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# El Salvador

STATE OF EMERGENCY  
AND HUMAN RIGHTS





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Inter-American Commission On Human Rights

# Report **State of Emergency** **and Human Rights in** **El Salvador**

2024

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Commissioner Carlos Bernal Pulido issued a reasoned partially dissenting vote on the report, which Commissioner Edgar Stuardo Ralón Orellana joined. Commissioner José Luis Caballero Ochoa and Commissioner Andrea Pochak issued a reasoned concurring vote. Per Article 19.2 of the IACHR Rules of Procedure, these opinions are included at the end of this document.

# Index

<b>EXECUTIVE SUMMARY .....</b>	<b>7</b>
<b>INTRODUCTION.....</b>	<b>13</b>
A. The actions of gangs and their effects on human rights .....	20
<b>THE INSTALLATION OF A STATE OF EXCEPTION (STATE OF EMERGENCY) AS A CITIZEN SECURITY POLICY IN EL SALVADOR.....</b>	<b>27</b>
A. General considerations: the suspension of guarantees in the framework of states of emergency .....	27
B. The state of emergency decreed in El Salvador in relation to citizen security.....	38
<b>CITIZEN SECURITY AND ACCESS TO JUSTICE .....</b>	<b>64</b>
A. Citizen security policy adopted in the fight against gangs .....	64
B. Reforms in criminal legislation, criminal procedure, and juvenile justice in connection with the state of emergency: conventionality and risks to human rights of the application of those reforms. ....	82
C. Complaints on human rights violations related to the criminal policy implemented during the state of emergency .....	99
<b>THE SITUATION OF PERSONS DEPRIVED OF LIBERTY.....</b>	<b>172</b>
A. Background.....	172
B. The worsening of detention conditions.....	174
C. Deaths, allegations of torture and mistreatment of persons deprived of their liberty .....	211
D. Impacts on family members of detainees.....	226
<b>FREEDOM OF EXPRESSION, JOURNALISM, AND THE DEFENSE OF HUMAN RIGHTS .....</b>	<b>237</b>
A. Legislative reforms during the state of emergency and their impact on freedom of expression .....	242

B.	Right to information and the state of emergency in El Salvador.....	252
C.	Situation of journalists and other impacts of the state of emergency in El Salvador on the right to freedom of expression .....	264
D.	Obstacles for the work of Human Rights Ombudspersons .....	274
	<b>CONCLUSIONS AND RECOMMENDATIONS.....</b>	<b>279</b>
	<b>EXPLANATIONS OF VOTES .....</b>	<b>290</b>



# **EXECUTIVE SUMMARY**

## **EXECUTIVE SUMMARY**

1. This report analyzes the emergency regime decreed in March 2022 in El Salvador and its effects on human rights. This regime, which remains in force as of the date of approval of this document, was decreed following a wave of violence that culminated in at least 92 deaths between March 24 and 27, 2022.
2. In this regard, the Commission recognizes that maras and gangs are a serious problem that has affected the country for decades due to the far-reaching control and influence they have in various territories and the high levels of violence they engage in. Consequently, this report examines the impact of organized crime on human rights and how it affects particular groups in a differentiated manner.
3. The Commission analyzes in detail Legislative Decree No. 333 of March 27, 2022, which declared the emergency regime throughout the national territory, as well as its successive extensions, based on Inter-American human rights standards governing the mechanism of suspension of rights and guarantees. The IACHR takes note of the information available on the current and unprecedented rates of improvement in citizen security in the country reported by the State, which would demonstrate that there is no emergency situation that justifies maintaining in force the suspension of rights and guarantees in accordance with the requirements of the American Convention.
4. In accordance with inter-American standards, states of emergency are an exceptional measure that must be necessary, reasonable, and proportional to the context of the emergency, noting that indispensable judicial guarantees cannot be suspended under any circumstances. For this reason, the IACHR calls on the Salvadoran State to reestablish the suspended rights and to adopt measures for the prevention, control, and response to criminality within the framework of a citizen security policy evaluated from a perspective that respects and guarantees human rights.

5. In this report, the IACHR addresses a series of additional measures in the area of citizen security adopted by the Salvadoran State in the fight against criminal groups described inside El Salvador as “terrorist organizations.” The State refers to a combination of intersectoral efforts in the prevention of violence, mitigation of risks and damages to vulnerable groups, and the rehabilitation of the social and community fabric. However, the IACHR reiterates the challenges previously identified in terms of social participation and accountability in citizen security policy. The Commission emphasizes the State's obligation to investigate crimes that consist of human rights violations, effectively seeking the truth about what happened, and to prosecute and punish those responsible, underscoring the importance of the administration of justice to ensure the rights of victims. It also recommends the development of adequate institutions to provide due attention to crime victims as a mainstay of its actions in the area of citizen security.
  
6. Since the installation of the emergency regime, a series of legislative amendments have been approved in the areas of criminal law, criminal procedure, and juvenile justice, which include several aspects of concern related to human rights. Thus, the IACHR notes that the reforms above all pursue a strongly punitive approach to address challenges to citizen security and in this report it addresses the risks of applying those regulations. In addition, it highlights the aspects contrary to the inter-American legal framework and the standards developed by the Inter-American Human Rights System, particularly the mandatory application of pre-trial detention to certain crimes, the confidentiality of the identity of justice operators in the framework of their actions in criminal proceedings, and the extension of the rules governing adult sentences to persons under 18 years of age.



7. According to available information, 73,000 people were detained from March 27, 2022 to the beginning of November 2023, the vast majority of whom were remanded in custody. In this regard, the IACHR interviewed individuals and heard allegations of human rights violations perpetrated by the security forces, including: systematic and widespread, illegal and arbitrary detentions, illegal searches of homes, abuses in the use of force y violations of the rights of children and adolescents. In addition, it received information on specific challenges in access to justice posed by detentions and their implications for the guaranteeing of the rights of Salvadoran individuals to judicial guarantees and judicial protection, which include, inter alia: delay in judicial oversight of detentions, the ineffectiveness of the habeas corpus recourse, the lack of evidence to support the charges brought, abuses in the imposition of pre-trial detention, the holding of judicial mass hearings, restrictions on the exercise of the right to defense and judicial guarantees, and disrespect for due process of law. Some of the reports received refer to worrisome aspects of a lack of respect for the specific rights and guarantees of children in conflict with the law.
  
8. Of particular concern, with regard to persons deprived of liberty, is the worsening of this population's already precarious situation, observed by the IACHR during its visit to the country in 2019, as a result of the deplorable conditions of detention, the high levels of overcrowding in certain centers, and the excessive application of pretrial detention. In the context of the emergency regime, the IACHR notes that the prison population tripled in a few months and, in view of the construction of the Terrorism Confinement Center, calls on the State to prioritize the review of pre-trial detentions already decreed and to pursue a criminal policy that uses deprivation of liberty as a measure of last resort. In addition to addressing the inhumane conditions, ill-treatment, and torture denounced by civil society organizations and a number of people interviewed, the information received points to the possible death of 189 to 200 persons deprived of liberty – the figures differ according to the source – and concerns about shortcomings in the investigations of these cases, as well as about the procedures for

notification of relatives and handling of the bodies. The Commission also received information on different effects on the families of persons detained during the emergency regime.

9. With regard to freedom of expression and journalism, the Commission and its Office of the Special Rapporteur for Freedom of Expression emphasize the essential role they play during states of emergency in preserving the values and functions of the democratic system. Thus, they address legislative reforms approved during that period that curtailed freedom of expression. These include restrictions to the right of access to information due to various obstacles, including an alleged increase in the number of refusals by State institutions to provide public information and failures to comply with international norms and standards on the matter; as well as the absence of available, periodic, and disaggregated information; and the denial of access to requests for information on the measures adopted in the context of an emergency. Likewise, there are challenges for journalistic coverage and the defense of human rights, judging by reports of a hostile environment for carrying out this work in the country, including recurrent stigmatizing discourse from state authorities.
10. In its conclusions, the Commission points out that there is a false dilemma between adopting effective actions to confront organized crime and observing the State's legal and international human rights obligations. The State must address the causes and consequences of crime from a comprehensive and intersectoral perspective, adopting prevention, control and response measures within the limits and procedures that guarantee respect for human rights, including gender and intersectional approaches and with greater citizen participation. It also urges the State to reestablish the rights and guarantees suspended by the legislative decrees promulgated under the emergency regime, reaffirming that this exceptional/emergency mechanism cannot become part of its permanent citizen security policy. Given the allegations of systematic and widespread illegal and arbitrary detentions by the security forces, as well as other violations of rights in the administration of justice and places of deprivation of

liberty, the IACHR considers it necessary to identify the circumstances that generated this pattern of alleged violations and the possible institutional and individual responsibilities. This includes also identifying the victims and the damages suffered in order to provide them with comprehensive reparation and adopt guarantees for non-repetition.

11. Finally, the Commission issues twenty-two recommendations to the State of El Salvador and places itself at the disposal of the State to provide technical assistance in accordance with its mandate.

# **INTRODUCTION**

## INTRODUCTION

12. The Inter-American Commission on Human Rights (IACHR) issues the present report on the state of emergency (*regime of exception*) and its effects on human rights in El Salvador, pursuant to the mandate conferred by Article 41 of the American Convention on Human Rights (ACHR). This norm establishes as its main function to promote the observance and defense of human rights, stimulating awareness of them among the peoples of the Americas, preparing studies and reports, and formulating recommendations, when it deems appropriate, to the member states. To that end, the IACHR followed the procedure established in Article 60 of its Rules of Procedure.
13. In 2021, the IACHR published a report on the human rights situation in El Salvador, subsequent to the on-site visit carried out in December 2019, following 32 years in which the IACHR was unable to conduct observations of this kind in the country.<sup>1</sup> On that occasion, the Commission addressed events up to the end of 2020, including efforts and progress made after the internal armed conflict that resulted in the construction and strengthening of Salvadoran democratic institutions. It also examined the challenges identified with regard to protecting and guaranteeing human rights based on certain thematic axes and taking into account the situation of groups at particular risk. In its report, in line with previous and subsequent reports detailed below, the Commission noted that the widespread control exercised by the maras and gangs over the territories and their violent actions produced multiple impacts on the exercise of human rights in the country, which were accompanied by ongoing violence after the end of the armed conflict due to other manifestations and actors.<sup>2</sup> The IACHR expresses its solidarity with the victims of maras and gangs, while recognizing the enormous impact of their actions, particularly the high number of human lives lost; and that this scenario requires the adoption of a

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<sup>1</sup> IACHR. Situation of Human Rights in El Salvador, OEA/Ser.L/V/II. Doc. 278, October 14, 2021.

<sup>2</sup> IACHR. Situation of Human Rights in El Salvador, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, paras. 28-31.



policy that addresses the causes and consequences of this organized crime. In 2015, the rate of intentional homicides per inhabitant reached alarming levels, positioning El Salvador with the highest figure in the world.<sup>3</sup> In the following years, the IACHR observed a significant improvement in crime rates, with the lowest homicide figures in the country being recorded as of 2019.<sup>4</sup>

14. In this context of a steady reduction of homicides in the country, between March 24 and 27, 2022, El Salvador registered a sudden spike in homicides in the different departments, resulting in the death of at least 92 people according to official data.<sup>5</sup> As a result of that situation, the Legislative and Executive Branches declared a state of emergency ("regime of exception") derived from the serious disturbances to public order by criminal groups that threaten the life, peace, and security of the Salvadoran population, in which a group of constitutional rights and guarantees were suspended in the national territory.<sup>6</sup> In the months that followed, three of the six initially suspended constitutional articles remained suspended; in particular, the right to be informed of rights and reasons for detention, not to be forced to testify, to have technical assistance; the 72-hour time limit for administrative detention; and the inviolability of correspondence and telecommunications and the consequences of violation of those

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<sup>3</sup> IACHR. Situation of Human Rights in El Salvador, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, par. 29.

<sup>4</sup> IACHR, 2019 Annual Report, Chapter IVA, 2020, par. 263; IACHR, 2020 Annual Report, Chapter IVA, 2021, par. 347; IACHR, 2021 Annual Report, Chapter IVA, 2022, par. 525; IACHR, 2022 Annual Report, Chapter IVA, 2023, par. 365.

<sup>5</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on State of Emergency Decree No. 333, Diplomatic Note MPOEA-OEA-063/2022, April 26, 2022; State of El Salvador, Un Nuevo El Salvador (A New El Salvador), Diplomatic Note MPOEA-OEA-117/2023, July 14, 2023, pp. 5, 6, 9-11.

<sup>6</sup> Legislative Assembly, Legislative Decree N°. 333 of March 27, 2022 - Let a "State of Emergency" be decreed throughout the national territory.

rights.<sup>7</sup> In addition, various measures were adopted in the fight against maras and gangs, including the arrest of more than 70,000 people suspected of having committed crimes related to collaboration with or membership in these criminal groups<sup>8</sup>.

15. The Commission received repeated allegations that the measures adopted in this framework had resulted in systematic and widespread human rights violations;<sup>9</sup> and, on several occasions, it called on the State to ensure that its efforts to prevent, control, and respond to criminality, including the investigation, prosecution, and punishment of criminal activities, were in accordance with its international human rights obligations.<sup>10</sup> In particular, it warned of reports of illegal and arbitrary detentions and restrictions on access to justice during the emergency regime, as well as possible violations of the rights of persons deprived of their liberty and the impact that the set of initiatives generated on the rights of children and adolescents.

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<sup>7</sup> Legislative Assembly, Legislative Decree (DL) No. 358, April 24, 2022; DL No. 396, May 25, 2022; DL No. 42721, June 2022; DL No. 454, July 19, 2022; DL No. 476, August 16, 2022; DL No. 503, September 14, 2022; DL No. 530, October 14, 2022; DL No. 569, November 15, 2022; DL No. 611, December 14, 2022; DL No. 644, January 12, 2023; DL No. 661, February 15, 2023; DL No. 687, March 15, 2023; DL No. 719, April 16, 2023; DL No. 738, May 14, 2023; DL No. 765, June 16, 2023; DL No. 797, July 12, 2023; DL No. 815, August 10, 2023; DL No. 843, September 13, 2023; DL No. 865, October 11, 2023; DL No. 888, November 7, 2023.

<sup>8</sup> Diario Las Américas, [El Salvador deroga ley de sanciones por difundir mensajes de pandillas \(El Salvador repeals law on penalties for disseminating gang messages\)](#), November 2, 2023; NTN24, ["En El Salvador hay más de 73.000 detenidos que no se sabe si son inocentes": defensora en Derechos Humanos \("In El Salvador there are more than 73,000 detainees whose guilt or innocence is unknown"\): Human Rights Defender.](#), November 6, 2023.

<sup>9</sup> In primary and secondary sources, which will be identified throughout the Report, which will be developed in paragraphs 146 to 161, 177, and 178.

<sup>10</sup> IACHR, Press Release 82/22 - IACHR Urges El Salvador to Ensure that Law Enforcement and Any Exceptional Measures Comply with Human Rights, April 20, 2022; IACHR, Press Release 126/22 - IACHR Urges El Salvador to Comply with Its International Obligations and Ensure Prisons and Law Enforcement Policies That Respect Human Rights, June 3, 2022; IACHR, Press Release 254/22 - Seven Months into the Exceptional Framework: IACHR Reminds El Salvador That It Must Comply with its Obligations Concerning Human Rights, November 11, 2022; IACHR, Press Release 58/23 - IACHR Calls on El Salvador to Reestablish Rights and Guarantees Suspended a Year Ago Under the State of Emergency, April 6, 2023.

16. In view of the information received and the persistence of allegations of human rights violations in the context of the prolongation of the emergency regime, which is still in force, the Commission decided to draft this special country report, which includes testimonies received from victims of human rights violations.<sup>11</sup> The purpose of this document is to analyze the effects of the emergency regime decreed in March 2022 on human rights in El Salvador, as well as the compatibility of the suspension of the exercise of rights and guarantees with inter-American norms and standards on the matter.
17. To prepare this report, the Commission compiled, analyzed, and systematized information regarding the human rights situation in El Salvador from the events immediately preceding the installation of the emergency regime on March 27, 2022 until November 10, 2023. As part of this work, the IACHR used primary and secondary sources.<sup>12</sup> Among the primary sources, it used the information received through the different mechanisms available to the IACHR, such as: public hearings; meetings with civil society organizations defending human rights, alleged victims of human rights violations and with the State; interviews conducted remotely and individually with individuals regarding alleged human rights violations within the scope of this report; and information available in the follow-up on compliance with IACHR recommendations. Official State documents, including those issued by the Constitutional Chamber of the Supreme Court of Justice, were also used as primary sources. Likewise, under the powers conferred by Article 41 of the American Convention, the IACHR requested information from the State on May 10, 2023. On June 16, 2023, the State was granted an extension to respond,

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<sup>11</sup> In March 2023, the IACHR took virtual testimonies from 29 people in order to obtain direct and in-depth information on the effects on human rights of the measures adopted during the state of emergency. In so doing, it heard from the following: persons detained and subsequently released during the state of emergency; relatives of persons deprived of their liberty, including those who died in State custody; and legal representatives of the detained persons and their relatives. The Commission conducted interviews using a questionnaire containing both previously prepared and open questions on the arrests made, judicial oversight of the arrests and access to justice, the conditions of detention, and the personal impacts triggered by the events reported.

<sup>12</sup> IACHR, Rules of Procedure of the Inter-American Commission on Human Rights, March 22, 2013, Article 59.5.

incorporating additional consultations. This request for information was answered on July 14, 2023; additionally, the State sent this information to the IACHR on October 6 and 8, 2023<sup>13</sup>.

18. Regarding the secondary sources, the IACHR took into account studies and other documents prepared by civil society organizations and individuals;<sup>14</sup> journalistic notes; decisions and recommendations of specialized international organizations, among others.
19. The IACHR acknowledges and is particularly grateful for the information provided by the State, as well as by civil society organizations and human rights defenders. Particularly noteworthy is the effort made by victims of human rights violations, their families,

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<sup>13</sup> State of El Salvador, Un Nuevo El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, on file with the IACHR; State of El Salvador, Diplomatic Note MPOEA-LE-011/2023, October 6, 2023, on file with the IACHR; State of El Salvador, Diplomatic Note MPOEA-LE-015/2023, October 6, 2023, on file IACHR; State of El Salvador, Diplomatic Note MPOEA-LE-018/2023, October 6, 2023, received on October 8, 2023, on file IACHR.

<sup>14</sup> The following reports and documents prepared by human rights organizations were, inter alia, taken into account: Azul Originario, Centro de Estudios de la Diversidad Sexual y Genérica, Cristosal, Fundación de Estudios para la Aplicación del Derecho, Instituto de Derechos Humanos de la Universidad Centroamericana José Simeón Cañas (IDHUCA), Red Salvadoreña de Defensoras de Derechos Humanos, Servicio Social Pasionista (SSPAS), [Informe anual sobre violaciones a derechos humanos durante el estado de excepción en El Salvador \(Annual report on human rights violations during the state of emergency in El Salvador\)](#), March 2023; IDHUCA, Cristosal, Due Process Foundation (DPLF), Red Salvadoreña de Defensoras de Derechos Humanos, SSPAS, [Muertes en cárceles durante el Régimen de Excepción en El Salvador: presuntas ejecuciones extrajudiciales. Informe de organizaciones de sociedad civil ante el Relator Especial sobre Ejecuciones Extrajudiciales](#) April 10, 2023; Human Rights Watch, Cristosal, ["We can detain whoever we want" Widespread human rights violations during the "regime of exception" in El Salvador](#), December 2022; Cristosal, [One year under the emergency regime: a permanent measure of repression and human rights violations. Situation Report for March 27, 2022 to March 27, 2023](#), May 12, 2023; Amnesty International, [El Salvador: President Bukele plunges country into human rights crisis after three years in office](#), June 2, 2022; Amnesty International, [El Salvador: One year into the state of emergency, authorities systematically commit human rights violations](#), April 3, 2023. Amnesty International, [El Salvador: Open Letter to President Nayib Bukele](#) April 1, 2022; DPLF, [Undue Process. Human Rights Violations During the Emergency Regime in El Salvador. Provisional Detention](#) July 2023; DPLF, [Undue Process. Human Rights Violations During the Emergency Regime in El Salvador. Substantive penal reforms](#), July, 2023; DPLF, [Undue Process. Human Rights Violations During the Emergency Regime in El Salvador. Faceless judges and other violations of the guarantee of a competent, independent, and impartial judge](#), 2023; Observatorio Universitario de Derechos Humanos de la Universidad Centroamericana José Simeón Cañas (University Observatory of Human Rights of the Central American University José Simeón Cañas), [Annual Report 2022: The State of Human Rights in El Salvador](#), April 2023; WOLA, [Corruption Under the State of Emergency in El Salvador: A Democracy Without Oxygen](#), September 27, 2022.

and witnesses to present their testimonies and complaints.<sup>15</sup>

20. In its observations on the draft of this report, the State raised a series of questions regarding the Commission's mandate to formulate this study and the methodology used, particularly with respect to the sources selected and the credibility of the information from civil society organizations. It also alleged the lack of inclusion of, and comparison with, information from the State, among other aspects. In this regard, as previously indicated, the IACHR requested abundant information from the State of El Salvador for the preparation of this report, which, once received, was duly analyzed and most of it was included. Likewise, the IACHR has made a series of requests to visit the State in order to observe in situ the human rights situation denounced, but to date it has not been possible to do so.<sup>16</sup>
21. This report is divided into 4 chapters. In the introduction, the IACHR addresses relevant background information regarding the actions of gangs and their effects on human rights. The first chapter deals with the inter-American standards for the suspension of guarantees and

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<sup>15</sup> The Commission clarifies that the term "complaint" does not refer to a case and petition being processed before the System, but rather refers to information presented by individuals or organizations alleging human rights violations. It also notes that this report is not intended to determine individual or state responsibilities with respect to specific cases of possible human rights violations. Individuals or groups who consider that they have suffered human rights violations have at their disposal the contentious proceedings mechanism (*mecanismo contencioso*) of the inter-American system, subject to compliance with specific requirements. By lodging petitions with the Inter-American Commission, those who have suffered human rights violations can obtain help. The Commission investigates the situation and may formulate recommendations to the responsible State so that the enjoyment of rights is restored to the extent possible, so that similar events do not occur in the future, and so that the events that occurred are investigated and redressed. In addition, individuals have at their disposal the mechanism of precautionary and provisional measures, as provided for in Articles 25 of the IACHR Rules of Procedure and 63.2 of the ACHR, respectively. More information is available on the official website of the IACHR: <https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/mandate/petitions.asp>

<sup>16</sup> CIDH, 925-23/ CIDH/SE/MPCT-VT, Ref.: Working visit to El Salvador, November 21, 2023; IACHR, Press Release 254/22 - Seven Months into the Exceptional Framework: IACHR Reminds El Salvador That It Must Comply with its Obligations Concerning Human Rights, November 11, 2022; IACHR, 649-22/IACHR/SE/MPCT-MISC, Ref: IACHR Working Visit Request to the State of El Salvador, November 9, 2022; IACHR, Hearing 'Detenciones arbitrarias y situación de las personas privadas de libertad en el Estado de Excepción en El Salvador (Arbitrary detentions and situation of persons deprived of liberty in the State of Exception in El Salvador)', 185th regular session, October 25, 2022; IACHR, Press Release 58/23 - IACHR Calls on El Salvador to Reestablish Rights and Guarantees Suspended a Year Ago Under the State of Emergency, April 6, 2023; IACHR, Annual Report 2022, Chapter IV.A Human Rights Development in the Region, 2023, par. 366.



analyzes the conventionality and the risks to human rights of the declaration of the emergency regime in El Salvador and its successive extensions. The second chapter addresses the measures adopted in the fight against gangs during the emergency regime, including the legislative reforms in criminal matters carried out during that period and the human rights violations denounced in the implementation of criminal policy in that context. The third chapter refers to the situation of persons deprived of liberty and the impact on their families; and the fourth chapter deals with events and measures adopted in the context of the emergency regime that affect the exercise of freedom of expression, journalism, and the defense of human rights. Finally, the Commission presents its conclusions and recommendations to the State.

22. On January 8, 2024, the IACHR transmitted a copy of the preliminary draft of this report to the Salvadoran State and requested that it submit its observations in accordance with its Rules of Procedure. The IACHR encouraged the State to submit updated information for review and inclusion in the report. The State requested two extensions to submit the information, which were granted.<sup>17</sup> On April 8, 2024, the IACHR received the information from the State,<sup>18</sup> which, where pertinent, was incorporated into the text. On June 28, 2024, the Commission approved the final version of this report.<sup>19</sup>

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<sup>17</sup> State of El Salvador, Diplomatic Note MPOEA-OEA-004/2024, January 9, 2024; State of El Salvador, Diplomatic Note MPOEA-OEA-028/2024, March 1, 2024; IACHR, 21-24/IACHR/SE/MPCT-CT, REF: Draft Report: State of Emergency and Human Rights in El Salvador. Request for extension, January 19, 2024; IACHR, 273-24 IACHR/SE/MPCT-Inf.P, REF: Draft Report: State of Emergency and Human Rights in El Salvador. Additional extension request and technical visit, March 5, 2024.

<sup>18</sup> State of El Salvador, Observations of the State of El Salvador on the IACHR Report "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024.

<sup>19</sup> The final version of the report was approved by the majority of the IACHR membership. Commissioner Carlos Bernal Pulido issued an explanation of his vote partially dissenting from the report: a position that was also shared by Commissioner Edgar Stuardo Ralón Orellana. Commissioner José Luis Caballero Ochoa and Commissioner Andrea Pochak issued a concurring opinion.

## **A. The actions of gangs and their effects on human rights**

23. The IACHR recognizes gang activity as a serious problem in El Salvador. The citizen security situation in the country is complex, since, according to data released by the State in November 2022, the main maras and gangs - Mara Salvatrucha, Barrio 18 Sureños, and Barrio 18 Revolucionarios - have 77,000, 21,000, and 20,000 members each, distributed in the 14 departments of the country<sup>20</sup>. As the Commission has pointed out, for decades these criminal groups have exercised great control and influence in various territories of the country, as well as in the daily lives of the people, who are commonly affected by threats, extortion, or generalized violence in the context of rivalries and confrontations between those groups.<sup>21</sup> In this context, El Salvador had the highest homicide rate in the world (106.3 homicides per 100,000 inhabitants in 2015).<sup>22</sup>
24. The State of El Salvador indicated to the Commission that crime is a multifactorial phenomenon that has progressively strengthened in the country since the mid-1990s, going from isolated criminal groups to organized crime groups that control portions of territory and exercise powers and attributions of the State.<sup>23</sup> It emphasized that maras and gangs are violent, heavily armed criminal groups that finance their activities through extortion and profit from the decent work of simple people and small and large businessmen, acting as true agents of terror and especially impacting the most

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<sup>20</sup> UN, Committee against Torture, Seventy-fifth session, Summary record of the 1966th meeting, CAT/C/SR.1966, 24 November 2022 November 2022, for. 16.

<sup>21</sup> IACHR, Situation of Human Rights in El Salvador, OEA/Ser.L/V/II. Doc. 278, October 25, 2021, para. 30.

<sup>22</sup> State of El Salvador, Un Nuevo El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, on file with IACHR, p. 8-9; World Bank, [United Nations Office on Drugs and Crime International Homicide Statistics database: Intentional Homicides \(per 100,000 population\) - El Salvador](#); 2015; United Nations, Regional Conference on Population and Development, [Number of victims of intentional homicides per 100,000 population, disaggregated by sex and age \(SDG Indicator 16.1.1\)](#), El Salvador, 2015.

<sup>23</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on Emergency Regime Decree No. 333, Diplomatic Note MPOEA-OAS-063/2022, April 26, 2022, on file with the IACHR, pp. 1-2.

vulnerable sectors.<sup>24</sup> As part of their actions, they carry out systematic attacks on the life, security, and personal integrity of the population. They also attack civilian, military, police, and prison authorities; they attack property by committing crimes of extortion against individuals or legal entities; they violate the right of every citizen to reside anywhere in the territory by forcing people to abandon their homes through threats. The State also indicated that they violate the right to education by forcing students to drop out of school. In addition, they threaten free transit, by establishing limitations on the movement of people in specific areas, and place them at risk of attacks on their lives or integrity; they paralyze public passenger transportation, even at the national level, and frequently threaten the lives of public transportation service personnel; and they impede the free exercise of economic and labor activities of broad segments of the population, among other actions.<sup>25</sup> In its observations on the draft of this report, the State pointed out that the Constitutional Chamber of the Supreme Court of Justice characterized these groups as terrorist organizations.<sup>26</sup>

25. The State detailed that, for more than two decades, children and adolescents lived in an environment of violence and deprivation in which it was unfeasible to guarantee their human rights and that exposure to situations of violence limited their options for comprehensive development and favored their involvement in criminal groups or gangs.<sup>27</sup> In this regard, it referred to data from 2015 and

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<sup>24</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on Emergency Regime Decree No. 333, Diplomatic Note MPOEA-OAS-063/2022, April 26, 2022, pp. 1-2.

<sup>25</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on Emergency Regime Decree No. 333, Diplomatic Note MPOEA-OAS-063/2022, April 26, 2022, pp. 1-2.

<sup>26</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador"(Observations of the State of El Salvador on the IACHR report entitled "State of Emergency and Human Rights in El Salvador"), Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, p. 60; Supreme Court of Justice, Constitutional Chamber, 22-20007/42-2007/89-2007/96-2007, August 24, 2015.

<sup>27</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 28-29.

2016 according to which young people under the age of 24 were a significant percentage of both perpetrators and victims of homicides in El Salvador.<sup>28</sup> It also reported that, in 2019, school dropouts caused by gang threats and violence hovered around 4.6%, affecting more than 40,000 students nationwide.<sup>29</sup>

26. On several occasions, the Commission and other international organizations have recognized that the actions of these criminal groups have a series of impacts on human rights and are responsible for high levels of violence, including acts such as sexual violence, sexual slavery, human trafficking, and generating the forced internal displacement of entire families and migratory flows to other countries in the region.<sup>30</sup> The IACHR has also maintained that in areas under the control of these groups a parallel power emerges that installs its own system of rules in order to exert control over the territory and the people who live there. This informal system of rules governs important aspects of people's lives and limits the exercise of their rights, in addition to infringing their right to personal security and putting their well-being at risk if those rules are broken.<sup>31</sup> Likewise, the IACHR has emphasized that gangs exercise various forms of social violence in the territories and that their criminal activities have a negative impact on the daily lives of these people, with effects in the institutional, economic, and social spheres.<sup>32</sup> In addition to territorial dominance, these groups are characterized by the use of violence to legitimize

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<sup>28</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 28-29.

<sup>29</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 28-29.

<sup>30</sup> IACHR, Situation of Human Rights in El Salvador, OEA/Ser.L/V/II. Doc. 278, October 25, 2021, para. 30; IACHR, The Impact of Organized Crime on Women, Girls, and Adolescents in the Countries of Northern Central America, February 17, 2023, paras. 62, 67; IACHR, Violence, Children and Organized Crime, OEA/Ser.L/V/II. Doc. 40/15 11 November 2015, para. 162;

<sup>31</sup> IACHR, Organized Crime and the Rights of Children, Adolescents and Youth: Challenges and State Actions, February 16, 2023, par. 52.

<sup>32</sup> IACHR, The Impact of Organized Crime on Women, Girls and Adolescents in the Countries of Northern Central America, OEA/Ser.L/V/II. Doc. 9/23, February 17, 1998, 2023, § 62 and 87.

patriarchal power, establish hierarchical relationships, and impose control over the members of the organization.<sup>33</sup>

27. While violence as a mechanism of gang control affects both women and men, the Commission has observed that gender-based violence is a critical and fundamental element of the strategy of terror, control, and domination of territories, commercial transactions, information, and, ultimately, of the population.<sup>34</sup> In this regard, it has identified situations of extreme violence, cruelty, and brutality against women, whose lives and bodies are perceived as territories for exercising power and control.<sup>35</sup> It has also highlighted how the violence exercised by organized crime-related actors adds to the other specific forms of violence already faced by women in different facets of their lives related to structural and historical factors of gender discrimination.<sup>36</sup> Even women and adolescent girls linked to gangs or those who live with gang members as family members are subject to disturbing acts of gender-based violence, such as sexual violence as a form of punishment and murders carried out with particular misogynistic cruelty, among other forms of violations with this bias.<sup>37</sup>
28. In addition to the above, over the last few years, the IACHR has paid close attention to the impact on the rights of children, adolescents, and young people and their interaction with organized crime in northern Central America, delving into the various forms of violence and

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<sup>33</sup> IACHR, *The Impact of Organized Crime on Women, Girls and Adolescents in the Countries of Northern Central America*, February 17, 2023, par. 87.

<sup>34</sup> IACHR, *Violence and Discrimination against Women and Girls*, OEA/Ser.L/V/II. Doc. 233 of 14 November 14, 2019, § 87,194.

<sup>35</sup> IACHR, *Violence and Discrimination against Women and Girls*, OEA/Ser.L/V/II. Doc. 233 of 14 November 14, 2019, § 230.

<sup>36</sup> IACHR, *The Impact of Organized Crime on Women, Girls, and Adolescents in the Countries of Northern Central America*, OEA/Ser.L/V/II. Doc. 9/23, February 17, 1998, 2023, § 31.

<sup>37</sup> IACHR, *Situation of Human Rights in El Salvador*, OEA/Ser.L/V/II. Doc. 278, October 25, 2021, para. 183, 184 IACHR *Violence and Discrimination against Women and Girls*, OEA/Ser.L/V/II. Doc. 233 of 14 November 14, 2019, § 81 and 194.



violations they face in contexts of violence and insecurity.<sup>38</sup> Thus, the Commission has highlighted how the presence of criminal organizations in the territory generates a lack of effective guarantees for several of their rights, reinforces the circle of exclusion and violence, and exposes them to being recruited, used, abused, and exploited.<sup>39</sup> Also, that incorporation into criminal groups subjects them to different levels of violence within the groups, in confrontation between rival groups or with security forces and in juvenile justice bodies.<sup>40</sup> Likewise, the IACHR has indicated how the cycle of recruitment by maras and gangs, through coercion or persuasion, particularly affects children living in poverty or with a disintegrated family nucleus.<sup>41</sup>

29. In addition, the Commission has addressed the relationship between the actions of these criminal groups and forced internal displacement in El Salvador.<sup>42</sup> In this regard, the IACHR valued the ruling of the Constitutional Chamber of the Supreme Court of Justice, which recognized that forced displacement has its origins in the context of violence and insecurity in El Salvador in gang-controlled areas, as well as in the systematic human rights violations caused by organized crime.<sup>43</sup> The Court emphasized that displacement in these circumstances is a multiple and continuous violation, affecting the

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<sup>38</sup> IACHR, North Central America. Organized Crime and the Rights of Children, Adolescents and Youth: Challenges and State Actions, OEA/Ser.L/V/II. Doc. 51/23, February 16, 2023; IACHR, Violence, Children and Organized Crime, OEA/Ser.L/V/II. Doc. 40/15, November 11, 2015; IACHR, Juvenile Justice and Human Rights in the Americas, OEA/Ser.L/V/II. Doc. 78, 44, 13, 2011.

<sup>39</sup> IACHR, North Central America. Organized Crime and the Rights of Children, Adolescents and Youth: Challenges and State Actions, OEA/Ser.L/V/II. Doc. 51/23, February 17, 1998, 2023, § 397.11; 187.

<sup>40</sup> IACHR, North Central America. Organized Crime and the Rights of Children, Adolescents and Youth: Challenges and State Actions, OEA/Ser.L/V/II. Doc. 51/23, February 17, 1998, 2023, § 159, 160, 163, 398.17, 398.20.

<sup>41</sup> IACHR, North Central America. Organized Crime and the Rights of Children, Adolescents and Youth: Challenges and State Actions, OEA/Ser.L/V/II. Doc. 51/23, February 17, 1998, 2023, § 397.15.

<sup>42</sup> IACHR, Situation of Human Rights in El Salvador, OEA/Ser.L/V/II. Doc. 278, October 25, 2021, para. 245.

<sup>43</sup> Supreme Court of Justice, Constitutional Chamber, [Amparo 411-2017](#), July 13, 2018; IACHR, Situation of Human Rights in El Salvador, OEA/Ser.L/V/II. Doc. 278, October 25, 2021, para. 249.

exercise of a series of rights to the extent that families have to move to escape threats, direct violence by these actors, and the recruitment of their members.<sup>44</sup> In the process, they often suffer new rights violations when they relocate to another area also controlled by other criminal groups.<sup>45</sup>

30. In this context, the Commission has formulated multiple recommendations from a regional and sub-regional perspective and directed to El Salvador that refer to different fronts, such as the production of knowledge on the actions and impact of organized crime on the human rights situation; the strengthening of actions for the comprehensive protection of different groups in vulnerable situations; the adoption of multidimensional measures to prevent and reduce crime and to neutralize the recruitment of new members to criminal groups; the strengthening of social reinsertion programs for people disassociated from organized crime; the investigation, prosecution, and punishment of acts of violence and discrimination related to organized criminal activities and reparation for victims; among other measures.<sup>46</sup>

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<sup>44</sup> IACHR, Situation of Human Rights in El Salvador, OEA/Ser.L/V/II. Doc. 278, October 25, 2021, para. 241-248, 256-268.

<sup>45</sup> IACHR, Situation of Human Rights in El Salvador, OEA/Ser.L/V/II. Doc. 278, October 25, 2021, para. 263.

<sup>46</sup> IACHR, Situation of Human Rights in El Salvador, OEA/Ser.L/V/II. Doc. Report on Citizen Security and Human Rights, OEA/Ser.L/V/II. Doc. 57, December 31, 2009; IACHR, North Central America. Organized Crime and the Rights of Children, Adolescents and Youth: Challenges and State Actions, OEA/Ser.L/V/II. Doc. 51/23, February 16, 2023; IACHR, The Impact of Organized Crime on Women, Girls and Adolescents in the Countries of Northern Central America, OEA/Ser.L/V/II. Doc. 9/ 23, February 17, 2023; *inter alia*.

**CHAPTER 1:  
THE INSTALLATION OF A  
STATE OF EXCEPTION  
(STATE OF EMERGENCY)  
AS A CITIZEN SECURITY  
POLICY IN EL SALVADOR**

## **THE INSTALLATION OF A STATE OF EXCEPTION (STATE OF EMERGENCY) AS A CITIZEN SECURITY POLICY IN EL SALVADOR**

### **A. General considerations: the suspension of guarantees in the framework of states of emergency**

31. Before analyzing the state of emergency established in El Salvador, the Commission considers it necessary to specify its recent actions in this matter in relation to the countries of the region, as well as the international norms derived from the American Convention and the inter-American standards developed in this matter based on the interpretation made by the Inter-American Commission and Court of Human Rights within their own spheres of competence.

32. The suspension of guarantees is an exceptional prerogative provided by the American Convention on Human Rights by means of which States may apply certain restrictive measures to rights and freedoms that, under normal conditions, are prohibited or subject to more rigorous requirements.<sup>47</sup> The Inter-American Court of Human Rights has indicated that this mechanism does not imply the suspension of the rights protected by the ACHR, but rather consists of the suspension or impediment of their full and effective exercise under certain circumstances.<sup>48</sup> According to Article 27.2 of the American Convention, no matter how serious the emergency, a certain category of rights may never be suspended. Likewise, in order to suspend the exercise of a right recognized by the American Convention, States must comply with the strict conditions established in its Article 27:

1); and In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present

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<sup>47</sup> IA Court H.R., Advisory Opinion OC-887 on Habeas Corpus in Emergency Situations (Articles 27.2, 25.1, and 7.6 of the American Convention on Human Rights), January 30, 1987, par. 24.

<sup>48</sup> IA Court H.R., Advisory Opinion OC-887 on Habeas Corpus in Emergency Situations (Articles 27.2, 25.1, and 7.6 of the American Convention on Human Rights), January 30, 1987, par. 18.

Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin.

2. The foregoing provision does not authorize any suspension of the following articles: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from Ex Post Facto Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the Child), Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights.

3. Any State Party availing itself of the right of suspension shall immediately inform the other States Parties, through the Secretary General of the Organization of American States, of the provisions the application of which it has suspended, the reasons that gave rise to the suspension, and the date set for the termination of such suspension.

**33.** Regardless of the distinctions that domestic law may make on the denomination or dimension of states of emergency, states of exception, states of siege, or other similar legal concepts, the IACHR and the Inter-American Court have focused their approach on the way in which States have used the suspension of guarantees in connection with such declarations of exceptional circumstances. In its monitoring work, the IACHR has expressed its concern about the context, purpose, and scope of the measures adopted, recalling the

requirements and limits for their use.<sup>49</sup> Recently, it specifically followed up on the establishment of states of emergency as a containment measure for the COVID-19 pandemic.<sup>50</sup> The IACHR highlighted the disproportionate effects that restrictions or limitations to rights can have on certain vulnerable groups, pointing out the need to adopt positive measures that generate an additional protection framework in this context.<sup>51</sup> It also reaffirmed the fundamental role of the independence and performance of all branches of government and oversight institutions in these circumstances, calling on States to strengthen democratic institutions under a human rights approach in order to comply with international obligations and the Inter-American Democratic Charter.<sup>52</sup>

34. During the suspension of guarantees, some of the legal limits on the actions of the public authorities may be different from those in force under normal conditions; likewise, those in power must act within the law and governed by the effective exercise of representative democracy, and the temporary suspension of the rule of law is not

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<sup>49</sup> E.g. IACHR, Situation of Human Rights in Honduras, OEA/Ser.LV/II. Doc. 146, 13 August 13, 2014, § 34; IACHR, , Situation of Human Rights in Guatemala: Diversity,; and Exclusion OEA/Ser.LV/II. Doc. 43/15, December 31, 2011, para, 2015, § 160, 170, 172; IACHR, Report on the Situation of Human Rights in Jamaica, OEA/Ser.LV/ II.144 Doc.12, August 10, 2012, par. 34; IACHR, press release 6009 - IACHR presents its preliminary observations on its visit to Honduras. Tegucigalpa, August 21, 2009; IACHR, Honduras: Human Rights and the Coup d'État. Doc. 55 from December 30 30, 2009, § 7, 91; IACHR, Follow-Up Report. Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia, OEA/Ser.LV/II.135. 40, August 13, 2014, para. 49; IACHR, 2021 Annual Report, OEA/Ser.LV/II DOC. Doc. 64 rev. 1 In May 26 26, 2022, § 245; IACHR, 2021 Annual Report, Chapter IV. B Guatemala, May 26, 2022, par. 13; IACHR, 2021 Annual Report, Chapter IV. B Venezuela, May 26, 2022, par. 2; IACHR, Annual Report 2020, Chapter V Guatemala, 2021, par. 85; IACHR, 2020 Annual Report, Chapter IV.B Venezuela, 2021. paras. 2 and 22.

<sup>50</sup> IACHR, Report on the pandemic and Human Rights, OEA/Ser.LV/II. Doc. 396, September 9, 2022; IACHR, 2019 Annual Report, Chapter IVA, 2020.

<sup>51</sup> IACHR, 130/ 20- IACHR Calls for guarantees for Democracy and the Rule of Law during the COVID-19 Pandemic, June 9, 2020..

<sup>52</sup> IACHR, 130/ 20- IACHR Calls for guarantees for Democracy and the Rule of Law during the COVID-19 Pandemic, June 9, 2020..



admissible.<sup>53</sup> The Commission considers that respect for, and the guaranteeing of, all rights must be the rule and the basis of State action, while curtailment of the exercise of some rights is only authorized under very special circumstances.

35. The Commission and the Court have highlighted the **proclamation of** a state of emergency as an essential condition for the suspension of guarantees.<sup>54</sup> This implies a series of publication and publicity-related acts, which are indispensable in determining responsibilities for the adoption and execution of exceptional measures, so that citizens can know exactly the extent of the limitations to their rights imposed by the State.<sup>55</sup> The idea is to prevent States from arbitrarily suspending rights in cases where material situations do not justify the adoption of such a measure.<sup>56</sup> Thus, in addition to public knowledge of internal turmoil, States have the obligation to comply with the substantial and formal requirements of domestic laws to establish states of emergency.<sup>57</sup>

36. On the other hand, Article 27.3 of the ACHR provides that States must immediately inform the other States Parties to the Convention of the provisions whose application they have suspended, the reasons for the suspension, and the date on which the suspension was terminated. The **notification** procedure, which must be carried out

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<sup>53</sup> IA Court H.R., Advisory Opinion OC-887 on Habeas Corpus in Emergency Situations (Articles 27.2, 25.1, and 7.6 of the American Convention on Human Rights), January 30, 1987, paras. 20 and 24.

<sup>54</sup> IA Court H.R. Case of Baena Ricardo et al. Panama, Merits, Reparations and Costs, Judgment of February 2, 2001. Series C No. 72, par. 94; IACHR, Baena Ricardo et al. Case: Panama, [Case of Baena Ricardo et al. v. Panama. Panama, Observations of the Commission to the Written Statement of the State of Panama of June 29, 1998, pp. 9-11](#), 1998, pp. 9-11.

<sup>55</sup> IACHR, Baena Ricardo et al. Case: Panama, [Case of Baena Ricardo et al. v. Panama. Panama, Observations of the Commission to the Written Statement of the State of Panama of June 29, 1998, pp. 9-11](#), 1998, pp. 9-11.

<sup>56</sup> IACHR, Baena Ricardo et al. Case: Panama, [Case of Baena Ricardo et al. v. Panama. Panama, Observations of the Commission to the Written Statement of the State of Panama of June 29, 1998, pp. 9-11](#), 1998, pp. 9-11.

<sup>57</sup> IACHR, Baena Ricardo et al. Case: Panama, [Case of Baena Ricardo et al. v. Panama. Panama, Observations of the Commission to the Written Statement of the State of Panama of June 29, 1998, p. 12](#), 1998, p. 12.

immediately through the Secretary General of the Organization of American States, constitutes a safeguard to prevent abuse of the exceptional powers of suspension of guarantees and allows other States to assess that the scope of such suspension is in accordance with the provisions of the Convention.<sup>58</sup> Likewise, the State is not exempted from justifying to the international community the existence of the emergency situation and the appropriate nature of the measures taken in this regard.<sup>59</sup>

37. Regarding the **circumstances** that prompt the suspension of guarantees, Article 27.1 expressly establishes the situations that may justify the adoption of these measures: "In time of war, public danger, or other emergency that threatens the independence or security of a State party." The Inter-American Court has pointed out that, in accordance with Article 29.a of the ACHR, such prerogative must be exercised and interpreted as **exceptional** and in restrictive terms.<sup>60</sup> For its part, the Commission has indicated that the circumstances invoked to justify exceptional measures must be very serious and constitute an imminent threat to the organized life of the nation.<sup>61</sup>
38. Accordingly, the IACHR has questioned the suspension of guarantees based on vague or ambiguous expressions such as "acts of violence in different regions of the country", as well as the lack of justification or evidence that the situation could not have been addressed through the

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<sup>58</sup> IA Court H.R. Case of Zambrano-Vélez et al. v. Ecuador. Merits, Reparations and Costs, Judgment of July 2, 2004. Series C No. 166, par. 70; IA Court H.R., Case of Espinoza Gonzáles v. Peru, Preliminary Objections, Merits, Reparations, and Costs. Judgment of 20 November 2014, para. 117.

<sup>59</sup> IA Court H.R. Case of Zambrano-Vélez et al. v. Ecuador. Merits, Reparations and Costs, Judgment of July 2, 2004. Series C No. 166, par. 70.

<sup>60</sup> IA Court H.R., Case of Espinoza Gonzáles v. Peru, Preliminary Objections, Merits, Reparations, and Costs. Judgment of 20 November 2014, para. 117.

<sup>61</sup> IACHR, Third Report on the Situation of Human Rights in Colombia, Chapter II. Protection of Human Rights in the Colombian Legal and Political System, OEA/Ser.LV/II.102 Doc. 9 rev. 1, February 24, 2020, par. 57.

ordinary mechanisms of the State.<sup>62</sup> On another occasion, it indicated that derogating essential guarantees of the population as a way of channeling social unrest and combating crime does not meet the parameters required by the American Convention.<sup>63</sup> For its part, the Inter-American Court has pointed out that the suspension of guarantees must operate as a strictly exceptional measure to confront real emergency situations and does not constitute a means to combat common crime.<sup>64</sup>

39. Even in the exceptional circumstances that authorize the use of this prerogative, the scope of the measures adopted and their adequacy to address the context of the emergency are fundamental elements in defining their compatibility with the precepts of the American Convention. States must ensure that the suspension adopted is strictly limited in extent and time to the requirements of the situation.<sup>65</sup> This means that what is permissible in some circumstances may not be permissible in others.<sup>66</sup> Along these lines, the act that suspends the guarantees must define the **material scope** of the suspension - i.e. the rights suspended -, the **duration**, and the **geographic scope** of its application.<sup>67</sup> Likewise, the **legality of** the measures adopted to address each of the special situations referred to in Article 27.1 will depend on the nature, intensity, depth, and particular context of the emergency, as well as on the

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<sup>62</sup> IACHR, Third Report on the Situation of Human Rights in Colombia, Chapter II. Protection of Human Rights in the Colombian Legal and Political System, OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 24, 2020, par. 65, 67, 71.

<sup>63</sup> IACHR, Annual Report 1998, Chapter V, Ecuador, OEA/Ser.L/V/II.102, April 16, 1999, par. 44.

I/A Court H.R. Case of Zambrano-Vélez et al. v. Ecuador. Merits, Reparations and Costs, Judgment of July 2, 2004. Series C No. 166, par. 52.

<sup>65</sup> Article 27.1 of the CADH.

<sup>66</sup> I/A Court H.R., Advisory Opinion OC-8/87 on Habeas Corpus in Emergency Situations (Articles 27.2, 25.1, and 7.6 of the American Convention on Human Rights), January 30, 1987, par. 22.

I/A Court H.R. Case of Zambrano-Vélez et al. v. Ecuador. Merits, Reparations and Costs, Judgment of July 2, 2004. Series C No. 166, par. IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II.144/15, December 31, 2015, para. 34.

**necessity, proportionality, and reasonableness** of the measures adopted with respect to it.<sup>68</sup>

40. Regarding the temporality of the measures, the IACHR has pointed out that using the state of siege in a systematic manner is tantamount to maintaining a regime of indefinite duration, and that this affects the institutional functioning of the rule of law.<sup>69</sup> It has also criticized the regulation authorizing the maintenance of a state of emergency for up to 270 days and stressed that it can only last as long as the exceptional circumstances giving rise to the emergency persist.<sup>70</sup> On that occasion, the Commission noted the difficulty of conceiving of many situations in which an extraordinary circumstance requiring the declaration of a state of emergency would persist for nine months.<sup>71</sup> It also indicated that the simple regulatory forecast of such a long period of time ends up promoting the use of this measure for that entire period of time.<sup>72</sup> With regard to the judgment on the proportionality of the suspension of certain rights, the IACHR has indicated that it is necessary to evaluate whether it is a measure strictly demanded by the situation.<sup>73</sup> This State decision

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<sup>68</sup> I/A Court H.R., Advisory Opinion OC-8/87 on Habeas Corpus in Emergency Situations (Articles 27.2, 25.1, and 7.6 of the American Convention on Human Rights), January 30, 1987, par. 22; I/A Court H.R., Case of Espinoza González v. Peru, Preliminary Objections, Merits, Reparations, and Costs. Judgment of 20 November 2014, para. 117.

<sup>69</sup> IACHR, Report on the Situation of Human Rights in the Republic of Colombia, Chapter I - Political and Regulatory System, E. The Emergency Regime in the Current Legal System, OEA/Ser.LV/II.53 doc. June 2, 2000, paras. 2.

<sup>70</sup> IACHR, Third Report on the Situation of Human Rights in Colombia, Chapter II. Protection of Human Rights in the Colombian Legal and Political System, OEA/Ser.LV/II.102 Doc. 9 rev. 1, February 24, 2020, par. 57–63.

<sup>71</sup> IACHR, Third Report on the Situation of Human Rights in Colombia, Chapter II. Protection of Human Rights in the Colombian Legal and Political System, OEA/Ser.LV/II.102 Doc. 9 rev. 1, February 24, 2020, par. 57–63.

<sup>72</sup> IACHR, Third Report on the Situation of Human Rights in Colombia, Chapter II. Protection of Human Rights in the Colombian Legal and Political System, OEA/Ser.LV/II.102 Doc. 9 rev. 1, February 24, 2020, par. 62.

<sup>73</sup> IACHR, [Case of Baena Ricardo et al. v. Panama, Observations of the Commission to the Written Statement of the State of Panama of June 29, 1998, p. 2, 1998, p. 12](#), 1998, p. 12.

cannot be arbitrary; on the contrary, it must be based on the requirements imposed by the particular situation that motivates it, it must be reasonable and proportional to that situation, and there must be no alternative less restrictive of rights that would allow it to overcome the emergency.<sup>74</sup> As for the principle of necessity, it requires the existence of an immediate as well as causal relationship between the measure and the danger it is intended to overcome.<sup>75</sup>

41. At the same time, the bodies of the Inter-American Human Rights System (IARHS) have reiterated the **limits** of State power to suspend rights and freedoms: these provisions must not violate other international obligations of the State, nor entail any discrimination based on race, color, sex, language, religion, or social origin.<sup>76</sup> Likewise, according to Article 27.2 of the ACHR, there are certain **rights whose suspension is prohibited** under any circumstances: articles 3 (Right to Recognition of Juridical Personality); 4 (Right to Life); 5 (Right to Personal Integrity); 6 (Prohibition of Slavery and Servitude); 9 (Principle of Legality and Retroactivity); 12 (Freedom of Conscience and Religion); 17 (Protection of the Family); 18 (Right to a Name); 19 (Rights of the Child); 20 (Right to Nationality); and 23 (Political Rights). Also prohibited is the suspension of the judicial guarantees indispensable for the protection of such rights.
  
42. In this regard, the Inter-American Court has determined that those judicial procedures that are ordinarily ideal for guaranteeing the full exercise of rights and freedoms that cannot be suspended should be

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<sup>74</sup> IACHR, [Case of Baena Ricardo et al. v. Panama, Observations of the Commission to the Written Statement of the State of Panama of June 29, 1998, p. 2, 1998, p. 12](#), 1998, p. 12.

<sup>75</sup> IACHR, [Case of Baena Ricardo et al. v. Panama, Observations of the Commission on the Written Statement of the State of Panama of June 29, 1998, p.5](#), 1998, p.5

<sup>76</sup> I/A Court H.R., Advisory Opinion OC-8/87 on Habeas Corpus in Emergency Situations (Articles 27.2, 25.1, and 7.6 of the American Convention on Human Rights), January 30, 1987, par. 19; IACHR, Third Report on the Situation of Human Rights in Colombia, Chapter II. Protection of Human Rights in the Colombian Legal and Political System, OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 24, 2020, par. 57.

considered as **indispensable judicial guarantees**.<sup>77</sup> These guarantees will differ according to the rights they seek to protect.<sup>78</sup> All judicial guarantees needed to ensure the effectiveness of the rights and freedoms that have not been suspended in the emergency<sup>79</sup> and those inherent to the preservation of the rule of law<sup>80</sup> must likewise be preserved.

43. Although the Court has not drawn up an exhaustive list of indispensable judicial guarantees, it has expressly recognized in its Advisory Opinions 8 and 9 and reaffirmed in its judgments that the legal procedures enshrined in Articles 25.1 and 7.6 of the American Convention on Human Rights are part of this group of rights that cannot be suspended under any circumstances.<sup>81</sup> Likewise, it has understood that Article 29.c of the ACHR cannot be suspended with respect to the judicial procedures inherent to the representative democratic form of government provided for in the domestic law of the States Parties as best suited to guarantee the full exercise of the rights protected by Article 27.2.<sup>82</sup> In addition, within the framework of

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<sup>77</sup> I/A Court H.R., Advisory Opinion OC-8/87 on Habeas Corpus in Emergency Situations (Articles 27.2, 25.1, and 7.6 of the American Convention on Human Rights), January 30, 1987, par. 29; I/A Court H.R., Advisory Opinion OC-9/87 on Judicial Guarantees in States of Emergency (Articles 27.2, 25, and 8 of the American Convention on Human Rights), October 6, 1987, par. 41.

<sup>78</sup> I/A Court H.R., Advisory Opinion OC-8/87 on Habeas Corpus in Emergency Situations (Articles 27.2, 25.1, and 7.6 of the American Convention on Human Rights), January 30, 1987, par. 30.

<sup>79</sup> I/A Court H.R., Advisory Opinion OC-8/87 on Habeas Corpus in Emergency Situations (Articles 27.2, 25.1, and 7.6 of the American Convention on Human Rights), January 30, 1987, par. 39.

<sup>80</sup> I/A Court H.R., Advisory Opinion OC-9/87 on Judicial Guarantees in States of Emergency (Articles 27.2, 25, and 8 of the American Convention on Human Rights), October 06, 1987, paras. 38, 41.2.

<sup>81</sup> I/A Court H.R., Advisory Opinion OC-8/87 on Habeas Corpus in Emergency Situations (Articles 27.2, 25.1, and 7.6 of the American Convention on Human Rights), January 30, 1987, par. 44; I/A Court H.R., Advisory Opinion OC-9/87 on Judicial Guarantees in States of Emergency (Articles 27.2, 25, and 8 of the American Convention on Human Rights), October 6, 1987, paras. 41.1, 41.2; I/A Court H.R., Case of Neira Alegría et al. v. Peru, Merits. Judgment of 19 January 1995, Series C No. 20., paras. 82- 83; I/A Court H.R., Durand and Ugarte Case Judgment of August 16, 2000. Series A No. 68, para. 106- 107; I/A Court H.R. Case of Zambrano-Vélez et al. v. Ecuador. Merits, Reparations and Costs, Judgment of July 2, 2004. Series C No. 166, par. 54; I/A Court H.R., Case of Osorio Rivera and Family v. Peru, Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 26, 2010, Series C No. 274, par. 120.

<sup>82</sup> I/A Court H.R., Advisory Opinion OC-9/87 on Judicial Guarantees in States of Emergency (Articles 27.2, 25, and 8 of the American Convention on Human Rights), October 6, 1987, par. 41.3.



its contentious function, the Court has ruled on other non-derogable, non-suspendable rights - in particular, the prohibition of arbitrary deprivation of liberty<sup>83</sup> and torture and cruel, inhuman, or degrading treatment or punishment.<sup>84</sup>

44. Article 25.1 refers to a general provision that includes the procedural institution of amparo, understood as a simple and brief judicial procedure that aims to protect all the rights recognized by constitutions, laws, and the Convention, including those protected by Article 27.2 of the ACHR.<sup>85</sup> While Article 25.1 refers to a genre of judicial proceedings, Article 7.6 deals with one of its specific aspects - the writ of habeas corpus.<sup>86</sup> As indicated by the Inter-American Court, habeas corpus in its classic sense directly protects personal or physical liberty against arbitrary detentions, utilizing a judicial mandate addressed to the corresponding authorities to bring the detainee before a judge so that he can examine the legality of the deprivation and, if necessary, order his or her release.<sup>87</sup> In this sense, it also serves as a means to oversee respect for the life and integrity of the person, to prevent his disappearance or failure to declare his whereabouts (place of detention), as well as to protect him from torture or other cruel, inhuman, or degrading treatment or punishment.<sup>88</sup>

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<sup>83</sup> I/A Court H.R. Case of Osorio Rivera and relatives v. Peru, Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 26, 2010, Series C No. 274, par. 120; I/A Court H.R. Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 30, 2016, Series C No. 287, par. 402; I/A Court H.R. Case of Yarce et al. v. Colombia. Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 30, 2016, Series C No. 325, par. 141.

<sup>84</sup> I/A Court H.R. Case of Lori Berenson Mejía v. Peru, Merits, Reparations and Costs, Judgment of November 30, 2016, Series C No. 119, par. 100; I/A Court H.R. Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 30, 2016, Series C No. 287, par. 418.

<sup>85</sup> I/A Court H.R., Advisory Opinion OC-8/87 on Habeas Corpus in Emergency Situations (Articles 27.2, 25.1, and 7.6 of the American Convention on Human Rights), January 30, 1987, par. 32.

<sup>86</sup> I/A Court H.R., Advisory Opinion OC-8/87 on Habeas Corpus in Emergency Situations (Articles 27.2, 25.1, and 7.6 of the American Convention on Human Rights), January 30, 1987, par. 34.

<sup>87</sup> I/A Court H.R., Advisory Opinion OC-8/87 on Habeas Corpus in Emergency Situations (Articles 27.2, 25.1, and 7.6 of the American Convention on Human Rights), January 30, 1987, par. 33.

<sup>88</sup> I/A Court H.R., Advisory Opinion OC-8/87 on Habeas Corpus in Emergency Situations (Articles 27.2, 25.1, and 7.6 of the American Convention on Human Rights), January 30, 1987, par. 35.

45. In addition, the indispensable judicial guarantees must be exercised within the framework and according to the principles of **due process of law**, as set forth in Article 8 of the Convention.<sup>89</sup> This article covers the conditions that must be met to ensure the adequate defense of those persons whose rights or obligations are under judicial consideration.<sup>90</sup> In order to be able to speak of true and proper judicial guarantees in accordance with the Convention, these requirements must be observed by the procedural bodies concerned.<sup>91</sup>
46. In sum, the organs of the Inter-American Human Rights System have emphasized that the suspension of guarantees can only be legitimately adopted when the conditions, general principles, and limits on the circumstances, the procedure, and the specific measures affecting the suspended rights or freedoms are respected. In this regard, the Commission and the Court have reaffirmed the importance of the existence of **suitable means for overseeing** emergency provisions issued by the State, so that they are reasonably adapted to the needs of the situation and do not exceed the strict limits imposed by the Convention or derived from it.<sup>92</sup> In this regard, the IACHR has considered it an important advance and guarantee that the country's constitution establishes that declarations of a state of emergency are subject to judicial review.<sup>93</sup>

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<sup>89</sup> I/A Court H.R., Advisory Opinion OC-9/87 on Judicial Guarantees in States of Emergency (Articles 27.2, 25, and 8 of the American Convention on Human Rights), October 6, 1987, par. 41.3; I/A Court H.R. Case of Neira Alegría et al v Peru, Merits. Judgment of 19 January 1995, Series C No. 20, par. 83; I/A Court H.R. Case of Zambrano-Vélez et al. v. Ecuador. Merits, Reparations and Costs, Judgment of July 2, 2004. Series C No. 166, par. 54.

<sup>90</sup> I/A Court H.R., Advisory Opinion OC-9/87 on Judicial Guarantees in States of Emergency (Articles 27.2, 25, and 8 of the American Convention on Human Rights), October 6, 1987, par. 28.

<sup>91</sup> I/A Court H.R., Advisory Opinion OC-9/87 on Judicial Guarantees in States of Emergency (Articles 27.2, 25, and 8 of the American Convention on Human Rights), October 6, 1987, paras. 27 and 30.

<sup>92</sup> I/A Court H.R., Case of Espinoza Gonzáles v. Peru, Preliminary Objections, Merits, Reparations, and Costs. Judgment of 20 November 2014, para. 120; I/A Court H.R. Case of J. v. Peru, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 27, 2008. Series C No. 275, par. 139.

<sup>93</sup> IACHR, Third Report on the Situation of Human Rights in Colombia, Chapter II: Protection of Human Rights in the Colombian Legal and Political System, OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 24, 2020, par. 59 and 69.

47. Finally, the Commission recalls that when certain rights are legitimately suspended, this does not mean that they are completely unenforceable.<sup>94</sup> In this context, the intervention of an independent and impartial judicial body capable of determining the legality of the actions carried out within the state of emergency<sup>95</sup> takes on special relevance, given that any action by the public authorities that exceeds the limits precisely indicated in the provisions that decree the suspension of guarantees<sup>96</sup> constitutes an abuse.

## **B. The state of emergency decreed in El Salvador in relation to citizen security**

48. In March 2022, the Executive and Legislative Branches of El Salvador declared a state of emergency (*régimen de excepción*) that has been in effect continuously until now: the closing date of this report. On at least four occasions, the IACHR alerted the State to the requirements stipulated in the American Convention for suspending the guarantees protected therein, as well as the limits established by international human rights law in exceptional circumstances.<sup>97</sup> Likewise, the Commission also warned the State about the impact on the exercise of human rights in the country derived from a series of facts and measures adopted in this context, related to citizen security, access to justice, and persons deprived of liberty.

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<sup>94</sup> I/A Court H.R., Case of J. v. Peru, Preliminary Objection, Merits, Reparations and Costs, November 27, 2013. par. 141.

<sup>95</sup> I/A Court H.R., Advisory Opinion OC-8/87 on Habeas Corpus in Emergency Situations (Articles 27.2, 25.1, and 7.6 of the American Convention on Human Rights), January 30, 1987, par. 30.

<sup>96</sup> I/A Court H.R., Advisory Opinion OC-8/87 on Habeas Corpus in Emergency Situations (Articles 27.2, 25.1, and 7.6 of the American Convention on Human Rights), January 30, 1987, par. 38.

<sup>97</sup> IACHR, Communiqué 82/22 - IACHR Urges El Salvador to implement citizen security actions in accordance with human rights, including under the Emergency Regime, April 20, 2022; IACHR, Communiqué 126/22 - IACHR Urges El Salvador to comply with its international obligations and guarantee penitentiary and citizen security policies with respect for human rights, June 3, 2022; IACHR, Communiqué 254/22 - Seven Months of the Emergency Regime: IACHR reminds El Salvador to comply with its human rights obligations, November 11, 2022; IACHR, Communiqué 58/23 - IACHR calls on El Salvador to reestablish the rights and guarantees suspended one year ago by the emergency regime, April 6, 2023.

49. As indicated above, States do not enjoy unlimited discretion to establish these exceptional measures, and the inter-American bodies must exercise subsidiary and complementary oversight within their spheres of competence.<sup>98</sup> Thus, in this section, the Commission will first examine the rules and procedures adopted by the State to suspend guarantees. The purpose of this is to highlight certain aspects regarding their compatibility with international obligations derived from the treaties to which El Salvador is a party and inter-American human rights standards, as well as the risks of applying these rules and procedures.

### **Analysis of Legislative Decree No. 333 of 2022 and its extensions: conventionality and the human rights risks posed by the Decree's application**

50. On March 27, 2022, on the initiative of the President of the Republic through the Council of Ministers, the Legislative Assembly of El Salvador approved Legislative Decree (DL) No. 333 - Exceptional Regime (State of Emergency). The decree was published in the Official Gazette on the same date and in its 5 articles: (i) indicates that its purpose is "to facilitate the legal tools and mechanisms to the institutions of Public Security, National Civil Police, and Armed Forces of El Salvador, to reestablish order and citizen security and territorial control"; (ii) declares "an exceptional regime" throughout the national territory, "derived from the serious disturbances to public order by criminal groups that threaten the life, peace, and security of the Salvadoran population"; iii) establishes that the Ministries of Justice and Public Security, of National Defense, and the Director of the National Civil Police shall coordinate actions to comply with the provisions of the decree, as well as coordinate pertinent measures to recover the security of the territory; iv) suspends the constitutional

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<sup>98</sup> I/A Court H.R. Case of Zambrano-Vélez et al. v. Ecuador. Merits, Reparations and Costs, Judgment of July 2, 2004. Series C No. 166, par. 47.

rights and guarantees regulated in Articles 7 (right of assembly and freedom of association; prohibition of the existence of armed groups)<sup>99</sup>, 12 sub-paragraph 2 (right to be informed of the rights and reasons for the detention, not to be forced to testify, to have technical assistance)<sup>100</sup>, 13 sub-paragraph 2 (limit of 72 hours for administrative detention)<sup>101</sup>, and 24 (inviolability of correspondence and telecommunications and consequences of their violation)<sup>102</sup>, in relation to article 131.27<sup>103</sup>, and article 29<sup>104</sup> all of the Constitution of the Republic; and v) indicates that its provisions are effective for 30 days from the date of publication in the Official Gazette.

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<sup>99</sup> Article 7.- The inhabitants of El Salvador have the right to associate freely and to meet peacefully, without arms, for any lawful purpose. No one shall be obligated to belong to an association. A person shall not be limited or impeded from the exercise of any licit activity because he does not belong to an association. The existence of armed groups of a political, religious or guild character is prohibited.

<sup>100</sup> Article 12.-[.] The detained person shall be immediately and clearly informed of his rights and of the reasons for his detention, and shall not be compelled to make a statement. The detained is guaranteed the assistance of a defense lawyer (defensor) during the proceedings of the auxiliary organs of the administration of justice and in judicial proceedings, in the terms established by the law.

<sup>101</sup> Article 13.-[.] Administrative detention shall not exceed seventy-two hours, within which the detained must be consigned to the order of a competent judge, with the diligences that he may have practiced.

<sup>102</sup> Article 24 - Correspondence of every kind is inviolable; if intercepted, it shall not be given credence nor accepted as evidence in any legal action, except in the cases of insolvency proceedings and bankruptcy. Interference of telecommunications is prohibited. Exceptionally, the temporary intervention of any kind of telecommunications may be judicially authorized, in a written and reasoned form, maintaining in any case the secrecy of private issues that are unrelated to the process. Information drawn from an illegal intervention will have no value. The attested contravention of what is established in this Article, by any official, will be just cause for the instant dismissal from his office and will lead to compensation for damages caused. A special law shall determine the crimes in which investigation of this authorization may be granted. It will also indicate the controls, periodic reports to the Legislative Assembly, and administrative, civil and criminal responsibilities and sanctions that the officials that illegally apply this exceptional measure will incur. The enactment and amendment of this law demands the favorable vote of at least two thirds of the total number of elected deputies.

