is based on a powerful propaganda apparatus made up of a national print newspaper, government radio and television, as well as the official social media, which are reinforced with substantial resources to pay for space in the private media and to further disseminate the rhetoric. The amount of resources dedicated to this has increased at the moment.⁶⁸

Legions of fake accounts in social networks (trolls and bots) revolve around the propaganda structure and even real people (youtubers, tweeters, among others) have dedicated themselves to intensely replicating government messages. These virtual (informal) types of official propaganda amplify the official public position through social networks. Their main characteristic is aggressiveness, as they freely post defamatory and misogynistic content. They also frequently use harassment in mass virtual attacks against their political targets.

⁶⁴ FundaUngo, "Encuesta coyuntural. Marzo 2023", Boletín temático, March 2023, <https://www.fundaungo.org.sv/products/encuesta-coyuntural-marzo-2023/789>.

⁶⁵ Public Opinion Institute of UCA (IUDOP), "Encuesta sobre coyuntura nacional. La población salvadoreña evalúa primer año del régimen de excepción", Encuestas de opinión, March 2023, <https://uca.edu.sv/iudop/publicacion/encuesta-sobre-coyuntura-nacional-3/>.

⁶⁶ Inter-american Commission of Human Rights (CIDH), "Situación de Derechos Humanos en El Salvador", October 14, 2021, 45-59, http://www.oas.org/es/cidh/informes/pdfs/2021_ElSalvador-ES.pdf.

⁶⁷ IUDOP, "Encuesta sobre coyuntura nacional...", <https://uca.edu.sv/iudop/publicacion/encuesta-sobre-coyuntura-nacional-3/>.

⁶⁸ Denni Portillo, "Aumento para comunicaciones y recorte en apoyo a juventud en presupuesto de presidencia 2023", La Prensa Gráfica, October 20, 2022, <https://www.laprensagrafica.com/elsalvador/Aumento-para-comunicaciones-y-recorte-en-apoyo-a-juventud-en-presupuesto-de-Presidencia-2023-20221019-0066.html>

Also, the government's propaganda policy has been able to monopolize the space of many private media outlets, particularly radio and television. As has been common in the region, the major Salvadoran media also carry a long-standing legacy of clientelism and complacency in the allocation of government advertising, usually awarded according to the logic of "reward or punishment" determined by the editorial line of each media outlet. Although the government has withheld data on the distribution of advertising, a study by the ARPAS Information Network revealed that at the beginning of the Bukele administration, advertising continued to be allocated based on these arbitrary criteria.⁶⁹

Using this impressive capacity to spread propaganda, the government's communications policy has placed the regime of exception at the center of its priorities since 2022. The propaganda to legitimize the "regime" enabled the administration—besides gaining popular support—to ignore the impacts of other serious national problems such as the increase in the cost of living and poverty, environmental depredation, the financial crisis, corruption, and the loss of guarantees related to electoral transparency, among others.

From this perspective, the state of exception has become an ideal marketing tool (but also a tool for intimidation and social control) to consolidate the two essential purposes of President Nayib Bukele's political project: **to maintain the concentration of power** through the subjugation of democratic checks and balances, especially the legislature and judiciary; and the **presidential reelection** despite constitutional prohibitions.

Extolling the state of exception as a liberating gesture against the internal enemy represented by the gangs. President Bukele has even presented the exception regime as "God's will". Some examples are:

- "With the Territorial Control Plan and the exception regime, this government has delivered true freedom to Salvadorans so that they can live in safe and peaceful communities, free of gangs."⁷⁰
- "Eight months and thank God we are beating them (...) nobody believed that we could win the war against gangs in just a few months, nobody (..) He (God) decided to do it in this year and we are the instrument to heal this land (...) to heal, literally, the most dangerous place in the world".⁷¹

The glorification of the regime is carried out through massive campaigns that use slogan phrases, the main one being "war against gangs", although it is accompanied by other similar ones such as "Zero homicides", "Territorial Control Plan" and "We continue".

Denial or silence of the serious human rights violations caused by the application of the state of exception. Following are some examples:

- "People are dying in prisons because they suffer up to four co-morbidities and refuse to receive their chemotherapy treatments (...) no death has been confirmed inside the prisons that is not linked to the health issue." (Osiris Luna, Prisons General Director).⁷²
- "Deaths occur in every prison." (Gustavo Villatoro, Minister of Justice).⁷³

The government has also adopted a strategy of silence with respect to other issues that negatively impact its image, such as allegations of behind-the-scenes negotiations between high-level officials and top gang leaders, and allegations of corruption.

⁶⁹ Josseline Roca and Norma Ramírez, "Bukele entrega pauta publicitaria a 'los mismos (medios) de siempre'", Red Informativa de ARPAS, September 16, 2019, <https://arpas.org.sv/2019/09/bukele-entrega-pauta-publicitaria-a-los-mismos-medios-de-siempre-tcs-recibe-la-mayor-tajada/>.

⁷⁰ Presidency of the Republic, "El Salvador con 100 días sin homicidios desde la implementación del régimen de excepción", September 17, 2022, <https://www.presidencia.gob.sv/el-salvador-con-100-dias-sin-homicidios-desde-la-implementacion-del-regimen-de-excepcion/>.

⁷¹ Nayib Bukele. Quoted by Swissinfo.ch, "Presidente Bukele dice que 'gracias a Dios' se gana 'guerra' contra las maras", <https://www.swissinfo.ch/spa/el-salvador-violencia-el-presidente-bukele-dice-que-gracias-a-dios-se-gana-guerra-contra-maras/48082584>.

⁷² Osiris Luna quoted by Lissette Lemus, "Osiris Luna asegura que las muertes en penales son por problemas de salud", El Diario de Hoy, October 18, 2022, <https://www.elsalvador.com/noticias/nacional/osiris-luna-director-de-centros-penales-carceles-prisiones-regimen-excepcion-/1008193/2022/>.

⁷³ Gustavo Villatoro quoted by Javier Urbina, "Ministro de Seguridad confirma 90 muertes en cárceles y más de 2000 liberados durante régimen de excepción", November 7 2022, <https://www.laprensagrafica.com/elsalvador/Ministro-de-Seguridad-confirma-90-muertes-en-carceles-y-mas-de-2000-liberados-durante-regimen-de-excepcion-20221107-0027.html>.

Concealment of and tampering with data. As has been widely exposed, the generalized withholding of public information, alterations to statistics, and manipulation of data to favor the image of the government's management in security matters has been constant, especially under the state of exception regime. Referring to this, WOLA denounced that:

El Salvador had overcome the culture of secrecy inherited from the war; however, measures such as the emergency regime have weakened democracy by limiting access to information and classifying security policies as confidential under the criterion of protecting 'national security', a concept that was applied during the war. Neither the press nor civil society has had access to detailed information on security policies and the fight against violence.⁷⁴

Harassment, bullying and stigmatization of human rights defenders, national and international human rights organizations, as well as the independent press. The most common is to conflate the defense of rights with the defense of "gang members", which has resulted in attacks that even include threats, especially in social networks. The following are some examples.

- "The IACHR didn't waste time to come out and defend gang members / But not a single word is said about the victims of these murderers / It is clear whose side they are on / We countries should evaluate withdrawing from these international organizations that only seek to keep our people suffering" (Nayib Bukele).⁷⁵
- "These are international organizations that defend the human rights of criminals that attack societies and States, that is what these international organizations are, and of course they had to come to El Salvador to meddle in our issues" (Gustavo Villatoro) ⁷⁶
- "Do you think I am interested in what these little human rights groups say? I am not at all interested! They have never been the panacea to solve the problems of any country; they live off the blood of the people of Latin America" (Gustavo Villatoro).⁷⁷
- Why [sic] Human Rights Watch and Cristosal defend those who mutilated Doña Isabel's parents? [sic] is it that Doña Isabel's parents have no rights?" (Christian Guevara, congressman, head of the Nuevas Ideas party).⁷⁸

Disqualification of opposition voices. All legislative proposals from opposition parties, currently in the minority, are dismissed a priori and their arguments are ignored. The propaganda structure of the government constantly attacks the political opposition, with a particularly strong misogyny against women deputies in office. An example is the following:

- "The clumsy opposition always plays one-step chess / They have bet everything on scaring the population regarding the Bitcoin Law" (Nayib Bukele)⁷⁹
- "The people from Mejicanos: It is a racketeering gang member/Salvadorans: It is a racketeering gang member/The diaspora: It is a racketeering gang member / The members of the opposition parties: He is a victim of the regime. He is innocent, look at his little baby face (...)" [adds photo of a young man] (Christian Guevara).⁸⁰

⁷⁴ WOLA, "Corrupción y Régimen de Excepción en El Salvador: una democracia sin oxígeno", Pronunciamiento de Wola.

⁷⁵ Nayib Bukele (@nayibbukele), Twitter, March 29, 2022.

⁷⁶ Gustavo Villatoro. Editorial Staff Diario El Mundo, "Villatoro pide ampliar régimen y acusa a ONG internacionales de defender criminales", El Mundo, April 12, 2023, <https://diario.elmundo.sv/politica/villatoro-pide-ampliar-regimen-y-acusa-a-ong-internacionales-de-defender-criminales>.

⁷⁷ Gustavo Villatoro, "Entrevista de Moises Urbina", Frente a frente TCS, February 28, 2023. From minute 34: <https://www.youtube.com/watch?v=2EGvFII-CW5g>.

⁷⁸ Christian Guevara, (@ChrisGuevaraG), Twitter, December 14, 2022.

⁷⁹ Nayib Bukele (@nayibbukele), Twitter, August 29, 2021.

⁸⁰ Christian Guevara, (@ChrisGuevaraG), Twitter, March 31, 2022.

Despite the pervasiveness and success of the government's propaganda on the state of exception, it will hardly be able to achieve the absolute homogenization of public opinion on the subject, since public opinion is rarely uniform.⁸¹

Opinion polls have begun to reflect these kinds of fissures or opposing perspectives to the majority acceptance of the state of exception. Specifically, surveys have shown that the percentage of acceptance declines when the population is asked about the judicial guarantees violated by the state of exception.

The IUDOP survey, for example, not only revealed the population's lack of knowledge about the suspended rights, but also showed -paradoxically- their disagreement with respect to specific measures of the regime that violate human rights. For example, it showed that:

88 out of every 100 Salvadorans disagree with the authorities' failure to inform the families of detainees of the death of persons in prison in a timely manner; 74 out of every 100 disapprove of the regime's allowing people to be detained for more than 72 hours without being informed of the reason for their arrest; A similar proportion also disapproves of the authorities carrying out arrests without a warrant; 67 out of 100 Salvadorans disapprove of the suspension of the right to defense, and 53 out of 100 are against the re-arrest of people whose judicial proceedings have concluded. Regarding the urgency of investigating the deaths of persons detained under the regime who died in prison, "Approximately 60 out of every 100 Salvadorans (57.6%) consider that it is very urgent that these deaths be investigated"⁸².

The March 2023 survey of FundaUngo foundation showed that the approval of the state of exception decreases significantly in specific situations that violate judicial guarantees. According to this survey, approval falls to 46.0 % with respect to the detention of persons for up to 15 days without being presented before a court; it decreases to 27.1 % with respect to the arrest of persons based on suspicions without a court order and drops to 11.2% regarding the denial to inform where the arrested persons are taken.

These surveys indicate that the population vehemently demands and desires sustainable security policies, but does not want human rights violations, particularly of innocent people who have been unjustly arrested. This sentiment, however, is still not enough to overcome the strong narrative of punitive populism of Bukele's government.

⁸¹ Michelle Bonner, "Qué es el populismo punitivo?..."

⁸² Nayib Bukele (@nayibbukele), Twitter, 29 de marzo, 2022.

IUDOP. "Encuesta sobre coyuntura nacional...", <https://uca.edu.sv/iudop/publicacion/encuesta-sobre-coyuntura-nacional-3/>.

⁸³ FundaUngo, "Encuesta coyuntural...", <https://www.fundaungo.org.sv/products/encuesta-coyuntural-marzo-2023/789>.

II. Patterns of gross human rights violations

2.1 Who are the prisoners under the state of exception?

The deliberate non-compliance with the Access to Public Information Act by withholding official information and data, and the exclusive publication of government data through press releases, press conferences and social networks, does not allow for analysis based on official sources, for this reason the figures presented below were taken from the official accounts of security institutions and press conferences given by officials, as well as academic and social institutions that have followed up on the issue.

As mentioned above, as of the closing date of this report, the government informed about the detention of 66,417 people suspected of being gang-related.⁸⁴

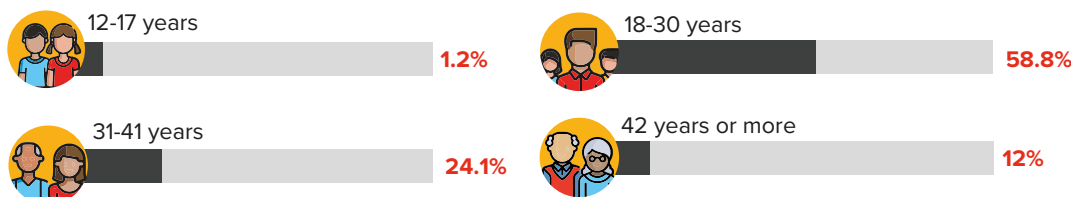
Even with this data on criminal behavior in 2022 and early 2023, according to a report presented by Human Rights Watch on persons prosecuted under the regime, more than 39,000 people were accused of Illicit Associations and 8,000 of pertaining to terrorist organizations, most of the persons held in prison have been charged with these crimes.⁸⁵ If the database cited by this organization is segmented in order to deepen the information (it contains data up to September 2022), taking into account the people in the pre-trial phase in specialized courts for crimes that could be gang related, Cristosal counts a total of 48,480 people who meet this condition. Of these, 82.0% are being prosecuted for illicit associations, 17.1% for terrorism and only 0.9% for crimes such as homicides, injuries, extortion, among others.

This same database indicates that 84.1% of the registered prisoners were men, while 15.7% were women and 0.1% have not been determined. This trend coincides with the registration of cases received by Cristosal. As will be seen in the next section.

Cases received by Cristosal

The information from Cristosal's registry of complaints under the state of exception indicates that in the first year of the regime, this organization received 3,275 complaints, equivalent to 3,403 people whose human rights had been violated. Of these, the highest percentage were filed by men (85.5%), followed by women (13.9%), and 55 people from the LGBTBIQ+ community also filed complaints. Of the total number of victims, 58.7% are between the ages of 18 and 30 years, but it is necessary to mention that 1.2% are adolescents (12-17 years).

Figure 1. Age ranges of victims known to Cristosal



Source: Based on Cristosal's data base, 2023.

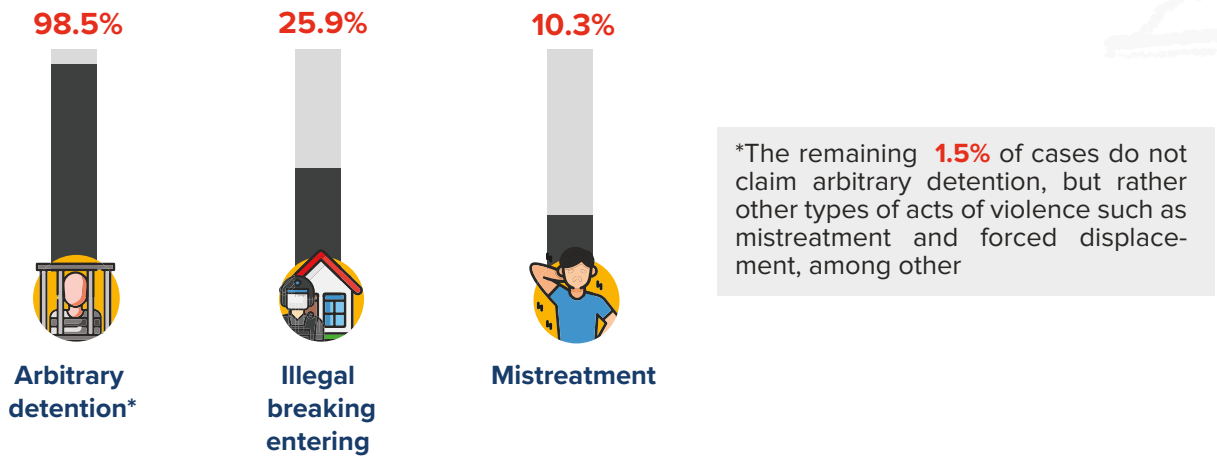
⁸⁴ Ministry of Justice and Public Security, "El régimen de excepción no fue una decisión fácil ni antojadiza": Gustavo Villatoro, Security Minister, March 27, 2023, <https://www.seguridad.gob.sv/el-regimen-de-excepcion-no-fue-una-decision-facil-ni-antojadiza-gustavo-villatoro-ministro-de-seguridad/>.

⁸⁵ Human Rights Watch (HRW), "El Salvador: filtración de base de datos apunta a abusos a gran escala", January 27, 2023, <https://www.hrw.org/es/news/2023/01/27/el-salvador-filtracion-de-base-de-datos-apunta-abusos-gran-escala#:~:text=12%3A00AM%20EST->.

According to these data, arbitrary detentions (98.5%) have been reported as the major violation, with the PNC officers being the main perpetrators (74.0%); however, this does not mean that the FAES has not made arrests, since 6.7% of the reports indicate that members of this security force actually arrested people. It is necessary to call attention to the following: 506 cases present some human rights violation against the victims' relatives, whether it occurred at the time of the detention of their loved ones or after.

Figure 2. Events reported to Cristosal

Three main events have been presented, although one person could have been the victim of more than one event, reason why percentages do not add up to 100%.



Source: Based on Cristosal's data base, 2023.

Other characteristics present in these cases known to Cristosal include 352 people with police records, 259 with chronic illnesses, 209 who have been arrested based on anonymous calls and 58 who have some type of disability.

In this sense, it can be argued that the victims detained by the state of exception are mostly young men whose rights were violated by the PNC, a body born of the Peace Accords precisely to enforce the rights of citizens. On the other hand, it is necessary to reflect on the logic followed by the State in these arrests, where priority has been given to alleged gang membership rather than actually prosecuting and providing justice for the crimes committed. It is also necessary to emphasize that the arrests have affected the community fabric and family nuclei by detaining -on occasions- community leaders both men and women, and by imposing on women a double and sometimes triple burden of care, as those responsible for the household, as workers and as the ones that follow the processes faced by their partners, siblings, parents or children.

2.2 Violations of the right to freedom due to arbitrary or illegal detentions

The vast majority of detentions carried out during the state of exception have been arbitrary, since the arrests do not comply with the guarantees granted by the due legal process and were made under the protection of legislative decrees that contravene the Constitution and international human rights norms. The United Nations Working Group on Arbitrary Detention considers that an arbitrary detention occurs when a state authority deprives a person of his or her freedom in an improper, unjust and/or unforeseeable manner, and without complying with due process guarantees.⁸⁶

The following are the main patterns of arbitrary detentions in cases handled by Cristosal:

- Absence of administrative or judicial arrest warrants.
- No prior investigation.
- Illegal detentions and double jeopardy.
- Illegal breaking and entering.
- Arrests based on anonymous calls.
- Second arrests of persons with a court order for their release.
- Detentions based on the existence of a criminal or police record.
- Stigmatization based on tattoos.
- Failure to inform families about the place of confinement and not allowing family communication.

Most arrests are made without a court or prosecutor's order and without prior investigation; exceptionally, the security authorities make arrests that meet this legal requirement, in cases of persons accused of crimes other than those of illicit associations or terrorism, or pertaining to a gang and who had an arrest warrant that had not been executed. As previously mentioned, only 0.9% of the persons detained are accused of other types of crimes.

The mass arrests made under the exception regime are widespread; in numerous complaints, the families affected testify that the captors use phrases such as "it is an order from the president" or "we know you are not involved in anything, but these are orders".⁸⁷

On the other hand, the exception regime and the reforms to the criminal legislation have given rise to arrests being made without prior investigation; the most serious aspect is that these are accredited by the FGR and endorsed by the specialized investigating judges using as evidence documents containing the analysis of the crime rate in the area or place where the person was captured, without individualizing the criminal conduct attributed to the arrested person.

In previous reports on the state of exception, double criminal prosecution has been identified as a mode of capture. This involves the detention of persons who have already been convicted and served their prison sentence, were dismissed, acquitted or were serving alternative measures to imprisonment. "A new charge is attributed to these persons: illicit associations, even if it is the same offense for which they were previously imprisoned or tried."⁸⁸ However, the Constitution prohibits double jeopardy (art. 11 inc. 1º final part Cn.)

Cristosal reiterates that these practices correspond to a policy of repression and terror, their systematic and generalized character demonstrated that they are not the result of isolated conducts, but respond to directives emanating from the highest governmental authorities.

⁸⁶ Working Group on Arbitrary Detention (s.f.). On arbitrary detention, United Nations, <https://www.ohchr.org/es/about-arbitrary-detention>.

⁸⁷ Cristosal. (June 14, de 2022). Human rights violations during the exception regime in El Salvador. Situation report period from April 27 to May 25, 2022. Obtained from <https://enfoca.org/web/wp-content/uploads/2022/06/TERCER-IN-FORME-Informe-Violaciones-DDHH-Re%CC%81gimen-de-Excepcio%CC%81n.pdf>

⁸⁸ Cristosal, "Violaciones DDHH durante régimen de excepción en El Salvador", June-September 2022, <https://cristosal.org/wp-content/uploads/2022/10/4-Cuarto-Informe-Situacional-sobre-DDHH-durante-el-re%CC%81gimen-de-excepcio%CC%81n.pdf>

Detentions that violate the right to domestic privacy.

As already noted, the principle of the sanctity of the home (art. 20 Cn.)⁸⁹ has not been limited in the decrees of the exception regime, therefore, any arrest that is made by entering the home of the person without a warrant, by deception, or by intimidation by the police or military authorities is in essence a violation of this right.

To circumvent this illegality, captors in most cases, report that the arrest was made in a different place and, in general, it is recorded that it was made in flagrante delicto (within 24 hours after the crime occurred); and almost all of the persons incarcerated are charged with illicit associations (art. 345 CPP).

Young man, 20 years old: Members of the PNC and the FAES arrived at his house at night, without an arrest warrant, they did not even ask his name, but they did ask how many men were in the house and if he had brothers, when he answered that it was only him, they told him: “well, you are going to accompany us.” One soldier told the others not to detain him: “why are you going to take him?” but another one answered that it was for investigation. They put him in a gray vehicle with private plates; they did not tell him the charges for his detention, only that he was under investigation.

Young man, 20 years old: Members of the PNC and the FAES arrived at his house at night, without an arrest warrant, they did not even ask his name, but they did ask how many men were in the house and if he had brothers, when he answered that it was only him, they told him: “well, you are going to accompany us.” One soldier told the others not to detain him: “why are you going to take him?” but another one answered that it was for investigation. They put him in a gray vehicle with private plates; they did not tell him the charges for his detention, only that he was under investigation.

Detention based on an anonymous complaint and without prior investigation.

Anonymous complaints or delations have been reported more frequently in the last months of the regime, mainly through the “123” hotline. Arrests under this modality have been used for settling scores, for quarrels between families, with neighbors in the communities or labor disputes; as well as for the eviction of tenants.

23-year-old man arrested in July 2022: he worked in the family business dedicated to the sale of food, had no criminal record and had not been arrested before. In the month prior to his arrest, he received threats from an inebriated neighbor who told him that “if I want, I can report you to the police and say that you are a gang member”.

Since then, the family began to be harassed by police officers who came to the young man’s place of work and his home to ask him questions, stopped him when he was driving on public roads, asked him for his documents and beat him. The harassment continued until the time of his arrest, when police officers went to his workplace and arrested him without a warrant or a prosecutor’s order, at which time he was also physically abused by his captors. The only explanation his relatives received about his capture was that an anonymous telephone call had been made against him.

⁸⁹ “The dwelling is inviolable and can only be entered with the consent of the person who inhabits it, by court order, for flagrante delicto or imminent danger of its perpetration, or for serious risk to people”. Constitution of the Republic, art. 20 inc. 2°.

