



Advocacy for Human Rights in the Americas

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Tom Lantos Human Rights Commission**

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Corruption under the State of Emergency in El Salvador: a democracy without oxygen

A [state of exception](#) is a legal mechanism used to address emergency situations and must be eminently temporary and extraordinary. However, President Nayib Bukele has governed El Salvador under this state since March 2022, giving a permanent and indefinite character to the limitation of constitutional rights. During these months, the executive branch has used state security forces to implement a policy against violence through repression, persecution, and stigmatization of the population, thus aggravating the human rights and democratic crises that the country is going through.

The state of emergency has not only allowed the suspension of constitutional guarantees but has also **eliminated legal controls over administrative processes for the use of public funds and state contracts and the right of access to public information**. In other words, it has fostered a lack of transparency and accountability in the management of public resources.

Overview

With information from the [National Civil Police](#), Bukele has been reporting zero homicides in the country and again, on September 13, 2022, zero homicides were [reported](#). This reflects a significant drop in the rates of violence and violent deaths in a country that, just a few months ago, was considered one of the [most violent in the world](#). However, due to lack of access to

public information, the veracity of these figures and whether they are being properly reported [cannot be verified](#). It is also important to note that the Bukele administration has [changed](#) what types of deaths are included in the total homicide figures, removing, for example, the deaths of alleged gang members in confrontations with the police.

While the state of exception has been the tool used by the government to violate fundamental guarantees and freedoms, as has been widely [documented](#), there is another series of key rights, such as the right to public information, whose enjoyment and exercise have also been violated.

Below is a description of some of the most worrisome situations resulting from the emergency regime:

1. Lack of access to reliable information

In 2011 El Salvador enacted the Law on Access to Public Information (LAIP) guaranteeing the right to seek and receive information held by the state, which strengthened citizen participation and democratic governance. However, since the beginning of his government, Bukele has failed to comply with this law, declaring most public information as reserved, **making the confidentiality of public management as the rule and not the exception as the law dictates**. The Institute of Access to Public Information (*Instituto de Acceso a la Información Pública*, IAIP) has ceased to be a control body, since its decisions reflect a lack of independence and impartiality. One example of this was the decision to make [President Bukele's declaration of assets confidential](#).

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, such as the [Territorial Control Plan, which was declared confidential for seven years by the IAIP](#). In this way, the democratic system has been delegitimized by excluding citizens in the processes of deliberation, management, and evaluation of public policies, especially those related to citizen security.

The press and civil society organizations have denounced a possible manipulation of information on violence rates, with clientelistic purposes. As [some academics](#) point out, this is characteristic of populist leaders and their intentions to "search for a direct relationship with the electorate, and a political discourse of friend/enemy". According to the news outlet [Gato Encerrado](#), the National Civil Police declared under reserve the information on homicides and

victims of the crime of disappearance in El Salvador, which demonstrates how data and information are concealed and unverifiable.

2. Corruption under "express purchases"

The right to access to information is a vital tool in the fight against corruption as it allows for the implementation of citizen auditing of government acts and promotes greater accountability. The emergency regime has exacerbated the de facto suspension of this right that Bukele's government initiated in the beginning of his mandate, annulling citizen's ability to verify the use of public funds by the National Civil Police and the Ministries of Security and Justice, among other institutions. **The Legislative Assembly -controlled by the ruling party- has approved other decrees along with the [six extensions](#) of the [decree of the state of exception](#), which allow the government to manage public funds without adhering to the Law of Acquisitions and Procurement of the Public Administration.**

According to the [Inter-American Court of Human Rights](#), the actions of the states must be "governed by the principles of publicity and transparency in public administration, which makes it possible for the people under its jurisdiction to exercise democratic control of the state's actions, so that they can question, investigate, and consider whether public functions are being properly carried out". In spite of this, [since the COVID-19 pandemic](#), the Bukele government has limited -both to the press and to the citizenry- information that could reveal possible abuses of power, mismanagement of public funds, and any mismanagement in the public sector.