<sup>103</sup> Article 131 - It corresponds to the Legislative Assembly: [...] 27<sup>o</sup>- To suspend and re-establish the constitutional guarantees in agreement with Article 29 of this Constitution, in a public and registered vote with at least two-thirds of the elected Deputies;

<sup>104</sup> Article 29 - In cases of war, invasion of territory, rebellion, sedition, catastrophe, epidemic, or other general disaster, or serious disturbances of the public order, the guarantees established in Articles 5; 6, first paragraph; 7, first paragraph; and 24 of this Constitution shall be suspended, except for meetings or associations with religious, cultural, economic or sport purposes. This suspension may affect all or part of the territory of the Republic and may be accomplished by a decree of the Legislative Organ or the Executive Organ, as the case may be. The guarantees contained in Articles 12, second paragraph, and 13, second paragraph, of this Constitution shall be suspended whenever the Legislative Organ so accords, with the favorable vote of three quarters of the elected Deputies; the administrative detention not exceeding fifteen days.

51. In consecutive months, and until November 10, 2023, the Assembly approved 21 decrees establishing continuous extensions to Legislative Decree No. 333<sup>105</sup>; all of them also presented by initiative of the Council of Ministers and valid for 30 days. Several extension decrees provide for the extension of the effects of Legislative Decree No. 333 under the same conditions, keeping most of the rights and guarantees contemplated in the aforementioned constitutional articles suspended. However, as of Legislative Decree No. 396 of May 25, 2022, the suspension of the second and third paragraphs of Article 7 of the Constitution - which, respectively, prohibit limiting the exercise of lawful activities for not belonging to an association and prohibit the existence of armed groups - was lifted, maintaining only the suspension of the first paragraph related to freedom of association and assembly. As of Legislative Decree No. 476 of August 17, 2022, the first paragraph of Article 7° was also no longer suspended. Consequently, the constitutional rights and guarantees provided for in articles 12, second paragraph, 13, second paragraph, and 24 were suspended for at least the last 19 months.
52. As noted above, in accordance with the duty of **proclamation** and **notification**, the State must observe certain aspects regarding the publication of the acts adopted to suspend guarantees as well as the publicity of these measures. The Commission has not received information that the State has failed to comply with the formal requirements of domestic law for declaring a state of emergency and suspending guarantees. It did, however, learn of criticisms regarding the material aspects of the measure, which will be addressed below.

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<sup>105</sup> Legislative Assembly, Decrees: No. 358, April 24, 2022; Decree No. 396, May 25, 2022; Decree No. 42721, June 2022; Decree No. 454, July 19, 2022; Decree No. 476, August 16, 2022; Decree No. 503, September 14, 2022; Decree No. 530, October 14, 2022; Decree No. 569, November 15, 2022; Decree No. 611, December 14, 2022; Decree No. 644, January 12, 2023; Decree No. 661, February 15, 2023; Decree No. 661, February 15, 2023; Decree No. 687, March 15, 2023; Decree No. 719, April 16, 2023; Decree No. 738, May 14, 2023; Decree No. 765, June 16, 2023; Decree No. 797, July 12, 2023; Decree No. 815, August 10, 2023; Decree No. 843, September 13, 2023; Decree No. 865, October 11, 2023; Decree No. 888, November 7, 2023.



53. Regarding publicity on the scope and reasons for the suspension of guarantees, the IACHR notes that Decree Law No. 333 limits its duration to 30 days, as well as the constitutional rights and guarantees that would be suspended, establishing the entire national territory as the scope of application of the measure. In the extension decrees, the geographic scope is not explicit, but the terms of the initial decree are reiterated. The Commission notes that the explanatory memorandum of DL No. 333 indicates the context that would require the suspension of guarantees and the constitutional grounds of "serious disturbances to public order" but does not detail why the suspension of those rights in particular would be a necessary, reasonable, and proportional measure to address the emergency situation. In the extension decrees, the information on the reasons for continuing to adopt the suspension of guarantees varies and, later in this report the Commission will express its concerns about the exceptional nature of this type of measure.
54. The Commission notes that the Permanent Mission of El Salvador to the OAS immediately notified the General Secretariat of the Organization of the suspension of guarantees adopted on March 27, 2022, attaching the respective legislative decree.<sup>106</sup> The extensions of the suspension of guarantees adopted respectively on April 24 and May 25 were only communicated by means of a note sent on June 13, 2022.<sup>107</sup> In the following months all the extension decrees were notified late, with intervals of 1 day to 20 days between the date of

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<sup>106</sup> El Salvador, [Note Verbale No. MPOEA- OEA-034/2022](#), March 27, 2022.

<sup>107</sup> El Salvador, [Note No. MPOEA- OEA-096/2022](#), June 13, 2022.

their adoption and international notification<sup>108</sup>; except for Decree No. 888 issued on November 7, 2023, which was not notified until the closing of this report. In this regard, the IACHR takes note of the notifications made and recalls that Article 27.3 of the ACHR requires immediate notification of the provisions whose application has been suspended, the reasons for the suspension, and the date on which the suspension was terminated.

55. Regarding the **emergency situation** that prompted the suspension of guarantees, the IACHR recalls that Article 27.1 of the ACHR only authorizes this measure "In time of war, public danger, or other emergency that threatens the independence or security of a State Party", while the national Constitution admits the suspension of certain guarantees "in cases of war, invasion of territory, rebellion, sedition, catastrophe, epidemic or other general calamity, or serious disturbances of public order"<sup>109</sup> In this regard, it considers it relevant to analyze the information provided on what was allegedly the exceptional context and why it would fall within the contemplated hypotheses.
56. The explanatory grounds identified in DL No. 333 point to "an increase in violent acts throughout the national territory by criminal structures, which endangers the life and physical integrity of the population" and the generation in the country of "a serious emergency [...] in recent hours, due to the increase in homicides that is affecting the population, where the fundamental right to life of the

<sup>108</sup> El Salvador, [Note No. MPOEA- OAS-100/2022](#), June 24, 2022; El Salvador, [Note No. MPOEA- OAS-116/2022](#), July 22, 2022; El Salvador, [Note No. MPOEA- OAS-136/2022](#), August 22, 2022; El Salvador, [Note No. MPOEA- OAS-184/2022](#), October 19, 2022; El Salvador, [Note No. MPOEA- OAS-202/2022](#), November 18, 2022; El Salvador, [Note No. MPOEA- OAS-220/2022](#), December 20, 2022; El Salvador, [Note No. MPOEA- OAS-005/2023](#), January 19, 2023; El Salvador, [Note No. MPOEA- OAS-032/2023](#), March 1, 2023; El Salvador, [Note No. MPOEA - OAS-054/2023](#), March 31, 2023; El Salvador, [Note No. MPOEA - OAS-063/2023](#), April 28, 2023; El Salvador, [Note No. MPOEA - OAS-078/2023](#), May 24, 2023; El Salvador, [Note No. MPOEA - OAS-109/2023](#), June 30, 2023; El Salvador, [Note No. MPOEA - OAS-109/2023](#) June 30, 2023; El Salvador, [Note No. MPOEA - OAS-126/2023](#), July 28, 2023; El Salvador, [Note No. MPOEA - OAS-146/2023](#), August 29, 2023; El Salvador, [Note No. MPOEA - OAS-172/2023](#), October 3, 2023; El Salvador, [Note No. MPOEA - OAS - 190/2023](#), October 31, 2023.

<sup>109</sup> Article 29, first paragraph.

entire population is being put at risk" In response to a request for information sent by the IACHR,<sup>110</sup> the State also indicated that criminal groups had responded in an extremely violent manner to State actions that sought to address the phenomenon of violence in a comprehensive manner. State officials stressed that these groups had implemented a "strategy of terror," embarking, between March 24 and 27, 2022, on a wave of indiscriminate homicidal violence, which resulted in the death of at least 92 people; and that on March 26 alone 62 people were killed in 12 of the 14 departments of the country. According to the State, this situation had triggered a serious disturbance to public order, a generalized panic in the population and constituted a national emergency that threatened the independence and security of the State, since those planned actions were aimed at destabilizing the authorities.<sup>111</sup>

57. At the same time, the IACHR received comments questioning the existence of an emergency situation in terms of the exceptional authorization granted by the ACHR and the Constitution of El Salvador. Thus, a civil society organization criticized the fact that Legislative Decree No. 333 did not indicate why the sudden increase in homicides constituted a serious disturbance of public order that altered the normal course of national life.<sup>112</sup> It also pointed out that the country has experienced sudden increases in homicides in the past<sup>113</sup>; and that one view held by the Constitutional Chamber of the Supreme Court of Justice considers that the increase in homicides does not

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<sup>110</sup> IACHR, request for information from the State El Salvador, 156-22/IACHR/SE/MPCT-Art.41, Ref.: State of Emergency Decree No. 333 - El Salvador, April 4, 2022.

<sup>111</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on State of Emergency Decree No. 333, Diplomatic Note MPOEA-OEA-063/2022, April 26, 2022; State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OEA-117/2023, July 14, 2023, pp. 5, 6, 9-11.

<sup>112</sup> Cristosal, [Legal Analysis of the Emergency Situation \(Régimen de Excepción\) decreed on March 27, 2022](#) march 29, 2022.

<sup>113</sup> Cristosal, [A 'régimen de excepción' that violates the constitution and enables human rights violations is not an effective measure against criminal violence](#), 2022.

constitute grounds to suspend fundamental rights.<sup>114</sup> According to this jurisprudential precedent, a period of increased crime would be an emergency situation, but it is not regulated in the Constitution as a case warranting suspension of constitutional guarantees.<sup>115</sup>

58. In its observations to the draft of the present report, the State declared that this would be a biased statement that ignores the context surrounding the pronouncement of the Constitutional Chamber regarding the difference between a state of exception and a state of emergency. It indicated that the Constitutional Chamber observed that merely describing a law as an "emergency" is not enough to allege the existence of a "regime of exception" envisaged in Article 29 of the Constitution. For that reason, a distinction is made between the two.<sup>116</sup>
59. With respect to the extensions of DL No. 333, the Commission notes that, in general, the regulations declare the continuity of a state of emergency justifying its continuation in a generic manner based on a risk due to the existence and actions of criminal organizations or pointing out the purpose and results of the measures implemented. In the first renewal of the state of emergency, the measures adopted are alleged to have shown convincing results; however, it is stated that the exceptional security circumstances will persist.<sup>117</sup> The following decrees<sup>118</sup> point out the reduction in the number of homicides and the capture of tens of thousands of people in the country, also stating that the state of emergency in the country persists. Specifically, they argue

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<sup>114</sup> Cristosal, [Legal Analysis of the Emergency Situation \(Régimen de Excepción\) decreed on March 27, 2022](#) march 29, 2022.

<sup>115</sup> Court of Justice, Constitutional Chamber, [Judgment- 15-96 and Ac. Legislative Decree No. 668](#), February 14, 1996, p . 60.

<sup>116</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador"(Observations of the State of El Salvador on the IACHR report entitled "State of Emergency and Human Rights in El Salvador"), Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, p. 49.

<sup>117</sup> Legislative Assembly, Decree No. 358, April 24, 2022.

<sup>118</sup> Legislative Assembly, Decree No. 396, May 25, 2022; Legislative Assembly, Decree No. 427, June 21, 2022; Legislative Assembly, Decree No. 454, July 19, 2022.

that: i) violent acts such as homicides cannot be separated or isolated from the conditions that lead to them; ii) most of the criminals were still at large; and iii) that these criminal organizations would continue to disintegrate and their composition would be affected, which would keep Salvadoran citizens and members of the public security and national defense institutions at risk.

60. Five months after the entry into force of the state of emergency, subsequent decrees<sup>119</sup> continued to stress the highly significant reduction in crime in the country compared to previous years, highlighting what allegedly constituted the lowest homicide rate in El Salvador's historical records. At the same time, they referred to the decrease in the circumstances under which the suspension of rights and guarantees was decreed, but maintained that the threat of criminal activity by these groups persisted. The decree published on December 14, 2022<sup>120</sup> indicates that in addition to the numerous captures of criminals, the main leaders of gang groups were also arrested. Even so, it is reaffirmed that the circumstances that led to the suspension of guarantees are still in place because the attacks and aggressions carried out during the state of emergency persisted. In addition, it is alleged that the criminal organizations and their members have changed their methods of criminal activity and are engaging in the illegal simulation of identity, activities, and trades in order to prevent their location and capture. In this context, the state of emergency would allow the eradication of this criminal phenomenon to continue along with the execution of phase 5 of the Territorial Control Plan, known as "Extraction".

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<sup>119</sup> Legislative Assembly, Decrees: No. 476, August 16, 2022; Decree No. 503, September 14, 2022; Decree No. 530, October 14, 2022; Decree No. 569, November 15, 2022.

<sup>120</sup> Legislative Assembly, Decree No. 611 - Prolong throughout the national territory, for a period of 30 days, the effects of Legislative Decree No. 333, dated March 27, 2022, December 14, 2022.

61. The decrees adopted between January and November 2023<sup>121</sup> reiterate that the suspension of guarantees must be maintained because the circumstances under which the suspension of rights and guarantees was decreed persist. These decrees add other grounds for the continuity of the emergency regime, such as: i) that the intervention of the security forces (*fuera pública*) should lead to the definitive eradication of this type of criminality; ii) the war against gangs faces a structural problem that must be addressed through systematic actions, requiring exceptional conditions to dismantle criminal groups; and, iii) the need to provide conditions for public security authorities to implement inter-agency strategies to revert the deterioration caused by gangs and ensure the sustainability of the progress achieved.
62. Additionally, the State of El Salvador explained to the IACHR that it has not adopted indefinitely the extensions to the emergency regime issued to date, given that they arise from a precise analysis of the temporal context with respect to the reasons for which the measure was originally adopted and which let it to conclude that it was necessary to restrict certain rights specifically identified in the legislative decrees that support those measures. This was to contain the actions of criminal groups that caused serious disturbances to public order and for years filled the population with fear, imposing restrictions on freedom of movement, the exercise of economic activities subject to the payment of extortion, deciding the life or death of many people, and marking in the most atrocious way the lives of women and girls, subjected to sexual slavery or care of the children of the same gang members.<sup>122</sup>
63. The State gave the following reasons for extending the decrees: the seriousness of the organized crime phenomenon; the excessive

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<sup>121</sup> Legislative Assembly, Decrees: No. 644, January 12, 2023; Decree No. 661, February 15, 2023; Decree No. 687, March 15, 2023; Decree No. 719, April 16, 2023; Decree No. 738, May 14, 2023; Decree No. 765, June 16, 2023; Decree No. 797, July 12, 2023; Decree No. 815, August 10, 2023; Decree No. 843, September 13, 2023; Decree No. 865, October 11, 2023; Decree No. 888, November 7, 2023.

<sup>122</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 9-11.



complexity resulting from the entrenchment of criminal structures developed for decades within society and their lack of timely treatment; the persistence of conditions of insecurity; the fact that a majority of terrorists are still at large; the risk of mutation due to the process of disintegration of criminal organizations; armed attacks on members of public security institutions; the use of police intelligence for concealment mechanisms of terrorist leaders; the dismantling of the subjugation of some local governments to terrorist groups; the need to maintain the police reaction to terrorist attacks; and the wide variety of criminal mechanisms to prevent location and capture.<sup>123</sup>

64. In its observations on the draft of this report, the State also indicated that the criminal groups comprise more than 120,000 members,<sup>124</sup> 71,000 of whom are detained, so that more or less 36% are still at large and, therefore, there is a latent risk of rearmament, reorganization, and/or retaliation against members of the population who denounced them or those who charged "fees" (extortion).<sup>125</sup> It also stated that the country is facing a scourge that has sought to override the exercise of the powers conferred on state institutions, in order to create a parallel state governed by criminal groups. According to the State, this is the reason why these groups, in a totally illegal and illegitimate manner, have distributed what they considered to be their territorial domains. It also indicated that in these territories the gang leaders imposed their authority and decided how people living in the communities should behave through all forms of coercion and the use

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<sup>123</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 9-11.

<sup>124</sup> The IACHR notes that there is a discrepancy between the figures presented by the State in its Report of April 8, 2024 and those contained in Annex 1 of this document. The first document indicates that the criminal groups comprise 120,000 people, while the second refers to 170,000 people.

<sup>125</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador"(Observations of the State of El Salvador on the IACHR report entitled "State of Emergency and Human Rights in El Salvador"), Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, p. 49.

of extreme violence.<sup>126</sup> The State asserted that the extension of the emergency regime is justified by the clear evidence that the disintegration of these groups has not led to an immediate or instantaneous reduction in their capacity to cause harm.<sup>127</sup>

65. For their part, civil society organizations affirmed that there are no valid reasons to prolong the state of emergency. They indicated that the period originally described as exceptional had become a permanent state policy; and that a state of emergency cannot be used for ordinary tasks such as crime control, since there are specialized instruments for ordinary use, except in extreme situations that render them ineffective.<sup>128</sup> Likewise, civil society organizations stressed that the circumstance triggering the emergency regime was the increase in homicides that occurred in March 2022 and that this did not persist due to the reduction in homicides, with official figures registering days in which there were no homicides in the country.<sup>129</sup> It was also indicated that the legislative body has not complied with the obligation established in constitutional jurisprudence to document and prove the existence of objective circumstances that justify the appropriate nature, necessity, and proportionality of the measures adopted.<sup>130</sup>

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<sup>126</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador"(Observations of the State of El Salvador on the IACHR report entitled "State of Emergency and Human Rights in El Salvador"), Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, p. 46.

<sup>127</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador"(Observations of the State of El Salvador on the IACHR report entitled "State of Emergency and Human Rights in El Salvador"), Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, p. 46.

<sup>128</sup> Amnesty International, [El Salvador: Open letter to President Nayib Bukele](#), April 1, 2022; Azul Originario et al, [Annual report on human rights violations during the state of emergency in El Salvador](#), March, 2023, pp. 14-16.

<sup>129</sup> Cristosal, [Resumen Análisis prórroga de régimen de excepción realizada el 17 de agosto de 2022](#), August, 2022; AMATE, Red Salvadoreña de Defensoras de Derechos Humanos, Idhuca, FESPAD, SSPAS, Cristosal, [Organizaciones documentan más de 4,500 denuncias de abusos bajo el régimen de excepción](#), February 8, 2022.

<sup>130</sup> Cristosal, [Summary Analysis of the extension of the state of emergency \(exception regime\) carried out on August 17, 2022](#) August 2022.

66. The IACHR acknowledges the delicate situation that occurred between March 24 and 27, 2022, and has [rejected](#) the acts of violence that resulted in the deaths of 92 people. On that occasion, in view of the context described above, it was necessary for the State to adopt certain actions in order to protect the life and integrity of its population within the framework of its obligation to prevent new violations of the human rights protected by the ACHR. The IACHR will address later in this report whether or not the measures adopted were necessary, reasonable, and proportional to deal with this situation.
67. With respect to the decrees extending the state of emergency subsequent to the initial one, the IACHR emphasizes that it is not sufficient to state that the emergency exists; rather, the State must identify the situation and justify why it falls within one of the specific circumstances enumerated in the American Convention<sup>131</sup>. In this regard, based on information provided by the State, it appears that the regulations extending the suspension of guarantees have not complied with this requirement, given that they do not present specific data or facts illustrating "serious disturbances of public order" when each decree was adopted. On the contrary, they recognize a substantial reduction in violent acts in the country. The Commission also takes into account all the information provided by the State, and described in detail in the following chapter, on how the current citizen security situation in El Salvador is an unprecedented improvement, reflected in multiple facets of life in the country. In this sense, the sum of actions undertaken by the State on different fronts has resulted in a decrease in crime in the country. However, based on current information, the initial objective reasons for the emergency set forth in D.L. No. 333 and its extensions or in the information provided by the

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<sup>131</sup> IACHR, Case of Baena Ricardo et al. v. Panama, [Reply in the Case of Baena Ricardo et al. v. Panama, Observations of the Commission on the Written Statement of the State of Panama of June 29, 1998](#), 1998, pp. 9-13.

State<sup>132</sup> no longer persist or justify maintaining the suspension of rights and guarantees protected by the ACHR.<sup>133</sup>

68. In addition to the above, the American Convention establishes that the suspension of guarantees must be strictly limited in time to the requirements of the emergency situation. The Committee notes that the legislature limited the **duration** of the measures to 30-day periods, with each legislative decree taking effect immediately upon expiration of the previous one.<sup>134</sup> As of the second extension of the emergency regime, the regulations went on to cite a ruling of the Constitutional Chamber issued in 2020 on the possibility of extending the emergency regime. According to the Legislative Assembly's interpretation of said judgment, it is not inferred that the extension of the exception regime must be limited to one time only and in no way should it be understood that successive extensions are prohibited. These are considered admissible as long as the circumstances that led to the suspension of rights continue to exist.<sup>135</sup>

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<sup>132</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on State of Emergency Decree No. 333, Nota Diplomática MPOEA-OEA-063/2022, 26 de abril de 2022; CIDH, Audiencia 'Derechos humanos y estados de excepción en El Salvador', 187° período de sesiones, 14 de julio de 2023; Estado de El Salvador, Un Nuevo El Salvador, Nota Diplomática MPOEA-OEA-117/2023, 14 de julio de 2023; Asamblea Legislativa, Decretos: No. 358, 24 de abril de 2022; Decreto No. 396, 25 de mayo de 2022; Decreto No. 42721 de junio de 2022; Decreto No. 454, 19 de julio de 2022; Decreto No. 476, 16 de agosto de 2022; Decreto No. 503, 14 de septiembre de 2022; Decreto No. 530, 14 de octubre de 2022; Decreto No. 569, 15 de noviembre de 2022; Decreto No. 611, 14 diciembre de 2022; Decreto No. 644, 12 de enero de 2023; Decreto No. 661, 15 de febrero de 2023; Decreto No. 687, 15 de marzo de 2023; Decreto No. 719, 16 de abril de 2023; Decreto No. 738, 14 de mayo de 2023; Decreto No. 765, 16 de junio de 2023; Decreto No. 797, 12 de julio de 2023; Decreto No. 815, 10 de agosto de 2023; Decreto No. 843, 13 de septiembre de 2023; Decreto No. 865, 11 de octubre de 2023; Decreto No. 888, 7 de noviembre de 2023.

<sup>133</sup> In its observations on the draft of this report, the State declared that this reflected a simplistic vision by the Commission of a complex, structural reality, and one lacking analysis, insight, and a long-term view. See: State of El Salvador, Observations by the State of El Salvador on the IACHR Report entitled "State of Emergency and Human Rights in El Salvador", Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, p. 50.

<sup>134</sup> Except for Legislative Decree No. 427, which came into force days before the end of the period covered by DL No. 396.

<sup>135</sup> Supreme Court of Justice, Constitutional Chamber, [Judgment 21-2020AC Unconstitutionality](#), June 8, 2020. pp. 55–56.

69. In addition, the IACHR notes that, in the aforementioned judgment, the Chamber analyzed the duration of measures related to the containment of the COVID-19 pandemic, and took the view that there was a specific constitutional gap regarding situations involving "epidemics, catastrophes, or general calamities that often last more than 60 days."<sup>136</sup> In this judgment, it indicated that a state of emergency (regime of exception) is a concept that in Latin American history has led to excesses, abuses, and perpetuation of a state of abnormality that should be characterized by its short duration.<sup>137</sup>
70. The Commission emphasizes that any decision aimed at maintaining a regime that is supposed to be extraordinary must unequivocally prove that the exceptional situations that gave rise to it persist, which is not evident from the information provided. In this regard, it [reiterates](#) its warning that the suspension of rights and guarantees, especially when applied indefinitely, constitutes an inadequate mechanism to combat crime. A state of emergency cannot, in practice, replace a State's security policy.
71. Regarding the **scope of** the measures adopted and their **legality** to address the emergency situation indicated, the Commission recalls that they must be necessary, reasonable, and proportional to the nature, intensity, depth, and particular context of the emergency. Furthermore, the provisions must not violate other international obligations of the State, involve any discrimination based on race,

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<sup>136</sup> Supreme Court of Justice, Constitutional Chamber, [Judgment 21-2020AC Unconstitutionality](#), June 8, 2020. pp. 54.

<sup>137</sup> The Salvadoran Court highlighted the historical context of civil war that El Salvador was facing at the time of drafting its Constitution, noting that "all the discussions of the constituent deputies in relation to the regime of exception were focused on avoiding the perpetuation of the states of siege that were common at that time". See: Supreme Court of Justice, Constitutional Chamber, [Judgment 21-2020AC Unconstitutionality](#) June 8, 2020. pp. 37, 53.

color, sex, language, religion, or social origin, or affect **rights that may not be derogated**<sup>138</sup>.

72. In the first decree, constitutional rights and guarantees regulated in articles 7, 12, second paragraph, 13, second paragraph, and 24 of the Constitution were suspended, which are directly related to aspects of the right of assembly, freedom of association, the right to personal freedom, judicial guarantees, judicial protection, and the protection of honor and dignity, contemplated in the ACHR. In addition, other elements were included, such as: the prohibition of the existence of armed groups of a political, religious, or trade union nature; the length of time of administrative detention; the procedure for interference and intervention in correspondence, as well as the consequences of their illegal use. As mentioned above, Legislative Decree No. 333 only indicates that the measures are adopted for the containment of serious disturbances to public order, but not the reasons or how the suspension of these rights is essential and proportional in that context. The State submitted to the IACHR complementary information in this regard that addresses, in summary, three components: the magnitude of gang activity; the limitations of the ordinary mechanisms available; and the purpose and value of the extraordinary measures adopted.<sup>139</sup>
73. Regarding the actions of the gangs, it indicated that violence in El Salvador has been pointed out by international organizations as a constant concern and that they have urged the State to improve the situation in the country, with conclusions on the territorial control of the gangs and their responsibility for massive human rights violations in

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<sup>138</sup> I/A Court H.R. Habeas corpus in Emergency Situations (Arts. 27.2, 25.1, and 7.6 of the American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, par. 22; I/A Court H.R. Case of Espinoza Gonzáles v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2014. Series C No. 289, par. 117.

<sup>139</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on State of Emergency Decree No. 333, Diplomatic Note MPOEA-OEA-063/2022, April 26, 2022; State of El Salvador, Un Nuevo El Salvador, Diplomatic Note MPOEA-OEA-117/2023, July 14, 2023.

the country. It pointed to the maras or gangs as criminal and terrorist groups, which deliberately provoked an increase in homicides, generating social alarm, public danger, and risk to the security of the State and the Salvadoran population. It alleged that such criminality was not conventional, but constituted an abnormality within the trend that had been occurring. The State indicated that these serious disturbances of public order that needed to be contained were abnormal or extraordinary due to the abruptness of the context that arose, as well as the origin of the disturbances.<sup>140</sup>

74. In its observations on the draft of this report, the State indicated that the characterization of these groups as “terrorist” was due, first, to the fact that, from its perspective, the gangs had an organized structure, which amounted to what it called “a parallel State”, with a clear hierarchy, control of territory throughout the country, with rules and codes of conduct to regulate their own actions and those of the population in the territories where they are present. Second, the State reported that these gangs had recruitment processes, illicit financing methods, and previous negotiations with governments. Third, it stated that these groups exercised power through violence and prevailed in certain sectors over the police forces. Fourth, they collected illegal taxes called “fees” and instilled fear in the population by systematically committing homicides, injuries, and threats, redistribution of the cable signal, appropriation of real estate, rape, theft, and robbery, receiving and other related activities such as money laundering, bribery, intimidation, drug trafficking, extortion, arms trafficking, and disappearances. Finally, it stated that they engaged in attacks with explosive devices, burning of public transport vehicles, and homicides, in order to create alarm and undermine state institutions.<sup>141</sup>

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<sup>140</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on State of Emergency Decree No. 333, Diplomatic Note MPOEA-OAS-063/2022, April 26, 2022, p. 1-8; State of El Salvador, Un Nuevo El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023.

<sup>141</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH “Estado de Excepción y derechos humanos en El Salvador”(Observations of the State of El Salvador on the IACHR report entitled “State of Emergency and Human Rights in El Salvador”), Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, p. 60.



75. Regarding the ordinary mechanisms available, the State pointed out that the country has legislation on crime, as well as a judicial system and auxiliary bodies for the administration of justice that work together to develop plans, operations, and government policies to combat crime; however, the legal and institutional framework, as well as the tools to combat crime, have not been sufficient to contain the increase in the number of violent homicides. The State maintained that the ordinary laws would have been an impediment to curtailing the attacks of these criminal groups on the population.<sup>142</sup>
76. The Salvadoran State also indicated that it was necessary to suspend constitutional guarantees in order to address the aforementioned situation through the urgent application of extraordinary measures. The State affirmed that, with the issuance of Decree No. 333, only the rights necessary to contain both the alarming situation of public danger and the risk to the security of the State and the Salvadoran population were restricted; and that these rights were linked to the daily actions of these terrorist groups. In addition, it highlighted the rights that were intended to be protected, such as life, liberty, security, and physical integrity, and the property of the population in general. Thus, in its opinion, the state of emergency (exception regime) approved was proportional and effective to deal with the situation of public danger and security faced by the Salvadoran State<sup>143</sup>.
77. The State affirmed that the right of assembly and association of the population was not restricted in general, but only in cases necessary to counteract the illegal and illegitimate actions of gang members or criminal groups. Likewise, it indicated that no events or meetings of any kind had been suspended throughout the national territory. Thus,

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<sup>142</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on State of Emergency Decree No. 333, Diplomatic Note MPOEA-OAS-063/2022, April 26, 2022, p. 1-8; State of El Salvador, Un Nuevo El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023.

<sup>143</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on State of Emergency Decree No. 333, Diplomatic Note MPOEA-OEA-063/2022, April 26, 2022, pp. 1-8; State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OEA-117/2023, July 14, 2023.

church meetings, sports, social, and cultural events were being held normally, contributing to a climate of peace, trust, and security for the benefit of the population. Finally, the State indicated that the purpose of the measures was to prevent members of criminal groups from meeting to conspire and agree on the commission of criminal acts; in other words, the idea was to dismantle the formation of those structures in order to prevent criminal actions. The State claimed that the measures would only apply to members of criminal bodies, whose meetings and associations were held for the planning and execution of criminal acts.<sup>144</sup>

78. For its part, the civil society organization Cristosal pointed out that the Legislative Assembly failed to analyze the proportionality that would justify the use of the state of emergency (exception regime), since it was approved after waiving procedures and without further analysis.<sup>145</sup> The Organization emphasized that the decree is not duly justified since neither the proportionality of the state of emergency as a whole, nor that of each specific right, was determined, a constitutional requirement derived from Article 29 of the Constitution as expressed by the Constitutional Chamber, in its Unconstitutionality Ruling 21-2020 (Cumulative). It pointed out that part of the content of article 12, second paragraph - on not obtaining declarations without the consent of the persons involved - was protected in other constitutional provisions that were not suspended; and that this article refers to judicial guarantees that cannot be suspended in accordance with article 27 of the ACHR.
79. The Commission considers that, although the sudden increase in homicides produced a context that required immediate and urgent

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<sup>144</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on State of Emergency Decree No. 333, Diplomatic Note MPOEA-OAS-063/2022, April 26, 2022, p. 1-8; State of El Salvador, Un Nuevo El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023.

<sup>145</sup> Cristosal, [Legal Analysis of the Exception Regime decreed on March 27, 2022](#) March 29, 2022; Cristosal, [A regime of exception that violates the constitution and makes human rights violations possible does not represent an effective measure against criminal violence](#), 2022.

actions by the State to prevent new fatalities, the suspension of some of the constitutional provisions affected would not be necessary or reasonable measures to address the reported situation. In this regard, it highlights the suspension of the second paragraph of Article 7 of the Constitution, according to which "a person may not be limited or prevented from exercising any lawful activity because he or she does not belong to an association" and the third paragraph of the same article, which "prohibits the existence of armed groups of a political, religious, or trade union nature." The information provided by the State does not allow the IACHR to identify how the regulations present in these constitutional provisions hindered the adoption of State efforts in the aforementioned context. It also notes that, from a literal reading of Article 29 of the Salvadoran Magna Carta, both paragraphs could not be suspended in the framework of a state of emergency (regime of exception).

80. Regarding the proportionality of the measures adopted, the State asserted that the right of assembly and association of the population in general was not suspended, but only in cases necessary to counteract the actions of criminal groups. However, DL No. 333 does not establish conditions, requirements, or limitations when suspending the different constitutional provisions, thus unrestrictedly affecting the entire population in the rights and guarantees it enumerates. Along these lines, it is of concern that this regulation suspends, broadly and throughout the country, the protection established in Article 24 of the Constitution against arbitrary or abusive interferences in private communications, suspending both the requirement of judicial oversight of the interventions carried out by public agents and of the legal consequences of the use of material obtained under these circumstances.
81. Article 13, second paragraph of the Constitution establishes that administrative detention shall not exceed seventy-two (72) hours, within which time the detainee must be placed under the orders of the competent judge, together with any proceedings that may have been

carried out; this is expressly related to Article 7.5 of the ACHR.<sup>146</sup> In the case of suspension of this rule, Article 29, second paragraph of the Constitution establishes a maximum period of 15 days for administrative detentions. Likewise, the maximum period for the presentation of a person before a judicial authority in such circumstances is not expressly specified, so the Commission understands -in the absence of any disclaimer by the State- that a detained person could be detained for up to 15 days without being presented before a judicial authority.

82. In this regard, the Inter-American Court has determined that, even under a suspension of guarantees, it is not proportional for a person detained without a warrant to remain deprived of liberty for 15 days without any form of judicial control.<sup>147</sup> The Court has stressed that the suspension of Article 7.5 of the ACHR cannot be considered absolute, whereby immediate judicial review of the detention is especially important in cases of arrests made without a warrant.<sup>148</sup> The IACHR reiterates the Court's jurisprudence establishing that "the suspension of certain aspects of the right to personal liberty cannot signify that the State's actions can derogate the jurisdictional controls over the way in which detentions are carried out."<sup>149</sup>
83. In addition to the above, the IACHR considers it serious that constitutional provisions related to indispensable judicial guarantees have been suspended, given that the American Convention does not

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<sup>146</sup> Article 7.5 - Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His or her release may be subject to guarantees to assure her or his appearance for trial.

<sup>147</sup> I/A Court H.R. Case of Espinoza González v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2014. Series C No. 289, par. 132; Case of J. v. Peru. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 27, 2013. Series C No. 275, par. 144.

<sup>148</sup> I/A Court H.R. Case of J. v. Peru, Preliminary Objection, Merits, Reparations and Costs, November 27, 2013. par. 143.

<sup>149</sup> I/A Court H.R. Case of J. v. Peru, Preliminary Objection, Merits, Reparations and Costs, November 27, 2013. par. 144; I/A Court H.R. Case of Castillo Petrucci et al. v. Peru. Merits, Reparations, and Costs. Judgment of May 30, 1999. Series C No. 52, par. 110.

establish this under any hypothesis. The second paragraph of Article 12 of the Constitution provides for the right of a detained person to be informed immediately and comprehensibly of his rights and the reasons for his detention; not to be forced to testify against himself; as well as the guarantee of the assistance of counsel in the proceedings of the auxiliary bodies of the administration of justice and in criminal judicial proceedings; provisions that are directly related to Articles 7.4, 8.2.g, and 8.2.d of the ACHR.<sup>150</sup> In this regard, the Inter-American Court has pointed out that Article 8 of the ACHR recognizes due process of law, that is, "the procedural requirements that should be observed in order to be able to speak of effective and appropriate judicial guarantees under the Convention."<sup>151</sup> As the Court points out, these principles cannot be suspended even in emergency situations, since they are necessary conditions for the procedural instruments regulated by the Convention to be considered as judicial guarantees.<sup>152</sup>

84. The IACHR considers that Article 7(4) of the American Convention is also part of the core of indispensable judicial guarantees, given that it is an essential tool to prevent arbitrary deprivation of liberty. According to the Inter-American Court, arbitrary deprivation of liberty is prohibited as a non-derogable right which cannot be suspended, even in cases where detention is carried out for reasons of public safety.<sup>153</sup> As, the

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<sup>150</sup> Article 7.4 - Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him. Article 8.2 - Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees: [...] d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel; [...] g. the right not to be compelled to be a witness against himself or to plead guilty; and

<sup>151</sup> I/A Court H.R., Advisory Opinion OC-987 on Judicial Guarantees in States of Emergency (Articles 27.2, 25, and 8 of the American Convention on Human Rights), October 06, 1987, paras. 27, 28.

<sup>152</sup> I/A Court H.R., Advisory Opinion OC-987 on Judicial Guarantees in States of Emergency (Articles 27.2, 25, and 8 of the American Convention on Human Rights), October 6, 1987, par. 30.

<sup>153</sup> I/A Court H.R. Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 14, 2014. Series C No. 287, par. 402.

regards the right established in Article 7.4 of American Convention, the Court has maintained that it refers to two guarantees for the person detained: i) oral or written information on the reasons for detention, and ii) notification, which must be in writing, of the charges.<sup>154</sup> This information at the time of the detention constitutes a mechanism to avoid illegal or arbitrary detentions from the very moment of deprivation of liberty and, in turn, guarantees the individual's right to defense.<sup>155</sup> The lack of information on the facts and the legal basis for the arrest affects the exercise of the defense and makes judicial control illusory.<sup>156</sup> In this sense, this article protects an essential procedure to ensure the proper judicial protection of rights and freedoms that cannot be suspended.

**85.** With regard to the extension decrees, the IACHR has already indicated that in the months that followed no extraordinary events or ongoing reasons for continuing the initial suspension of guarantees were identified. As noted above, the State has maintained that the level of violence has subsided. From the information provided by the State, there are no elements that merit maintaining the state of emergency. The lack of this requirement demanded by Article 27(1) of the American Convention vitiates the legality of any suspension of guarantees adopted by a State. In addition, the IACHR reiterates that the Convention establishes restrictions for the use of these extraordinary measures not only in terms of the gravity of the situation but also in terms of their permanence over time.

**86.** The Commission recalls that, in the event of a suspension of guarantees in accordance with inter-American parameters, the

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<sup>154</sup> I/A Court H.R., Case of J. v. Peru, Preliminary Objection, Merits, Reparations and Costs, November 27, 2013. par. 149; I/A Court H.R., Case of Espinoza González v. Peru, Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2014, par. 124.

<sup>155</sup> I/A Court H.R., Case of J. v. Peru, Preliminary Objection, Merits, Reparations and Costs, November 27, 2013. par. 149; I/A Court H.R., Case of Espinoza González v. Peru, Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2014, par. 124.

<sup>156</sup> I/A Court H.R., Case of J. v. Peru, Preliminary Objection, Merits, Reparations and Costs, November 27, 2013. par. 149; I/A Court H.R., Case of Espinoza González v. Peru, Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2014, par. 124.

application of the measures in specific cases is subject to jurisdictional control to determine whether they were established in accordance with the laws and international obligations of the State, as well as whether they were used in an abusive manner in the specific cases<sup>157</sup>. In this context, the IACHR emphasizes that the Inter-American Court has held that all authorities and public bodies, including judges and other bodies involved in the administration of justice, at all levels, are, within the framework of their respective competencies, obliged to verify compliance with the Convention in the issuance and application of the norms.<sup>158</sup> Thus, they must assess their validity and compatibility with the American Convention taking into account the treaty itself and, as appropriate, the precedents or jurisprudential guidelines of the Inter-American Court.<sup>159</sup>

- 87.** The State, for its part, referred to the Supreme Court of Justice (CSJ) as the institution with the function of guaranteeing the abstract and concrete control of the constitutionality of acts, omissions, norms and other possible objects of constitutional control, in accordance with the power conferred upon it by Articles 174 and 183 of the Constitution of the Republic.<sup>160</sup> It also added that it is incumbent upon the courts, within their power to administer justice, in cases in which they have to pronounce judgment, to declare the inapplicability of any law, treaty, or provision of other bodies, contrary to the constitutional precepts.<sup>161</sup> In its observations on the draft of this report, the State indicated that no

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<sup>157</sup> I/A Court H.R. Habeas corpus in Emergency Situations (Articles 27.2, 25.1, and 7.6 of the American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, paras. 30 and 38.

I/A Court H.R., Case of Gelman v. Uruguay. Monitoring of Compliance with Judgment. Order of the Inter-American Court of Human Rights of March 20, 2013, par. 69.

<sup>159</sup> I/A Court H.R., Case of Gelman v. Uruguay. Monitoring of Compliance with Judgment. Order of the Inter-American Court of Human Rights of March 20, 2013, par. 69.

<sup>160</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, p. 8.

<sup>161</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, p. 8.



claims of unconstitutionality have been admitted against Decree No. 333 of 2022, nor against the successive extensions of that decree.<sup>162</sup>

88. Finally, the Commission warns once again that the suspension of guarantees is a prerogative that cannot be legitimately adopted without respecting the conditions set forth in the ACHR, inasmuch as certain categories of rights can never be suspended.<sup>163</sup> The IACHR takes into account the risks and effects that the criminal actions of maras and gangs have on the human rights of the population of El Salvador, with respect to which there is a State obligation to provide care from a comprehensive perspective in order to rebuild the social fabric. Efforts to overcome the causes or consequences of crime must be carried out in full respect of the law and the international obligations assumed by the State for all persons under its jurisdiction. In view of the above, the Commission [reiterates](#) its call to the State of El Salvador to reestablish the full validity of the rights and guarantees suspended during recent months within the framework of the emergency regime and to adopt measures for the prevention, control, and response to crime within the framework of a citizen security policy evaluated from the perspective of respect and guarantees for human rights.<sup>164</sup> It also calls for criminal activities to be investigated, prosecuted, and punished with due diligence. In this sense, all initiatives related to the prevention or deterrence of crime, the dismantling of organized crime, or criminal charges (*atribución criminal*) must take place within the framework provided by the American Convention for the effective protection and guarantee of human rights in the country.<sup>165</sup>

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<sup>162</sup> State of El Salvador, Observations of the State of El Salvador to the IACHR Report "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, pp. 49-50.

<sup>163</sup> I/A Court H.R., Advisory Opinion OC-887 on Habeas Corpus in Emergency Situations (Articles 27.2, 25.1, and 7.6 of the American Convention on Human Rights), January 30, 1987, paras. 21 and 39.

<sup>164</sup> IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II. Doc. 57, December 31, 2009, par. 35.

<sup>165</sup> IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II. Doc. 57, December 31, 2009, par. 162.

**CAPÍTULO 2:  
CITIZEN SECURITY AND  
ACCESS TO JUSTICE**

## **CITIZEN SECURITY AND ACCESS TO JUSTICE**

### **A. Citizen security policy adopted in the fight against gangs**

89. The IACHR has been monitoring the State's actions in the area of citizen security, particularly the efforts deployed since the change of government in June 2019, including notably the implementation of the Territorial Control Plan (PCT).<sup>166</sup> At that time, the State reported on three of the seven stages of the PCT: 1) "Preparedness": primary prevention and visible presence of the National Police and the Armed Forces, which aims to profile and identify criminal structures in 17 municipalities for frontal combat, through direct intervention; control and strictness in detention centers to improve prison conditions; and deterrence of criminal behavior in the most vulnerable areas to transform the obtaining of resources and livelihoods. 2) "Opportunities": The reconstruction of the social fabric through the prosecution and prevention of crime, aimed at galvanizing social and economic opportunities in vulnerable areas; recovering, cleaning up, and remodeling spaces to improve living conditions, thereby facilitating coexistence and generating a sense of belonging; and providing support through a variety of opportunities and options, transforming localities for insertion into productive life. 3) "Modernization": modernization of the security forces in terms of tools, infrastructure, and resources.<sup>167</sup> Subsequently, the State reported the implementation of Phase 4 "Incursion": which would allow security forces to reach the places where gang groups operate, doubling the 20,000 military personnel already in place and incorporating new police for operations in different parts of the country.<sup>168</sup> Through

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<sup>166</sup> IACHR, Situation of Human Rights in El Salvador, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, paras. 28–72.

<sup>167</sup> IACHR, Situation of Human Rights in El Salvador, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, par. 33.

<sup>168</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on the status of compliance with the recommendations contained in the report "Situation of Human Rights in El Salvador" approved after an on-site visit carried out in 2019, Diplomatic Note MPOEA-OAS-122/2022, July 28, 2022, pp. 5; Ministry of Justice and Public Security, [Presidente Nayib Bukele anuncia IV Fase del Plan Control Territorial "Incurción"](#) [President Nayib Bukele announces Phase IV-- "Incursion" -- of the Territorial Control Plan], July 19, 2021.

information in the public domain, the IACHR learned that Phase 5 "Extraction": was being carried out - with the aim of extracting criminals from the communities<sup>169</sup>; along with Phase 6 "Integration": which, based on the National Directorate of Integration, "will focus on addressing medium and long-term needs where the Salvadoran State, private enterprise, universities, communities, and all sectors of society will be able to join together to address problems such as poverty."<sup>170</sup> The IACHR is not aware of what Phase 7 of the PCT would consist of.

90. In its 2021 country report, the IACHR recognized the drastic reduction in homicides nationwide.<sup>171</sup> For the year 2020 a homicide rate of 21 per 100,000 inhabitants was recorded,<sup>172</sup> reflecting a succession of decreases from the high point recorded in 2015 of 106.3 homicides per 100,000 inhabitants.<sup>173</sup> The Commission expressed its appreciation of positive aspects of the PCT, such as the effort to restore governance in the territories and the measures taken to protect and reconstruct the social fabric.<sup>174</sup>
91. The Commission also expressed concern about the lack of transparency and social participation in the Territorial Control Plan,

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<sup>169</sup> IACHR, 2022 Annual Report, Chapter V: Follow-up of recommendations made by the IACHR in its country or thematic reports: El Salvador, April 1, 2023, paras. 13, 15; Ministry of Security and Justice of El Salvador, [President Nayib Bukele announces Phase 5 of the Territorial Control Plan: Extraction](#), November 24, 2022.

<sup>170</sup> Ministry of Security and Justice of El Salvador, [President Nayib Bukele announces Phase VI of Territorial Control Plan](#), September 15, 2023.

<sup>171</sup> IACHR, Situation of Human Rights in El Salvador, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, par. 32.

<sup>172</sup> World Bank, [United Nations Office on Drugs and Crime International Homicide Statistics Database: Intentional Homicides \(per 100,000 inhabitants\) - El Salvador; 2020](#); United Nations, Regional Conference on Population and Development; 2020; UN, Regional Conference on Population and Development, [Number of victims of intentional homicides per 100,000 population, disaggregated by sex and age \(SDG Indicator 16.1.1\)](#). El Salvador, 2020.

<sup>173</sup> State of El Salvador, Un Nuevo El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, on file with IACHR, pp. 8-9; World Bank, [United Nations Office on Drugs and Crime International Homicide Statistics database: Intentional Homicides \(per 100,000 population\) - El Salvador; 2015](#); United Nations, Regional Conference on Population and Development, [Number of victims of intentional homicides per 100,000 population, disaggregated by sex and age \(SDG Indicator 16.1.1\)](#). El Salvador, 2015.

<sup>174</sup> IACHR, Situation of Human Rights in El Salvador, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, par. 34.

indicating that this made it difficult to identify the measures adopted and to analyze their correlation with the results obtained in terms of citizen security.<sup>175</sup> In this context, the Commission received information about a possible informal agreement between state officials and gangs to reduce violence, which was rejected by the State.<sup>176</sup> In this regard, in its observations on the Draft Report, the State affirmed that there is not, nor has there been any agreement of any kind between the State and the gangs to reduce violence in the current administration.<sup>177</sup>

92. In addition, in its 2021 Report, the IACHR also addressed the punitive response applied by the State, drawing attention to the exponential increase in the application of anti-terrorist laws to alleged gang members and the criminalization of these offenses.<sup>178</sup> It also criticized the involvement of the Armed Forces of El Salvador in citizen security activities<sup>179</sup> and referred to allegations related to abuses in the use of force by the police and armed forces that reportedly resulted in injuries or deaths.<sup>180</sup> It also addressed measures in response to the disappearances that have occurred in the country.<sup>181</sup> The Commission drew up three recommendations regarding these problems, in particular: publicize the Territorial Control Plan and incorporate bodies engaged in civil society participation and dissemination of citizen

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<sup>175</sup> IACHR, Situation of Human Rights in El Salvador, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, paras. 35–36.

<sup>176</sup> IACHR, Situation of Human Rights in El Salvador, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, paras. 35–37.

<sup>177</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador"(Observations of the State of El Salvador on the IACHR report entitled "State of Emergency and Human Rights in El Salvador"), Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, p. 55.

<sup>178</sup> IACHR, Situation of Human Rights in El Salvador, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, paras. 39–43.

<sup>179</sup> IACHR, Situation of Human Rights in El Salvador, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, par. 48.

<sup>180</sup> IACHR, Situation of Human Rights in El Salvador, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, paras. 55–64.

<sup>181</sup> IACHR, Situation of Human Rights in El Salvador, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, paras. 65–72.

security policies; urgently carry out diligent and impartial investigations in all cases where civilians are injured or killed by police or military forces, in order to establish the facts and determine the corresponding criminal responsibilities; and strengthen the capacities of the police in order to advance in the implementation of the plan for the gradual replacement of the armed forces in public security tasks, in accordance with Inter-American human rights standards<sup>182</sup>; and it concluded that compliance with these recommendations was still pending at the end of 2022.<sup>183</sup>

93. Despite the notable decrease in the number of violent deaths in the country, between March 24 and 27, 2022, at least 92 homicides were registered in different departments of the country, by organized crime groups, as indicated by the State. This situation was rejected by the IACHR.<sup>184</sup> In this regard, the Commission emphasizes the State's obligation to investigate these events seriously, impartially, and effectively, seeking the truth about what happened and to prosecute and punish all those intellectually and materially responsible for these crimes.<sup>185</sup> It also stresses that the State must ensure due attention and reparation to the victims of the crimes, including the relatives of the deceased victims, in accordance with international standards on the matter.<sup>186</sup>

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<sup>182</sup> IACHR, Situation of Human Rights in El Salvador, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, paras. 342.1, 342.2, 342.3.

<sup>183</sup> IACHR, 2022 Annual Report, Chapter V: Follow-up of recommendations made by the IACHR in its country or thematic reports: El Salvador, April 1, 2023, paras. 13–30.

<sup>184</sup> CNN, [62 murders registered this Saturday in El Salvador, the most violent day during the government of Nayib Bukele](#), March 27, 2022; EISalvador.com, [Violence killed 87 people in three days in El Salvador](#), March 28, 2022; State of El Salvador, Report of the State of El Salvador to the Interamerican Commission of Human Rights on state of emergency Decree No. 333, Diplomatic Note MPOEA-OAS-063/2022, April 26, 2022, on file with the IACHR.

<sup>185</sup> I/A Court H.R. Velásquez Rodríguez Case v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4 paras. 177 and 178.

<sup>186</sup> IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II. Doc. 57, December 31, 2009, par. 66.



94. Quite apart from this episode, the Commission considers it necessary to specify that human rights violations can be established even when the responsible agents are not individually identified<sup>187</sup> and that the State must perform due diligence to prevent the violation or address it as required by the American Convention even if an unlawful act violating human rights is not initially directly attributable to a State.<sup>188</sup>
95. The Court has indicated that in the event of any violation of rights, States have the obligation to investigate and punish it, also seeking the reestablishment, if possible, of the violated right and, where appropriate, the reparation of the damages caused by the violation of human rights.<sup>189</sup> Along these lines, the IACHR highlights the relevance of the justice administration bodies, which must carry out their investigation and judicial proceedings guaranteeing the victims of human rights violations or their relatives ample opportunities to participate and be heard, both in the clarification of the facts and the punishment of those responsible, as well as in the search for due reparation.<sup>190</sup> In addition, the IACHR has called on the States to have an adequate institutional framework to provide due attention to the victims of crimes or violent acts as a pillar of their actions in the area of citizen security, including aspects such as material, medical, psychological, and social assistance, among others.<sup>191</sup>
96. On this point, the State indicated that it continues to work to respond to the needs of the victims in order to protect, assist, and repair the

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<sup>187</sup> I/A Court H.R. Velásquez Rodríguez Case v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4, par. 173.

<sup>188</sup> I/A Court H.R. Velásquez Rodríguez Case v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4, par. 172.

<sup>189</sup> I/A Court H.R., Velásquez Rodríguez Case v. Honduras. Judgment of July 29, 1988, Series C No. 4, par. 166.

<sup>190</sup> Case of Pueblo Bello Massacre v. Colombia. Judgment of January 31, 2006, Series C No. 140, par. 144; I/A Court HR, Case of Gelman v. Uruguay. Judgment of February 24, 2011, Merits and Reparations, par. 187.

<sup>191</sup> IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II. Doc. 57, December 31, 2009, par. 66; UN, General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, A/RES/40/34, 29 November 1985.



damage caused. To this end, the Directorate of Attention to Victims of the Ministry of Justice and Public Security provides attention to the victim population of different acts of violence, but with special emphasis on those who are at risk and in a situation of forced internal displacement.<sup>192</sup> It indicated that this Directorate has 11 Local Victim Assistance Offices deployed throughout the country, where cases are received, victims are interviewed and offered legal, psychological, and psychosocial assistance.<sup>193</sup> In this sense, the aim is to provide a comprehensive response to the victims, in relation to the needs identified during the interview, through referral to other institutions or public or private entities and, as a last step, the action protocol is activated based on the particular case involved.<sup>194</sup> In its observations on the draft of this report, the State indicated that it has requested technical cooperation from the IACHR to address this situation, since it recognizes the need for a policy to assist victims, who for years suffered the scourge of gang violence. It does so despite the fact that the State is already taking major steps to ensure the recomposition of the social and community fabric in the hardest-hit areas and care of the victims of the generalized violence.<sup>195</sup>

97. The Commission values these efforts and expresses its willingness to cooperate technically in strengthening measures to assist crime victims. It also notes that for the year 2022, only about half of the budget foreseen in the Ministry of Justice and Security for the Integral Attention to Victims item (\$272,100.00 out of \$484,100.00) was executed.<sup>196</sup>

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<sup>192</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, p. 55.

<sup>193</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, p. 55.

<sup>194</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, p. 55.

<sup>195</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador"(Observations of the State of El Salvador on the IACHR report entitled "State of Emergency and Human Rights in El Salvador"), Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, p. 127.

<sup>196</sup> Ministry of Finance, [Liquidation of the last approved budget: Statements 1 to 18, General State Budget: Primary Units and Central Government Institutions, Demonstrative Statement of Budget Execution of Expenditures by Primary and Budgetary Units, January 1 to December 31, 2022, March 13, 2023, p. 219](#), March 13, 2023, p. 219.

98. Following the establishment of the state of emergency and the implementation of new measures in criminal and prison policies, the IACHR requested information on the main measures implemented to prevent and control criminality linked to maras and gangs, as well as their structural factors.<sup>197</sup> It also requested information on the means of data collection and type of statistical information available to the State for the formulation and measurement of the results of public policies in this area; and whether these policies incorporated a human rights approach and citizen participation, particularly of the communities most affected by violence.<sup>198</sup>
99. The State indicated to the Commission that the public security strategies have been implemented in a technical manner and with a minimum impact on rights, using the necessary tools that allow State institutions to defend the rights of citizens in the face of crime, without affecting the social and economic life of the country.<sup>199</sup> In particular, it referred to the state of emergency declaration itself and its extensions as one of the complementary measures adopted in the area of citizen security.<sup>200</sup> It also noted that, as of May 16, 2023, 68,700 criminals had been arrested, 1,201 of whom were heads of the various terrorist organizations.<sup>201</sup> The State also pointed to the implementation of security fences in some communities to remove gang members, some of whom are involved in small-scale drug dealing.<sup>202</sup> The State claimed that it had taken resolute steps to address the phenomenon of crime,

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<sup>197</sup> IACHR, Request for information from the State of El Salvador, Note No. 247-23/CIDH/SE/MPCT-Art.41, REF: Request for information on the state of emergency (emergency regime) and its effects on human rights, May 10, 2023.

<sup>198</sup> IACHR, Request for information from the State of El Salvador, Note No. 247-23/CIDH/SE/MPCT-Art.41, REF: Request for information on the state of emergency (emergency regime) and its effects on human rights, May 10, 2023.

<sup>199</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, p. 11.

<sup>200</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 8-12.

<sup>201</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, p. 11.

<sup>202</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 42-44.

establishing policies to guarantee the functions of prevention, combating crime, rehabilitation, and reintegration, which had been achieved through regulatory reforms in criminal, criminal procedure, and penitentiary matters.<sup>203</sup> In this regard, it detailed the legal reforms undertaken in the area of criminal justice<sup>204</sup>, which will be discussed in more detail in the following section of this report.

100. It also pointed out that violence prevention actions have included an increase in preventive patrols; intelligence-led patrols; intervention operations in communities with the highest incidence of maras or gangs nationwide; permanent police presence in places with the greatest influx of people such as tourist sites, financial or banking systems, markets and bus terminals; searches for persons and motor vehicles, among others.<sup>205</sup> All of this was aimed at reducing common criminal offenses and organized crime, and had resulted in a reduction in the number of homicides, extortion, forced internal displacement by mara or gang members, among others.<sup>206</sup>

101. In its comments on the draft of this report, the State further noted that the "Integration" phase of the Territorial Control Plan, which was launched in September 2022, aims to address the social roots of crime and gangs through community integration and social inclusion. Thus, the National Directorate for Integration will oversee community development initiatives and crime prevention programs. This phase also involves collaboration with civil society organizations and international agencies to develop projects that strengthen community resilience. The State emphasized that modernization of the security forces, creation of opportunities for young people, and social integration are crucial components

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<sup>203</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, p. 19.

<sup>204</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 19-20.

<sup>205</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, p. 19.

<sup>206</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, p. 19.

indicative of a proactive and preventive approach to be backed by an annual investment of \$30 million.<sup>207</sup>

102. Regarding the information used to formulate and measure public policies, the State reported that the Ministry of Justice and Public Security has implemented different mechanisms for this purpose, such as: i) the Operational Roundtable for Determining Homicide Figures - which aims to collect and validate data related to homicides in the country and provide a reliable national figure of homicides and cases of lethal violence, facilitating decision making and the formulation of evidence-based public policies. It involves the Attorney General's Office, the Institute of Forensic Medicine, the National Civil Police and the Ministry itself; ii) the Data Collection System on High Incidence Crimes - which is aimed at collecting information on the most frequently committed crimes in the country, with the objective of establishing policies and making decisions focused on the most affected territories, allowing for effective inter-agency articulation, given that it is aligned with the Territorial Control Plan and the National Justice and Public Security Policy; iii) the Data System on Violence against Women - focuses on the collection of specific information on gender-based violence, disaggregating the data collected by sex, thereby making it possible to carry out interventions with a gender approach and addressing violence against women more effectively; and iv) the Evidence on Trafficking in Persons - database that provides valuable information for the design and implementation of public policies aimed at combating all forms of trafficking in persons.<sup>208</sup>

103. In addition, the State affirmed that the human rights approach and citizen participation were essential elements in the formulation of public policy and strategies by the Ministry of Justice and Public

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<sup>207</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador"(Observations of the State of El Salvador on the IACHR report entitled "State of Emergency and Human Rights in El Salvador"), Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, p. 55.

<sup>208</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, p. 21.

Security.<sup>209</sup> It expressed a commitment to human rights and gender equity, reflected by the participation of different institutions in the Operational RoundTable for the Determination of Homicide Figures and the emphasis on sex-disaggregated data in the system of violence against women.<sup>210</sup> Furthermore, in its observations on the draft of this report, the State indicated that, in order to guarantee the rational and proportional use of force during the Emergency Regime, the Secretariat of Professional Responsibility of the National Civil Police created the General Supervision Plan in application of Legislative Decree No. 333, which contains the Emergency Regime. In addition, that Secretariat, through the Human Rights Unit, prepared the Decalogue on the use of force in a state of emergency, which includes the guidelines contained in international obligations, with a special focus on police actions in a state of emergency. The State pointed out that the dissemination of this document was verified at the national level, at the behest of the General Directorate of the National Civil Police, to ensure that police personnel practice self-control during their operations.<sup>211</sup>

104. It also indicated that data collection in communities most affected by violence confirmed a focus on inclusion and citizen participation in decision-making and policy implementation.<sup>212</sup> The State provided extensive information on the efforts undertaken on behalf of vulnerable groups, such as youth, young children, children and adolescents, women, among others, and indicated that it had promoted the adoption of a framework of standards and protection mechanisms for their comprehensive and full development.<sup>213</sup> It also stated that it had

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<sup>209</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, p. 21.

<sup>210</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, p. 21.

<sup>211</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador"(Observations of the State of El Salvador on the IACHR report entitled "State of Emergency and Human Rights in El Salvador"), Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, p. 45.

<sup>212</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, p. 21.

<sup>213</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 22-29.

prioritized the development of plans for crime prevention and the reconstruction of the social fabric.<sup>214</sup>

105. With regard to actions focused on children, adolescents, and youth, the State reported on the legislative reforms prior to the emergency regime that criminalized the recruitment of children and adolescents, as well as on the implementation of different strategies led by institutions that make up the National System for the Comprehensive Protection of Early Childhood, Children, and Adolescents.<sup>215</sup> It also highlighted actions for the reconstruction of the social and community fabric as part of the implementation of the Territorial Control Plan. In this regard, the State emphasized that between 2021 and 2023, 11 Urban Centers of Wellbeing and Opportunities (CUBO) were inaugurated in areas that were previously controlled by gangs in various parts of the country.<sup>216</sup> The State explained that these facilities allow young people in the communities to develop diverse skills, access training opportunities, and take part in activities for healthy recreation and integration, with more than 308,745 people benefiting.<sup>217</sup> The Commission had the opportunity to visit one of the CUBOs during its visit to the country in 2019, welcomes this initiative to rebuild the social fabric and encourages its replication in other communities.<sup>218</sup> The State indicated that the above is in addition to other strategies for the construction and more dynamic use of public spaces aimed at strengthening community identity and belonging - through culture and sports, for example - as elements of

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<sup>214</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 22-29.

<sup>215</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 22-29.

<sup>216</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 22-29.

<sup>217</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 22-29.

<sup>218</sup> IACHR. Situation of Human Rights in El Salvador, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, par. 38.

rehabilitation and reconstruction of the social fabric and contributing to the prevention of violence.<sup>219 220</sup>

106. In addition, the State reported that, as a counterpart to the "war against gangs" and in response to communities that were once inaccessible territories, a comprehensive education reform was launched in September 2022.<sup>221</sup> The purpose of this project was to dignify learning opportunities and facilities in a comprehensive manner and contribute to the formation of new generations through first level educational training based on six pillars: infrastructure, early childhood, teacher training, renewed curriculum, technology, health, and nutrition.<sup>222</sup> In this regard, the State provided details on the institutional transformation carried out with a focus on children and adolescents, which includes the approval of the "Growing Up Together Law for the Comprehensive Protection of Early Childhood, Childhood, and Adolescence" and the creation of the National Council for Early Childhood, Childhood, and Adolescence.<sup>223</sup> It also described the following actions: the 226 Local Rights Committees; the 16 Protection Boards on the rights of children and adolescents; the Network of Entities for the Care of Children and Adolescents, as well as the interagency coordination processes at the territorial level for the

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<sup>219</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 22-29.

<sup>220</sup> In its observations on the draft of this report, the State indicated that it has implemented and continues to conduct more than 16 workshops in the 4 Social Integration Centers, with the aim of repairing social and family relationships. It indicated that the workshops allow for reintegration into the community, reduce recidivism, lower the procedural burden, and avoid stigmatization, and have led to educational gains and resocialization. See: State of El Salvador, Observations by the State of El Salvador on the IACHR Report entitled "State of Emergency and Human Rights in El Salvador", Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, pp. 57-58.

<sup>221</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 30-39.

<sup>222</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 30-39.

<sup>223</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 30-39.



comprehensive care of cases of children and adolescents and their families in vulnerable situations identified by Social Welfare.<sup>224</sup>

107. In addition, the State referred to a number of community projects being executed with a focus on children and adolescents, including notably the following: "Linking the families of returned migrant children and adolescents to livelihoods"; "Follow-up of returned migrant children and adolescents and strengthening the sustainable reintegration of their families" - which has benefited hundreds of children and adolescents; "Attention to children and adolescents deprived of liberty" - which has addressed a total of 365 cases.<sup>225</sup> It also pointed to the Protection Programs, which involve interventions, actions, services, or projects with common objectives aimed at early childhood, children, and adolescents whose rights have been threatened or violated; as well as the Shelter Centers for children and adolescents. In addition, the State mentioned programs and facilities that are available to children and adolescents whose rights are threatened or violated and who are deprived of their family environment.<sup>226</sup> In addition, it pointed out the existence of institutions and measures related to juvenile justice, which will be addressed in the next chapter of this report.

108. With regard to efforts to address gang violence against women, the Salvadoran Institute for the Development of Women (ISDEMU), as the institution responsible for women's rights, has been able to consolidate a strategy that allows it to monitor, promote, and ensure compliance with the regulatory framework and public policies on prevention, care, and justice for women who face gender-based violence.<sup>227</sup> The State

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<sup>224</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 30-39.

<sup>225</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 30-39.

<sup>226</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 30-39.

<sup>227</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 39-41.

reported that ISDEMU implements a management and interagency articulation mechanism at the national level for the comprehensive and specialized care of women facing gender-based violence.<sup>228</sup> Thus, it includes a range of guidance, protection, care, and multidisciplinary counseling services from various devices such as: telephone lines, platforms, specialized care centers, departmental care centers, mobile units, and the Women's Protection System.<sup>229</sup>

109. The State also reported on the implementation of the Territorial Activation Plan in the communities of La Tutunichapa, La Campanera, and El Congo, and its planning for the Las Margaritas neighborhood. These territories are reportedly benefiting from a set of actions involving: social protection, reconstruction of the social fabric, social infrastructure, labor and productive inclusion; with the objective of generating opportunities for economic, social, and cultural development to contribute to the progressive reduction of the conditions of social and economic vulnerability of families of the communities excluded and stigmatized by violence.<sup>230</sup> The State informed that this strategy is part of the second phase of the Territorial Control Plan, called "Opportunities", which seeks to generate conditions for the inhabitants of areas previously besieged by gangs to escape cycles of violence and contribute to the economic and social development of their communities.<sup>231</sup> It also pointed out the multisectoral effort in which more than 15 State institutions work together to bring essential health, education, housing, and sports services to these communities.<sup>232</sup>

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<sup>228</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 39-41.

<sup>229</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 39-41.

<sup>230</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 37-39.

<sup>231</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 42-44.

<sup>232</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 42-44.

110. In addition to the above, the State of El Salvador reported having carried out infrastructure works in the framework of the Territorial Activation Plan, such as interventions to improve lighting and access to roads previously blocked by gang members; at the same time, having adopted the initiative to get rid of gang territorial symbols while promoting urban art.<sup>233</sup> Another noteworthy measure was the recovery and handing over to formal owners of 5,600 of an estimated 7,000 homes that had been taken or dispossessed by members of criminal organizations and their associates.<sup>234</sup> The State also indicated that it is developing the Judicial Facilitators Program in multiple departments, which relies on volunteer community leaders at the service of the administration of justice to guarantee efficient access to justice, strengthening conflict prevention and resolution mechanisms for peaceful coexistence, and promoting a culture of peace among the inhabitants of their communities.<sup>235</sup> In this regard, it detailed the services provided and activities carried out through this program, which has 611 volunteers.<sup>236</sup>
111. As a result of the aforementioned measures, the State asserted that they have had unprecedented results: the disarticulation of organized crime structures; the reestablishment of public security conditions at the national level; the favorable reversal of crime and impunity rates; the recovery of control of territories historically besieged by criminal groups and effective exercise of authority; the recovery of public spaces; greater security in communities; the reestablishment of property rights; the considerable increase in homicide-free municipalities, and the reduction of the homicide rate to historic lows - reaching 7.8 homicides per 100,000 inhabitants in 2022; as well as a

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<sup>233</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 42-44.

<sup>234</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 42-44.

<sup>235</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 42-44.

<sup>236</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 42-44.

significant reduction in the crime of extortion.<sup>237</sup> The State indicated that, between June 2019 and July 2023, El Salvador reached the 400-day mark without homicides, reportedly as a result of the implementation of the different phases of the Territorial Control Plan and the application of state of emergency rules.<sup>238</sup> As a result of this level of security, it indicated that it had been able to extend the hours of operation of public passenger transportation<sup>239</sup>; and that health personnel had been able to enter any area where their services are required.<sup>240</sup> In its comments on the draft of this report, the State indicated that, in 2023, only 154 homicides were recorded: a rate of 2.4 homicides per 100,000 inhabitants. It also indicated that the number of municipalities without homicides increased and that whole days without homicides were recorded, reflecting a significant improvement in public safety.<sup>241</sup>

112. In this context, the health sector also reportedly recorded a reduction in medical care due to violence, which made it possible to direct \$60 million dollars to other care such as medicines, vaccinations, and care for chronic degenerative diseases.<sup>242</sup> Finally, the State highlighted the security strategy as an economic and tourism enhancer, facilitating an environment where the Salvadoran population can develop its activities and boost its finances without worrying about the risk to their

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<sup>237</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 73, 8.

<sup>238</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, p. 7.

<sup>239</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 42-44.

<sup>240</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 42-44.

<sup>241</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador"(Observations of the State of El Salvador on the IACHR report entitled "State of Emergency and Human Rights in El Salvador"), Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, p. 28.