Second arrest of persons with a court order for their release.

Exceptionally, until June 2022, specialized investigating judges, who process cases of persons detained under the exception regime, conducted special hearings for the review of the provisional detention measure, and only in very few cases was it replaced by releasing the person with another type of measure. However, from August 2021 to the closing date of this report, a greater number of people have been observed receiving substitute measures, but they are not always released.

Cristosal has received repeated complaints and has documented cases of people who received alternative measures to pre-trial detention, but the prison authorities did not release them and they are still incarcerated, therefore, they are in illegal detention.

Another serious practice is the detention of persons who are re-arrested as they leave the prison, even though they have been released by court order with alternative measures to provisional detention. In these cases, the police agents wait outside the prisons inside their police patrol cars, and after verifying that they are dealing with a person being prosecuted under the exception regime, they detain this person again, take him to the nearest police station and record it as a new detention, this time the person is accused of “pertaining to Terrorist Organizations” and is taken back to the same prison or a different one, but this second case is brought to a different judge.

These practices constitute illegal detentions, given that there is a double trial, that they are prosecuted for the same facts, and are attributed two different crimes and judged by two different judges.

A different modality, but with the same consequences, is the second arrest inside the prison. According to testimonies of private defense attorneys and people who have been released from prison, the inmate is separated from the cell and taken to the area known as “quarantine” - a place where people who enter and leave the prisons stay between 5 and 10 days -, then they are notified that they will be released and their release is recorded, but before leaving, at the entry gate of the prison the guards hand them over to the police, who make a second arrest, this time, they are also charged with the offense of pertaining to “Terrorist Groups”.

Young man, 23 years old:

“At noon they called us by the loudspeaker and took us out and told us that we were going to be released. At that moment the notifier said ‘tomorrow you have to go to court, otherwise they will bring you back’. So I thought ‘I’m leaving right now.’ The time came, and there were 10 of us who were released, but there were two who had already been released before and this was their second time, so they were laughing, and we didn’t understand why they were laughing, and they kept looking at us and laughed. They put four of us in a cell where only two people fit. That cell was horrible, water was leaking and we stayed there for 8 days.”

[One day] they took us out and told us we were leaving, first a group of five people who were in another cell were taken, a few hours went by and they didn’t come back, so we thought they had left. But then they came back and we were worried. It was about three o’clock in the afternoon, they made us sign where it says that you are leaving the prison, they proceeded with the release, they check you and everything; but you just get to the gate, where there is a booth at the entrance of the prison, the police is waiting there and the guard gave them our papers, and then back inside (...).”

The case cited below refers to an illegal detention, despite the fact that this person had received a release order as a substitute measure for detention, he is still held in prison.

A young -twenty-year-old man:

“Just one day before his arrest he had undergone surgery, the court in charge considered the health complications he suffered before his arrest that worsened during his time in prison (in these cases a forensic medical examination is requested); however, despite the release order and the efforts of his relatives to have him released, they received a phone call two months later informing them that he had been arrested again, that he was in a police barracks and that a new process had been initiated against him.”

Missing Inmates.

Cristosal has provided assistance to relatives of people who were detained by police or soldiers, but have not received information about the prison or barracks where they are held captive, despite the fact that these relatives had searched for them in the different prisons in the country. Some of these cases have been referred to the Human Rights Ombudsman’s Office (PDDH) which, in turn, activates the penitentiary surveillance judges.

Lack of information on the whereabouts and health condition of inmates has been one of the main complaints of the families of prisoners, who after asking in the various prisons in the country receive no response; sometimes lack of information is due to a mistake in the name of the prisoner by the police, prosecutors or prison authorities, or that the prisoner has an intellectual or mental disability; however, it may also be that the prisoner died or is an extralegal death case.

For example, the Department of Information on Detained Persons of the Supreme Court of Justice, which is responsible for keeping a registry of persons of legal age detained or captured at the national level, does not have information or does not provide it in the case of persons captured under the exception regime; sometimes they do not even answer the telephone numbers designated to provide information on detained persons.

The DGCP does not have a single registry of persons detained under the state of exception, despite the fact that a year has passed since its implementation. The registry would allow the FGR, the Department of Information of Detained Persons and the PDDH (which by constitutional mandate must be informed of any detained persons, art. 194.I, ord. 5° Cn.), to have the necessary information to inform relatives about the place of confinement of persons held in prison under the regime; Therefore, it can be affirmed that the lack of information and the non-existence of registries of detained persons is undoubtedly a deliberate practice of opacity that prevents knowing the whereabouts of prisoners and that causes their family members uncertainty and suffering.

2.3 Violations of the right to life: death toll of the exception regime

Cristosal⁹⁰ has emphasized the State’s obligations with respect to inmates in State custody in its previous reports on the exception regime. The Inter-American Court of Human Rights (IACHR) and the Inter-American Commission on Human Rights (IACHR) have determined that it is the duty of the State to adopt measures to protect and preserve the right to life. The American Convention on Human Rights (ACHR) establishes that “no one may be arbitrarily deprived of his life” (art. 4).

⁹⁰ Cristosal, “Violaciones DDHH durante régimen de excepción en El Salvador”, (June-September 2022), <https://cristosal.org/wp-content/uploads/2022/10/4-Cuarto-Informe-Situacional-sobre-DDHH-durante-el-re%CC%81gimen-de-excepcio%CC%81n.pdf>.

In this sense, the IACHR Court⁹¹ holds that “States have the obligation to ensure the creation of the conditions required to prevent violations of this right and, in particular, the duty to prevent their agents from violating it. This obligation extends to “those who must safeguard security, be they its police forces or its armed forces”.

When the State restricts a person’s freedom, it limits the exercise of other rights, and therefore becomes the guarantor of the rights to life, personal integrity, health, food, among others. However, as has already been said,⁹² during the state of exception, the constitutional and international duties to protect and guarantee life have been deliberately breached by the Government and the competent security authorities, since the deaths that occurred at the time of detention, inside the prisons and due to lack of medical attention, may constitute extra-legal executions due to State responsibility, by action or omission.

The UN Working Group on Arbitrary Detention affirms that the main element that defines imprisonment is the dependence of the subject on the decisions adopted by the personnel of the establishment where he is held;⁹³ that is to say, the state authorities exercise total control over the person in their custody.⁹⁴ This particular context of subordination of the prisoner to the State -which constitutes a legal relationship of public law- falls within the *ius administrativist* category known as a relationship of special subjection, by virtue of which the State, upon depriving a person of his liberty, becomes the guarantor of all those rights that are not restricted by the very act of deprivation of liberty; and the prisoner, for his part, is subject to certain legal and regulatory obligations that he must observe.⁹⁵

The most important legal consequence of this situation of guarantor is the presumption *iuris tantum*, that is, that the State is internationally responsible for violations of the rights to life or personal integrity committed against persons in its custody, and it is up to the State to rebut this presumption with sufficiently effective evidence.⁹⁶

Security authorities either fail to give an explanation or downplay the importance of the dozens of deaths of prisoners during the state of exception, failing to comply with their obligations to protect the right to life and personal integrity and to prosecute acts that could constitute crimes.

The Minister of Justice and Public Security, Gustavo Villatoro, confirmed on November 7, 2022, that up to that date 90 deaths had occurred in the prisons, within the framework of the exception regime. He also stated that “deaths happen in the entire penitentiary system” and that every year inmates die.⁹⁷ He also stated that all deaths were being investigated by the PNC and the FGR; however, to date, the results of such investigations have not been made public.

2.3.1 Preliminary results of the investigation into the deaths of prisoners in state custody during the state of exception

The families of persons imprisoned during the state of exception continue with no information on the living and health conditions of their relatives and, even more seriously, on the date and cause of death. The DGCP does not communicate the death or violent death of persons in its custody. Most relatives learn about these deaths from funeral home employees and, sometimes, through social networks or reports from people who have been released from prison.

⁹¹ Corte IDH, “Caso Olivares Muñoz y otros Vs. Venezuela”, Fondo, Reparaciones y Costas. Serie C No. 415, 10 November 2020.

⁹² Cristosal, “Violaciones DDHH durante régimen...” <https://cristosal.org/wp-content/uploads/2022/10/4Cuarto-Informe-Situacional-sobre-DDHH-durante-el-re%CC%81gimen-de-excepcio%CC%81n.pdf>.

⁹³ United Nations (ONU), “Grupo de Trabajo sobre Detenciones Arbitrarias. Informe presentado al Consejo de Derechos Humanos”. Available in: A/HRC/10/21-09-11046 (ohchr.org).

⁹⁴ Corte IDH, “María Lourdes Afiuni respecto de Venezuela. Medidas Provisionales”, March 2, 2022, https://www.corteidh.or.cr/docs/medidas/Afiuni_se_02.pdf.

⁹⁵ Inter-American Commission of Human Rights (CIDH), Informe sobre los derechos humanos de las personas privadas de libertad en las Américas (OEA: Official Documents, 2011). Available in: <https://www.oas.org/es/cidh/ppl/docs/pdf/ppl2011esp.pdf>

⁹⁶ Corte IDH, “Caso Tibi Vs. Ecuador”, Excepciones preliminares, fondo, reparaciones y costas, Septiembre 7 2004, https://www.corteidh.or.cr/docs/casos/articulos/seriec_114_esp.pdf.

⁹⁷ Javier Urbina, “Ministro de Seguridad confirma 90 muertes en cárceles y más de 2,000 liberados durante régimen de excepción”. La Prensa Gráfica, (November 4, 2022), <https://www.laprensagrafica.com/elsalvador/Ministro-de-Seguridad-confirma-90-muertes-en-carceles-y-mas-de-2000-liberados-durante-regimen-de-excepcion-20221107-0027.html>

Cristosal documented the context of the deaths of prisoners under the state of exception, either through field research, interviews and in situ verifications- both at the time of arrest and during their deprivation of liberty and in cases of mass graves, and none of the deceased had been convicted of the crime attributed to them at the time of arrest.

Relatives, neighbors and acquaintances of the deceased were interviewed, almost all of whom expressed fear of being identified or of making public statements, because of reprisals from the authorities or because their priority is their own subsistence and the support and care of the children of the deceased; many of these families have also been victims of forced displacement.

This investigation has allowed us to account for **139 people who died in state custody (4 women and 135 men) between March 27, 2022 and March 27, 2023.**

Findings show that it is highly probable that the number of deaths is much higher, since it was verified that many were buried in mass graves, i.e. the family was not notified of the death and prisoners were buried as unknown persons, despite the fact that they were incarcerated. Likewise, testimonial information has been received on the deaths of women in the “Cárcel de Mujeres” and the “Granja Penitenciaria de Izalco” (Izalco Penitentiary Farm); as well as dozens of men who died from torture, beatings and lack of medical care at La Esperanza Preventive and Sentence Enforcement Center (known as “Mariona”), the Izalco⁹⁸ prison complex and the Quezaltepeque Preventive and Sentence Enforcement Center (recently renamed the Quezaltepeque Special Health Center), without having been able to confirm this information to date.

Documented cases show that most of the deceased were young individuals. Of the total number of documented deaths, 46.3% were individuals of productive age, that is, between 18 and 38 years of age. Those between 38 and 48 years of age accounted for 40.5%.

No member of the LGBTQ+ population was identified among the dead.

Table No. 1 Age range of women and men who died in State custody.

From March 27, 2022 to March 27, 2023

Rango de edades	No. de fallecidos	Hombre	Mujer
18 – 28	34	34	-
28 – 38	31	31	-
38 – 48	39	38	1
48 – 58	17	15	2
58 – 68	5	5	-
68 – 78	2	1	1
78 – 88	2	2	-
N/D	9	-	-
Total	139	126	4

Source: Cristosal.

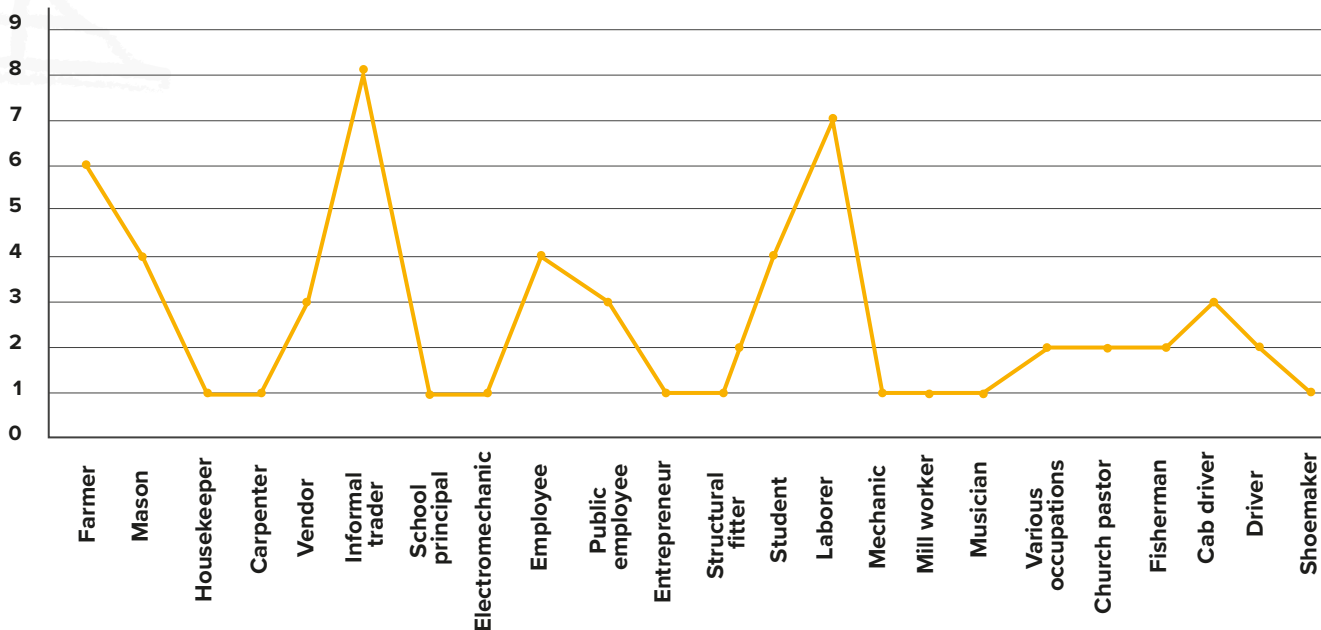
⁹⁸ The Izalco prison complex is made up of prisons: Izalco Phase I Prevention and Sentence Fulfillment Center, Izalco Phase II Security Penitentiary Center, Izalco Maximum Security Penitentiary Center Phase III, Izalco Phase IV; and the Izalco Prison Farm.

Of this number of verified deaths, it was determined that 108 people died between March 27 and December 31, 2022, and 30 died between January 1 and March 31, 2023.

The occupation of 51 of the 138 deceased persons was determined, ranging from agriculture, informal trade, employees and students, among other activities, as shown in the following graph.

Graph 4: Occupation of the deceased persons.

Between March 27, 2022 to March 27, 2023



Source: Cristosal

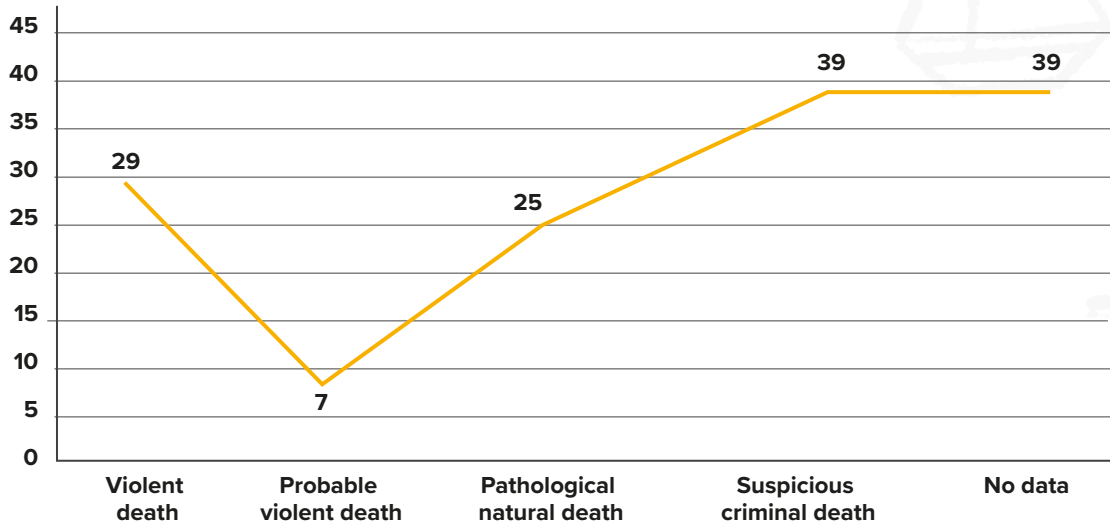
Among the deaths that occurred in State custody up to March 27, 2023, there are 30 cases in which the reported cause of death is indicated as “edema”, including 26 cases of pulmonary edema, 3 cases of cerebral edema, and 1 case of generalized edema; despite the fact that in several of these cases there was evidence of violence on the corpse. Likewise, 4 cases were reported in which the cause of death corresponded to infarction; in two of these cases the required medication was not provided for the pre-existing health conditions of the inmates. Regarding the above, 17 cases were identified in which the State failed to comply with its duty to provide adequate medical care, or the medication was not provided to the inmates as required. In addition, 2 deaths were reported in which anemia was related to the cause of death.

Based on the above information and the documentation compiled by Cristosal, four categories have been grouped to illustrate the possible causes of death: violent death, probable violent death, natural or pathological death, and death under suspicion of crime,⁹⁹ as shown in the following graph:

⁹⁹ Violent death is that produced by external, traumatic or toxic agents and by extension, violent death should also be understood as that produced in extreme or unfavorable environmental situations, such as deaths due to hunger, thirst, cold, heat or lack of breathable air. The diagnosis of violent death opens up three variables of medical-legal etiology: homicidal medical-legal etiology; Suicidal Legal Medical Etiology; Accidental Medical Legal Etiology. Suspicious criminal death: are all those sudden, unexpected deaths, sometimes of young people, without any disease that could suggest a fatal outcome, without any apparent cause that could justify it, of individuals alone, in many unknown cases. It is the rapid and surprising nature that causes them to be controversial and therefore, perform the autopsy in order to verify that it is a natural death or failing that if it is a violent death. J. Cartagena Pastor et al., Manual of legal medicine for jurists (Santo Domingo, 2016).

Graph No. 5 Cause of death of the deceased.

From March 27, 2022 to March 27, 2023



Most of these deaths were reported to have occurred in the following places: National General Hospital “Dr. Jorge Mazzini Villacorta”, department of Sonsonate (46 people); National Regional Hospital “San Juan de Dios”, department of Santa Ana (17 people); National Specialized Hospital “Rosales”, department of San Salvador (17 people); National Hospital “Dr. Juan José Fernández”, Zacamil (10 people); deaths in ambulances or vehicles outside hospitals (7 people). There were also 2 deaths in police barracks.

On the other hand, in April 2023, 14 deaths of inmates were reported, for a total of 47 deaths this year.

Thus, the **total number of deaths of inmates since the beginning of the state of exception adds up to 153**; however, one of these persons was detained before March 27, 2022.

As in all cases, individuals who died in state custody lived in conditions of poverty and/or in areas under gang domination or control. Arrests were carried out by police or military agents, despite the fact that many of them were also victims of gangs. These people were detained accused of collaborating with these criminal groups or because of anonymous complaints, or for having artistic tattoos, conflicts with police or military, previous police records, having been deported or previously detained, having been removed from a gang or because of tattoos alluding to gangs.

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individuals have died in State custody during the state of exception, they were all arrested without a prior investigation or trial.

None of these individuals were found guilty of the crime attributed to them.

The following are some examples of people who died as a result of these types of arrests:¹⁰⁰

Victims of gangs and the State.

52-year-old man: he had a small store and a mill. Between 2018 and 2019 he was forced to provide food to gang members who came armed and drugged to his business, at least one night a week. On one occasion, gang members fired several shots outside his home, so he was afraid they would harm his family. He was accused of collaborating with gangs and arrested. According to the IML report “he died of cerebral edema.”

Harassment and conflicts with police officers

30-year-old man: he transported passengers in his vehicle without having permission to do so. He was constantly harassed by policemen, because one of them wanted to buy his vehicle and he didn't agree to sell it.

He was arrested while he was at home, the police officers knew him and that is why they did not handcuff him; one of them told him: “I know you are not going down the wrong path, but orders are orders, and if we don't arrest you, others may come, and may beat you in front of your family.” At the police station they informed that the arrest had been made based on an anonymous call. He was strangled to death.

Although most of the cases of deaths in state custody during the state of exception have been made public, the prosecutorial, police and prison authorities deny any responsibility on the part of the police and prison administration, to the point of omitting criminal investigations.

The General Director of Prisons, Osiris Luna, downplayed the importance of these deaths and attributed responsibility to the deceased inmates themselves, stating that “there are people dying in the prisons who suffer up to four morbidities but who refuse to receive their chemotherapy treatments.”¹⁰¹ In addition, he stated that as security authorities they only record deaths caused by health problems. These statements contrast with the investigations carried out by Cristosal, in which it has been determined that inmates not only do not receive the medicines that their families buy for them as prescribed, but are not attended to when they complain about ailments and are not given the medicines that their families bring them.

Some of the family members have filed complaints with the FGR, but have not received a response. Cristosal is aware that the police have removed the bodies in 24 cases of prisoners held in the Maximum Security Center of Zacatecoluca, the Preventive and Sentence Compliance Center “La Esperanza” (Mariona), the prisons that make up the Penitentiary Complex of Izalco and in police barracks, these cases were recorded by the police as homicides.

The denial of information of any kind to the relatives of the deceased, including detainees who were transferred to hospitals, has been identified as a repeated practice. Exceptionally, families are given a forensic corpse examination certificate issued by the IML. Of the cases documented by Cristosal corresponding to the first year of the state of exception regime, only **36 were examined by the IML**; although some of these cases state that an autopsy was performed, the families do not know whether or not it was performed and what the results

¹⁰⁰ Personal data and information that identifies the victim are omitted, in attention to the rights to identity, privacy and private life of the surviving victim families.

¹⁰¹ Lissete Lemus, “Osiris Luna asegura que las muertes en penales son por problemas de salud”, El Diario de Hoy, October 18, 2022, <https://www.elsalvador.com/noticias/nacional/osiris-luna-director-de-centros-penales-carceles-prisiones-regimen-excepcion-1008193/2022/>.

were. When detainees die in hospitals, relatives are given a death certificate containing the cause of death, which is used to register the person's death. Cristosal has found that it is almost always stated that the death was due to an illness or chronic health condition, although most of the people entered the prison system without previous ailments.

However, the investigation allows us to sustain that at least 28 people died violent deaths due to torture¹⁰², beatings, mechanical asphyxiation by strangulation, injuries, among other causes; which were documented by the same Forensic Medicine Institute, and in other cases Cristosal has verified photographs of the corpses that show signs of violence.

Deaths due to torture, cruel, inhuman or degrading treatment.

Cases recorded as violent deaths, show a common pattern: the corpses present lacerations, hematomas that evidence blows, wounds with sharp or blunt objects, strangulation, hanging, among others.

32-year-old man: according to the IML report, he died from “severe blunt trauma to the thorax” (blows to the abdomen); in addition, his body had moderately deep lacerations on the elbow; approximately eight bruises: circular and irregular bruises on both knees, near his elbow, left forearm and wrist; in addition, a vertical wound of approximately eight centimeters on the left side of the head. At the time of his arrest, he was beaten by police officers.

Several of the corpses show evidence that the person was a victim of beatings and probably torture:

Young man, 23 years old: died on April 18, 2022. The corpse showed signs of beatings in various parts of the body, broken feet and hands, sores on the back in an elongated burn-like shape, which shows that he may have been a victim of torture.

