

Annual Report on Human Rights violations during the State of Exception in El Salvador

Policy Brief



Annual Report on Human Rights violations during the State of Exception in El Salvador

Policy Brief

Signing organizations:

- *Azul Originario*
- *Centro de Estudios de la Diversidad Sexual y Genérica (AMATE)*
- *Cristosal*
- *Fundación de Estudios para la Aplicación del Derecho (FESPAD)*
- *Instituto de Derechos Humanos de la UCA (Idhuca)*
- *Red Salvadoreña de Defensoras de Derechos Humanos*
- *Servicio Social Pasionista (SSPAS)*

Fotografía de portada:
Revista Gato Encerrado

Diagramación:
Galerna Estudio

San Salvador, March, 2023

This publication has been produced with the financial support of the European Union, in the framework of the project "Promoting governance from civil society for the prevention, restitution of rights and prohibition of torture and ill-treatment of women, youth and LGBTBI population in El Salvador and Honduras" EIDHR/2020/419-g28. The contents of this publication are the sole responsibility of the undersigned organizations and do not necessarily reflect the views of the European Union.

The contents of this document may be reproduced, distributed and disseminated in whole or in part for non-commercial purposes, provided that the credits and copyright of the original work are respected.



Introduction

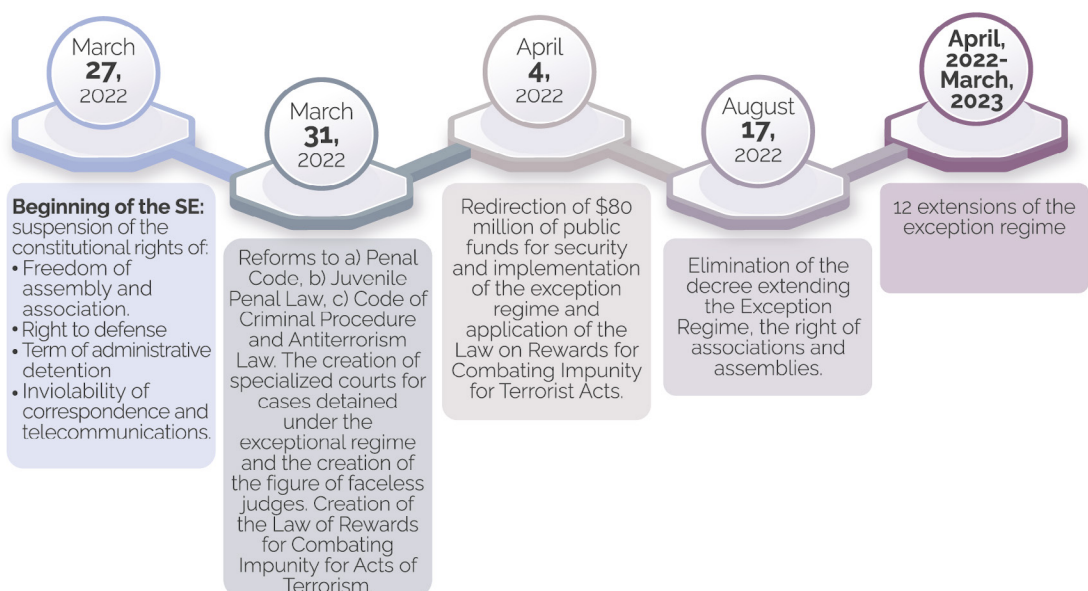
Decades after El Salvador had topped international rankings as one of the countries with the highest rate of lethal violence, it began to have a progressive decline from 2016, accentuating the trend from 2019 onwards, reaching a reported rate of 18 homicides per-10,000 inhabitants in 2021.

The government of Nayib Bukele, who assumed the 2019-2024 administration, attributed the rapid reduction of violence to the effectiveness of the so-called "Territorial Control Plan", a strategy whose specific proposals were never made public, but in the name of which hundreds of millions of dollars of own funds and loans were requested for its financing. In fact, it was the motive used by President Bukele to storm and militarize the legislative palace on February 9, 2020, as a pressure measure to obtain the approval of a loan.

Despite the reduction in homicides and the apparent improvement in security during the administration, the government faced moments of sudden spikes in homicidal violence, as well as growing pressure from the phenomenon of missing persons whose rate of reporting exceeded the one of homicide since 2019, which questioned the image of effectiveness of the actions implemented and publicized.

Between March 25 and 27, 2022, there was an abrupt increase in homicides that resulted in 87 deaths, with Saturday, March 26 being the most lethal day with 62 homicides, making it the day with the highest number of violent deaths since records have been kept.

Due to the seriousness of the homicide situation, the Legislative Assembly was convened on an emergency basis and, at the request of the Executive, declared a state of emergency as an extraordinary measure to restore order on March 27, 2022: State of Exception (SE).