The state of exception has favored corruption due to:

- a) **Blocking information and abuse in information classification:** classifying information related to government management -which by law should be public- into confidential information, as in the case of the asset declarations of public officials and employees, including that of President Bukele, which was declared confidential in October 2020. Through these actions the government altered the jurisprudence related to making public such declarations and limited the possibility of detecting illicit enrichment or embezzlement of public funds by government employees.
- b) **Lack of independence of the control bodies:** both at the administrative and judicial level. The members of the Institute of Access to Public Information do not fulfill their role of overseeing transparency and publicity since they are close to the ruling party. This is the case with [Juan Carlos Turcios](#), who was elected under serious criticism for irregularities in his appointment, and [Roxana Soriano](#), who also has ties to Bukele. This is also the case of the members of the [Constitutional Chamber](#), all of them allied with President Bukele.
- c) **Lack of compliance with the Procurement and Contracting Law:** the Legislative Assembly approved a [decree](#) so that, while the emergency regime is in force, the

government is not obliged to comply with the legal procedures for state purchases and contracting, such as the publication of contracts for services and public works, as well as the evaluation of companies or persons to whom they are awarded, etc. This opens a door to acts of corruption, taking into account that in 2020, the Attorney General's Office of El Salvador reported that [66% of purchases had some irregularity](#).

In the framework of the "war against gangs" and under the state of exception, Bukele initiated the construction of a new [prison](#) that Bukele himself called a "[confinement center for terrorism](#)" and where there is no information about its management, particularly with regards to the loans obtained to finance its construction and the costs involved. The procedures for these "express purchases" have also been extended to the construction of the new megaprojects announced by Bukele: the airport and the Pacific train.

Likewise, El Salvador's Ministry of Finance allocated \$890 million in the general budget for 2022 for security and defense issues and an additional \$400 [million](#) for security issues through a combination of redirected funds and debt. All funding sources are unknown; the Central American Bank for Economic Integration (CABEI) has disbursed more than [\\$1.6 billion to the government](#) of El Salvador since May 2021 and citizens don't have access to information regarding how the funds are being used.

Transparency International places El Salvador on its [red list](#) as a country whose perception of corruption is high, with a rating of 34/100 (0 is highly corrupt and 100 very clean) for 2021, a slight drop from the previous year where it scored 36/100, meaning an increase in public perception of corruption. In a country with limited resources and great needs, every dollar poorly invested or diverted for personal purposes is a violation of the rights of thousands of citizens who depend on state resources and support.

3. Systematic human rights violations

Serious human rights violations have been the most visible and worrisome effect of the emergency regime, as the climate of disrespect for constitutional guarantees such as the right to defense, due process, freedom of movement and association, among others, worsens and becomes more normalized. Although this has been specific to certain victims, the magnitude of the measures of the emergency regime have affected Salvadoran society as a whole.

Stigmatization, persecution and repression **have not been isolated actions, but are part of a larger objective against a sector of the population carried out in a systematic manner.**

The creation of a judicial culture of abuse of power and the normalization of the use of force as a method of social order by the National Civil Police, the Armed Forces, and the judiciary is alarming.

Emergency regime to silence dissident voices

The state of exception, whose purpose is to reduce violence generated by gangs, has been used to repress and silence voices critical of the Bukele government's actions, as is the case with the [arrest](#) of digital specialist Mario Gomez, who made statements about the use of Bitcoin and possible financial fraud by the Bukele government.

Another case is the recent arrest of Luis Alexander Rivas, who published a photo on Twitter of two of President Bukele's brothers with a group of bodyguards. In response, Bukele retaliated and Rivas was [charged with the crime of contempt](#). Although the crime is not related to gang-generated violence, it was carried out under the rules of the emergency regime which allowed the elimination of some of Rivas' constitutional guarantees.

- Arbitrary detentions

According to data handled by the Ministry of Justice and Public Security, since the beginning of the state of exception until September 12, [52,549 people](#) have been detained without arrest warrants or any guarantees such as due process. Although it is difficult to corroborate the government's figures and to know with certainty the total number of detainees and how many of these have been arbitrary detentions, there are indications that many of these were carried out in an arbitrary manner. Nearly five months into the emergency regime, six social organizations had received [3,186 complaints](#) of abuse of power, of which the [majority](#) were cases of arbitrary detentions.