The body was delivered to the family in a closed coffin. The IML reported it as a “sudden death”.

Young man, 24 years old: he was a fisherman and died in the ambulance on the way to the Zacamil National Hospital. His body had a perforation through one of his shoulders and lacerations on his knees, but the IML report stated the cause of death as “pulmonary edema”.

While he was detained, his family brought food packages to “Mariona” and even made a deposit of \$150.00 dollars for his expenses.

His wife suffered a miscarriage due to the impact of her husband's death, she was five months pregnant.

¹⁰² “Torture: any act by which serious pain or suffering, whether physical or mental, is intentionally inflicted on a person in order to obtain information or a confession from him or a third party, to punish him for an act he has committed, or is suspected of having committed, or of intimidating or coercing that person or others, or for any reason based on any type of discrimination, when such pain or suffering is inflicted by a public official or other person in the exercise of public functions, at your instigation, or with your consent or acquiescence. Pain or suffering that is the sole consequence of legitimate sanctions, or that is inherent or incidental to them, shall not be considered torture.” Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, (Art. 1).

One of the most frequent causes of death described in IML and hospital reports is mechanical asphyxia.¹⁰³ Mechanical asphyxia or asphyxia by immersion is one of the most common methods of torture known in El Salvador, practiced between 1970-1992 by the security forces during the armed conflict.

30-year-old man: the forensic medical examination of the IML stated that he had died as a result of “mechanical asphyxia by strangulation”. The corpse presented a kind of protuberance at the level of the sternocleidomastoid muscle and hematomas, possibly perpetrated with a rigid object. That is to say, he could have been strangled with a stick, club or tonfa.

42-year-old man: died in a police barracks. According to the medical examination, he died of “mechanical asphyxia by hanging”. The body had several blows to the head.

In most cases, the following are reported as the cause of death: pulmonary edema, pneumonia, renal failure, heart attack, anemia, cerebral hemorrhage, tuberculosis, among others. Due to the authorities' refusal to make available information on the results of autopsies -when performed-, as well as on the type of medical care provided, or their clinical records (when these types of deaths occur, the forensic medical examination is not performed), there are sufficient elements to presume that some of these deaths were preceded by violence, lack of assistance and medical care. There are even sufficient elements to presume that these diseases or chronic conditions could have been acquired or aggravated as a result of torture, beatings and cruel and inhuman treatment (prolonged confinement in punishment cells), lack of food, drinking water and minimum conditions for physiological needs, contagious diseases, among others.

Documented cases give rise to the affirmation that health care for inmates is null or deplorable, which aggravates any previous illness during detention. The unhealthy and overcrowded conditions worsen the health of people with chronic illnesses and medical conditions, and also predispose to the contraction of these conditions.

In some cases, the correlation between the cause of death and the condition of the corpse is not congruent.

44-year-old man: a farmer who did not suffer from any type of illness at the time of arrest. He was held for four months, initially in “Mariona” and later in the Quezaltepeque Prison; he died in the Rosales Hospital where he remained for approximately one month. The IML report states that he died of “pneumonia”, but his body had sores and he had lost a lot of weight, he was a robust person and “was unrecognizable”, according to the people interviewed.

42-year-old woman: she died in the San Juan de Dios Hospital in Sonsonate where it was stated that she died as a result of “septic shock due to immunosuppression caused by nasal carcinoma”, but her family didn't even know that she had cancer.

Her body was unrecognizable, she had lost approximately 40 pounds in the prisons of “Ilopango” and “Apanteos”. Her arrest was the result of an anonymous complaint.

¹⁰³ Asphyxia “is produced by a mechanism that prevents pulmonary ventilation. This mechanism can be internal (by foreign bodies or submersion) or external (hanging, strangulation, crushing, facial suffocation, burial).” University of Navarra Clinic, Medical Dictionary, 2023, <https://www.cun.es/diccionario-medico>.

Torture and cruel, inhuman and degrading treatment trigger serious illnesses in many of the prisoners as they are subjected to prolonged confinement in punishment cells, constant beatings, lack of food and deprivation of drinking water, among others.

A young 24 year old male, with no previous illnesses or chronic ailments: he was detained in May 2023. After 7 months in “Mariona”, he called a member of his family and said: “tell my mother that I am very sick, I have a stomach ache and the guards pay no attention.”

At the hospital he was told that he was malnourished, dehydrated and deeply anemic. Due to his health condition, at the request of his family, he was granted alternative measures to provisional detention. At the special hearing the judge told one of his relatives: “I am sorry to give you good news and bad news. I am going to give you the good news ... according to the two hearings and the polygraph test results in Izalco, he is innocent; but the bad news is that ... he has terminal renal insufficiency”.

In “Mariona” they informed his family that he had been transferred to the Granja Penitenciaria de Zacatecoluca, there they were told that they could not give them information about his condition, but that he was being held in that prison. Four days later his family found out that he had been admitted to the Santa Teresa de Zacatecoluca hospital, where he remained for 19 days.

“Lord in heaven, he was unrecognizable! He was just bones and skin, the little yellow chest, nothing like what he used to look like ... [tests] showed a black thing in his stomach, the walls were full of black water, and I asked the doctor why is was vomiting that?” The doctor replied, “he must have been hit in the stomach, his gastritis burst ... he can’t be cured, it is just a matter of time.” He died two days later at home.

While he was in the hospital he told one of his relatives: “there [in the “Mariona” prison] water is hot and tastes like chlorine and they hardly give us food, we get fed once a day, they don’t give us breakfast or lunch only dinner...we wait in line in a large court and everyone who gets food receives two hard blows on the back ... so I stopped going out to eat so they wouldn’t hit me, because those blows hurt .”

The Inter-American Court of Human Rights (IACHR) has repeatedly held that there is state responsibility for deaths caused by lack of medical assistance and care: “the State is in a special position of guarantor of the rights of all persons in its custody.¹⁰⁴ That is, it has a duty to “safeguard the health and well-being of prisoners by providing them, inter alia, with the required medical care, and to ensure that the manner and method of imprisonment does not exceed the unavoidable level of suffering inherent in detention.”¹⁰⁵

Deaths due to lack of medication or medical assistance.

In this sense, the lack of supply of medicines to people with chronic diseases or conditions that result in death, implies direct responsibility of the prison authorities.

When authorities are made aware of a health condition that requires specialized medications, they have the duty to ensure that the individuals in their custody receive the medication through the prison administration or the national health system. Even more serious is the fact that family members bring the medicines to the prisons and they are not given to the prisoners.

¹⁰⁴ Court IDH, “Caso Díaz Peña Vs. Venezuela”, Excepción Preliminar, Fondo, Reparaciones y Costas, Serie C No. 244, June 26, 2012, https://corteidh.or.cr/docs/casos/articulos/seriec_244_esp.pdf.

¹⁰⁵ Corte IDH, “Caso Díaz Peña Vs. Venezuela”, https://corteidh.or.cr/docs/casos/articulos/seriec_244_esp.pdf.

50-year-old woman: she had a liver disease, although her family took her medication to the prison where she was confined, they were not allowed to leave them there, and when her family asked about her, they responded that “if she needs medication, the doctor will let us know”. However, according to the IML report, she died of pulmonary thrombo-embolism and severe pneumonia.

She was detained by soldiers, who at the time of capture said they were only taking her for “a normal check-up, she will be back soon.”

Deaths before or during transportation to a health center.

It has been documented that at least 7 prisoners died in transit to a hospital, even, probably some of these deaths could have occurred inside the prison, which for now is not possible to establish because the families are not informed whether or not an autopsy was performed and its results. This could have determined the post mortem interval).

In any case, death in route is also a sign of a serious health condition that may not have been properly attended.

46-year-old man: he had diabetes and died 17 days after his arrest. According to the IML report, he was transferred to the Zacamil Hospital, but did not receive medical attention, and died in the ambulance of the La Esperanza prison. The cause of death was determined as “pulmonary edema”.

Funeral homes are the ones who report the death of prisoners.

Despite the fact that more than a year has passed since the state of exception was established, the penitentiary administration does not have a mechanism to guarantee the right of families to receive information on the situation and health conditions of prisoners in the context of the state of exception regime. Family members are not informed or notified when an inmate is transferred from one prison to another due to illness or chronic conditions; nor are they informed of the transfer to hospitals or of the death of the inmate.

The DGCP has a registry of family members who bring food packages and medicines to the prisons for their relatives; this agency is also responsible for keeping a record of all prisoners and their family members or contact persons.

Cristosal found that in most cases the relatives of deceased persons did not receive any communication from the prison or the DGCP, nor from hospitals or the police; they learned of the death through telephone calls or visits from employees of funeral homes offering their services.

Relative of a 23-year-old male: “I was notified that a funeral home was looking for me. I contacted them and they showed me a picture and asked me if it was my brother ... at that point I got sick. They just told me that my brother had died and asked me if I wanted them to pick up the body. At that moment I also called my mother, later two more funeral homes showed up with the same information about him”.

Funeral home employees are the first to know when someone has died, they usually have contacts or a relationship with hospital personnel, the Police and the IML; in some cases, the information is obtained in exchange for economic benefits such as a commission or percentage for the services provided by the funeral home. They obtain the name of the deceased, the personal data and address of relatives and even photographs of the body.

The commission charged by “Informants” ranges from five to ten percent of the total funeral services rendered in the month by the funeral home that received information, to food, and cell phone recharges, among other benefits. The cost of a basic funeral service ranges from \$300.00 to \$800.00 dollars, but sometimes it goes up to \$1,000.00 or \$1,500.00, amount which is almost impossible to pay by the majority of the families that, in general, live in poverty.

Receiving the news of the death of a family member from a stranger whose sole interest is to sell funeral services, causes extreme suffering to the families, who in their bewilderment, give in and pay high prices in exchange for more information and to be able to bury their loved one.

Relative of a 30-year-old man:

“They had just dropped another corpse when the funeral home was notified that there was another dead person. That’s why we found out ...the funeral home offered an inexpensive casket for \$750.00, but it was too small, the body didn’t fit. The casket cost \$950.00 plus the preparation for \$150.00, but we managed to hire another funeral home”.

Relative of a 53-year-old male:

“I was out in the farm and upon my return I saw a bunch of little girls crying, saying daddy died. Four funeral homes showed up to see which one was going to get the job. He was wearing handcuffs and had a pin prick like a nail in his eye”.

Prisoners buried in mass graves.

As mentioned above, prison authorities are mandated to keep a record of prisoners and their relatives or contact persons; however, several cases have been identified of corpses that were buried in mass graves. In these cases, family members learn of the death of their relative from third parties or through social networks or relatives of other prisoners.

The search and recovery of the body takes several days or weeks during which mourners are subjected to extreme suffering until the body is buried. It involves repeated visits to the prison or other centers, hospitals, the IML, the PDDH and the Attorney General’s Office, until the latter authorizes the exhumation process and the delivery of the body.

This process has severe repercussions on the emotional and mental health of family members, who are also exposed to mistreatment and discrimination by government employees and officials since they are treated as “relatives of gang members”.

So far there are four documented cases of people who were buried in mass graves.

45- year- old male: with an intellectual disability. His body was transferred to the IML with mistaken surnames and was buried in a common grave in the Memorial Park [Cemetery] La Bermeja; The medical examiner's note states that he died as a result of "pulmonary edema"; however, forensic photographs show that the corpse had edema on his face. People interviewed reported that he was beaten inside the prison, he was kicked in the stomach causing him to expel blood through his nose and mouth, which caused him to lose mobility and he was unable to eat; he did not receive medical care.

Young 23- year- old male : He died two months after being arrested, but his relatives found out about his death six months later, despite the fact they visited the prison where he was held every month to ask about him and leave the food package.

Eight months after his arrest they were informed that he was no longer there because he had died. He was buried in a mass grave and the exhumation took place two months later. The photos taken by the IML showed that the body had several bruises, but it was stated that he had died of "leukemia".

Six of the surviving families of people who died in state custody have suffered forced displacement; they left their homes because of police harassment or fear of being captured.

Annex 1 of this report contains a list detailing the name, occupation, age, date of detention and death, as well as the result of the investigation into the cause of death as stated in the forensic medical report issued by the Institute of Forensic Medicine, which in some cases is contrasted with the documentary and testimonial information obtained.

2.4 Condition of prisoners during the state of exception

2.4.1 Torture, cruel, inhuman and degrading treatment in prisons: a policy of punishment and terror

El Salvador exceeds the number of 105,000 persons in the prison system,¹⁰⁶ placing it as the country with the most inmates worldwide (approximately 1.6% of its total population). Despite the fact that nine more prisons were built between 2014 and 2019, and that the Terrorism Confinement Center was added in 2022¹⁰⁷ -which increased the number of places in the penitentiary system- the truth is that up to April 2023 the number of prisoners from the state of exception created overcrowding levels never seen in the country.

Thus, the conditions to which inmates are subjected to under the state of exception are typical of cruel, inhuman and degrading treatment, since they suffer extreme overcrowding, lack of food, assistance, health services and medicines; to which torture, beatings, punishments, permanent confinement, no access to sunlight are added; as well as the lack of drinking water, personal hygiene, use of sanitary services and cleaning of cells, among others. This is a government policy of punishment and terror for people detained under the state of exception, which has had an impact on the entire Salvadoran population.

¹⁰⁶ Data calculated from the sum of the number of people detained until March 1, 2022, which were 39,538, with the 66,417 reported by the Government until March 27, 2023 by the exception regime.

¹⁰⁷ As of April 2023, only 8,000 inmates had been transferred to this Center, which is said to hold 40,000 people. See: <https://m.facebook.com/SecPrensaS-V/posts/555926546711610/>; <https://www.laprensagrafica.com/elsalvador/Realizan-translado-de-privados-de-libertad-desde-el-oriente-de-El-Salvador-20230418-0083.html>

Cristosal interviewed dozens of people who were incarcerated between 7 and 11 months; most of them affirm that in the cells and sectors where they were detained there were almost no gang members, according to their calculations these did not exceed 30% of the total number of prisoners. According to their testimonies, during the admission procedure they were classified as civilians, tattooed civilians, active (MS-13, 18-R, 18 Sureños and other gangs) or retired. On the other hand, they affirm that in the cells and sectors in which they were held, gang members were in the minority.

31-year-old male held in Ilopango: “.....there were old people, there were young people, and most of them did not have tattoos alluding to gangs. When the guards came to check our tattoos, of about 250 inmates they only took out about six ... you see, there [was] a man who lived near a police station; he had lived in the United States for a long time, and had come to visit his family. He had bought a property and was putting up posts to divide the land. Then a soldier arrived and asked him, “where were you? I was posting” he said, but he referred to posting as putting up poles. “Ah, you’re the whistleblower, you are the one who gives us away with the gangs,” and he pointed a gun at him. The man suffers from high blood pressure, and he fainted. I guess the soldier thought he was surveilling. The soldier told him “You are the whistleblower.” They took him to the police station and all his family arrived, because the man was well known there, they knew “he was innocent”, but since they had already started the admission procedure, they could not let him go free, and the poor man was there. He was suffering from high blood pressure. He travelled to El Salvador every six months, because he was a truck driver abroad. If you gave him bad news, he would faint there, and vomit because he had high blood pressure”.

According to the people interviewed, in sector C of Ilopango, for example, there are 11 cells, with approximately 250 people in each cell on the second level; on the first floor there are between 150 and 180 inmates in each cell, of which only one held active gang members. The stories are similar in Izalco Phase I and II, most inmates are identified as civilians, but in Phase III, which is the maximum-security prison, the proportions vary, with more active gang members and fewer civilians.

In the case of Mariona, Phase II (prison inaugurated in 2021) one of the buildings has mostly active and non-active gang members and, in the second building, “civilians”, i.e., non-gang members predominate.

Beatings and mistreatment upon admission into the prison.

Since May 2022, when a humanitarian crisis broke outside the country’s prisons due to the demand for information from relatives of prisoners under the state of exception, almost all prisoners are transferred to one of the prisons within 24 hours of their arrest.

Numerous testimonies taken by Cristosal, from people who were held during the state of exception, show that they were transported in police vehicles to the different prisons, also in buses or minivans; upon arrival, they were received by custodial agents who handcuff them to each other, make them kneel with their heads down, they usually remain under the sun on the cement or gravel floor for more than an hour; Later, they are forced to squat down (with their legs completely bent as if they were sitting on the ground), while they advance the guards hit them with the tonfas (batons), kick them or hit them in the head, some of them faint and are beaten to force them to get up.

Inmates in the prisons of the Izalco penitentiary complex:

Young 24- year- old male: We arrived at about half past four in the afternoon at this prison, we were told to get out of the vehicle, and to kneel down in the entrance area of the prison, for half an hour on a gravel floor, we could not move with our hands on the back of our necks, our knees began to bleed, verbal violence began by the custodians treating us as gang members: “you will drink dirty water, you will never see the sun again”, after they had them kneeling they made them walk and then they had to kneel down again, then they stopped them again... Then they took them to a place which is called “el Barco” (the ship), “they hit me hard because I passed some people and got out of line and was beaten to get back in the line”.

Young 23- year- old male:

“When we arrived at the prison, we got off the coaster and the first thing they told us was to kneel down on the gravel. We were half an hour on the gravel and trembling with fear because we watched them [another group that entered earlier]; crouching down, kneeling, and being beaten. Next to me there was a boy who had osteoporosis, he was trembling with fear and said “they are going to kill me here”, and I said “calm down”. They didn’t hit me, but that kid couldn’t run because he was sick; he was coming slowly and they hit him, even though he was sick, they didn’t care about that. He told them he had to take a pill, because he was carrying some pills and he said he was going to have an attack. They didn’t care, they threw the pills away. They have no respect for you, for them you are useless, you are practically trash.”

Prisoner in La Esperanza Preventive and Sentence Enforcement Center (Mariona):

Young 20 -year- old male: We were taken to Mariona and they made us kneel down, a custodian with the nickname of “mountain” told them “Hands up and if you put them down, we are going to kill you; he put us in line, he insulted us and said “only the lucky ones will get out of here alive,” we all felt afflicted. While kneeling down, we were given electric shocks and one of the guys started bleeding. When they entered the sector where they were going to stay, the guards gave them another beating; they entered some facilities that are more or less new, in the middle there is a court, on one side there are two buildings.

Inhumane and undignified conditions during confinement (food and cleanliness).

As the number of arrests increased, overcrowding worsened in the prisons, some of the released inmates stated that in cells with a capacity for 70 people, around 250 or more inmates were held. The availability of space in the cells varies significantly depending on the prison; those of more recent construction, such as Phase II of Mariona or the prison of Izalco, have a better distribution. However, in places such as the Quezaltepeque Preventive and Sentence Enforcement Center (since May 2022, Quezaltepeque Special Health Center), the Apanteos Preventive and Sentence Enforcement Center, the Ilopango Preventive and Sentence Enforcement Center for Women (since September 2022, there are only men and it is called the Center for Admission, Diagnosis and Initial Classification of Prisoners). The Santa Ana Prison and Jucuapa Preventive Center, the size and distribution of the cells is not uniform and some of the old buildings, due to their age, are humid and have water filtration.

However, the largest number of persons detained under the state of exception are concentrated in the prisons of Izalco, “La Esperanza”, Apanteos, Ilopango, Santa Ana, Quezaltepeque, CECOT and some in Ciudad Barrios, San Miguel and Gotera; a much smaller number are still in police barracks (it is not known why they have not yet been transferred to prisons).

In “Mariona” and in Izalco, inmates of the regime remain in total confinement, without going out in the sun or engaging in any other type of activity. The cells have small windows covered with iron so that the air that enters is minimal; in some cells, air also enters through the bars of the door; however, the number of people held in each cell and the temperature of the places where the prisons are built (32 to 34 °C) increases the heat inside the cells, which causes some inmates to faint.

The lack of drinking water, personal hygiene and cleaning causes inhumane conditions, in some cases they are only allowed to drink a glass or a small bottle of water during the day.

20 year- old- male imprisoned in Mariona: Toilets were clogged and the prisoners who had just used them left everything dirty and full and overflowing down to the floor, there was no place to bathe ... He spent 5 days without being able to defecate; about 5 days later they started to give them more than one meal a day. They were given 3 buckets of newspapers to defecate, there was no water to clean, they slept under the cots and on the floor, some on the floor of the bathrooms, where they got fungus on their backs. [When he arrived at the prison cell there were 45 people, after 10 days there were 252 inmates.

24- year- old male imprisoned in Izalco Fase II: ..there were only two containers to collect water, one of them broke and we repaired it and we only [had] one little glass with which all 145 inmates in the cell drank water, besides all the dirty water from the bathroom ran into the drinking water containers, because there was no division or walkway to separate the bathroom area (which remained wet from urine all the time) and the area with the drinking water, so they were mixed.... On the fourth floor, there was water twice a day and the containers were sometimes not full, and even when they were full, they were not enough because they were only about 60 centimeters high. There were two toilets, one for urinating and one for defecating.

Due to overcrowding, the sleeping area is very small, 2 or 3 people sleep in a single space, others on the floor, even on the floor close to the toilets. Some tried to make hammocks with their clothes, but this is forbidden and inmates are punished.

These unhealthy conditions are inhumane and undignified, the IACHR in its reiterated jurisprudence has pointed out that “... from articles 5 and 1.1 of the ACHR it follows the obligation to provide ventilation and natural light, bed for rest, minimum hygiene conditions, basic food and access to drinking water, regular medical checkups and adequate treatment”.¹⁰⁸ It also argues that these conditions are necessary to guarantee the rights to life and personal integrity, and which constitute an inescapable obligation given the condition of subjection to the State.

¹⁰⁸ Court IDH, “Opinión Consultiva OC-29/22”, Enfoques diferenciados respecto de determinados grupos de personas privadas de libertad, May 30, 2022, https://www.corteidh.or.cr/docs/opiniones/seriea_29_esp.pdf.

Torture, punishment and executions.

Physical punishment and beatings are widespread practices in prisons designated for inmates during the state of exception. These practices consist of beatings at the time of counting. Every day, prisoners are taken out of the cells to be counted; at that moment they are beaten by custodial agents with their tonfas (batons), kicked or punched. They also do this when inmates complain or make noise, in these cases they also spray them with pepper spray or take them out of the cells during the night to beat them.

Former inmates at Izalco testify to punishments at the whim of the guards, which resulted in injuries. According to the testimony of a man who was released from this prison with alternative measures, punishments are common when inmates stand at the doors - to try to breathe better. On one occasion the guards threw water with detergent on the floor of the corridor and made the inmates run, which caused several of them to fall and injure themselves, and when they did not get up, they were kicked or hit with the baton.

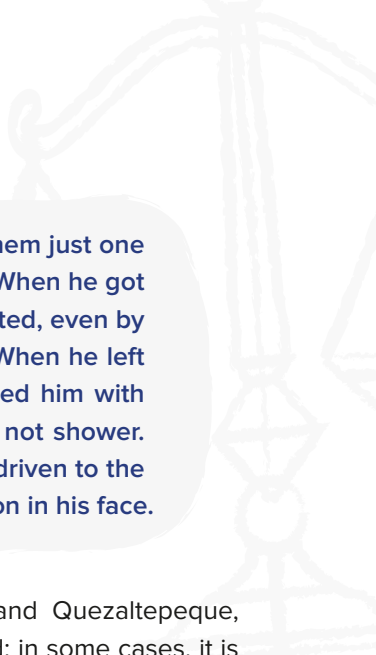
It is important to note that, in torture, the elements of intentionality and purpose concur; in these cases, it is about causing suffering, sometimes prolonged, with the intention of punishing, vilifying and setting an example to the other inmates.