<sup>242</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 42-44.

lives or to their sources of work or investment.<sup>243</sup> In this regard, the State emphasized that the security climate resulting from the implementation of the state of emergency and the PCT had attracted important investments in the energy, construction, and technology sectors.<sup>244</sup> It also noted the improvement in the flow of foreign investment and economic cooperation, as well as economic growth of 2.6%, which was reflected in an increase in employment and income, in exports of goods and services, in increased investment, and in households' maintenance of their levels of consumption.<sup>245</sup> The State also stressed that the security strategy had generated greater foreign demand in the tourism sector, reflecting a 78.1% growth in international visitors in the last decade and positioning the country as a tourist destination on a global scale, which has meant an improvement in the quality of life of the population that lives in tourist areas and/or derives its income from tourism.<sup>246</sup>

113. The Commission appreciates the information provided by the State regarding the different areas in which it has been acting to prevent, control, and respond to gang crime in the country. Although the Commission does not address the scope and impact of these measures at this time, it welcomes the fact that a joint effort has been made to prevent violence and mitigate risks and harm to vulnerable groups. In particular, it welcomes those aimed at recomposing the social and community fabric, through multisectoral measures to address the impacts that these territories have suffered over the years. The IACHR considers that actions of this nature play a fundamental

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<sup>243</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 12-15.

<sup>244</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 12-15.

<sup>245</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 12-15.

<sup>246</sup> In this regard, the State pointed out the recovery of 96% of post-pandemic tourism by the end of 2022, with a tourist income to El Salvador of 2.5 million visitors and record numbers visiting mountain areas, beaches, and other cultural attractions. Also noteworthy was the choice of the country for various sports tournaments. See: State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 15-18.

role in reducing crime in the territories and encourages strengthening them at the national level. It also stresses the importance of their being carried out and supervised by the citizenry, as mentioned below.

114. The Commission has indicated that public policies on citizen security should aim to prevent and control violent or criminal behavior that affects the exercise of rights, so that the members of a society can go about their daily lives with the lowest level of threat to their personal integrity, their civic rights, and the enjoyment of their property.<sup>247</sup> In this sense, it has pointed out that, from a preventive point of view, they should include three dimensions: primary prevention, based on measures aimed at the entire population in the areas of public health, education, employment, and training for the respect of human rights and the construction of democratic citizenship; secondary prevention, through measures aimed at persons or groups in situations of greater vulnerability to violence and crime, in order to reduce risk factors and generate social opportunities; and tertiary prevention, with actions aimed at persons already involved in criminal conduct, who are serving a criminal sentence, or who have recently completed their sentence.<sup>248</sup> Within this perspective, the Commission appreciates the important steps taken in relation to the primary and secondary prevention dimensions. At the same time, it calls on the State to include the tertiary prevention dimension as a pillar of its crime and violence prevention policy.
115. The IACHR observes that, although the State affirms that citizen participation is an essential element in the formulation of public policy, it does not identify the concrete mechanisms through which citizens can participate in the design, implementation, and evaluation of citizen security policy at the national and local levels. On the

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<sup>247</sup> IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II. Doc. 57, December 31, 2009, paras. 18 and 23.

<sup>248</sup> IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II. Doc. 57, December 31, 2009, par. 155.

contrary, according to the monitoring carried out before<sup>249</sup> and during the preparation of this report, during the state of emergency, the difficulties in accessing information related to citizen security in the country, such as statistical data and official records on violence and crime, as well as the measures adopted by the State in its prevention, control, and repression of crime, worsened. In this regard, the Commission reiterates its recommendation and encourages the incorporation of civil society participation bodies and dissemination of citizen security policies.

116. While appreciating the efforts referred to regarding violence prevention, risk mitigation, and rehabilitation of the social and community fabric, which it hopes will continue and be consolidated, the Commission has received worrying information on the implementation of operational measures in the field during the current state of emergency, as well as measures for the investigation and criminal prosecution of persons linked to criminal activity, which it addresses below.

**B. Reforms in criminal legislation, criminal procedure, and juvenile justice in connection with the state of emergency: conventionality and risks to human rights of the application of those reforms.**

117. While the state of emergency (emergency regime) was in effect, the IACHR became aware of a series of legislative modifications in the areas of criminal law, criminal procedure, and juvenile justice that

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<sup>249</sup> IACHR, 2022 Annual Report, Chapter V: Follow-up of recommendations made by the IACHR in its country or thematic reports: El Salvador, April 1, 2023, paras. 15 and 16.



include several aspects of concern related to human rights.<sup>250</sup> The State indicated that it carried out: ten legal reforms in special legislation for the effective prosecution of organized crime and the reinforced protection of victims; nine reforms in criminal legislation to adapt the ranges of penalties for organized crime offenses and the criminalization of the use of expressions and gang insignia for public tranquility and, control and security in communities; and two reforms in criminal procedure legislation with the aim of preventing recidivism of those who are subject to criminal proceedings in organized crime offenses and avoiding the paralysis of criminal proceedings due to the absence of the accused.<sup>251</sup>

118. According to the State, the regulatory modifications shared the same objective as the emergency regime (state of emergency) decree, in that they sought to provide the institutions that exercise the coercive power of the State with the necessary legal mechanisms to effectively stop, counteract, and/or penalize the unlawful conduct linked to the wave of violence perpetrated by the terrorist groups. The State claimed that it was necessary to carry out permanent reforms that would contribute to the fight against terrorist groups, not only in these moments of emergency, but also in the course of time, since over the years these groups have carried out attacks or systematic, planned,

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<sup>250</sup> Legislative Assembly, Legislative Decree (DL) N°.: 337 of March 30, 2022 - The Penal Code is reformed; DL No. 338 of March 30, 2022 - Law Regulating Drug Related Activities; DL No.- 339 of March 30, 2022 - The Code of Criminal Procedure is reformulated; DL N°. 341 of March 30, 2022 - Amend the Special Law against Acts of Terrorism; DL No. 342 of March 30, 2022 - Reform the Juvenile Penal Law; DL No. 343 of March 30, 2022 - Reform the Special Law against the Crime of Extortion; DL No. 344 of March 30, 2022 - Law on Rewarding and Eliminating Impunity for Acts of Terrorism; DL N°. 349 of April 05, 2022 - The Penal Code is reformed; DL No. 350 of April 5, 2022 - Reform the Law for the Prohibition of Maras, Gangs, Groupings, and Organizations of a Criminal Nature; Legislative Assembly, DL No. 507 of September 21, 2022 - Reform the Code of Criminal Procedure; DL No. 547 of October 26, 2022 - Reform the Law against Organized Crime; DL N°. 548 of October 26, 2022 - Reform the Telecommunications Law; Legislative Assembly, DL No. 803 of July 26, 2023 - Special Transitory Provisions to Order the Prosecution of defendants detained under the Exception Regime (state of emergency), decreed as of March twenty-seventh, two thousand and twenty-two.

<sup>251</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, p. 20.

and organized actions against broad sectors of the population.<sup>252</sup> In its observations on the draft of this report, the State indicated that the reforms are aimed at attacking criminal organizations, and that they are part of a set of regulatory instruments that have been modified to combat an abnormally grave level of crime and that are accompanied by actions aimed at protecting victims and reintegrating individuals within the territories.<sup>253</sup>

119. In this regard, on April 20, 2022, the IACHR urged the Salvadoran State to check whether the legislative reforms adopted abided by the ACHR(*conventionality*). In a public hearing held in June 2022, civil society organizations argued to the IACHR that the regulations were contrary to international human rights standards, and criticized their repressive nature.<sup>254</sup> In particular, they highlighted their concern about: i) the increase in the lengths of pretrial detention; ii) the creation of "faceless judges"; and, iii) the lowering of the minimum age of criminal responsibility for children and adolescents in conflict with the law; among other aspects. In this regard, the Commission will now analyze its concerns regarding the set of legislative reforms made to criminal policy, highlighting certain modifications that arguably deviate from Inter-American human rights standards.
120. First, regarding changes in the **length and use of pretrial detention or internment (*plazo y el uso de la detención o internamiento provisional*)**, the reform to the Code of Criminal Procedure of March 30, 2022 established that, for certain crimes, the previously existing maximum term of pretrial detention will no longer be applicable, and its duration will now be subject to the duration of the proceedings until

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<sup>252</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on State of Emergency Decree No. 333, Diplomatic Note MPOEA-OAS-063/2022, April 26, 2022, pp. 7-8.

<sup>253</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador"(Observations of the State of El Salvador on the IACHR report entitled "State of Emergency and Human Rights in El Salvador"), Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, p. 66.

<sup>254</sup> IACHR, Hearing 'Situation of Human Rights and the Rule of Law in El Salvador', 184th period of sessions, June 23, 2022.

a final sentence is reached.<sup>255</sup> Likewise, the reform established that, in proceedings against certain crimes, the use of substitute or alternative measures to pretrial detention will not be allowed, which in practice, according to the organizations, would mean the indefinite application of pretrial detention.<sup>256</sup>

121. Both the IACHR and the Court have stressed on different occasions that, as an exceptional and procedural measure, the use of pretrial detention can only be based on its legitimate purposes, namely: to ensure that the accused will not impede the development of the proceedings or evade justice.<sup>257</sup> In this sense, the general rule should be the freedom of the accused person while his criminal responsibility is being resolved, since he enjoys a legal state of innocence that requires that he receive treatment from the State in accordance with his status as an unconvicted person.
122. In addition, the Commission has stressed that pretrial detention should be maintained for a reasonable period of time, and must not be sustained for a period longer than the State can appropriately justify as necessary; otherwise, deprivation of liberty becomes arbitrary. In the same vein, the Commission has established that a reasonable

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<sup>255</sup> Article 1° of Legislative Decree N°. 339 of March 30, 2022 - The Code of Criminal Procedure is reformed.

<sup>256</sup> Article 5° of Legislative Decree N°. 339 of March 30, 2022; IACHR, Hearing 'Situation of Human Rights and Rule of Law in El Salvador', 184th session, June 23, 2022; Cristosal, [Análisis De Las Recientes Reformas Penales: \(Analysis of Criminal Reforms\) "A return to the inquisitorial model and the lack of protection of rights of the Salvadoran population."](#) September 2022, p.19; Human Rights Observatory of the José Simeón Cañas Centralamerican University, Annual Report 2022: The State of Human Rights in El Salvador, April 2023, pp. 135-136; DPLF, [Undue Process. Human Rights Violations During the Emergency Regime in El Salvador. Pretrial Detention](#), July 2023.

<sup>257</sup> IACHR, Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II.163, Doc. 105, July 3, 2017, par. 231. B. 2; I/A Court H.R., Case of Mendoza et al. v. Costa Rica, Preliminary Objections, Merits, Reparations, and Costs. Judgment of April 25, 2018. Series C No. 354, par. 367.

period cannot be established in abstract terms because it responds to criteria whose impact should be determined in each individual case.<sup>258</sup>

123. In addition, the Court and the IACHR have emphasized that the application of pretrial detention must be justified in each specific case.<sup>259</sup> In that regard, the IACHR has indicated that legislation contemplating the application of this precautionary measure based on the type of crime contradicts the principles of necessity and proportionality enshrined in the American Convention.<sup>260</sup> Accordingly, the IACHR urges the repeal of any provision requiring its mandatory application and preventing other options based on the type of offense.<sup>261</sup> It also calls upon the State of El Salvador to ensure that detention or pretrial detention is subject to periodic review, so that it is not prolonged when the reasons for its adoption no longer exist.<sup>262</sup>

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<sup>258</sup> To this end, elements such as the complexity of the case and the level of diligence of the judicial authorities in conducting the investigations may be considered. Thus, it is incumbent upon the State to present elements to justify extending the duration of the measure. Consequently, once the period considered reasonable has expired, the person subject to pretrial detention must be released -without prejudice to the continuation of the proceeding- since the State has lost the opportunity to continue ensuring the end of the proceeding by depriving the accused of his liberty. In these cases, the State must adopt other less harmful measures that ensure the accused's appearance at trial, other than deprivation of liberty. In that connection, see: IACHR, [Report on the Use of Pretrial Detention in the Americas](#), OEA/Ser.L/V/II., Doc. 46/13, December 30, 2013, paras. 159, 168, 169, 173, 361.

<sup>259</sup> I/A Court H.R., Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 20, 2009. Series C No. 207, par. 144.

<sup>260</sup> IACHR, Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II.163, Doc. 105, July 3, 2017, par. 231.B.3; IACHR, Report on the Use of Pretrial Detention in the Americas, December 30, 2013, par. 137.

<sup>261</sup> In this regard, in its observations on the Draft Report, the State indicated that it is unacceptable to suggest the repeal of provisions that the State has not implemented. State of El Salvador, Observations of the State of El Salvador to the IACHR Report "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OAS-054/2024, April 8, 2024, Annex 1, Methodological Systematization Matrix, line 24, column E.

<sup>262</sup> I/A Court H.R. Case of Mendoza et al. v. Costa Rica. Preliminary Objections, Merits, Reparations, and Costs. Judgment of April 25, 2018. Series C No. 354, par. 362. In this regard, in its observations on the Draft Report, the State indicated that the implementation of the emergency regime does not imply, under any circumstances, omitting periodic review of arrests or pretrial detention, as evidenced by the release of more than 7,000 people, which, it says, demonstrates the State's commitment to due process and justice. State of El Salvador, Observations of the State of El Salvador to the IACHR Report "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OAS-054/2024, April 8, 2024, Annex 1, Methodological Systematization Matrix, line 24, column E.

124. On the other hand, the Commission learned that, as measures for the protection of justice operators exercising criminal jurisdiction, the reform of the Code of Criminal Procedure established that administrative or judicial acts shall not contain the names or general data of judges, magistrates, or secretaries, or any other data that may serve for their identification, and that a number or any other code may be used for such purposes; and that, in the practice of face-to-face or virtual hearings, the necessary forms or means shall be used to make their visual identification impossible.<sup>263</sup> Civil society organizations indicated that these measures create the figure of **faceless judges**, which has been rejected by the Commission and the Court in its jurisprudence.<sup>264</sup>
125. In its observations on the draft of this report, the State indicated that "the regulations in force in El Salvador address the need to confront terrorist groups comprising as many as 170,000 individuals that have inflicted pain on the country."<sup>265</sup> <sup>266</sup> This rule, far from being arbitrary, is implemented in exceptional circumstances and, in fact, there is no documentation of any case in which its application has led to the violation of procedural guarantees." The State also claimed that this reform responded to the need to guarantee the security of judicial authorities, given the gangs' practice of attacking officials of the justice administration system in El Salvador.<sup>267</sup>

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<sup>263</sup> Article 2° of Legislative Decree N°. 339, March 30, 2022.

<sup>264</sup> IACHR, Hearing 'Situation of Human Rights and the Rule of Law in El Salvador', 184th session, June 23, 2022; University Observatory of Human Rights of the Central American University José Simeón Cañas, Annual Report 2022: The State of Human Rights in El Salvador, April 2023, pp. 134-135.

<sup>265</sup> The IACHR notes that there is a discrepancy between the figures presented by the State in its Report of April 8, 2024 and those contained in Annex 1 of this document. The first document indicates that the criminal groups comprise 120,000 people, while the second refers to 170,000 people.

<sup>266</sup> State of El Salvador, Observations of the State of El Salvador to the IACHR Report "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OAS-054/2024, April 8, 2024, Annex 1, Methodological Systematization Matrix, line 25, column E.

<sup>267</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador"(Observations of the State of El Salvador on the IACHR report entitled "State of Emergency and Human Rights in El Salvador"), Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, p. 60.

126. The IACHR recalls that the ISHR bodies have reiterated that trials before "faceless" or identity-restricted judges violate Article 8(1) of the American Convention, since they prevent the accused from knowing the identity of the judges and, therefore, from assessing their suitability and competence, as well as from determining whether grounds for recusal are present, all of which would hinder the exercise of their defense before an independent and impartial court.<sup>268</sup> The Court has also indicated that this extends to other non-judicial persons involved in the criminal process.<sup>269</sup> In this regard, the IACHR calls on the State to repeal the regulatory or other provisions that allow for the confidentiality of the identity of justice operators in the context of their actions in criminal proceedings.
127. With regard to **juvenile justice**, the Commission is concerned about a significant worsening of the measures applicable to children and adolescents in conflict with the law. In this regard, the previous legislation did not provide for the application of imprisonment to a child or adolescent who had committed an act classified as a crime, and "internment" was the most severe deprivation of liberty measure applicable. With the reform of the juvenile criminal law, three relevant modifications were established, namely: i) the "prison sentence" must necessarily be the measure applicable to a series of infractions previously subject to internment; ii) other infractions were added that will be punishable with this prison sanction; and iii) the maximum applicable sentence was increased - previously 15 years of internment and now 20 years of imprisonment.<sup>270</sup> In this regard, it was established

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<sup>268</sup> I/A Court H.R., Case of J. v. Peru, Preliminary Objection, Merits, Reparations and Costs, November 27, 2013. par. 184; Cantoral Benavides Case v. Peru. Merits, supra, paras. 127 and 128; Case of Lori Berenson Mejía v. Peru. Merits, Reparations and Costs, supra, par. 147; IACHR, Second Report on the Situation of Human Rights in Peru, OEA/Ser.L/V/II.84 doc. 39 rev. October 14, 1993, Conclusions and Recommendations, Recommendations, par. 6.

<sup>269</sup> I/A Court H.R. Case of Pollo Rivera et al. v. Peru. Merits, Reparations, and Costs. Judgment of October 21, 2016. Series C No. 319, par. 170.

<sup>270</sup> Articles 1° and 2° of Legislative Decree N°. 342 of March 30, 2022; DPLF, [Undue Process. Human Rights Violations During the Emergency Regime in El Salvador](#). The Substantive Criminal Reforms, July 2023, p.15.

that a child in conflict with the law who has reached 12 years of age may be punished with a prison sentence of up to 10 years, and that an adolescent who has reached 16 years of age may be punished with a prison sentence of up to 20 years.<sup>271</sup> In addition, in the current legislation, the 90-day limit for provisional measures for children and adolescents was abolished for certain crimes, which means that children and adolescents may be subject to provisional detention during the proceeding and until the final sentence; and neither detention or prison measures may be modified, substituted, or revoked in certain circumstances.<sup>272</sup>

**128.** In addition to the above, a legislative amendment of October 2022 established that the Courts against Organized Crime will be competent to hear crimes committed by children and adolescents under the modality of organized crime.<sup>273</sup> According to this reform, cases involving adults and minors as defendants must be heard by two judges, one with jurisdiction for adults and the other for minors, who, in such cases, will hear the cases jointly from the beginning of the proceedings until their completion. Likewise, the norm indicates that the legal guarantees established in legislation and international law must be respected at all times for children and adolescents in the determination of measures, sentences, and penitentiary establishments where the sentences are to be served.<sup>274</sup>

**129.** In this regard, civil society organizations expressed their opposition to the reduction of the minimum age for criminal responsibility of children

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<sup>271</sup> Articles 1° and 2° of Legislative Decree N°. 342, March 30, 2022.

<sup>272</sup> Article 3° of Legislative Decree N°. 342, March 30, 2022.

<sup>273</sup> Article 3° of Legislative Decree N°. 547 of October 26, 2022; Cristosal, [Análisis de las recientes reformas penales un regreso al modelo inquisitivo y la desprotección de derechos de la población salvadoreña](#), (Analysis of recent criminal reforms, return to the inquisitorial model, and failure to respect the rights of the Salvadorian population.) September 2022, pp.12-14.

<sup>274</sup> Article 3° of Legislative Decree N°. 547, October 26, 2022.



and adolescents in conflict with the law,<sup>275</sup> as well as the competence granted to the Courts against Organized Crime to hear crimes committed by this population, because it contravenes the special legal regime for this age group. In this regard, they emphasized that constitutional norms require the structure of a proceeding organized specifically for children and adolescents, with greater guarantees than those used for trying adults.<sup>276</sup>

130. For its part, the State indicated to the IACHR that "police and judicial statistics from criminal investigations show that many minors have assumed an active role in criminal organizations and terrorist structures, participating in confrontations against rival groups and attacking the authorities in charge of public security, as well as carrying out other criminal activities that are part of their 'modus operandi'."<sup>277</sup> For this reason, imprisonment was incorporated as a legal consequence for the commission of crimes related to organized crime. The State also indicated that the reforms to the Juvenile Criminal Law at no time repealed the special regime applicable to minors, and that only those involved in crimes related to organized crime will be treated under a special jurisdiction. It also pointed out that the reforms are in accordance with the Convention on the Rights of the Child, noting that the regulatory reform states that the protection of the rights and procedural guarantees of minors, as provided for in

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<sup>275</sup> According to the information received, under the previous legislation, detention measures were only applicable to adolescents over 16 years of age. See: IACHR, Hearing 'Situation of Human Rights and the Rule of Law in El Salvador', 184th session, June 23, 2022; DPLF, [Undue Process. Human Rights Violations During the Emergency Regime in El Salvador](#). Substantive Penal Reforms, July 2023

<sup>276</sup> Cristosal, [Analysis of Recent Criminal Reforms: "A return to the inquisitorial model and the lack of protection of the rights of the Salvadoran population"](#), September 2022, pp.12-14.

<sup>277</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on the occasion of the Hearing "Detenciones Arbitrarias y Situación de las personas privadas de libertad en el Estado de Excepción en El Salvador," (Arbitrary detentions and the situation of persons deprived of liberty during the state of emergency in El Salvador) Diplomatic Note MPOEA-OAS-186/2022, October 25, 2022, on file with the IACHR.

international legislation and treaties, must be fully ensured.<sup>278</sup> In its observations on the draft of this report, the State indicated that imprisonment for minors is not prohibited in the Convention or in Salvadoran domestic law, and that the limitations and exceptional application that should be applied to it have been complied with in the aforementioned reforms. This is due to the fact that, exceptionally, the imprisonment measures referred to are aimed at punishing those who commit these crimes in the form of organized crime. The State asserts that it is no generalization of prison sentences for minors; on the contrary, imprisonment is only applied in specific cases.<sup>279</sup>

131. Based on the foregoing, the IACHR recalls that one of the principles that governs the juvenile criminal system is the principle of specialization, according to which the adjudication of criminal law offenses committed by children and adolescents is the exclusive competence of the jurisdictional bodies specializing in juvenile criminal matters.<sup>280</sup> Likewise, regarding the minimum age at which children can be held accountable under the juvenile justice system, the Commission recommended that it be raised to an age closer to 18 years of age and, once raised, to ensure, in accordance with the principle of non-regression, that it is not lowered.<sup>281</sup> On the last point, the IACHR recalls that the principle of non-regression in this area implies that States must refrain from adopting legislative or administrative measures that entail a limitation or regression in the

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<sup>278</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on the occasion of the Hearing "Detenciones Arbitrarias y Situación de las personas privadas de libertad en el Estado de Excepción en El Salvador," (Arbitrary detentions and the situation of persons deprived of liberty during the state of emergency in El Salvador) Diplomatic Note MPOEA-OAS-186/2022, October 25, 2022, on file with the IACHR.

<sup>279</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador"(Observations of the State of El Salvador on the IACHR report entitled "State of Emergency and Human Rights in El Salvador"), Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, p. 58.

<sup>280</sup>I/A Court H.R., Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paras. 78 and 79.

<sup>281</sup> In that regard, see the IACHR, [Juvenile Justice and Human Rights in the Americas](#) OEA/Ser.L/V/II, Doc. 78, Adopted on July 13, 2011, par. 614, Specific recommendations, paras 12). a and 13. e), g).

enjoyment of the rights of children and adolescents subject to the juvenile justice system.<sup>282</sup> Accordingly, States must prevent the entry into force of regulations that seek to suspend certain guarantees in proceedings against children and adolescents accused of breaking criminal laws, or that seek to lower the minimum age for breaking criminal laws or for being subject to ordinary justice, among other regressive measures.<sup>283</sup>

132. In addition, the Commission reiterates that juvenile justice systems must be respectful of the specific legal principles applicable to children and adolescents, as well as the procedural guarantees and judicial protection applicable in all criminal proceedings, including the principle of the presumption of innocence. In the same vein, the use of pretrial detention in this population should be limited to cases in which it strictly serves a legitimate procedural purpose and is duly grounded in the specific case. In addition, the legislation should indicate the maximum terms for the duration of pretrial detention of children and adolescents, which should be reasonably short, as well as establish a mechanism for periodic review of this measure.<sup>284</sup> Finally, the Commission reiterates that the States must guarantee that custodial sentences for children and adolescents be applied only as an exceptional measure of last resort; as well as establish mechanisms for the periodic review of custodial measures that allow this population to regain their freedom in cases where the situation does not warrant their continued imprisonment.<sup>285</sup> In view of the foregoing, the IACHR calls upon the State of El Salvador to adopt all legislative, administrative, and other measures aimed at bringing its juvenile

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<sup>282</sup> IACHR, [Juvenile Justice and Human Rights in the Americas](#), OEA/Ser.L/V/II, Doc. 78, Adopted on July 13, 2011, par. 614, Specific recommendations, paras 12). a and 13. e), g);

<sup>283</sup> In that regard, see the IACHR, [Juvenile Justice and Human Rights in the Americas](#), OEA/Ser.L/V/II, Doc. 78, Adopted on July 13, 2011, par. 614, July 13, 2011, Specific recommendations, par. 13 g)

<sup>284</sup> On this, see: IACHR, [Juvenile Justice and Human Rights in the Americas](#), OEA/Ser.L/V/II, Doc. 78, Adopted on July 13, 2011, par. 614, July 13, 2011, Specific recommendations, paras 13, 14. i), and 17. i), j), k), m).

<sup>285</sup> IACHR, [Juvenile Justice and Human Rights in the Americas](#), OEA/Ser.L/V/II, Doc. 78, Adopted on July 13, 2011, par. 614, Specific recommendations, paras 18. a) and g).

criminal law into line with international obligations and the inter-American standards indicated.

133. The Commission has heard other concerns raised by civil society regarding setbacks in the **accusatory model and procedural guarantees** established in the legislation. In particular, they point out the following: (i) the modification in the Telecommunications Law would authorize the Prosecutor's Office to access personal data without the need for authorization or judicial control; (ii) the elimination of the explicit mention, in the Law against Organized Crime, on the control of legality of the evidentiary elements and the prohibition of obtaining illicit evidence; (iii) the elimination of the effects that the absence of the person deprived of liberty previously had on the statute of limitations and the continuity of the criminal process, now allowing, inter alia, trials to be held and the process to be concluded with the accused person absent; (iv) the granting of documentary evidence status to the mere denunciation and the acceptance of the police record of the interview as testimonial evidence.<sup>286</sup> In addition, the powers of the Public Prosecutor's Office were broadened to group together individuals who are allegedly members of the same criminal organization, without considering criteria such as the nature or typical characteristics of each individual's crime.<sup>287</sup> Regarding this last reform, the Due Process Foundation points out that a prosecutor's request would be sufficient for the case to be removed from one judge to another, based on alleged membership of a certain criminal organization,

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<sup>286</sup> IACHR, Hearing 'Situation of Human Rights and the Rule of Law in El Salvador', 184th session, June 23, 2022; Cristosal, [Análisis De Las Recientes Reformas Penales](#): (Analysis of the Recent Criminal Reforms) "[A return to the inquisitorial model and the lack of protection of the rights of the Salvadoran population](#)", September 2022, pp. 24-25, 5-6, 9-10, 12-14; Legislative Decree No. 547, October 26, 2022.

<sup>287</sup> Legislative Assembly, Decree No. 803 - Special transitory provisions to regulate the trial of accused detained under the state of emergency, decreed as of March 27, 2022, August 25, 2023; El Faro, Juicios colectivos en El Salvador traspasan una barrera innegociable para los derechos humanos, (Mass trials in El Salvador contravene limits that are non-negotiable when it comes to human rights.) August 11, 2023; Washington Office of Latin America, Juicios Colectivos en el Salvador: un ataque alarmante a los derechos humanos, (Mass trials in El Salvador: an alarming assault on human rights) August 10, 2023.

and could retroactively affect ongoing proceedings.<sup>288</sup> The Commission will refer to the backlog of cases later in the report when addressing the changes made to the structure of the criminal courts during the state of emergency. The IACHR also calls on the State to ensure that legislative changes, especially those of a criminal and criminal procedure nature, are aimed at progressively expanding the protection of human rights, which includes not rolling back the fundamental principles and guarantees of the accusatory criminal model.

134. In its observations on the draft of this report, the State referred to a ruling of the Constitutional Chamber, according to which the absence of the accused at trial would not violate the guarantee of defense contained in Article 11 of the Constitution, if his or her defense attorney is present.<sup>289</sup> It also indicated that notwithstanding the amendment to the Telecommunications Law, the Attorney General's Office has maintained the request for prior judicial authorization for the verification of personal data.<sup>290</sup>
135. The IACHR notes that there were also significant changes in the **criminalization** of different conducts and in the applicable **penalties**. Civil society organizations argued that some of the reformed norms

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<sup>288</sup> DPLF, [Undue Process. Human Rights Violations During the Emergency Regime in El Salvador. Faceless judges and other violations of the guarantee of a competent, independent and impartial judge](#), 2023

<sup>289</sup> Supreme Court of Justice, Constitutional Chamber, Habeas corpus Judgment 493-2016, January 27, 2017, Recital VI. 1; State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador" (Observations of the State of El Salvador to the IACHR Report "State of Emergency and Human Rights in El Salvador."), Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, p. 57.

<sup>290</sup> State of El Salvador, Observations by the State of El Salvador on the IACHR Report entitled "State of Emergency and Human Rights in El Salvador", Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, p. 59.

are vague and subjective or increase penalties disproportionately.<sup>291</sup> In this regard, they stated that the Constitutional Chamber has indicated that penalties cannot be of such a long duration as to render illusory any prospect of reintegration of the person into his or her social environment.<sup>292</sup> In addition, they indicated that the modification of the object of Article 1 of the Law against Organized Crime would be a step backwards insofar as it alters the investigation of crimes related to organized crime to the investigation of criminal organizations and their members, implying a return to the offender-based criminal law.<sup>293</sup>

136. In its observations on the draft of the present report, the State referred to the amendment of Article 345 of the Criminal Code, which targets persons who, knowing the negative consequences of collaborating with criminal groups, carry out actions that foster the actions of such terrorist groups.<sup>294</sup> In this regard, it indicated that all those persons who promote, help, facilitate, or support the formation or permanence of persons in terrorist groups, carry out such actions. It affirmed that the criminal definition is neither ambiguous nor contradictory, since its scope is properly restricted, so that the assertion that the criminal

<sup>291</sup> Art. 2 of Legislative Decree No.: 337 of March 30, 2022 - Amend the Penal Code; Art. 1 of Legislative Decree No. 338 of March 30, 2022 - Amend the Law Regulating Drug-Related Activities. As examples, they mentioned: the modification to the Penal Code that establishes penalties of 20 to 30 years in prison for persons who "receive direct or indirect benefit from relations of any nature with such organizations" - gangs or any other criminal organization; also the substantial increase in the penalties related to the Law Regulating Drug Activities - which previously established a prison sentence of 15 years as the highest penalty applicable to the crimes regulated therein and then, with the reform, established that the penalties will be from 20 to 30 years when committed by terrorist members, maras, gangs, or any other criminal group. On this, see: IACHR, Hearing 'Situation of Human Rights and the Rule of Law in El Salvador', 184th session, June 23, 2022; DPLF, [Undue Process. Human Rights Violations During the Emergency Regime in El Salvador. The](#) substantive penal reforms, July 2023.

<sup>292</sup> Court of Justice, Constitutional Chamber, Unconstitutionality Judgment 5- 2001, December 23, 2010.

<sup>293</sup> Cristosal, [Analysis of Recent Criminal Reforms: "A return to the inquisitorial model and the lack of protection of the rights of the Salvadoran population"](#), September 2022, pp. 11-12.

<sup>294</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador"(Observations of the State of El Salvador on the IACHR report entitled "State of Emergency and Human Rights in El Salvador"), Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, pp. 58-59.

definition causes insecurity or arbitrariness is unfounded.<sup>295</sup> The Commission has previously warned that countries in northern Central America have adopted "mano dura policies" that include linking criminal gangs to terrorism, such as the regulations of the Special Law Against Acts of Terrorism (LECAT). Regarding this law, the IACHR notes that there have been a number of questions about its constitutionality.<sup>296</sup> In 2015, the Supreme Court of Justice ratified several reforms to the Special Law against Acts of Terrorism, which declared some of the gangs and maras as terrorist groups.<sup>297</sup> The Constitutional Chamber of the Supreme Court also ratified that the LECAT contains a criminological justification for the punishment of just active membership in a terrorist organization.<sup>298</sup> In this regard, on different occasions, including in its report on the human rights situation in El Salvador, the Inter-American Commission has expressed its concerns about the application of anti-terrorism laws in this context.<sup>299</sup>

- 137.** The IACHR has held that the principle of legality in matters of anti-terrorist laws is one of the fundamental guarantees of due process and a fair trial, which must be observed with particular attention by

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<sup>295</sup> The State affirmed that, in essence, the amendment requires an intention to deliberately promote, aid, or support ongoing membership of those groups, whereby the means used to that end may be any activity that favors the emergence of new criminal groups or encourages their members to stay in those groups, because that entails strengthening such criminal groups through actions that promote, aid, or support the forming or permanence of such groups. Also, the criminal offense is not limited to the above-mentioned willful intention. Objectively, it also requires a profit motive, which is why the legislator made commission of the criminal offense dependent not only on executing the willful act of aid or promotion, but also on there being a causal link with a clearly defined outcome, consisting of a direct or indirect benefit, always in connection with support for organized crime: a condition that precludes simple collaboration. State of El Salvador, Observations by the State of El Salvador on the IACHR Report entitled "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, pp. 58-59.

<sup>296</sup> Supreme Court of Justice, Constitutional Chamber, 22-20007/42-2007/89-2007/96-2007, August 24, 2015.

<sup>297</sup> Supreme Court of Justice, Constitutional Chamber, 22-20007/42-2007/89-2007/96-2007, August 24, 2015.

<sup>298</sup> Supreme Court of Justice, Constitutional Chamber, 244-2015, September 2, 2015; State of El Salvador, Observations of the State of El Salvador to the Report of the IACHR "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, p. 33.

<sup>299</sup> IACHR, Situation of Human Rights in El Salvador, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, paras. 39–42.



States in the course of anti-terrorist strategies. It indicated that the principle of criminal legality is "(of) particular pertinence in the context of terrorism (...). Ambiguities in laws proscribing terrorism (...) undermine the propriety of criminal processes that enforce those laws."<sup>300</sup> With respect to the classification of terrorist crimes, the IACHR has also warned that the principle of legality is violated when national legislation uses criminal definitions that are vague, abstract, or imprecise, as opposed to modern criminal systems modern criminal systems which resort to rigid terms that do not allow for greater interpretation; especially in cases in which the criminal definitions of terrorism can be confused with each other or with other criminal definitions that allow for broad interpretation, hindering the necessary legal certainty that the State must guarantee in this area.<sup>301</sup>

**138.** In this regard, in its report, the IACHR indicated that the Salvadoran State must take administrative, legislative, and judicial measures to ensure that the legislation satisfies the principle of legality both in its content and in its application.<sup>302</sup> It also urged effective compliance with all due process guarantees and, in particular, guaranteeing the presumption of innocence, as well as the precept that no one should be convicted of a crime except on the basis of individual criminal responsibility in the application of the law in question.<sup>303</sup>

**139.** On the other hand, the IACHR and its Rapporteurship on Freedom of Expression (RELE) have also expressed their views on the inclusion of **criminal offenses that restrict freedom of expression**, which will be addressed in Chapter 4 of this report.

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<sup>300</sup> IACHR, Situation of Human Rights in El Salvador, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, paras. 39- 42, IACHR, Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116 , Doc. 5 rev. 1 corr. October 22, 2022.

<sup>301</sup> IACHR, Situation of Human Rights in El Salvador, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, paras. 39- 42, IACHR, Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116 , Doc. 5 rev. 1 corr. October 22, 2022.

<sup>302</sup> IACHR, Situation of Human Rights in El Salvador, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, paras. 39–42.

<sup>303</sup> IACHR, Situation of Human Rights in El Salvador, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, paras. 39–42.

140. The Commission notes that the set of legislative modifications made to criminal policy prioritizes a higher level of incarceration and a strongly punitive model as a solution to citizen security challenges. The IACHR notes that the punishable conducts and the applicable penalties have been increased, without the legal consequences necessarily being proportionate to the harm inflicted on legally protected assets, and that this is compounded by the possibility of greater application of pretrial detention and restrictions of the guarantees available to the persons charged. In this regard, the Commission has questioned the adoption of reforms of this nature in the region, noting that they are generally implemented without scientific reflection and a serious and inclusive debate on their relevance, feasibility, and consequences.<sup>304</sup> In addition, it has indicated that they reverse the progress achieved in strengthening the due process system and rationalizing the use of pretrial detention, and it has highlighted the severe impact of this approach generates on prison systems.<sup>305 306</sup>
141. In its country report on Human Rights in El Salvador, the Commission urged the State to adopt measures aimed at making rational use of imprisonment, such as the use of the pretrial detention regime in accordance with the relevant standards, and the promotion, regulation, and application of alternative measures to the deprivation of liberty.<sup>307</sup>

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<sup>304</sup> IACHR, Report on the use of pretrial detention in the Americas OEA/Ser.L/V/II. Doc. 46/13, December 30, 2013, paras. 79 and 80.

<sup>305</sup> IACHR, Report on the use of pretrial detention in the Americas OEA/Ser.L/V/II. Doc. 46/13, December 30, 2013, paras. 79 and 80.

<sup>306</sup> In its observations on the Draft Report, the State indicated that amendments should not be analyzed in isolation, without taking into consideration the whole set of normative instruments that have been modified, in order to reach the conclusion that they are "punitive" or imply a step backward, which the Draft Report does; because this ignores both the objective of combating a level of crime that is far more serious than common crime and the other policies implemented by the State to deal with the problem comprehensively. See: State of El Salvador, Observations of the State of El Salvador to the IACHR Report "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, pp. 64-65.

<sup>307</sup> IACHR, Situation of Human Rights in El Salvador, OEA/Ser.L/V/II Doc.278/21, October 14, 2021, par. 137.

Along these lines, the Commission reiterates its recommendation that the State establish a criminal policy aimed at using deprivation of liberty as a measure of last resort, by prioritizing the application of alternative measures,<sup>308</sup> which should be respectful of the gender perspective and the intersectional and intercultural approaches.<sup>309</sup> In conclusion, the IACHR emphasizes that strategies focused exclusively on the control and repression of violence and crime are insufficient to adequately address the structural and underlying causes that motivate violence and that usually disproportionately affect individuals and groups of people who are in a situation of vulnerability in the exercise of their rights, such as children, adolescents, and youth.<sup>310</sup> In this regard, the Commission calls on the State of El Salvador to focus more on policies for the prevention and reduction of violence aimed at responding to its causes with effective measures, from a comprehensive perspective that prioritizes the human rights approach and takes into consideration the social reintegration of convicted persons, as well as adequate care and reparation for victims.<sup>311</sup>

### **C. Complaints on human rights violations related to the criminal policy implemented during the state of emergency**

142. Since the installation of the emergency regime, the IACHR has received extensive complaints about human rights violations related to the measures adopted by the State in this context.<sup>312</sup> A number of civil

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<sup>308</sup> IACHR, Situation of Human Rights in El Salvador, OEA/Ser.L/V/II Doc.278/21, October 14, 2021, par. 342. Recommendation 12.

<sup>309</sup> IACHR, [Report on Women Deprived of Liberty in the Americas](#), OEA/Ser.L/V/II., Doc. 91/23, March 8, 2023, par. 316.

<sup>310</sup> IACHR, Violence, Children, and Organized Crime, OEA/Ser.L/V/II.Doc. 40/15, November 11, 2015, paras. 114 and 118.

<sup>311</sup> IACHR, Violence, Children, and Organized Crime, OEA/Ser.L/V/II.Doc. 40/15, November 11, 2015, par. 118.

<sup>312</sup> IACHR, Hearing on 'Situation of Human Rights and the Rule of Law in El Salvador', 184th period of sessions, June 23, 2022; IACHR, Hearing on 'Arbitrary Detentions and Situation of Persons Deprived of Liberty during the State of Emergency in El Salvador', 185th period of sessions, October 25, 2022; IACHR, Hearing on 'Human Rights and States of Emergency in El Salvador', 187th period of sessions, July 14, 2023.

society organizations filed complaints and followed up on cases of possible violations, documenting at least 4,723 cases involving 5,082 people during the first year of the regime, mostly in urban areas, especially in the department of San Salvador.<sup>313</sup> Likewise, organizations pointed out that the military sieges carried out in different areas of the country imposed de facto restrictions on circulation, entry into, and exit from the territories under military control that were not contemplated by the emergency decrees and other national regulations.<sup>314</sup>

143. Regarding the facts reported, in the "Informe anual sobre violaciones a derechos humanos durante el estado de excepción en El Salvador" (Annual report on human rights violations during the state of emergency in El Salvador), it is recorded that 4,825 facts (95%) referred to arbitrary detentions; 1,233 to lack of due process; 1,046 to breaking and entering; 925 to threats; 402 to cruel, inhuman, and degrading treatment; 213 to ill-treatment; 211 to excessive use of force; 193 to forced disappearances; 147 to injuries; 111 to deaths of persons deprived of liberty; 22 to torture; 13 to sexual harassment; 6 to homicides; and 3 to rapes.<sup>315</sup> They also received reports of other types of conduct, including harassment, intimidation, robbery, and theft.<sup>316</sup> Additionally, they documented other consequences derived from this

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<sup>313</sup> Azul Originario, Centro de Estudios de la Diversidad Sexual y Genérica, Cristosal, Fundación de Estudios para la Aplicación del Derecho, Instituto de Derechos Humanos de la UCA, Red Salvadoreña de Defensoras de Derechos Humanos, Servicio Social Pasionista (hereinafter Azul Originario et al.), [Informe anual sobre violaciones a derechos humanos durante el estado de excepción en El Salvador \(Annual Report on Human Rights Violations During the State of Emergency in El Salvador\)](#), March 2023, pp. 37-39.

<sup>314</sup> Azul Originario et al., [Informe anual sobre violaciones a derechos humanos durante el estado de excepción en El Salvador](#), March 2023, pp. 38-39.

<sup>315</sup> Azul Originario et al., [Informe anual sobre violaciones a derechos humanos durante el estado de excepción en El Salvador](#), March 2023, p. 43.

<sup>316</sup> Azul Originario et al., [Informe anual sobre violaciones a derechos humanos durante el estado de excepción en El Salvador](#), March 2023, p. 43.

context.<sup>317</sup> Likewise, the organizations also stressed that the people and their families affected by the measures implemented have endured various kinds of hardship.<sup>318</sup>

144. Regarding the profile of the victims referred to in this group of complaints, this report indicates that 4,743 were adults, 87 children and adolescents, and 252 were not described as pertaining to any particular age group; 4,246 persons were cisgender men, 743 cisgender women, 35 were trans men, 29 were trans women, 5 were non-binary/queer persons, and information on gender identity was not available for 25 persons.<sup>319</sup> In addition, in the group of 3,275 complaints of violations received exclusively by the Cristosal organization, it was recorded that 58 of the persons detained are persons with disabilities; and that 506 cases correspond to violations of the rights of family members of detainees.<sup>320</sup>
145. In March 2023, the IACHR took virtual testimonies from 29 people in order to obtain direct and in-depth information on the effects of the measures adopted during the emergency regime on human rights.<sup>321</sup> In this process, testimonies were taken from the following: persons detained and subsequently released during the regime; relatives of persons deprived of their liberty, including those who died in State custody; and legal representatives of the detained persons and their relatives. The Commission received information mainly on the arrests

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<sup>317</sup> Azul Originario et al., [Informe anual sobre violaciones a derechos humanos durante el estado de excepción en El Salvador](#), March 2023, pp. 46-47; Cristosal, [Personas en situación de desplazamiento forzado interno por el régimen de excepción \(Persons suffering forced internal displacement as a result of the state of emergency.\)](#), June 2022.

<sup>318</sup> Azul Originario et al., [Informe anual sobre violaciones a derechos humanos durante el estado de excepción en El Salvador](#), March 2023, p. 48.

<sup>319</sup> Azul Originario et al., [Informe anual sobre violaciones a derechos humanos durante el estado de excepción en El Salvador](#), March 2023, pp. 40, 41.

<sup>320</sup> Cristosal, [One year under the emergency regime: a permanent measure of repression and human rights violations. Situation Report for March 27 to 2022 March 27, 2023](#), May 12, 2023, pp. 21-22.

<sup>321</sup> The Commission had the collaboration of civil society organizations in the process of identifying and counseling persons affected in this context based on the data contained in their complaints

made, the judicial oversight of the arrests and access to justice, the conditions of detention, and the personal impacts generated by the events reported. The IACHR was struck by the fear expressed by those providing information that there would be retaliation in criminal proceedings against them or their family members, which reportedly dissuaded other people from giving their testimonies.

### **Illegal and arbitrary detentions**

146. The State indicated to the IACHR that, as of June 27, 2023, there were 65,940 persons detained during the 15 months of the emergency regime and placed at the order of the Attorney General's Office, of whom 63,114 were adults and 2,826 were minors.<sup>322</sup> By the beginning of November 2023, this figure had risen to 73,000 people according to public information<sup>323</sup>, of whom at least 60,452 people were reportedly deprived of liberty in the first year of the regime alone.<sup>324</sup> By way of comparison, the University Observatory of Human Rights of the José Simeón Cañas University (OUDH) recorded, based on data from the National Civil Police, that in 2019, a total of 41,112 people were detained in the country including cases of persons in the act of committing crimes (*flagrante delicto*), or cases involving execution of orders issued by the Prosecutor's Office or a court; while in 2020, 30,956 detentions were counted; and 26,777 up to October 31, 2021.<sup>325</sup> These data show that the annual

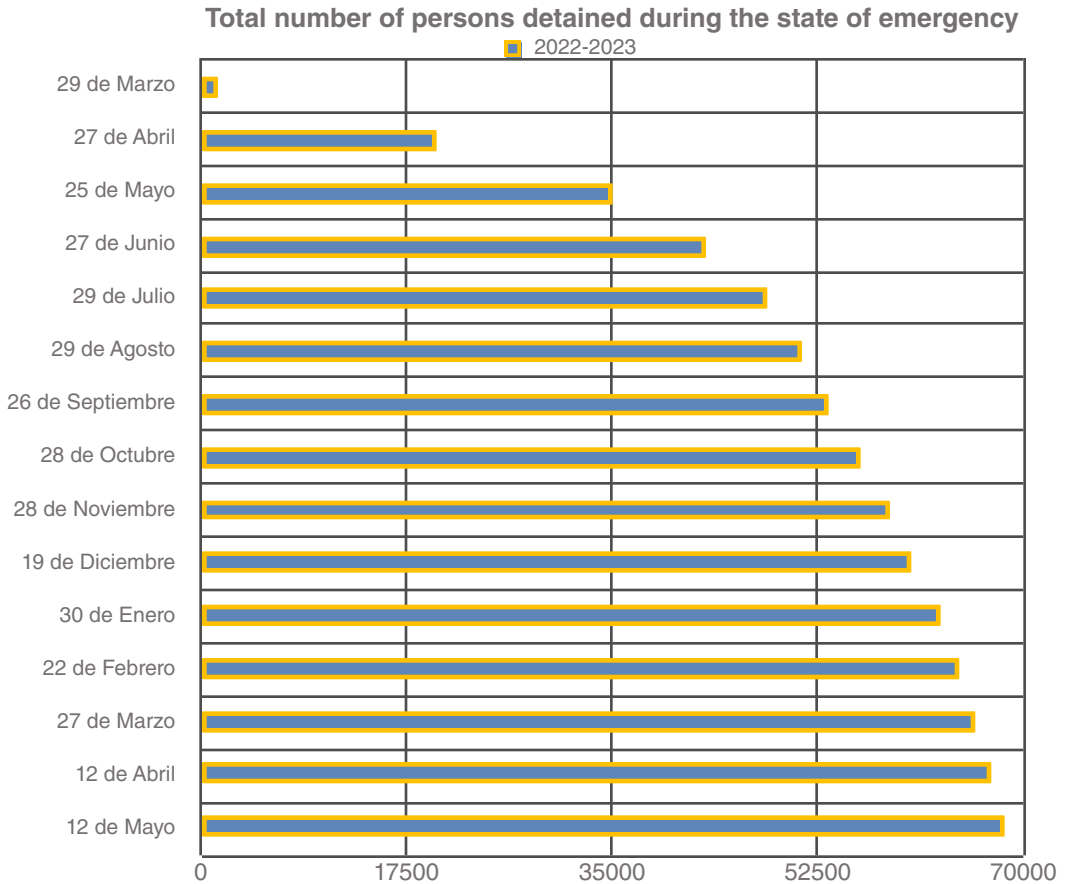
<sup>322</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, p. 52.

<sup>323</sup> Diario Las Américas, [El Salvador repeals law on penalties for disseminating gang messages](#), November 2, 2023; NTN24, ["En El Salvador hay más de 73.000 detenidos que no se sabe si son inocentes": defensora en Derechos Humanos \("In El Salvador there are more than 73,000 detainees whose guilt or innocence is unknown": Human Rights Defender.\)](#), November 6, 2023.

<sup>324</sup> Ministry of Security [@SeguridadSV]. (December 19, 2022). Estamos haciendo justicia en nombre de miles de salvadoreños. (We are doing justice on behalf of thousands of Salvadorans.) #Seguimos 24/7 en esta #GuerraContraPandillas. (#WeContinue 24/7 in this #WarAgainstGangs.) [\[Tweet\]](#).

<sup>325</sup> OUDH, [Report: An X-Ray on the Right to Personal Liberty in El Salvador](#), 2021, pp. 46-48; OUDH, [Annual Report 2021: The State of Human Rights in El Salvador](#) 2021, p. 59; OUDH, [Annual Report 2020: The State of Human Rights in El Salvador](#) 2020, p. 75; OUDH, [Annual Report 2019: State of Human Rights in El Salvador](#), 2019, pp. 56-57.

number of arrests made had been declining in the years prior to the state of emergency, but doubled during the first year of its implementation. The Commission also notes that the highest number of monthly detentions occurred in the first weeks of the state of emergency, as shown in the graph below:



Source: Prepared by the authors based on data from the Ministry of Justice and Public Security.<sup>326</sup>

<sup>326</sup> Graph prepared from data obtained from Ministry of Security [@SeguridadSV] Tweets: ([2022, March 29](#)), ([2022, April 27](#)), ([2022, May 25](#)), ([2022, June 29](#)), ([2022, July 29](#)), ([2022, August 29](#)), ([2022, September 26](#)), ([2022, October 28](#)), ([2022, November 28](#)), ([2022, December 19](#)), ([2023, January 30](#)), ([2023, February 22](#)), ([2023, March 27](#)), ([2023, April 12](#)), ([2023, May 12](#)). The number of persons detained during the state of emergency ceased to be disseminated on the Ministry's social networks as of May 2023.



147. From the information received from civil society organizations, as well as from the State, the IACHR observes worrisome situations that reportedly occurred during operations conducted by the security forces: allegations that were reiterated in the testimonies collected. In particular, they refer to a pattern of alleged illegalities and arbitrariness in detentions carried out in this context, including the absence of flagrante delicto circumstances or of an administrative or judicial order prompting the deprivation of liberty; and the use of discriminatory criteria to justify detentions based on the personal or socioeconomic characteristics of the person, or for having a criminal record. Witnesses also drew the IACHR's attention to an alleged failure to inform the detainee of the reason for his or her detention. The Commission also learned of other allegations of violations of rights in the context of the arrests carried out, including episodes of abuse in the use of force in these proceedings.

148. It is of concern that, in this context, the alleged illegal and arbitrary detention of a large number of people may have been justified, ordered, and tolerated as part of the security policy pursued in the context of the emergency decreed by the State. A number of sources indicate that there is pressure or incentives from political or institutional authorities within the Security Forces to detain a certain number of people per day. In this scenario, the police workers' movement pointed out the existence of a quota of 1,000 arrests per day.<sup>327</sup> In this regard, the Commission notes that there was a high number of arrests in the first months of the state of emergency, with a total of 20,000 people arrested in the first month alone.<sup>328</sup> There were

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<sup>327</sup> La Prensa Grafica, [Policemen denounce irregularities in arrest requests](#), April 12, 2022; Human Rights Watch, Cristosal, ["We can detain whoever we want" Widespread human rights violations during the "regime of exception" in El Salvador](#), December 2022, pp. 63, 64; La Prensa Gráfica, [Police Established "Detainee Quotas" in El Salvador, According to Movement Leader](#), July 27, 2023; La Prensa Gráfica, [Walter died after being beaten by police when they captured him: "They ended up killing him. Our problem is that it could happen to any of us."](#), April 4, 2022; La Prensa Gráfica, [Captures under the State of Emergency total 22,754](#), May 3, 2022.

<sup>328</sup> Ministry of Security [@SeguridadSV]. (April 22, 2022). Historical results. Our elements of the @PNCSV and @FUERZARMADASV will continue to work in an articulated manner in this #GuerraContraPandillas (WarAgainstGangs) to get out of [Tweet].

also reports of alleged retaliation against security agents who failed to comply with orders from their superiors because they considered them illegal or arbitrary.<sup>329</sup> Likewise, the organizations also recorded that, in some cases, the reason given by the security agents for the detention was allegedly "following orders from superiors" or "orders from the president."<sup>330</sup> In the same sense, different people heard by the IACHR reported having been present during conversations of security agents about the existence of quotas or incentives related to detentions. By way of example, some testimonies indicated:

He was on his way to work [...] They passed a police post where they stopped the vehicle and told him he was being detained. His daughter went to the delegation. They told him "we already know this fellow and we know that he is clean and that he is not involved in anything". His daughter asked: "so why are you taking him away?" and they replied that it was routine. She was told not to worry, he would be out in 15 days. [...] "I believe that their only objective was to make a number of arrests."<sup>331</sup>

I was transferred to the cells in Usulután. The agents had been saying that for each person they detained in the state of emergency they were given an extra salary. With my capture, they completed the number of captures they had to make.<sup>332</sup>

When they were taking me to the police station, the policemen were saying: "with this one we meet the quota and we're off on leave."<sup>333</sup>

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<sup>329</sup> La Prensa Grafica, [Three police officers accused of breach of duty arrested](#), May 3, 2022; El Faro, [The Regime's hidden files: hundreds of arrests for "nervousness" and "police record"](#), August 7, 2022.

<sup>330</sup> Human Rights Watch, Cristosal, ["We Can Arrest Anyone We Want" Widespread Human Rights Violations During the "State of Emergency" in El Salvador](#), December 2022, p. 66.

<sup>331</sup> Testimony No. 28 of March 23, 2023. Family member of a detained person.

<sup>332</sup> Testimony No. 16 of March 17, 2023. Person released under alternative measures (female).

<sup>333</sup> Testimony No. 23 of March 22, 2023. Person Released under substitute measures (female).

149. For their part, civil society organizations indicated that they have documented massive unlawful arrests and documented evidence of at least 1,100 cases, almost all without search or arrest warrants.<sup>334</sup> The IACHR was also informed that numerous arrests were reportedly based on anonymous complaints and social media, or based on the person having a "suspicious" or "nervous" appearance, with no relation to previous investigations into the crimes.<sup>335</sup> In this regard, Cristosal pointed out that, among the cases received, 209 people were reportedly arrested as a result of anonymous calls. A press investigation indicated a lack of transparency regarding the methodology and information used by the police to build the database of suspected gang members and collaborators, whose records have been used to support multiple arrests during the regime.<sup>336</sup> Thus, testimonies received by the IACHR point out:

In the evening, at about 7 o'clock, two national police officers suddenly came up to my room. I asked how I could help them. They approached me and asked for my name and my I.D. (DUI). They asked me to accompany them to the delegation because a person was saying that I was doing things. According to them, they would only ask me a few questions at the delegation. [At the police station] They told me they had received an anonymous call saying that I was collaborating with the gangs. I told him that I could not be arrested based on that evidence.<sup>337</sup>

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<sup>334</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 27, 2022 to March 27, 2023](#), May 12, 2023, pp. 22, 23; Human Rights Watch, Cristosal, ["We Can Arrest Whomever We Want" Widespread Human Rights Violations During the "Emergency Regime" in El Salvador](#), December 2022, pp. 63, 65.

<sup>335</sup> Cristosal, [One year under the emergency regime: a permanent measure of repression and human rights violations. Situation Report March 27, 2022 to March 27, 2023](#), May 12, 2023, pp. 22-24; El Faro, [The Regime's hidden files: hundreds of arrests for "nervousness" and "mugshot" \(ficha policial\)](#), August 7, 2022.

<sup>336</sup> El Faro, [The Regime's hidden files: hundreds of arrests for "nervousness" and "police record"](#), August 7, 2022.

<sup>337</sup> Testimony No. 6 of March 15, 2023. Person released under alternative measures.

At the police station they asked me if I had been arrested before. I told them that I did have a police record. They asked me if I had tattoos. I told them yes, I have artistic tattoos. In the arrest report they said that there was an anonymous call against me. They never mentioned why I was being detained.<sup>338</sup>

He was taken as a result of an anonymous phone call. There are people who are lending themselves to filing anonymous complaints in return for money.<sup>339</sup>

150. The organizations also indicated that there was a pattern of arresting and charging persons with criminal records of the crime of belonging to illicit groups, even if they had served their entire prison sentence or were subject to alternative measures, or even had been acquitted with their cases dismissed in the framework of criminal proceedings.<sup>340</sup> It was also recorded that several people arrested during the regime were re-arrested after regaining their freedom, and charged with other crimes such as those related to terrorist organizations.<sup>341</sup> As of mid-October 2022, more than 43,000 people had been arrested for the crime "pertaining to illicit groups" and more than 7,000 for alleged membership in a "terrorist organization."<sup>342</sup> In this context, a lawyer reported that:

I have had cases in which [...] they grant the substitute measures, but when they let the person out of the prison gate, the police re-arrest the

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<sup>338</sup> Testimony No. 11 of March 16, 2023. Person released under alternative measures.

<sup>339</sup> Testimony No. 18 of March 20, 2023. Family member of a person who died in detention.

<sup>340</sup> Cristosal, [One year under the emergency regime: a permanent measure of repression and human rights violations. Situation Report for March 27 2022 to March 27, 2023](#), May 12, 2023, p. 23.

<sup>341</sup> Cristosal, [One year under the emergency regime: a permanent measure of repression and human rights violations. Situation Report for March 27 2022 to March 27, 2023](#), May 12, 2023, p. 24.

<sup>342</sup> Human Rights Watch, Cristosal, ["We Can Arrest Anyone We Want" Widespread Human Rights Violations During the "State of Emergency" in El Salvador](#), December 2022, p. 92.

person and they no longer present him/her to the same Prosecutor's Office, but to another Prosecutor's Office.<sup>343</sup>

151. The testimonies gathered by the IACHR, data from civil society organizations, and information in the public domain indicated that repeated arrests have been carried out solely on the basis of the physical appearance and socioeconomic situation of the individuals, thus stigmatizing tattooed persons and residents of low-income communities.<sup>344</sup> The testimonies also reveal acts of discrimination and criminalization of adolescents and women who have been identified as companions of suspected gang members.<sup>345</sup> In this regard, some of the testimonies collected indicate the following:

I was at home resting, I was with my daughter and my wife. [...] They asked me for my identity documents. "You know there is an exception regime and you have tattoos," they told me. I replied that they were artistic tattoos and that they were not allusive to any gang. I told them that I was a student and worked [...], but they took me into custody.<sup>346</sup>

A few days earlier my partner (*compañero de vida*) had been arrested. On my way home on my motorcycle, I was given the stop sign. They asked for my license, my motorcycle card, and my I.D. They told me "We have been waiting for you all day." One asked me if I was

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<sup>343</sup> Testimony No. 3 of March 14, 2023. Defense attorney.

<sup>344</sup> Human Rights Watch, Cristosal, ["We Can Arrest Whomever We Want" Widespread Human Rights Violations During the "Emergency Regime" in El Salvador](#), December 2022, pp. 65, 68; Cristosal, [One year under the emergency regime: a permanent measure of repression and human rights violations. Situation Report March 27, 2022 to March 27, 2023](#), May 12, 2023, p. 23; ElSalvador.com, [Militares tratan diferente a los tatuados dependiendo de donde viven \(Military treat tattooed persons different depending on where they live\)](#), August 21, 2022.

<sup>345</sup> Cristosal, [Violaciones a los derechos humanos Durante el régimen de excepción en El Salvador. \(Human Rights Violations During the Emergency Regime in El Salvador\) Situation Report for the period from March 27 to April 26, 2022](#), May 2022, p. 23; Cristosal, [Violaciones a los derechos humanos Durante el régimen de excepción en El Salvador. \(Human rights violations during the state of emergency in El Salvador\) Situation Report for the period April 27 to May 25, 2022](#), June 14, 2022, pp. 27-28.

<sup>346</sup> Testimony No. 17 of March 20, 2023. Person released under alternative measures.

the life partner of my partner, who had been arrested. They asked me to accompany them. Those were the reasons for my arrest. The policeman called other police officers advising that they already had the person they were looking for.<sup>347</sup>

She was in informal employment. Around 12:00 p.m. Three national police officers arrived and detained her with the lie that she was only going to answer a few questions and that was why they were taking her to the police station. [...] At the delegation, they told me "leave her there because she is not going to leave. She is here because of a link to a boy who is in detention. I don't know if you know that your daughter had a relationship with a gang member. You better leave her, if your daughter didn't know how to make the most of her time, you better leave her." Since one lives in poor areas or areas catalogued as dangerous or with persistent gangs, everyone or the police officers presumed that they all belong to crime or gangs.<sup>348</sup>

152. In addition to the above, the organizations pointed out the existence of cases in which people with psychosocial disabilities or mental health conditions were detained and, in several episodes, this was linked to aspects associated with their personal condition.<sup>349</sup> They also indicated that, in these cases, it has not been possible to determine whether detention procedures have respected the special obligations of States to ensure the rights of persons with disabilities.<sup>350</sup>

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<sup>347</sup> Testimony No. 16 of March 17, 2023. Person released under alternative measures (female).

<sup>348</sup> Testimony No. 26 of March 23, 2023. Family member of detainee (female detainee).

<sup>349</sup> Human Rights Watch, Cristosal, ["We Can Arrest Anyone We Want" Widespread Human Rights Violations During the "Emergency Regime" in El Salvador](#), December 2022, p. 68; Cristosal, [Human Rights Violations During the Emergency Regime in El Salvador. Situation Report for the period March 27 to April 26, 2022](#), May 2022; p.26.

<sup>350</sup> Human Rights Watch, Cristosal, ["We Can Arrest Anyone We Want" Widespread Human Rights Violations During the "State of Emergency" in El Salvador](#), December 2022, p. 68.

153. In response to a request for information from the IACHR<sup>351</sup>, the State referred to the regulatory framework that allows it to exercise its punitive power and to deprive of liberty in the area of law enforcement and the administration of criminal justice, which provides for the protection of the rights of persons deprived of liberty, such as the right to a fair trial, the presumption of innocence, and the right not to be subjected to cruel or inhuman treatment.<sup>352</sup> It also indicated that states of emergency allow for the temporary suspension of certain rights and freedoms.<sup>353</sup> It reported that the arrests had been made in flagrante delicto and, for the most part, for the crime of pertaining to "Illegal Groups", due to membership in criminal organizations generally identified as "Mara Salvatrucha" and "Pandilla 18", whose existence has been declared illegal by articles 1 of the Law for the Prohibition of Maras and Gangs and 345 of the Penal Code. Also, that the defendants arrested were under investigation for the commission of a criminal act and, therefore, had an open proceeding against them, either in judicial instances or in the administrative phase of the Office of the Attorney General of the Republic.<sup>354</sup>
154. In its observations on the draft of this report, the State indicated that the National Civil Police (PNC) has tools created for the identification and profiling of gang members, such as the PNC Protocol for the Preparation and Updating of Criminal Profiles. The objective of the protocol is to develop guidelines for the preparation and updating of profiles of persons linked to a terrorist criminal group, organized crime, or common crime through the verification of databases and the gathering of field information from different sources. For such purposes, the State indicated that the following criteria are taken into account: i) having the individualization and identification of the person;

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<sup>351</sup> IACHR, Request for information from the State of El Salvador, Note No. 247-23/CIDH/SE/MPCT-Art.41, REF: Request for information on the state of emergency (emergency regime) and its effects on human rights, May 10, 2023.

<sup>352</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, p. 52.

<sup>353</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, p. 52.

<sup>354</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, p. 52.

ii) the existence of field documentation, territorial information, intelligence, or investigations linking the person with criminal groups, participation in some criminal act, which must be documented, notes, reports, and/or minutes (of denunciation, investigation, interview, among others); iii) use of forms of communication alluding to gangs, that the person was observed on any computer platform or social networks and that there is a digital or physical backup of this observation; iv) that the person has tattoos allusive to gangs; v) having a criminal record; iv) having a record of crimes committed in other countries.<sup>355</sup> The State also mentioned that it has a Gang Identification Manual for El Salvador, which aims to facilitate the understanding, interpretation, and analysis of the various ways in which gangs communicate with each other, in order to demonstrate the identity and membership of those criminal groups.

**155.** The State confirmed that the arrests carried out in this context have been made in flagrante delicto, mostly for the crime of "Unlawful Groups", due to the fact that the persons arrested belonged to criminal groups or gangs. It clarified that the individuals have been previously profiled as members or collaborators of a mara or gang. It indicated that the offenses for which a person is arrested are explicitly stated in the police reports drawn up at the time of arrest.<sup>356</sup>

**156.** In this regard, the IACHR recalls that the prohibition of arbitrary deprivation of liberty is a non-derogable right that cannot be suspended, including for reasons of public security,<sup>357</sup> and urges the State to observe the rights and guarantees provided in Article 7 of

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<sup>355</sup> State of El Salvador, Observations by the State of El Salvador on the IACHR Report entitled "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, pp. 67-79.

<sup>356</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador"(Observations of the State of El Salvador on the IACHR report entitled "State of Emergency and Human Rights in El Salvador"), Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, pp. 50-51.

<sup>357</sup> I/A Court H.R., Case of Rodríguez Vera and others (The disappeared from the Palace of Justice) v. Colombia. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 14, 2014. Series C No. 287, par. 402.



the American Convention when applying measures depriving personal liberty.

157. No person may be deprived of his or her physical liberty except for the reasons and under the conditions previously established in the Political Constitutions of the States or in the laws enacted pursuant thereto; otherwise, the deprivation of liberty would be illegal and contrary to Article 7(2) of the American Convention.<sup>358</sup> This right was not suspended by the legislative decrees of the state of emergency and must be ensured in its entirety, and the State must refrain from making arrests for reasons other than those provided for in the applicable legislation. The Commission stresses that the limitations to which the public authorities are subjected must be precisely indicated in the provisions that decree the state of emergency, and consequently, any action that exceeds or goes beyond what is provided for in the law is illegal.<sup>359</sup>
158. Likewise, the Court has addressed a number of situations in which a deprivation of liberty can be considered arbitrary, such as those carried out for discriminatory reasons<sup>360</sup> or the prolongation of detention without the person being brought before a competent authority.<sup>361</sup> Regarding Article 7.3 of the Convention, it has indicated that arbitrariness is distinguished from the concept of "contrary to law" and should be interpreted more broadly to include elements of

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<sup>358</sup> I/A Court H.R., Case of Espinoza Gonzáles v. Peru, Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2014, par. 109; I/A Court HR, Case of J. v. Peru, Preliminary Objection, Merits, Reparations, and Costs, November 27, 2013. par. 126; I/A Court H.R. Case of García and Family v. Guatemala. Merits, Reparations, and Costs, Judgment of November 29, 2012, par. 100.

<sup>359</sup> I/A Court H.R. Case of Pollo Rivera et al. v. Peru. Merits, Reparations, and Costs. Judgment of October 21, 2016. Series C No. 319, par. 100; I/A Court H.R., Case of Espinoza Gonzáles v. Peru, Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2014, par. 120.

<sup>360</sup> I/A Court H.R. Case of Fernández Prieto and Tumbeiro v. Argentina. Merits and Reparations. Judgment of September 1, 2020. Series C No. 411, par. 82.

<sup>361</sup> I/A Court H.R. Case of Espinoza Gonzáles v. Peru, Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2014, par. 134.

impropriety, injustice, and unpredictability.<sup>362</sup> Both the Commission and the Court have held that no one may be arrested or imprisoned for reasons or by methods that, though classified as legal, may be considered incompatible with the observance of the fundamental human rights of the individual because they are, among other things, unreasonable, unforeseeable, or disproportionate.<sup>363</sup>

159. The Inter-American Court has indicated that programmed and collective detentions, which are not based on the individualization of punishable conduct and lack judicial oversight, are contrary to the presumption of innocence, and therefore the State may not carry them out under any circumstances.<sup>364</sup> In addition, States must also substantiate and prove the existence of sufficient evidence to reasonably assume the criminal conduct of the detained person and that the detention is strictly necessary.<sup>365</sup> This means that arrests cannot be made on the basis of mere suspicion or personal perception of the accused's membership in a particular illegal group or gang, especially when this is based on mere appearance.<sup>366</sup> As the Inter-American Court has indicated, States must evaluate on a case-by-case basis the objective reasons that effectively indicate that a person is linked to the commission of a crime, since the use of profiles implies a presumption of guilt against any person who fits them, which would result in detentions for discriminatory reasons which would, therefore, be arbitrary.<sup>367</sup>

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<sup>362</sup> I/A Court H.R., Case of J v. Peru, Preliminary Objection, Merits, Reparations, and Costs, November 27, 2013. par. 127.

<sup>363</sup> I/A Court H.R., Case of J v. Peru, Preliminary Objection, Merits, Reparations, and Costs, November 27, 2013. par. 127.

<sup>364</sup> I/A Court H.R., Case of Servellón García et al. v. Honduras, Judgment of September 21, 2006, par. 96.

<sup>365</sup> I/A Court HR, Case of Pacheco Teruel et al. v. Honduras, Merits, Reparations, and Costs, Judgment of April 27, 2012 par. 106.

<sup>366</sup> I/A Court HR, Case of Pacheco Teruel et al. v. Honduras, Merits, Reparations, and Costs, Judgment of April 27, 2012 paras. 101 and 106.