- Abuses in Prison

There is extreme overcrowding in the prisons which has led to deplorable conditions. Local human rights organizations have documented a lack of basic necessities such as access to clean water, sanitary services, and sufficient food in decent condition. There has also been a complete lack of medical attention for people detained who are in need of medicine for preexisting conditions as well as those who develop COVID-19 or other conditions while in detention. As of August 25, the country's Forensic Institute (*Instituto de Medicina Legal*, IML) had registered [73 deaths](#) within the country's prison system since the state of exception was put in place. The IML confirmed that 35 of these were a result of torture or violent deaths, 22 of medical neglect, and the rest of undetermined causes. In most cases, the families of the victims are not informed or given details surrounding the cause of death, which suggests the possibility of an underreporting of deaths as a result of abuse or neglect.

- Additional Human Rights Violations

In addition to the mass arbitrary arrests and excessive force used by security forces both during these arrests and in the prisons themselves, there have also been cases of [forced disappearances](#) and human rights abuses committed by judicial authorities. As of August 23, 45,260 people had been provisionally sent to prison during [mass hearings](#) and in one hearing alone, 552 people were accused. Local groups have denounced these hearings as they don't allow for the individualization of cases, nor the right to defense.

Conclusions

Beyond the legal problems involved in the implementation and indefinite extension of the state of exception in El Salvador, during the five months that its been in effect, it has shown that the current approach to **violence and criminality is a problem of a political nature, of concentration of power**. Punitive populism has been used for clientelistic-electoral purposes, generalizing a [discourse that defends](#) the creation of new crimes, the increase of penalties, and the use of prison as the most appropriate measures to address criminal acts

The gravity and circumstances under which human rights violations have occurred in El Salvador reflect a government that uses punitive - not preventive - measures that violate human rights as a security strategy. Arbitrary detentions and torture in prisons have occurred in a systematic, generalized, and massive manner, repressing part of the population, which implies a possibility that crimes against humanity are being committed.

In addition, the emergency regime has exacerbated the de facto annulment -initiated by the Bukele government- of the right to access to public information. This has led to further **closure of civic space that is preventing citizens from accessing any type of information generated by the government and its public administration**. The state of exception has permitted **the evasion of legal procedures and legal screenings for the management of public funds and budget expenditures**. Due to the lack of access to information, there is no certainty about the procedure for the acquisition of goods or services in security matters, facilitating acts of corruption such as embezzlement.

Recommendations

Due to the threats to democracy, it is essential that the international community -including governments, multilateral organizations and donors- make calls and exert diplomatic pressure on the Bukele government to respect human rights and not to use the state of exception indefinitely.

It is essential that the Biden administration seek ways to make its initiatives such as Voices and the Strategy to Address the Root Causes of Migration in Central America more effective in protecting civil society and the independent press.

The U.S. government should also:

- Call on the government of El Salvador to cease the abuse of public force and human rights violations against the population, and urge the Legislative Assembly not to continue to approve extensions to the state of emergency.
- Expand effective channels of communication with organizations, journalists, and social leaders so that they can express their concerns and present proposals, including ways to transmit information in a confidential and secure manner that could contribute to investigations in the United States for acts of corruption and human rights violations perpetrated by public officials in El Salvador.
- Ensure that any assistance or transfer of capabilities to the Salvadoran armed forces is conditioned on respect for the Leahy Law.
- Continue to make use of the various U.S. targeted sanction regimes for government officials and other actors that compromise human rights, democracy and the rule of law.

To prevent corruption in the management of public funds, international financial organizations - such as the International Monetary Fund - can promote the auditing of the use of loans for security, defense, and justice in El Salvador. Likewise, they can play a fundamental role in stemming the tide of authoritarianism and human rights violations by conditioning the funds that are approved for El Salvador on respect for the rule of law.

Finally, international cooperation should verify that any assistance directed to the justice system, prisons, and security forces is implemented based on principles of transparency and respect for human rights.