Man imprisoned in “Mariona”:

“They made them kneel again then took them to the cells, beating them, they told them that ‘they were not going to see the sun again’, every day they threw pepper gas at them at dawn, they were fed only once a day. The toilet was a hole and only two people could go, that cell is on the second floor, they could not bathe. ‘One day they showed up with a bucket of food. We arrived on a Thursday (and it was Monday), the guard asked ‘are you hungry? When we answered yes, the guard threw the food on the floor, which was full of mud and other dirt, and said: ‘you are only going to pick the food up with your mouth and if you grab it with your hands, I will take you out and I will beat you’ and gave them 5 seconds to pick up the food with their mouths. Hunger and the promise of punishment made them eat the food from the floor, only with their mouths: “We were so hungry that we ate the food from the floor, only with our mouths. Then he went to one side, these guys never spoke in vain, if they said they would do something, they did what they said; some inmates threw the food in the hole in the bathroom and ate only what they could ... when the custodian returned, he said: the dogs were hungry”.

That week, supposedly human rights people in gray shirts would arrive, they were foreigners, but a custodian warned them “tomorrow visitors will come and the first artist who tells what is going on here, is the first one who will die from electric shocks”

Punishment cells are used for those who complain, talk during the night or don't listen to the instructions of the guards, sometimes for no reason; also, for arguments or fights. These cells are smaller, are generally very dark, no cots available, sometimes no pit or toilet, almost no water to drink and no baths, and little access to pits or toilets. Several prisoners stated that some of those who go to these cells return in a state of malnutrition or do not make it out alive.



21-year-old man: “He was in the punishment cell in Sector 2, there they gave them just one meal a day, tortilla and beans, first in the hand, then in a plastic food container. When he got out of that cell, he was taken to the malnutrition area, ‘there they were well treated, even by the guards, so they could recover and then he was taken to be beaten again’. When he left this sector, they took him to sector 5, in another punishment cell; they received him with another beating, there they brought him a little water to drink, but they could not shower. After 20 days there he suffered a brain stroke, he woke up when he was being driven to the hospital, his mouth was twisted and he was trembling and felt a tingling sensation in his face.

According to the testimonies of people who were imprisoned in Mariona, Izalco and Quezaltepeque, executions occur inside the prisons, but nobody talks about this because they are afraid; in some cases, it is presumed that they are hired killers, but it is also affirmed that many die as a result of beatings, blows and electric shocks caused by the guards.

In Quezaltepeque, for example, there is a blackboard where they write down the number of inmates who are dying. One of the persons who gave her testimony and asked for confidentiality, stated that she was incarcerated in April and was transferred to another prison at the end of May; while she was there, she frequently saw the blackboard where they wrote down the dead, until before her transfer she observed that there were already more than 40.

A 34-year-old man who was detained in one of the Izalco prisons: “... one day they came twice for the head count in the early morning and the rumor spread that an inmate had escaped from another cell and module, but he was found in module B, dismembered”.

Man, imprisoned in “Mariona”: “[The cell] had iron sealed windows, that look like a tin can, no air enters through those windows, air enters through the door of the cells, the ceiling of the cell is a soffit. I was there until August 25 approximately, during that time I saw that about 10 people died of asphyxiation. In the cells in front of me I saw that other people died because the guards killed them. The guards would take inmates out, maybe because the guard would come and the prisoner would look at him, they would beat him in the middle of the court and give him electric shocks. [In the case of] another 95-year-old man, when they shouted “count” they made him run but the floor was slippery so he fell and when he was going to get up the guards hit him in the head and he died there.”

The violence inflicted on prisoners is part of a deliberate policy of punishment and terror promoted by President Nayib Bukele himself and the officials who make up the security cabinet. These messages and orders, which are repeated in public speeches, social networks and even in advertising spots, are taken up and executed by the authorities and prison staff; all this occurs with the connivance of the Attorney General’s Office, which does not investigate reports of violence and deaths inside prisons.

These practices demonstrate a deliberate failure to comply with international obligations regarding the treatment of prisoners, which emphasize respect for human dignity, physical, psychological and mental integrity, as well as the absolute prohibition of cruel, inhuman and degrading treatment. This is also a deliberate failure to comply with the prohibition of torture.

According to the testimonies of some of the persons interviewed, before receiving a visit from an official or other persons, they are physically punished and forced to throw away their water containers and even their food; to prevent them from speaking or raising their heads when they are squatted down and exposed for video or photographic purposes, they are threatened with death or electric shocks. President Nayib Bukele himself, accompanied by the General Director of Prisons, Osiris Luna, the Director of the PNC and the Minister of Defense, among other officials, once visited the Quezaltepeque prison; the president gave a threatening speech, saying that they would never see sun light again, that they would not have food, among other intimidating expressions. A brother of the president also visited the Apanteos prison - his name was not revealed - he was accompanied by the General Director of Prisons and other officials; the threats and punishments were similar.

The UN Committee against Torture has stated that the prohibition of torture is absolute and imperative; no exceptional circumstances whatsoever may be invoked by States parties to justify acts of torture. It has further expressed concern about "...efforts by States to justify torture and ill-treatment as a means of protecting public security or averting emergencies in these or any other situations."¹⁰⁹ In the same sense, the IACHR¹¹⁰ recalls that an international legal regime of absolute prohibition of all forms of torture has been established, which belongs to *ius cogens* (mandatory norms).

With respect to the deduction of responsibility for these serious acts, the Committee against Torture has held "...the elements of intent and purpose in Article 1 do not involve a subjective investigation of the motivations of the perpetrators, but must be objective findings in light of the circumstances. It is essential to investigate and establish the responsibility of both those in the hierarchical chain and the direct perpetrators."¹¹¹

2.4.2 Violations of the right to health

Health conditions inside prisons are serious, due to physical, mental and emotional illnesses that are mostly contracted and caused by overcrowding, unsanitary conditions, inadequate food and lack of prevention and medical care.

As described in previous chapters, the proliferation of skin diseases affects the majority of inmates, many of them are contagious, worsened by the excessive heat and because inmates sleep on the same cots and sometimes use common objects such as clothes to dry themselves, when they can bathe. It is very likely that many have suffered from COVID-19 without receiving medical attention. Although the authorities do not provide information on the health conditions of prisoners, tuberculosis is a disease that has always been present in the country's prisons, so considering the overcrowding levels, it is very likely that there has been a significant increase this year.

On the other hand, the lack of water and its contamination, the insalubrity caused by the lack of cleanliness; as well as the filth around the toilets, which causes many inmates to be unable to defecate or urinate, is the cause of stomach and urinary tract diseases, sometimes produced by parasites, bacteria, viruses and the consumption of some foods. Despite the fact that prisoners cry out for assistance, no one provides them with health care; such care is only given when they faint or have a crisis.

¹⁰⁹ Committee Against Torture, "General Observation N° 2", Implementation of article 2 by States parties. CAT/C/GC/2, January 24 2008, <https://www.ohchr.org/es/documents/general-comments-and-recommendations/catcgc2-general-comment-no-2-2008-implementation>

¹¹⁰ OC-29/22", Differentiated approaches regarding certain groups of people deprived of liberty, May 30, 2022, https://www.corteidh.or.cr/docs/opiniones/seriea_29_esp.pdf

¹¹¹ Committee Against Torture, "General Observation N° 2", Implementation of article 2 by States parties. CAT/C/GC/2, January 24, 2008, <https://www.ohchr.org/es/documents/general-comments-and-recommendations/catcgc2-general-comment-no-2-2008-implementation>.

The neglect of serious illnesses and chronic conditions, the lack of medicines for those who were prescribed treatments prior to their detention, as well as for inmates injured inside the prison or who entered in post-operative conditions, cause health crises, since the prison system does not provide this type of care, in such a way that people with permanent long term treatments for diseases such as heart problems, tumors, kidney failure, degenerative diseases, among others, as well as people living with HIV or AIDS, and sexually transmitted diseases, are aggravated by the interruption of the indicated medical treatment, which can lead to their death.

Man in one of the prisons in Izalco: “.....a guy had a bacterium in his brain, he lost his vision, nobody gave him medical care, just another [inmate] that looked after him. There was another inmate with diabetes, he had a crisis, they took him out to inject him with insulin. They didn’t give him his medication until June 8”.

During the first two months of the state of exception, the relatives of those held in the prisons went to the different penitentiaries to receive information about the health status of their relatives and tried to give them their medication; however, they were not allowed to, and in other cases inmates were not given those medicines.

As of June 2022, analgesics, vitamins and even uncontrolled antibiotics were allowed; however, most of the people who were incarcerated during the state of exception claim not to have received them, although their relatives stated having left them at the prisons.

The provision of medicines and treatments indicated for people with serious illnesses and chronic conditions requires that the family provide the medicines and present the prescription issued by a medical professional. This is difficult because they commonly go to public health centers or the Salvadoran Social Security Institute (ISSS) where they do not issue prescriptions or medications when the patient is not present. Very few people are able to afford these medications and comply with the requirements demanded by the prison system.

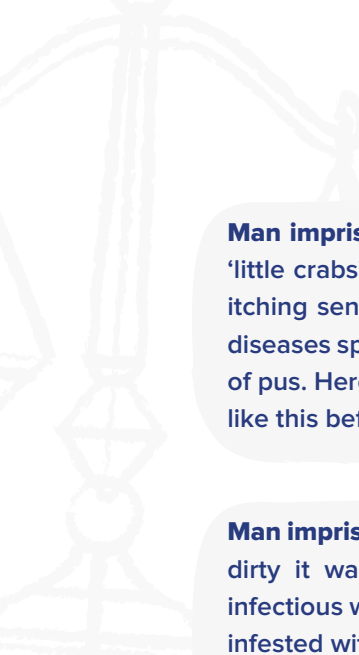
People with mental or intellectual disabilities tend to be the most neglected, since the entry of controlled medications is much more complicated, as is the provision of prescriptions by mental health professionals. People with physical, mental and intellectual disabilities are the most at risk, because the prison environment causes their condition to worsen and makes it even more difficult for them to socialize or express their ailments.

On the other hand, although family members bring food on a regular basis, according to the specifications provided by the DGCP, it is not always delivered to their relatives in prison. Those who have been released never received the food package or maybe once or twice but it didn’t contain what their families had bought. The same happens with clothing, but medicines are almost never delivered to the prisoners.

Some prisons have small clinics staffed mostly by inmates with a medical background or students; there are also services provided by the national health system, but this care is scarce and does not meet the demand, mainly for medicines.

The most common conditions are skin conditions:

Cutaneous myiasis, crabs, boils (divies), scabies or human scabies, allergies, among others.



Man imprisoned in Ilopango: “Pimples started to appear in on our genitals, they call them ‘little crabs’, but they are tremendous pimples that come out in the hair, with a burning and itching sensation. Well, the ‘linguillae’ are like pimples that are drained of pus. All kinds of diseases spread in that sector. And boils. Even yesterday I had to burst a boil, I’m still sick. Full of pus. Here I can see like little dots; all this is allergy. All full of pimples, and my skin was not like this before. I would say that 20% of inmates have pus all over their legs.”

Man imprisoned in Izalco: “When they took us to quarantine the first time...since the cell was dirty it was also infested. There are some things called ‘cangrejos’ (crabs), which are infectious welts, and the ‘racket’. I was moved to the third cell and while I was in this cell I was infested with ‘linguillas’, they appeared on my back, and other inmates tried to remove them but they just got bigger Another prisoner in the same cell told me ‘I’m going to bite you’. To get the little animal out, they put a piece of plastic on you and bite you. That fellow inmate took it out of me, the little animal came out.”

Malnutrition:

Many inmates suffer from malnutrition (the body does not receive enough nutrients). According to the testimonies of former prisoners under the state of exception, the number of malnourished prisoners is high, and in some prisons, rehabilitation cells have been set up to take care of people with this condition, to whom a slightly varied diet is given and who sometimes receive food packages -food brought by their families-.

Most prisoners granted alternatives to provisional detention have suffered considerable weight loss, although not all of them have been diagnosed with malnutrition.

Man imprisoned in Mariona: “There are cells for the malnourished and others for those who are very sick, but they are mixed together. He was in the malnutrition area. “They gave me creams and treatment for my feet, serums and amoxicillin and more food: for breakfast: a cookie, tortilla and beans, for dinner two tortillas and beans, there was water for bathing and drinking, there were toilets”.

At the beginning of June 2022, the prison administration set aside the Quezaltepeque Preventive and Sentence Compliance Center for the incarceration of people with terminal and chronic illnesses, now called “Quezaltepeque Special Health Center”, as well as a significant number of people living with HIV-AIDS. According to testimonial information, this center distributes retrovirals to inmates who require them. But there are also people who were arrested before the state of exception.

Man imprisoned in Quezaltepeque: “They took them to Quezaltepeque, in that place there was one inmate with diabetes, when he was getting off the minivan he fell and they kicked and beat him with their batons, he was taken to the hospital but we never heard or saw him again.... Next to my cell there were inmates who were convulsing, and started to scream, they took them aside and gave them medicine... We also had 3 inmates with HIV, one of them had been taken out seriously ill, they were placed together with inmates who had been imprisoned before the regime. [There were also people with tuberculosis mixed with people with HIV”.

Unlike other prisons, members of churches, including PDDH personnel, are admitted to the Quezaltepeque penitentiary.

Most of the people interviewed say that it is very likely that the prison authorities or prison employees “steal” the medicines brought by the families of inmates since prisoners never receive them.

2.4.3 Habilitation of the Terrorism Confinement Center (CECOT)

On January 31, 2023, President Bukele announced the completion of the so-called “Terrorism Confinement Center” (CECOT) in all T.V channels and radio stations. The Minister of Public Works described it as “the largest prison in the Americas”.¹¹²

Subsequently, on February 24, the President announced the transfer of two thousand inmates to this new prison, with a wide national and international propaganda display.¹¹³ This last announcement was made a few hours before the U.S. Department of Justice made public an indictment against 13 leaders of the Mara Salvatrucha, in which it pointed out the existence of negotiations between two high officials of Bukele’s government with that gang.¹¹⁴

The propagandistic display of the CECOT as a symbol of the “war against gangs” in El Salvador, and its alleged capacity to intern “40,000 people”, has had a great impact in the regional press; however, it is not possible to confirm if this is its real installed capacity, nor is it possible to know its construction and operation costs, nor the processes of assignment of the works to three specific companies, since this information was declared under reserve by the Government.^{115 116}

It is worth mentioning that the Legislative Assembly issued the Special Law for the Construction of Prisons in April 2022.¹¹⁷ This law excluded the application of the LACAP (Public Administration Procurement and Contracting Law) and subjected the acquisition of goods and services for the construction of prisons to the guidelines of the Public Administration Procurement and Contracting Regulatory Unit of the Ministry of Finance (MH), without establishing control parameters or indicating the contracting procedures.

The “Special Transitory Regime for the Acquisition of Goods and Services by the State within the framework of the Declaration of the State of Exception Act”¹¹⁸ was also enacted in order to “carry out contracting and acquisitions to comply with the provisions of the State of Exception, so as to simplify and facilitate the procurement of goods and services and the execution of works and all types of investments necessary for such purpose”. Like the above-mentioned laws, it excludes the application of the LACAP and leaves it to the discretion of the Ministry of Finance to issue the guidelines and regulations for public procurement. Note that it does not specify which goods and services are contracted in “compliance with the provisions of the exception regime” and that the issuance of regulations on public procurement corresponds solely to the Legislative Assembly.

Despite the publicized construction of the CECOT, this is the first work of the Bukele Government related to the expansion of the capacity of the prison system; since the second phase of the expansion of Mariona, was initiated before he took office; in fact, at the onset of Bukele’s Government they talked about closing prisons to build universities.¹¹⁹

¹¹² Nayib Bukele (@nayibbukele), “Centro de Confinamiento del Terrorismo [agrega video de recorrido]”, Twitter, January 31, 2023.

¹¹³ Nayib Bukele (@nayibbukele), “Hoy en la madrugada, en un solo operativo, trasladamos los primeros 2,000 pandilleros” [agrega video de prisioneros], Twitter, February 24, 2023.

¹¹⁴ Bryan Avelar, “La Fiscalía de EEUU señala a funcionarios de Bukele de negociar con la MS-13 entre 2019 y 2021”, El País, February 25, 2023, <https://elpais.com/internacional/2023-02-26/la-fiscalia-de-ee-uu-senala-a-funcionarios-de-bukele-por-negociar-con-la-ms-13-entre-2019-y-2021.html>

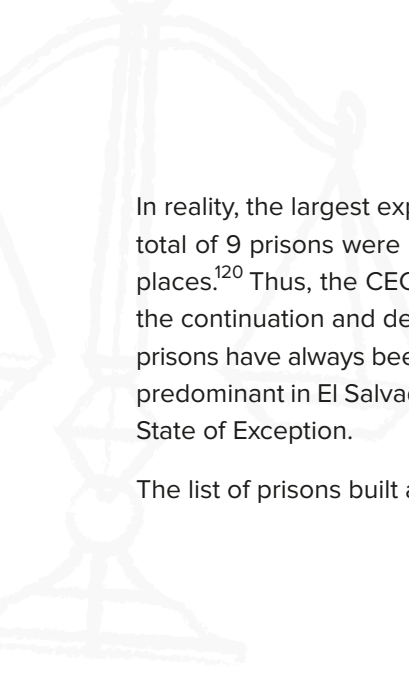
¹¹⁵ Milton Rodríguez, “Gobierno oculta el costo y los contratos de construcción del Megapenal de Tecoluca”, El Diario de Hoy, February 7, 2023, <https://www.el-salvador.com/noticias/nacional/gobierno-oculta-costoy-contratos-de-construccion-megapenal-tecoluca/1038100/2023/>.

¹¹⁶ In addition, the CECOT has been built under the validity of the new “Law for the Construction of Prison Centers”, approved in April 2022, which has been questioned for enabling contracts without the legal transparency standards still in force in the country.

¹¹⁷ Legislative Decree N° 357, April 19, 2022, published on Official Newspaper N° 73, Volume 435, April 19, 2022.

¹¹⁸ Legislative Decree 359 dated April 24, 2022, published in the Official Gazette number 77, Volume 435 of the 25th of the same month and year.

¹¹⁹ AFP, National Geographic in Spanish, December 27, 2019, www.ngenespanol.com: <https://www.ngenespanol.com/el-mundo/cierran-carcel-de-el-salvador-para-construir-una-universidad/>.



In reality, the largest expansion of the prison system occurred during Sanchez Ceren's administration, since a total of 9 prisons were built between April 2015 and March 2019, increasing the installed capacity by 16,296 places.¹²⁰ Thus, the CECOT does not represent a new concept in Salvadoran prison management, but rather the continuation and deepening of an excessively punitive penal system model, in which "maximum security" prisons have always been a priority. The CECOT, in this sense, is a magnified version of the old punitive strategy predominant in El Salvador for more than two decades, fabricated today as a propaganda tool to legitimize the State of Exception.

The list of prisons built as of 2016 and their installed capacity is added in Annex 2 of this report.

¹²⁰ Own elaboration based on Labor Memories (various years) of the Ministry of Justice and Public Security, and various journalistic sources.

III. Impact on women, adolescent girls, boys and LGBTQ+ population

3.1 Violation of women's rights

The state of exception has created multiple forms of violence against women who live in violent contexts that make them even more susceptible, as the relatives of prisoners or as prisoners themselves.

Of the total number of complaints received by Cristosal, 80.6% were filed by women. Precisely, women are responsible for locating, providing food, medicines and seeking justice for their relatives in prison. They are also responsible for the care of children, adolescents and the elderly; and they become providers for the children of other prisoners and elderly people in their vicinity. As a result, these women experience a decline in their living conditions.

Cristosal has documented cases of girls, adolescents and women who are victims of sexual harassment and abuse by police and soldiers. In some cases, this situation has forced the families to move or send the girls and adolescents to other places to avoid being abused or detained for not giving in to the harassment of the authority.

Many of the women detained were pregnant at the time of their arrest and gave birth without their families knowing if the child was born, if it was a boy or a girl or the health status of both; other women were detained when they were in the postpartum stage, that is, their children were left in the care of relatives or third parties a few days after they were born.

Among the main violations of the rights of women affected by the state of exception, identified in previous reports,¹²¹ and which have persisted during the implementation of the regime, are the following:

- a. The deterioration of living conditions when women are economically dependent on their captured family member.
- b. The additional assignment of child-rearing and care-giving tasks, particularly to elderly women, who are generally mothers and grandmothers of the prisoners, in addition to being left without financial resources and in charge of young children.
- c. Decrease in income and time, since they have to investigate the whereabouts of their relatives, obtain evidence and clearances and visit different state agencies (PNC, PGR, Prisons, among others).
- d. Impacts on their physical, emotional and mental health.
- e. Loss of life projects, mainly when they stop studying or lose their businesses or jobs to devote themselves to care tasks and the search for justice for their detained family members.

3.1.1 Violations of the rights of women in prison

Until September 2022, there was a prison in the country exclusively for the confinement of women called “Centro Preventivo y de Cumplimiento de Penas para Mujeres de Ilopango” -better known as “Cárcel de Mujeres”- and a mother and child area in the Granja Penitenciaria de Izalco; however, in the first months of the state of exception, the Jucuapa Preventive Center was opened for elderly women or those with chronic illnesses.

¹²¹ Cristosal, Violaciones a los derechos humanos durante el régimen de excepción. Informe situacional periodo del 27 de abril al 25 de mayo de 2022. June 14, 2022, <https://enfoca.org/web/wp-content/uploads/2022/06/TERCER-INFORME-Informe-Violaciones-DDHH-Re%CC%81gimen-de-Excepcio%CC%81n.pdf>.

However, as of July 2022, the first transfer to “Apanteos” took place, and in September of that same year all the women who were being held in “Ilopango” were transferred to that prison, while others were taken to the Izalco Phase IV Prison; The latter were later relocated to the Izalco Men’s Prison, where an area was set up for women in the trust phase and for women that had already been sentenced (in both cases these were not women arrested under the regime).

These transfers were carried out without further preparation and in an improvised manner, in a one-day operation; some women were only allowed to take part of their personal belongings, and lost their clothes and other objects.

Cristosal¹²² has previously detailed the inhuman and degrading conditions experienced by the women who were incarcerated in “Ilopango” under the state of exception: violations to their dignity, privacy, physical, psychological and sexual integrity, health and nutrition, among others.

The detention of women under the regime is mostly for “having links” - a term used by the police for those who have some family or an intimate relationship with gang members - they are also detained as collaborators, in these cases they are mothers, sisters or partners of men who are accused of being gang members. A smaller number of women are directly accused of belonging to these structures.

In any case, these are arrests that have a strong component of gender violence; many of them were also victims of the gangs by being raped, subjected to sexual slavery and forced to move prohibited objects under threat of causing harm to their families, their sons and daughters or themselves, and now they are victims of the State.

33 -year- old woman: “[the policeman] asked me if I was my partner’s life mate, so I answered ‘yes’, ‘well, he said, you are going to have to accompany us’. I asked him why, and he said ‘those are the orders given to us, that you are going to have to accompany us. I said ‘But give me an explanation, the reason why you are detaining me, or what has happened, who has informed you, or what you have been informed’, he said, ‘Well, these are things that we cannot publish, the thing is that you are going to have to accompany us and that is it.’”

The detention conditions in Apanteos, and other prisons where women are held, do not vary much from “Cárcel de Mujeres” (Women’s Prison). Apanteos was built in 1996 and its facilities are not adequate to house women. Various testimonies indicate that the lack of space means that many women sleep in corridors and overcrowding continues; however, the space situation has improved for those detained under the state of exception, as well as access to water. However, this prison has also exceeded its capacity, so there are women located in areas called “Blocks”, which are very humid and force the women to dry the floor every day because they sleep on the floor. Some women have access to mats that they share with other inmates.

Despite the fact that only four women have been reported dead during their incarceration under the state of exception, many women who were detained report that they saw several women die inside the prison; in addition, they witnessed abortions caused by negligence and abuses of authority.

¹²² Cristosal, “Violaciones a los derechos humanos durante el régimen de excepción en El Salvador”, October 19, 2022, <https://cristosal.org/cuarto-informe-situacional-de-violaciones-a-derechos-humanos-durante-el-regimen-de-excepcion/>

Woman imprisoned in “Cárcel de Mujeres”:

“... In some galleys that were in the lower part of the building, there were thousands of women sleeping on the floor, without mattresses or blankets, and since it was the rainy season, they got wet at night ... As there was no medical assistance, I saw an old woman of 50 or maybe 56 years of age, die. I dare say it was a type of pneumonia ... Because she was sleeping on the floor and she started a cough, had a fever and reached the point where she could not breathe, they took her out of the cell to take her to the health unit ... And the next day they told her daughter who was also there with us that her mother had died.”