<sup>367</sup> I/A Court H.R., Case of Fernández Prieto and Tumbeiro v. Argentina, Merits and Reparations, Judgment of September 1, 2020, par. 82.

160. Another aspect pointed out about the actions of the security forces is related to the failure to comply with their duty to inform about the reasons for the detention and the rights of the detained person. By way of example, testimonies collected by the IACHR contain phrases like:

No, we were not informed of the reasons for detention. They only asked my brother about his criminal record or if we had been detained before.<sup>368</sup>

People were not aware of their rights. In some cases, they were given the floor to speak and expressed their lack of knowledge about the reasons for detention.<sup>369</sup>

When I entered Mariona I was asked if I knew why I was being detained. And I told him that I did not know and they informed me that it was because I was a collaborator of illicit groups. But I did not understand what that entailed. Until I got out, when I realized what crimes I was being charged with.<sup>370</sup>

161. The Commission notes that Decree No. 333 and its extensions have continued to suspend the constitutional article that requires immediate and understandable information to be given to the detained person about his rights and the reasons for his detention<sup>371</sup>. In light of the above, the IACHR reiterates its consideration that this suspension does not abide by the ACHR because the right to access this information is a guarantee provided for in Article 7.4 of the ACHR,

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<sup>368</sup> Testimony No. 1 of March 13, 2023. Person released under alternative measures.

<sup>369</sup> Testimony No. 2 of March 13, 2023. Defense attorney.

<sup>370</sup> Testimony No. 20 of March 21, 2023. Person Released under substitute measures.

<sup>371</sup> In its observations on the Draft Report, the State claimed that, in all the detentions carried out, the corresponding minutes were drawn up for each case, which establish the crime for which individuals were detained and in what context. See: State of El Salvador, Observations by the State of El Salvador on the IACHR Report entitled “State of Emergency and Human Rights in El Salvador”, Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, p. 69.

which is part of the core of indispensable judicial guarantees that cannot be suspended under any circumstances. According to Inter-American jurisprudence, the officer carrying out the detention must inform, in simple language and free of technicalities, the essential facts and legal grounds on which the detention is based, as a mechanism to avoid illegal or arbitrary detentions and to guarantee the individual's right of defense.<sup>372</sup> Therefore, the IACHR urges the security forces to provide this information from the very moment of deprivation of liberty, immediately informing the detained person of the reasons for his or her deprivation of liberty, as well as his or her rights.

### **Illegal breaking and entering**

162. With regard to house raids, according to the information presented, repeated arrests that occurred during the period of the emergency regime were carried out with illegal entry into homes, since they were allegedly carried out without a warrant, by security agents practicing deception or intimidation.<sup>373</sup> <sup>374</sup> By way of example, some of the testimonies collected by the IACHR state:

They did not bring a warrant from a judge, nor did they show me the anonymous call. They entered without permission, I did not

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<sup>372</sup> VA Court H.R., Case of Espinoza Gonzáles v. Peru, Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2014, par. 124.

<sup>373</sup> Cristosal, [One year under the emergency regime: a permanent measure of repression and human rights violations. Status Report March 27, 2022 to March 27, 2023](#), May 12, 2023, p. 24; Azul Origip. 24; Azul Originario et al., [Annual Report on Human Rights Violations During the State of Emergency in El Salvador](#), March 2023, p. 445; EISalvador.com, [Policías y soldados registran viviendas en Soyapango](#), December 5, 2022.

<sup>374</sup> In its observations on the Draft Report, the State indicated that the arrest records describe how arrests were carried out, so that the claims of unauthorized entry into homes are unfounded. The State reiterated that without concrete information on the alleged cases in which this occurred, it is impossible to make assertions of such gravity, and that Salvadoran regulations and the procedures of security personnel set rules that are in accordance with the Constitution and the ACHR. See: State of El Salvador, Observations by the State of El Salvador on the IACHR Report entitled “State of Emergency and Human Rights in El Salvador”, Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, p. 69.

refuse because I knew that doing so would harm me. I felt intimidated, afraid.<sup>375</sup>

About 8 to 12 policemen arrived. There was a loud knock on the door. I was told "open the door." My son was wearing his underpants and I was in my underwear. They took my son and husband out, leaving my other children inside. They were looking for weapons in my house. "We're going to take you," they told my son. "Why are they going to take him away?" I asked. They answered me that it was because of the decree of the state of emergency; that they were orders from the government. "But being poor and being young is not a crime," I told them. They had no arrest warrant or anything else. They just grabbed my son, handcuffed him, and put him in the patrol car. [...] They searched my house. We were not present, we were told to stay outside while my house was raided.<sup>376</sup>

After my son's arrest, as part of the "house by house" operation. On one occasion approximately eight national police officers came to my house and searched my home. I was alone with my granddaughter. Also, the other five little houses around here. We live in a rural area, there have never been gangs. They pointed their guns at me and inspected the house.<sup>377</sup>

- 163.** In this regard, the IACHR recalls that the entry of police and military personnel without legal authorization or the consent of the inhabitants constitutes an arbitrary and abusive interference in their family home. The Inter-American Court has held that the protection of an individual's home from arbitrary or abusive interference implies recognition that there is a personal sphere that must be exempt from and immune to abusive and arbitrary invasion or attack by third

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<sup>375</sup> Testimony No. 6 of March 15, 2023. Person released under alternative measures.

<sup>376</sup> Testimony No. 14 of March 17, 2023. Family member of detainees (adult male and female detainees).

<sup>377</sup> Testimony No. 28 of March 23, 2023. Family member of a detained person.

parties or the public authorities.<sup>378</sup> Under Article 11.2 of the ACHR, as a general rule, a search or house search requires due authorization or a warrant and exceptions thereto, such as flagrante delicto, are valid only in the circumstances established by law, and must be interpreted strictly.<sup>379</sup>

### **Abuse in the use of force**

164. The Commission was also alerted to acts of violence by the police and armed forces, including disturbing reports of abuses in the use of force against children and adolescents and allegations of sexual harassment and violence.<sup>380</sup> Some of them contain the following statements:

In my son's case they were going to kill him. According to what he tells me, they grabbed him by the hair and that rural policeman told him "you are a scum of society." [...] my son who is a minor. The policemen beat him with an iron chair, they never took him to forensics. They were taken to some police station cells (bartolinas) in another municipality.<sup>381</sup>

There is no difference in the detention of minors. In a case I am handling, five soldiers arrived at a bus stop, beat the person they were going to arrest and my client, who is a minor, was also beaten and taken away, even though they were told that she was a minor.<sup>382</sup>

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<sup>378</sup> I/A Court H.R., Case of Fernández Ortega et al. v. Mexico, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 30, 2010, par. 156.

<sup>379</sup> I/A Court H.R. Case of Pollo Rivera et al. v. Peru. Merits, Reparations, and Costs. Judgment of October 21, 2016. Series C No. 319, par. 116.

<sup>380</sup> ElSalvador.com, [Armed Forces tried to hide rape of girl committed by military, according to MTP](#), September 27, 2023; ElSalvador.com, [Colonel arrested for allegedly raping two minors](#), August 5, 2023; Infobae, [Soldiers' sexual abuse of minors in El Salvador, the other monster hidden under the exception regime](#), October 8, 2023; ElSalvador.com, [Women in Puerto El Triunfo accuse military chief of extorting them with sexual propositions](#), October 10, 2023; Gato Encerrado, [They demand that the military cease sexual and physical violence against girls in the emergency regime](#), October 18, 2023.

<sup>381</sup> Testimony No. 9 of March 16, 2023. Family member of detainees (adolescent and adult detainees).

<sup>382</sup> Testimony No. 5 of March 14, 2023. Defense attorney.

They grabbed my sister, they groped her all over, her legs, her breasts. She was also arrested.<sup>383</sup>

Human Rights Watch and Cristosal documented cases in which security agents beat detainees or threatened to arrest their family members, with pregnant women losing their babies following these episodes.<sup>384</sup> Additionally, based on information from the National Civil Police and the Armed Forces, as of December 2022, there were at least 84 civilian deaths resulting from confrontations with security forces.<sup>385</sup>

165. In this regard, in its observations on the draft of this report, the State indicated that the Office of the Attorney General of the Republic rigorously monitors citizen complaints related to the abuse of force by officials of authority and investigates them diligently.<sup>386</sup> It pointed out that, in the context of more than 70,000 arrests of people linked to criminal groups, the figures consistently indicate a very low level of lethal force and a significant decrease in fatalities in the execution of police operations, which would demonstrate the

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<sup>383</sup> Testimony No. 14 of March 17, 2023. Family member of detainee (adult male and female detainees).

<sup>384</sup> La Prensa Grafica, [State of emergency | Family denounces capture of pregnant teenager who lost her baby in prison](#), October 7, 2022; La Prensa Gráfica, [Homicides drop and family members seek information on detainees in El Salvador](#), March 29, 2022; La Prensa Gráfica, [Mothers denounce threats from police during arrests](#), April 28, 2022; La Prensa Gráfica, [Walter died after being beaten by police when they captured him: "They ended up killing him. Our problem is that it could happen to any of us."](#), April 4, 2022; ElSalvador.com, [Minors arrested after participating in a play in Bajo Lempa released](#), November 7, 2022; Cristosal, [Human Rights Violations During the Emergency Regime in El Salvador. Situation Report for the period March 27 to April 26, 2022](#), May 2022, p. 47; Human Rights Watch, Cristosal, ["We Can Arrest Anyone We Want" Widespread Human Rights Violations During the "Emergency Regime" in El Salvador](#), December of 2022, p. 66

<sup>385</sup> Human Rights Watch, Cristosal, ["We Can Arrest Anyone We Want" Widespread Human Rights Violations During the "Emergency Regime" in El Salvador](#), December of 2022, p. 63; La Prensa Gráfica, [Clashes with the National Civil Police during the state of emergency leave 80 dead](#), November 28, 2022.

<sup>386</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador"(Observations of the State of El Salvador on the IACHR report entitled "State of Emergency and Human Rights in El Salvador"), Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, pp. 77-78.

effectiveness of the intervention mechanisms and protocols adopted by the National Civil Police.

### **Violations of the rights of girls, boys, and adolescents.**

166. The IACHR also expresses its concern regarding the specific effects on children and adolescents in this context since, on the one hand, they face being detained by security forces and, on the other, the deprivation of liberty of their family members. Specifically, the IACHR expresses its concern over the detention of thousands of children and adolescents during the state of emergency. According to figures provided by the State, a total of 2,826 children and adolescents detained during the state of emergency were deprived of liberty as of June 27, 2023.<sup>387</sup> According to press reports, this would include the detention of 10 to 13 year olds.<sup>388</sup> In this scenario, the IACHR is concerned about both the high number of children and adolescents detained would be the result of the use of discriminatory practices by security forces, based on their physical appearance or place of residence, as occurs in the case of adults.<sup>389</sup> There have even been reports of arrests with excessive use of force against children.<sup>390</sup>

167. In this regard, the Commission reiterates its concern about the human rights situation of thousands of children and adolescents who are or have been members of criminal organizations. In this regard, it recalls that the American Convention and the American Declaration provide

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<sup>387</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, p. 52.

<sup>388</sup> La Prensa Grafica, [LPG Forum: "We don't want the criminals free, we want the innocent free."](#), February 14, 2023.

<sup>389</sup> On this, see: University Observatory of Human Rights of the Central American University José Simeón Cañas, [Annual Report 2022: The State of Human Rights in El Salvador](#), April 2023, p. 164.

<sup>390</sup> Cristosal, [Violaciones a los derechos humanos Durante el régimen de excepción en El Salvador. \(Human Rights Violations During the State of Emergency in El Salvador\) Situation Report for the period from March 27 to April 26, 2022](#), May 2022, p. 22; Cristosal, [Violaciones a los derechos humanos Durante el régimen de excepción en El Salvador. \(Human rights violations during the state of emergency in El Salvador\) Situation Report for the period April 27 to May 25, 2022](#), June 14, 2022, p.26.



that children have the right to special measures for their protection. Accordingly, these special protections include the prohibition of the recruitment of children and adolescents for illicit activities such as those carried out by organized crime, maras, and gangs. This prohibition implies that States must adopt immediate, effective, and urgent actions to eradicate such recruitment. Consequently, children and adolescents who are recruited by organized crime, maras, or gangs should be treated primarily as victims. In view of this, the IACHR reiterates that the systems for the protection and reintegration of children and adolescents recruited by criminal groups need to be redesigned in accordance with the principles of best interests and comprehensive protection. To this end, it is necessary that States review their "iron fist" policies that seek to lower the age of criminal responsibility and increase the length of sentences of deprivation of liberty for persons under 18 years of age in accordance with the Inter-American principles governing children.<sup>391</sup>

168. In addition to the above, the Commission recalls that, when detaining a child or adolescent, the police are obliged to guarantee the rights of children to be immediately brought before a competent judge, to have their parents or guardians notified as soon as possible, to make contact with their family, and to meet with their defense counsel as soon as possible. Additionally, pursuant to the duty of special protection contained in Article 19 of the American Convention and Article VII of the American Declaration, States must establish an even lower limit for judicial control of the detention of children. This, taking into account the fact that these are people in the developmental stage, the fact that the harmful effects of detention on children and adolescents are greater than those on adults, and the special situation of vulnerability of this population.<sup>392</sup>

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<sup>391</sup> On this, see: IACHR, [Organized Crime and the Rights of Children, Adolescents, and Youth: Challenges and State Actions in Northern Central America](#), OEA/Ser.LV/II., Doc. 51/23, February 16, 2023, paras. 156 and 168.

<sup>392</sup> In this regard, IACHR, [Juvenile Justice and Human Rights in the Americas](#), OEA/Ser.LV/II., Doc. 78, adopted on July 13, 2011, paras. 252 and 255.

169. In its comments on the draft of this report, the State noted that the National Council for Early Childhood, Children, and Adolescents (CONAPINA) has validated the effectiveness of the protection procedures for adolescents implemented by the National Civil Police.<sup>393</sup> It informed that CONAPINA has been instructed to ensure differentiated treatment of minors, in separate shelters from adults and under the administration of this Council. It also reported that CONAPINA's official records do not show any protection process involving children under 12 years of age or adolescents of this age.<sup>394</sup>

### **The control mechanisms of the security forces**

170. Regarding the mechanisms to control the actions of the National Civil Police and the Armed Forces, the State informed that the country has the necessary tools to enforce rights. Likewise, to claim, in appropriate cases and as provided by law, compensation for damages caused by the actions of public sector agents.<sup>395</sup> The State indicated that the functions of the Office of the Deputy Attorney General (Procuraduría Adjunta) for the Defense of the Rights of Migrants and Citizen Security of the Office of the Attorney General for the Defense of Human Rights (PDDH) include the supervision of the actions of both institutions to provide specialized attention to the protection of the right to life, integrity, security, and personal liberty.<sup>396</sup> However, it did not indicate whether there are any complaints or denunciations filed before this body concerning possible human rights violations during the state of emergency. It informed that the National Verification Plan deployed by the institution contemplates guardianship and verification actions

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<sup>393</sup> State of El Salvador, Observations of the State of El Salvador to the IACHR Report "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, Annex 1, Methodological Systematization Matrix, line 103, column G.

<sup>394</sup> State of El Salvador, Observations of the State of El Salvador to the IACHR Report "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, Annex 1, Methodological Systematization Matrix, line 103, column G.

<sup>395</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OEA-117/2023, July 14, 2023, pp. 55-56.

<sup>396</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OEA-117/2023, July 14, 2023, p. 55.

related to the state of emergency, as well as comprehensive care for the families of the victims of homicides and femicides.<sup>397</sup>

171. In its observations on the draft of this report, the State presented the actions of the PDDH within the framework of this Plan, indicating that more than 21,000 steps were taken, including interviews with authorities, telephone calls, guidance, consultation of files, official letters, and immediate actions.<sup>398</sup> It informed that the institution is notified by the Police of the arrests made and that it has carried out verifications in hearings; bartolinas (police detention centers); adult detention centers; in Social Integration Centers for Adolescents; and targeted closures. It also reported that it has a Prison Verification Department, which is responsible for responding to requests from families regarding possible violations of the rights of persons deprived of liberty; and that it coordinates with prison supervision judges regarding the conditions of persons deprived of liberty, police headquarters in each department; and with the PNC's Secretariat of Professional Responsibility. It also indicated that psychological care has been provided to alleged victims and/or family members whose situation is related to the state of emergency, with the help of coordination by the Victim Assistance Department. Regarding the verifications carried out, the State reported that from March 27, 2022 to November 12, 2023, 698 were carried out in detention centers, 175 in hearings; and 223 in other contexts; totaling 1,096 verifications.<sup>399</sup> The State indicated that the PDDH had also promoted rapprochement with public security authorities, the Public Prosecutor's Office, and police headquarters; also that it supports the training of police personnel and

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<sup>397</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on State of Emergency Decree No. 333, Diplomatic Note MPOEA-OEA-063/2022, April 26, 2022.

<sup>398</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador"(Observations of the State of El Salvador on the IACHR report entitled "State of Emergency and Human Rights in El Salvador"), Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, pp. 71-77.

<sup>399</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador"(Observations of the State of El Salvador on the IACHR report entitled "State of Emergency and Human Rights in El Salvador"), Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, pp. 71-77.

promotes the strengthening of interagency coordination and articulation mechanisms to guarantee human rights.<sup>400</sup>

172. In turn, the University Observatory of Human Rights of the Central American University José Simeón Cañas indicated that 847 people reported to the PDDH some type of violation committed by PNC personnel in 2022 and 176 by Armed Forces personnel.<sup>401</sup> With regard to the actions of the PDDH, it was indicated that the statistical data published show that technical and operational actions have been taken within the framework of its constitutional mandate.<sup>402</sup> However, civil society organizations questioned the lack of qualitative information on the situations attended to and observed by the PDDH during the state of emergency, and said that they were unaware of definitive resolutions having been reached on the cases related to this period.<sup>403</sup> They point out the absence of public updates on the implementation of the National Verification Plan and its qualitative findings, calling for greater transparency and periodicity in the dissemination of this information, as well as the coordination and formulation of concrete recommendations to the relevant state agencies.<sup>404</sup> In the same vein, the Commission stresses the importance of strengthening the PDDH as a channel for reporting human rights violations, as well as the importance of citizen confidence in this mechanism.

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<sup>400</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OEA-117/2023, July 14, 2023, p. 64.

<sup>401</sup> University Observatory of Human Rights of the Central American University José Simeón Cañas, [Annual Report 2022: The State of Human Rights in El Salvador](#), April 2023, p. 95.

<sup>402</sup> Cristosal, [One year under the emergency regime: a permanent measure of repression and human rights violations. Situation Report for March 27 to 2022 March 27, 2023](#), May 12, 2023, pp. 65-66.

<sup>403</sup> Human Rights Watch, Cristosal, ["We Can Arrest Anyone We Want" Widespread Human Rights Violations During the "Emergency Regime" in El Salvador](#), December 2022, p. 97; Cristosal, [One year under the emergency regime: a permanent measure of repression and human rights violations. Situation Report for March 27, 2022 to March 27, 2023](#), May 12, 2023, pp. 65-66; Azul Originario et al, [Annual report on human rights violations during the state of emergency in El Salvador](#), March of 2023, p. 57;

<sup>404</sup> Cristosal, [One year under the emergency regime: a permanent measure of repression and human rights violations. Situation Report March 27, 2022 to March 27, 2023](#), May 12, 2023, pp. 65-66, Human Rights Watch, Cristosal, ["We Can Arrest Anyone We Want" Widespread Human Rights Violations During the "Emergency Regime" in El Salvador](#), December 2022, p. 12

173. In its observations on the draft of this report, the State informed that the Office of Citizen Attention for Internal Control of the National Civil Police has been set up to deal with complaints of alleged human rights violations committed by operational and administrative personnel, as an action to prevent human rights violations and care for victims of such alleged violations. It indicated that the creation of this unit responds to the need to make available to the population channels for reporting possible excesses in the use of force in the framework of police procedures.<sup>405</sup>
174. It also reported that the powers of the General Inspectorate of Public Security of the Ministry of Justice and Public Security for overseeing the Police include receiving and processing complaints or reports related to possible disciplinary offenses committed by police officers.<sup>406</sup> In the performance of its oversight and supervision functions, the Inspectorate pursued 66 disciplinary investigation proceedings between March 27, 2022 and November 10, 2023, of which: 4 were related to due process; 11 to personal freedom; 29 to personal integrity; 9 to personal safety; 5 to life; 3 to access to justice; 2 to privacy; 1 to dignity and 2 to legal security. It also indicated that, based on a resolution issued by the PDDH referring to complaints corresponding to 349 persons for events between June and September 2022, it ordered the initiation of investigations in 21 cases within the framework of its mandate. In addition, it pointed out that the Inspectorate has carried out 53 inspections in police units and delegations. The State also highlighted the existence of an Inter-institutional Working Group of the PDDH together with the National Civil Police, to strengthen police actions, conflict resolution, attention to victims, and treatment of detainees.

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<sup>405</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador"(Observations of the State of El Salvador on the IACHR report entitled "State of Emergency and Human Rights in El Salvador"), Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, p. 45.

<sup>406</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador"(Observations of the State of El Salvador on the IACHR report entitled "State of Emergency and Human Rights in El Salvador"), Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, pp. 71-77.

175. For its part, the Human Rights Observatory of the UCA reported that in 2022, 552 complaints of human rights violations were reported to the PNC units that carry out internal surveillance tasks, including 158 cases on the alleged violation of freedom; 123 on personal safety and public safety; 68 on physical integrity; 48 on access to justice; 42 on ill-treatment or cruelty; and the remaining 113 cases on the right to life, privacy, life free of violence, dignity, legal security, among others.<sup>407</sup> The OUDH indicated that it had no information on the outcome of this group of complaints, and did not know if the cases were referred to the Attorney General's Office or if those responsible were eventually punished.<sup>408</sup> With respect to disciplinary offenses, it noted that 69 members of the public security forces were investigated for committing serious and very serious offenses during 2022, including violations of the right to personal integrity, providing false information on the whereabouts of persons, among others.<sup>409</sup> Throughout 2023, 111 proceedings were initiated for serious and very serious offenses committed by personnel, related to violations of the rights of other persons and 396 disciplinary proceedings were initiated against lower-level police, administrative, and technical personnel, only 33 of which involved offenses related to violations of the rights of persons outside the police institution.<sup>410</sup> The OUDH also reported difficulties in obtaining information on investigations that could constitute serious crimes due to the institution's reservations.<sup>411</sup> In 2022, no cases

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<sup>407</sup> University Observatory of Human Rights of the Central American University José Simeón Cañas, [Annual Report 2022: The State of Human Rights in El Salvador](#), April of 2023, pp. 78-91.

<sup>408</sup> University Observatory of Human Rights of the Central American University José Simeón Cañas, [Annual Report 2022: The State of Human Rights in El Salvador](#), April 2023, p. 89.

<sup>409</sup> University Observatory of Human Rights of the Central American University José Simeón Cañas, [Annual Report 2022: The State of Human Rights in El Salvador](#), April 2023, p. 80.

<sup>410</sup> University Observatory of Human Rights of the Central American University José Simeón Cañas, [Annual Report 2022: The State of Human Rights in El Salvador](#), April 2023, pp. 81-81, 84-85.

<sup>411</sup> University Observatory of Human Rights of the Central American University José Simeón Cañas, [Annual Report 2022: The State of Human Rights in El Salvador](#), April of 2023, pp. 85-86.

involving members of the armed forces were investigated, punished, or forwarded to the Public Prosecutor's Office.<sup>412</sup>

176. In this regard, the Commission reiterates the importance of establishing independent internal and external mechanisms and procedures to ensure the accountability of both the authorities responsible for citizen security policy and the functioning of the institutions that make up the citizen security system.<sup>413</sup> This should include disciplinary mechanisms and procedures for violations committed by law enforcement officials.<sup>414</sup>

177. From March 2022 to date, the Commission notes with concern the information received regarding the existence of a pattern of widespread and systematic illegal and arbitrary detentions carried out as part of a security plan under the state of emergency.<sup>415</sup> Of the more than 70,000 detentions carried out, the IACHR highlights reports of repeated deprivation of liberty in cases not involving flagrante delicto and without an administrative or judicial order, and the use of discriminatory criteria to justify detentions based on the personal or socioeconomic characteristics of the person, or for having a criminal record (see paragraphs 146ff). As indicated earlier in this chapter, based on information published by the State, two days after the establishment of the state of emergency, 1,400 persons were detained; in all, 20,000 persons were detained in the first month of the state of emergency; at least 35,000 persons were detained by the end of the second month; at least 42,000 persons were detained by the end of the third month; and at least 48,000

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<sup>412</sup> University Observatory of Human Rights of the Central American University José Simeón Cañas, [Annual Report 2022: The State of Human Rights in El Salvador](#), April 2023, p. 95.

<sup>413</sup> IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II. Doc. 57, December 31, 2009, paras. 232.8.d, 232.4.

<sup>414</sup> IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II. Doc. 57, December 31, 2009, paras. 232.9.i.

<sup>415</sup> I/A Court H.R. Case of Herzog et al. v. Brazil. Preliminary Objections, Merits, Reparations, and Costs. Judgment of March 15, 2018. Series C No. 353, paras. 222-229, 229-239; I/A Court H.R., Case of Members and Militants of the Unión Patriótica v. Colombia. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 27, 2022. Series C No. 455, par. 114.

persons were detained by the end of the fourth month. Likewise, in the following months, the IACHR observed that an average of around 2,000 detentions per month was maintained until May 2023, when this information was no longer published.<sup>416</sup> In this regard, it is of great concern that most of these arrests were made alleging flagrante delicto for the crime of "Unlawful Groups", and at the same time based on prior profiling by the security agencies - as indicated by the State - which could constitute a practice of illegal and/or arbitrary detention. Also of concern are the elements used to establish people's current links to criminal organizations - among which are the possession of tattoos, communications alluding to maras and gangs, as well as having a criminal record.<sup>417</sup> The IACHR recommends that the State make efforts to investigate the alleged illegal and arbitrary detentions, establishing, where applicable, individual responsibilities at different levels and identifying the circumstances leading to this situation. Determining the factors that caused or favored the repetition of a large number of abuses on a national scale is fundamental so that actions and/or institutional reforms can be adopted to prevent their repetition.<sup>418</sup>

178. Particularly with regard to the reports of violence involving injury to life and limb, the Commission emphasizes that law enforcement agencies may only use force as a last resort, and that the use of firearms and lethal force is even more exceptional.<sup>419</sup> In any hypothesis of deaths linked to the actions of state forces, the State is obliged to verify the legitimacy of the use of lethal force, investigating the facts ex officio,

<sup>416</sup> Ministry of Security [@SeguridadSV] Tweets: ([2022, March 29](#)), ([2022, April 27](#)), ([2022, May 25](#)), ([2022, June 29](#)), ([2022, July 29](#)), ([2022, August 29](#)), ([2022, September 26](#)), ([2022, October 28](#)), ([2022, November 28](#)), ([2022, December 19](#)), ([2023, January 30](#)), ([2023, February 22](#)), ([2023, March 27](#)), ([2023, April 12](#)), ([2023, May 12](#)).

<sup>417</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador"(Observations of the State of El Salvador on the IACHR report entitled "State of Emergency and Human Rights in El Salvador"), Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, pp. 50, 51, 67-79.

<sup>418</sup> IACHR, Report 'Situation of Human Rights in El Salvador', OEA/Ser.L/V/II. Doc. 278, October 14, 2021, paras. 38, 44, 45, 342.1.

<sup>419</sup> I/A Court H.R. Case of Zambrano-Vélez et al. v. Ecuador. Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 166, paras. 83-84.



without delay and in a serious, independent, impartial, and effective manner.<sup>420</sup> Likewise, the Inter-American Court has emphasized that sexual violence perpetrated by members of the security forces is particularly serious, causing devastating physical, emotional, and psychological consequences against women.<sup>421</sup> In this regard, the IACHR has recommended the creation of internal and external monitoring and accountability systems to enforce the duty to investigate, with a gender and ethno-racial perspective, all cases in which law enforcement officers use lethal force and/or sexual violence, and the strengthening of the institutional capacity of independent oversight bodies.<sup>422</sup>

179. In this regard, the State indicated that the Office of the Attorney General (FGR) of the Republic maintains strict vigilance in the context of citizen complaints related to the abuse of force by state agents, so that with respect to security operations carried out in the context of the state of emergency, that Office, as guarantor of legality and the right of access to justice of the population, has initiated 19 investigations for alleged abuse of force, of which 18 are in the investigation phase and one is being provisionally archived.<sup>423</sup> In turn, the OUDH reported that the internal mechanisms of the National Civilian Police had referred 119 cases of crimes to the FGR in 2022, of which they were able to verify that at least 26 referred to violations of the right to personal integrity and the life of persons outside the institution.<sup>424</sup> The Observatory indicated that the information on criminal proceedings

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<sup>420</sup> I/A Court H.R. Case of Zambrano-Vélez et al. v. Ecuador. Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 166, par. 88.

<sup>421</sup> I/A Court H.R. Case of the Miguel Castro-Castro Prison v. Peru. Judgment of November 25, 2006. Merits, Reparations, and Costs, par. 311.

<sup>422</sup> IACHR, Report No. 141/11, Merits, Cases 11.566 and 11.694, Cosme Rosa Genoveva, Evandro De Oliveira et al. (Favela Nova Brasília), Brazil, October 31, 2011, Recommendations, par. 5.

<sup>423</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, p.64.

<sup>424</sup> University Observatory of Human Rights of the Central American University José Simeón Cañas, [Annual Report 2022: The State of Human Rights in El Salvador](#), April of 2023, pp. 86-88.

initiated and concluded was reported as non-existent and subsequently as kept secret (“reservada”) by the FGR.<sup>425</sup>

180. The IACHR calls on the State to ensure transparency in relation to this data, enabling citizen oversight of State actions in this area. It also appreciates the opening of these investigations and calls on the Attorney General's Office to continue following up on these and other possible cases in the framework of the considerations and recommendations addressed to the State of El Salvador in the 2021 Country Report regarding the investigation of abuses by security forces.<sup>426</sup> Notwithstanding the above, it is a priority to attend to the people who were victimized by the illegal and arbitrary measures. The IACHR will refer to aspects related to the restitution of liberty and other rights affected by the ongoing judicial proceedings when addressing the functioning of the justice system. Finally, with regard to the information received on the actions of the police authorities in the registration and custody of detainees, the Commission indicates that it will analyze this in the chapter on the situation of persons deprived of liberty.

### **Initial considerations on the functioning of the justice system**

181. The IACHR emphasizes that, in the democratic system, the prosecutor's office and the judiciary have important functions, among them, to monitor the activity of the security forces, and must adopt the corresponding actions within the framework of their competencies to investigate, prosecute, and punish the human rights violations committed. Likewise, in administering justice, they must ensure respect for and guarantee the human rights and due process of the accused. Since the implementation of the state of emergency, the Commission has been informed of specific challenges in the functioning of the justice system in light of the

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<sup>425</sup> University Observatory of Human Rights of the Central American University José Simeón Cañas, [Annual Report 2022: The State of Human Rights in El Salvador](#), April of 2023, pp. 86-88.

<sup>426</sup> IACHR, Situation of Human Rights in El Salvador, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, paras. 61-64, 342.2.

detentions carried out and their implications for guaranteeing the rights of Salvadoran individuals.<sup>427</sup>

182. In this regard, the State of El Salvador indicated that efforts were made to strengthen the Specialized Criminal Jurisdiction, calling on 22 judges or magistrates to lend support and creating another 236 temporary positions to support the courts.<sup>428</sup> It indicated that the Courts against Organized Crime were also created with the purpose of boosting efforts to strengthen judicial investigation and criminal prosecution of criminal organizations.<sup>429</sup> These courts are multi-person courts and are composed of four regular judges, one of whom is a juvenile court judge, who is known as a "the judge responsible for safeguarding the rights of minors", since he or she is exclusively responsible for the judgment when a trial also involves adults.<sup>430</sup> It also reported the creation of the Courts of Guarantees, whose function is established by the Constitution of the Republic and the Special Law for the Intervention of Telecommunications.<sup>431</sup> It indicated that out of 11 courts, 6 have jurisdiction for the Central Zone, 3 for the Western Zone, and 2 for the Eastern Zone<sup>432</sup>; 2 other Courts of Guarantees have nationwide jurisdiction and 2 Chambers against Organized Crime have nationwide jurisdiction.<sup>433</sup> As indicated, the courts created

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<sup>427</sup> IACHR, Hearing 'Situation of Human Rights and Rule of Law in El Salvador', 184th session, June 23, 2022; IACHR, Hearing 'Arbitrary detentions and situation of persons deprived of liberty in the state of emergency in El Salvador', 185th session, October 25, 2022; Human Rights Watch, Cristosal, "[We Can Arrest Anyone We Want" Widespread Human Rights Violations During the "Emergency Regime" in El Salvador](#)", December of 2022, p. 91.

<sup>428</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, p. 53.

<sup>429</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 53-54.

<sup>430</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 53-54.

<sup>431</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 53-54.

<sup>432</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 53-54.

<sup>433</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 53-54.

began operating on June 1, 2023, reflecting a synchronized and consistent effort by all State bodies to fight criminal organizations, aimed at providing access to justice for all Salvadorans, guaranteeing legal security and ensuring effective completion of criminal proceedings.<sup>434</sup> In addition, USD \$1,872,095.73 was reportedly invested in goods to equip the judicial offices.<sup>435</sup>

183. In its observations on the draft of this report, the State referred to the "special transitory provisions for ordering the prosecution of defendants detained under the state of emergency" approved by Legislative Decree No. 803 of 2022.<sup>436</sup> It reported that they are intended to regulate the procedure to be carried out for the submission of accused persons to a single criminal proceeding, due to their belonging to the same terrorist organization or illicit group and who were captured while the state of emergency was in force. For this reason, the Office of the Attorney General of the Republic was empowered to carry out a transitional procedure designed to assign defendants in proceedings under investigation in different courts to specific groups based on the following criteria: organization/group (*estructura*), name, operation, territory, or others that may be applicable at the discretion of the prosecutor and in accordance with the evidence available.<sup>437</sup> The Prosecutor's Office has two years to prosecute the cases, after which the judiciary shall issue a final dismissal of the cases in which the procedure is not complied with or the Prosecutor's Office does not rule on the determination of the illegal group to which a defendant belongs.

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<sup>434</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 53-54.

<sup>435</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 53-54.

<sup>436</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador"(Observations of the State of El Salvador on the IACHR report entitled "State of Emergency and Human Rights in El Salvador"), Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, pp. 83-84.

<sup>437</sup> The expert, documentary, and testimonial evidence referred to by the State as that used by the Police and the Prosecutor's Office to prove membership in the illegal group is indicated in paragraph 200 of this report.

184. The IACHR takes note of the restructuring of the courts that created single jurisdictions for the crime of terrorism through special transitory provisions to regulate the proceedings of defendants detained under the state of emergency in El Salvador and the additional human and logistical resources allocated. However, the Commission observes that the establishment of a special jurisdiction to carry out functions normally performed by the ordinary jurisdiction is an extraordinary measure that, although feasible or apparently more efficient, cannot violate the procedural guarantees of the accused persons guaranteed in the American Convention.
185. Indeed, the accumulation of causes of the same nature in some cases can be positive, and has even been recommended. In this sense, in cases foreseen and authorized by procedural law, in situations where the dispersion and magnitude of the cases rather hinder access to justice, the IACHR has recommended the creation of a single jurisdiction.<sup>438</sup> In this regard, the IACHR has warned that highly complex procedural cases require the State to analyze the deployment of specific measures to comply with its international obligations regarding access to justice, in particular the prosecution and punishment of those responsible for human rights violations and, at the same time, to provide procedural guarantees for the accused.<sup>439</sup>
186. Thus, the State must evaluate, in the particular situation, how the dispersion of processes generates obstacles for justice operators to fully understand the evidence, contexts, and processes related to mega-criminal cases. However, this cannot rest solely on the decision of a single procedural party, but -in addition to the normative authorization- must be subject to litigation, observing the procedural guarantees of the persons charged and whether the restriction to their right to a natural judge is valid according to human rights norms and inter-American standards. An automatic

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<sup>438</sup> IACHR, Third Report of the Special Follow-up Mechanism on the Ayotzinapa Case, OEA/Ser.L/V/II.Doc.270/22, November 8, 2022, paras. 183-185.

<sup>439</sup> IACHR, Third Report of the Special Follow-up Mechanism on the Ayotzinapa Case, OEA/Ser.L/V/II.Doc.270/22, November 8, 2022, paras. 183-185.

determination for the transfer of ongoing criminal cases, without a jurisdictional assessment or subject to appeal, may lead to proceedings being conducted before improper jurisdictions, resulting in setbacks and delays when these procedural flaws are corrected and the proceeding returns to the initial jurisdiction.<sup>440</sup>

187. The IACHR also reiterates the concerns previously expressed regarding the concealment of the identity of the judges in these jurisdictions, as well as the other procedural aspects that imply setbacks for the judicial guarantees of persons accused of crimes and in the area of juvenile justice. In addition, the Commission received troubling information on, inter alia, the delay in judicial control of detentions, the ineffectiveness of the habeas corpus recourse, lack of evidence to support the charges, abuses in the imposition of pretrial detention, the holding of mass judicial hearings, limitations on the exercise of the right to defense and judicial guarantees, and disrespect for due legal process.

### **Judicial protection with respect to arrests made**

188. The State indicated that once a person is detained, whether in flagrante delicto or by administrative order, he or she is immediately referred to the Attorney General's Office, and in the case of arrests made by court order, the detained persons are immediately referred to the judge who issued the order.<sup>441</sup>
189. However, with the state of emergency in force, the maximum period for administrative detention was extended from 72 hours to 15 days, and it is not clear whether this is the maximum period for presenting the person deprived of liberty to a judicial authority. In its observations on the draft of this report, the State indicated that a significant number of persons linked to organized crime had been

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<sup>440</sup> CIDH, Tercer Informe del Mecanismo Especial de Seguimiento al Asunto Ayotzinapa, OEA/Ser.L/V/II.Doc.270/22, 8 de noviembre de 2022, paras. 185 and 187.

<sup>441</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, p. 51.

captured, posing a major challenge for the institutions responsible for prosecuting them; hence, the constitutional fifteen-day period guarantees that these persons are submitted within a specific time to the judicial system, for the determination of their criminal responsibility for the crimes with which they are charged. It indicates that this deadline is intended to assure those who are captured that they will not be held indefinitely without being tried. It also obliges the Attorney General's Office to comply with its constitutional duty to prosecute within that maximum period of detention.<sup>442</sup>

190. In this regard, the IACHR reiterates its previous considerations regarding this time period not being compatible with the obligations established in the American Convention even in a state of emergency. According to the Inter-American Court, the **immediate judicial review of a detention** is the ideal means of control to avoid the arbitrariness or illegality of detentions, and the judge must guarantee the rights of the detainee, authorize the adoption of precautionary or coercive measures, when strictly necessary, and ensure, in general, treatment consistent with the presumption of innocence that protects the accused until his or her responsibility is established.<sup>443</sup> In this regard, the UN Committee against Torture recommended that the State of El Salvador "abolish the provisions according to which detained persons may be held in administrative detention for periods of up to 15 days and make the necessary amendments to introduce instead a maximum period of 48 hours."<sup>444</sup>

191. Regarding the number of persons detained and released, the State reported that of the 65,940 persons detained as of June 27, 2023, 5,308 were released by court order at the request of the prosecuting

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<sup>442</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador"(Observations of the State of El Salvador on the IACHR report entitled "State of Emergency and Human Rights in El Salvador"), Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, p. 51.

<sup>443</sup> I/A Court H.R. Case of the Gómez Paquiyauri Brothers v. Peru. Merits, Reparations, and Costs. Judgment of July 8, 2004. Series C No. 110, par. 95.

<sup>444</sup> United Nations, Committee Against Torture, Concluding observations on the third periodic report of El Salvador, CAT/C/SLV/CO/3, December 19, 2022, par. 11.c.

authority and 988 by administrative authority, for a total of 6,296 persons released.<sup>445</sup> Despite the above, the IACHR received information of repeated cases in which persons continued to be detained after having received an alternative measure to provisional detention.<sup>446</sup> The testimonies collected by the IACHR refer to this issue and also denounce the **lack of effectiveness of the habeas corpus recourse**:

When I was released, I spent 20 more days in the prison.<sup>447</sup>

I received a letter of release on February 24 and was notified on February 28. Although the letter said "release immediately", I was not released until March 16. I don't know why they keep you like this. My family went every day from 2:00 p.m. to midnight to wait for me to leave. They kept waiting for me.<sup>448</sup>

The mere filing of habeas corpus was not a problem. Yes, they have received them, but those processes are a dead letter. They may be resolved by the Constitutional Chamber or second instance chambers, but in no case do I know that they have been decreed. Habeas corpus is an ineffective procedure.<sup>449</sup>

I went to file a habeas corpus and the only response I received was a document asking me if I knew where my son was, what crime they were accusing him of (de qué delito me lo acusaban), the file number,

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<sup>445</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, p. 52.

<sup>446</sup> Cristosal, [One year under the emergency regime: a permanent measure of repression and human rights violations. Situation Report from March 27, 2022 to March 27, 2023](#), May 12, 2023, p. 25; El Faro, [Juzgado ordena liberar a panadero capturado durante el Régimen, pero Centros Penales desobedece \(Judge orders the release of baker arrested during the state of emergency, but Centros Penales disobeys\)](#), August 25, 2023.

<sup>447</sup> Testimony No. 17 of March 20, 2023. Person released under alternative measures.

<sup>448</sup> Testimony No. 29 of March 24, 2023. Person released under alternative measures.

<sup>449</sup> Testimony No. 2 of March 13, 2023. Defense attorney.



but they did not give me any further response. I called a number I was given and they don't answer.<sup>450</sup>

192. According to information gathered by the Legal and Anti-Corruption Department of the National Foundation for Development, between March 2022 and January 2023, the Supreme Court of Justice received 4,012 Habeas Corpus requests in different judicial offices, most of them related to persons captured during the state of emergency, and at that time 3,512 appeals were still pending, that is, 78%.<sup>451</sup> Likewise, according to data from the Constitutional Chamber published in the press, between March 27, 2022 and June 30, 2023, the Supreme Court of Justice (CSJ) received 5,198 Habeas Corpus petitions in different judicial offices, most of them related to persons arrested during the state of emergency, and up to that moment it had resolved 1,419 appeals, that is, 28%.<sup>452</sup> For its part, the OUDH noted that, in 2022, there was a 630% increase in the number of habeas corpus filed before the CSJ compared to the same period of the previous year and that of the 3,396 appeals filed in 2022, 948 were resolved, and 27 were admitted.<sup>453</sup> The organizations also indicated that in some cases, the Constitutional Chamber made precautions requiring the petitioners to provide the location of the detained person or their state of health, data that the Habeas Corpus petitioners were unable to present, since it was precisely the refusal of the prison authorities to provide this information that had motivated the filing of the appeal.<sup>454</sup>

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<sup>450</sup> Testimony No. 14 of March 17, 2023. Relative of two detainees (adult male and female detainees).

<sup>451</sup> La Prensa Grafica, [Supreme Court of Justice has not resolved 3,512 petitions of Habeas Corpus](#), March 1, 2023.

<sup>452</sup> La Prensa Grafica, [¿Qué está pasando con los habeas corpus en el régimen de excepción en El Salvador? \(What is happening with habeas corpus under the state of emergency in El Salvador?\)](#), November 13, 2023; Cristosal, [Analysis: The State of the Control System in El Salvador](#), November 2023, p. 14; La Prensa Gráfica, [Supreme Court of Justice without resolving 3,512 Habeas Corpus petitions](#), March 1, 2023.

<sup>453</sup> The University Observatory of Human Rights of the Central American University José Simeón Cañas, Annual report 2022: The State of Human Rights in El Salvador, April 2023, pp. 137-138.

<sup>454</sup> Cristosal, [One year under the emergency regime: a permanent measure of repression and human rights violations. Situation Report for March 27 2022 to March 27, 2023](#), May 12, 2023, p. 64.

193. On this issue, the State indicated that the state of emergency has led to a greater activation of the constitutional jurisdiction, which is why the Constitutional Chamber has adopted measures to ensure the timely processing of cases.<sup>455</sup> These measures include the timely scheduling of Chamber sessions; an increase in staff performing legal coordination, legal collaboration, and notification functions; the identification of lawsuits with issues in common for similar treatment; and urgent cases that merit priority handling.<sup>456</sup> It also noted an increase in the settlement of constitutional Habeas Corpus proceedings.<sup>457</sup> In its comments on the draft of this report, the State reported, based on data from the Supreme Court of Justice of February 2024, that the number of proceedings initiated in 2022 and 2023, as well as those completed, is equivalent to five times the number received in previous years. In particular, it reported that in 2022, 3,396 habeas corpus petitions were filed, of which 948 were settled. In 2023, 3,071 were initiated and 2,716 were settled.<sup>458</sup> It also indicated that constitutional jurisprudence establishes that the workload must be considered as an objective factor when evaluating the time taken by the courts to issue rulings on certain matters. The State pointed out that this consideration must take into account the particularities of each case, since the volume of proceedings handled by a court may have an impact on the time it takes to settle cases under its jurisdiction, despite the efforts made by the authorities to avoid this.<sup>459</sup>

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<sup>455</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, p. 7.

<sup>456</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, p. 7.

<sup>457</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, p. 7.

<sup>458</sup> State of El Salvador, Observations of the State of El Salvador to the IACHR Report "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, Annex 1, Methodological Systematization Matrix, line 44, column E.

<sup>459</sup> State of El Salvador, Observations of the State of El Salvador to the IACHR Report "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, Annex 1, Methodological Systematization Matrix, line 45, column E.

194. The Commission recalls that habeas corpus fulfills the purpose of judicially verifying the legality of the deprivation of liberty as it is a means to control respect for the life and integrity of the person, prevent his disappearance or refusal to declare his place of detention, as well as to protect him against torture or other cruel, inhuman, or degrading treatment or punishment.<sup>460</sup> Both the detained person and his family members or other persons close to him must have access to this or other prompt and effective judicial procedures or remedies as a means to determine his whereabouts or state of health, or to identify the authority that ordered or carried out the deprivation of liberty.<sup>461</sup> This remedy must not only formally exist in law, or be formally admissible; it must also meet the objective of obtaining without delay a decision on the legality of the arrest or detention.<sup>462</sup> According to official information received by the Commission, the percentage of habeas corpus cases settled in 2022 was 28% and 88% in 2023. While the Commission appreciates the State's efforts to increase its capacity to process and respond to habeas corpus appeals in 2023, it notes that 84% of the appeals received in those 2 years are still pending resolution. In this regard, the IACHR considers the excessive length of time it takes to respond to these appeals to be serious, especially when a state of emergency is in force. Especially in such circumstances, the Court has stressed the relevance of judicial guarantees, both to protect non-derogable or non-suspended rights and to verify the legality of the measures applied in the specific case.<sup>463</sup>

195. The Commission notes that El Salvador's domestic jurisdiction has also consistently pronounced on the need for Habeas Corpus to be

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<sup>460</sup> I/A Court H.R. Advisory Opinion OC-8/87. Habeas corpus in Emergency Situations (Articles 27.2, 25.1, and 7.6 of the American Convention on Human Rights). Resolution of January 30, 1987, par. 35.

<sup>461</sup> I/A Court H.R. Case of Torres Millacura et al v. Argentina. Merits, Reparations, and Costs. Judgment of August 26, 2011. Series C No. 229, par. 114.

<sup>462</sup> I/A Court H.R., Case of J. v. Peru, Preliminary Objection, Merits, Reparations, and Costs, November 27, 2013. par. 170.

<sup>463</sup> I/A Court H.R., Advisory Opinion OC-9/87 on Judicial Guarantees in States of Emergency (Articles 27(2), 25 and 8 of the American Convention on Human Rights) of October 6, 1987, p. 25.

resolved within a reasonable period of time. In this sense, following the provisions of the ACHR, Salvadoran courts have indicated that the right to jurisdiction guarantees compliance with the constitutional obligation to satisfy within a reasonable period of time the claims of the parties or to issue and execute the judgment without delay.<sup>464</sup> The IACHR agrees with Salvadoran jurisprudence that indicates that the saturation of hearings<sup>465</sup> or the workload<sup>466</sup> is not in itself sufficient to justify the legal time limits. In the present situation, the delay in the response to the Habeas Corpus actions responds to the detention policy, which should have foreseen that its execution would trigger an unprecedented procedural saturation. Taking into consideration that the legal actions undertaken deal with the right to liberty, it is necessary to take the appropriate measures to achieve procedural discharge, guaranteeing that it be completed within a reasonable period of time.

- 196.** In view of the above, the Commission urges the State to take additional actions to strengthen the judiciary so that it can fulfill its mandate, considering the situation that has arisen as a result of the tens of thousands of arrests made in recent months. It also urges the State to ensure that habeas corpus petitions are analyzed within a reasonable period of time and are an effective remedy to review the legality of detentions and respect for the rights of detainees, and if granted, to grant immediate release to the detainee.

### **The right to the presumption of innocence, due process of law, and judicial guarantees**

- 197.** In its observations on the draft of this report, the State reported that at least 54,000 homicides were "established" during the preliminary

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<sup>464</sup> Supreme Court of Justice, Constitutional Chamber, HC-49-2010 of January 19, 2018, p. 4; Court of Justice, Constitutional Chamber, HC-49-2010 of October 15, 2010, p. 3;

<sup>465</sup> Supreme Court of Justice, Constitutional Chamber, HC-49-2010 of January 19, 2018, p. 8; Court of Justice, Constitutional Chamber, HC-49-2010 of October 15, 2010, p. 5.

<sup>466</sup> Supreme Court of Justice, Constitutional Chamber, HC-126-2013 of July 3, 2013, p. 7; Court of Justice, Constitutional Chamber, HC-236-2011 of August 15, 2012, p. 12.

stage of criminal proceedings, with judicial oversight of the factors needed to determine the corresponding responsibilities based on criminal legislation. It asserted that the prosecution of all persons captured is carried out within the legally established deadlines, in order to guarantee both a response by the judiciary and the rights of the accused in the respective proceedings. It also claimed that the Salvadoran State has used the tools provided by the state of emergency in a responsible manner and with the sole purpose of criminally prosecuting those individuals proven to have been members of gangs who have engaged in criminal activities within those gangs.<sup>467</sup>

198. However, civil society organizations criticized other aspects related to the right to the presumption of innocence, due process of law, and judicial guarantees. They denounced a series of **practices on the part of the prosecutor's office** that can be summarized mainly as: tolerance of illegal and arbitrary procedures in the police and military actions that led to the arrest; criminal charges, especially for the crime of pertaining to unlawful groups, or the processing of provisional arrests without minimal evidence or even evidence against the accused person; and failure to individualize a specific crime committed by the accused person (*ausencia de individualización de las conductas típicas de la persona imputada*).<sup>468</sup> Many of the charges were based on "police intelligence" assumptions, through: reports of people allegedly caught in "flagrante delicto"; police reports of "crime incidence" in the areas of residence or capture of the person; police intelligence database reports on the mara or gang structure operating in the area of residence or capture of the person; police "expertise" regarding people's tattoos and their interpretation; and reports of

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<sup>467</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador"(Observations of the State of El Salvador on the IACHR report entitled "State of Emergency and Human Rights in El Salvador"), Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, pp. 67-69.

<sup>468</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Progress Report March 27, 2022 to March 27, 2023](#), May 12, 2023, p. 61; Cristosal, [Human Rights Violations During the State of Emergency in El Salvador. Situation Report for the period March 27 to April 26, 2022](#), May 2022, p.16-17.

having a police and/or criminal record.<sup>469</sup> The testimonies taken also referred to some of these aspects:

The first hearing was 6 days after my arrest. We were moved to a room in Mariona. There is a screen there. They only mentioned the names of the people who were accused in order to know if they were present. There were about 150 of us. The prosecution requested six more months of investigation. All the people stayed the six months; no one was released at that hearing. They asked if anyone had anything to mention, but because of the same fear, no one gave an opinion, because it could have been held against us (*porque la tenemos en contra*).<sup>470</sup>

All of the demands are motivated by the facts relating to the increase in homicides in March 2022. They all have the same format, then they make a diagnosis of crime in the area, an analysis of the area, and the gang structure of the area. Then after the documentation they made reference to the capture of the person, a police intelligence report as a collaborator or member (even if it was drawn up after the arrest), plus the identification of any gang's tattoos.<sup>471</sup>

The evidence being offered by the Attorney General (FGR) is the arrest record, the medical check-up, the appointment of a public defender, and the reading of rights.<sup>472</sup>

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<sup>469</sup> Cristosal, [Violaciones a los derechos humanos Durante el régimen de excepción en El Salvador. \(Human Rights Violations During the State of Emergency in El Salvador\) Situation Report for the period April 27 to May 25, 2022](#), June 14, 2022, p.37; Cristosal, [Human Rights Violations. During the state of emergency \(régimen de excepción\) in El Salvador. Situation Report for the period June to September 2022](#), October 19, 2022 p. 31.

<sup>470</sup> Testimony No. 23 of March 22, 2023. Person Released under substitute measures.

<sup>471</sup> Testimony No. 2 of March 13, 2023. Defense attorney.

<sup>472</sup> Testimony No. 3 of March 14, 2023. Defense attorney.

199. In its observations on the draft of this report, the State indicated that in order to prove membership in the illegal group, the Police and the Prosecutors' Office, in the investigation proceedings, must provide testimonial, documentary, and expert evidence regarding the individual and the group to which he or she belongs, including: a criminal profile of the person indicated, in the PNC database, in which it is stated that he/she belongs to the gang; history of arrest and link to a gang; that the accused has tattoos on his/her body identifying him/her as a gang member; demonstration of participation in the commission of crimes; testimonies of targeted witnesses (*testigos blancos*) or selected witnesses who establish membership in the gang; testimonies of victims linking him/her to the gang; seizures of telephones with information alluding to gangs; seizures of weapons, drugs, or other illicit objects while acting as a gang member; gang tattoo and graffiti interpretation analysis reports; social network information indicating gang membership; surveys of graffiti in areas frequented by gangs; body inspection albums showing tattoos alluding to gangs; other relevant indications.<sup>473</sup>
200. In addition, the IACHR was informed that **the specialized investigating judges** reportedly endorsed these practices to the extent that: they would automatically decree provisional detentions without proof, evidence or indications; they would not individualize the criminal conduct attributed to the detained person; and they would omit to deal with reports of deplorable and subhuman conditions of detention and cruel, inhuman, and degrading treatment. In repeated virtual hearings and in large groups, the microphone would be muted and the accused persons would not be able to exercise their material defense or narrate the abuses suffered; or the hearing would continue without the presence of the accused person when the Internet

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<sup>473</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador"(Observations of the State of El Salvador on the IACHR report entitled "State of Emergency and Human Rights in El Salvador"), Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, pp. 83-84.

connection is interrupted.<sup>474</sup> Obstacles were also reported in obtaining basic information about the place of detention, the assigned court, the day of the hearing, as well as the lack of access to the court file<sup>475</sup>:

The courts are not raising formal obstacles, but they are obstructing material and technical defense by not giving me information. Decreeing the confidentiality of the file. [...] The only cases in which the Criminal Code provides for confidentiality are those that affect public morals, secrecy for national security, to protect the right to privacy of the victims or to protect public order. However, all cases are now reserved on "public order" grounds without justification or good reason.<sup>476</sup>

The biggest difficulty is that the whole process is shrouded in secrecy.<sup>477</sup>

We were told that the sheer amount of documents that existed made it impossible to access the file. As a general rule, there was no access to the file. In some cases, the injunction or summons was provided, but in a digital copy. At best, we had access to the prosecutor's injunction at the hearing. Access to documentation

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<sup>474</sup> Cristosal, [One year under the state of emergency : a permanent measure of repression and human rights violations. Progress Report for March 27, 2022 to March 27, 2023](#), May 12, 2023, pp. 23, 61-62, 91; Cristosal, [Human Rights Violations During the State of Emergency in El Salvador. Situation report for the period March 27 to April 26, 2022](#), May 2022, p.18, Cristosal, [Human Rights Violations During the State of Emergency in El Salvador. Situation Report for the period April 27 to May 25, 2022](#), June 14, 2022, pp. 40-41; Cristosal, [Human Right Violations. During the state of emergency \(régimen de excepción\) in El Salvador. Situation Report for the period June to September 2022](#), October 19, 2022 p. 27.

<sup>475</sup> Cristosal, [Violaciones a los derechos humanos Durante el régimen de excepción en El Salvador. \(Human Rights Violations During the State of Emergency in El Salvador\) Situation Report for the period from March 27 to April 26, 2022](#), May 2022, p.11; Cristosal, [Human Rights Violations During the State of Emergency in El Salvador. Situation Report for the period April 27 to May 25, 2022](#), June 14, 2022, pp. 33-34; Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. dear Situation Report for March 27 2022 to March 27, 2023](#), May 12, 2023, p. 62.

<sup>476</sup> Testimony No. 5 of March 14, 2023. Defense attorney.

<sup>477</sup> Testimony No. 4 of March 14, 2023. Defense attorney.



was quite limited. Until after the initial hearing, the court did not allow access to the file.<sup>478</sup>

201. Regarding the initial **hearings**, in which the legality of the arrest must be assessed, the criminal charges must be decided, and a decision taken regarding whether the person charged must be placed in pre-trial detention, the Commission was informed that they have been held on some occasions in groups of up to 500 detainees.<sup>479</sup> From April 10 to December 31, 2022, there were at least 110 mass hearings involving 19,235 people, with pre-trial detention ordered in 99% of these hearings.<sup>480</sup> In some hearings, the authorities would allow public defenders about four minutes to present the case for 400 to 500 people<sup>481</sup>; and less than 2% of defendants would be able to speak on their own behalf in hearings of that magnitude.<sup>482</sup> It was also reportedly common to dismiss on no good reason defense pleas and requests for alternatives to imprisonment.<sup>483</sup> In this regard, the organizations pointed out that "mass hearings" reduce the opportunity to exercise an adequate material and technical defense and do not individualize criminal responsibilities, thereby curtailing the presumption of innocence.<sup>484</sup>

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<sup>478</sup> Testimony No. 2 of March 13, 2023. Defense attorney.

<sup>479</sup> Human Rights Watch, Cristosal, ["We Can Arrest Anyone We Want" Widespread Human Rights Violations During the "State of Emergency" in El Salvador, December 2022](#), p. 94; Cristosal, Cristosal, December 2022, p. 94; Cristosal, [Human Rights Violations. During the state of emergency \(régimen de excepción\) in El Salvador. Situation Report for the period June to September 2022](#), October 19, 2022 p. 27.

<sup>480</sup> The University Observatory of Human Rights of the Central American University José Simeón Cañas, Annual report 2022: The State of Human Rights in El Salvador, April 2023, pp. 136-137.

<sup>481</sup> Human Rights Watch, Cristosal, ["We Can Arrest Anyone We Want" Widespread Human Rights Violations During the "State of Emergency" in El Salvador](#), December 2022, p. 94.

<sup>482</sup> Cristosal, [Violaciones a los derechos humanos Durante el régimen de excepción en El Salvador. \(Human Rights Violations During the State of Emergency in El Salvador\) Situation Report for the period April 27 to May 25, 2022](#). June 14, 2022, pp. 33-34.

<sup>483</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 27 2022 to March 27, 2023](#), May 12, 2023, p. 62.

<sup>484</sup> Human Rights Watch, Cristosal, ["We Can Arrest Anyone We Want" Widespread Human Rights Violations During the "State of Emergency" in El Salvador](#), December 2022, p. 94.

202. Likewise, for certain crimes -such as those related to "illicit groups" or "terrorism"-, Salvadoran legislation establishes that virtual hearings must be held virtually as a rule<sup>485</sup>, which was highlighted as particularly detrimental in hearings with dozens and hundreds of accused persons.<sup>486</sup> These obstructions to the exercise of technical and material defense in the massive virtual hearings were also mentioned in the testimonies taken by the IACHR from the perspective of both the accused and the lawyers who have acted in different cases:

There were many of us in the audience. The hearings are virtual. I didn't get to speak. Since there are [people] from different penal centers, I didn't get to give my testimony, but it wasn't going to do any good anyway, nobody got out. [...] In addition, there were about 400 of us for one public defender.<sup>487</sup>

I have been present at hearings of up to 611 detainees, only private attorneys and a public defender were present. None of the defendants were physically present.<sup>488</sup>

In the hearings that I have attended, they limit the time for the defense to participate. There are judges who indicate a maximum of 5 minutes. It is impossible to exercise a defense with that amount of time, added to the fact that we do not have access to the file in an optimal manner.<sup>489</sup>

The hearings are done virtually, they just called me that I had a hearing and went to take me to where the computer is. There were

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<sup>485</sup> Human Rights Watch, Cristosal, "[We Can Arrest Anyone We Want" Widespread Human Rights Violations During the "State of Emergency" in El Salvador](#)", December 2022, p. 95.

<sup>486</sup> Human Rights Watch, Cristosal, "[We Can Arrest Anyone We Want" Widespread Human Rights Violations During the "State of Emergency" in El Salvador](#)", December 2022, p. 95.

<sup>487</sup> Testimony No. 1 of March 13, 2023. Person released under alternative measures.

<sup>488</sup> Testimony No. 2 of March 13, 2023. Defense attorney.

<sup>489</sup> Testimony No. 7 of March 15, 2023. Defense attorney.

about 36 people there, it wasn't just me. I had the floor, but I couldn't say anything. I just said I wanted clothes, I couldn't say anything else.<sup>490</sup>

On the tenth day after I was transferred to the prison I had my hearing. It was about three o'clock in the afternoon. We were pulled out early and I was waiting. On site were a screen, camera and microphone and the person in charge of the hearing. The public defender pointed out the names of the people she was defending and we had to say "present." She told us that if we were given an opportunity to speak we should not use it or say anything. I had never been detained before and I wanted to ask the judge why I had been detained.<sup>491</sup>

**203.** With respect to virtual hearings, the State indicated that the Supreme Court of Justice has made efforts to integrate new communication technologies for the holding and development of oral hearings, which are also carried out through videoconferencing.<sup>492</sup> It pointed to the use of Delegates of Penitentiary Affairs, who from the prisons and penitentiaries, provide legal-administrative support to the activity of the judge, in accordance with the provisions of the Interagency Protocol for conducting hearings and proceedings through videoconferencing, in aspects such as verifying the identity of the accused, checking that the audiovisual system allowed for correct understanding of the act being executed, facilitating communication with the main hearing room and the defense attorneys, among others, thereby effectively protecting the accused and detainee.<sup>493</sup>

**204.** The Commission also received information on other patterns of limitations in the exercise of **judicial guarantees** and the **technical**

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<sup>490</sup> Testimony No. 20 of March 21, 2023. Person Released under substitute measures.

<sup>491</sup> Testimony No. 6 of March 15, 2023. Person released under alternative measures.

<sup>492</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 52-53.

<sup>493</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 52-53.

**and material defense** of the accused persons, such as the restriction of contact between the accused persons and their legal representatives in the preparation of their defense due to the prohibition of entry into the penal centers.<sup>494</sup> Thousands of detainees were reportedly held incommunicado for weeks or months, barred from making phone calls and only having access to their legal representative for a few minutes shortly before their hearings.<sup>495</sup> Thus, the testimonies recorded:

To begin with, the police never allowed the lawyer to meet with the detained person, either during the administrative stage, the judicial stage, or afterwards. None of the lawyers who have represented persons under the state of emergency have been able to meet with them. Brief communications, at best. The only mechanism for communication could be during the hearing for the imposition of precautionary measures.<sup>496</sup>

They don't let lawyers in, they deprive us of any lawyer visits. I was accused of belonging to illicit groups. I had no legal assistance until the court hearing.<sup>497</sup>

They only told me it was about illicit groups. No, I had no contact with my public defender. I was introduced to him at the police station, but I never spoke to him.<sup>498</sup>

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<sup>494</sup> Cristosal, [Violaciones a los derechos humanos Durante el régimen de excepción en El Salvador. \(Human Rights Violations During the State of Emergency in El Salvador\) Situation Report for the period from March 27 to April 26, 2022](#), May 2022, p.11; Cristosal, [Human Rights Violations During the State of Emergency in El Salvador. Situation Report for the period April 27 to May 25, 2022](#), June 14, 2022, pp. 33-34; Cristosal, [Human Right Violations. During the state of emergency \(régimen de excepción\) in El Salvador. Situation Report for the period June to September 2022](#), October 19, 2022, p.27; Cristosal, [One year under the state of emergency : a permanent measure of repression and human rights violations. Situation Report for March 27 2022 to March 27, 2023](#), May 12, 2023, p. 62.

<sup>495</sup> Human Rights Watch, Cristosal, ["We Can Arrest Anyone We Want" Widespread Human Rights Violations Under El Salvador's "State of Emergency"](#), December 2022, pp. 93-94

<sup>496</sup> Testimony No. 2 of March 13, 2023. Defense attorney.

<sup>497</sup> Testimony No. 1 of March 13, 2023. Person released under alternative measures

<sup>498</sup> Testimony No. 23 of March 22, 2023. Person Released under substitute measures.

205. Based on the aforementioned practices, the Commission is concerned that persons accused of crimes during the state of emergency in El Salvador are facing serious harm to the **right to presumption of innocence** and violations of the exercise of **judicial guarantees**. The IACHR notes that in a short period of time there was a high number of open criminal cases, mainly for crimes related to membership of and collaboration with organized crime groups. The IACHR is concerned about reports of the practice of automatically charging persons detained in the context of the state of emergency, without adequately identifying the punishable acts committed and with little evidence to back the accusations made. In addition, judicial proceedings under the characteristics described above - especially mass hearings - do not allow for individualized knowledge of the cases and guilt of each individual, nor do they allow for the exercise of essential rights in criminal proceedings. The Commission warns that these and other violations of due process of law are particularly serious in light of the above-mentioned situation of massive illegal and arbitrary detentions since March 2022.

206. Article 8 of the American Convention recognizes due process, which encompasses the conditions that must be met to ensure the adequate defense of those whose rights or obligations are under judicial consideration.<sup>499</sup> Likewise, this article presents a set of minimum guarantees that must be ensured in the course of a criminal proceeding in observance of the principle of presumption of innocence of the accused.<sup>500</sup> In accordance with this principle, it is up to the prosecuting party to prove that the criminal offense is attributable to the person charged.<sup>501</sup> In this sense, the State has the duty to inform the interested party of the cause of the accusation and the reasons for the charge, i.e., the actions or omissions with which he or she is

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<sup>499</sup> I/A Court H.R. Judicial Guarantees in States of Emergency (Articles 27.2, 25, and 8 of the American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, par. 28.

<sup>500</sup> I/A Court H.R. Case of Ricardo Canese v. Paraguay. Merits, Reparations, and Costs. Judgment of August 31, 2004. Series C No. 111, par. 153.

<sup>501</sup> I/A Court H.R. Case of Zegarra Marín v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of February 15, 2017. Series C No. 331, par. 123-125.

charged, the evidentiary basis for the accusation, and the legal characterization given to these facts.<sup>502</sup> The American Court has also stressed that all this information must be provided in an explicit, clear, complete, and sufficiently detailed manner to enable the accused to fully exercise his right to defense and prove to the judge his version of the facts.<sup>503</sup> The IACHR emphasizes that everyone has the right to be heard by a competent, independent, and impartial judge in the substantiation of any formal accusation against him or her.<sup>504</sup>

207. The American Convention establishes the specific guarantees of this right, the purpose of which is both to provide the accused with the necessary tools to prove his innocence, and to enable him to play an active part in a rigorous control of the process to guarantee the validity and credibility of the evidence allegedly showing his guilt.<sup>505</sup> Likewise, the Court has indicated that the core element in the right to material defense is the possibility for the accused to actively participate in the hearings and proceedings and to make a free statement on the facts attributed to him; while technical defense ensures that the accused is advised on his duties and rights and exercises critical and legal control in the production of evidence.<sup>506</sup> The Commission urges judges to ensure the effective exercise of the right of defense in trial of the accused in both its material and technical aspects, ensuring parity in the exercise of the adversarial process and, specifically, in the possibility of requesting the production of evidence and ensuring that such evidence is effectively gathered. This includes guaranteeing adequate means and time to prepare and exercise the defense; duly

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<sup>502</sup> I/A Court H.R. Case of Barreto Leiva v. Venezuela. Merits, Reparations, and Costs. Judgment of November 17, 2009. Series C No. 206, par. 28.

<sup>503</sup> I/A Court H.R. Case of Barreto Leiva v. Venezuela. Merits, Reparations, and Costs. Judgment of November 17, 2009. Series C No. 206, par. 28.

<sup>504</sup> Article 8 of the American Convention on Human Rights.

<sup>505</sup> I/A Court H.R. Case of Rodríguez Revolorio *et al.* v. Guatemala. Preliminary Objection, Merits, Reparations, and Costs. Judgment of October 14, 2019. Series C No. 387, par. 117.

<sup>506</sup> I/A Court H.R. Case of Manuela *et al.* v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 2, 2021. Series C No. 441, par. 120.

notifying of the charges filed; ensuring access to information related to the case file; among others.