Characterization of alleged human rights violations

Several civil society organizations have followed up on alleged human rights violations and have opened reporting channels and support for complainants in the face of the undermining of the institutions in charge of protecting the rights of the population and controlling the decisions of the executive and the legislature, such as the Human Rights Ombudsman's Office and the Judiciary.

As of March 15, 2023, the volume of cases served was 4,723 and 5,082 direct victims, according to the databases of each organization.

The cases come from all departments of the country; their concentration in certain departments is due to various factors such as the greater size and population concentration, but also to the greater or lesser proximity or knowledge of the complaint mechanisms implemented by human rights organizations, as well as their territorial extension.

Among the departments with the most cases, San Salvador stands out with 1,897 complaints and La Libertad with 566. In addition to the considerations mentioned above, it should be considered that the Salvadoran government has carried out more actions aimed at achieving arrests in urban areas of these two departments than in the rest of the country, such as the military fences imposed in various places.

The military fences impose restrictions on movement, entry and exit to territories under military control, even though neither the state of exception decrees have restricted freedom of movement, nor is there any other regulation that contemplates this figure in times of peace, so they would be unregulated measures that affect the human rights of the inhabitants of those places.

It is important to emphasize that the period of greatest intensity of reports of possible human rights violations due to the state of exception occurred in the first three months of its implementation, then stabilized as of August 2022 and showed a reduction in February and March 15, 2023.

It is important to emphasize that for gender-diverse populations, the month of June, the month of greatest visibility for the LGBTI+ population, represents one of the months with the highest number of human rights violations.

According to the total number of complaints received by the different organizations, the affected population according to age groups shows that the adult population is the most affected, although minors have not been exempt from being subject to possible violations of their rights, as shown in the complaints received by the different organizations and also documented by journalistic information.

Of the total number of registered victims, 772 are women (including diverse women) and although they represent about 15%, the differentiated impacts of the state of exception on women may lead to exacerbate gender disparities in access to civil, economic and social rights, access to justice, and increased care, household and unpaid work.

Within these needs with a gender perspective, the attention and provision of basic hygiene and health conditions is relevant, such as the provision of essential implements like sanitary towels and attention to sexual and reproductive health, as well as to pregnancies in detention facilities.

Although the majority of direct victims are male, the care-giving roles assigned to women increase disproportionately when, in addition to all the care-giving work, they become the main providers of economic resources and food for the household; this situation may also increase the work of caring for children, the elderly or delivering food packages in prisons.

Human rights organizations working for the LGBTI+ population have determined, since 2016, that the greatest aggressor to their human rights are the state security forces, mainly the National Civil Police. Given this background, the state of exception has not only restricted constitutional guarantees for the populations, but has also favored abuses by the security forces, which aggravates the situation for the LGBTI+ population by limiting the free exercise of their rights, intensifying aggressions and limiting, even more, access to justice.

One element that has been frequently mentioned in the coverage of persons deprived of liberty is the death of persons in State custody for health reasons related to chronic illnesses, a fact that is even partially recognized by the government. As part of the complaints received, the organizations have documented, to the extent possible, the incidence of chronic diseases in victims of the state of exception.

In 420 cases the complainants were able to indicate pre-existing health conditions of the victims, but only in 324 cases is the type of illness known, with heart disease, diabetes and respiratory diseases being the main health problems.

Among the events reported as human rights violations, the most frequent has been arbitrary detention, which corresponds to 95% of the registered victims, which is the genesis of other detention-related affectations such as deaths in custody or, as a consequence of detention, violations of due process, torture, cruel, inhuman or degrading treatment, among others.

The suspension of the right to be informed of the cause of detention could have been used as an excuse to carry out unfounded arrests, which is presumed from the testimonies and information on the existence of arbitrary or unlawful detention quotas and criteria for arrests, i.e. the arrests would not have been based -in many cases- on prior individualization -an indispensable requirement to submit someone to criminal justice- but under the logic of sticking to the first step of making the arrest and then investigating, as tacitly recognized by the presidential discourse and the authorities who have maintained that "the innocent will be released".

In addition to the above, the legal reforms that establish the indefinite duration of provisional detention in cases of illicit groups (art. 8 CPP) and the extension for up to two additional years

of the investigation phase for cases of the state of exception and other assets known under the Law against Organized Crime (art. 21-A) are added as aggravating factors, thus extending the term.

There are also other reports that have to do with the context where the main violation occurred, where illegal searches and searches of homes, threats, ill-treatment, intimidation and illegal limitations to freedom of movement come into play, a figure that includes the forced displacement of persons.

The acts of rape reported by the organizations are a direct affectation to women and LGBTI+ population, facts that increase misogyny, sexism and repression towards dissident bodies. Many of these violations occur outside the restrictions on rights imposed by the state of exception, for example, the right to inviolability of the home, as well as family privacy and freedom of movement, are not suspended by the state of exception, so that raids and searches of homes are illegal and violate human rights if they do not have an order authorizing their execution.

One of the consequences of a state of exception is the occurrence of cases of forced internal displacement. Several individuals and families opted to change their homes due to threats or fear of becoming victims of the state of exception.