“There were also abortions, girls who were pregnant and because they were not given medical assistance in time, had an abortion. I saw a girl whose appendix burst in the cell where we were, they took her to the hospital, they treated her and three days later they took her back to the floor where we were. Every day she had to walk up and down all those stairs to go for treatment. The professionals who performed the surgery did not realize that the girl was four months pregnant and after they performed the appendectomy, the girl got worse again, they took her to the hospital and found out that she was pregnant and performed a curettage”.

Woman incarcerated at “Apanteos”:

“The bathrooms were outside the cells, 10 bathrooms had been set up for a total of 1,600 women; access to bathrooms was by shifts, they took us out by cells to go to the bathroom; buckets were placed inside the cells for prisoners to urinate”.

One of the major risk factors is the type of prison staff assigned to this prison for the custody of women, since they should be attended by women as a priority; however, the high number of inmates and the distribution in other prisons may have led to the appointment of men and women who are not properly trained to attend to women; the same may be happening in the other prisons to which women were transferred.

Woman in the prison of “Apanteos”:

“When we arrived, the majority of custodians, were men. Those in the trust phase were men, cooks were men. There were women, but let’s say they covered the night shift, there were two men and one woman. When it was time to bathe, there were only female guards. But from there, most of the time they were men, those that counted us, took us out to the patio to receive some sunlight, were all men”.

Food is also precarious, many of the women interviewed stated that they did not receive food packages. Those who did receive food packages said that they were not given all the food that their families brought them (e.g., milk, supplements and cereals).

Woman incarcerated in “Apanteos”:

“We spent 17 days eating macaroni, at the beginning food declined, since they took away the food from the packages and left us only with prison food. We had enough water and more bathrooms, there were containers for drinking water, and large basins for bathing and washing... [But] as more women were arrested, access to water and cleanliness decreased a little. In September the last two transfers arrived. On September 11 they took them out to the corridors, and put 175 more women in our cell; then they took 157 women to the “block”, in this place they slept on the floor. At the beginning women were taken out in the sun every day, but with the new transfers they no longer went out.”

Women with serious illnesses and chronic conditions do not receive the health care they require, the most common health problems are the following: asthma, diabetes, hypertension, tumors, heart disease, among others. A high number of women have mental illnesses. Overcrowding and lack of hygiene in the prisons also causes skin and respiratory diseases.

22-year-old woman: “There were two inmates who acted as health promoters inside the prison and, through the cell manager, they informed them who needed medication. Medications were provided, although it took some time, especially for the skin. Inmates with chronic diseases who received medication from their families shared it with other inmates who did not have medication for the same diseases.”

Punishments, and therefore cruel, inhuman and degrading treatment, as well as torture, are recurrent.

Women are pepper-sprayed at night “for making noise”, to intimidate them or for any other reason. Particularly serious is the situation of lesbian women who suffer discrimination and mistreatment, and are more frequently subjected to physical punishment and confinement in punishment cells.

47-year-old woman:

“... [I saw] how sometimes they beat inmates when they misbehaved: like if they used more water than they should, had fights, quarrels, or were not present at the count time, they left them 24 hours hanging on a net, without eating, without going to the bathroom; I saw when the guards beat a young woman who stole some cleaning and food packages, even the director of the prison intervened to beat her, they left her quite injured because they hit her limbs. Extreme punishment consisted in sending inmates to the so-called Dungeon, which was a small cell... They also put them in the sun to do push-ups until they were on the verge of fainting”.

Woman detained in “Apanteos”:

“They took them to the so-called Dungeon which was a totally dark cell where no light entered at all, where they were uncommunicated for up to 30 days, they were only given food, they were not allowed to have toilet paper”.

With regard to the treatment of women prisoners, the State has a particular obligation to take into consideration the special attention they should receive and to avoid all forms of discrimination and violence. Thus, Cristosal takes up what was expressed by the Committee on the Elimination of Discrimination against Women (CEDAW) in its General Recommendation No. 33 (paragraph 53, subparagraph c),¹²³ in which it recommends States to:

“Use administrative detention only as an exception, as a last resort and for a limited period, when necessary and reasonable in the case in question, proportionate to a legitimate aim and in accordance with national law and international standards. Ensure that all appropriate measures have been taken, including effective legal assistance and that procedures are in place to enable women to challenge the lawfulness of their detention. Ensure periodic review of such cases of detention in the presence of the prisoner, and ensure that the conditions of administrative detention are in accordance with relevant international standards to protect the rights of incarcerated women”.

3.2 Violation of the rights of children and adolescents

Undoubtedly, children and adolescents suffer adverse effects from the arrest of their parents or caregivers. Many have witnessed the arrest of their family members and the use of physical violence and aggressive and dignity-damaging expressions by police and soldiers, which leaves emotional and psychological scars that will have an impact throughout their lives.

In these cases, they are almost always left in the care of women, some of whom are part of their biological family, but others are neighbors, friends or acquaintances. They are usually older women, generally grandmothers or aunts; they are also left in the care of adolescents or young women who are unemployed or who were studying and stop doing so to dedicate themselves to the maintenance, care and protection of children and adolescents who have been left in their care.

In many of these cases, children and adolescents are unable to continue their studies because they cannot be taken to school, given school supplies or accompanied in their homework. Adolescents also face the impact on their life project, since they must assume responsibilities that are not appropriate for their age, such as being in charge of providing food and basic services to their family, among other responsibilities, and they are often forced to abandon their studies.

In general terms, the following living conditions and violations of their rights have been identified:

- Physical, emotional and psychological violence when they experience the detention of family members or people in their environment.
- Violation of the right to a dignified life, because their standard of living declines considerably, their overall development is affected and their basic needs are not met; food, decent housing, clothing, among others, are also affected.
- Lack of protection programs: despite the fact that the State is obliged to guarantee the development of programs to protect the rights of children and adolescents, there are no specific programs for the care and protection of children and adolescents whose parents and guardians have been detained during the state of exception.
- Violation to their health rights and lack of access to health services, mainly when only one person—usually a woman— must assume all the care duties and provide resources to support them, since this impedes taking them to the preventive health centers; they don't have the capacity to buy medicines either.

¹²³ Committee for the Elimination of Discrimination against Women. (August 3, 2015). General Recommendation No. 33 On women's access to justice.

- Serious effects on their physical and mental health, as they have consequences such as enuresis, depression, anxiety, loss of appetite, insomnia, among others.
- Violations of their rights to image and privacy, in cases of imprisoned juveniles who are publicly presented as “terrorists” or gang members. Also, when their relatives are publicly exposed and children and adolescents see their social life affected by the exposure faced regarding their life stories.
- Violation of the right to breastfeeding, since women detained under the exception regime whose children were breastfeeding have to stop. Women held at the Izalco Prison Farm and who were detained during the regime and were pregnant at the time of their detention, can breastfeed, the rest cannot breastfeed their children.
- Violation of the right to education, because they do not attend school due to lack of economic resources, lack of people to take them to school and displacement from their places of residence.
- Forced displacement.
- Violation of the right to identity, in the case of children born while their mothers are in detention and who have not been registered at birth. The families of the detained women are not informed if the child was born.
- 21Q Violation of the right to maintain personal relations with their father and mother. Article 75 of the Growing Together Act, which establishes the right of children and adolescents to maintain the social and emotional bond with their mother, father or caregiver when they are deprived of their liberty, this right has been particularly violated.

Some examples are given below:

Girls under the care of a senior citizen: A 27-year-old man was detained in May 2022. He has two daughters under his care, since the mother emigrated to the United States a few days prior to his detention, and he was responsible for providing child support for his daughters. The 2-year-old and 3-year-old girls have been left in the care of the maternal grandmother, who is 80 years old.

Many children and adolescents who are left in the care of relatives experience significant decline in their living conditions, since they are unable to continue their studies or must also take on domestic chores and work to contribute financially to the family group.

Young women in charge of siblings: Her mother was detained in May 2022, she lived with her 5 sons and daughters aged 5, 9, 12, 15 years of age and a young man aged 22 years who was a student. They were all left under the care of the eldest sister who was 27 years old at the time, and who was also the mother of a 7-year-old girl; that is to say, she assumed the care of 5 children and adolescents, and the responsibility of feeding them, transporting them to their schools, guaranteeing their health and basic needs. It is also assumed that she undertook the task of seeking justice for their mother, bringing her the food package and medicines, among other responsibilities.

It is important to remember that it is the duty of the State, when parents or caregivers are in prison, to adopt all measures so that incarceration of parents has the least impact on their sons and daughters; it also has the duty to implement care and protection programs for those who have been directly affected.

Regarding the condition of adolescents arrested the state of exception, it has not been possible to obtain official information on the number of adolescents arrested, nor on their age, sex or the crime attributed to them. Although information was requested from the National Council for Early Childhood, Childhood and Adolescence (CONAPINA), this institution issued a resolution declaring itself incompetent to provide information on the matter,¹²⁴ arguing that such information should be requested from the Supreme Court of Justice. Notwithstanding, art. 131 of the Growing Together Act establishes the competence of this institution for the administration of prisons and the development of programs for juveniles.

Cristosal has dealt with cases of mistreatment inside the social insertion centers for adolescents, neglect in health services and lack of medicines, mainly due to skin diseases such as scabies, boils, cutaneous myiasis, allergies, among others, that have proliferated. Also, cases of respiratory diseases and malnutrition. It is also noted that there is a lack of personal hygiene supplies.

3.3 LGTBIQ+ Population

Both the police and members of the Armed Forces have had impunity to act with extreme abuses against the LGTBIQ+ population, during the state of exception, based on the sexual orientation and gender identity of diverse populations. Many people from this group have been victims of arbitrary detention, injuries, threats and intimidation; without protection and investigation mechanisms for the acts of violence against them.

“They asked me to lift up my shirt and noticed that I had a tattoo alluding to the LGTBIQ+ population, and when they saw it, a soldier said: ‘He’s a bad ass, you want to give him a beating’”.

The right to self-identity of trans people has been one of the most violated during arrests, since they are exposed in the media with legal names and exhibiting their physical transformations in line with their gender identity, in a mocking way, undermining their dignity.

The lack of information on the whereabouts of trans women has been denounced, as well as the physical and psychological mistreatment inside prisons. It is particularly serious that they are held in prisons for men without separation, as they are exposed to sexual abuse and rape.

¹²⁴ Resolution No. UAIP/CONAPINA/0008/2023, dated March 27, 2023.

IV. Forced displacement during the state of exception regime

One of the effects of crime, whether common or perpetrated by gangs, is forced internal displacement. In an analysis of this issue, IUDOP shows that 1.2% of the population consulted said they had had to change their residence due to some act of violence or threat received. In 60.0% of the cases, the event that forced people to move was perpetrated by a gang member.¹²⁵

Based on the information from the cases known by Cristosal, through its human rights protection system, 419 people were identified as forcibly internally displaced due to violence during the first year of the regime. The information analyzed indicates that women have been affected more (59.9%) than men (39.9%); most of the victims are children and adolescents (38.0%) followed by people between 18 and 39 years of age (37.7%); it is important to mention that 5.5% are people aged 60 or older. This implies that women, as heads of household, not only have to provide security and protection to their families, but also assume an overload of caregiving tasks, as mentioned in a previous section.

Gangs continue to be the main aggressors of these people (57.0%), despite the fact that the proportion of complaints against these groups has decreased with respect to data presented by Cristosal in previous years.¹²⁶ On the other hand, the proportion of people whose rights have been violated by the PNC has grown: 20.7% said that a police officer had trampled their rights.¹²⁷ The Armed Forces have also violated the human rights of these people: 1.9% mentioned that members of this armed group were their aggressors, which resulted in forced displacement.

Taking qualitative information from the cases known to Cristosal, it has been possible to identify people who are victimized both by the security forces and by gangs; these families experience a double victimization and their need for protection increases due to the feeling of insecurity. Because of this, most families in this condition wish to migrate, as they consider that within national boundaries, they will not be safe.

37-year-old man:

“It so happens that the police arrested my wife accusing her of illicit associations, which is not true. She has had her business for 20 years[...] and we have been forced to pay extortion, reason why we moved to another area”.

40-year-old male: I need to migrate or request asylum to any country who will accept me. The situation we have been going through for several months now and that is worsening with the state of exception and the territorial security plan, and other laws, endanger the freedom to move and the life of many people.

¹²⁵ IUDOP, “El desplazamiento interno forzado por violencia en el año 2022”, <https://uca.edu.sv/iudop/wp-content/uploads/El-desplazamiento-interno-forzado-por-violencia-en-el-año-2022.pdf>.

¹²⁶ In contrast, during the period from 2020 to February 8, 2022, the proportion of people who denounced gangs as their aggressors was 76.7%. Cristosal and Servicio Social Pasionista, “People in a situation of forced internal displacement 2020-8 February 2022. Two years of Law, continued lack of protection”, <https://enfoca.org/web/wp-content/uploads/2022/02/Infogra-%CC%81fico-an%CC%83os-de-Ley-DFI-2022.pdf>

¹²⁷ This proportion, in the same period from 2020 to February 8, 2022, was 1.9%. In this sense, the increase has been more than 15 percentage points. Idem.

The main causes for which these people displace -or are considering displacement- are threats (27.2%) and intimidation (23.2%); these actions may come from gangs or from the police and the Armed Forces. If they come from the latter - and within the framework of the regime - they can occur at the moment of a person's arrest, when police officers or military personnel threaten to arrest other members of the family if they insist on asking about the reasons for their arrest. There may also be sustained harassment by security institutions against family groups who are threatened if they do not "collaborate" with them, that is, they intimidate people by alluding that the consequences will be worse if they do not comply with their orders.

40 -year-old male:

"The policeman told us that nothing would happen to us and that it was just a routine thing, that we were going to be freed quickly. They found tattoos on us, but they are artistic and do not allude to a mara or gang and they added that we should not resist getting into the patrol car because it was going to be worse for us".

33 -year-old woman:

"... They arrested my cousin, and police harassment always continues, they have already come to look for me when I am not there, they tell me that if I do not collaborate with them, they will take me in custody, that is why I have locked myself in, I am afraid".

Although in a lower percentage, there is also the incidence of other crimes that are generally associated with gang activity, such as homicides of family members (7.6%), extortion (4.0%) and disappearances (3.9%); this category also includes those cases in which families report that prison authorities have not provided them with information about their detained family members despite having gone to different prisons.

Cristosal has identified that there has been a change in the pattern of forced internal displacement in El Salvador: although gangs are more often mentioned by victims as their aggressors, the increase of more than 15 percentage points in the mention of the PNC ¹²⁸ as the main aggressor of people who displaced during this first year of the regime is worrying, especially when the mission of this institution is to "guarantee order, security and public tranquility".¹²⁹

¹²⁸ Going from 1.9% of mentions during 2020 and 2021 to 20.7% during 2022.

¹²⁹ National Civil Police, Mission, no publication date, <https://www.pnc.gob.sv/marco-institucional/>.

V. Violation of judicial guarantees and due process

The legal architecture of the policy of human rights violations that has been established as a result of the state of exception has not derived exclusively from this regime, but also from a series of reforms to the criminal laws that have been promoted by the presidency of the Republic.

These penal reforms were approved by the Legislative Assembly in 2022, in two stages, without legislative debate or citizen consultation. Subsequently, the Supreme Court of Justice (CSJ), the Attorney General's Office (FGR) and appointed judges have applied them without exercising any type of constitutional control.

The reforms have allowed the establishment of a “criminal law of the enemy” in El Salvador, which obviously contradicts the postulates of a constitutional rule of law.¹³⁰

The dysfunctions provoked in the Salvadoran justice system since the establishment of the state of exception are so serious and of such magnitude that, paradoxically, they have configured within the justice system itself what the constitutional jurisprudence of Colombia has called “an unconstitutional state of affairs”.

In effect, despite the fact that it should be the guarantor of legality, at this moment the subsystem **“Attorney General's Office - Criminal Jurisdiction of Organized Crime”** is tolerating and committing, in turn, massive and systematic violations against an undetermined number of people (tens of thousands); through unconstitutional practices that destroy the basic judicial guarantees in the criminal proceedings related to the state of exception (and others). Officials involved renounce to their fundamental obligation to guarantee rights in all those judicial proceedings, with which the basic elements of this jurisprudential figure are configured.¹³¹

Since the highest authorities of the Attorney General's Office and the Judiciary are the implementers of these unconstitutional practices, one of the obvious consequences is the most absolute impunity for the offending prosecutors and judicial operators, a situation that enables the intervention of international protection instances such as the IACHR and, eventually, the International Criminal Court, given the already described features of *lèse humanité* that have caused massive human rights violations in El Salvador (art. 46 of the American Convention on Human Rights and art. 7 of the Rome Statute).

5.1 Penal reforms to dismantle basic judicial guarantees

5.1.1 Reforms approved in March and April 2022

The first block of reforms to the criminal laws that complemented the state of exception regime was approved in March 2022, for which reason they have been in force for one year, seriously affecting due process and judicial guarantees. These are the Criminal Code, the Criminal Procedural Code, the Special Law against Acts of Terrorism, the Law Regulating Drug Activities, the Juvenile Criminal Law and others.

¹³⁰ Mostajo Barrios, quoting Günter Jakobs, describes: “Jakobs postulates the existence and need for a criminal law of the enemy that opposes a criminal law of the citizen, that is, the need for a criminal law that is not within the parameters, nor is it governed by the principles of liberal criminal law characteristic of the rule of law. The Criminal Law of the Enemy is a warlike legislation rather than a legal one, which regulates dealings with those subjects who cannot be considered citizens because they represent a physical and/or regulatory danger to the State and society. The reduction or abolition of procedural guarantees and the advancement of punishability, without the criminal scale being reduced in proportion to this advancement, as well as a combative logic rather than intimidation, are the characteristics of this criminal law of the enemy. (Günther Jakobs. “Criminal Law of the Citizen and Criminal Law of the Enemy”. In *Criminal Law of the Enemy*, coordinated by Günther Jakobs and Cancio Meliá. Bogotá: Universidad Externado de Colombia.

¹³¹ J. Lyon *The figure of the State of Unconstitutional Things as a mechanism for the protection of fundamental rights of the vulnerable population in Colombia*, Legal Magazine Mario Alario D'Filippo (2011): 69.80.

¹³² Reforms to the Penal Code (Decree 337); reforms to the Criminal Procedure Code (Decree 339); reforms to the Special Law against Acts of Terrorism (Decrees 341); reforms to the Juvenile Criminal Law (Decree 342); reforms to the Special Law against the crime of extortion (Decree 343); Law of Rewards and Elimination of Impunity (Decree 344); all from March 30, 2022 and published in the D.O. 65, Volume 434 of the same date.

The main amendments introduced by these reforms were the following:

- Maximum sentences for any person convicted of participating in a gang or for crimes related to the activity of these groups (20 to 30 years, in one of the aggravated modalities up to 45 years). These are sentences that become perpetual and seek to remove from society those convicted of these crimes during their lifetime (violating the constitutional principle of readaptation enshrined in art. 27 Cn.).
- Eliminate the possibility for persons who are accused of being gang members to have access to alternative measures to provisional detention and give the authorities the power to extend without limit this internment without conviction (the authorities will not be obliged to respect the maximum period of two years for provisional detention established by law).
- Power to impose prison sentences on children and adolescents accused of gang membership, so that they can be sentenced as adults (prison sentences of 20 to 30 years for adolescents between 16 and 18 years of age; and sentences of 10 to 15 years for children between 12 and 15 years of age).
- Power to conduct trials and convictions even in the absence of the accused.
- Reserve the identity of judicial officials (judges and justice operators) involved in the processes related to the cases referred to in the reforms, creating the figure that has been called “faceless judges” in other countries in the region.”
- Retroactive application of the reforms (unduly disguising them as “laws of public order”), despite the absolute prohibition of the Constitution to do so in criminal matters, except in what is favorable to the defendant (art. 21 Cn.)
- Power to validate reference witnesses (who are not aware of the facts as seen and heard), to substitute direct witnesses in cases where persons accused of being members of gangs are being tried.

Subsequently, on April 5, 2022, a reform to the Penal Code was approved that criminalized the transmission of any message allegedly originating from gang groups, which could cause “anxiety” in the population. This new criminal offense is expressly aimed at the media and journalists with the clear purpose of criminalizing press coverage of gang activities, which is why this reform has been known as a “gag law”, violating the right to freedom of expression.¹³³

Also, on April 24, 2022, the “Special Transitory Law for the Procurement of Goods and Services by the State in the framework of the Declaration of the State of Exception” was approved, which in essence excludes from the application of the Law of Procurement and Contracting of the Public Administration (LACAP) such actions carried out in the framework of the regime, and submits them to regulatory instruments issued by the executive itself, through the Ministry of Finance (MH). This decree, evidently, opens spaces for opacity in the management of public funds in general and the use of public funds without controls.¹³⁴

5.1.2 Reforms approved in the period from September to November 2022

The criminal laws that were amended in the second block of reforms of 2022 were the Criminal Procedure Code, the Telecommunications Law, the Law against Organized Crime, and the Judicial Organic Law. The main aspects of these reforms are summarized in the following paragraphs.

The reforms to the Criminal Procedure Code (September 2022) were aimed at allowing procedural acts to be carried out and the trial to conclude in the case of absent defendants (annulling the right to material defense); that is, defendants can be convicted while absent, undermining the statute of limitations and further limiting the exercise of the right to defense.¹³⁵

¹³³ Reform to the Criminal Code, Decree 349 of 04/05/22, published in the D.O. 69, Volume 435 of the same date.

¹³⁴ Cristosal, “Human rights violations during the state of exception...”

¹³⁵ Reforms to the Criminal Procedure Code, Decree 507 of September 21, 2022, published in the D.O. 179, Volume 436, of September 26 of the same year.

The Law Against Organized Crime (LECO) was subject to substantial reforms, clearly aimed at eliminating or diminishing various guarantees within this special procedure, facilitating arbitrary practices of judicial and prosecutorial operators that have been applied in the exception regime since its inception. The most relevant reforms to LECO were the following:¹³⁶

- They modify the object of the law, with the purpose of granting organized crime courts greater discretion to judge based on the profile of the individuals (as members of criminal organizations, especially gangs) and not based on the crimes committed. This is an approach of criminal law of the perpetrator or criminal law of the enemy.
- They abolish, for this jurisdiction, the accusatory model of the criminal process that has prevailed since the great criminal reform of 1998 and established an involution towards the old inquisitorial system of 1973. Therefore, sentencing courts are eliminated in this jurisdiction and the same judges who have instructed and accepted the accusation, will administer the plenary stage and pass sentence.
- They create organized crime courts for children and adolescents, under the risk of subtracting them from the application of special legislation for minors, contemplated by the Constitution of the Republic (art. 35 inc. 2º Cn.).
- They suppress the rules of control for evidence legality, reducing them in practice to the sound criticism of the judge. The reform also grants a mere denunciation the quality of “documentary evidence” and also to the police record of witness interview (which could thus substitute the witness’ own statement in the public hearing).
- They extend the provisional detention period up to 2 years in this special process (the previous maximum term was 1 year). However, a reform to the Code of Criminal Procedure in March 2022 allows provisional detention to last until the end of the process, so the 2-year limit is a formalism and detention can become indefinite.
- The figure of an abbreviated trial (benefits in exchange for admitting responsibility) is introduced to the process of organized crime, which opens the possibility of validating confessions under coercion or torture; and the application of the plea bargain (benefits to perpetrators of crimes in exchange for collaboration).
- Other reforms to the Law Against Organized Crime are aimed at giving greater power and discretion to the Attorney General’s Office and reducing judicial controls over its actions (as in the case of freezing bank accounts and seizure of assets); it relaxes the criteria for the recognition of persons by photographs; and it eliminates the possible participation of justices of the peace in proceedings to anticipate evidence.