**208.** The IACHR also notes that, due to the existence of the state of emergency, the second paragraph of Article 12 of the Constitution of El Salvador, which refers to the right of the detained person to be informed of his rights and the reasons for his detention; not to be forced to incriminate himself when testifying; and to be guaranteed the assistance of his defense before the organs of administration of justice, is still suspended in the country.<sup>507</sup> The Commission reaffirms its view that these aspects form the core of the indispensable judicial guarantees, which are not subject to suspension under any circumstances. It is precisely through this set of judicial procedures and legal conditions that the State guarantees the appropriate means to control the acts dictated in an emergency context, ensuring that the measures adopted do not exceed the limits imposed by the ACHR or detract from full observance of the rights protected by Article 27.2 of the ACHR.<sup>508</sup>

**209.** Particularly regarding the right not to be compelled to testify against oneself, the Inter-American Court has indicated that any statement obtained through any form of coercion capable of breaking the spontaneous expression of the person's will must be annulled.<sup>509</sup> In this regard, the court has emphasized that statements obtained through coercion are usually not truthful and should be excluded from the judicial process as a way of discouraging procedural acts derived from torture or cruel treatment.<sup>510</sup> In this context, the IACHR notes that Article 24 of the Constitution remains suspended, which affects the requirement of judicial control over the interventions carried out by

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<sup>507</sup> Asamblea Legislativa, Decreto Legislativo No. 888, 7 de noviembre de 2023.

<sup>508</sup> I/A Court H.R., Advisory Opinion OC-9/87 on Judicial Guarantees in States of Emergency (Articles 27.2, 25, and 8 of the American Convention on Human Rights), October 6, 1987, paras. 20 and 21.

<sup>509</sup> I/A Court H.R. Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 26, 2010. Series C No. 220, par. 166.

<sup>510</sup> I/A Court H.R. Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 26, 2010. Series C No. 220, par. 166.

public agents, as well as the legal consequences of the use of material obtained under these circumstances.<sup>511</sup>

210. The Commission recalls that all authorities of a State Party to the Convention have an obligation to check compliance between acts or omissions and domestic norms and the American Convention (conventionality control), so that the interpretation and application of domestic law is consistent with the State's international human rights obligations.<sup>512</sup> As far as the justice system is concerned, justice operators must carry out this conventionality control within the framework of their respective competencies and the corresponding procedural regulations, taking into account not only the treaty, but also the interpretation that the Inter-American Court has made of it.<sup>513</sup> This supervisory task ensures respect for the rights that were not suspended by the state of emergency and control of the conventionality of the suspensions adopted. In view of the foregoing, the Commission calls upon the justice operators to exercise, within the framework of their respective competencies and with independence and impartiality, a control of conventionality both in the issuance and application of norms, in terms of their validity and compatibility with the Convention, and in the determination, trial, and resolution of particular situations and concrete cases, taking into account the treaty itself and, as appropriate, the precedents or jurisprudential guidelines of the Inter-American Court.<sup>514</sup>

211. With regard to **free criminal assistance**, the State indicated that the Office of the Attorney General of the Republic (PGR), as the institution responsible for providing free criminal assistance to persons who cannot obtain a private attorney and its Public Criminal Defense Unit

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<sup>511</sup> See also Inter-American Convention to Prevent and Punish Torture (Article 10).

<sup>512</sup> I/A Court H.R. Case of Colindres Schonenberg v. El Salvador. Merits, Reparations, and Costs, Judgment of February 4, 2019. Series C No. 373, par. 129.

<sup>513</sup> I/A Court H.R. Case of Colindres Schonenberg v. El Salvador. Merits, Reparations, and Costs, Judgment of February 4, 2019. Series C No. 373, par. 129.

<sup>514</sup> I/A Court H.R., Case of Gelman v. Uruguay. Monitoring of Compliance with Judgment. Order of the Inter-American Court of Human Rights of March 20, 2013, par. 69.



(Ombudsman's Office), is a major player in the technical defense of adults and adolescents who are accused of committing a punishable act, from the initial investigation phase to the phase of prison supervision and enforcement of the sentence or execution of measures for minors, as appropriate.<sup>515</sup> It reported that the Ombudsman's Office has experienced a considerable increase in the number of cases since the first decree of the state of emergency, and has continuously and uninterruptedly provided its services, which have been comprehensive and focused on a human rights and gender perspective.<sup>516</sup> Between March 27, 2022 and May 16, 2023, the Ombudsman's Office has attended to approximately 58,880 criminally prosecuted persons, having increased the number of public defenders who provide their services on a permanent basis in the different local units; in addition, the institution's facilities have been adapted so that persons deprived of liberty are presented in a dignified manner and are allowed reasonable communication during the first interview with the assigned public defender.<sup>517</sup> The State mentioned the hiring of personnel in the Auxiliary Prosecutor's Offices at the national level, in the positions of Ombudsman, receptionist, psychologist, and social worker.<sup>518</sup> Although it did not specify the increase in contracted personnel, in its comments on the draft of this report, it indicated the number of people in these positions at the national level: 33 public defenders, 7 psychologists, 2 social workers, and 15 receptionists.<sup>519</sup> In addition, In a hearing held in November 2023 by the IACHR, the

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<sup>515</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 54-55.

<sup>516</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 54-55.

<sup>517</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 54-55.

<sup>518</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, p. 8.

<sup>519</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador"(Observations of the State of El Salvador on the IACHR report entitled "State of Emergency and Human Rights in El Salvador"), Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, pp. 83-84.

State indicated that the PGR would conduct the criminal defense of almost 80% of the persons detained during the state of emergency.<sup>520</sup>

212. In turn, civil society organizations asserted that the PGR had collapsed, indicating that, between January and the end of March 2022, defenders handled 9,000 cases, which rose to more than 55,000 between March and July alone.<sup>521</sup> Due to the high increase in arrests, the PGR had reportedly advised the public not to seek initial legal attention until 13 days after capture by security forces.<sup>522</sup> The Commission also heard criticisms about the institution's procedures for receiving and preserving documentation relevant to the cases, as well as about communication with the families.<sup>523</sup> In repeated cases, basic information about the process, such as the basis of the accusations and the stage of a particular case, or an explanation of the documents that family members should submit, was not provided.<sup>524</sup> In addition, situations of neglect, negligence, mistreatment, gender violence, and stigmatization of family members were reported.<sup>525</sup>

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<sup>520</sup> IACHR, Hearing 'Forced Disappearances during the State of Emergency', 188th session, November 9, 2023.

<sup>521</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 27 2022 to March 27, 2023](#), May 12, 2023, p. 62.

<sup>522</sup> Cristosal, [Violaciones a los derechos humanos Durante el régimen de excepción en El Salvador. \(Human Rights Violations During the State of Emergency in El Salvador\) Situation Report for the period March 27 to April 26, 2022](#), May 2022; p.15.

<sup>523</sup> Cristosal, [Violaciones a los derechos humanos Durante el régimen de excepción en El Salvador. \(Human Rights Violations During the Emergency Regime in El Salvador\) Situation Report for the period April 27 to May 25, 2022](#), June 14, 2022, pp. p.35 -37.

<sup>524</sup> Cristosal, [Violaciones a los derechos humanos Durante el régimen de excepción en El Salvador. \(Human Rights Violations During the Emergency Regime in El Salvador\) Situation Report for the period April 27 to May 25, 2022](#), June 14, 2022, pp.35-37; Cristosal, [Human Rights Violations During the state of emergency \(régimen de excepción\) in El Salvador. Situation Report for the period June to September 2022](#), October 19, 2022, p.27; Cristosal, [Violaciones a los derechos humanos durante el régimen de excepción en El Salvador. Situation Report for the period March 27 to April 26, 2022](#), May 2022, p.15; Human Rights Watch, Cristosal, ["We Can Arrest Whoever We Want" Widespread Human Rights Violations During the "State of Emergency" in El Salvador](#), December 2022, pp. 93-94.

<sup>525</sup> Cristosal, [Violaciones a los derechos humanos Durante el régimen de excepción en El Salvador. \(Human Rights Violations During the Emergency Regime in El Salvador\) Situation Report for the period April 27 to May 25, 2022](#), June 14, 2022, pp.35-37; Cristosal, [Human Rights Violations During the Emergency Regime in El Salvador. Situation Report for the period March 27 to April 26, 2022](#), May 2022; pp. 11, 62.

213. In its comments on the draft of this report, the State indicated that any complaint or denunciation filed by users or their relatives is directed through the appropriate channels, with the aim of establishing disciplinary responsibilities in the event that the public official has committed any fault. In this regard, it indicated that so far, the PGR's Legal Affairs Department, which is in charge of managing such disciplinary proceedings before the Civil Service Commission, has not registered any case related to the accusations raised.<sup>526</sup>
214. The Commission reiterates its views that, despite the increased human resources allocated to the PGR, the measures adopted in the area of citizen security under the emergency regime have substantially increased the demand for the services constitutionally assigned to that institution, and significant challenges have been observed with regard to complying with those additional requirements.<sup>527</sup> This makes it all the more important to determine the resources needed to meet the real demands of the institution in the current situation.<sup>528</sup> The Commission and the Court have underscored the importance of free public legal defense services for persons without resources as an essential part of their right to effective judicial protection and have indicated that this service must be provided with sufficient guarantees for its efficient performance, on an equal footing with the guarantees provided for prosecution.<sup>529</sup> It is also essential that the free services provided are geared towards facilitating access to justice for groups

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<sup>526</sup> State of El Salvador, Observations of the State of El Salvador to the IACHR Report "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, Annex 1, Methodological Systematization Matrix, line 48, column E.

<sup>527</sup> IACHR, 2022 Annual Report, Chapter V: Follow-up of recommendations made by the IACHR in its country or thematic reports: El Salvador, April 1, 2023, paras. 90-91.

<sup>528</sup> IACHR, 2022 Annual Report, Chapter V: Follow-up of recommendations made by the IACHR in its country or thematic reports: El Salvador, April 1, 2023, paras. 90-91.

<sup>529</sup> I/A Court H.R., Exceptions to the Exhaustion of Domestic Remedies (Articles 46(1), 46(2)(a) and 46(2)(b), American Convention on Human Rights). Advisory Opinion OC-11/90 of August 10, 1990. Series A No. 11, par. 126; I/A Court H.R. Case of Ruano Torres et al. v. El Salvador. Merits, Reparations, and Costs, Judgment of October 5, 2015. Series C No. 303, par. 155; IACHR, Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights, OEA/Ser.L/V/II.129, Doc. 4, September 7, 2007, paras. 51– 55; I/A Court H.R. Case of Ruano Torres et al. v. El Salvador. Merits, Reparations, and Costs, Judgment of October 5, 2015. Series C No. 303, par. 157.

that are particularly affected by poverty, ensuring wide dissemination of information on rights and remedies within the justice system.<sup>530</sup>

215. In sum, based on the information received, the IACHR observed severe restrictions to rights and guarantees with respect to the actions of the Attorney General's Office and the Judiciary in their work to oversee the deprivations of liberty carried out during the state of emergency and in the criminal prosecution of persons allegedly linked to or collaborating with gangs. The Commission urges the State to adopt additional efforts to ensure the effectiveness of the habeas corpus remedy, especially in the face of the suspension of rights and guarantees due to the state of emergency. It also urges the implementation of the necessary measures for a complete, exhaustive, and impartial review of the criminal cases initiated in this context, in order to avoid or correct injustices, examining each case on a case-by-case basis based on strictly legal criteria.<sup>531</sup> To this end, it recommends the examination of the lines of inquiry and the procedures carried out, determining which acts should be corrected or annulled due to violations of due legal process, curtailment of defense, and failure to observe presumption of innocence of the persons prosecuted.

### **Pretrial detention**

216. Regarding pretrial detention, the State did not provide figures on how many people were subjected to this type of measure. It indicated that the Office of the Attorney General of the Republic compiles evidence of the commission of the crime and the participation of the accused, which it presents to the judicial authority for the corresponding decision, together with the request for the hearing for the imposition

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<sup>530</sup> IACHR, Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights, OEA/Ser.L/V/II.129 , Doc. 4, September 7, 2007. par. 88.

<sup>531</sup> Interdisciplinary Group of Independent Experts (GIEI)- Bolivia, [Final Report on the acts of violence and human rights violations that occurred between September 1 and December 31, 2019](#), July 23, 2021, pp. 287, 465.

of measures.<sup>532</sup> It informed that in this hearing there is participation of the defense, the prosecution, and the defendant, either in person or by videoconference, which would guarantee the rules of due process.<sup>533</sup> Under the state of emergency, the Department of Probation and Assisted Liberty of the Supreme Court of Justice also provides support to the Judges of Penitentiary Surveillance and Execution of Sentences, managing information on assisted persons who are deprived of liberty due to the regime and who for that reason cease to comply with their conditions or rules of conduct, as well as alternative sentences to imprisonment. This is to ensure that the Judges have sufficient elements to support their decisions, in application of the criteria of justification for non-compliance that the same law recognizes, in such a way that the assisted person is guaranteed, among others, the right to due process, access to justice and legal certainty.<sup>534</sup>

217. According to public information, of the 65,795 people detained up until March 2023, about 90% were remanded in custody.<sup>535</sup> Of particular concern is the information that justice operators are automatically requesting and applying the measure for certain crimes, including "illicit groupings" and membership in a "terrorist organization", even in the absence of evidence<sup>536</sup>:

There were about 500 people in the audience that day. I saw the list, he was number three hundred and something and he was

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<sup>532</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, p. 52.

<sup>533</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, p. 52.

<sup>534</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, p. 52.

<sup>535</sup> France24, [El Salvador under a state of emergency: the net outcome after one year of Bukele's controversial measure](#), March 29, 2023; Contrapunto, [313 days without homicides. There are 4,012 Habeas Corpus](#), March 1, 2023.

<sup>536</sup> Human Rights Watch, Cristosal, ["We Can Arrest Whomever We Want" Widespread Human Rights Violations During the "Emergency Regime" in El Salvador](#), December 2022, p. 92; Cristosal, [One year under the emergency regime: a permanent measure of repression and human rights violations. Situation Report for March 27, 2022 to March 27, 2023](#) May 12, 2023, pp. , 27 62, 64, 65.

charged with belonging to illegal groups. All persons were remanded in custody.<sup>537</sup>

In the hearings, they do not evaluate evidence, all the lawyers had the people's papers (*arraigos*) with them. Only one of every 52 people was given alternative measures. Although judges receive evidence, they do not evaluate it. For example, when the substitution of precautionary measures is not achieved, a special hearing for the review of measures is requested, the evidence or opinions are received, but not evaluated. It even happened that, in order to prove the employment of a person, the judicial authority asked me absurdly to have the employer come and declare that the person I represent works in that place.<sup>538</sup>

**218.** The IACHR reiterates its considerations on the incompatibility with inter-American human rights standards of any regulation that establishes pretrial detention as mandatory based on the type of crime.<sup>539</sup> Bearing in mind the precautionary and exceptional nature of this measure, the Commission urges the State to ensure its rational use, favoring the use of less burdensome alternative measures.<sup>540</sup> It is incumbent upon the prosecution to show that the application of alternative measures is not feasible.<sup>541</sup> Likewise, its application should only occur when the applicable legal parameters are met in each individual case, which should be in accordance with international human rights law, and given necessity, proportionality, and legitimate purpose.<sup>542</sup> The corresponding resolution ordering pretrial detention

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<sup>537</sup> Testimony No. 24 of March 23, 2023. Family member of a detained person.

<sup>538</sup> Testimony No. 3 of March 14, 2023. Defense attorney.

<sup>539</sup> IACHR, Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II.163, Doc. 105, July 3, 2017, par. 231.B.4.

<sup>540</sup> IACHR, Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II.163, Doc. 105, July 3, 2017, par. 231.E.2.

<sup>541</sup> IACHR, Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II.163, Doc. 105, July 3, 2017, par. 231.E.2.

<sup>542</sup> IACHR, Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II.163, Doc. 105, July 3, 2017, paras. 230, 231.B.1-4.

must name the individual whose pretrial detention is being ordered, spell out the facts attributed to him or her, specify the crimes that those facts constitute, explain the circumstances that necessitate pretrial detention, and set the time period that the individual is to be held in pretrial detention and the date on which it will expire.<sup>543</sup>

**219.** The Inter-American Court has indicated that in order for a precautionary measure restricting liberty not to be arbitrary and not affect the right to the presumption of innocence, it is necessary that: a) there are material assumptions related to the existence of an unlawful act and the link of the person being prosecuted to that act; b) these measures comply with the four elements of the "proportionality test", that is, with the purpose of the measure, which must be legitimate (compatible with the American Convention), suitable to comply with the purpose pursued, necessary, and strictly proportional; and c) the decision that imposes them is sufficiently well substantiated to evaluate whether it complies with the conditions indicated.<sup>544</sup>

**220.** The Inter-American Court has reiterated the obligation to duly substantiate and give reasons for decisions that may affect human rights, indicating, through rational argumentation, the reasons on which they are based, taking into account the allegations and the evidence provided in the case file.<sup>545</sup> In addition, the Commission recalls that it is the responsibility of the prosecution and judicial authorities to ensure periodic reviews of the situation of persons subject to pretrial detention and the validity of the circumstances that led to its application.<sup>546</sup> Likewise, the IACHR has recommended to the States that these should be decided in an oral hearing, with the

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<sup>543</sup> IACHR, Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II.163, Doc. 105, July 3, 2017, paras. 230, 231.B.6.

<sup>544</sup> I/A Court H.R., Case of García-Rodríguez et al. v. Mexico. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 25, 2023, paras 156-158.

<sup>545</sup> I/A Court H.R. Case of Escher et al. v. Brazil. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 6, 2009. Series C No. 200, par. 139.

<sup>546</sup> IACHR, Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II.163, Doc. 105, July 3, 2017, par. 165.

participation of all parties, in order to guarantee the principles of contradiction, immediacy, publicity, and celerity; and to ensure the right of defense, the accused persons should be present and heard by the judicial authority.<sup>547</sup>

221. It is important to note that the Inter-American Court has related automatic pretrial detention to the right to equality and non-discrimination, stating that States must refrain from actions that in any way are aimed, directly or indirectly, at creating situations of de jure or de facto discrimination. Likewise, in the event that the discriminatory treatment refers to unequal protection of domestic law or its application, the fact must be analyzed in light of Article 24 of the American Convention in relation to the categories protected by Article 1(1) of the Convention. In this regard, according to inter-American jurisprudence, a difference in treatment is discriminatory when it does not have an objective and reasonable justification, that is, when it does not pursue a legitimate aim and there is no reasonable relation of proportionality between the means used and the aim pursued.<sup>548</sup>
222. Regarding the processing and duration of open cases, the Commission learned that, as of the legislative reform of the Law against Organized Crime, specialized judges would be empowered to extend the term of the investigation for up to two years, postponing the preliminary hearing on the case<sup>549</sup>; and applying it retroactively to

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<sup>547</sup> Along the same lines, see: IACHR, Report on the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II. Doc. 46/13, December 30, 2013, paras. 179 and 326. Recommendation C “Legal framework and application of pretrial detention”; Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II.163. Doc. 105, July 3, 2017, par. 182.

<sup>548</sup> I/A Court H.R., Case of García- Rodríguez et al v. Mexico. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 25, 2023, par. 172.

<sup>549</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report March 27, 2022 to March 27, 2023](#), May 12, 2023, p. 62, 91; La Prensa Gráfica, [Captured by the regime will spend another year in prison](#), January 31, 2023.



ongoing proceedings.<sup>550</sup> The legislative decree justifies in its explanatory memorandum that "in view of the significant increase in the number of criminal proceedings processed in these courts, it is temporarily necessary to extend the procedural deadlines, taking into account existing capacities".<sup>551</sup> For their part, testimonies from lawyers indicate that:

I have never, in my 35 years of practice, seen the time limit for preliminary investigation (*plazo de instrucción*) last a year. In almost all of the proceedings there have been extensions beyond the permitted time limits.<sup>552</sup>

The preliminary investigation stage has not been carried out. A decree was approved modifying the time limits for the investigation stage, which can be extended for one year. None were scheduled. Most of the persons detained under the state of emergency have not had a preliminary hearing.<sup>553</sup>

They are decreeing provisional measures of preventive detention for 6 months, but an extension of the pre-trial investigation can be requested for up to a further 6 months. However, after the reform it can be extended up to 1 year without any request from the prosecutor's office. Thus, the judges are decreeing the extension for up to one more year. This means that people can go two years without a preliminary hearing.<sup>554</sup>

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<sup>550</sup> Human Rights Watch, Cristosal, ["We Can Arrest Whomever We Want" Widespread Human Rights Violations During the "Emergency Regime" in El Salvador](#), December 2022, p. 95; Cristosal, [One year under the emergency regime: a permanent measure of repression and human rights violations. Situation Report for Sunday, March 27, 2022 to March 27, 2023](#) May 12, 2023, pp. 62, 91.

<sup>551</sup> Legislative Assembly, Decree Law No. 547 of October 26, 2022 - Amend the Law against Organized Crime.

<sup>552</sup> Testimony No. 4 of March 14, 2023. Defense attorney.

<sup>553</sup> Testimony No. 2 of March 13, 2023. Defense attorney.

<sup>554</sup> Testimony No. 5 of March 14, 2023. Defense attorney.

**223.** The IACHR is alarmed that the measure adopted with respect to the increased burden on the justice system favors the prolongation of criminal proceedings and has a disproportionate impact on the rights of the accused. This is especially relevant considering that, as a rule, pretrial detention has been prioritized as a precautionary measure in the proceedings, and that complaints have been filed about the deficiencies in the investigations and evidentiary elements that support the charges brought and the detentions ordered. Likewise, the Commission notes that, due to the legislative reforms carried out in March 2022,<sup>555</sup> the length of pretrial detention was extended and can be maintained until a final sentence is issued in the process, something particularly serious considering the existing overcrowding in places of deprivation of liberty. The IACHR recalls the judicial obligation to process with greater diligence and promptness criminal proceedings in which the accused is deprived of liberty.<sup>556</sup>

### **Juvenile justice**

**224.** The Commission has received very little information on the treatment of children and adolescents in conflict with the law during the state of emergency. According to information provided by the State, at least 2,826 were detained, but it was not indicated how many are facing charges, have been subjected to pretrial detention, or have been treated with various precautionary measures.<sup>557</sup> Human Rights Watch reported, based on leaked documents from the Ministry of Justice and Public Security, that 1,082 children would have been sent to pretrial detention under the state of emergency between March and August 2022; 21 of them were reportedly between 12 and 13 years old.<sup>558</sup> The total number of boys arrested would be 917 and

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<sup>555</sup> Article 1° of Legislative Decree N°. 339 of March 30, 2022 - The Code of Criminal Procedure is reformed.

<sup>556</sup> I/A Court H.R. Case of Wong Ho Wing v. Peru. Preliminary Objection, Merits, Reparations, and Costs. Judgment of June 30, 2015. Series C No. 297, par. 268.

<sup>557</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, p. 51.

<sup>558</sup> La Prensa Grafica, [Leaking of official documents confirms abuses during the regime](#), January 28, 2023.

there would be 164 girls detained.<sup>559</sup> Salvadoran civil society organizations underscore the disproportionate impact that the legislative reforms and other measures adopted within the framework of the citizen security policy have had on children and adolescents. They stress that they have been arrested and prosecuted for broadly defined offenses that violate basic due process guarantees and undermine the prospects of justice for victims of gang violence. For its part, in its observations on the draft of this report, the State indicated that the information on the detention of children between 12 and 13 years of age does not match the records of the National Council for Early Childhood, Childhood and Adolescence (Consejo Nacional de la Primera Infancia, Niñez y Adolescencia).<sup>560</sup>

**225.** In this regard, some of the reports received by the IACHR mention facts of concern regarding the lack of respect for the specific rights and guarantees of children in conflict with the law:

In the juvenile case, I asked the judge in writing to allow me to meet with the young man to assist him, the judge told me that there was no opportunity to do so. That it was the state of emergency and that I could not meet with the detainees.<sup>561</sup> [...] They are rescheduling the hearings to extend the ninety days in which the minors could be detained. For example, in one case I have, it has been extended 3 times, it should be subject to a measure other than detention. This minor has spent a year in detention, even though the maximum is 90 days.<sup>562</sup>

They are calling minors for medical check-ups, but the protocols for

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<sup>559</sup> La Prensa Grafica, [Leaking of official documents confirms abuses during the regime](#), January 28, 2023.

<sup>560</sup> State of El Salvador, Observations of the State of El Salvador regarding the IACHR Report "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, pp. 87 and 93.

<sup>561</sup> Testimony No. 3 of March 14, 2023. Defense attorney.

<sup>562</sup> Testimony No. 3 of March 14, 2023. Defense attorney.

medical assessment of children and adolescents are not being complied with. [...] Parents are not notified. They wanted to enter to know the state of their daughter's health, especially because she is pregnant, but they were not allowed to enter the police station facilities. [...] The social workers and psychologists go to make the reports with family members, but they do not give them information about the legal situation or the state of health of their daughter.<sup>563</sup>

226. For its part, with respect to juvenile justice, the State reported that it has: (i) the Social Integration Programs - aimed at adolescents who have been in conflict with the law and who have been subjected to the Juvenile Criminal Justice System; (ii) the Social Integration Centers - physical spaces intended for the fulfillment of internment measures for adolescents, ordered exceptionally by a Juvenile Judge; (iii) the Care Program in the Administrative Measure of Guardianship - aimed at adolescents with an administrative measure depriving them of liberty in guardianship, with the general objective of promoting their dignified treatment at the stage of their entry into juvenile criminal justice processes; iv) the Program for the Care of Adolescents in Detention - with the objective of providing education in responsibility and social insertion of adolescent offenders as a public service to strengthen the Salvadoran family and the construction of a democratic society; and v) the Attention Program for Adolescents in Assisted Liberty Measures - with the objective of creating, fostering, and developing technical, vocational, and psychosocial skills that allow adolescents to create a life project without being separated from their social, community, and

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<sup>563</sup> Testimony No. 5 of March 14, 2023. Defense attorney.

family contexts or the surroundings that enable them to achieve a full and satisfactory life.<sup>564 565</sup>

227. In its observations on the draft of this report, the State indicated that although in the context of the state of emergency, adolescents allegedly linked to gang criminal activity have been detained, they are subject to due process in the juvenile courts.<sup>566</sup> It pointed out that, from the moment of their detention, they are guaranteed a space and treatment differentiated from that of adults, in accordance with national legislation on the protection of children's rights, which establishes that any measure of deprivation of liberty or internment must be of an exceptional nature and that under no circumstances should they remain with adults. For that reason, at the time of their detention they are transferred to Safeguard Centers (*Centros de Resguardo*) located nationwide and administered by CONAPINA. The National Council for Early Childhood, Childhood and Adolescence is responsible for verifying compliance with legal deadlines and ensuring that adolescents with alleged criminal responsibility have access to legal mechanisms for their due defense, providing transportation to attend their hearings and facilities for ombudspersons to take part in their defense; it has also facilitated access to the Social Integration Centers for the multidisciplinary teams of the Courts for the Monitoring of

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<sup>564</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 36-37.

<sup>565</sup> In its comments on the draft of this report, the State indicated that the "Care Program of the Administrative Guardianship Measure" provides for the following: 1) Food and nutrition care; 2) Health care; and 3) Legal assistance; and that "Internment Care" has the following components: 1) Help with accessing formal education; 2) Help with accessing non-formal education; 3) Food and nutrition; 4) Health care; 5) Psychosocial care; 6) Legal assistance; and, 7) Life skills development care. In addition, the State reported that, during 2022, a total of 77,697 services were provided, 41.5% in integral health; a total of 1,036,530 food rations were served and distributed in the CIS; and a total of 22 adolescents and young people attended university; in addition to 326 who attended certified technical courses. In 2023, more than 35,000 services were provided to adolescents in conflict with the law, of which 19,227 corresponded to individual psychosocial care. See: State of El Salvador, Observations by the State of El Salvador on the IACHR Report entitled "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, p. 60.

<sup>566</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador"(Observations of the State of El Salvador on the IACHR report entitled "State of Emergency and Human Rights in El Salvador"), Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, pp. 87-90.

Measures for Minors, in order to periodically review, and if possible substitute, internment measures. In this regard, it indicated that in no Social Insertion Center are there adolescents who have spent more than one year under internment measures without having their legal status defined.

228. The Commission recalls that juvenile criminal justice systems must guarantee children and adolescents all the rights and legal principles recognized for all persons accused of committing crimes and, in addition, those derived from the special protection that corresponds to them due to their age and stage of development.<sup>567</sup> Along these lines, the penal guarantees contained in Articles 8 and 25 of the American Convention must be respected and juvenile justice must take into account as one of its main objectives the reintegration of children and adolescents in conflict with the law. The Commission also underscores the right of children and adolescents to be heard and to participate in the juvenile justice process, directly or through their mother and/or father or other persons responsible for their care. At the same time, it draws attention to both the principle of the reasonableness of the time limit for these processes, and the need for the deprivation of liberty of children and adolescents to be kept as a last resort.<sup>568</sup>

### **Final considerations on access to justice**

229. The Inter-American Commission warns that, with the implementation of the state of emergency, the tightening of citizen security legislation and policies, and the massive detentions carried out by the security forces, the justice system plays a more important part for the protection of human rights. On different occasions throughout 2022 and 2023, the IACHR urged the State of El Salvador to ensure that the judicial guarantees indispensable for the protection of the rights and freedoms enshrined in the Convention remain in force in all

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<sup>567</sup> IACHR, [Juvenile Justice and Human Rights in the Americas](#), OEA/Ser.L/V/II, Doc. 78, Adopted on July 13, 2011, paras. 13, 145, 148.

<sup>568</sup> IACHR, [Juvenile Justice and Human Rights in the Americas](#), OEA/Ser.L/V/II, Doc. 78, adopted on July 13, 2011.

circumstances; and called attention to the special importance of judicial supervision of the measures adopted in this context.<sup>569</sup> However, the information received refers to a series of failures in the administration of justice that imply restrictions to due process of law, judicial guarantees, and judicial protection of persons detained and charged with crimes during the state of emergency.<sup>570</sup> The Commission is very concerned to note that a few months after the occurrence of serious events that diminished the independence of justice operators, numerous allegations arose regarding massive violations of rights and guarantees related to access to justice.

- 230.** In fact, and by way of background, in 2021, the IACHR condemned the expedited dismissals of the plenary of regular and alternate magistrates of the Constitutional Chamber of the Supreme Court of Justice by the Legislative Assembly because the Commission considered that guarantees of due process had been ignored, and that there had been no specific causes for dismissals, as required by the Constitution. It considered that the lack of these elements constituted a serious attack on the principle of separation and independence of powers and the democratic rule of law and contravened inter-American standards for the removal of justice operators. The Legislative Branch argued that the magistrates had issued pronouncements declaring that decrees of the Executive Branch

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<sup>569</sup> IACHR, Communiqué No. 82 - IACHR Urges El Salvador to implement citizen security actions in accordance with human rights, including under the State of Emergency, April 20, 2022; IACHR, Communiqué No. 126 - IACHR Urges El Salvador to comply with its international obligations and guarantee penitentiary and citizen security policies with respect for human rights, June 3, 2022; IACHR, Communiqué No. 254 - Seven Months of the State of Emergency: IACHR reminds El Salvador to comply with its human rights obligations, November 11, 2022; IACHR, Communiqué No. 58 - IACHR calls on El Salvador to reestablish the rights and guarantees suspended one year ago by the state of emergency, April 6, 2023.

<sup>570</sup> This situation is particularly alarming considering that, in 2021, the Commission had issued warnings to the Salvadoran State about the risks and impacts posed by a number of episodes for democratic institutions in the country, especially the justice system. See: IACHR, Communiqué No. 110 - IACHR condemns the dismissal of magistrates of the Constitutional Chamber of the Supreme Court of Justice, without respect for due process and urges El Salvador to preserve the rule of law, May 3, 2021; IACHR, Communiqué No. 234 - IACHR and UN Expert Reject Legislative Reforms that Remove Judges and Prosecutors in El Salvador and Call for Respect for Guarantees for Judicial Independence, September 7, 2021; IACHR, Hearing 'General Situation of Human Rights in El Salvador - de oficio', 180th Period of Sessions, June 30, 2021; IACHR, Public Hearing "Situation of Judicial Independence in El Salvador", held in the framework of the 183rd Period of Sessions, March 16, 2022.

during the pandemic were unconstitutional, thereby hindering the work of the Executive Branch.<sup>571</sup> In the same plenary session, the Assembly approved the election of 4 new members and a new president of the Constitutional Chamber; it also dismissed the Attorney General of the Republic and elected a new person to the position amid questions about his independence and impartiality.<sup>572</sup>

231. In addition to the above, on August 31, 2021, the Legislative Assembly of El Salvador approved reforms to the Judicial Career Law and the Organic Law of the Attorney General's Office.<sup>573</sup> Both regulations modified aspects related to the transfer of justice operators, as well as the termination of their careers. The IACHR and the United Nations Special Rapporteur on the Independence of Judges and Lawyers rejected such legislative reforms and called on El Salvador to respect the guarantees for judicial and prosecutorial independence, pointing out inter-American and international standards regarding the irremovability of justice operators and their proper appointment.

232. In the hearing "Situation of Judicial Independence in El Salvador," held on March 16, 2022, the State argued that the legislative reforms had been relevant to make the work of the justice system more efficient and that they sought to guarantee access to justice and dignify judicial work. It also stated that it had ensured a clear legal framework in relation to the start, transfer, promotions, and termination of such careers, requiring a duly substantiated resolution to carry out transfers. The State indicated that, out of a universe of 702 judges, it identified that the measures determined by the legal reform were applicable to 220 judicial officials; also, based on an agreement of the Supreme

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<sup>571</sup> Legislative Assembly Decree No. 2. The following lawyers are removed from their posts as regular magistrates of the Constitutional Chamber: José Oscar Armando Pineda Navas, Aldo Enrique Cáder Camilot; Calos Sergio Avilés Velásquez; Carlos Ernesto Sánchez Escobar, and Marina de Jesús Marengo de Torrento. Diario Oficial (Official Gazette) No 81. San Salvador, May 1, 2021, p. 3.

<sup>572</sup> BBC News, [El Salvador: new Bukele-friendly Legislative Assembly removes Constitutional Court judges and attorney general from office](#) May 2, 2021.

<sup>573</sup> Legislative Assembly, Decree No. 144 - Reform the Judicial Career Law, August 31, 2021; Legislative Assembly, Decree No. 145 - Reform the Organic Law of the Office of the Attorney General of the Republic, August 31, 2021.



Court of Justice, a bonus was offered to those who voluntarily resigned from their posts before the law came into force. As a result, 96 judges resigned; 121 requested to continue acting under the availability regime and 5 were dismissed by the application of the law.<sup>574</sup> Civil society organizations criticized the legislative amendments, pointing out that the availability regime would not ensure guaranteed stability in office, as provided for in the Constitution; that the resignations of judges in this context should be considered as the result of external pressure, and that at least 98 new judges were appointed without allegedly having complied with the procedures required by law.<sup>575</sup> They also expressed the fear of justice operators of being removed or transferred as a consequence of their judicial decisions and the non-observance of the constitutional and legal procedures for appointments and promotions of members of the Judiciary. They also reported attacks and acts of criminalization of operators, including acts of harassment by the National Civil Police and the Armed Forces against judges, as well as allegedly unjustified summonses to the Attorney General's Office.

**233.** The Commission emphasizes that the history of measures that weaken the rule of law, with impacts on the separation of powers and on judicial and prosecutorial independence, is particularly important given the installation of a state of emergency that suspends rights and guarantees protected by the American Convention on Human Rights for a prolonged period of time. In addition, the adopted policy of confronting gangs by means of mass detentions of persons allegedly involved in criminal activities increases the importance of the role of

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<sup>574</sup> IACHR, Hearing on the Situation of Judicial Independence in El Salvador, 183rd Period of Sessions, March 16, 2022; Meeting with civil society organizations held on June 9, 2022, on file with the IACHR.

<sup>575</sup> IACHR, Hearing on the Situation of Judicial Independence in El Salvador, 183rd Period of Sessions, March 16, 2022; Agrupación Ciudadana por la Despenalización del Aborto, Asociación Azul Originario, Centro de Derechos Reproductivos, CRISTOSAL, Fair Trials International, Fundación para el Debido Proceso, Instituto de Derechos Humanos de la UCA, Mujeres Libres, Organización Mundial Contra la Tortura, Servicio Social Pasionista, [Report of Civil Society Human Rights Organizations against Torture of the United Nations, El Salvador, 2022](#) El Mundo newspaper, [Corte Suprema ya nombró a 100 jueces sustitutos por reformas a la carrera judicial \(Supreme Court already appointed 100 substitute judges following judicial career reforms\)](#), November 15, 2021; DW, [El Salvador: more than 200 dismissed judges must leave office in two days](#), September 23, 2021.

supervision of legality, constitutionality, and adherence to conventions that prosecutors and judges must exercise to ensure due process and the rights and guarantees of individuals. In particular, in the face of allegations of systematic and generalized illegality and arbitrariness in the deprivation of liberty. The Inter-American Court has emphasized that in criminal proceedings that may culminate in major sanctions such as the deprivation of personal liberty, careful scrutiny must be exercised in determining the criminal responsibility of the accused, along with respect for the formalities that guarantee the possibility of defense and the due process of law.<sup>576</sup> Based on the multiple complaints mentioned above, it is imperative that the State ensure full reparation for the affected persons, including the annulment of proceedings that violated the Convention.

- 234.** The Commission reiterates the precautionary and non-punitive nature of pretrial detention, which should be applied in accordance with international standards on the matter. In observing a context of excessive application of this type of measure, the IACHR urges the State to periodically review whether requirements for maintaining the pretrial detention are met and to correct any excesses. The Commission also requests that special heed be paid to vulnerabilities that may increase of acts of violence and discrimination in pretrial detention contexts, such as race, ethnicity, age, sexual orientation, gender identity and expression, and disability, as well as intersectionality of the aforementioned factors.<sup>577</sup> In this regard, it urges the reduction of pretrial detention for people at special risk by prioritizing the use of alternative measures.<sup>578</sup>
- 235.** Finally, the IACHR urges ensuring that criminal proceedings are normally well publicized, given that publicity constitutes both an

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<sup>576</sup> Case of Rodríguez Revolorio *et al.* v. Guatemala. Preliminary Objection, Merits, Reparations, and Costs. Judgment of October 14, 2019. Series C No. 387, par. 119.

<sup>577</sup> IACHR, Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II.163, Doc. 105, July 3, 2017, par. 229.

<sup>578</sup> IACHR, Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II.163, Doc. 105, July 3, 2017, par. 229.

essential element of the judicial guarantees of the accused person and information of public interest.<sup>579</sup> Throughout its history, the Commission has pointed out that investigating human rights violations and imposing the appropriate sanctions on those responsible is a legal duty of the States,<sup>580</sup> which is a condition for the protection of the rights affected,<sup>581</sup> but also part of the rights of the victims or their families.<sup>582</sup> In this sense, in order to meet this obligation, it is imperative that the State ensures the individual criminal accountability of those persons who are actually responsible for the crimes committed in the country, rigorously investigating the criminal structures and individual responsibilities for the acts committed, especially those that have resulted in violations of rights.

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<sup>579</sup> I/A Court H.R. Case of Palamara Iribarne v. Chile. Merits, Reparations, and Costs. Judgment of November 22, 2005. Series C No. 135, paras. 166-168.

<sup>580</sup> I/A Court H.R. Velásquez Rodríguez Case v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4 par. 174.

<sup>581</sup> I/A Court H.R. Case of the Massacres of El Mozote and nearby places v. El Salvador, Merits, Reparations, and Costs, Judgment of October 25, 2012. Series C No. 252, par. 244.

<sup>582</sup> I/A Court H.R. Case of the Massacres of El Mozote and nearby places v. El Salvador, Merits, Reparations, and Costs. Judgment of October 25, 2012. Series C No. 252, par. 242.

**CHAPTER 3:  
THE SITUATION  
OF PERSONS DEPRIVED  
OF LIBERTY**

## THE SITUATION OF PERSONS DEPRIVED OF LIBERTY

### A. Background

236. The situation of persons deprived of liberty in El Salvador has been an issue of special concern to the Inter-American Commission in recent years. In its Country Report published in 2021, the IACHR made an extensive diagnosis and highlighted the precarious situation of this population as a result of deplorable detention conditions, high levels of overcrowding in certain centers, excessive application of pretrial detention, and permanent detentions in police detention centers.<sup>583</sup>

237. Based on information provided by the State, it was recorded that, as of December 28, 2020, the prison system had a prison population of 36,691 persons, of whom 92.28% were men and 7.72% were women, without taking into account persons detained in police facilities - the "bartolinas".<sup>584</sup> The IACHR highlighted the alarming overcrowding in the prison system, with average rates of 136% until December 2020, even reaching extreme levels of 600% in some prisons.<sup>585</sup> It further noted that a contributing factor to the high level of overcrowding in the country was related to the overuse and excessive length of pretrial detention, as well as the lack of alternatives to imprisonment.<sup>586</sup>

238. In its 2021 Country Report, the IACHR highlighted the negative impact of the "extraordinary security measures" or "emergency" measures implemented to combat crime inside prisons, which were extended several times and include the prohibition of visits, suspension of

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<sup>583</sup> IACHR, Report 'Situation of Human Rights in El Salvador', OEA/Ser.L/V/II. Doc. 278, October 14, 2021, par. 338.

<sup>584</sup> IACHR, Report 'Situation of Human Rights in El Salvador', OEA/Ser.L/V/II. Doc. 278, October 14, 2021, par. 131.

<sup>585</sup> IACHR, Report 'Situation of Human Rights in El Salvador', OEA/Ser.L/V/II. Doc. 278, October 14, 2021, par. 133.

<sup>586</sup> IACHR, Report 'Situation of Human Rights in El Salvador', OEA/Ser.L/V/II. Doc. 278, October 14, 2021, par. 134.

hearings, and the confinement or isolation of detainees.<sup>587</sup> In this context, it found that 100% of the population deprived of liberty remained in isolation from the outside world, noting that restrictions were also imposed on persons in pretrial and administrative detention.<sup>588</sup> In addition, the State was alerted that the regime of prolonged isolation and solitary confinement inside maximum security prisons did not comply with inter-American standards on the matter.<sup>589</sup>

**239.** In relation to detention conditions, the IACHR found unsanitary conditions, lack of hygiene, inadequate medical care, and scarce and inadequate access to water.<sup>590</sup> These conditions had resulted in various types of diseases, leading the IACHR to call for minimal measures to improve them.<sup>591</sup> It expressed that persons deprived of liberty in the *bartolinas* also faced high levels of overcrowding and various challenges such as lack of access to food, personal hygiene products, and warm clothing.<sup>592</sup> The IACHR highlighted the serious violence to which trans women deprived of liberty in male prisons are subjected and have suffered, and requested the adoption of measures to protect their life and personal integrity.<sup>593</sup>

**240.** In light of the above-mentioned problems, the IACHR prepared a series of recommendations that addressed aspects such as the establishment of a criminal policy that uses deprivation of liberty as a

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<sup>587</sup> IACHR, Report ‘Situation of Human Rights in El Salvador’, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, paras. 159-160.

<sup>588</sup> IACHR, Report ‘Situation of Human Rights in El Salvador’, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, par. 161.

<sup>589</sup> IACHR, Report ‘Situation of Human Rights in El Salvador’, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, par. 163,

<sup>590</sup> IACHR, Report ‘Situation of Human Rights in El Salvador’, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, par. 138.

<sup>591</sup> IACHR, Report ‘Situation of Human Rights in El Salvador’, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, paras. 140-142.

<sup>592</sup> IACHR, Report ‘Situation of Human Rights in El Salvador’, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, paras. 145-146.

<sup>593</sup> IACHR, Report ‘Situation of Human Rights in El Salvador’, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, paras. 150 and 152.

last resort; an end to the use of police facilities as places of long-term detention; the provision of resources in prisons; the guarantee of regular visits to prisons; the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; the creation of the National Mechanism for the Prevention of Torture; and the guarantee of differentiated attention to women deprived of their liberty.<sup>594</sup>

**241.** In its first report on the implementation of these recommendations, referring to the year 2022, the Commission determined that the aforementioned recommendations were pending compliance and indicated that the measures adopted in the context of the regime had posed new challenges at a particularly delicate juncture.<sup>595</sup> In this chapter, based on what has been analyzed, the IACHR will also address other issues related to deaths and allegations of torture of persons in state custody. In addition, the IACHR will analyze the impact that the measures adopted under the state of emergency have had on the families of the detained persons.

## **B. The worsening of detention conditions**

**242.** According to the data sent by the State, as of June 27, 2023, 63,114 adults had been detained since the beginning of the emergency regime. Of them 6,296 people were released, including adults, children, and adolescents.<sup>596</sup> The IACHR does not have information on the total number of persons deprived of liberty at the national level disaggregated by police detention centers, penitentiaries, and detention centers for children and adolescents or by population groups. It also highlights that as of December 28, 2020, the

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<sup>594</sup> IACHR, Report 'Situation of Human Rights in El Salvador', OEA/Ser.L/V/II. Doc. 278, October 14, 2021, paras. 342.12-342.16, 342.20.

<sup>595</sup> IACHR, 2022 Annual Report, Chapter V: Follow-up of recommendations made by the IACHR in its country or thematic reports: El Salvador, April 1, 2023, paras. 57-85.

<sup>596</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 51, 52.



Penitentiary System had 36,691 people in custody, as recorded in the last Country Report.

243. Throughout the state of emergency, the Commission received troubling information on the situation of persons in police stations; overcrowding in the prison system; inhumane conditions of detention; restrictions on medical care and access to medicines; lack of access to data on the whereabouts and situation of detainees; the application of isolation and incommunicado detention measures; and the differentiated impacts that deprivation of liberty has had on groups in vulnerable situations, among other issues that will be addressed below.<sup>597</sup>

244. Regarding the situation in the **bartolinas** (police stations), the University Observatory of Human Rights of the UCA estimated that, compared to the previous year, the population detained in the bartolinas increased by 488%, worsening overcrowding and overcrowding.<sup>598</sup> Similarly, the people interviewed by the IACHR reported deplorable conditions of detention in the bartolinas and that family members had to ensure access to minimum resources such as water, food, and clothing:

In the bartolina they made us stay in boxer underwear. The cells were freezing and dirty. It was my first time in a bartolina; it was horrible. As they were saturated, they made daily transfers. There was no water, no food, no dinner. There is only the ground; that's where we slept. It is a feeling of despair, sadness; of not knowing why this is happening; of not understanding why we were taken without any justification. [...] I asked for a phone call. I went to the

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<sup>597</sup> IACHR, Hearing on 'Situation of Human Rights and the Rule of Exception in El Salvador', 187th period of sessions, July 14, 2023; IACHR, Hearing 'Arbitrary detentions and situation of persons deprived of liberty in the state of emergency in El Salvador', 185th period of sessions, October 25, 2022; IACHR, Hearing 'Situation of Human Rights and Rule of Law in El Salvador', 184th period of sessions, June 23, 2022.

<sup>598</sup> The University Observatory of Human Rights of the Central American University José Simeón Cañas, Annual report 2022: The State of Human Rights in El Salvador, April 2023, p. 63.



phone and contacted my relatives. I asked them for a package because I had not eaten or drunk anything.<sup>599</sup>

I was taken to the Naval police barracks, commonly known as "el penalito". I only spent one day there. It is a very small cell, perhaps about three by three. There was a really disgusting toilet, you sleep on the floor, the cement is cold. One arrives and is left in his underwear.<sup>600</sup>

In the Zacamil bartolinas, in la mexicanos, we were in a cell for about 50 people, but there were 85 of us.<sup>601</sup>

In the bartolinas of Zacatecoluca I entered in the afternoon, maybe I was there for a day. My food was provided by my family, clothing too. In the cells, we slept on the floor.<sup>602</sup>

I spent one day in the Zacatecoluca delegation and then I was transferred to the Mariona prison. In the bartolinas there are no beds, one sleeps on the floor. I ate from the packages brought to me by my relatives.<sup>603</sup>

**245.** For its part, the State of El Salvador reported that the National Civil Police, through the Subdirectorate of Specialized Operational Areas, redesigned the procedure and steps necessary for the transfer of persons detained in police custody to a detention center in the shortest possible time.<sup>604</sup> Likewise, in order to guarantee the minimum conditions in police detention centers, it indicated that it has coordinated with the Ministry of Health to provide health care to

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<sup>599</sup> Testimony No. 6 of March 15, 2023. Person released under alternative measures.

<sup>600</sup> Testimony No. 11 of March 16, 2023. Person released under alternative measures.

<sup>601</sup> Testimony No. 17 of March 20, 2023. Person released under alternative measures.

<sup>602</sup> Testimony No. 20 of March 21, 2023. Person Released under substitute measures.

<sup>603</sup> Testimony No. 23 of March 22, 2023. Person Released under substitute measures.

<sup>604</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 58-60.

persons deprived of liberty in bartolinas, including medical consultations, examinations, and medicines in cases of diagnosis of chronic illness.<sup>605</sup>

246. In this regard, the Commission recommended that the State of El Salvador cease the use of police facilities as places to house people for long periods of time. It also warned the State that the extension of the administrative detention period to 15 days was not compatible with this recommendation.<sup>606</sup> In light of this, the IACHR once again urges the State of El Salvador to implement urgent and effective actions to put an end, immediately to the use of police facilities as places of permanent housing for persons deprived of liberty.

247. With respect to **penitentiary centers**, the State indicated that there are currently 23 in the country, distributed in: admission centers, preventive centers, centers for serving sentences, and special centers.<sup>607</sup> The State affirmed that these have facilities that allow the creation of conditions for the satisfaction of the needs of persons deprived of liberty; particularly, within a state of emergency, such as access to basic services, food, drinking water, health, recreation, hygiene, programs, and workshops, among others.<sup>608</sup> It indicated that opportunities for improvement have been identified in the prison infrastructure related to the expansion of sectors in all prisons, ensuring cross ventilation and natural light, laundry areas, toilets,

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<sup>605</sup> Among the permanent measures being developed, the State referred to: the immediate transfer to a health care center of persons deprived of liberty who present alterations or serious health problems in order to receive initial medical attention; the periodic sanitization of police detention centers and their perimeter to prevent the proliferation of diseases; access to food, clothing, and personal hygiene packages, permanent prescription drugs and, in the case of women, the facilitation of intimate personal hygiene during menstrual periods; the facilitation of spaces for breastfeeding. In that connection, see: State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 58-60.

<sup>606</sup> IACHR, 2022 Annual Report, Chapter V: Follow-up of recommendations made by the IACHR in its country or thematic reports: El Salvador, April 1, 2023, paras. 65-67.

<sup>607</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 56, 57.

<sup>608</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 56, 57.

courtrooms, elimination of humidity in common areas, among others.<sup>609</sup> It also highlighted the refurbishment of the former Apanteos Penitentiary Center, currently used to house women prisoners, in order to provide them with better conditions of detention, infrastructure, hygiene, cleanliness, space, health, and security; as well as the Ilopango Admission, Diagnosis, and Classification Center, which has provided, for the first time, an entry center for prisoners entering the system, during their initial observation and diagnosis.<sup>610</sup>

**248.** In addition, the State of El Salvador pointed out the construction of the Terrorism Confinement Center (CECOT), located in Tecoluca, for gang leaders and gang members in senior positions.<sup>611</sup> It indicated that, with an installed capacity for 40,000 inmates, it will allow for the reduction of prison occupancy in other prisons nationwide and the redistribution of the entire prison population based on technical-criminological criteria, in accordance with the legal system.<sup>612</sup> The State asserted that the CECOT offers decent work and accommodation conditions for police officers and prison guards, since it has a dining area, dormitories with individualized showers, a fully equipped gymnasium, and a recreation area, among other facilities; it also provides the conditions needed for the rehabilitation of inmates, since it has a factory with 64 workshops, including painting, desks, and textiles.<sup>613</sup> The State also stressed that CECOT is a clear example of the transformation of the Salvadoran Penitentiary System, which has gone from being considered an

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<sup>609</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 56, 57.

<sup>610</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 56, 57.

<sup>611</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 66- 69.

<sup>612</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 66- 69.

<sup>613</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 66- 69.

institution where criminal groups used to operate, to one where order, control, and discipline have been restored.<sup>614</sup>

249. According to information from Cristosal, the largest number of people detained under the emergency regime are concentrated in the prisons of Izalco, "La Esperanza", Apanteos, Ilopango, Santa Ana, Quezaltepeque, CECOT, and some in Ciudad Barrios, San Miguel, and Gotera.<sup>615</sup> Civil society organizations estimated that overcrowding reached 300%, taking into account that 39,538 people were reportedly deprived of liberty by March 1, 2022 and 65,291 were reportedly detained by March 2023 - which would total 104,829 people deprived of liberty with an installed capacity of the Salvadoran penitentiary system for 30,864 places.<sup>616</sup> Thus, for example, in the La Esperanza Penal Center, known as Mariona, the prison population reportedly increased from 7,600 to 33,000 inmates; and in the Izalco Penal Center there was reportedly an increase from 8,500 to 23,300 detainees; and both the Preventive and Sentence Enforcement Center for Women in Ilopango - which was converted into the Ilopango Admission, Diagnosis and Classification Center - and the San Miguel Preventive Detention Center reportedly exceeded six times their housing capacity.<sup>617</sup>

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<sup>614</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 66- 69.

<sup>615</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 27 to 2022 March 27, 2023](#), May 12, 2023, pp. 39-40.

<sup>616</sup> Cristosal, Instituto de Derechos Humanos de la Universidad Centroamericana José Simeón Cañas (IDHUCA), Due Process Foundation (DPLF), Red Salvadoreña de Defensoras de Derechos Humanos, Servicio Social Pasionista (SPASS), [Prison Deaths During the State of Emergency in El Salvador: Alleged Extrajudicial Executions, Report of Civil Society Organizations to the Special Rapporteur on Extrajudicial Executions](#), April 10, 2023 (hereinafter Cristosal et al, [Prison Deaths During the State of Emergency in El Salvador: Alleged Extrajudicial Executions](#), April 10, 2023, pp. 12-13.

<sup>617</sup> The University Observatory of Human Rights of the Central American University José Simeón Cañas , Annual report 2022: The State of Human Rights in El Salvador, April 2023, p. 66.

250. Considering the 40,000 quotas created by CECOT, the organizations estimate that prison overcrowding is still as high as 133%.<sup>618</sup> The organizations criticized the confidentiality of information that would make it possible to confirm the real installed capacity of this center, among other data relevant to citizen control of prison policies.<sup>619</sup> They also pointed out that based on satellite images of the infrastructure and calculations of its dimensions, it was found that, on average, there is a space of 0.60 meters for each person deprived of liberty, which would be contrary to international guidelines of ensuring at least 4 square meters per person.<sup>620</sup> They also warned that a single space with 40,000 detainees poses risks in terms of management and individualized treatment of detainees in accordance with international standards.<sup>621</sup>
251. In its comments on the draft of this report, the State indicated that it has taken into account the recommendations of international standards on prison architecture. In its view, prison and security personnel are trained to be able to guarantee conditions and dignified treatment for the protection of persons deprived of their liberty inside the CECOT. In this regard, it reported that constant training has been provided to personnel in human rights and gender issues, with the support of the Prison School, the Prison Human Rights Unit, and the Gender Unit of the General Directorate of Prisons. It also indicated that the transfer of persons deprived of liberty to the CECOT is being carried out progressively, taking into account the security measures

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<sup>618</sup> Cristosal et al., [Prison Deaths during the Emergency Regime in El Salvador: Alleged Extrajudicial Executions](#), April 10, 2023, pp. 12-13.

<sup>619</sup> Azul Originario et al, [Annual report on human rights violations during the state of emergency in El Salvador](#), March 2023, pp. 51-52; Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 27, 2022 to March 27, 2023](#), May 12, 2023 pp 45-46.

<sup>620</sup> Azul Originario et al, [Annual report on human rights violations during the state of emergency in El Salvador](#), March 2023, p. 51-53

<sup>621</sup> Azul Originario et al, [Annual Report on Human Rights Violations During the State of Emergency in El Salvador](#), March 2023, pp. 51-53; Human Rights Watch, Cristosal, ["We can detain whoever we want" Widespread human rights violations during the "state of emergency" in El Salvador](#), December 2022, pp. 75-77; University Observatory of Human Rights of the Central American University José Simeón Cañas, Annual Report 2022: The State of Human Rights in El Salvador, April 2023, p. 67.

that the procedure warrants in view of the characteristics of the population being housed in that center.<sup>622</sup>

252. The Commission notes that it does not have the official information necessary to evaluate the real situation of prison overcrowding.<sup>623</sup> It also highlights information from the organizations according to which only 2,000 inmates have been transferred to the new facility, which means that the system is still severely overcrowded.<sup>624</sup> In this context, the IACHR received information on the lack of space for detainees to move around the prisons<sup>625</sup>:

I wanted to be in the cell because I was exhausted, tired, sad, I wanted to rest, I had never felt so bad. There were 140 of us in one cell, there were only 12 cots, but they had put 6 more cots in. There was no room for us.<sup>626</sup>

They put us in a cell. At the beginning, there were 35 people. At 6:00 p.m. we were already 200 people. It was not possible to walk. The next day, dead bodies started coming out of the center. They were drowning because they were suffocating. [...] Then I was moved to

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<sup>622</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador", Nota Diplomática MPOEA-OEA-054/2024, April 8, 2024, p. 96.

<sup>623</sup> In the current context, the Commission considers it relevant to highlight the case discussed in the Constitutional Chamber of the CSJ, which declared the existence of an unconstitutional state of affairs and ordered the cessation of the overcrowded conditions of the detainees in the police stations of Quezaltepeque, Soyapango, and San Vicente, as well as the other precincts where this problem is observed. It ordered the authorities involved to carry out the strategic plans for this purpose and follow-up on the results. See: Court of Justice, Constitutional Chamber, Habeas Corpus, 119-2014AC, May 27, 2016, p. 42.

<sup>624</sup> Cristosal et al., [Prison Deaths during the Emergency Regime in El Salvador: Alleged Extrajudicial Executions](#), April 10, 2023, pp. 12-13; University Observatory of Human Rights of the Central American University José Simeón Cañas, Annual Report 2022: The State of Human Rights in El Salvador, April 2023, p. 66.

<sup>625</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report March 27, 2022 to March 27, 2023](#), May 12, 2023, pp. 39-40; Human Rights Watch, Cristosal, ["We Can Arrest Anyone We Want" Widespread Human Rights Violations During the "Emergency Regime" in El Salvador](#), December 2022, pp. 77-78.

<sup>626</sup> Testimony No. 6 of March 15, 2023 . Person released under alternative measures.

sector three, which had 250 people, and was capable of holding about 50 people.<sup>627</sup>

The cells are overcrowded. Maybe 150 people can fit and there were 210 people. There were people sleeping on the floor. There were about 50 cots, sometimes we slept two or three people per cot.<sup>628</sup>

There were cots for 60 people, but we had 130 people crammed in. In Mariona, they were for 90 people but there were 140 of us. Some people slept in the "caves", that is, under the beds, where they would put two people. Three people slept on the cots and the aisles were also occupied by people sleeping there. To go to the bathroom, we could hardly walk at night.<sup>629</sup>

**253.** The IACHR takes note of the information regarding the creation of the CECOT. In this regard, it stresses that the construction of new prisons can help prevent or reduce overcrowding. At the same time, it considers that these measures may be insufficient when they are accompanied by criminal policies that prioritize the massive deprivation of personal liberty, especially in the case of prolonged pre-trial detention<sup>630</sup>. Likewise, the Commission recalls that mega prison complexes may generate various problems, such as the generation of conditions contrary to the principle of individualization of the execution of the sentence, the increased vulnerability of persons belonging to groups at special risk, and the difficulty for guards to effectively exercise internal control of the facilities.<sup>631</sup>

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<sup>627</sup> Testimony No. 10 of March 16, 2023. Person released under alternative measures.

<sup>628</sup> Testimony No. 23 of March 22, 2023. Person released under alternative measures.

<sup>629</sup> Testimony No. 29 of March 24, 2023. Person released under alternative measures.

<sup>630</sup> Similarly, see: IACHR, [Situation of Human Rights in Honduras](#), OEA/Ser.LV/II. Doc. 146, August 27, 2019, par. 343.

<sup>631</sup> IACHR, [Report on the Situation of Persons Who Are Deprived of Liberty in Ecuador](#), OEA/Ser.LV/II, adopted on February 21, 2022, par. 116.

254. Based on the above, and considering the high number of persons deprived of liberty, which has almost tripled in the last two years, the Commission reiterates its recommendation aimed at implementing a criminal policy that uses deprivation of liberty as a measure of last resort,<sup>632</sup> prioritizing the use of alternative measures respectful of gender and intercultural and intersectional approaches. Likewise, taking into consideration the risks inherent to mega-prison complexes, the IACHR urges the State to prioritize the review of pretrial detention decreed on the basis of the inter-American standards mentioned above.
255. The Commission also received alarming information about deplorable **detention conditions** in prisons. Particularly notable, in this regard, is complete confinement in cells without air circulation or with humidity and filtration problems, without being able to go out in the sun or carry out other types of activities.<sup>633</sup> Also noteworthy are restrictions on access to toilets and water for personal hygiene, consumption, and cleaning, with reports of only one glass or small bottle of water during the day or a shared container for more than 140 people in the cell.<sup>634</sup> The testimonies taken by the Commission also referred to critical conditions of sanitation and access to water:

The toilets were overflowing with poop because there was no water to flush it down. People were sick with the flu. I had to sleep on the floor in a space of 40 centimeters. There was no water, only water from a bucket, but it was dirty. We slept in boxer shorts. I lasted nine days like this. My mom brought a package and I was able to change.<sup>635</sup>

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<sup>632</sup> IACHR, 2022 Annual Report, Chapter V: Follow-up of recommendations made by the IACHR in its country or thematic reports: El Salvador, April 1, 2023, paras. 62-63.

<sup>633</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 27 to 2022 March 27, 2023](#), May 12, 2023, pp. 39-40.

<sup>634</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 27 to 2022 March 27, 2023](#), May 12, 2023, pp. 39-40.

<sup>635</sup> Testimony No. 6 of March 15, 2023 . Person released under alternative measures.



The first day we had no water. There was water flowing from 4 to 5 a.m. to bathe the 125 of us, we did not wash anything. We'd better grab some water to drink. [...] There were packages containing hygiene material. I had to share with those who had nothing.<sup>636</sup>

There was no running water. When we were allowed to fill up, we only had small bottles for the whole day. We bathed with a bottle. It was dirty water. Most people were in pain from the water; they were vomiting and had diarrhea. [...] The toilets were just clogged, the bathroom was full, you had to go outside. They never gave us water. Sometimes they would pass us buckets to use as lavatories. We ate next to where they did their necessities.<sup>637</sup>

Drinking water is the same water we use for bathing. They do not give us a separate barrel. There was running water every day. One could go to the bathroom at any time, but with the shower, the cell attendants played roles (*hacían roles*).<sup>638</sup>

256. Likewise, the IACHR received information on restrictions on the sending and receipt of food packages and basic hygiene and clothing supplies from family members to their relatives deprived of liberty during the emergency regime<sup>639</sup>:

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<sup>636</sup> Testimony No. 1 of March 13, 2023. Person released under alternative measures.

<sup>637</sup> Testimony No. 10 of March 16, 2023. Person released under alternative measures.

<sup>638</sup> Testimony No. 23 of March 22, 2023. Person released under alternative measures.

<sup>639</sup> In some prisons, family members were prohibited from sending packages to detainees and had to buy "institutional packages", which could cost US\$170 per month for male prisoners and US\$185 per month for female prisoners. Among other situations, despite not being prohibited, it was indicated that the monthly package sent by the family could take 15 days to be delivered, while the institutional package would be delivered on the same day. In addition, people who were released reportedly indicated that they did not receive all the supplies brought by their relatives. In that connection, see: University Observatory of Human Rights of the Central American University José Simeón Cañas, [Annual Report 2022: The State of Human Rights in El Salvador](#), April 2023, p. 66; Infobae, [Nayib Bukele's government now charges prisoners for food, clothing and hygiene products in prisons](#), February 18, 2023; La Prensa Gráfica, [Prisons suspends sale of packages for detainees](#), February 23, 2023; La Prensa Gráfica, [Uncertainty of families over sale of packages for inmates in prisons](#), January 14, 2023; ElSalvador.com, [Families are wary of the new "fund" to deposit money for inmates](#), September 12, 2023.

I was dropped off two packages with medicine and everything and they never delivered them. A guard told me I didn't need it. The trusted ones keep the packages. [...] I was never able to have visitors. I was not told whether someone had left me a package.<sup>640</sup>

We have given them medicines and packages, but they say they don't get them in full. Now you pay for a food package in the prison that costs about 35 dollars.<sup>641</sup>

Family members bring us packages, but they take things away from them. Even though I was sent medication, I never received the medication.<sup>642</sup>

**257.** The organizations reported that detainees frequently receive only one meal a day and that the food conditions in the prisons have caused a large number of inmates to suffer from high levels of malnutrition.<sup>643</sup> <sup>644</sup> In some prisons, cells have been set up for people with this condition, who reportedly received slightly better food, as well as food packages from their relatives.<sup>645</sup> In the testimonies taken by the Commission, the people indicated that the food was scarce and of poor quality, apart from the effects on their health:

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<sup>640</sup> Testimony No. 20 of March 21, 2023. Person released under alternative measures.

<sup>641</sup> Testimony No. 27 of March 23, 2023. Family member of a detained person.

<sup>642</sup> Testimony No. 11 of March 16, 2023. Person released under alternative measures.

<sup>643</sup> Azul Originario et al, [Annual report on human rights violations during the state of emergency in El Salvador](#), March 2023, pp. 53-54; Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 27 to 2022 March 27, 2023](#), May 12, 2023, pp. 39-40.

<sup>644</sup> In its observations on the draft of the present report, the State reported that the Penitentiary Administration guarantees three mealtimes, with diets appropriate to the needs of recovery and conservation of the health of persons deprived of liberty, in the different Penitentiary Centers, regardless of the penitentiary regime under which the person is being held. See: State of El Salvador, Observations by the State of El Salvador on the IACHR Report entitled "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, p. 87-90.

<sup>645</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 27 to 2022 March 27, 2023](#), May 12, 2023, pp. 39-40.

When I came in we were given a lunch break. Then they gave us two times. They gave us beans and a tortilla. Then they gave us rice and cream. I was malnourished. When I arrived at the prison I weighed 170 pounds; when I left I weighed 90 pounds.<sup>646</sup>

The first day and for a week, 4 people ate from a small plate, practically one bite each. After the 15 days, one for two arrived, but I only had one serving (*un tiempo*). Then a small plate for each person. People had to eat and drink to survive, not because it was in good condition.<sup>647</sup>

Sometimes breakfast and lunch or lunch and dinner would be together at the same time. And you had to eat it all. They are not fit to eat, not even one's dog at home would eat it, bad taste, poorly cooked.<sup>648</sup>

We shared a plate of food for 4 people, very little food, only twice a day.<sup>649</sup>

The first few days we were given very stale food, leftovers. Many colleagues became sick and had stomach aches. One pot for two people.<sup>650</sup>

**258.** Civil society organizations highlighted to the IACHR the various impacts on the health and physical, mental, and emotional integrity that these detention conditions have had on the detainees.<sup>651</sup> They denounced the proliferation of contagious skin and respiratory

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<sup>646</sup> Testimony No. 10 of March 16, 2023. Person released under alternative measures.

<sup>647</sup> Testimony No. 11 of March 16, 2023. Person released under alternative measures.

<sup>648</sup> Testimony No. 16 of March 17, 2023. Person released under alternative measures (female).

<sup>649</sup> Testimony No. 17 of March 20, 2023. Person released under alternative measures.

<sup>650</sup> Testimony No. 29 of March 24, 2023. Person released under alternative measures.

<sup>651</sup> IACHR, Hearing "Arbitrary detentions and the situation of persons deprived of liberty under the State of Emergency in El Salvador", 185th period, October 25, 2022

diseases due to unsanitary cells and the shared use of objects.<sup>652</sup> They criticized the lack of access to information on the health conditions of persons deprived of liberty, the demands imposed on family members to provide medication, and the differentiated impacts that persons with disabilities suffer in this context.<sup>653</sup> According to them, some prisons operate clinics staffed mostly by inmates who are health professionals or students, and the services of the national system were reportedly unable to meet the demand.<sup>654</sup> Likewise, the lack of medical care and medication for serious or chronic illnesses has allegedly caused serious consequences or cost the lives of people in state custody.<sup>655</sup> At the same time, it was recognized that since June 2022, the Quezaltepeque Preventive and Sentence Enforcement Center, now called "Quezaltepeque Special Health Center", was assigned to the confinement of people with terminal and chronic diseases, including a significant number of people with HIV-AIDS, who reportedly have access to retroviral medication.<sup>656</sup> The people interviewed by the IACHR confirmed having faced various challenges related to medical care:

I remember that some comrades died in Mariona, in sector 6. One shouted emergency and it was a boy who was convulsing. The custodian, when he arrived, would hit them with the toe of his boot

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<sup>652</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 27 to 2022 March 27, 2023](#), May 12, 2023, pp. 43-44.

<sup>653</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 27 to 2022 March 27, 2023](#), May 12, 2023, pp. 43-44.

<sup>654</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 27 to 2022 March 27, 2023](#), May 12, 2023, pp. 43-44.

<sup>655</sup> Human Rights Watch, Cristosal, ["We Can Arrest Whomever We Want" Widespread Human Rights Violations During the "Emergency Regime" in El Salvador](#), December 2022, p. 78; Cristosal, [One year under the emergency regime: a permanent measure of repression and human rights violations. Situation Report for March 27, 2022 to March 27, 2023](#), May 12, 2023, pp. 43-44; Azul Originario et al., [Annual report on human rights violations during the state of emergency in El Salvador](#), March 2023, pp. 53-54.