Of the total number of reports registered, almost a year after the beginning of the state of exception, there were 332 cases of forced displacement.

With respect to the institutions most frequently mentioned, the National Civil Police is attributed 74% of the cases; followed by the joint actions of the PNC and elements of the Military in a 16% of the cases. In third place comes the Army, acting autonomously, with 6% of the cases. Then, there is a small number of events attributable to other State actors, with 3% of the events.

Although there is no unified record of the main variables and indicators of other effects generated by human rights violations during the state of exception, in many cases the loss of movable and immovable property and the loss of business or employment are documented as economic effects, aggravated by the living expenses of persons deprived of liberty imposed on their families and the costs associated with transportation and legal procedures. In terms of education, the main impact is the loss of the school year and school dropout or abandonment due to the deterioration of family conditions or the fear of also being victims of the state of exception, while in terms of mental health, the presence of post-traumatic stress, depression and anxiety is reported, both in children and adolescents, as well as in adults.

In the case of children and adolescents whose fathers, mothers or guardians have been detained, when they are left without legal guardians due to the detention of their primary caregivers, they are left in the hands of relatives or friends who often do not have the economic capacity to meet all their needs, especially in the case of those who are in the care of elderly people such as grandparents or are exposed in unsafe and risky spaces.

In some cases, the indirect consequences of a person's detention have had serious effects on the health of their family members. Press reports documented two cases of women who have suffered miscarriages as a result of notification of the death of their partners detained by the state of exception.

Persons in prison status

As has been evident, the high number of detentions has had a direct impact on the situation of the population deprived of liberty and the penitentiary system in general. As of March 27, 2023, the Minister of Justice and Public Security reported 66,417 persons detained during the state of exception -including more than a thousand juvenile minors, which are added to the pre-existing prison population, meaning an overcrowding of 145% of its installed capacity. Under these conditions, until the new facilities were built, prison overcrowding reached approximately 372% of the installed capacity. With the creation of the CECOT, according to official information, prison capacity would increase by 40,000 more spaces, reaching 67,280, which would increase overcrowding by 151%, without considering the forecast of 30,000 more arrests to be carried out, announced by the authorities. In conclusion, even with the CECOT, prison overcrowding would be worse than before the state of exception.

Along with the beginning of the state of exception, the executive decreed a state of emergency in the penitentiary centers, which meant the closure of visits or entry of people outside the penitentiary system and communication with the outside, as well as the tightening of internal disciplinary conditions, which implied intensive searches, as well as other extra-legal measures such as the removal of inmates' personal possessions and the rationing of food as collective punishment with emphasis on gang members, prohibited by international human rights instruments, such as the Turku Norms or the Mandela Rules. The state of emergency was still active one year into the state of exception.

In the absence of a centralized and efficient system of information on detainees, families were forced to move between different prison offices to find out the whereabouts of their detained relatives, often at great distances from their homes.

In these circumstances, there were cases of temporary forced disappearance of persons, which have been documented in the complaints received by human rights organizations and which, as of February 2023, accumulated 193 possible cases, as reported in this report. Between the beginning of the state of exception, on March 27, 2022, and the end of February 2023, human rights organizations have counted, based on press reports, the death of 102 people in custody, mostly men, mostly between 18 and 50 years of age.

With the first deaths of people in custody and the denunciation of their relatives and human rights organizations, the determination of the causes of death of individuals began to be subregistered.

Testimonies of family members indicate that they received different information about the reasons for death, although the bodies showed clear signs of violence, or forensic reports that do not give a concrete cause of death, but resort to generic explanations (pulmonary edema, for example), in some cases the corpse was not even autopsied or the family was threatened so that they would not open the coffin and recognize the body. In addition, the Institute of Legal Medicine denied having a registry of persons who died during the regime and was temporarily militarized.

Conclusions

The regimstate of exception has meant the most serious setback in terms of democratic institutionality, constitutional rule of law and human rights since the peace accords. It is the next step after the institutional undermining that began on May 1, 2021 with the dismissal and irregular replacement of the Constitutional Chamber of the Supreme Court of Justice and the Attorney General's Office.

The undermining of institutions and the rule of law has been the platform for serious abuses committed under the state of exception, as well as for the deepening of opacity and the elimination of guarantees and rights of access to information, freedom of the press and transparency in public administration.

Apart from considerations about its original necessity in the face of an extraordinary situation of violence, the continuity of the state of exception is unnecessary, excessive and disproportionate once normality has been reestablished, and even the subsequent improvement in security claimed by the government authorities. Its extension is a permanent risk of abuse of power towards the population.

The high costs of human lives, serious human rights violations against direct victims and their families, have been the price of the governmental achievement. These human costs have meant great economic, social, care, physical and mental health damages for the thousands of direct and indirect victims that will cause a mark in the Salvadoran society still not estimable.

* If you wish to deepen the analysis and evidence of cases, you can consult the full report on our website or download it by QR code.