The Telecommunications Law was also reformed under the argument of fighting crime.¹³⁷ This reform obliges telephone operators to store personal data of all users, including documents and photographs to allow geolocation of the place where the sale and activation of the service takes place; registration of lines and calls and data of origin of any electronic communication, without a specific purpose other than to be available to the authorities (without specifically defining which authorities) and without regulating prior consent. For these reasons, this reform violates the right to informational self-determination, evades judicial control and opens the door to unlawful monitoring of citizens by the State.¹³⁸

Finally, on November 1, 2022, the Legislative Assembly also approved reforms to **the Organic Judicial Law** (at the initiative of the CSJ) aimed mainly at the territorial expansion and installed capacity of the Organized Crime (OC) Courts.¹³⁹ The reform creates 11 new OC courts, two second instance Chambers in this matter, as well as 2 Courts of Guarantees (destined to authorize wiretapping). The creation of these new courts would entail the abolition (for conversion) of 46 courts of the ordinary criminal and peace jurisdiction, including the two Chambers of second instance.

¹³⁶ Reforms to the Law against Organized Crime, Decree 547 of October 26, 2022, published in the D.O. 225, Volume 437, of November 29 of the same year.

¹³⁷ Reforms to the Telecommunications Law, Decree 548 of October 26, 2022, published in the D.O. 225, Volume 437, of November 29 of the same year

¹³⁸ Cristosal, "Analysis of recent penal reforms." F.

¹³⁹ Commission on Legislation and Constitutional Points of the Legislative Assembly, Opinion No. 40 of October 31, 2022. Legislative Assembly. "Organized Crime Courts will strengthen the fight against gangs", November 2, 2022, <https://www.asamblea.gob.sv/node/12504>. La Prensa Gráfica, "There will be 'mega jurisdiction' of courts for cases of the regime", October 28, 2022, <https://www.laprensagrafica.com/elsalvador/Habra-megajurisdiccion-de-tribunales-para-casos-de-regimen-20221027-0093.html>.

However, as of the closing date of this report, the reforms to the Judicial Organic Law have not been published in the Official Gazette, which indicates that they have not been sanctioned by the President of the Republic, despite the fact that the text of the reform foresaw its effective date in January 2023.¹⁴⁰

Cristosal has filed three unconstitutionality lawsuits against some of the reforms mentioned in the previous sections, specifically the following:

- Lawsuit against Article 345-C of the Penal Code (gag law) and against paragraph 3°, of Article 1 of the Law for the proscription of maras, gangs, groupings, associations and organizations of a criminal nature (filed on April 19, 2022); because the reforms violate Article 6 of the Constitution (freedom of expression) by criminalizing the exercise of journalism. Reference was made to the doctrine of faithful reporting.
- Lawsuit against reforms to the Criminal Procedural Code regarding the figure of “faceless judges” (filed on June 8, 2022); for violation of jurisprudential precedents on the initiative of law; as well as reflex violation of the Constitution, since the figure of faceless judges violates Article 8 of the ACHR (judicial guarantees).
- Lawsuit against the “Régimen Especial Transitorio para la Adquisición de Bienes y Servicios por parte del Estado, en el marco de la declaratoria de Régimen de Excepción” (Special Transitory Regime for the Acquisition of Goods and Services by the State, within the framework of the declaration of the State of Exception) (**filed on November 8, 2022**); since it violates jurisprudential precedents on public procurement and the Constitution, as this decree vulnerates the UN Convention against Corruption which sets forth certain rules that have to be enforced in Public Procurement.

As of the closing date of this report, none of these claims of unconstitutionality have advanced and no notification has been received regarding their admission or rejection by the Constitutional Court.

5.2 Operation of the Courts of Exception

As described by Cristosal,¹⁴¹ all cases of persons detained under the state of exception have been prosecuted applying the Organized Crime Law before the “Specialized Courts” (which as of the October 2022 reform are called “Organized Crime Courts”).

Neither the decrees of approval and extension of the exception regime, nor the Judicial Organic Law, nor the reforms described in this report, formally create a special jurisdiction to apply the state of exception regime, but in practice (de facto) the authorities have delimited the presentation and trial of these thousands of cases only before the Specialized Courts.

It is a policy of the Attorney General’s Office to exercise criminal action before these courts in all cases related to the state of exception; complemented by a practice of the specialized judges who automatically assume and declare themselves competent, under the connivance of the Supreme Court of Justice (CSJ). It is a rule that does not obey the analysis of each concrete case nor the application of legal criteria that determine specialized competence; an unwritten rule that does not follow the law and arises from the excessive discretion of prosecutorial and judicial officials.

Specialized judges have thus set themselves up as judges of exception, ad hoc judges who attract to their own jurisdiction all the cases of the state of exception and also (as of the reforms of October 2022) cases against children and adolescents that should fall under the ordinary jurisdiction of the Juvenile Courts. This is, in practice, a jurisdiction privilege, expressly prohibited by the Constitution in article 190.

¹⁴⁰ Law and business, “New courts against organized crime awaiting sanction”, February 1, 2023

¹⁴¹ Cristosal, “Human rights violations during the emergency regime...” /

The jurisdiction of Organized Crime has been instrumentalized in such a way that it now functions as the jurisdiction of the regime of exception, as a consequence of these unconstitutional practices promoted by the FGR (which exercises the criminal action), the CSJ (which appoints the judges of exception) and the specialized judges themselves, who accept this role without exercising control over the prosecutorial actions.

As Cristosal has pointed out, the jurisdiction privilege is unconstitutional as it directly violates the right to equality (art. 3 Cn.) and the guarantee of the natural judge (art. 11 Cn.).

In this regard, the Constitutional Court of El Salvador has established that “according to the prohibition of jurisdiction privilege (Article 190 Cn.) no one can be subtracted from the competent Judge or attracted by a jurisdiction of exception (...).”¹⁴² This implies “the rejection of any attempt to create exceptional tribunals established formally or covertly, which may imply discriminatory procedural treatment for their recipients, in which the standard of guarantees contemplated in the Constitution and in current conventional international law is not observed by their holders”.

5.3 Trial path of persons detained under “the regime”.

After one year of enforcement of the state of exception, it is possible for Cristosal to describe the route imposed on prisoners along their judicial proceedings, by identifying the unconstitutional practices and human rights violations systematically exercised by prosecutorial and judicial officials applying the state of exception.

It should be kept in mind that, as has been amply demonstrated in the previous chapters, persons detained under “the regime” have suffered, for the most part, arbitrary detention, torture, cruel, inhuman and degrading treatment during the administrative detention stage. But these conditions are prolonged indefinitely as they are subjected to judicial proceedings that also violate their rights.

The question then becomes valid: **What does it mean to be prosecuted under the state of exception in El Salvador today?** Basically, it means to be judged without rights or guarantees, mainly as follows.

No respect for the constitutional term of administrative detention.

People are deprived of the constitutional right to an administrative detention not to exceed 72 hours (art. 12 Cn.) in view of the indefinite prolongation of the state of exception. They were detained without a court order and without being informed of the reason for their detention.

No presumption of innocence.

People do not have the right to the presumption of innocence. On the contrary, the established procedure imposes, de facto, the presumption of guilt.

People are generally charged with the crime of “Illicit Associations” “agrupaciones Ilícitas” (art. 345 CPP) without evidence or even indications against them, with very few exceptions. The mere mention of the captors in the police report or through anonymous calls is enough to subject them to the organized crime judicial process.

A standard feature of this prosecutorial practice is the absence of individualization of the person charged with a typical criminal conduct (as established in the Penal Code). In spite of this, prosecutors and judges, subject people to provisional detention that becomes indefinite, as described above.

Individuals are held uncommunicated, without the right to have contact with their defense counsel.

¹⁴² Constitutional Chamber of the Supreme Court of Justice. Unconstitutionality. December 19, 2012, <https://www.jurisprudencia.gob.sv/visormlx/pdf/6-2009.pdf>

Without an Attorney General's Office to guarantee legality.

The prosecutors appointed to apply the state of exception do not exercise their obligation to guarantee the legality of their actions; they do not exercise control over the actions of the police and the military that led to the detention of persons under “the regime”.

Prosecutors in these cases accept and tolerate the arbitrary procedures used in administrative detentions and even cover up abuses even if they amount to torture.

They exercise criminal action against the vast majority of persons detained under “the regime” and have requested provisional detention against thousands of persons even without having evidence against them, and without individualizing the alleged criminal conduct (Cristosal 2022).¹⁴³

Without an impartial judge.

The guarantee of a natural judge is denied to persons detained under the regime”. In effect, they are judged by judges who have not been appointed in accordance with the law, under the standards of the Constitution.

The appointments of the specialized judges made by the CSJ did not follow the procedure of law, so they could be null and void. The aforementioned Court proceeded with the appointments bypassing the previous process of interview, evaluation, selection and incorporation in shortlists of the National Council of the Judiciary (CNJ), as established by the Constitution and the law (arts. 186 final clause Cn.; 22 letter “c”, 62 and 63 of the Law of the National Council of the Judiciary; 6 clause 2°, letter “a”, 15 and 23 of the Law of the Judicial Career).¹⁴⁴

Furthermore, they are “faceless judges” (their identity and that of their collaborators is reserved), so there is no possibility of identifying possible personal conflicts of interest in specific cases.

In practice, they have constituted a jurisdiction privilege (prohibited by the Constitution), i.e. they are ad hoc judges, they are “the judges of the regime of exception”.

After one year, it has been sufficiently verified that the specialized judges who apply “the regime” systematically incur in unconstitutional practices, such as the following: omitting the control of the prosecutorial actions; automatically resolving provisional detentions against all the detained persons, despite the absence of proof, evidence or indications; obstructing the exercise of the technical defense and denying the material defense (in massive virtual hearings).

In addition, specialized judges apply, without any assessment, the criminal reforms that have abolished or diminished judicial guarantees, without exercising any control of constitutionality or conventionality, violating the Magna Carta and international human rights treaties.

Besides, according to the Organized Crime Law (art. 16) the cases that the FGR presents before this jurisdiction must have a significant level of evidence, equivalent to that offered at the end of the investigation in an ordinary process; however, neither prosecutors nor specialized judges comply with this legal obligation (Cristosal 2022).

No material defense and no adequate technical defense.

The state of exception regime, according to the terms of the Constitution, allows for limited contact with defense attorneys during the administrative detention stage. However, Salvadoran prison authorities avoid this contact at all times, even when the case has already been prosecuted and provisional detention has been ordered, which can last for more than 2 years.

¹⁴³ Cristosal, in his report for the June-September 2022 period on “the regime”, highlighted that “The fiscal requirements (...) continued to show serious deficiencies [since] they base the accusation on the basis of assumptions of ‘police intelligence’ that try to sustain in arrest records, reports from ‘police intelligence bases’ and reports on the context or alleged criminal situation of the place of residence or of the arrest of the accused; sometimes they also use criminal record information. In general, the Prosecutor’s Office fails to individualize the accusation of each person, that is, it fails to link each person to a specific criminal act.”

¹⁴⁴ Said non-compliance could be verified through the responses given to requests for information that Cristosal made to the Supreme Court of Justice and the National Council of the Judiciary in May 2022, which evidences the omission of the procedure (See: Cristosal, “Fourth situation report: Human rights violations during the emergency regime in El Salvador”, October 2022, p. 29..

Inmates have no contact with their defense attorneys, so they cannot participate in the preparation of their defense. During the initial hearings (called “hearings for the imposition of measures” in LECO) they also lack the possibility of taking the floor and exercising their material defense. At the beginning, hearings were massive (up to 600 defendants), but as time elapsed the number has declined; however, they are still collective hearings with a large number of defendants.

During the aforementioned hearings, judges limit the intervention of defense attorneys to a few minutes and dismiss, generally without express grounds, their defense pleadings or bail documents that seek to obtain measures other than detention.

People in conditions of poverty (the majority of those arrested cannot afford to hire the services of a private defense attorney), so they must resign themselves to the assistance of a public defender. As Cristosal has verified, the public entity responsible for this duty, the PGR, has collapsed in the face of more than 66 thousand arrests during the regime. This lack of installed capacity has manifested itself in the neglect of cases, negligence, mistreatment, omission of the effective exercise during hearings and stigmatization of family members. There have even been cases of sexual harassment against family members by public defenders (Cristosal 2022).

No reasonable time frame for the pre-trial investigation.

Individuals under the state exception find themselves in a kind of indefinite provisional detention. In practically all cases the judges automatically decree the provisional detention for a period of 6 months requested by the Attorney General’s Office, even in the absence of evidence, and in the same way they approve prosecutorial requests to extend the investigation for 6 more months.

However, it should be taken into account that the October 2022 reform to the LECO empowered specialized judges to extend the term of the investigation process up to 2 years, upon prosecutorial request.

In addition, a transitory provision of such reform (art. 21-A of the LECO), allows judges, to automatically apply an extension of the pretrial investigation period for one year, to persons already detained under the regime, **counted as of the effective date of the reform.**

Thus, since the aforementioned decree was published on November 29, 2022, the reform entered into force on December 7 of that year; by that time, many persons were already under provisional detention for up to nine months. For them, the reform of “art. 21 -A” extended the instruction period for one more year (totaling up to 21 months in provisional detention) after which, they could additionally face an extension of another year if the FGR so requests (totaling up to 43 months) before the preliminary hearing is scheduled.¹⁴⁵

Cristosal has verified concrete cases in which there has already been an automatic extension of one more year of pre-trial detention, against persons who had previously been detained for several months under the “regime”. In fact, it was also verified that posters with the following text have been placed outside various specialized courts:

“The period of instruction for the hearings for the imposition of measures under the regime of exception carried out in the period from April to December 2022, has been extended for twelve more months, ending on the eighth day of December 2023.

Therefore, no second hearings have been scheduled in 2023”.

¹⁴⁵ According to the reforms to the Law against Organized Crime (Decree 547 of October 26, 2022, published in D.O. 225, Volume 437, of November 29 of the same year), article 21-A was added, which, in the The first paragraph establishes textually: “The criminal proceedings processed based on this law, initiated before the entry into force of this decree and that are in the investigation phase, this will be extended for a period of twelve months from this date, decree, after which an extension may be requested for up to twelve more months, fulfilling the requirements set forth in Article 17 of this law” (emphasis added).

Tried in Secret.

The principle of publicity of criminal proceedings (arts. 13 CPP, 8 CADH and 14 PIDCP) is totally denied to persons detained under the state of exception.

This is another unconstitutional practice of the prosecutors and judges of the “regime”. In every case of detained persons, the Attorney General’s Office requests total confidentiality of the process and the judges grant it without any legal basis. The total confidentiality of the proceedings has thus become a general rule and, in this way, the violations to the due process become secret, as well as the identity of the judges themselves.

No impartial review of the provisional detention measure.

Despite the March 2022 reform that seeks to prevent the application of alternative measures to prison in favor of persons detained under “the regime”, defense lawyers -most of them private individuals- are requesting the specialized courts to hold hearings to review the detention of their clients and request an alternative measure, which has resulted in judicial hearings for that purpose.

According to Cristosal’s verifications, for several months these hearings have resulted in the systematic denial of requests for the substitution of provisional detention. However, in recent months, some specialized judges are granting these alternative measures to prison in some cases, without there being a uniform criterion among the judges to grant the alternative measures.

Despite this change, most judges continue to deny the change of precautionary measures and maintain the detentions in force; there is also a predominant rejection of the documentation of family, social and labor ties presented by the defense attorneys, without sufficient grounds to justify the bail rejection or due to the restrictive criteria of the judges who demand documents that are impossible to obtain.

There are also reports of intimidation and stigmatizing phrases against defense attorneys during review hearings by prosecutors and judges.

Cristosal verified the practice of generally rejecting requests for review of measures, in several specialized courts, mainly in Santa Ana and San Salvador.

Subjected to the “supra-judicial” power of security authorities.

The fate of persons detained under the “regime” is subject to the arbitrariness of military and prison officers who, in practice, act as “supra-judicial” powers. This arbitrariness is clearly manifested in the cases of persons who are awarded a reversal of their provisional detention, but whose release orders are not enforced, despite the fact that they were duly notified; these are illegal detentions that can last for several months.

Cristosal verified the practice of prison authorities who carry out the internal administrative procedure to release an inmate, but end up not releasing them (despite the court order) and hand them over to members of the police who “recapture” them arbitrarily accusing them of acts of terrorism, that is to say, a new crime is added to them. Exceptionally, the FGR has remedied this form of abuse.

No access to the right to habeas corpus.

Most of the persons detained under the state of exception have not had access to the right to habeas corpus, which is enshrined in Article 11 of the Constitution and which legally the State has no power to suspend, even under an exception regime.

The Constitutional Court has rendered habeas corpus ineffective through a sustained practice of omission. According to data from the Anticorruption Legal Advisory Service (ALAC), as of February 28, 2023, said Court reported 4,012 habeas corpus requests filed, of which 78% (3,518) had not been solved and only 1% was deemed as “case dismissed”, that is to say, resolved in favor of the detained person.¹⁴⁶

¹⁴⁶ Anti-Corruption Legal Advisory, ALAC (@ALAC_SV), Twitter, February 28, 2023, [https://twitter.com/ALAC_SV/status/1630571691414892545?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%](https://twitter.com/ALAC_SV/status/1630571691414892545?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E)

The vast majority of these requests have been filed before the Constitutional Court in the city of San Salvador (3,369) of which the Court has not resolved any of them. The remaining have been filed before courts in the interior of the country, which is permitted by law due to territorial jurisdiction (Lemus 2023).

During the first year of the “regime”, Cristosal supported the activation of habeas corpus in 105 cases of arbitrarily detained persons, preparing the writs that were presented directly by their relatives before the Constitutional Court. At the closing date of this report, none of the cases have been resolved, despite the fact that most of them refer to people suffering from chronic illnesses or disabilities, lack of information from their relatives about their health condition or the authorities’ refusal to allow them to receive medication.

Paradoxically, in 10 of these cases, the Constitutional Court made preventions requiring the petitioners to provide the location of the imprisoned person or their state of health, data that is impossible to submit, since it is precisely the refusal of the prison authorities to provide such information what motivated the families to file the habeas corpus.

The habeas corpus filed on behalf of persons with health problems or disabilities are of a corrective nature, since they seek to protect their integrity and health, so the omission of the Constitutional Court to resolve them becomes especially serious, and even violates its own jurisprudence, in which it has repeatedly held that **“habeas corpus is the appropriate mechanism to protect prisoners from actions or omissions that violate their dignity in relation to their integrity. Moreover, the protection of the health of inmates has a direct link with integrity.”**¹⁴⁷

Faced with this manifest and deliberate ineffectiveness of the Constitutional Court, Cristosal filed a complaint before the IACHR for another 66 cases of persons arbitrarily detained under the exception regime and whose habeas corpus petitions have not received responses. The complaint was filed in March 2023 for violations of the rights to personal liberty, to judicial guarantees and to judicial protection, enshrined in Articles 7, 8 and 25 of the American Convention on Human Rights, respectively.

The complaint before the IACHR also requests precautionary measures to protect the life and integrity of the victims during their imprisonment; as well as measures to guarantee access to medical treatment; processing at liberty; adoption of mechanisms to allow family members to know the legal and health situation of inmates and access to their legal representatives and family members, among others.

No judicial penitentiary oversight.

To date, there is no public knowledge that the Penitentiary Surveillance Judges are making periodic visits to the prisons, in order to interview inmates under the state of exception and verify the legality or not of their detentions (articles 35 and 37, numbers 9 and 13 of the Penitentiary Law).

Cristosal is only aware of two cases in which visits have been made by Prison Oversight Judges, at the request of family members of inmates; in both cases the judges asked the IML to conduct a health examination of the inmate in question.

The conditions of torture and cruel, inhuman and degrading treatment in which inmates are held, under the regime, have been imposed by the DGCP without having declared a state of emergency that should be under judicial control by the Prison Surveillance Judges (arts. 23 and 24 of the Penitentiary Law).

¹⁴⁷ Habeas corpus. Final Judgment, 360-2016. Constitutional Chamber. Supreme Court of Justice November 14, 2016), <https://www.jurisprudencia.gob.sv/DocumentosBoveda/D/1/2010-2019/2016/11/CO136.PDF>

No effective protection of prisoners' human rights.

After one year, the Human Rights Ombudsman Office has not issued any definitive pronouncement on the serious human rights violations that have occurred under the state of exception regime; not even in face of the numerous cases of arbitrary deaths, torture, illegal detentions or violations of due process of law, so the exercise of its mandate has been severely limited. Each of the incumbents only issued statistical profile reports.

Ombudsman Tobar issued his report on May 6, 2022, according to which, between March 27 and April 25 of that year, the institution developed “3,298 actions for the protection of human rights”: 338 verifications; attended 807 cases; and carried out 2,143 institutional actions (official letters, calls, orientations and others). On April 28 of this year, Ombudswoman Caballero released a report, according to which between October 19, 2022 and March 17, 2023, the PDDH recorded 1,081 official letters issued; 1,190 telephone requests; 597 interviews with authorities; 3,141 orientations and 1,054 immediate actions.

In both reports, the incumbents limited themselves to issuing statistical data¹⁴⁸ on their actions and very general recommendations, without mentioning specific cases or situations, in the sense of “guaranteeing the dignified treatment (...) of prisoners”, as well as continuing to “adopt the necessary measures to guarantee the dignified treatment (...) of prisoners”,¹⁴⁹ and the protection of the rights to life, personal integrity, liberty, freedom of movement and others” and “to review the legal situation of prisoners without links to criminal groups.”

Despite the silence of the incumbents, the statistical reports published by the PDDH show that its technical and operational staff at the national level is carrying out various framed procedures within its institutional mandate. Cristosal has verified this effort, since during the first year of the state of exception regime it has requested the PDDH to take action in 153 cases of arbitrary detentions (including 7 cases of locating prisoners, 11 cases of medical attention and medicines and 1 case of verification of an arbitrary death); although it should be noted that the PDDH has only responded in 16 of these cases and Cristosal has only been notified of one initial resolution.¹⁵¹

On the other hand, Cristosal is also aware that the DGCP does not allow the PDDH to verify the situation of prisoners in all prisons; furthermore, in specific cases, the DGCP does not provide the information requested in a timely manner. Regarding this obstacle to the PDDH's mandate, no pronouncement has been published by the head of the institution.

As of the closing date of this report, the PDDH has not made public any final resolutions on cases of human rights violations due to the application of the exception regime; nor has it made public the issuance of precautionary measures, special reports, press releases or proposals for amendments to legislation related to this area.

5.4 Judicial guarantees violated during the state of exception

The reforms to the criminal laws described above repeal, annul or limit judicial guarantees, far beyond the limits allowed by the Constitution and the American Convention on Human Rights itself, as has been pointed out.

The situation becomes even more serious because the “regime” and the reforms have given way to arbitrary practices that constitute serious human rights abuses by prosecutors and judges. Some of these practices involve actions or omissions that could even constitute crimes, as highlighted in previous Cristosal situation reports.

Annex No. 2 of this report includes a table illustrating the main judicial guarantees violated through legislative reforms and practices of officials that have been reproduced throughout the year that the regime has been in force. A column is added on the possible consequences or responsibilities of such actions.

¹⁴⁸ PDDH, “VERIFICATION REPORT IN THE CONTEXT OF THE EXCEPTION REGIME PRODUCT OF THE INCREASE IN HOMICIDES AND FEMINICIDES THAT OCCURRED IN THE LAST WEEK OF MARCH”, May 2022.

¹⁴⁹ PDDH, (@PDDHEISalvador), “Report of the #Procuradora DDHH @RaqueldeGuevara regarding the issue of Security”, Twitter, April 28, 2023, <https://twitter.com/PDDHEISalvador/status/1652068249041874944?cxt=HHwWgMC9jbnUqe0tAAAA>

¹⁵⁰ PDDH, “VERIFICATION REPORT IN THE CONTEXT OF THE REGIME...”

¹⁵¹ PDDH, (@PDDHEISalvador), “Report of the #ProcuradoraDDHH...”