<sup>656</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 27, 2022 to March 27, 2023](#), May 12, 2023, p. 45

on the ribs and if you were still breathing they would leave you in the cell.<sup>657</sup>

You could only receive medical care for very serious emergencies. There was scabies, there were chronic diseases and they were not attended to. There is no medical attention inside the prison. The same people who are convicted of other crimes are the ones who serve you, they are called "white cross". There was only one doctor, but the prison authorities would not let us go to him.<sup>658</sup>

No, there was no access to medical care. There were people from the white cross, but they were the same inmates who are under trust. You have to be almost dying to get medical attention. Sometimes they were given some pills.<sup>659</sup>

When we arrived in sector 5 (in Mariona) we started to have fever, headache, we started to get fungus, we had itchy skin. We couldn't sleep because of these diseases. I lasted 17 nights without sleep. There were some guys who were called "white cross", who were the same inmates, and they filled out some protocols, but they only took you out if you were about to die. [...] After a while they began to take people to the doctor's office for scabies or fungus. We were given the opportunity for a consultation every three months.<sup>660</sup>

**259.** In this regard, the State indicated that attention to the right to health of persons deprived of liberty is a priority and, for this reason, the General Directorate of Penitentiary Centers (DGCP) had adopted measures to effectively ensure first, second, and third level health care, on an equal, free, and universal basis.<sup>661</sup> In addition, it indicated

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<sup>657</sup> Testimony No. 29 of March 22, 2023. Person Released under substitute measures.

<sup>658</sup> Testimony No. 10 of March 16, 2023. Person released under alternative measures.

<sup>659</sup> Testimony No. 23 of March 22, 2023. Person released under alternative measures.

<sup>660</sup> Testimony No. 29 of March 24, 2023. Person released under alternative measures.

<sup>661</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 58-60.

the approval of the "Protocol of action for prison staff in the different penitentiary centers in view of the impact of the application of the emergency regime in El Salvador", whose objective is to establish the main guidelines for action by prison staff to guarantee the protection of persons deprived of liberty and their rights; the hiring of medical staff of different specialties and nursing staff; the tripling of the number of clinical resources and the expansion of inter-agency coordination with the Ministry of Health.<sup>662</sup>

260. The State also mentioned the following as measures that had been adopted: a) the provision of immediate health care as soon as the person deprived of liberty enters the Penitentiary System, at the Center for Admission, Diagnosis and Classification of Persons Deprived of Liberty, where personnel from the clinical area ascertain their health condition in order to provide the appropriate treatment in a timely manner; b) identification of the prison population with chronic degenerative pathologies, psychiatric conditions, symptoms of tuberculosis, or malnutrition; c) timely identification of persons deprived of liberty who require surgery, for scheduling the same at the Quezaltepeque Prison Hospital; d) provision of food and special diets, if necessary, in the different prisons; e) medical controls for the attention of diseases and acquisition of medicines for their respective treatment, including sexual and reproductive health care and early detection of emergencies and potential health complications; f) taking laboratory tests, x-rays, height and weight, hydration, hygiene measures, cleaning campaigns, nutrition to increase the caloric intake of patients; g) the adaptation of a special cell in each penitentiary center to house the population deprived of liberty with tuberculosis and others with malnutrition, as a preventive and sanitary measure for a better approach; h) vaccination campaigns to comply with the basic immunization schedule, including 98% immunization against COVID19; and i) fumigation campaigns against vectors.<sup>663</sup>

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<sup>662</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 58-60.

<sup>663</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 58-60.

261. Likewise, in its comments on the draft of this report, the State reiterated the efforts made in the area of health in the penitentiary system. It reported on the creation of prison clinics in each penitentiary, staffed with qualified health personnel; the supply of medicines; the signing of agreements with the Ministry of Health through Local Health Units, hospitals, and complementary health services (laboratory, physiotherapy, etc.).<sup>664</sup> It highlighted the creation and implementation of the Special Health Care Centers in the Penitentiary System, which house prisoners diagnosed with chronic or terminal diseases, such as diabetes, kidney failure, HIV, cancer, or tuberculosis, to provide them with adequate and specialized medical care and treatment: 1) Usulután Special Health Center; 2) La Occidental Comprehensive Health Care Center for Persons Deprived of Liberty; 3) Sensuntepeque Special Health Center; 4) Quezaltepeque Prison Health Center; 5) Izalco Special Health Care Center; and, 6) Zacatecoluca Special Health Care Center.<sup>665</sup> In addition, regarding the Quezaltepeque Special Health Care Center, known as "the Hospital" of the Penitentiary System, the State indicated that it has an operating room, as well as a recovery area for patients.<sup>666</sup> According to the State, in order to improve the health conditions of inmates, other measures have been implemented such as hydration plans, hygiene measures, and drinking water supply, as well as improvements in the storage and distribution of water and the implementation of nutritional plans.<sup>667</sup>

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<sup>664</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador", Nota Diplomática MPOEA-OEA-054/2024, April 8, 2024, pp. 95-103.

<sup>665</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador", Nota Diplomática MPOEA-OEA-054/2024, April 8, 2024, pp. 95-103.

<sup>666</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador", Nota Diplomática MPOEA-OEA-054/2024, April 8, 2024, pp. 95-103.

<sup>667</sup> State of El Salvador, Observations of the State of El Salvador to the IACHR Report "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OAS-054/2024, April 8, 2024, pp. 95-103.

262. Regarding improvements in prison infrastructure and hygienic conditions in detention centers, the State indicated: (a) periodic review of the drinking water system; (b) the construction of shower and toilet areas with their respective "barred" windows for proper air circulation; (c) the elimination of humidity in shared spaces within the penitentiary centers; (d) the conformation of basins and supply of barrels, to maximize the collection of drinking water; e) the creation of spaces to separate persons deprived of liberty with delicate illnesses or health problems; f) the improvement of the infrastructure of the penitentiary centers to guarantee the circulation of air in the cells and the entry of natural light; g) the creation of new spaces within the same structure to distribute the persons deprived of liberty in an adequate manner.<sup>668</sup>
263. The Commission recognizes and appreciates the measures adopted by the State, especially those implemented to improve hygiene conditions, identify persons with a variety of medical care or medication needs, and treat them according to their specific conditions. However, the IACHR cautions that persons deprived of their liberty continue to face inhumane conditions of detention. Despite these measures, both the information received from civil society organizations and the testimonies gathered point to the increasingly precarious conditions in various detention centers as well as the serious risks to the rights to health, personal integrity, and life of inmates.<sup>669</sup> The IACHR deplores the failure to grant consent to an on-site observation on this matter. In this regard, the Commission reiterates that, in response to the measures adopted during the state of emergency, it issued several calls for the Salvadoran State to take concrete actions to guarantee the life, health, and integrity of all

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<sup>668</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 58-60.

<sup>669</sup> IACHR, Hearing on 'Situation of Human Rights and the Rule of Law in El Salvador', 185th session, October 25, 2022; IACHR, Hearing on 'Human Rights and States of Emergency in El Salvador', 187th session, July 14, 2023.



persons under its custody.<sup>670</sup> The IACHR also emphasizes that the State, by failing to ensure its obligation to provide minimum conditions of detention to persons deprived of liberty, generates a heavy burden for family members, especially women, as will be discussed in the last section of this chapter.

**264.** The Commission reiterates the obligation of States to provide timely and adequate health services to persons in their custody. In particular, the Inter-American Court has indicated that this duty implies guaranteeing the physical and mental health of persons deprived of liberty, particularly through the provision of a regular medical check-up and, when required, adequate, timely, and specialized medical treatment.<sup>671</sup> Along these lines, the IACHR emphasizes that the General Regulations of the Penitentiary Law establish the care and treatment of the physical and mental health of detainees in Special Centers and, in their absence, through the collaboration of different State entities.<sup>672</sup> Additionally, the IACHR reiterates its call in the 2021 Country Report in which it urged the State of El Salvador to adopt measures to provide prisons with sufficient human and financial resources in order to ensure minimum detention conditions for the incarcerated population, guaranteeing detention conditions compatible with human dignity and respect for fundamental rights.<sup>673</sup> This requires

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<sup>670</sup> IACHR, Press Release No. 126 - [IACHR Urges El Salvador to Comply with Its International Obligations and Ensure Prisons and Law Enforcement Policies That Respect Human Rights](#), June 3, 2022; IACHR, Press Release No. 254 - [Seven Months into the Exceptional Framework: IACHR Reminds El Salvador That It Must Comply with its Obligations Concerning Human Rights](#), November 11, 2022; IACHR Calls on El Salvador to Reestablish Rights and Guarantees Suspended a Year Ago Under the State of Emergency April 6, 2023.

<sup>671</sup> I/A Court H.R. *Case of Chinchilla Sandoval et al. v. Guatemala*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of February 29, 2016. Series C No. 312, paras. 171-72.

<sup>672</sup> Executive Decree No. 95 - General Regulations of the Penitentiary Law, November 14, 2000, Articles 202, 203.

<sup>673</sup> IACHR, 2022 Annual Report, Chapter V: Follow-up of recommendations made by the IACHR in its country or thematic reports: El Salvador, April 1, 2023, par. 72.

a prior diagnosis of priorities, followed by sufficient budget allocation to ensure the minimum conditions of detention.<sup>674</sup>

265. In recent years, the IACHR has also monitored other issues related to the **treatment of detainees** in El Salvador, condemning the "extraordinary security measures" or "emergency" measures implemented and the obstacles observed in guaranteeing due process, such as access to defense, limited participation in proceedings remotely through videoconferencing, the constant suspension of court hearings, prolonged and indefinite isolation under inhumane conditions, health problems, and the suspension of the visitation regime.<sup>675</sup> The IACHR will address information related to the disciplinary regime applied to persons deprived of liberty in the following section of this report. It also considers it relevant to highlight the seriousness of the persistence of the incommunicado detention of detainees, especially when added to complaints about failures in the registration of detainees and access to information about them.

266. On the other hand, civil society organizations reported to the Commission, in hearings<sup>676</sup> and by submitting information<sup>677</sup>, that one of the main problems related to the mass arrests carried out in recent months was the forced disappearance of persons, in some

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<sup>674</sup> IACHR, 2022 Annual Report, Chapter V: Follow-up of recommendations made by the IACHR in its country or thematic reports: El Salvador, April 1, 2023, par. 72.

<sup>675</sup> IACHR, Report 'Situation of Human Rights in El Salvador', OEA/Ser.L/V/II. Doc. 278, October 14, 2021, par. 160.

<sup>676</sup> IACHR, Hearing 'Forced Disappearances during the State of Emergency', 188th session, November 9, 2023; IACHR, Hearing 'Arbitrary Detentions and Situation of Persons Deprived of Liberty in the State of Emergency in El Salvador', 185th session, October 25, 2022; IACHR, Hearing 'Situation of Human Rights and the Rule of Law in El Salvador', 184th session, June 23, 2022.

<sup>677</sup> Azul Originario et al, [Annual report on human rights violations during the state of emergency in El Salvador](#), March 2023, pp. 52-53; Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report March 27, 2022 to March 27, 2023, May 12, 2023, p. 26](#), May 12, 2023, p. 26; Human Rights Watch, Cristosal, ["We Can Arrest Anyone We Want" Widespread Human Rights Violations During the "Emergency Regime" in El Salvador](#), December 2022, pp.70-72; University Observatory of Human Rights of the Central American University José Simeón Cañas, Annual Report 2022: The human rights situation in El Salvador, April 2023, pp. 48-50; Amnesty International, [El Salvador: One year into the state of emergency, authorities systematically commit human rights violations](#), April 3, 2023.

cases for short periods of time, due to the lack of timely documentation and availability of information for the families of the detained persons so that they would know the place of detention of their loved ones. They indicated the absence of a centralized and efficient system of information on detained persons, and that institutions that should keep updated records, such as the General Directorate of Penal Centers and the Department of Information on Detained Persons of the Supreme Court of Justice, did not have updated information or did not provide it.<sup>678</sup> According to the press, the Prison Information System (SIPE) - which centralized information on the prison population - was deactivated for access from judicial headquarters as of December 2021.<sup>679</sup> Likewise, the Commission was informed of cases in which the whereabouts of the detained person remained unknown for days or weeks after being transferred from one penitentiary to another because the information was not provided to their families in a timely manner<sup>680</sup>:

In that case, I requested an expert opinion on his health condition. However, the doctor was informed that he was not in the prison. The court asked me to find out which penal center he was in. I told them they should know. And they said to me: "It is that penitentiary centers are transferring people without giving notice".<sup>681</sup>

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<sup>678</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Status Report March 27, 2022 to March 27, 2023](#), May 12, 2023, p. 26; Azul Originario et al [Annual Report on Human Rights Violations during the State of Emergency in El Salvador, March 2023, p. 52-53](#); [Human Rights Watch](#), March 2023, pp. 52-53; Human Rights Watch, Cristosal, ["We can detain whoever we want" Widespread human rights violations during the "regime of exception" in El Salvador](#), December 2022, pp.70-72.

<sup>679</sup> El Faro, [Judges have lost access to the Prison Information System](#), March 30, 2022.

<sup>680</sup> University Observatory of Human Rights of the Central American University José Simeón Cañas, [Annual Report 2022: The State of Human Rights in El Salvador](#), April 2023, pp. 166-167; ASDEHU, Alerta Raquel, Cristosal, IDHUCA, FESPAD, DPLF, ORMUSA, SSPAS, Ref: El Salvador - Thematic Hearing "Forced Disappearances and Other Forms of Disappearance", August 11, 2023 (on file with IACHR).

<sup>681</sup> Testimony No. 5 of March 14, 2023. Defense attorney.

On the day of the transfers, family members sleep outside to ask for information. My relatives tell me that after four or five days they were able to obtain information from the prosecutor's office.<sup>682</sup>

They selected us by name and had us sit for a while they verified everyone's data and transferred us to Izalco. The reason for the transfer was never reported. No, one's family is the one who asks. On their part, it is rare that they provide information. Just the insults one always receives.<sup>683</sup>

I knew that she had been transferred during the early morning hours to the Women's Prison because I went to the police station to buy a package for my daughter, and they told me that she had already been taken away. I went to the women's prison in July to take the packages to the women's prison and they told me that I did not appear in the system. Here she is in the center, but you can't leave food for her because she has no location at the moment. We don't know where they are going to place it, and I was prevented from buying a package for her. As a mother, I worried too much.<sup>684</sup>

**267.** This context reportedly led the families of the captured persons to move between different institutions and to gather for days or weeks around the prisons in order to confirm the whereabouts of their detained relatives, their health condition and to provide them with the food and clothing supplies required by the authorities.<sup>685</sup> The problem was registered as critical in the first months of the state of

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<sup>682</sup> Testimony No. 12 of March 17, 2023. Person released under alternative measures (female).

<sup>683</sup> Testimony No. 23 of March 22, 2023. Person released under alternative measures.

<sup>684</sup> Testimony No. 26 of March 23, 2023. Family member of detainee (female detainee).

<sup>685</sup> Azul Originario et al, [Annual Report on Human Rights Violations During the State of Emergency in El Salvador](#), March 2023, pp. 52-53; Human Rights Watch, Cristosal, ["We can detain whoever we want" Widespread human rights violations during the "regime of exception" in El Salvador](#), December 2022, pp.70-72.

emergency,<sup>686</sup> given that on May 21, 2022 the authorities established "information centers" outside some prisons.<sup>687</sup> Likewise, these difficulties continued to be recorded in the following months.<sup>688</sup>

268. For its part, in a hearing held in November 2023, the State denied that there were forced disappearances in this context, indicating that in 2023 the Attorney General's Office had received no complaints about this type of crime.<sup>689</sup> It also reported on the mechanisms that the State offers to citizens who wish to receive information on the criminal proceedings of their relatives detained under the state of emergency.<sup>690</sup> In October 2022, the State indicated to the IACHR that family members and professionals practicing defense could request and receive the information registered in the SIPE on persons deprived of liberty through the Human Rights Prison Unit or the Penitentiary Centers.<sup>691</sup> In this regard, it indicated that the System established the requirements and procedure for providing information on the location, transfer, and needs of detainees, while in order to provide health information it would be necessary for the person

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<sup>686</sup> Azul Originario et al, [Annual Report on Human Rights Violations During the State of Emergency in El Salvador](#), March 2023, pp. 52-53; Human Rights Watch, Cristosal, ["We can detain whoever we want" Widespread human rights violations during the "regime of exception" in El Salvador](#), December 2022, pp.70-72.

<sup>687</sup> Human Rights Watch, Cristosal, ["We Can Arrest Anyone We Want" Widespread Human Rights Violations During the "Emergency Regime" in El Salvador](#), December 2022, pp.70-72

<sup>688</sup> La Prensa Grafica, [More than a year of searching for detainees in the regime](#), April 13, 2023.

<sup>689</sup> IACHR, Hearing on 'Forced Disappearances during the State of Emergency', 188th session, November 9, 2023; State of El Salvador, Observations of the State of El Salvador on the Report of the IACHR "State of Emergency and Human Rights in El Salvador", Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, Annex 1, Methodological Systematization Matrix, line 56, column E.

<sup>690</sup> IACHR, Hearing on 'Forced Disappearances during the State of Emergency', 188th session, November 9, 2023; State of El Salvador, Observations of the State of El Salvador on the Report of the IACHR "State of Emergency and Human Rights in El Salvador", Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, Annex 1, Methodological Systematization Matrix, line 56, column E.

<sup>691</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on the occasion of the Hearing "Arbitrary detentions and the situation of persons deprived of liberty during the state of emergency in El Salvador," Diplomatic Note MPOEA-OAS-186/2022, October 25, 2022, p. 5.

deprived of liberty to provide written consent.<sup>692</sup> It also indicated that the PDDH had recommended to the General Director of Penitentiary Centers that he strengthen the activation mechanism of the Care Center for Relatives of Persons Detained under the Emergency Regime, so that they could know the location, legal, and health condition of persons deprived of liberty, as well as generate safe conditions for access to personal supplies and medicines strictly necessary for persons deprived of liberty with health conditions.<sup>693</sup> Pursuant to that recommendation, the State indicated that the respective mechanism was strengthened by placing human resources outside the prisons that are receiving inmates under the regime, with appropriate technological equipment, to provide the necessary information - which can also be requested in writing at the administrative offices of the DGCP.<sup>694</sup> The State also indicated that inter-agency cooperation with the PDDH aimed to provide this same service in the facilities of that institution.<sup>695 696</sup>

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<sup>692</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on the occasion of the Hearing "Arbitrary detentions and the situation of persons deprived of liberty during the state of emergency in El Salvador," Diplomatic Note MPOEA-OAS-186/2022, October 25, 2022, p. 5.

<sup>693</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on the occasion of the Hearing "Arbitrary detentions and the situation of persons deprived of liberty during the state of emergency in El Salvador," Diplomatic Note MPOEA-OAS-186/2022, October 25, 2022, pp. 5-6.

<sup>694</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on the occasion of the Hearing "Arbitrary detentions and the situation of persons deprived of liberty during the state of emergency in El Salvador," Diplomatic Note MPOEA-OAS-186/2022, October 25, 2022, pp. 5-6.

<sup>695</sup> State of El Salvador, Report of the State of El Salvador to the Inter-American Commission on Human Rights on the occasion of the Hearing "Arbitrary detentions and the situation of persons deprived of liberty during the state of emergency in El Salvador," Diplomatic Note MPOEA-OAS-186/2022, October 25, 2022, pp. 5-6.

<sup>696</sup> En sus observaciones al proyecto del presente informe, el Estado reiteró su rechazo a la existencia de un patrón de negación de detenciones y afirmó que cualquier caso eventual de demora en la puesta a disposición de la información no puede constituir una negativa del Estado a brindar información y mucho menos una desaparición forzada. Señaló que toda detención por la Policía Nacional Civil se realiza respetando los parámetros legales, las personas son puestas a disposición de autoridad judicial y cuentan con un defensor asignado. See: State of El Salvador, Observations by the State of El Salvador on the IACHR Report entitled "State of Emergency and Human Rights in El Salvador", Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, p. 100

269. In addition to deficiencies in the registration of detainees and failures to provide minimum data to family members and legal representatives, the Commission was informed about the prolonged incommunicado detention of persons deprived of their liberty. According to the press, they did not receive visits during the pandemic, at least from April 2020 to December 2021; and, in the context of the emergency regime, visits were also suspended.<sup>697</sup> There is no communication mechanism between the detainees and their families,<sup>698</sup> which was corroborated in some of the testimonies taken by the IACHR:

In the seven months I was there I never met my children or the lawyer. I was uncertain about what was going on.<sup>699</sup>

I never heard from my family. Until the day I was free. I knew they were okay if they were going to drop me off a package.<sup>700</sup>

They had him kneeling there, they were abusing him as if he had been a criminal. I can't tell you exactly, you never hear from them again, nor do they give you any information about anything, it's like a kidnapping.<sup>701</sup>

270. In its observations on the Draft Report, the State pointed out that since a state of emergency is in force, "it is not possible" to comply with the ordinary conditions that existed prior to its implementation. It likewise indicated that there is no restriction on family members and defense attorneys receiving information regarding persons deprived of liberty

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<sup>697</sup> Azul Originario et al, [Informe anual sobre violaciones a derechos humanos durante el estado de excepción en El Salvador](#), March 2023, pp. 52-53; La Prensa Gráfica, [22 meses sin permitir visitas a privados de libertad](#), December 28, 2021; IACHR, Hearing "[Arbitrary detentions and the situation of persons deprived of liberty during the state of emergency in El Salvador](#)" 185th regular session, October 25, 2022.

<sup>698</sup> La Prensa Gráfica, [Three years without visits in Salvadoran penitentiaries](#), March 17, 2023.

<sup>699</sup> Testimony No. 12 of March 17, 2023. Person released under alternative measures (female).

<sup>700</sup> Testimony No. 16 of March 17, 2023. Person released under alternative measures (female).

<sup>701</sup> Testimony No. 22 of March 21, 2023. Family member of deceased person.

or on persons deprived of liberty receiving their hygiene kits and medicines provided by their families.<sup>702</sup>

271. The Commission has alerted the Salvadoran State on the importance of ensuring direct contact and the maintenance of links between detainees and their families, recommending that visits be guaranteed in all penal establishments on a regular basis and that the prohibition contained in Article 79-A of Decree 93 - Reforms to the Penitentiary Law be reviewed.<sup>703</sup> In this regard, it recalls that solitary confinement should be an exceptional measure and that it can generate a situation of extreme psychological and moral suffering for the detainee.<sup>704</sup> Isolation from the outside world produces in any person moral suffering and psychic disturbances, places him or her in a situation of particular vulnerability<sup>705</sup> and both prolonged isolation and coercive solitary confinement are, by themselves, cruel and inhuman treatments,<sup>706</sup> and that in some situations, added to other conditions and contexts, could amount to torture. In addition to the above, lack of contact with the outside world may impair the exercise of other rights and guarantees and place the person in a situation of particular vulnerability, increasing the risk of other violations in prisons.<sup>707</sup>

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<sup>702</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador", Nota Diplomática MPOEA-OEA-054/2024, April 8, 2024, p. 100.

<sup>703</sup> IACHR, 2022 Annual Report, Chapter V: Follow-up of recommendations made by the IACHR in its country or thematic reports: El Salvador, April 1, 2023, par. 76; IACHR, report has Situation of Human Rights in El Salvador, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, par. 342.15

<sup>704</sup> I/A Court H.R., Case of Espinoza Gonzáles v. Peru Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2014. 186; I/A Court H.R., Suárez Rosero Case v. Ecuador, Merits, Judgment of November 12, 1997, par. 51.

<sup>705</sup> I/A Court H.R., Suárez Rosero Case v. Ecuador Interpretation of the Judgment on Reparations. Judgment of May 29, 1999, Series C No. 51, par. 90

<sup>706</sup> I/A Court H.R. Case of Velásquez Rodríguez v. Honduras Merits. Judgment of July 29, 1998. Series C No. 4 par. 156.

<sup>707</sup> I/A Court H.R. Case of Suárez Rosero v. Ecuador. Merits. Judgment of November 12, 1997. Series C No. 35, par. 83, 90; I/A Court H.R., Loayza Tamayo Case v. Peru. Merits. Judgment of September 17, 1997. Series C No. 33, par. 52.



272. Accordingly, the bodies of the ISHR and the United Nations have referred to different measures essential to the prevention of arbitrary detentions, torture, and forced disappearances, among other possible violations of rights related to the deprivation of liberty. Places of deprivation of liberty must keep up-to-date records for each detained person and this information must be accessible to the person deprived of liberty, his or her representative, family members, and the competent authorities.<sup>708</sup>
273. Likewise, the agencies of the universal system have recommended the establishment of a uniform protocol and an effective control system for all centers where persons are deprived of their liberty, with appropriate sanctions for those who fail to register or deliberately refuse to provide such information to any person with a legitimate

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<sup>708</sup> In this regard, the following applies: The record shall contain at least the following data: (a) information on the person's identity, which shall include, as a minimum, the following: the person's name, age, sex, nationality, ethnicity, address, and names of parents, family members, legal representatives or defense counsel if applicable, and any other relevant information pertaining to the person deprived of liberty; (b) information concerning the personal integrity and state of health of the person deprived of liberty; (c) reasons or grounds for the person's incarceration; (d) the authority that ordered or authorized the person's detention; (e) the authority who took the individual to the facility; (f) the authority legally responsible for supervising the detention; (g) date and time of admission and release; (h) dates and times of any transfers and the destinations; (i) the identity of the authority who ordered and is responsible for the transfer; (j) an inventory of the detainee's personal effects, and (k) the signature of the person incarcerated and, in the event of refusal or inability to sign, an explanation about the reasons thereof. This information must be accessible to the person deprived of liberty, his or her representative, family members and the competent authorities. In that connection, see: IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas (Approved by the Commission during its 131st regular period of sessions, held from March 3-14, 2008, Principles IX (2)); I/A Court H.R. Matter of Urso Branco Prison, Brazil Provisional Measures. Order of the Inter-American Court of Human Rights of June 18, 2002, preambular paragraph 7; I/A Court H.R., I/A Court H.R., Matter of Children and Adolescents Deprived of Liberty in the "Complexo do Tatuapé" da FEBEM Brazil. Provisional Measures. Order of the Inter-American Court of Human Rights of November 30, 2005. Preambular paragraph 6; I/A Court H.R., Case of Landaeta Mejías Brothers et al v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 27, 2014. Series C No. 281, par. 167-168; Article XI of the Inter-American Convention on Forced Disappearance of Persons, adopted in Belém do Pará, Brazil, June 9, 1994, at the twenty-fourth regular session of the General Assembly.

interest.<sup>709</sup> They have also recommended that a family member of the detainee should be informed of the fact and place of detention within 18 hours, or within 24 hours to ensure legal counsel.<sup>710</sup>

274. The Commission also asked the State to report on the special measures adopted to address the specific needs of women and people of African descent, indigenous people, LGBTI people, the elderly, people with disabilities, and children and adolescents in detention units.<sup>711</sup> In addition, with respect to measures adopted to address the specific needs of women and persons of African descent, indigenous people, LGBTI, the elderly, persons with disabilities, and children and adolescents in detention units, the State of EI Salvador indicated that the work of the prison system is aimed at providing all persons deprived of liberty, without distinction, with favorable conditions for their development, taking into account **differentiated approaches with respect to certain groups of persons in vulnerable conditions**.<sup>712</sup> As examples of their gradual implementation, the State pointed to: the Women's Prison Centers and the adequate and specialized facilities for children with their mothers deprived of liberty; the Prison Center for foreigners, with the constant access of consulates and embassies; and the Prison Center for LGBTI population, chronically or terminally ill people.<sup>713</sup>

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<sup>709</sup> United Nations, Committee on Enforced Disappearances, Concluding observations on the report submitted by Argentina under Article 29, paragraph 1, of the Convention, CED/C/ARG/CO/ 1, 12 December 2013, par. 29, a, b; United Nations, Committee on Enforced Disappearances, Concluding observations on the report submitted by Burkina Faso under Article 29, paragraph 1, of the Convention, CED/C/BFA/CO/1, 24 May 2016, par. 34; United Nations, Working Group on Arbitrary Detention: Preliminary Observations of its visit to Mexico (September 18-29, 2023), p. 2; Articles 17.3, 18.1 of the International Convention for the Protection of All Persons from Enforced Disappearance, United Nations Doc. A/RES/61/177 of 20 December 2006.

<sup>710</sup> United Nations, Commission on Human Rights, Report submitted by the Special Rapporteur on the question of torture pursuant to Commission resolution 2002/38, E/CN.4/2003/68, 17 December 2002, par. 26.g.

<sup>711</sup> IACHR, Request for information from the State of EI Salvador, 156-22/CIDH/SE/MPCT-Art.41, Ref.: Exceptional Regime Decree No. 333 - EI Salvador, April 4, 2022.

<sup>712</sup> State of EI Salvador, A New EI Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 61-62.

<sup>713</sup> State of EI Salvador, A New EI Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 56, 57.

275. The State reported that there are protocols that establish the measures to be taken, according to the vulnerability of the detainee.<sup>714</sup> It indicated that the separation of children and adolescents in conflict with the law from adults deprived of their liberty is ensured, since they are not sent to police stations, in accordance with international standards that protect the rights of children, but are sent to special shelters, suitable for the care of this segment of the population, under the administration of other State institutions.<sup>715</sup> In addition, it asserted that persons identified as LGBTI population in police custody are kept in separate locations in order to guarantee their rights.<sup>716</sup> In turn, foreigners also receive legal advice, access to consular assistance is guaranteed, as is compliance with the Inter-American Convention on Serving Criminal Sentences Abroad.<sup>717</sup>

276. With regard to medical care, the State claimed that the Directorate General of Prisons ensures that it is received according to the prison population's general and specific needs; thus, the elderly population receives geriatric care; women, gynecological care; and the LGBTI population receives the health services required according to their particular needs.<sup>718</sup> In addition, in the case of foreigners, the LGBTI population, or any other vulnerable group, they are included in treatment programs based on their needs and in mental health programs, psychological care is provided when requested; and when there is no family support, personal hygiene items are provided. For persons with disabilities, facilities have been adapted to provide them with access to the prison clinic and to make it easier for them to get

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<sup>714</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 61-62.

<sup>715</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 61-62.

<sup>716</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 61-62.

<sup>717</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 61-62.

<sup>718</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 61-62.

around; they are provided with physiotherapy and with medical care from specialists in hospitals pertaining to the national network, and they are treated in prison in accordance with their physical condition. Therapeutic activities are also tailored to meet their needs and condition. In addition, they are provided with medical supplies to help them move around and to improve their overall condition.<sup>719</sup>

**277.** Regarding the specific needs of women deprived of liberty within the prison system, the State pointed to the following measures: medical and multidisciplinary evaluations with the objective of identifying the needs of each woman deprived of liberty and coordinating specialized medical consultations outside the prison, if necessary; awareness-raising activities on the importance of breastfeeding, with the objective of strengthening the bond between mother and child in the context of confinement; and the adaptation of spaces within prisons to meet the needs of women.<sup>720</sup> In its comments on the draft of this report, the State noted that since the Prison Act allows children up to the age of 5 to accompany their mothers deprived of their liberty, a specialized detention center was secured for this purpose.<sup>721</sup>

**278.** In addition, the IACHR was told about concerns regarding the situation of groups at particular risk of deprivation of liberty and the differentiated impacts of imprisonment. Regarding the transfers made

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<sup>719</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 61-62.

<sup>720</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 61-62.

<sup>721</sup> At the same time, the State stressed that the General Directorate of Penitentiary Centers had implemented a program of care for children, which includes education, health, nutrition, psychosocial care, and a focus on rights, aimed at guaranteeing care in accordance with the law and promoting the all-round development of children from 0 to 5 years of age who are living with their mothers in the penitentiary system. It also reported on the implementation of the "Soy Persona" (I am a Person) program, designed to foster emotional ties between mother and child, by developing awareness processes and updating the protocols for the care of children, to make sure that they pursue early childhood care objectives. State of El Salvador, Observations by the State of El Salvador on the IACHR Report entitled "State of Emergency and Human Rights in El Salvador", Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, p. 101.

from July 2022 from the "Centro Preventivo y de Cumplimiento de Penas para Mujeres de Ilopango" to other prisons, it was noted that they were carried out in a surprising and improvised manner and that some women reportedly lost their clothes and other objects. Some of the women were relocated to a specific area of the Izalco Men's Detention Center; some to the Apanteos center, which did not have adequate shelter facilities.<sup>722</sup> The precarious conditions were also reported in the testimonies taken by the Commission:

The cell was adapted for 160 women, and there were more than 360 women. [...]Early on, there was an opportunity to do some sports or read a book. As the prison collapsed due to overcrowding, the women were locked up day and night.<sup>723</sup>

There were 200 people in each cell and about 20 or fewer cots. Four or five of us had to fit into each cot: a tiny space. It is quite hot. The person in charge of each cell did the cleaning.<sup>724</sup>

The food always arrived in a pot and three times a day. Sometimes the food was dirty and hard, they said they put a lot of iodine in it. There were times when it smelt bad. [...]We had menstrual hygiene products only when a family left a package. [...] To bathe we had to bathe in no more than seven "hucaladitas". We only bathed every three days. [...] [Even if we were menstruating], we still had to wait for the water to come on to wash. Some colleagues had infections.<sup>725</sup>

I was transferred to the Apanteos prison in Santa Ana. According to the comments heard there, they said that human rights delegations had called their attention to the fact that there were many women sleeping on the floor and getting wet at night. When we arrived,

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<sup>722</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 27 to 2022 March 27, 2023](#), May 12, 2023, pp. 48-51.

<sup>723</sup> Testimony No. 16 of March 17, 2023. Person released under alternative measures (female).

<sup>724</sup> Testimony No. 8 of March 16, 2023. Person released under alternative measures (female).

<sup>725</sup> Testimony No. 8 of March 16, 2023. Person released under alternative measures (female).

they threw away everything we were carrying, leaving us with just one change of clothes. [...] Lack of water was what we suffered most. When the guard was in a good mood, she let us fill all the buckets, but when she was angry, only three. There we washed every three days, if there was water we bathed every day. If there was no water, we only drank 8 ounces of water, 4 in the morning and 4 in the evening.<sup>726</sup>

The only specialty it has is general medicine; there is no sexual and reproductive health care.<sup>727</sup>

**279.** In this regard, in its observations on the draft of this report, the State indicated that, in order to improve the conditions of confinement of women deprived of their liberty, the women who were being held at the Ilopango Preventive and Punishment Center for Women were transferred to the Apanteos Preventive and Punishment Center for Women, as part of the improvements to the infrastructure of the prison system. Several improvements were made to the latter prison to meet the needs of the women, including: an increase in installed capacity; construction of toilets and showers; improvement of natural and artificial lighting; and increased ventilation.<sup>728</sup>

**280.** The IACHR was also told about pregnant women with serious illnesses and chronic conditions reportedly not receiving the health care they require, and about a large number of women with mental illnesses, as well as skin, and respiratory diseases.<sup>729</sup> It also received reports of abortions that were allegedly caused by negligence or

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<sup>726</sup> Testimony No. 16 of March 17, 2023. Person released under alternative measures (female).

<sup>727</sup> Testimony No. 12 of March 17, 2023. Person released under alternative measures (female).

<sup>728</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador"(Observations of the State of El Salvador on the IACHR report entitled "State of Emergency and Human Rights in El Salvador"), Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, p. 101.

<sup>729</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 27 to 2022 March 27, 2023](#), May 12, 2023, pp. 48-51.

abuse of authority.<sup>730</sup> Additionally, it was pointed out as a risk factor the fact that the redistribution of women inmates in Ilopango to different prisons has exposed them to prison staff, including male guards, without the proper training to care for women.<sup>731</sup>

**281.** The Commission also learned about some acts of discrimination and mistreatment of lesbian and transgender women, who were reportedly more frequently subjected to physical punishment and confinement in punishment cells.<sup>732</sup> Likewise, the IACHR does not have information on the separation of trans women in prisons for men<sup>733</sup> and highlights the lack of information on the situation of persons with disabilities deprived of liberty in the context of the state of emergency.

**282.** The IACHR recalls that persons belonging to at-risk groups who face discrimination while at liberty are more susceptible to indirect discrimination due to the disproportionate risks and differentiated impacts they face during incarceration, which results in much more severe effects of imprisonment.<sup>734</sup> In view of this, the authorities are duty-bound to adopt measures based on a differentiated approach that takes into account the condition of vulnerability of persons in detention and the specific violations of their rights caused by incarceration. In addition, these measures should consider the frequent intersectionality of risk factors that may accentuate their risk situation.<sup>735</sup>

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<sup>730</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 27 to 2022 March 27, 2023](#), May 12, 2023, pp. 48-51.

<sup>731</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 27 to 2022 March 27, 2023](#), May 12, 2023, pp. 48-51.

<sup>732</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 27, 2022 to March 27, 2023](#), May 12, 2023, pp. 48- 51, 53.

<sup>733</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 27 2022 to March 27, 2023](#), May 12, 2023, p. 53.

<sup>734</sup> Thus, IACHR, [Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas](#), par. 215; and IACHR, [Request for an Advisory Opinion to the Inter-American Court of Human Rights](#), paras. 16 and 17

<sup>735</sup> Similarly, see: IACHR, [Report on women deprived of freedom in the Americas](#), OEA/Ser.LV/II., Doc. 91/23, March 8, 2023, par. 120.

283. Consequently, as part of their obligations, States must ensure that in places of deprivation of liberty for women or women's sections in mixed facilities, the supervision and custody of women must be exercised exclusively by female staff.<sup>736</sup> In addition, women deprived of their liberty have the right to access specialized medical care in accordance with their physical and biological characteristics, and that adequately responds to their reproductive health needs. This right includes receiving gender-sensitive health care on a regular and timely basis, at least in the specialties of gynecology, mastology, and sexual and reproductive health. In addition, it implies the duty of States to adopt measures to ensure that health professionals specialized in female and women's pathologies are available in prisons for medical consultations on a sufficiently regular basis. In cases where health services cannot be provided in the institutions, States must implement actions to ensure the prompt and regular transfer of incarcerated women to health centers where they can receive the appropriate care for their pathology.<sup>737</sup>
284. Regarding the accommodation of trans women, the IACHR has indicated that States must allocate exclusive spaces for the accommodation of trans women, and put an end to practices that result in their accommodation together with men or other LGBT persons without differentiation.<sup>738</sup>
285. Regarding **children and adolescents in internment centers**, the available public information is limited to August 30, 2022, when there were 2,312 adolescents in internment centers under the responsibility of the Salvadoran Institute for the Integral Development of Children and Adolescents, of whom 1,947 were males and 365 females; the majority were between 16 and 18 years of age (66.70%), followed by

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<sup>736</sup>IACHR, [Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas](#), adopted by CIDH on March 13, 2008, Principles XIX and XX.

<sup>737</sup> IACHR, [Report on Women deprived of liberty in the Americas](#), OEA/Ser.L/V/II., Doc. 91/23, March 8, 2023, par. 147.

<sup>738</sup> IACHR, [Report on Women Deprived of Liberty in the Americas](#), OEA/Ser.L/V/II., Doc. 91/23, March 8, 2023, par. 295.



ages between 14 and 16 years (26.73%), between 12 and 14 years (3.63%), and 18 years of age (2.94%).<sup>739</sup> Likewise, the IACHR learned of possible situations of mistreatment inside the social insertion centers for adolescents, neglect in health services, and lack of personal hygiene supplies and provision of medicines, as well as the proliferation of skin and respiratory diseases, and malnutrition.<sup>740</sup>

286. With regard to the health care provided to adolescents in insertion centers (*Centros de Inserción*), in its observations on the draft of this report, the State indicated that as soon as they are placed under the care of CONAPINA, they are guaranteed a medical checkup in the Health Units and that the continuity of the treatment prescribed is ensured. This is due to the fact that there are properly equipped clinics and health personnel for the care and follow-up required by adolescents in the Social Integration Centers. It also pointed out that the medical check-ups have not revealed any physical abuse or injuries due to excessive use of force: a finding that is supported by the file of each adolescent in the Insertion and Protection Centers. The State also indicated that in these centers, the young people receive balanced food and nutrition thanks to a diet that is designed and approved by CONAPINA personnel, and that care is also taken to ensure healthy food preparation and distribution. In addition, the State reported that, at the beginning of the implementation of the state of emergency, CONAPINA ensured that children were “presumed to be underage” and that birth certificates were requested and, if no birth

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<sup>739</sup> University Observatory of Human Rights of the Central American University José Simeón Cañas, [Annual Report 2022: The State of Human Rights in El Salvador](#), April 2023, pp. 72-75

<sup>740</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 27, 2022 to March 27, 2023](#), May 12, 2023, pp. 51-53.

certificate was found, it also ensured that the corresponding legal procedures were followed to identify their age.<sup>741</sup>

**287.** With regard to pregnant adolescents in Social Insertion Centers, the State reported that there is a separate space for their health care and that of their children, recreational rooms, comprehensive development centers, and other specialized care. It stressed that the same facilities are provided for children who are with their mothers deprived of their liberty at the Izalco Farm. On the other hand, the State pointed out that, despite the increase in the number of adolescents in detention, care services have not been overwhelmed and, in addition, the capacities and skills of the personnel providing direct care to adolescents (including administrative, security, and technical personnel, directors, multidisciplinary teams) have been strengthened.<sup>742</sup>

**288.** In this regard, the Commission recalls that the deprivation of liberty of children and adolescents due to their infringing criminal law does not authorize States to restrict their other human rights. Moreover, since the States are in a position of guarantors with respect to this population deprived of liberty, they must adopt positive measures to ensure that they can effectively enjoy all their rights. Deprivation of liberty must be carried out in such a way as to ensure the humane treatment and observance of children and the human rights of the detained juvenile. According to the Court, States' special position of

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<sup>741</sup> It also mentioned that CONAPINA has invested in infrastructure and equipment improvements with a fund of approximately US\$2 million to ensure decent conditions for adolescents, including the construction of schools, desks, and other implements for their educational and mental development. The State also reported that all surveillance, protection, and care personnel have been trained with an investment of US\$90,000 and specialized personnel (167 professionals) have been hired to provide comprehensive care in psychology, nursing, and social work, at a cost of approximately US\$141,000 per month for the social insertion centers. State of El Salvador, Observations of the State of El Salvador to the IACHR Report "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, pp. 101 and 102.

<sup>742</sup> State of El Salvador, Observations of the State of El Salvador to the IACHR Report "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OAS-054/2024, April 8, 2024, pp. 101 and 102.

guarantor vis-à-vis incarcerated persons is particularly reinforced in these cases, due to the special protection that the State must provide to persons under 18 years of age.<sup>743</sup>

289. Finally, the IACHR highlights the lack of information regarding the situation of deprivation of liberty of the **elderly**. El Salvador is a party to the Inter-American Convention on the Protection of the Human Rights of Older Persons, which determined in Article 5 that older persons deprived of their liberty constitute a group in a situation of vulnerability and victims of multiple discrimination. Likewise, Article 13 of said instrument establishes the obligation of the States to guarantee access to special programs and comprehensive care, which include rehabilitation mechanisms for their reintegration into society. Thus, it is essential to ensure their medical care, their physical accessibility in prison facilities, the preservation of family ties, and their social reintegration, as indicated by the Inter-American Court.<sup>744</sup> Therefore, given the disproportionate effect and impact that the precarious conditions of detention described in this report may have on the human rights of the elderly deprived of their liberty, it is necessary for the State to identify this population under its custody and provide specific guarantees for their confinement under dignified conditions. The IACHR reiterates that the aforementioned Convention establishes that, as appropriate, the States Parties shall promote alternative measures to deprivation of liberty, in accordance with their domestic legal systems.

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<sup>743</sup> See: I/A Court H.R., Matter of Children and Adolescents Deprived of Liberty in the “Complejo do Tatuapé” of Fundação CASA. Provisional Measures. Order of the Inter-American Court of Human Rights of July 3, 2007, preambular paragraph 8; Matter of Children and Adolescents Deprived of Liberty in the “Complejo do Tatuapé” of FEBEM. Provisional Measures. Order of the Inter-American Court of Human Rights of July 4, 2006, preambular paragraph 10; Case of the “Juvenile Reeducation Institute” v. Paraguay. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 2, 2004. Series C No. 112, par. 160. I/A Court H.R. Case of the “Juvenile Reeducation Institute” v. Paraguay. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 2, 2004. Series C No. 112, par. 160.

<sup>744</sup> IACHR, Request for an Advisory Opinion to the I/A Court H.R., Differentiated Approaches to Persons Deprived of Liberty, November 25, 2019, UNODC. Handbook on Prisoners with Special Needs, 2009, p. 127. Prison Voice Washington, Correcting Food Policy in Washington Prisons: How the DOC Makes Healthy Food Choices Impossible for Incarcerated People & What Can be Done? 2016, p. 2.

### **C. Deaths, allegations of torture and mistreatment of persons deprived of their liberty**

290. Since the start of the state of emergency, the Commission has learned of disturbing information regarding deaths, allegations of torture, and ill-treatment of persons deprived of liberty, abuses in the use of disciplinary measures and the use of force against persons deprived of liberty, as well as deficiencies or omissions in the mechanisms for denouncing and investigating these events. The following section addresses some of these reports.

291. According to information in the public domain, from March 27, 2022, to June 2023, there were investigative inquiries into at least 142 **deaths of persons deprived of liberty** in that period.<sup>745</sup> By the end of October 2023, the number of deaths in custody had allegedly risen, with figures varying from 189 to 200 people.<sup>746</sup> A number of civil society organizations criticized the restrictions on access to this type of information and, based on consolidated data from various sources, indicated that there were higher numbers of deaths.<sup>747</sup> As of July 2023, the number of deceased persons reportedly amounted to

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<sup>745</sup> AP News, [Prosecutor's office registers \(archiva\) 142 deaths in El Salvador prisons attributed to natural causes](#), June 13, 2023; DW, [El Salvador Registers \(archiva\) "142 Cases" of Deaths in its Prisons](#), 14 June 2023.

<sup>746</sup> DW, [NGO: "Victims" of the State of Emergency in El Salvador Rise](#), October 19, 2023; La Prensa Gráfica, [The number of people killed in prisons under the state of emergency in El Salvador rises to 200: "When the moms opened the boxes, there were their children completely beaten up."](#), October 31, 2023.

<sup>747</sup> Azul Originario et al, [Annual Report on Human Rights Violations During the State of Emergency in El Salvador](#), March 2023, pp. 54-59; Cristosal, Instituto de Derechos Humanos de la Universidad Centroamericana José Simeón Cañas (IDHUCA), Due Process Foundation (DPLF), Red Salvadoreña de Defensoras de Derechos Humanos, Servicio Social Pasionista (SPASS), [Prison Deaths During the State of Emergency in El Salvador: Alleged Extrajudicial Executions, Report of Civil Society Organizations to the Special Rapporteur on Extrajudicial Executions](#), April 10, 2023 (hereafter, Cristosal et al., [Prison Deaths during the Emergency Regime in El Salvador: Alleged Extrajudicial Executions, Report of Civil Society Organizations to the Special Rapporteur on Extrajudicial Executions](#), April 10, 2023), pp. 6-9.

at least 174.<sup>748</sup> The majority were men, but a potential underreporting of women who died in detention was also noted.<sup>749</sup>

292. The organizations indicated that, in repeated cases, the relatives of the deceased were not immediately informed of the death by state agents, and heard about it through third parties, such as representatives of funeral service companies.<sup>750</sup> State agents also recorded their burial without notification to family members, in some cases, in mass graves and as unidentified persons.<sup>751</sup> In addition, they denounced the existence of clandestine graves inside the prisons.<sup>752</sup>

293. On the possible causes of the deaths, Cristosal conducted a study based on field, documentary, and interview research and grouped the then 139 deaths in state custody into four categories: 29 violent deaths, 7 probable violent deaths, 25 natural or pathological deaths, and 39 deaths in which a crime is suspected. Cristosal also indicated that it did not have sufficient data on 39 persons.<sup>753</sup> Likewise,

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<sup>748</sup> Swissinfo.ch, [The "victims" of the state of emergency in El Salvador total some 5,490, according to allegations](#), July 20, 2023; La Prensa Gráfica, [The 175 people deprived of liberty who have died during the regime in El Salvador](#), August 8, 2023.

<sup>749</sup> Azul Originario et al, [Annual report on human rights violations during the state of emergency in El Salvador](#), March 2023, pp. 54-59; Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 27, 2022 to March 27, 2023](#), May 12, 2023, pp. 27-32, 48-51.

<sup>750</sup> Azul Originario et al, [Annual report on human rights violations during the state of emergency in El Salvador](#), March 2023, pp. 52-53; Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report March 27, 2022 to March 27, 2023](#), May 12, 2023, pp. 35-36; Cristosal et al, [Deaths in Prisons during the State of Emergency in El Salvador: Alleged Extrajudicial Executions](#), April 10, 2023, pp. 9-11.

<sup>751</sup> Azul Originario et al, [Annual report on human rights violations during the state of emergency in El Salvador](#), March 2023, pp. 52-53; Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report March 27, 2022 to March 27, 2023](#), May 12, 2023, pp. 27-32, 35-36; Human Rights Watch, Cristosal, ["We Can Arrest Anyone We Want" Widespread Human Rights Violations During the "State of Emergency" in El Salvador](#), December 2022, 85-91; Amnesty International, [El Salvador: One year into the state of emergency, authorities systematically commit human rights violations](#), April 3, 2023.

<sup>752</sup> Cristosal et al., [Prison Deaths During the Emergency Regime in El Salvador: Alleged Extrajudicial Executions](#), April 10, 2023), pp. 6-9.

<sup>753</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 27 to 2022 March 27, 2023](#), May 12, 2023, pp. 27-32.

according to international experts consulted by Human Rights Watch and Cristosal, the death certificates reviewed did not meet legal and medical standards because they failed to record all the underlying causes and other significant conditions that contributed to the death in question.<sup>754</sup> The organizations highlighted the lack of consistency between the cause of death reported and the condition of the corpse, indicating that, in dozens of the cases studied, the document merely reported that death was the result of some kind of "edema", when there were evident signs of the corpse having been subjected to violence.<sup>755</sup> In this regard, Cristosal indicated that it had verified photographs from the Institute of Forensic Medicine that indicated possible blows and mechanical asphyxiation by strangulation, among other injuries, and disclosed some of these records.<sup>756</sup> In a hearing held at the 187th Period of Sessions of the IACHR, the organizations denounced that some of the deaths may have been extrajudicial executions.<sup>757</sup>

294. Likewise, in at least 20 cases, the deceased was not provided with the appropriate medication or medical care even when they were related to pre-existing conditions or others that arose or were aggravated by the incarceration.<sup>758</sup> The Commission learned of cases in which the families were informed that an autopsy would be performed, but were

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<sup>754</sup> Human Rights Watch, Cristosal, ["We Can Arrest Anyone We Want" Widespread Human Rights Violations During the "Emergency Regime" in El Salvador](#), December 2022, pp. 85-91.

<sup>755</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 27, 2022 to March 27, 2023](#), May 12, 2023, pp. 27-34; Azul Originario et al, [Annual report on human rights violations during the state of emergency in El Salvador](#), March 2023, pp. 54-59; La Prensa Gráfica, [Medicina Legal reconoce 73 reos fallecidos en régimen de excepción](#) (Forensic medicine acknowledges 73 accused dying during the state of emergency), August 26, 2022.

<sup>756</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 27, 2022 to March 27, 2023](#), May 12, 2023, pp. 27-34; 92.

<sup>757</sup> IACHR, Hearing 'Human Rights and States of Emergency in El Salvador', 187th period of sessions, July 14, 2023.

<sup>758</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 27 to 2022 March 27, 2023](#), May 12, 2023, pp. 27-32.

not told when it happened or what finding was reached.<sup>759</sup> According to the organization, as a rule, the forensic medical examination would not be performed for deaths that would be related to certain diseases, such as heart attack, pneumonia, kidney failure, among others, which would make it difficult to identify conditions that could have been acquired or aggravated as a result of torture or cruel, inhuman, and degrading treatment.<sup>760</sup> The people heard by the IACHR also referred to the lack of notification and access to information about the death of their relatives, as well as the difficulties encountered with forensic and investigative institutions:

It was very insensitive, because, even on the same day in the morning, a family member went to the Mariona prison to deliver a package to him and they did not inform him about the death; they received the package. [...] We have been asking for the judicial file and the forensic file and they do not give it to us because they say it is incomplete. We have not been given the medical report indicating the cause of death. Only the medical report, which states the name, where they went to pick up the body and what he died of. It only states the cause without further explanation. There is no more detailed file. [...] According to forensic medicine we are told that it was due to mechanical asphyxia by strangulation.<sup>761</sup>

When they no longer gave me information about him in the prison, I said I was going to fight until I found him. I went to many state institutions and although I was afraid that he was dead, I went to forensics to ask. There I was told that he had died (three months earlier) and that he had been transferred to mass graves. [...] Forensic medicine told me that he died of pulmonary edema. We did not know that he had this condition before he was arrested. When I examined his body, I saw many blows and he had not been beaten before. I was

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<sup>759</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 27 to 2022 March 27, 2023](#), May 12, 2023, pp. 27-32.

<sup>760</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 32 to 2022 March 27, 2023](#), May 12, 2023, pp. 32-35.

<sup>761</sup> Testimony No. 18 of March 20, 2023. Family member of a person who died in detention.

very upset, [...] he was my right-hand man. The situation I experienced is not easy.<sup>762</sup>

It is only a cause of death sheet, but that cause is not further substantiated. I had to ask the doctor how it had happened. I was left in doubt. He told me that he had already had the symptoms for 5 months. That inside the prison he developed [the disease]. [...]They did not want to give me the clinical file at the hospital. [...]They don't tell us anything, if they are sick or if they have been taken out of the prison. A regrettable situation. A woman came out of the prison crying because she had been told that her daughter had been dead for two months and she had been taking her packages.<sup>763</sup>

There I could not see a perforation [...] until the funeral home when they were preparing her for me. That makes me think that something happened to her inside the penal center. The forensic medicine document talks about blood pressure, but it did not say anything about this problem that she had [...] I am quite doubtful because forensic medicine does not give you the autopsy. I was told that it would be ready in 15 to 20 days. They asked me to call them. I wanted to claim the autopsy, but they told me that they could not give it to me; only to the Prosecutor's Office handling the case. I started to do the rounds and went to the prosecutor's office. I was told that the case wasn't there. I had to pay for several cabs. I was told that the prosecutor in the case was not there. I explained what I was going for. They told me they would not give me the autopsy.<sup>764</sup>

- 295.** In its observations on the draft of this report, the State indicated that the registration of deaths and the entry of a death certificate is an administrative procedure carried out by the registries of the municipal mayors' offices, and that the registration practice followed in El

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<sup>762</sup> Testimony No. 19 of March 20, 2023. Family member of a person who died in detention.

<sup>763</sup> Testimony No. 21 of March 21, 2023. Family member of deceased person in detention (Deceased woman).

<sup>764</sup> Testimony No. 22 of March 21, 2023. Family member of a person who died in detention.



Salvador is to refer to the immediate cause of death.<sup>765</sup> For this purpose, when a corpse is delivered to the Institute of Forensic Medicine, the latter issues a one-time, original copy of a form, in which the forensic doctor gives a preliminary description of the cause of death. In cases where there is no evident cause of death, further (histopathological, toxicological, radiological) studies are conducted in order to determine the direct cause of death, in accordance with the corresponding medico-legal protocols. As a collaborating entity of the Administration of Justice, the Institute of Forensic Medicine issues forensic expert opinions at the request of the competent authority. The State indicated that according to the law, the forensic doctor's purpose is to determine the direct cause of death, the possible time of death, and related matters so that in its expert opinions the Institute only determines the cause of death, with the Attorney General's Office of the Republic being responsible for the criminal classification of the facts, based on the investigations.

296. Civil society organizations indicated that information on investigations is also reserved by the Attorney General's Office for a period of two years.<sup>766</sup> In June 2023, the Commission took cognizance of the statement of the Attorney General of the Republic, related to the archiving of the investigation of the 142 cases related to the death of persons deprived of liberty detained during the state of emergency. According to the authority, after scientifically establishing the causes of those deaths, it was determined that they were related to diseases preexisting at the time of arrest or to diseases for which timely assistance was provided and death occurred.<sup>767</sup> In a hearing held by the IACHR in July 2023, the head of the Attorney General's Office

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<sup>765</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador"(Observations of the State of El Salvador on the IACHR report entitled "State of Emergency and Human Rights in El Salvador"), Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, pp. 104-105.

<sup>766</sup> Human Rights Watch, Cristosal, "[We Can Arrest Anyone We Want" Widespread Human Rights Violations During the "State of Emergency" in El Salvador](#)", December 2022, pp. 85-91, 95-97.

<sup>767</sup> ElSalvador.com, [Prosecutor confirms 142 deaths of inmates under the exception regime and defends that "there is no crime to prosecute"](#), June 13, 2023; AP News, [Prosecutor files 142 deaths in El Salvador's prisons that he attributes to natural causes](#), June 13, 2023.

reiterated that, in relation to this type of death, the institution relies on scientific methods, endorsed by the Institute of Forensic Medicine<sup>768</sup>

297. As the Inter-American Commission and Court have reiterated, the State is the guarantor of the rights of persons deprived of liberty, insofar as it exercises total control over the person subject to its custody.<sup>769</sup> The treatment of detainees should be subject to the strictest scrutiny and take into account any special conditions of vulnerability that they present.<sup>770</sup> In this regard, the organs of the Inter-American system have indicated that there is a presumption of State responsibility for the deaths, injuries, or deterioration in the health of a person deprived of liberty, which can only be rebutted by a satisfactory and convincing explanation of what happened and by means of valid evidence.<sup>771</sup>

298. The Commission recalls that when it comes to the investigation of the death of a person who was in the custody of State agents, the corresponding authorities have the duty to initiate ex officio and without delay, a serious, independent, impartial, and effective investigation, that is, with due diligence and substantiated by all available legal means and aimed at determining the truth about what

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<sup>768</sup> IACHR, Hearing 'Human Rights and States of Emergency in El Salvador', 187th period of sessions, July 14, 2023.

<sup>769</sup> IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA/Ser.L/V/II., Doc. 64, December 31, 2011, paras. 46-57; I/A Court H.R., Case of Bulacio v. Argentina, Merits, Reparations, and Costs, Judgment of September 18, 2003, Series C No. 100, par. 126.

<sup>770</sup> I/A Court H.R., Case of Bulacio v. Argentina, Merits, Reparations, and Costs, Judgment of September 18, 2003, Series C No. 100, par. 126; I/A Court H.R. Case of Isaza Uribe et al. v. Colombia. Merits, Reparations, and Costs. Judgment of November 20, 2018. Series C No. 363, par. 87; I/A Court HR, Case of J. v. Peru, Preliminary objection, merits, reparations, and costs, Judgment of November 27, 2013, Series C No. 275, par. 343.

<sup>771</sup> I/A Court H.R., Case of Bulacio v. Argentina, Merits, Reparations, and Costs, Judgment of September 18, 2003, Series C No. 100, par. 126; I/A Court H.R. Case of Isaza Uribe et al. v. Colombia. Merits, Reparations, and Costs. Judgment of November 20, 2018. Series C No. 363, par. 87; I/A Court HR, Case of J. v. Peru, preliminary objection, merits, reparations, and costs, judgment of November 27, 2013, Series C No. 275, par. 343; I/A Court H.R., Case of Juan Humberto Sánchez v. Honduras, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 7, 2003, par. 111.

happened.<sup>772</sup> This includes taking into account certain specific relevant criteria, such as: considering the degree of involvement of state agents; providing a certain degree of public scrutiny to the investigation; preserving the scene of the facts and evidence; conducting an autopsy by trained professionals including any evidence indicating alleged acts of torture by state agents; among other measures.<sup>773</sup> The IACHR also calls on the State to take into account international guidelines in the investigation of possible extra-legal, arbitrary, and summary executions, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death. Even in cases of non-violent deaths, the Commission warns that the failure to establish criminal responsibility should not necessarily prevent ongoing investigation of other types of responsibility for other acts or conduct that may have contributed to the death, depending on the circumstances of each case.<sup>774</sup>

299. Likewise, the Commission urges the State to ensure the dignified treatment of the mortal remains of deceased persons; the notification of family members regarding the death; the proper registration and identification of human remains; as well as to respect the will of the families regarding the final disposition of the bodies, all of the above with particular attention to the United Nations Standard Minimum Rules for the Treatment of Prisoners "The Nelson Mandela Rules".<sup>775</sup>
300. Both the persons heard by the Commission and civil society organizations denounced **acts of torture and ill-treatment** of detainees, abuses in the disciplinary sanctions applied, and omissions in the face of acts of intra-prison violence. They indicated that physical

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<sup>772</sup> I/A Court H.R. Case of Chinchilla Sandoval et al. v. Guatemala. Preliminary Objection, Merits, Reparations, and Costs. Judgment of February 29, 2016. Series C No. 312, par. 257.

<sup>773</sup> I/A Court H.R. Case of Landaeta Mejías Brothers et al v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 27, 2014. Series C No. 281, par. 254.

<sup>774</sup> I/A Court H.R. Case of Chinchilla Sandoval et al. v. Guatemala. Preliminary Objection, Merits, Reparations, and Costs. Judgment of February 29, 2016. Series C No. 312, paras. 259 and 280.

<sup>775</sup> IACHR, Practical Guide No. 1: What are the standards to ensure respect for mourning, funeral rites, and tributes to persons deceased during the COVID-19 pandemic, October 15, 2020, pp. 7-9.

punishment and beatings are said to be generalized in prisons that hold detainees during the state of emergency and reported accounts of violence that include beatings, simulated drowning, electric shocks, abuse in the use of pepper spray, among others<sup>776</sup>:

They handcuffed me in the yard on the bars and from all the cells you could see what they were doing to me. They hit you with the stick wherever they can. They leave you handcuffed for three hours. Some people don't make it to the cell and they give you another beating.<sup>777</sup>

We were lying in the sun on the asphalt with a lot of pebbles that bothered our knees. We spent more than two hours lying down. The prison guards wanted to find out which gangs we were from and beat us, but since we don't belong to gangs, they couldn't get us to say anything. Then we went forward on our knees to have our hair shaved. We were asked to move to the steps and then to the cells. We were beaten as we passed, and when we entered the cell, we were beaten as well. [...] I could not get up from my cot for three days because of the beating they gave me. [...] Well, the use of force was always imposed, there was no punishment cell because they are being used by people for sexual diversity. Whoever committed an infraction, if the cell did not say who committed it, we were pepper sprayed and left without food for a while. If someone said who it was, they would take that person out to do squats and then beat him between three or four custodians until they knocked him unconscious.<sup>778</sup>

They kept us on the gravel for about half an hour, the stones were wedged in our knees, I started to bleed and tremble. You couldn't move because if we moved, the custodians would beat us.<sup>779</sup>

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<sup>776</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report March 27, 2022 to March 27, 2023](#), May 12, 2023, pp. 37-43; Human Rights Watch, Cristosal, ["We Can Arrest Anyone We Want" Widespread Human Rights Violations Under El Salvador's "State of Emergency"](#), December 2022, pp. 77-78.

<sup>777</sup> Testimony No. 29 of March 24, 2023. Person released under alternative measures.

<sup>778</sup> Testimony No. 17 of March 20, 2023. Person released under alternative measures.

<sup>779</sup> Testimony No. 6 of March 15, 2023. Person released under alternative measures.

The next day they took me to the Izalco prison. They put us on our knees and gave us a big beating and made us walk on our knees in the gravel. They insulted us, telling us that we were "shitty gang members" and that "it was our fault that Salvadorans were the way they were". [...] they sent us to the Mariona Prison. There they made us do the same, walk on our knees. The sun was very strong, we burned our knees because it was so hot. [...] They counted us in the morning and in the afternoon. They would pull us out with their hands around our necks. They gave us electric shocks. They used to beat us up and kick us, for them it was like a sport, they would laugh, they were happy that we fell down.<sup>780</sup>

- 301.** The testimonies taken by the Commission also referred to acts of sexual violence both in the bartolinas and in the prisons:

When we were in the bartolinas, we asked policemen for sheets because it was very cold. The policemen told us that they were going to put a few "bugs" in to warm us up and rape us.<sup>781</sup>

A colleague who was in the bartolinas was raped by the police.<sup>782</sup>

In the penitentiary center it was men who did the inspection [on female detainees]. I did not know of any sexual violence, but they searched her private parts and male custodians did this search.<sup>783</sup>

I also saw abortions due to lack of medical assistance. In the cell we were in, her appendix burst, they took her to the hospital, but when they did the surgery they didn't realize she was 4 months pregnant. They took her out again due to complications, realized she was

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<sup>780</sup> Testimony No. 10 of March 16, 2023. Person released under alternative measures.

<sup>781</sup> Testimony No. 8 of March 16, 2023. Person released under alternative measures (female).

<sup>782</sup> Testimony No. 10 of March 16, 2023. Person released under alternative measures.

<sup>783</sup> Testimony No. 12 of March 17, 2023. Person released under alternative measures (female).

pregnant and had to perform a curettage. I don't know how she got pregnant, as she had been detained longer.<sup>784</sup>

"I had the misfortune to see how they raped a boy there, but nobody did anything because if you said anything you were next".<sup>785</sup>

**302.** In its observations on the draft of this report, the State reported that the Deputy Directors of Security of each prison have precise instructions to exercise the requisite oversight and monitoring, as well as to adopt the corresponding preventive security measures to safeguard the physical integrity of persons deprived of liberty. In the event of violence in prisons, the State emphasized that there is a Contingency Plan, which prioritizes immediate and timely notification of the corresponding legal authorities to ensure proper investigation.<sup>786</sup> It also indicated that there is no record in the Attorney General's Office of any complaints of violence in prisons such as those described, and that if they exist, the pertinent investigations will be carried out and it will be the justice system that will reach a decision in each case.<sup>787</sup>

**303.** Additionally, civil society organizations denounced the **hardening of internal disciplinary conditions** in prisons, through intensive searches, as well as other extra-legal measures such as the removal of inmates' personal possessions, food rationing as collective punishment, and confinement in cells, often for 24 hours a day.<sup>788</sup>

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<sup>784</sup> Testimony No. 16 of March 17, 2023. Person released under alternative measures (female).

<sup>785</sup> Testimony No. 1 of March 13, 2023. Person released under alternative measures.

<sup>786</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador", Nota Diplomática MPOEA-OEA-054/2024, April 8, 2024, p. 105

<sup>787</sup> State of El Salvador, Observations of the State of El Salvador to the IACHR Report "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, Annex 1, Methodological Systematization Matrix, lines 66 and 67, column E.

<sup>788</sup> Azul Originario et al, [Annual report on human rights violations during the state of emergency in El Salvador](#), March 2023, pp. 52-53 University Observatory of Human Rights of the Central American University José Simeón Cañas, Annual Report 2022: The State of Human Rights in El Salvador, April 2023, pp. 64-65.

They reported cases of detainees sent to punishment cells who returned in a state of malnutrition or died.<sup>789</sup> In addition, there are allegations that prison officials tolerate acts of violence committed by the detainees themselves.<sup>790</sup>

In Mariona we were locked up 24/7. Then in Izalco prison, at the most, we were taken out twice a week, one hour per cell.<sup>791</sup>

We didn't do anything, we didn't even have a book. We had no access to anything. Not even a pencil. They would not let us out of the cell. They only took us out in the sun for an hour twice a week [...] There was one time when they didn't give us food and water as punishment.<sup>792</sup>

In some areas, they would take us out in the sun for an hour. But most do not. [...] All sectors had to go through punishment cells, it was a rotation. All of us who came from the hospital were transferred to the punishment cell. We were given very little food as punishment. [...] What they did when they saw something they didn't like. They took them out in the middle of the court, they put handcuffs on us, and hung us by our hands, we spent 5 hours, there were people who bled to death. Even for just talking. He wanted all the people to be quiet. [...] When he was in there, the guards forced him to do what they said. And if you didn't, they beat us, they gave us electric shocks, in front of everyone so that the others could see.<sup>793</sup>

Depending on the severity, if one objected, one went to the "calabozo" which is a punishment cell. Or if the guard or the cell manager didn't

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<sup>789</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 40 to 2022 March 27, 2023](#), May 12, 2023, pp. 40-43.

<sup>790</sup> Amnesty International, [El Salvador: President Bukele plunges country into human rights crisis after three years in office](#), June 2, 2022.

<sup>791</sup> Testimony No. 23 of March 22, 2023. Person released under alternative measures.

<sup>792</sup> Testimony No. 8 of March 16, 2023. Person released under alternative measures (female).

<sup>793</sup> Testimony No. 10 of March 16, 2023. Person released under alternative measures.

like you, they would also send you for punishment. There you had no rights. [...] She was left hanging for 24 hours in handcuffs without food. I also saw cases where they were beaten during the transfer. There was one woman who did not want to come and was beaten with a stick. I also saw how when they put women to exercise in the sun, they got sunstroke.<sup>794</sup>

304. In a hearing held in July 2023, the State indicated that the Office of the Attorney General of the Republic had received no complaints of torture or degrading human treatment.<sup>795</sup> On the other hand, the organizations indicated that the PDDH was reportedly not accessing places of deprivation of liberty to exercise its constitutional mandate, and demanded that they be able to carry out periodic visits to the different places, publishing information on their findings and recommendations.<sup>796</sup> In its observations on the Draft Report, the State indicated that within the framework of the National Verification Plan in the Context of the state of emergency, implemented by the Office of the Human Rights Ombudsman, visits have been made to prisons by the aforementioned institution to verify respect for the human rights of persons deprived of liberty and to monitor the activities of the General Directorate of Penitentiary Centers. It also noted that the PDDH, through various pronouncements, official letters, and verification reports in the context of the state of emergency, has issued relevant and timely recommendations to the various State authorities, to ensure that all procedures carried out in general, but particularly in the context of the state of emergency, are conducted with complete

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<sup>794</sup> Testimony No. 12 of March 17, 2023. Person released under alternative measures (female).

<sup>795</sup> IACHR, Hearing 'Human Rights and States of Emergency in El Salvador', 187th period of sessions, July 14, 2023.

<sup>796</sup> Cristosal, [One year under the emergency regime: a permanent measure of repression and human rights violations. Situation Report March 27, 2022 to March 27, 2023](#), May 12, 2023, pp. 65-66; OUDH, Report: 100 Days of State of Emergency in El Salvador, 2022, August 2022, pp. 135-138; Human Rights Watch, Cristosal, ["We Can Arrest Anyone We Want" Widespread Human Rights Violations Under El Salvador's "State of Emergency"](#) December 2022, p. 10.



respect for the principle of legality, innocence, due process, and the human rights of all persons.<sup>797</sup>

305. The IACHR also heard reports of a lack of internal channels or inadequate procedures to identify possible cases of rights violations inside places of deprivation of liberty:

A doctor saw that someone was in agony and asked her what was wrong. You could not speak with confidentiality. The guard approached her and pointed his baton at her, threatening that if she said anything she would be beaten again. [...] On another occasion, a person got sciatic gout due to the blows given to him by the guards, some doctors asked about the blows and that they could make a memorandum indicating the situation, but the guards were there and one could not speak freely.<sup>798</sup>

There was no [possibility to file petitions or complaints]. We said we wanted to talk to the director or the custodians, but they ignored us.<sup>799</sup>

306. The Commission reiterates its condemnation of all forms of torture, cruel, inhuman, or degrading treatment, and recalls its absolute prohibition in any situation.<sup>800</sup> In addition, it recalls that rape committed by state agents is a particularly serious and reprehensible act, taking into account the vulnerability of the victim and the abuse of power by the agent, constituting in all cases a violation of the human rights

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<sup>797</sup> State of El Salvador, Observations of the State of El Salvador on the IACHR Report "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, pp. 105 and 106.

<sup>798</sup> Testimony No. 29 of March 24, 2023. Person released under alternative measures.

<sup>799</sup> Testimony No. 8 of March 16, 2023. Person released under alternative measures (female).

<sup>800</sup> IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, par. 350.

protected in Articles 5 and 11 of the American Convention.<sup>801</sup> Such illegal conduct presupposes severe and long-lasting physical and mental suffering, due to its non-consensual and invasive nature, affecting the victim, her family, and community. In turn, the Commission and the American Court have held that sexual violence against women has devastating physical, emotional, and psychological consequences.<sup>802</sup> The Commission recalls that it is an inalienable responsibility of the State to prevent all forms of torture and ill-treatment, to condemn their practice and to punish, at all times, all material and intellectual perpetrators.<sup>803</sup> Likewise, disciplinary restrictions or sanctions may not go so far as to amount to torture or ill-treatment.<sup>804</sup> The Commission notes that the State has not ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and that the

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<sup>801</sup> I/A Court H.R., Case of the Miguel Castro-Castro Prison v. Peru. Judgment of November 25, 2006. Merits, Reparations, and Costs, par. 311; IACHR, Application to the Inter-American Court of Human Rights. Case 12.579 12,579, Valentina Rosendo Cantú et al., Mexico, August 2, 2009, paras. 60, 90; CIDH, Application to the Inter-American Court of Human Rights. Case 12.580. Inés Fernández Ortega, Mexico, May 7, 2009, paras. 88-117; IACHR, Report 53/01, Case 11.565, Merits, Ana, Beatriz and González Pérez, Mexico, April 4, 2001, par. 45; IACHR, Report No. 5/96, Case 10.970, Merits, Raquel Martín Mejía, Peru, March 1, 1996, section 3. analysis.

<sup>802</sup> IACHR. Report No 53/01. Case 11.565, Ana, Beatriz, and Celia González Pérez. México. April 4, 2001. Par. 45; I/A Court H.R., Miguel Castro Castro Prison Case. Merits, Reparations, and Costs. Judgment of November 25, 2006. Series C No. 160, par. 313, citing the Cfr. United Nations, Commission on Human Rights during the 54th period of sessions. Report submitted by Ms. Radhika Coomaraswamy, Special Rapporteur on violence against women, including its causes and consequences, in accordance with Commission resolution 1997/44. Doc. E/CN.4/1998/54, January 26, 1998, par. 14.

<sup>803</sup> IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, par. 350. Under the United Nations Standard Minimum Rules for the Treatment of Prisoners, States have obligations to: (a) documentation and reporting of any signs of torture or other ill-treatment, during the examination of the inmate upon admission to prison or when providing medical care; (b) prompt and impartial processing and investigation of allegations of torture, by a national authority independent of the prison administration; and (c) recording in the prisoner file management system of petitions and complaints, including allegations of torture or other treatment or ill-treatment, unless they are of a confidential nature. In addition, they add that inspections facilitate monitoring that can ensure the transparency necessary to prevent acts of torture in places of detention. In that connection, see: United Nations, United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), E/CN.15/2015/L.6/Rev.1, 21 May 2015, Rule 34, 57.3, 8(d).

<sup>804</sup> In this regard, the following practices are prohibited: a) indefinite solitary confinement; b) prolonged isolation; c) confinement in a dark or permanently illuminated cell; d) corporal punishment or reduction of food or drinking water; and e) collective punishments. See: United Nations, Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), E/CN.15/2015/L.6/Rev.1, 21 May 2015, Rule 43 1.

creation of the National Mechanism for the Prevention of Torture is pending, for which reason it urges that the Office of the Human Rights Ombudsman establish a program of periodic visits to places of deprivation of liberty, with the necessary privacy and confidentiality for interviews, and that the results be made public in reports.

#### **D. Impacts on family members of detainees**

307. The Commission has learned how the detentions carried out during the state of emergency have affected the families of persons deprived of liberty in different ways. Both the people who gave testimony to the IACHR and civil society organizations and the press have stressed that women have been particularly impacted by this context, warning that it has exacerbated the gender disparities already existing in the country.<sup>805</sup> Women are often the ones who undertake the initial and ongoing efforts to locate their detained family members, help them to access justice, and provide them with basic supplies during deprivation of liberty.<sup>806</sup> In this regard, Cristosal indicates that 80.6% of the complaints received by the organization were filed by women.<sup>807</sup> These tasks are in addition to the roles of caregiver and/or financial support to the household, generating an overload and deterioration of women's living conditions.<sup>808</sup>

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<sup>805</sup> Azul Originario et al., [Annual Report on Human Rights Violations during the State of Emergency in El Salvador](#), March 2023, p. 41.

<sup>806</sup> Amnesty International, [El Salvador: One year into the state of emergency, authorities systematically commit human rights violations](#), April 3, 2023; Cristosal, [One year under emergency rule: a permanent measure of repression and human rights violations. Situation Report from March 27, 2022 to March 27, 2023](#), May 12, 2023, p. 47; El País, [Madres a la fuerza: el impacto silencioso del régimen de excepción en El Salvador de Bukele \(Mothers under duress: the sudden impact of the state of emergency in Bukele's El Salvador.\)](#), June 10, 2023; La Prensa Gráfica, [Régimen de excepción ha sido doble impacto para las mujeres \(The state of emergency has impacted women twice as hard as men.\)](#), April 20, 2023.

<sup>807</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 27 2022 to March 27, 2023](#), May 12, 2023, p. 47.

<sup>808</sup> Amnesty International, [El Salvador: One year into the state of emergency, authorities systematically commit human rights violations](#), April 3, 2023; Cristosal, [One year under emergency rule: a permanent measure of repression and human rights violations. Situation Report for March 27 2022 to March 27, 2023](#), May 12, 2023, p. 47.

Well, my sister-in-law, my mother, and I have been left to take care of their children. In the case of his youngest son, his health collapsed. He cries, every time he sees something of his brother, he cries. And financially, he needs him.<sup>809</sup>

I had to stop going to work because I was looking for my partner. I just went on my own, with my ticket. I lost my job because of it. I had to leave my daughter with my sister-in-law.<sup>810</sup>

**308.** With regard to economic impacts, they point out that the detention of a member of the family and the extra tasks that arise as a result cause, on the one hand, a decrease in income and, on the other hand, additional expenses in the family budget.<sup>811</sup> They indicate that they have to go to different bodies to obtain information about their relatives and secure the necessary documentation for legal proceedings, which results in a loss of time and resources for their subsistence and affects their employment.<sup>812 813</sup>

It is very difficult because you have to save and save all month long to buy the most necessary things, buy the hygiene kit [...] It is very difficult, you spend a lot of money on the bus, and find a place to sleep

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<sup>809</sup> Testimony No. 18 of March 20, 2023. Family member of a person who died in detention.

<sup>810</sup> Testimony No. 27 of March 23, 2023. Family member of a person detained in custody.

<sup>811</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 27 2022 to March 27, 2023](#), May 12, 2023, p. 47.

<sup>812</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 27, 2022 to March 27, 2023](#), May 12, 2023, p. 47; Cristosal, [Human Rights Violations During the State of Emergency in El Salvador Situation Report for the period April 27 to May 25, 2022](#), June 14, 2022, pp. 35 -37.

<sup>813</sup> In its observations on the draft of this report, the State indicated that gangs and their criminal activity provided the means of subsistence for many families, so that, undoubtedly, the dismantling of these criminal groups has had an impact on the family economy of people linked to such criminal groups; however, this has translated into economic benefits for the rest of the population. See: State of El Salvador, Observations of the State of El Salvador to the IACHR Report "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, Annex 1, Methodological Systematization Matrix, line 71, column E.

because it is not a one-day trip. It's far away, you spend a lot of money. This prison is almost on the border with Guatemala.<sup>814</sup>

The reality that I live day by day is very difficult, [...] I used to eat three times a day and now I eat twice a day, to save money to give my son a package. My children do not study now.<sup>815</sup>

We have had to go into debt to get the packages to him. The trip alone is three hours there and three hours back. There is a lot of expense and it takes a lot of time. My health has deteriorated. [...] They have cornered us in such a way that I don't know how we are going to get out of this.<sup>816</sup>

**309.** The Commission also received information that families have suffered stigmatization, threats, and violence in the way they are treated by law enforcement and prison officials for being relatives of persons suspected of having committed a crime.<sup>817</sup>

Most family members are desperate and afraid. They are desperate because they have no protection and limited resources. They are afraid because, in several cases, the police warn them that they will be the next.<sup>818</sup>

I was later notified that she had been readmitted to the hospital. We tried to see her. The guards threatened to arrest me for asking for

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<sup>814</sup> Testimony No. 13 of March 17, 2023. Family member of detainee (female detainee).

<sup>815</sup> Testimony No. 14 of March 17, 2023. Family member of detainees (adult male and female detainees).

<sup>816</sup> Testimony No. 28 of March 23, 2023. Family member of a detained person.

<sup>817</sup> La Prensa Grafica, [State of Emergency has had a double impact for women](#), April 20, 2023; El País, [Mothers under duress: the sudden impact of the state of emergency in Bukele's El Salvador](#), June 10, 2023; La Prensa Gráfica, [PNC does not sanction police violence and drives away family members](#), April 27, 2022; Cristosal, [Human Rights Violations During the Emergency Regime in El Salvador. Situation Report for the period April 27 to May 25, 2022](#), June 14, 2022, pp. 35 -37.

<sup>818</sup> Testimony No. 7 of March 15, 2023. Defense attorney.

information about my sister. I was told "you know I can proceed against you".<sup>819</sup>

Now one is afraid not only of crime and gangs, but also of the authorities.<sup>820</sup>

They also recalled that hundreds of family members were sleeping outside different prisons for weeks, facing adverse weather conditions to get news of their relatives.<sup>821</sup> In this context, the Commission learned that force was reportedly used to evict hundreds of family members who were waiting for the possible release of their relatives around the Mariona Prison.<sup>822</sup>

When he was taken to Mariona, we did not know to which penitentiary he had been transferred. They did not give us information. I even had to sleep outside with everything and my baby, who was one year old at the time. I was rained on and mistreated. They did not want us there. They were yelling at us to leave, they were lousy. We had to move to different penitentiary centers to ask for him. After a month we were able to find out that he was in Mariona (sector and cell). We do not know if he is well, sick, or alive.<sup>823</sup>

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<sup>819</sup> Testimony No. 21 of March 21, 2023. Family member of deceased person in detention (Deceased woman).

<sup>820</sup> Testimony No. 26 of March 23, 2023. Family member of detainee in detention (Female detainee).

<sup>821</sup> El Faro, [Women seeking among the Regime](#), May 4, 2022; Cristosal, [Human Rights Violations During the State of Emergency in El Salvador. Situation Report for the period from April 27 to May 25, 2022](#), June 14, 2022, pp. 28-29; La Prensa Gráfica, [PNC does not sanction police violence and drives away family members](#), April 27, 2022.

<sup>822</sup> La Prensa Grafica, [Relatives continue in Mariona despite evictions](#), May 25, 2022.

<sup>823</sup> Testimony No. 27 of March 23, 2023. Family member of a detained person.

310. The Commission also learned that all of the above has produced diverse impacts on the physical, emotional, and mental health of family members, as well as on their life plans<sup>824</sup>:

It gives me insomnia, I can't sleep. When they take a dead body out of Mariona, to think that my son could be killed. My children panic at the mere sight of a policeman. I have a little girl who trembles when she looks at policemen. Not knowing anything about one's children, and feeling powerless to do anything. When I go to Mariona, so close to my son and not being able to see him. I will never get rid of this drama I have; I am terrified.<sup>825</sup>

It's a collective hysteria because we are watching the news about the transfers, about the deaths. It makes me anxious to go to the prison and see the people being transferred. When I go to ask for information I get a stomachache. We are re-victimized in the institutions.<sup>826</sup>

It is a very difficult situation. From the moment they took her into custody, knowing she was innocent, we thought she was going to get out. We had hoped that she would appear at the 15-day hearing, then at six months. With all this going on it has been a change. Emotionally, we are all very bad. We do not accept what happened. We never prepared for her death. My family is destroyed, knowing that because of an anonymous phone call she is now dead. My mom has fallen ill.<sup>827</sup>

The impact it has had on us is irreversible. I have suffered even since they took him away. After he died, it got worse. [...] I would like my

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<sup>824</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report March 27, 2022 to March 27, 2023](#), May 12, 2023, p. 47; La Prensa Gráfica, [Presos del régimen y sus familiares presentan enfermedades físicas y mentales \(Prisoners and their family members are suffering from physical and mental illness\)](#), March 27, 2023.

<sup>825</sup> Testimony No. 14 of March 17, 2023. Family member of detainee (adult male and female detainees).

<sup>826</sup> Testimony No. 24 of March 23, 2023. Family member of a detained person.

<sup>827</sup> Testimony No. 21 of March 21, 2023. Family member of person who died in detention (Female).

son's name to be cleared because, in reality, my son was innocent. He was not a criminal.<sup>828</sup>

311. On the other hand, children and adolescents, the elderly, and people with disabilities have also suffered specific impacts from the detention of the person in charge of providing for the family or looking after them. According to civil society information published in the press, close to 100,000 children have suffered the detention of their mother or father, and sometimes both, which could put them at risk.<sup>829</sup> In repeated cases, adolescents had to support the family income or care and protection tasks of other family members.<sup>830</sup> In this regard, the organizations indicated that they have observed a higher incidence of child labor, school dropouts, and forced displacement among the families of persons deprived of liberty during the state of emergency.<sup>831</sup> Likewise, many children and adolescents have witnessed the use of physical and verbal violence in the detention of their relatives and acquaintances or have been approached for police searches in the communities where they live.<sup>832</sup> All of the above reportedly also affected their health and personal integrity, among other rights.<sup>833</sup> In addition, it was pointed out that the current criminal and penitentiary policy deprives children

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<sup>828</sup> Testimony No. 22 of March 21, 2023. Family member of a person who died in detention.

<sup>829</sup> El Salvador.com, [Childhood left homeless by captures during the regime exceeds 100,000 cases](#), September 30, 2023.

<sup>830</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 27, 2022 to March 27, 2023](#), May 12, 2023, pp. 51-53.

<sup>831</sup> Amnesty International, [El Salvador: One year into the emergency regime, authorities systematically commit human rights violations](#), April 3, 2023; Azul Originario et al, [Annual report on human rights violations during the state of emergency in El Salvador](#), March 2023, p. 48; University Observatory of Human Rights of the Central American University José Simeón Cañas, [Annual Report 2022: The State of Human Rights in El Salvador](#), April of 2023, pp. 165-166.

<sup>832</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report March 27, 2022 to March 27, 2023](#), May 12, 2023, pp. 51-53; La Prensa Gráfica, [Régimen de excepción está vulnerando a la niñez \(State of emergency is harming children\)](#), March 30, 2022.

<sup>833</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 27, 2022 to March 27, 2023](#), May 12, 2023, pp. 51-53.



and adolescents from maintaining family relationships with their mothers, fathers, and caregivers.<sup>834</sup>

**312.** In its observations on the draft of the present report, the State indicated that, through the lead institution for children, it adopted measures to ensure a comprehensive approach to the situation of children with a family member deprived of liberty. Thus, CONAPINA has been working with a number of civil society organizations in the creation of the project entitled "Bolstering Human Resources for Protection Boards attending to cases of children and adolescents deprived of liberty in the context of the state of emergency." The State also reported that since March 2022, in coordination with the Ministry of Justice and the General Directorate of Penitentiary Centers, a voluntary census had been conducted of the entire adult prison population with regard to the children under their responsibility. This created a computer platform that allowed the Protection Boards to have information on children and adolescents deprived of liberty to ensure their care, protection, and monitoring of their situation and to guarantee their rights.<sup>835</sup>

**313.** The State reported that, in the first stage of implementation of the state of emergency, the needs of this population group were identified.<sup>836</sup> In addition, the State reported that judges, when

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<sup>834</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 27, 2022 to March 27, 2023](#), May 12, 2023, pp. 51-53.

<sup>835</sup> State of El Salvador, Observations of the State of El Salvador to the IACHR Report "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, pp. 108-110.

<sup>836</sup> It added that face-to-face interviews had been conducted in all prisons to determine whether the inmates had children, and thus address possible needs based on the circumstances in each case. This process included the creation of an offline data collection instrument, which allowed all needs for attention to be addressed. CONAPINA professionals carried out the procedures for obtaining information about children, facilitating their care through the Protection Boards, responsible for verifying and addressing the cases according to the needs identified. According to the State, "far fewer than 100,000 children and adolescents were identified." State of El Salvador, Observations by the State of El Salvador on the IACHR Report entitled "State of Emergency and Human Rights in El Salvador", Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, p. 107

conducting hearings of adults, forward to CONAPINA the information regarding children and adolescents under their care and protection, in order for CONAPINA to take appropriate protection measures. It also stressed that economic support has been provided to caregivers to strengthen the care of children and adolescents with relatives deprived of liberty, by facilitating educational scholarships, seed capital, life-style options, and food support. The State emphasized that the results of the census were used to classify needs and deliver benefits and enrollment in programs or projects. All these actions were carried out in territories recovered from crime and gang control, allowing communities that for many years had been unable to access government benefits and cooperation services, due to the actions of the gangs, to now enjoy opportunities to enhance their development.<sup>837</sup> Finally, the State indicated that it had not registered an increase in street children and adolescents and that the still latent cause of the decrease in schooling was due to the COVID-19 pandemic.<sup>838</sup>

**314.** In this regard, the Commission has pointed out that the deprivation of liberty also causes differentiated impacts and disproportionate consequences for the persons under the care of detainees. Thus, considering that women are more frequently in charge of single-parent households and are the sole caregivers of their children, when women are incarcerated, the care of their children is generally left to the closest family member, sometimes requiring the intervention of social services to support their well-being. Accordingly, the rupture of

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<sup>837</sup> The State also pointed out that CONAPINA has also developed several projects with components that strengthen families' self-sustainability mechanisms. It reported that since 2022, 1,203 families had benefited from 5 projects financed by international cooperation organizations, partner governments, and government agencies. All together, the projects entailed an investment of: \$930,000.00. State of El Salvador, Observations of the State of El Salvador on the IACHR Report "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, pp. 108-110.

<sup>838</sup> State of El Salvador, Observations by the State of El Salvador on the IACHR Report entitled "State of Emergency and Human Rights in El Salvador", Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, p. 110.

protective ties caused by female incarceration means that persons under their care are exposed to poverty, marginalization, and neglect, which can have long-term consequences, such as involvement in criminal organizations or even institutionalization.<sup>839</sup>

While I was in prison I was sad for my daughter. I was afraid she would become ill or sick. When I was released I was told that my daughter was not eating, that she had become very ill and that she got sick. She is already starting to talk, but at first she didn't speak to me.<sup>840</sup>

Soldiers arrived and knocked on the door. [...]My dogs were beaten by them and they died. The children were frightened, they did not move at all. When she was taken away, they came to scream for their mother. The older kids cry, they don't want to eat, they don't want to study. The oldest girl was quite affected. She starts crying and screaming, she tells me "I want my mommy, I need my mommy".<sup>841</sup>

My son is not allowed to leave the house, he is studying online. I am afraid for my daughter to go out to school; I walk her to school and pick her up. My son only goes out with me.<sup>842</sup>

- 315.** All these data and accounts show the Commission that the measures adopted under the state of emergency have produced a series of effects on human rights that go beyond the persons detained and extend to their families and communities. The IACHR observes different types of impacts, which include the concrete obstacle to the exercise of rights and guarantees of family members, or indirectly impacts due to the feeling of defenselessness and fear of being victims of illegalities and arbitrariness on the part of public agents from

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<sup>839</sup> IACHR, [Report on Women Deprived of Liberty in the Americas](#), OEA/Ser.LV/II., Doc. 91/23, March 8, 2023, par. 86.

<sup>840</sup> Testimony No. 8 of March 16, 2023. Person released under alternative measures (female).

<sup>841</sup> Testimony No. 13 of March 17, 2023. Family member of detainee (female detainee).

<sup>842</sup> Testimony No. 9 of March 16, 2023. Family member of detainees (adolescent and adult detainees).

different institutions. In addition, the abusive use of pretrial detention, coupled with the current conditions of detention in prisons, has contributed to the increased poverty of economically vulnerable families, deepening gender inequalities and impacting groups that are already at special risk and vulnerability, generating consequences that may have a lasting effect on their lives.

**316.** The IACHR is particularly concerned about the magnitude of the measures undertaken during the state of emergency, which reveal the choice of a criminal policy model focused on highly repressive measures, with the suspension of rights and guarantees, and, in addition, allegedly systematic and widespread human rights violations. For this reason, the IACHR urges the State to develop criminal and penitentiary policies from a human rights and intersectional approach, which also consider the impacts that the prioritization of incarceration as a citizen security measure generates on family and community nuclei. In the same vein, the Commission reiterates the importance of strengthening intersectoral policies to prevent crime and restore the social fabric, based on data and built with transparency and social participation.

**317.** The Commission also calls on the State to ensure that the actions of the institutions, at all levels, are geared towards guaranteeing rights and stresses the importance of constantly reevaluating practices that are reported as victimizing by users. Along these lines, the IACHR takes note of the "Principles and Best Practices on the Protection of the Rights of Women Relatives of Persons Deprived of Liberty (Bogotá Principles)" as a regional initiative of civil society organizations and groups of women relatives of persons deprived of liberty and their contributions to best practices based on their experiences of the challenges encountered due to public policies.<sup>843</sup> Finally, the Commission calls on the State of El Salvador to take into account the voices of family members and the impacts they have endured, when formulating and implementing measures of reparation for the rights violations denounced in this report.

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<sup>843</sup> IACHR, Hearing 'Differential Impact on the Lives of Women Relatives of Persons Deprived of Liberty in the Americas', 187th Period of Sessions, July 12, 2023.

**CHAPTER 4:  
FREEDOM OF EXPRESSION,  
JOURNALISM, AND THE  
DEFENSE OF HUMAN RIGHTS**

## **FREEDOM OF EXPRESSION, JOURNALISM, AND THE DEFENSE OF HUMAN RIGHTS**

318. Freedom of expression, in all its forms and manifestations, is a fundamental and inalienable right, and an indispensable requirement for the very existence of a democratic society. Respect for and protection of freedom of expression acquires a primordial function, since this right also enables other human rights and safeguards democratic values.<sup>844</sup>

319. In states of emergency, freedom of expression acquires an essential function as it contributes to preserving the values and functioning of the democratic system, which is why States are called upon to respect and guarantee this right.<sup>845</sup> So important is the link between freedom of expression and democracy that the very purpose of Article 13 of the American is to strengthen the functioning of pluralistic and deliberative democratic systems by protecting and promoting the free flow of information, ideas, and expressions of all kinds.<sup>846</sup> Therefore, under exceptional institutional circumstances, the right to freedom of expression constitutes a necessary condition for the operation of mechanisms enabling citizens to exercise oversight of public administration.<sup>847</sup> Therefore, information, opinions, news,

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<sup>844</sup> IACHR, [Background and Interpretation of the Declaration of Principles](#).

<sup>845</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, [A Hemispheric Agenda for the Defense of Freedom of Expression](#), OEA/Ser.L/V/II IACHR/SRFE/INF. 4/09, February 25, 2009, par. 18: 18.

<sup>846</sup> IACHR Office of the Special Rapporteur for Freedom of Expression, [Inter-American Legal Framework Regarding the Right to Freedom of Expression](#), OEA Ser.L/V/II IACHR/SRFE/INF. 2/09, December 30, 2009, par. 8.

<sup>847</sup> IACHR Office of the Special Rapporteur for Freedom of Expression, [Inter-American Legal Framework Regarding the Right to Freedom of Expression](#), OEA Ser.L/V/II CIDH/RELE/INF. 2/09, December 30, 2009, par. 8.

and ideas need to circulate as widely as possible, guaranteeing the maximum level of exercise of freedom of expression.<sup>848</sup>

320. Likewise, the Office of the Special Rapporteur has emphasized that broad, robust, and participatory public debate on matters that concern all citizens is an essential element during states of emergency, as it contributes to the formation of an informed public opinion that is aware of its rights.<sup>849</sup> Similarly, the right to freedom of expression and information promote accountability and transparency in the public administration of the authorities, as well as the reporting of situations of corruption, abuse, or concentration of power.<sup>850</sup> These rights become especially important in emergency situations, as they allow people to hear and express their opinions and differences in a peaceful manner.<sup>851</sup> Finally, these rights constitute an essential condition for citizens to gauge the scope of their rights, as well as the mechanisms and guarantees that exist to make them effective.<sup>852</sup>

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<sup>848</sup> I/A Court H/R. Advisory Opinion OC-5/85, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Articles 13 and 29 American Convention on Human Rights), November 13, 1985, Series A No. 5 par. 64; IACHR, Office of the Special Rapporteur for Freedom of Expression, [Inter-American Legal Framework Regarding the Right to Freedom of Expression](#), OEA Ser.LV/II IACHR/SRFE/INF. 2/09, December 30, 2009, par. 81.

<sup>849</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression (SRFE), [Annual Report 2022: OEA/Ser.LV/II. Doc. 50 v. 2](#), March 6, 2022, par. 607.

<sup>850</sup> I/A Court H.R. Case of Claude-Reyes et al. v. Chile, Merits, Reparations, and Costs, Judgment of September 19, 2006, Series C No. 151, paras. 85-87.

<sup>851</sup> I/A Court H/R. Advisory Opinion OC-5/85, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Articles 13 and 29 American Convention on Human Rights), November 13, 1985, Series A No. 5 paras. 57 and 70; IACHR, [Background and Interpretation of the Declaration of Principles](#).

<sup>852</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, [The right to access information in the Inter-American Legal Framework](#), OEA/Ser.LV/II. IACHR/SRFE/INF. 9/12, March 7, 2011, Prologue.



321. The right to freedom of expression is not absolute and admits exceptional limitations.<sup>853</sup> Inter-American jurisprudence has established that, to be admissible, restrictions on freedom of expression must meet three basic conditions: (i) The limitation must have been precisely and clearly defined through a formal and material law, (ii) the limitation is aimed at achieving compelling objectives authorized by the American Convention, and (iii) the limitation is necessary in a democratic society for the achievement of the compelling purposes sought; strictly proportional to the purpose pursued; and suitable for achieving the compelling limitations it seeks to achieve. It is up to the authority imposing the limitations to demonstrate that these conditions have been met.<sup>854</sup> These restrictions are exceptional in nature and should not limit, beyond what is strictly necessary, the full exercise of freedom of expression and become a direct or indirect mechanism of prior censorship.<sup>855</sup> In contexts of suspension of rights and guarantees, compliance with these requirements is especially important and double-checking their observance helps to prevent the actions of the public authorities from being illegal, or exceeding the limits established by international human rights law.<sup>856</sup>

322. Likewise, in exceptional regimes, in addition to the criteria described above, there is the requirement of temporariness or temporariness, according to which measures restricting fundamental freedoms must

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<sup>853</sup> I/A Court H.R., Case of Herrera Ulloa v. Costa Rica, Preliminary Objections, Merits, Reparations, and Costs, Judgment of July 2, 2004, Series C No. 107, par. 120.

<sup>854</sup> IACHR Office of the Special Rapporteur for Freedom of Expression, [Inter-American Legal Framework on the Right to Freedom of Expression](#), OEA Ser.L/VII IACHR/SRFE/INF. 2/09, December 30, 2009, paras. 67 and 68.

<sup>855</sup> I/A Court H.R., Case of Palamara Iribarne v. Chile, Merits, Reparations, and Costs, Judgment of November 22, 2005, Series C No. 135, par. 79; I/A Court H.R., Case of Kimel v. Argentina, Merits, Reparations, and Costs, Judgment of May 2, 2008, Series C No. 177, par. 54.

<sup>856</sup> I/A Court H.R., Advisory Opinion OC-8/87, Habeas Corpus in Emergency Situations (Articles 27.2, 25.1, and 7.6 American Convention on Human Rights), January 30, 1987, Series A No. 8, par. 38; IACHR, [Pandemic and Human Rights](#), OEA/Ser.L/VII Doc. 396, September 9, 2022, paras. 35 and 38.



be limited in time.<sup>857</sup> The IACHR and SRFE emphasize that the temporary nature of a state of emergency implies that the State must periodically verify, based on available information, the persistence of the causes that gave rise to the declaration of the state of emergency. In this regard, it is essential for the State to have accurate and timely information to evaluate, on a regular basis, whether or not the causes for the state of emergency persist.

**323.** Therefore, the IACHR and its Office of the Special Rapporteur emphasize that, in these contexts of exceptional circumstances, the work of the press plays a crucial role in keeping society informed about the different issues of public life, particularly those that are related to and allow for a better social and institutional understanding of the circumstances that led to the exceptional circumstances. This is essential to foster strong, informed, and vigorous debate. In states of emergency, journalists may not be victims of, among other things, arbitrary detentions, prosecutions, accusations, threats, or violence as a result of their work as journalists. Despite the above, SRFE has recorded that States often resort to criminal law to punish the publication or dissemination of ideas and information related to the state of emergency. In this regard, SRFE has pointed out that the use of criminal law as a form of reprisal and intimidation against journalists and communicators investigating matters of great public interest constitutes an indirect means of censorship and could curtail freedom of expression.<sup>858</sup>

**324.** In particular, in its observations on the draft of this report, the State of El Salvador indicated to the IACHR and its Special Rapporteurship that during the state of emergency there is no documented case in which journalists or media workers have suffered arbitrary detentions, prosecution, accusations, threats, or violence as a result

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<sup>857</sup> I/A Court H.R., Advisory Opinion OC-8/87, Habeas Corpus in Emergency Situations (Articles 27.2, 25.1, and 7.6 American Convention on Human Rights), of January 30, 1987, Series A No. 8 paras 38 and 39.

<sup>858</sup> IACHR, [Background and Interpretation of the Declaration of Principles](#).

of their work.<sup>859</sup> It also asserted that criminal law has not been used to punish the publication or dissemination of ideas and information related to the state of emergency.<sup>860</sup> Nevertheless, the Special Rapporteurship has learned of alleged intimidation and threats of prosecution against journalists and media workers investigating criminal matters as a result of the legislative amendments adopted on April 5, 2022 in connection with the state of emergency.<sup>861</sup> In the opinion of the Commission and its Special Rapporteurship, these regulations had an inhibiting effect on public discourse, especially in the case of journalists, writers, and the media, as will be detailed later in this chapter.<sup>862</sup>

**325.** Likewise, the IACHR has held that in periods of emergency, States must refrain from restricting the work of journalists, as it constitutes a fundamental tool for informing the public, ensuring compliance with the rule of law, and promoting transparency and accountability of the authorities.<sup>863</sup> Likewise, States are called upon to guarantee that journalists can freely carry out their work, providing maximum guarantees so that they can work in safety and without fear of reprisals.<sup>864</sup>

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<sup>859</sup> State of El Salvador, Observations of the State of El Salvador to the IACHR Report "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, pp. 13-14.

<sup>860</sup> State of El Salvador, Observations of the State of El Salvador to the IACHR Report "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, pp. 13-14.

<sup>861</sup> This aspect is addressed in the sections on "Legislative amendments during the state of emergency and their impact on freedom of expression" and "Situation of journalists and other impacts of the state of emergency in El Salvador on the right to freedom of expression."

<sup>862</sup> This aspect is addressed in the sections on "Legislative amendments during the state of emergency and their impact on freedom of expression" and "Situation of journalists and other impacts of the state of emergency in El Salvador on the right to freedom of expression."

<sup>863</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, Press Release No. 58/ 20, [COVID-19: Governments must promote and protect access to and free flow of information during pandemic – International experts.](#), March 19, 2020; IACHR, [Pandemic and Human Rights](#), OEA/Ser.LV/II. Doc. 396, September 9, 2022, paras 125, 127, and 130.

<sup>864</sup> United Nations, OAS, [Joint declaration on violence against journalists and media workers in the context of protests](#), September 13, 2013

**326.** In times of emergency, freedom of expression is a fundamental pillar, as it contributes to maintaining transparency and holding public authorities accountable.<sup>865</sup> Guarantees of freedom of expression legitimize democracy and reassure society and the international community insofar as they prove that public action can be scrutinized and debated by citizens.<sup>866</sup> Likewise, the work of the press becomes an essential tool for overseeing the rule of law, which contributes to providing society with information on matters of public interest.<sup>867</sup>

#### **A. Legislative reforms during the state of emergency and their impact on freedom of expression**

**327.** As indicated in the preceding paragraphs, Decree No. 333 of March 27, 2022 suspended, for 30 days, a number of rights and guarantees of the Constitution of the Republic related to freedom of association, the right of assembly, protection against arbitrary or abusive interference in private life, among others.<sup>868</sup> Requests for extension of the state of emergency no longer included rights related to freedom of association.<sup>869</sup>

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<sup>865</sup> IACHR, [Specialized supervisory bodies for the right to access public information](#), OEA/Ser.L/V/II. IACHR/SRFE/INF. 14/ 16, 2016, Office of the Special Rapporteur for Freedom of Expression, par. 3; IACHR, Special Rapporteurship for Freedom of Expression, [The Inter-American Legal Framework regarding the Right to Access to Information](#) OEA/Ser.L/V/II. IACHR/SRFE/INF. 9/12, March 7, 2011, par. 90; United Nations, OSCE, and OAS, [Joint Declaration on International Mechanisms for the Promotion of Freedom of Expression](#), December 6, 2004.

<sup>866</sup> IACHR, Special Rapporteurship for Freedom of Expression, [The Inter-American Legal Framework regarding the Right to Access to Information](#), OEA/Ser.L/V/II. IACHR/SRFE/INF. 9/12, March 7, 2011, par. 172; IACHR, Office of the Special Rapporteur for Freedom of Expression, [Inter-American Legal Framework on the Right to Freedom of expression](#), OEA Ser.L/V/II IACHR/SRFE/INF. 2/09, December 30, 2009, par. 33.

<sup>867</sup> IACHR Office of the Special Rapporteur for Freedom of Expression, [Inter-American Legal Framework Regarding the Right to Freedom of Expression](#), OEA Ser.L/V/II CIDH/RELE/INF. 2/09, December 30, 2009, paras. 165 et seq.

<sup>868</sup> Republic of El Salvador, Legislative Assembly, Decree No. 33322.

<sup>869</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations](#), May 12, 2023.

328. In this context, on April 4, 2022, the Minister of Justice and Public Security submitted to the Legislative Assembly two draft Legislative Decrees aimed at expanding the catalog of crimes contained in both the Penal Code and the Law for the Prohibition of Maras, Gangs, Groups, Associations, and Organizations of a Criminal Nature.<sup>870</sup> On April 5, 2022, the Legislative Assembly decreed the amendment of the aforementioned laws, incorporating the following provisions respectively:

**Criminal Code, Article 345-C:** Whoever elaborates, participates in their elaboration, facilitates, or manufactures, texts, paintings, designs, drawings, graffiti, or any form of visual expression on real property of public or private use, that explicitly or implicitly transmit messages, signs, denominations, propaganda, or any type of written manifestation that makes allusion to the different groupings, or terrorist criminal associations of maras or gangs, and especially with the purpose of alluding to territorial control of said groups or transmitting threats, shall be sanctioned with a prison sentence of ten to fifteen years. The same sanction shall apply to those who, through the use of communication and information technologies, radio, television, written, or digital media, reproduce and transmit messages or communications originated or allegedly originated by such criminal groups, which could generate distress and spread panic among the general population.<sup>871</sup>

**Article 1, paragraph 3 of the Law for the Prohibition of Gangs:** Likewise, texts, paintings, designs, drawings, graffiti, or any form of visual expression, whether on public or private property, that explicitly or implicitly transmit messages related to the different groups or criminal associations referred to in this article, and especially those

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<sup>870</sup> Bill proposed by the President of the Republic, [Reforming the Penal Code, incorporating Art. 345-C](#), April 4, 2022; Bill proposed by the President, [Reforming the Law for the Prohibition of Maras, Gangs, Groups, Associations, and Organizations of a Criminal Nature](#), April 4, 2022.

<sup>871</sup> Legislative Assembly, [Reform to the Penal Code](#), Decree 349, published in the Official Gazette on April 5, 2022.

whose purpose is to allude to the territorial control of said groups or to transmit threats to the population in general, are declared illegal. Likewise, it is forbidden for the radio, television, written, or digital media to reproduce and transmit to the general population messages or statements originating or allegedly originating from said criminal groups, which could generate distress and panic in the population.<sup>872</sup>

**329.** The Minister of Justice and Security stated that the purpose of the amendment to the Law for the Prohibition of Gangs was to "repress and dissuade individuals from illegitimately using the right to freedom of expression" in a way that could "directly affect public order."<sup>873</sup>

**330.** As of November 1, 2023, the Legislative Assembly of El Salvador repealed the two norms that criminalized the dissemination of messages related to gangs or criminal groups by the media.<sup>874</sup> According to official information, the repeal of these provisions was justified by the effectiveness of the Government's security strategies, such as the implementation of the Territorial Control Plan and the state of emergency, implemented since March 2022 to combat gang violence.<sup>875</sup> The Nuevas Ideas party argued that the legislation responded to a reality of extreme violence that put the life and integrity of the citizens at risk, but, having fulfilled the objective for which the norms were decreed, "it becomes necessary to alter the referred paragraphs again, this time in order to guarantee the full exercise of the fundamental rights of all Salvadoran citizens."<sup>876</sup>

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<sup>872</sup> Legislative Assembly, [Amending the Law for the Prohibition of Maras, Gangs, Groups, Associations, and Organizations of a Criminal Nature](#), Decree 350, published in the Official Gazette on April 5, 2022

<sup>873</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression (SRFE), [Annual Report 2022](#)., OEA/Ser.LV/II. Doc. 50 v. 2, March 6, 2022, paras 596.

<sup>874</sup> X account of the Legislative Assembly (@AsambleaLegislativaSV), [November 1](#) and [November 1](#).

<sup>875</sup> Legislative Assembly of El Salvador, [Deputies decriminalize dissemination of messages generated by gangs](#), November 2.

<sup>876</sup> AP News, [El Salvador: Congress repeals controversial reform on gang messages in the media](#), November 2, 2023; La Prensa Gráfica, [Assembly approves decriminalization of gang-generated messages through media](#), November 2, 2023.

331. The IACHR and its Office of the Special Rapporteur join the message of the Office of the United Nations High Commissioner for Human Rights (OHCHR), and recognize the importance of the decision adopted by the Legislative Assembly to repeal the second paragraph of Article 345-C of the Penal Code, as well as Article 1, paragraph three of the Law for the Prohibition of Maras and Gangs.<sup>877</sup> These rules would have had a chilling effect on public discourse, and particularly on journalists, writers, and the media.<sup>878</sup> As noted by the OHCHR, this decision should be complemented by other measures that contribute to strengthening civic space and provide the necessary conditions for the work of human rights defenders and journalists in a safe and enabling environment.<sup>879</sup>
332. On April 13, 2022, the Office of the Special Rapporteur for Freedom of Expression warned through a press release about the risks of criminalization of freedom of expression following the approval of these legislative amendments to the Penal Code and the Law for the Prohibition of Gangs.<sup>880</sup> In this regard, the Office of the Special Rapporteur considered that the broadness and vagueness of the terms used to describe the prohibited conducts conflict with international standards that require that any limit to freedom of expression be expressly, specifically, and clearly set forth in the law. The aforementioned ambiguity of the wording makes it difficult to distinguish between expressions that are punishable and those that are not. Thus, for example, the criminalization of any type of visual expression that "implicitly"

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<sup>877</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), [Press Release - El Salvador](#), 3 November 2023.

<sup>878</sup> This aspect is addressed in the following paragraphs, as well as in the section on "Situation of journalists and other impacts of the state of emergency in El Salvador on the right to freedom of expression."

<sup>879</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), [Press Release - El Salvador](#), 3 November 2023.

<sup>880</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, Press Release No. 80/22, [The Office of the Special Rapporteur warns of the risk of criminalization of legitimate exercises of freedom of expression in El Salvador as a result of legislative reforms](#), April 13, 2022.

alludes to criminal groups may conflict with what the Inter-American Court has pointed out regarding "the use of strict and unambiguous terms that clearly delimit punishable conduct."<sup>881</sup>

**333.** On that occasion, the State of El Salvador informed SRFE that, in its opinion, the reforms adopted were clear and specific and none of them led to a vague interpretation, but rather "sent a strong message to groups operating outside the law about the limits of their actions."<sup>882</sup> In addition, it indicated that it was up to the judiciary to hear each particular case and make the legal and factual assessments to verify whether the requirements of the criminal offense were met. According to the State, "it is precisely the margin of appreciation that allows the judge to evaluate human conduct in the context of compliance or non-compliance with the rules of social coexistence."<sup>883</sup>

**334.** The State of El Salvador also indicated that the punishable conducts "are very different from the informative work of the media," as is shown by the fact that, to date, seven days after the reforms came into force, "the media have continued to publish on a variety of platforms and social networks on the subject of gangs in El Salvador and there has been no prosecution whatsoever." Neither judicial nor administrative

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<sup>881</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, Press Release No. 80/22, [The Office of the Special Rapporteur warns of the risk of criminalization of legitimate exercises of freedom of expression in El Salvador as a result of legislative reforms](#), April 13, 2022.

<sup>882</sup> Mission of El Salvador to the OAS, Position of the State of El Salvador regarding the draft communiqué of the Office of the Special Rapporteur for Freedom of Expression of the IACHR on the risk of criminalization of legitimate exercises of freedom of expression in El Salvador as a result of legislative reforms. MPOEA-OEA-055/2022. April 12, 2022.

<sup>883</sup> Mission of El Salvador to the OAS, Position of the State of El Salvador regarding the draft communiqué of the Office of the Special Rapporteur for Freedom of Expression of the IACHR on the risk of criminalization of legitimate exercises of freedom of expression in El Salvador as a result of legislative reforms. MPOEA-OEA-055/2022. April 12, 2022.

proceedings have been initiated against the media as an institution, or against individual members.<sup>884</sup>

- 335.** The Commission and its Rapporteurship also note that, on the day those amendments were approved, the President stated through social networks that "[w]hen the Germans wanted to eradicate Nazism, they prohibited by law all Nazi symbology, as well as messages, apologies, and everything aimed at promoting Nazism. No one said anything, it was understandable. Now we will do that with the gangs."<sup>885</sup>
- 336.** In July 2023, the State argued that it had been necessary to expand the list of crimes in order to prohibit and punish visual expressions used by gangs for territorial control as well as to prevent the use of any means to reproduce their messages. It also pointed out that there had already been examples of communiqués attributed to gangs in social networks that had reportedly alarmed the population and reiterated that no complaints had been registered in relation to this crime.<sup>886</sup>
- 337.** In public hearings held during the 185th and 187th Sessions of the IACHR, held in October 2022 and July 2023, the Commission received

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<sup>884</sup> Mission of El Salvador to the OAS, Position of the State of El Salvador regarding the draft communiqué of the Office of the Special Rapporteur for Freedom of Expression of the IACHR on the risk of criminalization of legitimate exercises of freedom of expression in El Salvador as a result of legislative reforms. MPOEA-OEA-055/2022.

<sup>885</sup> Nayib Bukele's X account (@nayibbukele), [April 5, 2022](#); France 24, [President Bukele steps up pressure in his "war" against gangs in El Salvador](#), April 7, 2022; Gato Encerrado, [It is false that the media defends gangs in El Salvador](#), May 18, 2022. In response to those statements, in its Press Release No. 380/22, the Office of the Special Rapporteur maintained that neither in the norm itself nor in the preamble are there references leading one to conclude that the speeches that the Government seeks to combat have similarities with those speeches that are not protected by international law, such as propaganda for war, hate speech, or incitement to genocide. IACHR, Office of the Special Rapporteur for Freedom of Expression, Press Release R80/22, [The Office of the Special Rapporteur warns of the risk of criminalization of legitimate exercises of freedom of expression in El Salvador as a result of legislative reforms](#), April 13, 2022.

<sup>886</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 70-72.



information on the regressive impacts on freedom of expression that these norms had reportedly caused.<sup>887</sup> The petitioning organizations pointed out that the penal reforms implemented in connection with the state of emergency were having a self-censoring effect. Thus, they emphasized that citizens are afraid of denouncing and exposing ideas about criminal groups or gangs that could be framed within the expressions penalized in the reforms to the Penal Code and the Law for the Prohibition of Maras and Gangs. They also denounced the existence of official harassment and discrediting of human rights defenders and journalists for the social auditing work they carry out, which exacerbate the climate of intolerance against them and increase the risk of harm to their lives and integrity.<sup>888</sup> The State of El Salvador did not attend the hearing of the 185th Session; while at the hearing of the 187th Session it did not refer to the information presented by the petitioning organizations on this issue.

**338.** In addition, the Commission heard that the Association of Journalists of El Salvador (APES) and the organization Cristosal had filed a complaint of unconstitutionality of the penal amendments before the Constitutional Chamber of the Supreme Court of Justice in April 2022.<sup>889</sup> The organizations pointed out that the amendments impose absolute limits on freedom of expression and access to information, as they expressly prohibit reporting on key developments regarding, for instance, public safety and criminality committed by gangs.<sup>890</sup> In addition, they alleged that the legislative decrees would be unconstitutional because they make use of indeterminate legal

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<sup>887</sup> IACHR, [Arbitrary detentions and the situation of persons deprived of the liberty under the State of Emergency in El Salvador](#), 185th period of sessions, October 25, 2022.

<sup>888</sup> IACHR, [Arbitrary detentions and the situation of persons deprived of the liberty under the State of Emergency in El Salvador](#)", 185th period of sessions, October 25, 2022.

<sup>889</sup> La Prensa Grafica, [APES and Cristosal file unconstitutionality lawsuit against reforms to Penal Code and Gang Prohibition Law](#), April 19, 2022; Revista Gato Encerrado X account (@GatoEncerradoSV), [April 19, 2022](#).

<sup>890</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, [Annual Report 2022](#) OEA/Ser.L/V/II. 50 v. 2, March 6, 2022, paras 606.

concepts, for example, when they prohibit messages that could "generate anxiety or panic in the population." Despite the time elapsed, as of the closing date of this report, the unconstitutionality suit had not been admitted by the Constitutional Chamber of the Supreme Court of Justice of El Salvador.<sup>891</sup> For its part, in its observations on the draft of this report, the State of El Salvador reiterated that said norms had been repealed by the Legislative Assembly on November 1, 2023.<sup>892</sup>

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<sup>891</sup> Information provided by journalists and civil society organizations in 2023, Archive of the Office of the Special Rapporteur for Freedom of Expression. With respect to the judicial body and the functions of the Constitutional Court, the Special Rapporteurship considers it important to take into account that on May 1, 2021, the Legislative Assembly of El Salvador dismissed the 5 permanent judges of the Constitutional Chamber of the Supreme Court of Justice and the 4 alternate judges. On that occasion, the IACHR condemned the decision, as it failed to comply with constitutional norms regulating the procedure and inter-American standards for the removal of justice operators. It also urged El Salvador to respect the democratic rule of law and announced that, in response to these serious events, it had decided to install a Coordination and Timely and Integrated Response Room (SACROI) for El Salvador to monitor and respond to the human rights situation in the country. See, IACHR [The IACHR condemns the removal of the judges of the Constitutional Chamber of the Supreme Court of Justice without respect for due process and urges El Salvador to preserve the rule of law.](#), May 3, 2021

<sup>892</sup> State of El Salvador, Observations of the State of El Salvador on the IACHR Report "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, pp. 34-35, 115; State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador", Nota Diplomática MPOEA-OEA-054/2024, April 8, 2024, Annex 1, Matriz de Sistematización Metodológica, line 82, column E.

- 339.** For the IACHR and its SRFE, the amendments described above, as they were drafted, could imply the criminalization of protected speech of special importance in a state of emergency. In this regard, the Inter-American System has held that, in the case of speech protected by its public interest, the punitive response of the State through criminal law is not in line with the Convention.<sup>893</sup> According to the Inter-American Court, "the use of criminal law against those who disseminate information of this nature would directly or indirectly constitute intimidation which, in the end, would limit freedom of expression and would impede public scrutiny of unlawful conduct, such as acts of corruption, abuse of authority, etc. Ultimately, this would weaken public controls over the State's powers, causing grave damage to democratic pluralism."<sup>894</sup>
- 340.** The Court has specified that "Journalistic conduct can produce liability in another legal sphere, such as in civil law, or require correction or public apologies, for example, in cases of possible abuses or excesses of bad faith."<sup>895</sup> However, in the case of speech protected by the American Convention because of its public interest, criminal liability is excluded.<sup>896</sup>
- 341.** In this sense, the Commission and its SRFE observe that the mere threat of being criminally charged for critical expressions on issues related to maras and gang-related activities could provoke self-

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<sup>893</sup> I/A Court H.R., *Álvarez Ramos v. Venezuela*, Preliminary Objection, Merits, Reparations and Costs, Judgment of August 30, 2019, Series C No. 380 2019. Par. 121.

<sup>894</sup> I/A Court H.R., *Álvarez Ramos v. Venezuela*, Preliminary Objection, Merits, Reparations and Costs, Judgment of August 30, 2019, Series C No. 380 2019. Par. 122. I/A Court H.R. *Baraona Bray v. Chile*, par. 109

<sup>895</sup> I/A Court H.R., *Urrutia et al. v. Ecuador*, Merits, Reparations, and Costs, Judgment of November 24, 2021, Series C No.446, par. 119.

<sup>896</sup> I/A Court H.R., *Palacio Urrutia et al. v. Ecuador*, Merits, Reparations, and Costs, Judgment of November 24, 2021, Series C No.446, par. 119.

ensorship.<sup>897</sup> As previously stated, the use of criminal tools to punish specially protected speech can be considered as an indirect method of restricting expression due to its intimidating, silencing, and inhibiting effects on the free flow of ideas, opinions, and information of all kinds.<sup>898</sup>

**342.** In summary, views on issues related to the criminal situation in El Salvador and the actions of illegal groups constitute specially protected speech due to their public interest and, therefore, must be widely respected and guaranteed by the State. The free flow of information and ideas on these matters allows society to be informed about issues that concern and impact it as citizens.

**343.** Finally, in its comments to the draft of this report, the State indicated that the maras and gangs have used the media and social networks to sow fear and expand their territorial control.<sup>899</sup> Nevertheless, the Commission and its Rapporteurship consider it appropriate to emphasize that the information and opinions disseminated by the press and other actors such as academics, human rights defenders, artists, or activists on issues related to gangs should not be qualified by the State *per se* as an endorsement of discourse that encourages or promotes violence and discrimination. There are risks for democracy if a paradigm is installed in which the understanding of complex phenomena such as organized crime is based exclusively on official information and seen from an official angle. On the other hand, it is enormously useful for democracy that the State provide and guarantee the conditions for a broad public debate, where the

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<sup>897</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, Press Release R8022, [The Office of the Special Rapporteur warns of the risk of criminalization of legitimate exercises of freedom of expression in El Salvador as a result of legislative reforms](#), April 13, 2022.

<sup>898</sup> IACHR Office of the Special Rapporteur for Freedom of Expression, [Inter-American Legal Framework on the Right to Freedom of Expression](#), OEA Ser.LV/II IACHR/SRFE/INF. 209, December 30, 2009, par. 114.

<sup>899</sup> State of El Salvador, Observations of the State of El Salvador to the IACHR Report "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OAS-054/2024, April 8, 2024, Annex 1, Methodological Systematization Matrix, line 81, column E.

phenomenon of organized crime is socially understood based on a range of contributions to public debate, which include but are not limited to the governmental approach.

- 344.** Based on the foregoing, although the IACHR and its SRFE recognize the repeal of the second paragraph of Article 345-C of the Penal Code, as well as the repeal of the third paragraph of Article 1 of the Law for the Prohibition of Maras and Gangs, they consider it imperative that the following actions be taken: First, the State should bring its criminal legislation, particularly those provisions that remain in force in the aforementioned articles, into line with international standards on freedom of expression. This implies using precise and unambiguous terms that clearly define punishable conduct, in an express, precise, exhaustive, and prior manner, differentiating them from those that are not punishable or that can be sanctioned with non-penal measures.<sup>900</sup> In particular, the Legislative Assembly should ensure that future laws or regulations that may affect freedom of expression within the framework of the state of emergency comply with international standards on the matter. Finally, steps should be taken to ensure that State spokespersons do not label speeches that diverge from official opinions as an endorsement of criminality and gangs.

## **B. Right to information and the state of emergency in El Salvador**

- 345.** Access to information is a central component of the right to freedom of expression. In states of emergency, it is an important tool for ensuring the functioning of the state, promoting accountability and transparency in state management, and preventing corruption.<sup>901</sup> The IACHR has stated that access to information and active

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<sup>900</sup> IACHR Office of the Special Rapporteur for Freedom of Expression, [Inter-American Legal Framework Regarding the Right to Freedom of Expression](#), OEA Ser.LV/II CIDH/RELE/INF. 2/09, December 30, 2009, par. 72.

<sup>901</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, [The Inter-American Legal Framework regarding the Right to Access to Information](#), 2010, OEA/Ser.LV/II. IACHR/SRFE/INF. 1/09. Par. 5.

transparency are central to guaranteeing the active participation of citizens in complex scenarios.<sup>902</sup>

346. During the state of emergency in El Salvador, the Commission and its Rapporteurship received information on alleged restrictions to the right of access to information, related to the absence of available, periodic, and disaggregated information; the denial of access to requests for information on the measures adopted; the absence of transparency in the decisions issued by the Institute of Access to Public Information (IAIP), as well as obstacles to journalistic coverage.<sup>903</sup> It should be noted that concerns about the status of the right of access to public information precede the state of emergency installed in March 2022. International organizations have drawn attention to the progressive and steady deterioration of transparency and accountability mechanisms since the inauguration of the current government in June 2019.<sup>904</sup> This is having a drastic impact on transparency and oversight of public spending, which has increased the risk of corruption and abuse of power in the country.<sup>905</sup>
347. According to information presented by civil society, there has been a drastic increase in the number of reservations of public information by State institutions, without compliance with international norms and

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<sup>902</sup> IACHR, [Pandemic and Human Rights](#), OEA/Ser.LV/II. Doc. 396, September 9, 2022, paras. 76 and 80.

<sup>903</sup> Information submitted by the Passionist Social Service (SSPAS), Access to Public Information 2022. Archive of the Office of the Special Rapporteur for Freedom of Expression, undated; [Elsalvador.com, Institute for Access to Information is "dead", say experts in transparency](#), May 23, 2022; Acción Ciudadana, [There is a challenging context for transparency and the fight against corruption in El Salvador](#), December 5, 2022; Acción Ciudadana, [The IAIP in favor of citizens?2022 Update](#), August 2022; La Prensa Grafica, [2022 was a year of challenges for transparency and fight against corruption](#), December 6, 2022.

<sup>904</sup> Human Rights Watch, ["We can arrest anyone we want"](#), December 7, 2022.

<sup>905</sup> Human Rights Watch, ["We can arrest anyone we want"](#), December 7, 2022; WOLA, [Corruption Under the State of Emergency in El Salvador: A Democracy Without Oxygen](#), September 27, 2022.

standards on the matter.<sup>906</sup> Thus, for example, journalists report that the National Civil Police have declared the number of homicides and victims of the crime of disappearance to be confidential information.<sup>907</sup> The institution allegedly based its refusal to provide this information on the grounds that it would jeopardize national defense and public safety, and could cause harm to the prevention, investigation, or prosecution of illegal acts.<sup>908</sup> The same media outlet reported that, in response to a request for information made to the Attorney General's Office, the institution responded in May 2022 that it could not provide statistical data on reports of homicides, disappearances, rapes, sexual assaults, and violence against women, corresponding to the period of March and April.<sup>909</sup>

**348.** In its observations on the draft of this report, the State indicated that the response from the Access to Information Unit of the Attorney General's Office did not consist of communicating that the information itself "was nonexistent"; rather, it indicated that the Statistics Department did not have statistical reports generated that contained the information requested, since the databases of the automated system were being updated.<sup>910</sup> Likewise, it pointed out that the document consisting of the statistical report according to the

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<sup>906</sup> Information provided by journalists and civil society organizations in 2023, Archive of the Office of the Special Rapporteur for Freedom of Expression.

<sup>907</sup> Gato Encerrado, [Police withhold information on homicides and missing people](#), June 21, 2022.

<sup>908</sup> Gato Encerrado, [Police withhold information on homicides and missing people](#), June 21, 2022.

<sup>909</sup> Gato Encerrado, [Prosecutor's Office denies data on crimes of violence](#), June 14, 2022.

<sup>910</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador"(Observations of the State of El Salvador on the IACHR report entitled "State of Emergency and Human Rights in El Salvador"), Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, p. 117; State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador", Nota Diplomática MPOEA-OEA-054/2024, April 8, 2024, Annex 1, Matriz de Sistematización Metodológica, line 83, column E.

requested specifications had not been generated, pursuant to the provisions of Article 73 of the Law on Access to Public Information.<sup>911</sup>

349. Civil society organizations reported that, in response to several requests for information on citizen security issues made in 2022 and 2023, the General Directorate of Prisons responded that it could not provide it because it was confidential(*under reserve*).<sup>912</sup> In this way, information on the total number of persons held in prisons, LGTBI persons deprived of their liberty, persons who have died in prisons, serious offenses or crimes committed by guards, budget data, among others, was denied.<sup>913</sup>
350. Likewise, the Ministry of Justice and Public Security reportedly reserved information related to the Territorial Control Plan, advertising services, all procurement and contracting processes for goods and services, and arms loans between the police and the Armed Forces.<sup>914</sup> In this context, the IACHR and its Special Rapporteurship are particularly concerned about the lack of access to information on the construction of the Terrorism Confinement Center (CECOT). As far as the IACHR and its SRFE were able to ascertain, the information on the bidding and allocation processes for the works, as well as the construction and operating costs, was declared confidential by the Government.<sup>915</sup> This center was allegedly built on the basis of direct

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<sup>911</sup> State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador", Nota Diplomática MPOEA-OEA-054/2024, April 8, 2024, p. 117; State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador", Nota Diplomática MPOEA-OEA-054/2024, April 8, 2024, Annex 1, Matriz de Sistematización Metodológica, line 83, column E.

<sup>912</sup> Information sent by the Passionist Social Service (SSPAS) on access to public information 2022, Archive of the Office of the Special Rapporteur for Freedom of Expression, August 15, 2023.

<sup>913</sup> Information sent by the Passionist Social Service (SSPAS) on access to public information 2022, Archive of the Office of the Special Rapporteur for Freedom of Expression, August 15, 2023.

<sup>914</sup> The Graphic Press, [Hidden for seven years: Increased confidentiality of information related to Public Safety](#), October 5, 2022.

<sup>915</sup> BBC News, [The secrecy surrounding Cecot, the mega-jail symbol of Bukele's war against gangs](#), July 4, 2023.



contracting under the new Public Procurement Law, which came into force in March 2023.<sup>916</sup> In this regard, in its observations on the draft of this report, the State maintained that the limitations on disclosure of public information by State institutions had complied strictly with legal requirements and international standards, as stipulated in the Law on Access to Public Information.<sup>917</sup>

- 351.** The new Public Procurement Law replaced the Public Administration Procurement and Contracting Law and, according to public reports, would constitute a legislative setback in terms of access to information and transparency, as it limits accountability on the use of public funds by the Executive.<sup>918</sup> Thus, for example, the new law establishes that "strategic projects of public utility to be carried out by the institutions" are excluded from the application of this law -and, therefore, from the application of the principle of transparency. In the opinion of the Commission and its Special Rapporteur, this concept is ambiguous and vague since it does not clearly delimit which specific projects fall under this category. This could lead to the arbitrary and disproportionate use of this ground in order to excessively limit the transparency of relevant information on projects undertaken by the Government in the framework of its criminal policy in the state of emergency.
- 352.** As mentioned above, the Office of the Special Rapporteur and the IACHR also learned about of alleged obstacles faced by the families of the detained persons, as a result of the lack of information on

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<sup>916</sup> El Diario de Hoy, [Government hides the cost and the construction contracts for the megajail at Tecolouca](#), February 7, 2023.

<sup>917</sup> State of El Salvador, Observations of the State of El Salvador to the IACHR Report "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, Annex 1, Methodological Systematization Matrix, line 83, column E.

<sup>918</sup> Wola, [Corruption Under the State of Emergency in El Salvador: A Democracy without Oxygen](#), September 27, 2022; El Faro, [Nueva ley de compras habilita gasto discrecional de más de \\$1,500 millones en megaobras \(New purchasing law provides for discretionary spending of more than \\$1,500 on megaprojects\)](#), January 26, 2023.

substantial issues directly related to the state of emergency.<sup>919</sup> Among the limitations reported are: the absence of a centralized and efficient system of information on persons in custody<sup>920</sup> and the underreporting of the number and causes of deaths of persons in state custody.<sup>921</sup>

**353.** For its part, the State of El Salvador indicated that there has been adequate and timely dissemination of the process of creating the law of the different state emergency decrees and their respective extensions, which have been explained in a simple manner and in accessible audiovisual formats. In addition, it indicated that the general population has been kept informed in a timely and continuous manner of the progress in the fight against crime through the open signal for radio and television, as well as digital platforms. In the State's opinion, there has also been adequate and timely communication on progress in security and territorial recovery in those areas that were previously considered at risk and highly dangerous. In addition, the public media have reported in a timely manner on the arrests of alleged criminals; on the different public hearings held in accordance with the regulations of the criminal law in force in the country; as well as on the release of persons whose participation in a punishable act has not been proven and whose innocence has been proven.<sup>922</sup>

**354.** The State maintained that the Office of the Attorney General of the Republic has continuously and expeditiously provided information regarding statistical data and persons subject to criminal proceedings.

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<sup>919</sup> Azul Originario Asociación, Amate, Cristosal, Fundación de Estudios para la Aplicación del Derecho, Idhuca, Red Salvadoreña de Defensoras de Derechos Humanos, Servicio Social Pasionista, [Annual report on human rights violations during the state of emergency in El Salvador](#), March 2023.

<sup>920</sup> Azul Originario Asociación, Amate, Cristosal, Fundación de Estudios para la Aplicación del Derecho, Idhuca, Red Salvadoreña de Defensoras de Derechos Humanos, Servicio Social Pasionista, [Annual report on human rights violations during the state of emergency in El Salvador](#), March 2023.

<sup>921</sup> Azul Originario Asociación, Amate, Cristosal, Fundación de Estudios para la Aplicación del Derecho, Idhuca, Red Salvadoreña de Defensoras de Derechos Humanos, Servicio Social Pasionista, [Annual report on human rights violations during the state of emergency in El Salvador](#), March 2023.

<sup>922</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 70-72.

It also informed that the Information Office of Detained Persons of the Supreme Court of Justice receives the report of each one of the captures made, which is available to public and private institutions, as well as to the general public. Finally, it indicated that the Judicial Branch has tried to generate facilities for users requesting information related to the state of emergency, ensuring respect for the rights of persons detained by any authority.<sup>923</sup> On the other hand, it reported that it has made efforts to attend to relatives of detainees who request information on the place of detention. In addition to the measures discussed in the previous chapter of this Report, the State indicated that the Procurators' Office (*Procuraduría General de la República*) also has a virtual customer service system, which provides guidance and information on institutional services and persons detained in the context of the state of emergency. Through this system it is, according to the State, possible to establish appointments with the public defenders assigned to provide information and assistance to the families of detainees. Likewise, the Procurator's Office reportedly continues to provide in person orientation and information services.<sup>924</sup>

**355.** The IACHR and its Office of the Special Rapporteur recall that Article 13 of the American Convention protects the right of citizens to "seek" and "receive" information, and implies the positive obligation of the State to provide the information in its possession.<sup>925</sup> Principle 4 of the IACHR's Declaration of Principles of Freedom of Expression provides: "Access to information held by the State is a fundamental right of every individual. States have the obligation to guarantee the full exercise of

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<sup>923</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 70-72.

<sup>924</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 70-72.

<sup>925</sup> I/A Court H.R., Case of Claude-Reyes et al. Judgment of September 19, 2006, Series C No. 151, par. 58 a) and b); I/A Court H.R., Case of Claude Reyes et al, Merits, Reparations, and Costs, Judgment of September 19, 2006, Series C No. 151. Paras. 76 and 78; I/A Court H.R., Case of López Álvarez v. Honduras, Merits, Reparations, and Costs. Judgment of February 1, 2006, Series C No. 141, Par. 77; I/A Court H.R., Case of Herrera Ulloa v. Costa Rica, Preliminary Objections, Merits, Reparations and Costs, Judgment of July 2, 2004, Series C No. 107. Par. 108.

this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.”<sup>926</sup>

- 356.** The right of access to information is a fundamental requirement to guarantee transparency in government management and on the part of state authorities, and a crucial tool for citizen control of the functioning of the State and accountability.<sup>927</sup> Likewise, the inter-American system has emphasized that the right to information is an instrument for the realization of other human rights, such as access to justice, personal identity, the right to health and education, allowing people to know exactly what their rights are, and the mechanisms that exist to protect them.<sup>928</sup> Therefore, the State must refrain from establishing general or arbitrary limitations to this right, based on reasons of security or public order.<sup>929</sup> Any type of restriction to this right, even in contexts of exception, must meet the criteria of legality, legitimate purpose, necessity, and proportionality.<sup>930</sup>
- 357.** The right of access to public information imposes an obligation on the State to proactively disclose information about its functions, activities, and management of public resources on a routine basis, even in the absence of a request for access to public information, ensuring that the information is accessible, understandable, and up-to-date.<sup>931</sup> In

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<sup>926</sup> IACHR, [Declaration of Principles on Freedom of Expression](#), Adopted by the IACHR at its 108th regular session held in October 2-20, 2000, Principle No. 4.

<sup>927</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, [Right to information and national security](#), OEA/Ser.LV/II IACHR/SRFE/INF.24/20, July, 2020. Par. 123.

<sup>928</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, [The Inter-American Legal Framework regarding the Right to Access to Information](#), OEA/Ser.LV/II. IACHR/SRFE/INF. 1/09. Par. 5.

<sup>929</sup> IACHR, [Pandemic and Human Rights in the Americas](#), resolution 1/2020, April 10, 2020.

<sup>930</sup> IACHR, [Pandemic and Human Rights](#), OEA/Ser.LV/II. Doc. 396, September 9, 2022, paras. 35, 62, 337 (3).

<sup>931</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, [Right to Information and National Security](#), OEA/Ser.LV/II IACHR/SRFE/INF.24/20. July 2020. Par. 150.

states of emergency, this implies that States provide truthful, reliable, and disaggregated information on all aspects of public interest related to the emergency regime.<sup>932</sup>

**358.** In addition to its obligation to disclose, the State has the obligation to produce or gather the information it needs to fulfill its duties.<sup>933</sup> According to the IACHR, the production of duly disaggregated information is a means of guaranteeing the effectiveness of a public policy. In this regard, the Commission and the Rapporteurship emphasize that the information produced by the State in states of emergency is a crucial element for seriously evaluating the strategies implemented, challenges, difficulties, and progress, and to make decisions based on evidence.

**359.** The Commission and its Office of the Special Rapporteur have highlighted that there is a close link between the availability of public information and the monitoring of government response and performance during specific contexts, such as a state of emergency.<sup>934</sup> Public information allows citizens to know the reasons for the declaration of an emergency, the measures adopted by the government to address the situation, and to monitor the response and results of government measures. In this sense, it is a right that is fundamental for citizens to move through a situation of institutional alteration, such as a state of emergency, in an informed manner, and allows for due oversight by different bodies on the legality and conventionality of the measures adopted. This means that, during the

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<sup>932</sup> IACHR, [Pandemic and Human Rights](#), OEA/Ser.LV/II. Doc. 396, September 9, 2022, paras. 80 and 86.

<sup>933</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, [The Inter-American Legal Framework regarding the Right to Access to Information](#), 2010, OEA/Ser.LV/II. IACHR/SRFE/INF. 1/09. Par. 35.