VI. Conclusions

The state of exception regime is a permanent measure of repression, in the context of a lack of comprehensive security policies.

The state of exception has not been a temporary and exceptional measure in accordance with the constitutional framework, but rather a permanent mechanism of repression and violation of constitutional rights that in practice constitutes the only tool or strategy of the government of President Nayib Bukele, in the evident absence of comprehensive security policies. It is clear that prevention, care to victims, re-socialization and rehabilitation are not part of the current government's security strategy; although the Territorial Control Plan includes Social Prevention in Phase II, there are no documents that develop contents, or focus actions and goals in this area, nor is there any significant budget execution on these aspects.

The exception regime is part of a strategy of punitive populism and government propaganda characterized by lack of transparency.

It is evident that along with thousands of arbitrary detentions, the Government has used an iron fist rhetoric synthesized in the message of "war against gangs" which aims to manipulate public opinion, and which involves the instrumentalization of criminal law under the logic of the "internal enemy". To develop this strategy, the government has resorted to secrecy in its negotiations with gangs, in the statistical figures of homicides and other crimes, in deaths in state custody, in the construction of the Terrorism Confinement Center (CECOT) and any information that would allow the public to contrast the official discourse with reality. This has also meant the attack against the press and human rights organizations to avoid contrasting information.

The state of exception has been applied using police and military procedures aimed at carrying out massive arbitrary detentions.

The main operational strategy during the state of exception is the execution of massive arbitrary detentions, that is, arrests without respect for the guarantees of due process of law. The systematic nature of this practice -of national scope- shows that it is a state policy decided at the highest level, and not merely the result of isolated abuses, attributable only to the operators who carry them out.

The vast majority of the tens of thousands of arrests of persons under the state of exception have been arbitrary, and the most recurrent patterns of abuse to carry them out have been the following: absence of administrative or judicial arrest warrants; absence of a prior investigation; illegal detentions and double jeopardy; illegal searches of the home or domicile; detentions based on anonymous complaints; detentions of persons for a second time, despite having a court order for their release; detentions based on the existence of a criminal or police record; and detentions based on stigmatization due to the presence of tattoos. As a general rule, the authorities do not provide information to the families about the place of detention and impose absolute family isolation, a situation that has resulted in many prisoners being in a state of forcible disappearance for the time being. According to the complaints received by Cristosal, 74% of the identified perpetrators are members of the PNC, while 6.7% are members of the FAES.

A report by Human Rights Watch, which revealed information on charges against persons detained under the state of exception as of September 2022, identifies that -considering a significant sample of 48,480 persons arrested - only 0.9% have been charged with homicides, injuries, extortion and other serious crimes typical of gangs. In contrast, 82% have been charged with illicit associations and 17.1% with pertaining to terrorist groups, the latter characterized by ambiguous and open criminal offenses.

These figures reflect the high degree of discretion and arbitrariness in making arrests, and their null impact on the criminal prosecution of serious crimes, such as homicides.

Mass arbitrary detentions are the gateway to a cycle of terror that includes torture, cruel, inhuman and degrading treatment; possible arbitrary deaths; de facto early sentencing and trials without minimum procedural guarantees. As Cristosal pointed out in previous reports, the systematic perpetration of these human rights violations as a State policy decided at the highest level, of a systematic nature and directed at a specific segment of the population (people living in conflictive, poor and mostly young communities) allows them to be considered crimes against humanity (art. 7 of the Rome Statute of the International Criminal Court)

 **The state of exception has resulted in the deaths of people from violence, denial of medical care and malnutrition while in state custody.**


There is evidence of dozens of people detained under the state of exception who have died as a result of torture or very serious injuries inflicted while in State custody. Asphyxiation, broken bones, numerous bruises, lacerations and even perforations on the bodies have been documented by the Institute of Forensic Medicine or through photographs. Almost half of the people who died in prisons under the exception regime were victims of confirmed violent deaths, possible violent deaths or deaths suspected of a crime. Almost a fifth of these deaths were due to pathologies that show deliberate negligence in providing them with medical assistance, medicines and even food, even though many of these persons documented their chronically ill condition; in five of the cases the confirmed cause of death was malnutrition and severe anemia. None of these individuals had been convicted in court of any crime. The majority of the regime's fatalities were young men.

The number of deaths under the state of exception could be much higher, as there is evidence of people who died inside the prisons whose bodies have been buried in mass graves in local cemeteries, with no notification to family members. Prison authorities do not notify the families of these deaths, so they only learn of them when private funeral homes intervene.

Although Cristosal has confirmed 153 cases of arbitrary deaths inside the prisons under the state of exception, it is very difficult to establish an exact number of these deaths, given the restriction of access to information on these cases by prison authorities. Added to this, is the absence of information on the practice of autopsies, or the content of the forensic and hospital reports, which in the few cases that are notified to the relatives are usually characterized by their ambiguity regarding the causes of death (a situation that sometimes contrasts with the evidence of physical violence on the bodies of the victims). These circumstances have created serious doubts about the objectivity of such reports.

The failure to conduct criminal investigations into these deaths and the public speeches of high-ranking officials denying the facts, show that arbitrary deaths are tolerated by the State as part of a policy of torture

national scope- shows that it is a state policy decided at the highest level, and not merely the result of isolated abuses, attributable only to the operators who carry them out.

 **Torture and cruel, inhuman and degrading treatment of persons detained under the state of exception regime are a widespread and systematic practice.**

Torture and cruel, inhuman and degrading treatment inflicted on thousands of persons detained under the exception regime are widespread and systematic, which demonstrated that they are part of a policy of punishment perpetrated by prison guards and officials of the prison administration, but which must necessarily have the authorization and support of the authorities up to the highest level in the Security branch.

Testimonial evidence establishes the practice of collective torture upon arrival at the prison, being one of the most common forms of torture, the use of blunt instruments or batons by the guards, as well as torture by position, such as digging them into gravel until they bleed and remaining in a “squatting” position for a long time and other limitations of movement; these forms of torture continue to be reproduced over the months throughout the period of imprisonment. There have also been reports of asphyxiation and electric shocks; penetrating injuries (ascertained in persons who died in prisons); as well as the indiscriminate use of pepper spray to inflict pain. Extreme humiliations, including throwing food on the floor and on mud, forcing inmates under threat to eat directly from the floor and using only their mouths (no hands), while they were called “dogs”; constant death threats or of beatings or electric shocks, or subjecting them to new tortures are also reported. Some report having been forced to witness the torture of others, including the deaths of people as a result of beatings by the guards.

Prison conditions have also constituted situations of widespread torture. Tens or hundreds of people in extreme overcrowding, many unable to sit or lie down so they take turns to sleep; as well as extreme insalubrity due to contaminating conditions in the sanitary facilities, including the mixing of contaminated fluids of feces or urine with drinking water. Insufficient provision of food and water is reported, which has resulted in cases of malnutrition; deliberate limitation of access to light and air, causing fainting and, probably, aggravating health conditions in a deadly manner; in addition, prolonged stays in punishment cells without sufficient light and air and without toilets, during which the already scarce amount of food and water provided to them is reduced even more.

The refusal to provide medical assistance and medicines to people with chronic, degenerative or terminal illnesses is another form of torture, as their conditions and suffering worsen (in some cases to the point of death without assistance). The spread of contagious diseases, especially skin diseases, has caused epidemics and generalized infections without inmates receiving any treatment.

One witness reported the presence of President Bukele himself in one of the country’s prisons, who gave an intimidating speech against inmates and showed total indifference to the conditions of confinement. This type of incident demonstrates that torture and cruel, inhuman and degrading treatment are an institutionalized practice decided from the highest levels of government and the State.


 **The state of exception has provoked serious violations of the human rights of women, children and adolescents.**

Women prisoners under the regime have also suffered cruel, inhuman and degrading treatment, as well as torture. The improvised transfer of the entire inmate population of the former “Women’s Prison” to the “Apanteos” prison, worsened their conditions of confinement, increased overcrowding, insalubrity and inhumane conditions such as sleeping on wet floors without mattresses; in addition, they are guarded by women and also by men without training in the management of female inmate population. One of the most common forms of collective torture is the spraying of pepper spray at night. Clearly, the treatment inflicted on female prisoners by the exception regime is a form of systematic institutional violence against women.

The female relatives of the persons detained under the exception regime have suffered a deterioration in their living and subsistence conditions; their child-rearing and care-giving tasks have increased, particularly for elderly women, who are generally mothers and grandmothers of the detained persons, in addition to being left without financial resources and in charge of young children. Despite the decline of their income, women invest time and resources to investigate the whereabouts of their family members, obtain certificates, clearances and go to different agencies (PNC, PGR, Prisons, among others), in addition to the effort to pay for food packages or medicines. The impacts on their physical, emotional and mental health caused by the detention of a relative are also evident.

On the other hand, children and adolescents affected by the state of exception have suffered physical, emotional and psychological violence when witnessing the arrest of family members or people around them. Their right to a dignified life has been affected by the deterioration of their standard of living, including clothing, food, access to education, among others; they suffer health consequences such as enuresis, depression, anxiety, loss of appetite, insomnia. Their right to maintain personal relations with their incarcerated parents has also been affected and they do not have access to protection programs, which have not been created by the State.

The repercussions of the state of exception on women, children and adolescents are clearly in violation of international human rights treaties, particularly the Convention on the Rights of the Child and the Convention of Belem Do Para.

 **The reforms to criminal laws approved in 2022 had the purpose of applying a criminal law model of the enemy which resulted in a setback regarding judicial guarantees.**

The reforms to the criminal laws have had the clear purpose of applying a model of Criminal Law of the Enemy in El Salvador, repealing, limiting or making impossible basic judicial guarantees, as well as considerably increasing sentences (up to 45 years) against persons who are identified or attributed as being gang members and, as such, are treated by the State as “non-persons” or “enemies”.

Most of the reforms contain elements that are clearly unconstitutional and in violation of International Human Rights Laws and are aimed at allowing the serious human rights violations that are practiced under the state of exception, since they are designed to violate basic procedural guarantees, standardize the use of provisional detention as an early penalty (on average 2 years) and tolerate illegal practices, under the certain threat of receiving almost life sentences without having had any real capacity for defense or a fair trial.

 **An ad hoc jurisdiction has been installed for the state of exception that has allowed human rights violations.**

It is clear that the Attorney General's Office and the Supreme Court of Justice have established an institutional policy that seeks to concentrate all cases of the state of exception in the specialized jurisdiction of Organized Crime, in such a way that it attracts for itself such cases, leaving out ordinary criminal judges.

This practice has created a (de facto) jurisdiction privilege that is prohibited by the Constitution. It has been demonstrated that most of the current specialized judges were appointed after the state of exception began, enjoying the confidentiality of their identity (they are faceless judges) and without having followed the procedure established by the Constitution, which provides for the prior participation of the National Council of the Judiciary.

These judges have automatically ordered a provisional detention against thousands of people even without evidence, and have not exercised the necessary judicial control over the prosecutors' actions, so that, eventually, it could be determined that they have incurred in several crimes, such as prevarication and attacks to the right of defense. Therefore, it is possible to conclude that the Specialized Judges have acted as ad hoc judges for the state of exception, and have allowed thousands of human rights violations.

 **There has been a serious lack of effectiveness of the constitutional human rights mechanisms.**

The Constitutional Court has been negligent with respect to hundreds of habeas corpus petitions filed on behalf of persons detained under the state of exception, as the vast majority of these petitions have gone unanswered. For their part, two members of the Office of the Human Rights Ombudsman (who have served during the year the regime has been in effect) have failed to fully exercise their powers in the numerous cases of persons detained during the regime. Therefore, it is possible to affirm that the human rights protection mechanisms provided for in the Constitution, such as habeas corpus and the protection procedures delegated to the PDDH, lack effectiveness for the time being.

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Annexes

Annex No. 1 Death toll under the state of exception

March 27, 2022 to March 27, 2023

	Name	Age	Sex	Date of Arrest	Date of Death	Name of Prison	Cause of Death
1	José Israel Crespín Solorzano	24	Male	01/04/2022	02/04/2022	Centro Preventivo y de Cumplimiento de Penas de La Esperanza	Beaten. The body presented excoriations at occiput level, wound on the right eyelid with hematoma. Beaten.
2	Leonardo Vladimir Rivera Castillo	26	Male	31/03/2022	03/04/2022	Complejo Penitenciario de Izalco	The body had injuries.
3	Walter Vladimir Sandoval Peñate	32	Male	30/03/2022	03/04/2022	Centro Penitenciario de Máxima Seguridad de Izalco Fase III	The body presented blows and fractures, he was beaten at the moment of the arrest (IML: Severe closed thorax trauma of contusive type).
4	Mauricio Alberto Flores Sorto	37	Male	01/04/2022	15/04/2022	Complejo Penitenciario de Izalco	The body presented injuries: abrasions and bloody secretions in the nostrils. He suffered from anxiety and hypertension (cause not determined, autopsy was ordered).
5	José Jeremías Deleón Escamilla	39	Male	05/04/2022	17/04/2022	Complejo Penitenciario de Izalco	The body presented bruises and punctures, presumably he had been beaten (IML sketch: sepsis secondary to pleural empyema caused by blunt chest trauma).
6	Ricardo Antonio Mejía Díaz	45	Male	03/04/2022	17/04/2022	Complejo Penitenciario de Izalco	Septic abdomen
7	Elbin Josué Sánchez Rivera	22	Male	03/04/2022	19/04/2022	Complejo Penitenciario de Izalco. Fase III	The body had back injuries and broken ribs, feet and hands (Out-of-hospital death report: hypertension and sudden death).
8	Oscar Alfredo Gallegos Pocasangre (Person with disability)	46	Male	15/04/2022	20/04/2022	Complejo Penitenciario de Izalco	The body presented blows to the head (IML report: Severe cranioencephalic trauma of contusive type).
9	Melvin Alexander Palacios Ramírez	29	Male	01/04/2022	20/04/2022	Complejo Penitenciario de Izalco Fase I	Chronic Kidney Disease
10	Edwin Enrique Pérez Aguilar	39	Male	21/04/2022	21/04/2022	Centro Penitenciario de Seguridad Zacatecoluca	Chronic Kidney Disease
11	Maynor Alcides Crespín	23	Male	03/04/2022	24/04/2022	Centro Penal de Quezaltepeque	Malnutrition
12	José Luis Guevara Ulloa	36	Male	26/04/2022	29/04/2022	Bartolinas de la Policía Nacional Civil de la Delegación de San Miguel	Violent Death
13	Rafael Valdez Portillo	74	Male	28/01/2021	01/05/2022	No data	No data
14	Ernesto Alexander Loy Loy	25	Male	02/05/2022	03/05/2022	Bartolinas de la Policía Nacional Civil de la Delegación de Santa Ana	Head injury due to fall

15	Miguel Angel Flores Guzmán	45	Male	29/04/2022	05/05/2022	Centro Preventivo y de Cumplimiento de Penas de La Esperanza	Medical Malpractice
16	Sonia del Carmen López Acevedo	56	Woman	19/04/2022	05/05/2022	Centro Preventivo y de Cumplimiento de Penas de Ilopango	Pneumonia (Acute lung edema)
17	Francisco Manuel Cañas Serrano	30	Male	21/04/2022	06/05/2022	Complejo Penitenciario de Izalco	No data
18	Luis Fernando Ramírez Mejía	23	Male	01/01/2021	06/05/2022	Complejo Penitenciario de Izalco	Pulmonary Edema
19	David Ernesto Juárez Ávila	46	Male	11/04/2022	07/05/2022	Centro Preventivo y de Cumplimiento de Penas de La Esperanza	Body had a blow to the eye (IML report: Pulmonary edema, pending toxicology and histopathology studies).
20	José Misael Oliva Abarca	26	Male	04/04/22	07/05/2022	Complejo Penitenciario de Izalco	Electrolyte imbalance
21	Wilson Alexander Cruz Pineda	27	Male	30/03/2022	07/05/2022	Complejo Penitenciario de Izalco	Pulmonary edema due to tuberculosis
22	José Guillermo Vides	40	Male	No data	09/05/2022	Complejo Penitenciario de Izalco	No data
23	Sergio Alcides Natividad Calzadilla	28	Male	No data	09/05/2022	Centro Preventivo y de Cumplimiento de Penas de La Esperanza	Beaten, the body showed blows.
24	Carlos Wilfredo Saucedo González	26	Male	07/05/2022	09/05/2022	Centro Preventivo y de Cumplimiento de Penas de La Esperanza	Beaten in prison. Violent death
25	Michael Geovanni Menívar Sosa	30	Male	No data	10/05/2022	Complejo Penitenciario de Izalco	The body presented blows
26	William Alexander Galeas González	36	Male	13/04/2022	12/05/2022	Centro Preventivo y de Cumplimiento de Penas de La Esperanza	Body showed signs of torture: there was a bruise on the forehead and bruises on the arms. (Hospital death certificate: Other bacterial pneumonias) (IML report: Pulmonary edema).
27	Víctor Manuel López Trinidad	62	Male	11/04/2022	12/05/2022	Centro Especial en Salud de Quezaltepeque	Possible violent death (autopsy ordered under investigation).
28	Humberto Alexander Cárdenas Blanco	35	Male	07/05/2022	13/05/2022	Centro Preventivo y de Cumplimiento de Penas de La Esperanza	The body presented blows, burns and a fractured jaw and left foot, possible torture prior to death (IML Report: Pulmonary edema)
29	Elvin Ernesto Castillo Majano	40	Male	08/05/2022	14/05/2022	Centro Penitenciario de Máxima Seguridad de Izalco. Fase III	Traumas with blunt tool
30	Romeo Mauricio Posada Urrutia	57	Male	05/04/22	16/05/2022	Complejo Penitenciario de Izalco. Fase III	The body presented blows and cracks in hands and feet. (IML Report: Generalized

							edema with skin sphacelation in the right upper limb
31	Eduardo Luis Fuentes Reyes	31	Male	16/05/2022	16/05/2022	Centro Preventivo para Hombres de San Miguel	Heart infarction
32	René Mauricio López Mejía	28	Male	08/05/2022	18/05/2022	Complejo Penitenciario de Izalco	The body had blows to the forehead, chest and arms (IML: Blunt chest trauma).
33	Juan José Ibañez García	21	Male	08/05/2022	25/05/2022	Complejo Penitenciario de Izalco	No data
34	Henry Eleazar Joya Jovel	45	Male	21/04/2022	25/05/2022	Centro Preventivo y de Cumplimiento de Penas de La Esperanza	The body presented blows in the face, he was beaten (IML report: Pulmonary edema).
35	Jesús Antonio Navarro Mendoza	48	Male	24/05/2022	26/05/2022	Complejo Penitenciario de Izalco	No data
36	José Virgilio Mendoza León	49	Male	No data	28/05/2022	No data	No data
37	Marco Tulio Castillo Reyes	38	Male	28/03/2022	28/05/2022	Centro Especial en Salud de Quezaltepeque	Liver cirrhosis
38	Yonis Balmoris Lovo Amaya	48	Male	11/05/2022	29/05/2022	Complejo Penitenciario de Izalco	Pulmonary Edema
39	Milton Joel Elías Vásquez	40	Male	No data	29/05/2022	Complejo Penitenciario de Izalco	Pneumonia multisystemic failure
40	Mario Davis Arias Rivera	44	Male	10/05/2022	30/05/2022	No data	Pulmonary Edema, Diabetes, lack of medications
41	Hugo Mauricio Rivas Sigüenza	48	Male	18/04/2022	30/05/2022	Centro Especial en Salud de Quezaltepeque	(IML Report: Septic Shock, gas gangrene)
42	Santos de Jesús Díaz Rodríguez	55	Male	No data	01/06/2022	Granja Penitenciaria de Santa Ana	Body presented blows to hands, nose, ribs and chest, broken earlobe. Bacterial Pneumonia
43	Rafael López Castellón	53	Male	08/04/2022	01/06/2022	Centro Preventivo y de Cumplimiento de Penas de La Esperanza	IML report: Cerebral Edema)
44	Mario Alexander Regalado Lemus	24	Male	22/05/2022	02/06/2022	Complejo Penitenciario de Izalco	Pneumonia, pulmonary Edema
45	David Abraham Cortez Trejo	65	Male	No data	02/06/2022	Centro Preventivo y de Cumplimiento de Penas de La Esperanza	No data
46	José Luis Moreno Terán	18	Male	02/04/2022	03/06/2022	Complejo Penitenciario de Izalco	Beaten. (IML Report: Pneumonia)
47	Jorge Enrique Ponce Flores	46	Male	No data	04/06/2022	Complejo Penitenciario de Izalco. Fase I	Multiorgan failure
48	Miguel Ángel Díaz Rivas	28	Male	05/04/2022	5/06/2022	Complejo Penitenciario de Izalco	Severe anemia. Right wrist dislocation and ecchymosis in right anti ulnar fossa.

49	Carlos Alberto Salguero Murcia	43	Male	30/04/2022	05/06/2022	Complejo Penitenciario de Izalco	No data
50	Jairo Fernando Ayala Segura	22	Male	08/05/2022	06/06/2022	Complejo Penitenciario de Izalco	He was beaten at the time of arrest, suffered from low potassium and was taking medication that he was not allowed to continue taking. (IML report: Pulmonary edema preliminary cause, pending histopathological study).
51	José Manuel Ramírez Orozco	26	Male	15/05/2022	06/06/2022	Complejo Penitenciario de Izalco	Hypokalemic syndrome
52	Oscar Armando Ramírez Campos	39	Male	08/05/2022	07/06/2022	Complejo Penitenciario de Izalco	Renal failure, pneumonia and infarction.
53	Rafael Antonio Quintanilla Cruz	56	Male	02/05/2022	07/06/2022	Centro Preventivo y de Cumplimiento de Penas de La Esperanza	(Death certificate: Acute pulmonary edema)
54	José Milton Leiva Quinteros	39	Male	No data	08/06/2022	Complejo Penitenciario de Izalco	Severe demyelination
55	José Carlos Mendoza Lobos	41	Male	24/05/2022	08/06/2022	Complejo Penitenciario de Izalco	Hypovolemic shock, stroke and pneumonia
56	Elías N.	36	Male	No data	09/06/2022	Bartolinas de la Policía Nacional Civil de la Delegación de Soyapango	No data
57	Ricardo Patris Salama	38	Male	No data	10/06/2022	No data	No data
58	Lucía Guadalupe Aquino de Murcia	50	Woman	12/04/2022	10/06/2022	Centro Preventivo de Jucuapa	(IML report: Pulmonary thrombo embolism plus severe pneumonia)
59	José Marvin Salmerón	53	Male	23/05/2022	10/06/2022	Complejo Penitenciario de Izalco	He suffered from diabetes and was convalescing from the amputation of a right toe. Body presented broken rib cage, gangrenous right foot and scrape on the right side of the face. Pulmonary edema.
60	German Orlando Escobar López	28	Male	01/05/2022	12/06/2022	Complejo Penitenciario de Izalco. Fase I	Septic shock and chronic renal disease stage 5.
61	José Noé Gómez Canales	No data	Male	No data	12/06/2022	No data	Pulmonary Edema
62	Juan Carlos Gómez Vásquez	45	Male	No data	12/06/2022	Complejo Penitenciario de Izalco	No data
63	Edgar Ernesto González	37	Male	12/05/2022	13/06/2022	Complejo Penitenciario de Izalco	The body had a blow to the lips. (IML report: Multisystemic failure secondary to encephalopathy, produced by liver cirrhosis)
64	José Rubén Umaña Flores	30	Male	No data	14/06/2022	Complejo Penitenciario de Izalco	No data
65	Marvin Eliofredo Gámez Amaya	30	Male	31/05/2022	15/06/2022	Complejo Penitenciario de Izalco	(IML report: Pulmonary edema pending histopathologic study)

66	Antonio Benedicto Robles	83	Male	6/03/2022	15/06/2022	Centro Preventivo y de Cumplimiento de Penas, Penitenciaria Occidental de Santa Ana	Acute myocardial infarction with ST elevation (the patient was not allowed to take medication for hypertension).
67	Edgar Alcides Díaz Orellana	40	Male	31/05/2022	17/06/2022	Complejo Penitenciario de Izalco	No data
68	Samuel Eliseo Prudencio Mendoza	38	Male	01/04/2022	19/06/2022	Complejo Penitenciario de Izalco	No data
69	Juan Carlos Ramírez Méndez	38	Male	No data	20/06/2022	Complejo Penitenciario de Izalco	Cerebral Edema
70	Alexander Román Ramírez Méndez	No data	Male	No data	21/06/2022	Complejo Penitenciario de Izalco	Fractures due to blows with blunt objects
71	José Roberto Cáceres	48	Male	28/05/2022	21/06/2022	Complejo Penitenciario de Izalco	No data
72	José Aníbal Ramírez Márquez	44	Male	No data	22/06/2022	No data	No data
73	José Guillermo Gámez	86	Male	No data	22/06/2022	No data	No data
74	Mario Moisés Cardona López	43	Male	No data	24/06/2022	Complejo Penitenciario de Izalco	Cerebral Edema
75	Marvin Antonio Benítez Perlera	23	Male	06/04/2022	26/06/2022	Centro Preventivo y de Cumplimiento de Penas de La Esperanza	Acute Lymphatic Leukemia
76	Alfredo Aarón Morales	25	Male	18/04/2022	27/06/2022	Centro Preventivo y de Cumplimiento de Penas de La Esperanza	Fall
77	Francisco Javier Tejada	28	Male	No data	28/06/2022	Complejo Penitenciario de Izalco	Pulmonary Edema
78	Carlos Ernesto Flores Cabrera	29	Male	22/05/2022	26/06/2022	Centro Especial en Salud de Quezaltepeque	He had bruises on his ribs and legs, suffered from diabetes (IML report: acute pulmonary edema, pending studies).
79	Pedro Antonio Vanegas	34	Male	No data	30/06/2022	Complejo Penitenciario de Izalco	No data
80	José Cristóbal Cartagena Brizuela	40	Male	No data	30/06/2022	Complejo Penitenciario de Izalco	No data
81	Adrián Efraín Solórzano Hernández	30	Male	18/04/2022	04/07/2022	Centro Preventivo y de Cumplimiento de Penas de La Esperanza	(LMI report: mechanical asphyxia due to strangulation)
82	Cristóbal Ernesto Renderos Meléndez	34	Male	14/10/2021	09/07/2022	Centro Preventivo y de Cumplimiento de Penas de Apanteos	(Hospital death record: Body had bruises on legs, shoulders and neck. Septic shock, nosocomial pneumonia and <u>Chronic Kidney Disease</u> , stage II.)

83	Juan Alfonso Najarro Ramírez	30	Male	08/04/2022	12/07/2022	Centro Preventivo y de Cumplimiento de Penas La Esperanza	(IML Report: Pulmonary Edema)
84	Raquel Avelar Avelar	59	Male	02/04/2022	15/07/2022	Centro Especial en Salud de Quezaltepeque	The body presented blows in the face (IML Report: cerebral hemorrhage of vascular type) (Hospital death certificate: subdural hematoma)
85	Julio César Mendoza Ramírez	25	Male	18/04/2022	15/07/2022	Centro Preventivo y de Cumplimiento de Penas de La Esperanza	The body presented wounds on the right side of the stomach, fractures in the right arm and in 3 ribs and a blow to the back of the head (IML report: Pulmonary edema. Death under study).
86	Fredy Edgardo Velásquez Guevara	50	Male	22/05/2022	21/07/2022	Complejo Penitenciario de Izalco	Body presented evident state of malnutrition. According to the hospital, he had renal insufficiency. (IML report: Pulmonary edema pending histological studies).
87	José Mauricio Quintanilla Medrano	29	Male	25/06/2022	04/08/2022	Centro Preventivo y de Cumplimiento de Penas de La Esperanza	Pulmonary Edema
88	Rafael Edgardo Aguirre Guinea	29	Male	No data	23/08/2022	Centro Preventivo y de Cumplimiento de Penas de La Esperanza	No data
89	Rolando Eduardo Urquilla Cerritos	47	Male	29/04/2022	24/08/2022	Centro Especial en Salud de Quezaltepeque	The body had sores on the skin (IML report: Bilateral Pneumonia).
90	Dionicio Adonay Ramírez Rivas	24	Male	30/06/2022	24/08/2022	Centro Preventivo y de Cumplimiento de Penas de La Esperanza	He had a perforation across the right shoulder (Autopsy: Non-traumatic subarachnoid hemorrhage of vascular type).
91	Francisco Huevo López	64	Male	27/06/2022	24/08/2022	Centro Preventivo y de Cumplimiento de Penas de La Esperanza	The body presented bruises on the face, head, <u>arms</u> and feet. Pulmonary edema
92	Kevin Alexander Portillo Ayala	No data	Male	No data	31/08/2022	Complejo Penitenciario de Izalco	No data
93	Ariel Yanes	No data	Male	No data	02/09/2022	Complejo Penitenciario de Izalco	No data
94	José Leonidas Bonilla Torres	45	Male	26/04/2022	03/09/2022	Centro Preventivo y de Cumplimiento de Penas de La Esperanza	Heart infarction (no blood pressure medication was given)
95	José Serafín Guerra Fuentes	36	Male	26/05/2022	26/09/2022	Centro Preventivo y de Cumplimiento de Penas de La Esperanza	No data
96	Iván Zelaya	Sin data	Male	No data	28/09/2022	Sin data	No data

97	Jimmy Antonio Zelaya Centeno	30	Male	No data	29/09/2022	Centro Preventivo y de Cumplimiento de Penas de La Esperanza	No data
98	Carlos Ernesto García Mercado	42	Male	No data	01/10/2022	Complejo Penitenciario de Izalco	Cerebral Edema
99	Jorge Alberto Henríquez	58	Male	14/04/2022	10/10/2022	Centro Especial en Salud de Quezaltepeque	Lack of medical care
100	José Gilberto N.	No data	Male	No data	11/10/2022	No data	No data
101	Mauricio Ernesto Rodríguez Bonilla	50	Male	25/04/2022	22/10/2022	Centro Especial en Salud de Quezaltepeque	Closed abdominal trauma and pneumonia
102	Miguel Ángel Pimentel Martínez	58	Male	15/10/22	26/10/2022	Bartolinas del Sistema de Emergencia 911 de la Policía Nacional Civil de Santa Ana	Myocardial infarction
103	Rufino Leiva Rodas	60	Male	No data	09/11/2022	No data	No data
104	Ramón González	55	Male	No data	21/11/2022	Centro Preventivo y de Cumplimiento de Penas de La Esperanza	Negligence due to lack of medical care
105	Rosa Haydee Avilés	76	Woman	01/04/2022	29/11/2022	Centro Preventivo y de Cumplimiento de Penas de Apanteos	(IML report: Hypovolemic hemorrhagic shock due to hepatic lacerations)
106	Douglas Antonio García Orellana	29	Male	23/05/2022	03/12/2022	Centro Preventivo y de Cumplimiento de Penas de Apanteos	Pulmonary Edema
107	Víctor Manuel Melara Ascencio	32	Male	No data	22/12/2022	No data	Pulmonary Edema
108	Isaí Ramos Sorto	50	Male	12/05/2022	23/12/2022	No data	He was beaten at the time of arrest; body presented a blow to the forehead. Pulmonary edema
109	Ezequiel Humberto Linares	No data	Male	No data	01/01/2023	Centro Preventivo y de Cumplimiento de Penas La Esperanza	No data
110	Juan Carlos Palacios	42	Male	30/12/2022	02/01/2023	Bartolinas de la Policía Nacional Civil de la Delegación de San Salvador	Mechanical asphyxia by hanging
111	Kevin Ernesto Peraza Navas (FOTO CON GOLPES EN LA CARA)	27	Male	18/05/2022	04/01/2023	Centro de Cumplimiento de Penas de Usulután	The body presented blows in the face and possible fracture of the neck (IML: Pulmonary tuberculosis, chronic gastroenteritis and septicemia).

112	Mario Guillermo Benítez	55	Male	No data	04/01/2023	Centro Preventivo y de Cumplimiento de Penas de Apanteos	No data
113	Jorge Alberto Jurado Campos	27	Male	No data	08/01/2023	Centro Preventivo y de Cumplimiento de Penas de Apanteos	No data
114	Rafael Antonio Murcia	38	Male	No data	10/01/2023	Centro Penal de Ilopango	No data
115	Milton Vladimir González Vanegas	25	Male	05/04/2022	10/01/2023	Centro Especial en Salud de Quezaltepeque	Complications due to diabetes
116	José Fernando Martínez Palma	45	Male	No data	16/01/2023	No data	No data
117	Tony Alexander Guardado	44	Male	No data	18/01/2023	No data	No data
118	Emilio Salinas Andrade	53	Male	29/03/2022	28/01/2023	Complejo Penitenciario de Izalco	The body had marks on the wrists and one eye (IML report: <u>Chronic Kidney Disease</u> and bronchopneumonia).
119	Abel de Jesús Polia Pérez	39	Male	No data	31/01/2023	Centro Preventivo y de Cumplimiento de Penas de Apanteos	Lung problems
120	Noelia Elizabeth García Hernández	42	Woman	14/06/2022	01/02/2023	Centro Preventivo y de Cumplimiento de Penas de Apanteos	(IML report: Septic shock due to immunosuppression caused by nasal carcinoma)
121	Noé Alexander Rivera Vásquez	23	Male	23/05/2022	04/02/2023	Centro Especial en Salud de Quezaltepeque	(IML report: Asphyxia due to suffocation. Aspiration of gastro alimentary material through the airways).
122	Edwin Manuel Flores Coreas	24	Male	13/05/2022	10/02/2023	Granja penitenciaria de Zacatecoluca	He suffered ill-treatment: he was beaten and kicked in the prison, poor nutrition. Malnutrition (death certificate from private doctor: malignant neoplasm of the upper digestive tract).
123	Franklin Morataya	No data	Male	No data	14/02/2023	Centro Preventivo y de Cumplimiento de Penas de La Esperanza	Fractures in various parts of the body
124	César Garay	No data	Male	No data	23/02/2023	No data	Terminal illness
125	Luis Alonso Martínez González	28	Male	15/09/2022	25/02/2023	Centro Preventivo y de Cumplimiento de Penas de Apanteos	(Death certificate from hospital: Meningococcal meningitis and unspecified sepsis)
126	Oscar Ernesto Hernández Caballero	44	Male	23/01/2023	25/02/2023	Bartolinas Policiales de San Salvador	Diabetes complications

127	Fredy Cruz Castillo	43	Male	25/04/2022	26/02/2023	Centro Preventivo y de Cumplimiento de Penas de La Esperanza	Anemia and water in the lungs (Hospital death certificate: five-day hyperkalemia and stage 5 chronic kidney disease)
128	Edy Berríos Castellón	55	Male	No data	27/02/2023	Centro Preventivo y de Cumplimiento de Penas de La Esperanza	Blows and Fractures
129	Carlos José Santos Mejía (Discapacidad intelectual)	18	Male	17/10/22	04/03/2023	Complejo Penitenciario de Izalco	Body had injuries to the head and legs (IML report: Pulmonary edema pending histological and toxicological studies).
130	Pedro Noé Guzmán Osorio	30	Male	2005	04/03/2023	Centro Preventivo y de Cumplimiento de Penas de Apanteos	(IML report: Bilateral bronchopneumonia)
131	Osmín Alberto Bonilla Cardoza	42	Male	No data	05/03/2023	Complejo Penitenciario de Izalco	No data
132	Jonathan Alexander Cerna Cornejo	26	Male	10/04/2022	06/03/2023	Complejo Penitenciario de Izalco	Chronic renal disease and respiratory disease
133	Rodrigo Vásquez Veliz	44	Male	09/05/2022	09/03/2023	Centro Preventivo y de Cumplimiento de Penas de Apanteos	Possible chronic renal disease (IML <u>report</u> : left basal pneumonia).
134	Francisco Javier Aguirre Peñate	30	Male	No data	09/03/2023	Centro Preventivo y de Cumplimiento de Penas de La Esperanza	No data
135	Rene Antonio Mejía Portillo	23	Male	01/01/2023	14/03/2023	No data	Chronic renal disease
136	José Raúl Ramírez	36	Male	08/08/2022	21/03/2023	Complejo Penitenciario de Izalco	Body presented blows. (IML report: Acute pulmonary Edema)
137	Orlando Claros	22	Male	No data	22/03/2023	No data	No data
138	Josué Vides	No data	Male	No data	22/03/2023	Centro de Detención Menor de Zacatecoluca	No data
139	Francisco Antonio Menéndez Mendoza	42	Male	No data	23/03/2023	Centro Preventivo y de Cumplimiento de Penas de La Esperanza	No data

Death Toll under the State of Exception Regime

March 28, 2023 – April 31, 2023

	Name	Age	Sex	Date of Arrest	Date of Death	Name of Prison	Cause of Death
140	Carlos Romero Hernández López	36	Male	03/04/2022	05/04/2023	Granja Penitenciaria de Santa Ana	(IML report: Generalized sepsis)
141	Francisco Ovidio Domínguez Cornejo	27	Male	No data	05/04/2023	Complejo Penitenciario de Izalco	No data
142	José Candelario Navarrete Romero	62	Male	No data	08/04/2023	Centro Preventivo y de Cumplimiento de Penas de Apanteos	No data
143	Erick Jonathan López Hernández	32	Male	No data	08/04/2023	Centro Especial en Salud de Quezaltepeque	No data
144	Juan José Merino Leiva	40	Male	April 2022	10/04/2023	Complejo Penitenciario de Izalco	Skull fracture and several blows to the body.
145	Denis Alexander	No data	Male	No data	15/04/2023	Complejo Penitenciario de Izalco. Fase III	No data
146	Nixon Roel Campos	No data	Male	No data	19/04/2023	Centro de Confinamiento del Terrorismo (CECOT)	Malnutrition
147	Luis Torres Méndez	19	Male	No data	20/04/2023	Granja penitenciaria de Zacatecoluca	No data
148	Erick Wilfredo Ulloa	No data	Male	No data	22/04/2023	Complejo Penitenciario de Izalco	No data
149	Miguel Ernesto Iraheta Rodríguez	34	Male	No data	24/04/2023	Sin dato	No data
150	Carlos Antonio Platero	41	Male	No data	24/04/2023	Complejo Penitenciario de Izalco	No data
151	José Adam Quintanilla	59	Male	No data	26/04/2023	Centro Preventivo y de Cumplimiento de Penas de Apanteos	Blows and fractures
152	Aureliano López Alvarado	66	Male	No data	26/04/2023	No data	Blows and fractures
153	Marco Adalberto López	30	Male	No data	28/04/2023	No data	Blows

Source: own data base during Cristosal's field investigation and press notes.

Annex No. 2 Prisons opened from 2016 to 2022.

Prisons opened between 2016 and 2022	Department	Opening date	Prison Capacity
Granja Penitenciaria de Santa Ana	Santa Ana	December 5, 2016	2,160 PDL
Complejo Penitenciario Izalco Fase II	Sonsonate	February 21, 2017	1,296 PDL
Complejo Penitenciario Izalco Fase III	Sonsonate	February 21, 2017	2,016 PDL
Granja Penitenciaria de Izalco	Sonsonate	March 29, 2017	1,000 PDL
Granja Penitenciaria de Zacatecoluca	La Paz	October 4, 2017	1,008 PDL
Centro de Detención Menor La Esperanza	San Salvador	December 2017	3,000 PDL
Centro de Detención Menor Santa Ana	Santa Ana	December 11, 2018	3,060 PDL
Centro de Detención para Mujeres Izalco	Sonsonate	March 28, 2019	2,256 PDL
Centro Preventivo y de Cumplimiento de Penas La Esperanza Fase II	San Salvador	December 6, 2021	10,000 PDL
Centro de Confinamiento del Terrorismo (CECOT)	San Vicente	January 31, 2023	40,000 PDL

Source: Based on the Annual Report of the Ministry of Justice and Public Security, the Prisons General Directorate and Press notes.

Annex No. 3 Judicial guarantees violated by the application of the state of exception and the reforms to the criminal laws of 2022.

Judicial guarantees violated by the application of the state of exception and the reforms to the criminal laws of 2022.

Guarantees violated (according to arts. 8, 9 and 25 ACHR)	Human Rights violations	Transgressions to the Constitution and responsibility of officials (including alleged crimes committed).
Right to life and personal integrity.	Arbitrary deaths. Inhumane prison conditions, torture, ill-treatment, denial of medical assistance and medicines, limited food and water, unhealthy conditions, threats, etc.	Violation of art. 1 and 2 CN. Alleged offenses that could be established in an investigation. By prison agents and authorities: Torture (art. 366-A Pn); Aggravated Homicide (art. 129 Pn); Aggravated Injuries (art. 145 Pn); Arbitrary Acts (art. 320 Pn); Breach of Duty (art. 321 Pn). On the part of public prosecutors: Breach of Duties (art. 321 Pn); Failure to Investigate (art. 312 Pn). By specialized judges who hear these cases: Omission of Notice (art. 312 Pn).

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<p>Right to a natural and impartial judge.</p>	<p>Exclusive use of the organized crime jurisdiction in all cases of persons detained under the State of exception regime.</p>	<p>Violation of Articles 11, 21 and 190 of the Constitution by the deputies who approved the reforms to the criminal laws.</p> <p>Alleged crimes that could be established in an investigation.</p> <p>By prosecutorial officials who deliberately resort to OC jurisdiction: Arbitrary acts (art. 320 Pn).</p> <p>By Specialized judges who declare themselves competent: Breach of official duty (art. 310 Pn).</p>
<p>Presumption of innocence.</p>	<p>Provisional detention as an anticipated penalty, without proof or evidence, requested by prosecutors and automatically ordered by Specialized judges.</p>	<p>Alleged crimes that could be established in an investigation.</p> <p>By prosecutorial officials: Attempts related to the right of defense (art. 298 Pn); Slanderous accusation or indictment (art. 303 Pn); Arbitrary Acts (art. 320 Pn); Breach of Duties (art. 321 Pn).</p> <p>By Specialized Judges: Attempts related to the right of defense (art. 298 Pn); Breach of duty (art. 310 Pn).</p>
<p>Communication to the accused of the charges against her/him.</p>	<p>Arbitrary detentions, by means of deception, with unjustified violence, without prosecutorial or judicial orders.</p> <p>Failure to appear at the first hearing or presence at mass hearings without conditions to be effectively informed of the charges against them.</p>	<p>Alleged crimes that could be established in an investigation.</p> <p>By police and military captors: Arrest by Public Official or Employee, Agent of Authority or Public Authority (art. 290); Arbitrary Acts (art. 320 Pn); Breach of Duties (art. 321 Pn); Attempts related to the right of defense (art. 298 Pn).</p> <p>By public prosecutors: Breach of Duties (art. 321 Pn).</p> <p>By Specialized Judges: Attempts related to the right of defense (art. 298 Pn).</p>
<p>Right to not testify against oneself.</p>	<p>By establishing by <u>law</u> a period of investigation of up to two years, imprisonment in cruel, inhuman and degrading conditions is prolonged, as well as the</p>	<p>Violation of Articles 11, 12 and 13 of the Constitution by the deputies who approved the reforms to the criminal laws.</p> <p>Attacks on the right to defense (art. 298 Pn); Arbitrary Acts (art. 320 Pn); Breach of Duties (art. 321 Pn).</p>

	<p>practice of torture for that time.</p> <p>By establishing the figure of abbreviated trial in the LECO, detainees can accept responsibility in exchange for sentence reductions and other benefits.</p>	
Right to contest the judgment against him/her.	<p>There will be no final judgment until two years or more after the detention.</p> <p>The more than 66,000 persons detained during the regime are convicted and sentenced without conviction for the time being.</p> <p>The extensions of the investigation up to 2 years do not admit any appeal against them.</p>	<p>Violation of articles 11, 12 and 13 of the Constitution by the deputies who approved the reforms to the criminal laws.</p> <p>Alleged crimes that could be established in an investigation. By Specialized Judges who ex officio apply disproportionate maximum terms: Attacks on the right of defense (art. 298 Pp).</p>
Ne bis in idem (not to be tried twice for the same cause).	<p>Many people were detained because they were in police records due to sentences already served, being under measures other than imprisonment for minor offenses, or simply for having been arrested and then released or dismissed for lack of evidence against them.</p> <p>Since judges do not exercise control over arbitrary detentions or prosecutorial actions, these persons are subjected to double jeopardy.</p> <p>This abuse also occurs in the case of persons with release</p>	<p>Violation of Article 11 of the Constitution by the deputies who approved the reforms to the criminal laws.</p> <p>Alleged crimes that could be established in an investigation.</p> <p>By police and military captors: Arrests by Public Official or Employee, Agent of Authority or Public Authority (art. 290); Arbitrary Acts (art. 320 Pp); Breach of Duties (art. 321 Pp); Attempts related to the right of defense (art. 298 Pp).</p> <p>By public prosecutors: Breach of Duties (art. 321 Pp).</p> <p>By Specialized Judges: Attempts related to the right of defense (art. 298 Pp); Prevaricato (art. 310 Pp).</p>

	orders who are "recaptured" to prevent their release.	
Publicity of procedural acts.	<p><u>Prosecutors</u> request, without sufficient justification, total confidentiality in all proceedings related to the regime.</p> <p>Ju Judges automatically decide total confidentiality in all proceedings related to the regime.</p>	<p>Alleged crimes that could be established in an investigation.</p> <p>By prosecutors: Attempts related to the right of defense (art. 298 <u>Pp</u>); Arbitrary acts (art. 320 <u>Pp</u>).</p> <p>By Specialized Judges: Attempts related to the right of defense (art. 298 <u>Pp</u>).</p>
Principle of Legality and Retroactivity.	<p>Reform that establishes an investigation stage of up to 2 years, allows retroactive application of this rule to proceedings already initiated.</p> <p>Judges are informally extending the investigation period to 1 year after this reform.</p> <p>Prosecutor's Office may request another extension of 1 more year.</p>	<p>Violation of articles 11, 12, 13 and 21 of the Constitution by the deputies who approved the reforms to the criminal laws.</p> <p>Alleged crimes that could be established in an investigation.</p> <p>By Specialized Judges: Attempts related to the right of defense (art. 298 <u>Pp</u>); Breach of duty (art. 310 <u>Pp</u>).</p>
Trial within a reasonable period of time.	<p>The criminal investigation of up to 2 years is not a reasonable <u>period of time</u> and, on the contrary, is a form of early punishment</p>	<p>Violation of Articles 11, 12 and 13 of the Constitution by the deputies who approved the reforms to the criminal laws.</p> <p>Alleged crimes that could be established in an investigation.</p> <p>By Specialized Judges: Attempts related to the right of defense (art. 298 <u>Pp</u>); Breach of duty (art. 310 <u>Pp</u>).</p>
Principle of proportionality in the imposition of penalties.	<p>The reforms to the Criminal Code impose sentences of up to 20 and 30 years without observing the principle of proportionality, seriousness of the damage or the way of participation attributed.</p>	<p>Violation of articles 11, 12, 13 and 35 of the Constitution by the deputies who approved the reforms to the criminal laws.</p>

	<p>These severe penalties are applicable even against minors under 18 years of age.</p>	
<p>Right to Judicial Protection.</p>	<p>Judges do not exercise control over abuses committed during police and prosecutorial actions in application of the regime, omitting to fulfill their duty to protect.</p> <p>Nor do persons who have suffered human rights violations during their detention have access to protection since they are totally uncommunicated and without the possibility of speaking during hearings.</p>	<p>Alleged crimes that could be established in an investigation.</p> <p>By Specialized Judges: Attempts related to the right to defense (art. 298 Pn); Omission of Notice (art. 312 Pn); Breach of duty (art. 310 Pn).</p>

Annex No. 4 Photographic evidence of injuries and inhumane conditions of bodies of deceased persons in State custody during the state of exception.