<sup>934</sup> CIDH, Press Release No. 11920. [IACHR and its Special Rapporteurships OSFRE and OSRESCER Express Serious Concern Over Violations of the Right to Information in Nicaragua and the Impact of These on Access to Health During the COVID-19 Pandemic](#), May 27, 2020.

period of exception, the Public Authority has a heightened duty to guarantee the right of access to information.<sup>935</sup>

360. With respect to the confidentiality of information held by the State, the Office of the Special Rapporteur for Freedom of Expression has expressed that the use of generic and automatic classifications should be avoided, and any confidentiality should be justified through the application of the harm test<sup>936</sup> and public interest.<sup>937</sup> At the same time, the authorities must refrain from using legal and de facto restrictions that hinder real and effective public access to archives containing information indispensable for the protection of human rights and the clarification of the truth.<sup>938</sup> According to the information reported, requests for information related to the state of emergency have often been denied based on general confidentiality criteria, and not as a result of harm test findings, contrary to what is established in inter-American standards.<sup>939</sup>

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<sup>935</sup>IACHR, [Pandemic and Human Rights](#), OEA/Ser.L/V/II. Doc. 396, September 9, 2022, par. 81; IACHR, Press release No. 119/20. [IACHR and its Special Rapporteurships OSFRE and OSRESCER Express Serious Concern Over Violations of the Right to Information in Nicaragua and the Impact of These on Access to Health During the COVID-19 Pandemic](#), May 27, 2020.

<sup>936</sup> In accordance with the contents of the [Inter-American Model Law 2.0 on Access to Public Information](#), the harm test requires an analysis to determine whether the disclosure of the requested information could generate a real, demonstrable, and identifiable harm, that is, that the disclosure of the information presents a real risk to the public interest, that determines that the harm to the public interest would be greater if the requested information were disclosed, and that the information would seriously affect the parties involved in the facts described.

<sup>937</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, [Right to Information and National Security](#), OEA/Ser.L/V/II IACHR/SRFE/INF.24/20, July 2020, par. 191

<sup>938</sup> I/A Court H.R. Case of Myrna Mack Chang v. Guatemala Merits, Reparations, and Costs. Judgment of November 25, 2003. Series C No. 101, par. 181.

<sup>939</sup> Such is the case, for example, of the information related to the construction of the CECOT, the withholding of information on the number of homicides and victims of the crime of disappearance issued by the National Civil Police, and the denial of information on reports of homicides, disappearances, rapes, sexual assaults, and violence against women by the Attorney General's Office.

- 361.** In view of the above, the Commission and its RELE emphasize the importance of the Institute of Access to Public Information,<sup>940</sup> as well as the units of access to public information in the different state institutions, acting with total formal and material independence from the public authorities, thereby effectively ensuring that information on matters of public interest is accessible in accordance with the law. The IAIP must avoid the concealment of information, and ensure that Salvadoran society has access to information on fundamental data in the midst of a state of emergency.<sup>941</sup> The Commission highlights the need for effective control by the IAIP, as the highest administrative authority in this matter, to ensure that the confidentiality of information does not become an instrument of opacity, especially in critical contexts such as a state of emergency. It is essential to guarantee the suitability of the staff of the institute, the traceability of the processes of information requests, the compatibility of the decisions that reserve access to information in accordance with inter-American standards, and the respect of all obligated subjects for the decisions of the guarantor body.
- 362.** Finally, although the State claims to have informed the population in a timely and continuous manner about the progress made in the fight against crime, the Office of the Special Rapporteur has learned that some State media and privately owned media administered by the State are disseminating biased content favorable to the government,

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<sup>940</sup> Pursuant to Article 58 of the Access to Public Information Law, the IAIP is in charge of ensuring the correct interpretation and application of the Access to Public Information Law, in addition to guaranteeing the due exercise of the right to public information and resolving disputes regarding the classification and declassification of reserved information.

<sup>941</sup> EDH, Régimen de excepción: acceso a la información, otro derecho suspendido "de facto" (State of emergency: access to information, another right that has been suspended.) - Noticias de El Salvador, July 2-3, 2022.

for alleged political purposes and government propaganda.<sup>942</sup> In this regard, the Special Rapporteurship notes with concern that the State could be using its institutional channels with the objective of positioning the official account as the only legitimate and truthful one in the public debate on the alleged progress made during the state of emergency, and not necessarily to guarantee the right of access to public information, in accordance with international standards.<sup>943</sup>

**363.** In this regard, in its observations on the draft of this report, the State argued that the Commission and its Special Rapporteurship had adopted a subjective approach. According to the State, the institutional channels comply strictly with state (and not other) purposes, and that they play a crucial role in guaranteeing and facilitating access to public information for all citizens, in line with the fundamental principles of transparency in governance.<sup>944</sup>

**364.** In view of the above information, the Commission and its Rapporteurship are concerned about the existence of serious allegations of restrictions on access to public information in the context of El Salvador's state of emergency. In particular, complaints about violations of the human rights of persons deprived of their liberty, or abuses in the use of public force, among other issues that make it

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<sup>942</sup> IACHR, Annual Report 2022, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, OEA/Ser.L/V/ II/ Doc. 50, March 6, 2023, paras. 961, 579-586; Cristosal, [One Year under the Emergency Regime: A Permanent Measure of Repression and Human Rights Violations](#), May 12, 2023; Asociación de Periodistas de El Salvador (APES), [Régimen de excepción y afectación a la libertad de prensa y libertad de expresión en El Salvador](#), June 2023; Reporters Without Borders (RSF), [El Salvador: media landscape](#), 2024.

<sup>943</sup> IACHR, Annual Report 2022, [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#), OEA/Ser.L/V/ II/ Doc. 50, March 6, 2023, paras. 961, 579-586; Cristosal, [One year under emergency rule: a permanent measure of repression and human rights violations](#), May 12, 2023; Reuters, [Trolls, propaganda and fear stoke Bukele's media machine in El Salvador](#), November 29, 2022; Focos, [New Ideas-infested newspaper received \\$7.4 million in public money](#), July 28, 2023; Razón Pública, [Bukele: the president who disguises authoritarianism as democracy](#), March 12, 2023; Voice of America, [Creadores de contenido tienen su espacio en el Congreso de El Salvador: ¿información o propaganda?](#), May 3, 2023.

<sup>944</sup> State of El Salvador, Observations of the State of El Salvador to the IACHR Report "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, pp. 118-119



possible to monitor and evaluate the security context and the state of emergency. In this regard, the IACHR considers it essential that the authorities and obligated subjects give priority to requests for access to information related to situations in the context of an emergency, including the allocation of public funds, public procurement, and the impact of emergency measures on the exercise of fundamental rights and freedoms.<sup>945</sup>

### **C. Situation of journalists and other impacts of the state of emergency in El Salvador on the right to freedom of expression**

**365.** Journalism acquires a central role in states of emergency, insofar as journalists supervise and report on the actions of the authorities and public institutions. This oversight function is particularly relevant to prevent impunity for abuses of power and human rights violations.<sup>946</sup> As this Office has previously noted, it is by virtue of their role as public watchdogs that social communicators often become targets of violence and intimidation with a view to silencing them.<sup>947</sup>

**366.** In El Salvador, journalists continue to report a hostile climate for carrying out their work.<sup>948</sup> According to the information received, since the declaration of the state of emergency conditions for the practice of journalism have worsened with respect to the period preceding the state of emergency - which civil society organizations had already described as regressive in terms of guarantees for journalism - and

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<sup>945</sup> IACHR, Press Release No. 223/20, [IACHR Calls on Countries to Combat Corruption and Guarantee Human Rights Through Public-Sector Transparency and Accountability During the COVID-19 Pandemic](#), September 16, 2020.

<sup>946</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2002, Chapter II: Evaluation of the State of Freedom of Expression in the Hemisphere.

<sup>947</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2002, Chapter II: Evaluation of the State of Freedom of Expression in the Hemisphere.

<sup>948</sup> Gato Encerrado, [Press Freedom Under Attack in El Salvador](#), May 3, 2023; El Diario de Hoy, [APES condemns increased persecution against journalists](#), July 24, 2022.

particularly as a result of the approval and entry into force of criminal amendments aimed at repressing expressions linked to gangs, which have had a marked inhibiting effect on freedom of information on these issues.<sup>949</sup> According to information from civil society, due to this context, at least 10 journalists and one communicator (3 women and 8 men) have left the country as a preventive measure.<sup>950</sup>

367. The Association of Journalists of El Salvador and the Inter American Press Association (IAPA) affirmed that since the declaration of the state of emergency, threats, and hostilities against the independent press have intensified, a situation that has generated self-censorship of news sources not only towards local media but also vis-à-vis international media.<sup>951</sup> Likewise, the organization Article 19 highlighted the systematic discrediting of the press and a repressive policy that seeks to undermine the press.<sup>952</sup> At the same time, organizations of journalists and communicators have pointed out that there has been a serious regression in the regulatory frameworks of freedom of expression, freedom of the press, and access to public information, and that they should have sought legal advice in order to avoid

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<sup>949</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, Press Release No. 80/22, [The Office of the Special Rapporteur warns of the risk of criminalization of legitimate exercises of freedom of expression in El Salvador as a result of legislative reforms](#), April 13, 2022.

<sup>950</sup> Association of Journalists of El Salvador (APES), [Régimen de excepción y afectación a la libertad de prensa y libertad de expresión en El Salvador \(State of emergency and impact on press freedom and freedom of expression in El Salvador\)](#), June 2023; IACHR, [Hearing No. 6](#); IACHR, Hearing "[Arbitrary detentions and the situation of persons deprived of liberty under the State of Emergency in El Salvador](#)", 185th period of sessions, October 25, 2022.

<sup>951</sup> SIP, [Conclusions](#) 78th General Assembly. October 27 - 30, 2022; Swissinfo, [IAPA points out "restrictions and threats" to the press in El Salvador](#), April 25, 2023; Association of Journalists of El Salvador (APES), [Régimen de excepción y afectación a la libertad de prensa y libertad de expresión en El Salvador \(State of emergency and impact on press freedom and freedom of expression in El Salvador\)](#), June 2023; La Prensa Gráfica, [Libertad de expresión en El Salvador ha retrocedido en régimen de excepción \(Freedom of expression in El Salvador has deteriorated in the state of emergency\)](#), July 5, 2023.

<sup>952</sup> Article 19, [Quarterly Analysis on the State of Freedom of Expression in Central America and the Caribbean. July-September 2023](#), pp. 5 and 6.

committing the criminal offenses created by the legislative amendments of April 2022.<sup>953</sup>

**368.** In this context, SRFE has followed up on the situation of community journalist Víctor Barahona, who was arrested on June 7, 2022 at his home in the municipality of Apopa, and subsequently charged for allegedly committing the crime of unlawful association.<sup>954</sup> According to information received by SRFE, the journalist was deprived of his liberty for 11 months, during which time he was allegedly the victim of mistreatment and cruel, inhuman and degrading treatment.<sup>955</sup> According to the journalist's public statements, prior to his arrest, he had interviewed Rodolfo Pereira, a leader of Soyapango vendors, who denounced corruption in the Soyapango mayor's office, live on a television program. Following that interview, Pereira was also reportedly captured under the state of emergency.<sup>956</sup> The journalist publicly stated that his capture could be linked to his journalistic work or community work.<sup>957</sup>

**369.** Following his public statements, the journalist was summoned to appear at a special hearing on July 27, 2023, at the request of the Attorney General's Office, allegedly because "the circumstances for which he was granted alternative measures to provisional detention had changed."<sup>958</sup> In addition, the Public Prosecutor's Office allegedly

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<sup>953</sup> Information contributed by journalists and civil society organizations in 2023. Archive of the Office of the Special Rapporteur of Freedom of Expression.

<sup>954</sup> Elsalvador.com, [Víctor Barahona, the first community journalist to be captured in regime](#), July 10, 2023.

<sup>955</sup> DW, [APES denounces torture of journalist in El Salvador prison](#), July 11, 2023.

<sup>956</sup> El Faro, [Victor Barahona: "The Jackals came to the cell and gave horrible beatings."](#), August 15, 2023; Elsalvador.com, ["Being a journalist in this country is a crime", says Víctor Barahona, released from the regime](#), July 10, 2023.

<sup>957</sup> El Faro, [Victor Barahona: "The Jackals would come to the cell and give horrible beatings."](#), August 15, 2023.

<sup>958</sup> DW, [APES: El Salvador Prosecutor's Office Requests Re-Arrest of Reporter](#), July 27, 2023.

justified the need to prevent the journalist from "evading justice".<sup>959</sup> According to SRFE, during the hearing, the journalist and his lawyer were ordered to maintain total confidentiality.

**370.** The State of El Salvador has informed the IACHR and its Office of the Special Rapporteur that the legal proceedings against Víctor Barahona are not related to his journalistic profession, but to his alleged participation in crimes linked to maras and gangs.<sup>960</sup> In its observations on the draft of this report, the State reiterated that there is evidence of the alleged link between journalist Víctor Barahona and the "18 Revolutionaries" gang.<sup>961</sup> This was brought to the attention of the Commission and its Special Rapporteurship.<sup>962</sup>

**371.** The Rapporteurship has also learned of alleged intimidation and threats of prosecution against journalists investigating crimes related to the legislative amendments approved on April 5, 2022 in the framework of the state of emergency. For example, a member of the Nuevas Ideas party warned on social networks that he would file a formal complaint with the Attorney General's Office against journalists Óscar Martínez and Gabriela Cáceres for allegedly "having replicated messages related to gangs in order to terrorize the population."<sup>963</sup>

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<sup>959</sup> Voice of America, [El Salvador: Prosecutor's Office seeks to imprison journalist Víctor Barahona again](#), June 27, 2023; Gato Encerrado, [Court imposes silence on journalist who denounced torture in prisons under the State of Emergency](#), June 27, 2023.

<sup>960</sup> Information provided by the State of El Salvador, September 2023. Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>961</sup> State of El Salvador, Observations of the State of El Salvador to the IACHR Report "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, Annex 1, Methodological Systematization Matrix, line 88-90, column H.

<sup>962</sup> State of El Salvador, Observations of the State of El Salvador to the IACHR Report "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, Annex 1, Methodological Systematization Matrix, line 88-90, column H.

<sup>963</sup> Swissinfo, [Association of Salvadoran journalists denounces attempt of "criminalization"](#), April 10, 2022; El Mundo, [Member of Nuevas Ideas threatens to denounce El Faro journalists before the Attorney General's Office](#), 10 April 2022; El Faro, [Juez documentó que Crook fue liberado pese a tener procesos penales abiertos \(Judge documented the fact that Crook was released despite facing criminal proceedings\)](#), April 5, 2022.

372. Likewise, SRFE learned that a pro-government congresswoman, while exemplifying conducts that would fit into the new criminal offenses, warned that if a book on gangs and criminal groups, "instead of investigating the social phenomenon (...) were a book that disseminates messages (on any platform) of gang members", it would be penalized. In the same way, it mentioned the example that, if a book "talked about crimes or the ways in which they were committed", "it would be committing another crime because it would be an accomplice for not denouncing."<sup>964</sup>
373. In June 2023, during a television interview, the director of the National Civil Police reportedly warned that journalists "are going to have to answer for those actions in which they defended crime," referring to the coverage of the negotiations between the Government of El Salvador and the gangs in 2012.<sup>965</sup> Salvadoran journalists denounced that the official's message denotes persecution against them, with the clear intention of violating the right to freedom of expression as well as criminalizing the practice of journalism.<sup>966</sup>
374. In August 2023, the president disclosed in his X account that journalists Bryan Avelar, Héctor Silva Ávalos, and Sergio Arauz had allegedly received classified documents from former security advisor Alejandro Muysont.<sup>967</sup> APES denounced that such a pronouncement constitutes a tacit threat to press freedom, and warned that such a pronouncement could lead to officials and employees being charged with talking to journalists.<sup>968</sup>

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<sup>964</sup> El Mundo, [Pineda says it's a crime if journalist's book on gangs talks about crimes](#), April 19, 2022; X account of Marcela Pineda (@MarcelaPinedaSV), [April 18, 2022](#).

<sup>965</sup> El País, [El Salvador police director threatens to jail journalists who covered government-gang truce](#), June 6, 2023; Elsalvador.com, [PNC director assures that politicians and journalists will be prosecuted for 2012 truce](#), June 6, 2023.

<sup>966</sup> La Prensa Grafica, [Journalists warned of criminal prosecution over truce](#), June 7, 2023.

<sup>967</sup> Nayib Bukele's X account (@nayibbukele), [August 9, 2023](#).

<sup>968</sup> X account of the Association of Journalists of El Salvador (@apeselsalvador), [August 10, 2023](#).

375. On the other hand, the IACHR and its Special Rapporteurship also received reports on obstruction of journalistic coverage within the framework of the state of emergency. In May 2023, a photojournalist from *El Diario de Hoy* was reportedly detained by agents of the National Civil Police. According to information received, police officers detained the professional for photographing the facade of the Rosales Hospital in San Salvador. The hospital is a work in progress and the photojournalist wanted to document the progress of the work. The agents allegedly asked him to identify himself as a journalist and threatened him with arrest under the state of emergency for the crime of "resistance."<sup>969</sup>
376. Also, on June 5, 2023, an employee of the General Directorate of Penal Centers reportedly prevented Yessica Hompanera, a photojournalist for *El Diario de Hoy*, from taking photographs of the remodeling of the Jorge "Mágico" González National Stadium. The journalist was reportedly asked by prison employees to delete her photographic material, as she could not take pictures of the prisoners working at the site without a permit issued for that purpose.<sup>970</sup> According to information in the public domain, DGCP employees reportedly took photographs of the journalist and the vehicle in which she was traveling.<sup>971</sup>
377. In the context of the state of emergency, there have also been reports of stigmatizing statements by public officials against journalists, independent media, activists, human rights defenders, among other actors. Such is the case, for example, of a pro-government deputy who allegedly referred to journalists from *El País* as "bar journalists" after the publication of an article in which they reported on the declaration of the state of emergency. Another pro-government deputy, quoting a tweet from a journalist about the state of emergency, warned "the

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<sup>969</sup> Elsalvador.com, [Police detain El Diario de Hoy photojournalist outside Rosales Hospital](#), May 24, 2023.

<sup>970</sup> X account of the Association of Journalists of El Salvador (@apeselsalvador), [June 05, 2023](#).

<sup>971</sup> X account of the Association of Journalists of El Salvador (@apeselsalvador), [June 5, 2023](#).

journalists of *El Faro*" that "they will go to jail if they collaborate with the gangs."<sup>972</sup> For his part, The Minister of Justice and Public Security described *La Prensa Gráfica* and *El Diario de Hoy* as "hypocrites," accusing them of "protecting the interests of criminal structures" and "being on the side of terrorists and their opposition allies to misrepresent information."<sup>973</sup> A similar incident was reported by the Vice Minister of Justice and Director General of Penitentiaries, who referred to *El Faro* journalists as "terrorists", "gang spokespersons," and "mercenaries."<sup>974</sup> Likewise, the president of the Legislative Assembly reportedly commented on his social networks that the gang members were "journalistic sources" for many journalists.<sup>975</sup>

**378.** The IACHR and its Office of the Special Rapporteur have continued to monitor reports of surveillance of the communications of journalists and human rights defenders, following the findings of the University of Toronto's Citizen Lab and the Access Now initiative in early 2022. The technical expertise carried out by the experts determined that at least 35 people from Salvadoran media and civil society organizations had their phones tapped with the Pegasus *software*, created by the Israeli company NSO Group. Among this group of people, 22 were members of the investigative journalism portal *El Faro*.<sup>976</sup> For its part, the State indicated that "the origin of such interventions is unknown, and it is conducting the corresponding investigations to determine the

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<sup>972</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, [Annual Report 2022](#), OEA/Ser.L/V/II. Doc. 50 v. 2, March 6, 2022, par. 574.

<sup>973</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression (SRFE), [Annual Report 2022: OEA/Ser.L/V/II. Doc. 50 v. 2, March 6, 2022, par. 574.](#)

<sup>974</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression (SRFE), [Annual Report 2022: OEA/Ser.L/V/II. Doc. 50 v. 2, March 6, 2022, par. 574.](#)

<sup>975</sup> Ernesto Castro's X account (@ECastroES), [May 16, 2023](#).

<sup>976</sup> IACHR, Press Release No. 022/22, [IACHR, Its Special Rapporteurship for Freedom of Expression and OHCHR Are Concerned About Evidence of the Use of Pegasus Malware to Spy on Journalists and Civil Society Organizations in El Salvador](#), January 31, 2022.

responsibility and authorship of such acts, which would have also violated devices and communications of state officials.”<sup>977</sup>

**379.** Although the events described above predate the current state of emergency, they constitute an extremely worrying precedent of patterns of intimidation against journalists and human rights defenders that the State must investigate fully, effectively, and impartially. In this sense, the Rapporteurship considers that the lack of clarification of what happened favors the repetition of the facts and has a self-censoring effect on the victims.

**380.** In late 2022, SRFE also learned about the alleged use of spying *software* against Supreme Court Justice Paula Patricia Velázquez, who reportedly received a message on her cell phone on December 15, 2022, stating "Apple believes that state-sponsored attackers are trying to breach your iPhone associated with your Apple ID."<sup>978</sup> In this regard, in its comments on the draft of this report, the State noted that Apple sent this generic communication to users who may have been infected with spyware. In addition, it indicated that Apple has filed a lawsuit against the company responsible for the creation of this software, in which it does not refer to any State and in particular to El Salvador.<sup>979</sup>

**381.** Journalists' associations and press freedom organizations have reportedly requested the Attorney General's Office to initiate an investigation into the reported espionage. However, according to reports, the investigations have not made much progress and only two

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<sup>977</sup> IACHR, Press Release No. 022/22, [IACHR, Its Special Rapporteurship for Freedom of Expression and OHCHR Are Concerned About Evidence of the Use of Pegasus Malware to Spy on Journalists and Civil Society Organizations in El Salvador](#), January 31, 2022.

<sup>978</sup> El Faro, [Apple warns Supreme Court justice of possible spying with Pegasus](#), February 9, 2023

<sup>979</sup> State of El Salvador, Observations of the State of El Salvador to the IACHR Report "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, pp. 120-121; State of El Salvador, Observaciones del Estado de El Salvador al Informe de la CIDH "Estado de Excepción y derechos humanos en El Salvador", Nota Diplomática MPOEA-OEA-054/2024, April 8, 2024, Annex 1, Matriz de Sistematización Metodológica, line 92-94, column E.



summons have been issued.<sup>980</sup> Likewise, SRFE learned that the organization Cristosal would file a writ of amparo before the Supreme Court of Justice due to the lack of investigation on the use of state funds for the alleged espionage against journalists.<sup>981</sup> On this issue, the State of El Salvador reported that to date no complaint has been registered in relation to the alleged existence of illegal interception of communications through surveillance technologies, during the period of validity of the state of emergency.<sup>982</sup>

**382.** According to information from civil society, the adverse context for freedom of the press has caused the forced departure of journalists from the country for fear of reprisals. As indicated above, according to the Association of Journalists of El Salvador, at least 10 journalists and one communicator (3 women and 8 men) have reportedly left the country for security reasons.<sup>983</sup>

**383.** In view of the foregoing considerations, the Commission and its Office of the Special Rapporteur reiterate that journalism is the primary and principal manifestation of freedom of expression of thought and that the State has the obligation to respect and guarantee its work.<sup>984</sup> These obligations become even more relevant during states of emergency, since the press requires the highest level of guarantees to carry out its work.

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<sup>980</sup> Information furnished by Journalists and civil society organizations, March 2023. Archive of the Office of the Special Rapporteur for Freedom of Expression.

<sup>981</sup> DW, [El Salvador: amparo to be filed for spying on journalists](#), April 29, 2023.

<sup>982</sup> State of El Salvador, A New El Salvador, Diplomatic Note MPOEA-OAS-117/2023, July 14, 2023, pp. 70-72.

<sup>983</sup> Association of Journalists of El Salvador (APES), [Régimen de excepción y afectación a la libertad de prensa y libertad de expresión en El Salvador \(State of emergency and impact on press freedom and freedom of expression in El Salvador\)](#), June 2023; IACHR, [Hearing No. 6:Arbitrary detentions and the situation of persons deprived of liberty under the State of Emergency in El Salvador](#)", 185th period of sessions, October 25, 2022.

<sup>984</sup> I/A Court H/R. Advisory Opinion OC-5/85, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Articles 13 and 29 American Convention on Human Rights), November 13, 1985, Series A No. 5 paras. 70 and 71.

- 384.** The State has the duty to ensure that journalists and media workers reporting during the state of emergency are not arrested, threatened, assaulted, or limited in any manner as a result of practicing their profession. Their work materials and tools must not be destroyed or confiscated by the authorities.<sup>985</sup> It is essential that the authorities emphatically condemn attacks against journalists and act with due diligence and speed in clarifying the facts and punishing those responsible.<sup>986</sup>
- 385.** In addition, they recall that disproportionate restrictions on access to the scene of events, arrests, and charges brought against reporters in the performance of their professional duties violate the right to freedom of expression. It is up to the authorities to restore the impaired guarantees and ensure full respect for the right to freedom of expression.<sup>987</sup> In this regard, it is important that States adequately instruct security forces on the role of the press, in order to prevent obstruction and undue interference in its work under states of emergency.<sup>988</sup>
- 386.** The Commission and the Rapporteurship recall that, in order to do their work effectively, journalists must be perceived as independent observers and not as potential criminals or accomplices to crimes for disseminating information or opinions related to gangs. The mere fact of being threatened with prison sentences for reporting on these matters has a deterrent effect.

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<sup>985</sup> United Nations, OAS, [Joint declaration on violence against journalists and media workers in the context of protests](#), September 13, 2013.

<sup>986</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, [Silenced zones: Highly dangerous areas for the exercise of freedom of expression](#), OEA/Ser.L/V/II IACHR/SRFE/INF.16/17, March 15, 2017, par. 158.

<sup>987</sup> United Nations, OAS, [Joint declaration on violence against journalists and media workers in the context of protests](#), September 13, 2013.

<sup>988</sup> United Nations, OAS, [Joint declaration on violence against journalists and media workers in the context of protests](#), September 13, 2013.

## **D. Obstacles for the work of Human Rights Ombudspersons**

- 387.** The work of human rights defenders is fundamental for the universal implementation of human rights, the existence of full and lasting democracies, and the consolidation of the rule of law, since they exercise the necessary social oversight of public officials and democratic institutions.<sup>989</sup>
- 388.** Despite the importance of its work, the Commission has observed that the defense of human rights in El Salvador takes place in a hostile context, characterized by the discrediting of its activities. The Commission warns that, within the framework of the state of emergency, there have been various obstacles that impede the free exercise of the right to defend human rights in El Salvador.<sup>990</sup>
- 389.** According to the Roundtable for the Right to Defend Rights, during 2022, 182 aggressions against human rights defenders and journalists were identified; while media monitoring recorded 82 acts of aggression.<sup>991</sup> It indicates that 47.80% of these assaults were committed against cisgender women, 27.47% involved cisgender men, and 20.87% were reported as collective cases.<sup>992</sup> Among the main aggressions directed against human rights defenders are intimidation, harassment and threats, cyber-harassment or cyberbullying, stigmatizing and discrediting speeches, criminalization, and digital

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<sup>989</sup> IACHR, *Toward a Comprehensive Policy for the Protection of Human Rights Defenders*, OEA/Ser.L/V/II. Doc. 207, December 29, 2017, par. 30.

<sup>990</sup> IACHR, *Situation of Human Rights in El Salvador*, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, paras. 283 and 284.

<sup>991</sup> Iniciativa Mesoamericana de Mujeres Defensoras de Derechos Humanos. "Mesa por el Derecho a Defender Derechos presenta Informe de agresiones contra personas defensoras y periodistas: análisis de casos 2022 en El Salvador ("Roundtable on the Right to Defend Rights presents a Report on attacks against human rights defenders and journalists: analysis of 2022 cases in El Salvador.") September 7, 2022, p. 15.

<sup>992</sup> Iniciativa Mesoamericana de Mujeres Defensoras de Derechos Humanos. "Roundtable on the Right to Defend Rights presents a Report on attacks against human rights defenders and journalists: analysis of 2022 cases in El Salvador." September 7, 2022, p. 16.

attacks.<sup>993</sup> The Commission was informed that more than half of the recorded attacks were allegedly committed by public officials: police officers (40%) and Members of the Legislative Assembly (15%).<sup>994 995</sup>

**390.** The Commission is concerned about the multiple reports of aggressions against women human rights defenders, who, according to civil society, have filed the highest number of complaints, with harassment and bullying being the most recurrent, followed by cyberbullying and arbitrary detentions.<sup>996</sup> The Commission reminds the State of the differentiated risks and disproportionate gender-based effects faced by women defenders.<sup>997</sup> They suffer additional obstacles linked to gender discrimination and are victims of stigmatization, are exposed to sexist or misogynistic comments, or their complaints are not taken seriously.<sup>998</sup> Therefore, all measures aimed at mitigating the risks they face must be adopted with a gender perspective and an intersectional approach, so that they can provide comprehensive protection by considering, understanding, and by attaching especial importance to the complexities of the differentiated forms of violence faced by women defenders because of their profession and gender.<sup>999</sup>

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<sup>993</sup> Iniciativa Mesoamericana de Mujeres Defensoras de Derechos Humanos. "Roundtable on the Right to Defend Rights presents a Report on attacks against human rights defenders and journalists: analysis of 2021-2022 cases in El Salvador." September 7, 2002, p. 42.

<sup>994</sup> IACHR, Public Hearing "[Status of Judicial Independence in El Salvador](#)", held within the framework of the 183rd Period of Sessions, July 14, 2023.

<sup>995</sup> In its observations on the draft of this report, the State indicated that it is not certain that the facts included in these reports can be classified as attacks against journalists and human rights defenders. It was also adamant that there were no restrictions in El Salvador on the exercise of human rights work. See: State of El Salvador, Observations of the State of El Salvador on the IACHR Report "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, p. 122.

<sup>996</sup> Iniciativa Mesoamericana de Mujeres Defensoras de Derechos Humanos. "Roundtable on the Right to Defend Rights presents a Report on attacks against human rights defenders and journalists: analysis of 2021-2022 cases in El Salvador." September 7, 2002, p. 25.

<sup>997</sup> IACHR, Report on the Situation of Human Rights Defenders and Social Leaders in Colombia, OEA/Ser.L/V/II. 124 doc. 262, December 6, 2019, par. 68.

<sup>998</sup> I/A Court H.R., I/A Court H.R. Case of Digna Ochoa and family v. Mexico. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 25, 2021. Series C No. 447, par. 125.

<sup>999</sup> I/A Court H.R., I/A Court H.R. Case of Digna Ochoa and family v. Mexico. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 25, 2021. Series C No. 447, par. 101.

391. The Commission notes that stigmatizing speeches and smear campaigns have been more recurrent in the context of the state of emergency. Civil society organizations indicate that the work of human rights organizations conducted within the framework of the state of emergency has been the object of attacks and discrediting by government authorities, from the highest level.<sup>1000</sup> It is reported that the most common approach has been to equate the defense of rights with the defense of "gang members."<sup>1001</sup> The Commission is concerned that these speeches come from the highest levels of the State.<sup>1002</sup> This has led to attacks that go so far as to include threats, especially on social networks.<sup>1003</sup>
392. The Commission recalls that the disqualification of the work carried out by human rights defenders through pronouncements by State officials generates stigmatization and, at the same time, can promote a climate of hostility and intolerance on the part of different sectors of the population that hinders the legitimate exercise of their freedom of association.<sup>1004</sup>
393. In addition, the Commission has learned of allegedly arbitrary detentions of human rights defenders. For example, on July 17, 2022, indigenous leader Adolfo Santo Zetino and his son Alexander Zetino were detained by agents of the National Civil Police while they were at their home in the San Ramón district, in the department of Sonsonate. During his arrest, authorities reportedly made comments with racist

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<sup>1000</sup> Azul Originario et al, [Annual Report on Human Rights Violations during the State of Emergency in El Salvador](#), March 2023, p. 15.

<sup>1001</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 27 2022 to March 27, 2023](#), May 12, 2023, p. 19.

<sup>1002</sup> WOLA, [El Salvador State of Emergency and Attacks against Human Rights Defenders and Organizations Facilitate State Abuses](#), March 31, 2022; Human Rights Watch, Cristosal, ["We Can Arrest Anyone We Want" Widespread Human Rights Violations During the "State of Emergency" in El Salvador](#), December 2022.

<sup>1003</sup> Cristosal, [One year under the state of emergency: a permanent measure of repression and human rights violations. Situation Report for March 27 2022 to March 27, 2023](#), May 12, 2023, p. 19.

<sup>1004</sup> IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. Doc. 66, December 31, 2011, par. 125.

connotations against the defender because of his long hair. After five hours and following social pressure from the community, the authorities released Adolfo Santo Zetino without formally notifying him of the reasons for his detention.<sup>1005</sup> Similarly, on April 19, 2022, agents of the National Civil Police detained human rights defender Esmeralda Beatriz Rodríguez de Peña near her home in Cantón Sisiguayo, in the municipality of Jiquilisco, department of Usulután.<sup>1006 1007</sup>

394. Given these obstacles, the Commission notes that to date there has been no progress in the creation of a solid legal framework to support the work of human rights defenders in El Salvador,<sup>1008</sup> a situation also noted by the United Nations Committee against Torture, which urged the State to adopt a regulatory framework in this regard.<sup>1009</sup> The Commission reiterates its recommendation that the State of El Salvador adopt a legal framework for the protection and defense of human rights defenders and implement a comprehensive policy for the protection of human rights defenders, taking all necessary measures to put an end to stigmatization and degrading remarks originating from the State or its agents in order to prevent violence against journalists and human rights defenders, and in compliance with the inter-American standards that establish special responsibilities for public authorities to ensure the exercise of their freedom of expression.

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<sup>1005</sup> La Prensa Grafica, "[The police said that they would take him away for review](#)": [family member of indigenous leader captured under the state of emergency](#), July 18, 2022; Resumen Latinoamericano, "[El Salvador. State of Emergency Persecutes Environmentalists and Their Families](#)", September 11, 2022; Front Line Defenders, "[El Salvador: Prolonged state of emergency exposing human rights defenders to increased risks](#)", September 14, 2022.

<sup>1006</sup> La Prensa Grafica, "[Esmeralda Domínguez, Human Rights Defender in Usulután, Detained](#)", April 23, 2023; El Salvador Now, "[Human rights activist in Bajo Lempa communities detained](#)", April 23, 2023; Front Line Defenders, "[El Salvador: Prolonged state of emergency exposing human rights defenders to increased risks](#)", September 14, 2022.

<sup>1007</sup> In its observations on the draft of this report, the State said that it had no record of the existence of a request for information by the Commission, and therefore the Commission describes the detentions as arbitrary without previously verifying the State's position, thereby ignoring the complementary nature of the inter-American system. See: State of El Salvador, Observations of the State of El Salvador on the IACHR Report "State of Emergency and Human Rights in El Salvador," Diplomatic Note MPOEA-OEA-054/2024, April 8, 2024, p. 122.

<sup>1008</sup> IACHR, [Annual Report 2022, Chapter IV.A. Development of Human Rights in the Region](#), par. 377

<sup>1009</sup> Committee Against Torture - CAT, Concluding observations on the third periodic report of El Salvador, 25 November 2022, par. 37.



# **CAPÍTULO 5: CONCLUSIONS AND RECOMMENDATIONS**

## **CONCLUSIONS AND RECOMMENDATIONS**

395. The Commission concludes this report by reaffirming that the actions of the maras and gangs in El Salvador are a reality that for decades has impacted the exercise of human rights of the Salvadoran population. The State must adopt effective actions to confront and eradicate organized crime, tailored to the stroke and seriousness of the particular situation of the country, and in accordance with the legal and international obligations that must govern the actions of the State. The contrast between these two aspects is a false dilemma, and the guarantee and protection of human rights should be the objective and starting point of any effort in the area of citizen security.
396. The IACHR has highlighted the high rates of crime and violence recorded in the decades following the end of the internal armed conflict, and has also monitored the use of various citizen security strategies in El Salvador's recent history. Following a remarkable and unprecedented reduction in acts of violence in the country in recent years, which was recognized by the Commission in its 2021 Report, the wave of violence perpetrated in March 2022 resulted in multiple deaths and led the State to adopt extraordinary measures to eradicate the common gangs, declaring a state of emergency. The Commission notes that this critical episode in March 2022 does not reflect the current citizen security situation in El Salvador, which once again shows a significant decrease in violence rates. Therefore, the emergency situation established in the American Convention on Human Rights to maintain suspended rights, a measure that has been in effect for more than 19 months, is not observed. The State must abide by the international obligations it has assumed, which establish requirements and limits for adopting such an exceptional mechanism for suspending the rights and guarantees protected by the Convention, which cannot become an integral part of its permanent citizen security policy. In this regard, the IACHR urges the State to repeal the state of emergency, ending the suspension of rights and guarantees through the extensions to Legislative Decree No. 333 of 2022, and reiterates that indispensable judicial guarantees must be maintained in force in all circumstances.



397. In this context, the Commission highlights the importance of addressing the causes and consequences of crime from a comprehensive and intersectoral perspective, adopting prevention, control, and response measures within the limits and procedures that guarantee respect for human rights, including gender and intersectional approaches. The Commission appreciates the measures implemented by the State of El Salvador that espouse a crime prevention perspective in its different dimensions, protection of vulnerable groups, mitigation of the impacts of violence, and rehabilitation of the social fabric in part of the territories affected by the actions of gangs. The IACHR encourages their strengthening, and highlights the importance of these measures including greater openness to citizen participation in the formulation, implementation, and accountability of citizen security policies. On the other hand, it notes that, during the period analyzed in this report, multiple legislative reforms were promoted with a markedly punitive approach that reportedly contravene inter-American standards on juvenile justice, judicial guarantees, and the rational use of pretrial detention, among other aspects. The Commission draws attention to the significant increase in sentences, even for crimes that have low offensive potential, and their effects on the re-socialization of convicted persons.
398. Likewise, in view of the allegations of systematic and widespread illegal and arbitrary detentions by the security forces, as well as other violations of rights in the justice system and places of deprivation of liberty, the IACHR considers it necessary to identify the circumstances that generated this pattern of alleged violations, the possible institutional and individual responsibilities, as well as the identification of the victims and the damages suffered in order to provide them with comprehensive reparations and adopt guarantees for non-repetition. In addition, it urges the Justice Administration System to adopt immediate measures to address the high number of people who are deprived of their liberty without a final conviction and to ensure that judicial proceedings are carried out under due process of law with full guarantees of hearing and defense for the accused, as well as the presumption of their innocence. In addition, it calls for

ensuring special protection standards for children and adolescents in conflict with the law and their reintegration as one of the main objectives of juvenile justice.

- 399.** The administration of justice has a relevant role in guaranteeing the rights of the victims of human rights violations and their families, which includes ensuring the right to the truth about the facts and those responsible for the violations committed through the investigation, trial, and application of the corresponding punishment to the guilty parties, as well as making it possible to seek due reparation. To this end, judges in El Salvador must have guaranteed judicial independence. The Commission also considers that measures to assist crime victims are an important pillar to be considered in the public policies developed by the State and values the willingness expressed by the State to receive technical cooperation to strengthen measures of this nature<sup>1010</sup>.
- 400.** The Commission warns that the automatic application of pretrial detention violates its precautionary purpose based on the individualized circumstances of the specific case and its use as a priority aggravates the situation of prison overcrowding in El Salvador, which has tripled in a few months. This context has produced inhumane conditions of detention, which have been made more extreme by "security" or "emergency" measures in the prisons that preceded and were maintained during the state of emergency. The Commission expresses particular concern about deaths in state custody and allegations of torture and ill-treatment, and urges the investigation of state responsibility when they occur. It also recalls the various impacts that the mass incarceration of people has had on the families of detainees.
- 401.** Finally, the IACHR warns that, in a state of emergency, freedom of expression acquires an essential function as it contributes to preserving the values and functioning of the democratic system.

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<sup>1010</sup> IACHR, Meeting Notes with the State of El Salvador, September 6, 2023, IACHR Archive.

Access to information and active transparency are essential tools to ensure citizen participation and the accountability of the State in these complex scenarios. These tools allow the population to learn about the context and extent of the exceptional measures imposed on their fundamental rights and to act against the adoption of measures that are not justified. The Commission also highlights the important work of journalism and the defense of human rights in these situations and calls on the State of El Salvador to take the necessary actions to ensure that there is no hostile environment for either the exercise of journalism or the defense of human rights. Thus, the IACHR calls upon the State to ensure that journalists and media workers reporting during the state of emergency are not arrested, threatened, assaulted, or restricted in any manner for practicing their profession. In particular, it calls upon the State to refrain from intimidating, threatening, and disqualifying the work of journalists and to reject, investigate, and punish any type of violence against them. In addition, the IACHR calls on the State to adapt the regulations that may impair the right to freedom of expression and of the press, and to adopt specific measures that guarantee the plurality of the media, in order to foster freedom and pluralism in society.

402. Based on the provisions of Article 41, paragraph b, of the American Convention on Human Rights and the information indicated in this report, the Commission reasserts some of the recommendations of the 2021 country report and makes the following recommendations to the State of El Salvador:
1. Put an end to the suspension of the rights and guarantees curtailed under the state of emergency.
  2. Elaborate and implement a comprehensive and multisectoral public security policy on the causes and consequences of crime, based on evidence, with a focus on human rights, establishing the participation of civil society bodies in its definition and implementation.

3. Periodically publish data on the actions taken in connection with citizen security policy and the results obtained, including within the framework of the different stages of the Territorial Control Plan.
4. Develop and implement a policy of attention to victims of crimes perpetrated by gangs, ensuring the participation of victims and civil society throughout the process.
5. Draw up a list of the victims of human rights violations perpetrated in the context of detentions and criminal prosecutions initiated under the state of emergency, ensuring the participation of victims and civil society throughout the process.
6. Elaborate and implement a comprehensive reparation plan for the victims of human rights violations perpetrated in the context of detentions under the state of emergency, considering the gender perspective and the intersectionality of other factors of vulnerability and discrimination.
7. Bring the criminal and criminal procedure legislation adopted or amended during the state of emergency into line with inter-American norms and standards, in particular:
  - a. Repeal any provision that require the mandatory application of pretrial detention or that prevents its substitution due to the type of crime, in particular Article 5° of Legislative Decree No. 339 of March 30, 2022;
  - b. Repeal the provisions that allow for the confidentiality of the identity of justice operators in the context of their actions in criminal proceedings, in particular Article 2 of Legislative Decree No. 339 of March 30, 2022.

8. Bring the legislation on juvenile justice amended during the state of emergency into line with inter-American norms and standards, in particular:
  - a. Repeal any provision ordering the mandatory application of preventive detention or imprisonment or preventing its substitution due to the type of crime, in particular Article 3° of Legislative Decree No. 342 of March 30, 2022;
  - b. Repeal the provisions that allow application of adult prison sentences to persons under 18 years of age within the framework of juvenile justice, in particular Articles 1° and 2° of Legislative Decree No. 342 of March 30, 2022.
9. Produce, and move ahead with implementing, the plan for the gradual withdrawal of the armed forces from citizen security tasks.
10. Urgently conduct diligent and impartial investigations in all cases that occurred within the framework of the state of emergency where civilians were injured or killed by police or military forces, or in state custody, while also investigating possible acts of torture, in order to establish the facts and determine the corresponding criminal or other responsibilities.
11. Prepare a diagnosis on the current needs of the following institutions, regarding their competencies in criminal cases, as well as a road map with concrete actions for them to carry out their work effectively:
  - a. Office of the Procurator General of the Republic;
  - b. Office of the Attorney General;
  - c. Judiciary

12. Adopt measures to guarantee due process for all people arrested in the context analyzed. In particular:
  - a. Immediately inform the person under arrest and their family and representatives of the motives and reasons for which they are being held.
  - b. Safeguard exercise of the right of the accused to defend himself or herself personally or to be assisted by counsel of his or her own choosing, and to communicate freely and privately with that person.
  - c. Cease the practice of mass judicial hearings.
13. Maintain a registration system for all persons deprived of liberty, including those detained in penitentiary centers as well as in places of temporary housing, in the terms indicated in paragraph 273 of this report, updated and easily accessible by the competent authorities, representatives, and persons in charge of the defense and/or protection of rights, as well as their relatives.
14. Regarding the use of pretrial detention as a measure of last resort and justified by the procedural purposes of each specific case:
  - a. Modify the legislation by incorporating more alternative measures to pretrial detention;
  - b. Adopt a protocol or guidelines addressed to judicial authorities on pretrial detention that:
    - (i) prioritize the application of less burdensome measures than pretrial detention;
    - (ii) address the gender perspective; the best interests of

children and the impact on persons belonging to groups at special risk when deciding on precautionary measures in criminal investigations or proceedings.

- c. Adopt a system of periodic review of both the validity of the circumstances that led to the initial application of pretrial detention in each case and compliance with the maximum periods of detention, allowing for the immediate release of persons held in pretrial detention when such circumstances are no longer in force, the maximum periods established have been met, or the reasonable period of time that allows a person to be held under this precautionary measure has expired.
15. Immediately remedy any overcrowding situation. To this end, issue an order from the justice sector and the penitentiary system prohibiting the entry of new detainees into facilities already occupied beyond their official capacity.
16. Design and establish a plan of action to remedy the deficiencies identified in this report with respect to the minimum conditions of detention of persons deprived of liberty, especially in the areas of shelter, hygiene conditions, food, drinking water, and access to medical treatment, taking into account the gender perspective and the special risk situation of specific groups.
17. Guarantee regular visits by family members, representatives, and competent authorities in all penal centers and repeal all provisions prohibiting family visits contained in Article 79-A of Decree 93 - Reforms to the Penitentiary Law.
18. Design and implement an accessible, available and safe complaint system for all persons deprived of their liberty where they can receive free assistance and file the corresponding legal actions to stop the violation of their rights.

19. Ensure the socio-educational purpose of the juvenile justice system, developing educational, professional training, and recreational programs for children and adolescents in the custody of the State authorities; likewise, that the educational programs comply with the same content and time requirements established by the educational authorities for children who are not deprived of their liberty.
20. Guarantee compliance with the principle of maximum disclosure of public information held by the State, and ensure that the classification of information as confidential is carried out in accordance with inter-American standards on the subject and is subject to periodic review to assess the relevance of the restriction.
21. Within the framework of the ongoing training provided by the State, ensure the implementation of programs aimed at:
  - a. security forces on human rights and inter-American standards on deprivation of liberty, use of force, gender perspective, and differentiated approaches.
  - b. justice operators on inter-American standards on access to justice, pretrial detention, juvenile justice, gender perspective, differentiated approaches.
  - c. prosecutors, penitentiary agents, and personnel of the Forensic Medical Service on the application of the Istanbul Protocol, as well as the Minnesota Protocol for the case of extrajudicial executions or suspicious deaths in detention.



22. Ratify:
  - a. the Inter-American Convention on Forced Disappearance of Persons;
  - b. the International Convention for the Protection of all Persons from Forced Disappearance;
  - c. the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity;
  - d. The Optional Protocol of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; and create the National Mechanism to Prevent Torture.
  
23. Agree to a working visit by the IACHR.

**ANNEX:  
EXPLANATIONS OF VOTES**

## **REASONED OPINION OF COMMISSIONER CARLOS BERNAL PULIDO ON THE REPORT "STATE OF EMERGENCY AND HUMAN RIGHTS IN EL SALVADOR", JOINED BY COMMISSIONER STUARDO RALÓN ORELLANA**

With the customary respect for my colleagues and in accordance with Article 19.1 of the Rules of Procedure of the Inter-American Commission on Human Rights ("the Commission" or "the IACHR"), I present a partial dissenting opinion in relation to the country report, entitled "State of Exception and Human Rights in El Salvador."

While I recognize the important value of the report issued and its contribution to the guarantee of human rights in El Salvador, I consider it essential, on this occasion, to express my partial disagreement, as I consider that the Report: (i) requires greater methodological precision; (ii) it seems to ignore essential principles of the System that they apply in a cross-cutting manner, even in the framework of the exercise of the IACHR's observance function, and (iii) it represents an opportunity to advance in strengthening the transparency of the Commission.

### **1. The importance of methodological rigor in country reports**

In this section, I will refer to the importance of methodological rigor in country reports by the Inter-American Commission, in view of the duties of transparency and impartiality. On the other hand, I will identify some gaps in the report.

#### **1.1. Methodological rigor in the formulation of Country Reports**

Articles 58 and 60 of the IACHR's Rules of Procedure grant the Commission the power to prepare reports on the human rights situation in a country. From a reading of these provisions, two characteristics emerge that form the foundation of the process of formulating this type of report: on the one hand, it has a participatory nature and involves direct dialogue with the State – insofar as the procedure provides for the submission of the draft report to

the State in question<sup>1011</sup>— and, on the other hand, it tends to a rigorous approach, as the procedure also contemplates the modification of the draft report once the observations of the State have been received<sup>1012</sup>.

This claim to rigor that underlies the process of preparing country reports is reinforced by a systematic review of the Commission's Rules of Procedure and, in particular, from other provisions that, although they refer to other types of procedures, reflect the incorporation of this purpose in the exercise of all the functions assigned to the Inter-American Commission.

Thus, Article 13 of the Rules of Procedure provides for the role of the Executive Secretariat to request from interested parties all the information it deems relevant for the preparation of draft reports, among other documents prepared by the Commission. This point is especially relevant if one bears in mind that the collection of information – its quality and objective approach – is an essential prerequisite for ensuring rigor in addressing the social and legal realities that are the object of the Commission's knowledge.

In the same sense, Article 59(5) of the Rules of Procedure states that the Commission shall use reliable and convincing information obtained from, among other things, official acts of the State, the system of petitions and cases, on-site visits, public hearings, or human rights reports<sup>1013</sup>.

This provision, although it is framed within the formulation of Annual Reports, is of great relevance, since its chapters IV and V have a structure and teleology similar to the Country Reports and, in any case, the aforementioned provision reflects the importance of ensuring the reliability of the sources consulted – as an essential element to ensure the rigor with which the findings are presented and the recommendations are justified. It could hardly be stated that such a prerogative is not applicable to the other reports issued by the Commission.

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<sup>1011</sup> IACHR Rules of Procedure. Article 60.a.

<sup>1012</sup> IACHR Rules of Procedure. Article 60.b.

<sup>1013</sup> Item a to h

In this framework, the Commission's Strategic Plan 2023-2027 includes elements of great relevance that reinforce the importance of the rigor and quality of the Country Reports. In particular, it first establishes as a mitigation strategy the examination of the quality of its reports, including the country reports, and the strengthening of accountability with a focus on results and transparency<sup>1014</sup>.

Second, and for the purpose of assessing possible risks of human rights violations – a task that would feed into the country reports – the Strategic Plan provides for the adoption of indicators, methodologies and tools for the collection, recording, cataloguing and analysis of information from closed and open sources<sup>1015</sup>.

Finally, the Strategic Plan places transparency as an institutional value, by virtue of which the IACHR must account for its decisions or work<sup>1016</sup>. This institutional value, notwithstanding the observations that I will make at the end, must permeate in a cross-cutting way each of the processes that take place in the Commission, and its implementation, within the framework of the formulation of Country Reports, is subject, among others things, to the existence of clear and objective parameters for the collection and comparison of information.

In this way, all these provisions urge the Commission to ensure a rigorous and methodologically sound approach in each of the pronouncements it makes and, in particular, in the reports in which it analyzes the human rights situation in the States Parties to the OAS.

Methodological rigor, as has been maintained doctrinally, implies adopting parameters and measures that ensure the credibility, authenticity, trust,

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<sup>1014</sup> IACHR. Strategic Plan 2023-2027. Page 103.

<sup>1015</sup> IACHR. Strategic Plan 2023-2027. Page 68.

<sup>1016</sup> IACHR. Strategic Plan 2023-2027

and integrity of certain findings<sup>1017</sup>. In this regard, I must emphasize that in the social sciences a good quality study differs from a deficient one when it is rigorous<sup>1018</sup>.

Rigor becomes even more relevant when the information that is issued has the potential to define policies, strategies and actions to be followed in the face of certain phenomena. In this framework, this conceptual power must be regulated in some way, in such a way that the judgments that are issued, based on that knowledge, are legitimate to the sources from which they emerged<sup>1019</sup>. This, meanwhile, an investigation without rigor, becomes the unauthorized voice of a knowledge that becomes uncertain<sup>1020</sup>.

Under this framework, I emphasize that a rigorous and methodologically sound approach is not only a mandate underlying the important functions assigned to the Inter-American Commission, under the OAS Charter, but also clarifies, enriches, makes transparent, and ensures the quality, relevance, and usefulness of the findings identified in the Reports – as an essential premise for the promotion of human rights.

## **1.2. Observations on the Report**

Having defined the importance of methodological rigor in the Commission's activities, I will now expose some gaps in the Country Report on El Salvador.

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<sup>1017</sup> Castillo, Edelmira; Vásquez, Martha Lucía Methodological rigor in qualitative research

Colombia Médica, vol. 34, no. 3, 2003, pp. 164-167 Universidad del Valle

Cali, Colombia

<sup>1018</sup> CORNEJO, Marcela and SALAS, Natalia. Methodological Rigor and Quality: A Challenge to Qualitative Social Research. *Psicoperspectivas* [online]. 2011, vol.10, n.2 [cited 2024-07-02], pp.12-34. Available at: <[http://www.scielo.cl/scielo.php?script=sci\\_arttext&pid=S0718-69242011000200002&lng=es&nrm=iso](http://www.scielo.cl/scielo.php?script=sci_arttext&pid=S0718-69242011000200002&lng=es&nrm=iso)>. ISSN 0718-6924. <http://dx.doi.org/10.5027/psicoperspectivas-Vol10-Issue2-fulltext-144>.

<sup>1019</sup> Ibid

<sup>1020</sup> Ibid

In particular, I will make some observations regarding: (i) the temporal delimitation of the Report, (ii) the absence of methodological clarity in the selection of testimonies and reports cited, and (iii) the rigor of the sources that support the alleged facts described.

- **In relation to the temporal delimitation**

In the report analyzed in this dissenting partial opinion, information has been included that exceeds the temporal, factual and contextual framework on which the document deals. In particular, in paragraphs 227, 229, 230, 231, 237, 238, 239, 263, 386, 387, 388, 389 and 391.

Thus, the purpose defined in the draft report corresponds to the following: "to analyze the effects of the state of emergency decreed in March 2022 on human rights in El Salvador, as well as the compatibility of the suspension of the exercise of rights and guarantees with inter-American human rights regulations and standards."

However, the aforementioned paragraphs include information on the dismissal of judges and other political matters that are not directly related to the state of emergency and, in view of the temporal and contextual overflow of these incorporated facts, there is not enough information to allow them to be contrasted and verified.

- **In relation to the rigor of the sources that support alleged events that occurred**

I note with concern that the report refers to the alleged existence of systematic patterns or practices of human rights violations (for example, in paragraphs 147 or 177), without, on the one hand, identifying the sources from which such statements are derived, which, moreover, are particularly serious.

On the other hand, I emphasize that the sources cited (for example in paragraph 177) do not correspond to the factual or contextual element to be proved. In particular, in the aforementioned paragraph, reference was made

to the alleged existence of a pattern of illegal and arbitrary, generalized and systematic detentions" and in a footnote there are cases of other States or figures of detentions carried out in a specific period, without providing any further elements that would allow concluding that they are arbitrary.

In this regard, I emphasize the importance of the Commission's reports being legally and factually supported. This implies including the sources that support the conclusions and reflecting a true exercise in confrontation – when one of the various positions on a reality is assumed. This becomes more important when delicate statements are made in the face of the alleged existence of patterns or practices.

On this last point, I emphasize that the Inter-American Court of Human Rights has pointed out the seriousness of affirming that a State has perpetrated or tolerated a pattern of human rights violations and, therefore, has stressed that an evaluation of the evidence must be carried out that is capable of creating the conviction of the truth of the facts denounced<sup>1021</sup>.

Although this pronouncement was formulated by the Inter-American Court of Human Rights within the framework of its contentious jurisdiction, it is fully applicable to any scenario in which it is intended to factually delimit a reality and attribute actions or omissions to a State – associated with patterns or practices of human rights violations – as in fact occurs in the Report analyzed.

- **In relation to the methodological criteria considered for the selection of testimonies and reports that substantiate some of the findings**

On the one hand, in several sections of the report, reference is made to the collection of 29 testimonies from people detained and released, legal representatives and family members. These accounts are of the greatest relevance, as they support several of the statements or conclusions reached by the Commission.

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<sup>1021</sup> Inter-American Court of Human Rights. Case of Velásquez Rodríguez v. Honduras. Bottom. Judgment of July 29, 1988. Series C No. 4. Paragraph 129



In spite of the above, I find an important gap in the Report in that it does not account in a transparent and objective manner for: (i) the criteria taken into account to delimit such a universe of testimonies and select the people interviewed; (ii) the relevant characteristics of the participants – discrimination by roles, i.e. how many correspond to detainees, family members and representatives; (iii) the civil society organizations that facilitated communication with the interviewees, and (iv) whether any of the testimonies listed coincide with possible petitions pending before the Commission.

On the other hand, I note that the Report repeatedly cites several civil society organizations – whose voice, of course, has the greatest relevance. However, given the special value given in the Report to its findings, it would have been essential to have a methodological chapter that, in turn, would allow: (i) to identify the criteria considered to select such a source of information and (ii) to incorporate, in turn, the relevant methodological approaches of the external sources of information consulted.

In this regard, I would like to draw attention to the fact that such information is not only necessary to ensure the rigor of the Report, the transparency of the Commission and its objective approach to the facts; but also to materially guarantee the State's right to defense, with respect to the information provided, and an exercise of comprehensive contrast.

## **2. The IACHR's Enforcement Function and the Alleged Non-Application of Essential Human Rights Principles**

In this vote, I have referred to the State's right to defense in the formulation of the Country Report under scrutiny. At the same time, and as I indicated in the deliberation phase, by virtue of the principle of subsidiarity, it is not for the Commission to determine whether or not there were sufficient reasons in the State to declare and maintain the state of emergency; rather, to analyze, for example, whether the legal acts issued that declared and extended the state of emergency had the motivation required in international human rights law.

I uphold the latter because, first, the State is in the best position to define the appropriateness or otherwise of measures such as those analyzed in the specific case and, second, insofar as, under this framework, the Commission does not have sufficient inputs to make such an assessment – which, by the way, requires a comprehensive approach, that goes beyond the legal.

The truth is that behind these observations, two essential questions arise at the center of the discussion: Does the principle of subsidiarity apply to the Country Reports of the Inter-American Commission? Is the right to defense also enforceable in these types of proceedings? My answer is in the affirmative for the reasons that I will develop below.

In this context, first, I would like to draw attention to the fact that the complementary nature of the Inter-American Human Rights System derives from the preamble to the ACHR, which establishes that the IAHR is "an adjuvant or complementary to the [protection] offered by the domestic law of the American States" and that there is no treaty provision that limits its framework of application.

In fact, the Inter-American Court of Human Rights and the IACHR have established that the principle of complementarity is the core or central pillar of the IAHR and informs the entire System transversally<sup>1022</sup>, so it is consistent with this that it is also applied to processes related to the issuance of country reports.

This, since these diagnoses of general or special human rights situations also require taking into account that, precisely, it is the States that are the

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<sup>1022</sup> Case of Gelman v. Uruguay. Supervision of Compliance with Judgment. Resolution of the Inter-American Court of Human Rights of 20 March 2013: <https://www.oas.org/es/cidh/Informes/pdfs/proteccion-personas-defensoras.pdf>; [https://www.oas.org/es/cidh/decisiones/mc2022/res\\_50-22\\_mc\\_517-22\\_br\\_es.pdf](https://www.oas.org/es/cidh/decisiones/mc2022/res_50-22_mc_517-22_br_es.pdf)

first to be called upon to guarantee human rights within their territories<sup>1023</sup>. The foregoing, since its authorities are in a privileged position to define the best ways to protect and guarantee human rights, since they face internal problems with a degree of immediacy, contextual knowledge and even specialization – for example, through ministries or special administrative departments – infinitely greater than that which any organ of the IAHRs could achieve.

This is reinforced if we bear in mind that these reports – as indeed the report analyzed in this vote does – address the aforementioned international obligations of the States, derived from the American Convention and other instruments of the System, and make recommendations.

Second, the Inter-American Court of Human Rights has established that judicial guarantees must be observed in the different proceedings<sup>1024</sup> without there being any justification for the fact that the same rights that the IAHRs has developed should not be guaranteed by its organs to the States.

This is especially true when the contradiction and the right to defense are expressly provided for in the procedure itself in the country reports – in particular, when it contemplates a stage for the submission of observations by the State to the draft report approved by the Commission.<sup>1025</sup>

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<sup>1023</sup> Inter-American Court of Human Rights. Case of *Gelman v. Uruguay*. Supervision of Compliance with Judgment. Resolution of the Inter-American Court of Human Rights of March 20, 2013, Paragraph 70; Inter-American Court of Human Rights. Case of the *Santo Domingo Massacre v. Colombia*. Preliminary Objections, Merits, and Reparations. Judgment of November 30, 2012. Series C No. 259. Paragraph 142. Case of *Acevedo Jaramillo et al. v. Peru*. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 157. Paragraph 66.

<sup>1024</sup> Inter-American Court of Human Rights. Case of the *Constitutional Court v. Peru*. Merits, Reparations and Costs. Judgment of January 31, 2001. Series C No. 71. Paragraph 69; Inter-American Court of Human Rights. Case of *Favela Nova Brasília v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 16, 2017. Series C No. 333. Paragraph 185; Inter-American Court of Human Rights. Case of *Petro Urrego v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 8, 2020. Series C No. 406. Paragraph 119

<sup>1025</sup> IACHR Rules of Procedure. Article 60

Third, the Commission's Strategic Plan 2023-2027 recognized coherence as an institutional value." In particular, under the Resolution, the Commission stressed that "in order to effectively support the promotion and defense of human rights in the hemisphere, [the] internal structures and processes must be consistent with [the] mission."<sup>1026</sup>

In this regard, it is worth noting that the Strategic Plan's mission was to promote "the observance and defense of human rights in each and every one of the States of the Americas in accordance with the highest international standards, in order to safeguard the dignity of individuals and strengthen the rule of law and democracy."<sup>1027</sup>

Under this framework, the value of coherence requires the Commission to adopt a human rights perspective in each of the proceedings carried out. This means ensuring the full enjoyment of fundamental guarantees, among which is the right to defense.

Finally, the need for these principles and guarantees is reinforced when the report formulates findings associated with the international responsibility of the State, such as the alleged *unconventionality* of legal frameworks or the alleged existence of human rights violations perpetrated by agents of the State – even though, as I have pointed out on several occasions, this does not represent the opportunity or the mechanism to do so.

For these reasons, I reiterate that the principle of subsidiarity and fundamental guarantees such as the right to defense, by virtue of the preamble of the Convention itself and the institutional value of coherence, extend to all proceedings in the Inter-American Commission, including country reports.

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<sup>1026</sup> IACHR. Strategic Plan 2023-2027. Page 28.

<sup>1027</sup> IACHR. Strategic Plan 2023-2027. Page 28.

### 3. A call for transparency

In the processing of the report analyzed, the State of El Salvador raised some concerns regarding the financing of the Inter-American Commission and the organizations cited in the report, as well as the alleged existence of conflicts of interest<sup>1028</sup>. In particular, he highlighted the existence of the same funder for both the Commission and civil society organizations referenced in the Report<sup>1029</sup>.

In this regard, I would like to point out again that the Strategic Plan 2023-2027 (i) identifies transparency as an institutional value<sup>1030</sup> and (ii) projects the strengthening of accountability and transparency of institutional processes as one of the programs to be advanced<sup>1031</sup>.

In particular, the Strategic Plan states that "the IACHR will promote greater dissemination and transparency of its administrative processes and the use of financial resources, as well as the management of human talent, in accordance with the standards of the OAS and the IACHR. To this end, a specific plan will be developed with a route to address the priorities defined on the basis of consultations and internal policy."<sup>1032</sup>

It is in this context that the Commission issued its Policy on Access to Information and Proactive Transparency, in which it reiterated that institutional transparency represents a central element for the functioning of the Inter-American Commission<sup>1033</sup>.

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<sup>1028</sup> Permanent Mission of El Salvador to the OAS. Observations of the State of El Salvador on the IACHR Report "State of Exception and Human Rights in El Salvador." Page 12 et seq

<sup>1029</sup> Permanent Mission of El Salvador to the OAS. Observations of the State of El Salvador on the IACHR Report "State of Exception and Human Rights in El Salvador." Page 15 et seq

<sup>1030</sup> IACHR. Strategic Plan 2023-2027. Page 28.

<sup>1031</sup> IACHR. Strategic Plan 2023-2027. Page 58.

<sup>1032</sup> IACHR. Strategic Plan 2023-2027. Page 85.

<sup>1033</sup>IACHR. Inter-American Commission on Human Rights Policy on Access to Information and Proactive Transparency

The foregoing is fully consistent with the Inter-American Democratic Charter, an instrument that expressly recognizes that transparency is a fundamental component of the exercise of democracy and, therefore, of the guarantee of human rights<sup>1034</sup>.

In this context, I take this opportunity to make a special call to consider the observations presented by the State – and previously enunciated – and to promote a true inter-American dialogue that, from an active approach to transparency, allows these concerns to be resolved and addressed in a comprehensive manner.

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<sup>1034</sup> Inter-American Democratic Charter. Article 4.

## **CONCURRING VOTE BY COMMISSIONER JOSÉ LUIS CABALLERO OCHOA AND COMMISSIONER ANDREA POCHAK ON THE REPORT ON THE STATE OF EMERGENCY AND HUMAN RIGHTS IN EL SALVADOR.**

### **I. On the importance of the Report**

1. On June 28, 2024, the Inter-American Commission on Human Rights (hereinafter "IACHR") approved the *Report on the State of Emergency and Human Rights in El Salvador*, after more than two years of monitoring the situation in the country since the declaration of the state of emergency in March 2022, which remains in force as of the date of issuance of this report.
2. This is a key report, linked to a **central theme** of the inter-American human rights system. Thus, the practice espoused by several countries in the region during the twentieth century of resorting to states of exception, emergency, or siege (estados de excepción, emergencia o de sitio) to resolve internal security issues, and the human rights abuses that were perpetrated during them, induced the American Convention on Human Rights (hereinafter, "American Convention"), more than 35 years ago, to regulate the substantive and formal limits to the suspension of rights (Article 27) and the Inter-American Court on Human Rights (hereinafter, "I/A Court H.R." or the "Inter-American Court") to dedicate two Advisory Opinions to this issue.<sup>1035</sup> In other words, the report on El Salvador does not address a "novel" issue, but one that has been on the central agenda of the inter-American system since its origins, giving rise to numerous jurisprudential pronouncements.
3. The seriousness of the situation evidenced by the *Report on the State of Emergency and Human Rights in El Salvador* requires emphasizing

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<sup>1035</sup> [I/A Court H.R., Advisory Opinion OC-8/87, Habeas Corpus in Emergency Situations \(Articles 27.2, 25.1 y 7.6 Convención Americana sobre Derechos Humanos\)](#), Serie A N° 8, 30 de enero de 1987; y [Opinión Consultiva OC-9/87, Garantías judiciales en estados de emergencia \(arts. 27.2, 25 y 8 Convención Americana sobre Derechos Humanos\)](#), Serie A N° 9, 6 de octubre de 1987.

that the States Parties to the American Convention must pay special attention to the meaning and nature of this concept, as well as the **risks it may pose to democracy and human rights**, especially if the state of emergency is prolonged, rendering it normal rather than exceptional and more liable to contravene the Convention.

4. For this reason, the first part of this concurring opinion briefly highlights aspects related to the state of emergency, in order to highlight its adverse effects on human rights and democratic institutions when its use does not comply with international standards on the matter. The second part of this opinion discusses some methodological aspects related to the preparation of these kinds of monitoring reports in general, and of this document in particular.

## **II. The main inter-American standards regarding states of emergency and human rights**

5. Although the standards developed by the inter-American system - and particularly by the Inter-American Court through its Advisory Opinions 8/87 and 9/87- are categorical with respect to the fact that states of emergency must be interpreted restrictively, the term continues to be used frequently in the region.
6. In the Commission's view, states of emergency must precede **situations that seriously threaten public order or the security of the State**, such as war, public danger, or other emergency that threatens its independence or security;<sup>1036</sup> that is, there must be an actual "threat [to] the normal life of a nation [...] greater than mere civil disorder, [...] in the sense that damage to security is imminent and not latent or potential."<sup>1037</sup> The Human Rights Committee, for its part, has

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<sup>1036</sup> IACHR, [Informe anual de la Comisión Interamericana de Derechos Humanos 1980-1981](#), OEA/Ser.L/V/II.54 doc.9 rev.1, October 16, 1981 states of Emergency; [Informe sobre la situación de los Derechos Humanos de un sector de la población nicaragüense de origen Miskito](#), OEA/Ser.L/V/II.62 doc. 10 rev. 3, 29 de noviembre de 1983, Segunda Parte, apartado E; [Informe No. 48/00, Caso 11.166, Walter Humberto Vásquez Vejarano Perú](#), 13 de abril de 2000, párrs. 33 and 39.

<sup>1037</sup> CIDH, [Informe sobre la situación de los Derechos Humanos de un sector de la población nicaragüense de origen Miskito](#), ya citado.



pointed out that "not every disturbance or catastrophe constitutes an exceptional situation endangering the life of the nation."<sup>1038</sup> Although the IACHR stated that States have "discretionary leeway to assess the existence of such threats"<sup>1039</sup>, such leeway cannot be conceived in isolation from the American Convention on Human Rights.

7. The review of the facts pursues, from a practical and legal point of view, an obvious purpose: the defense of the State and, of course, the guaranteeing of a democratic Constitution. This purpose is undermined if the facts preceding a state of emergency respond to situations that are not serious or only apparently serious. The IACHR emphasized that the state of emergency is **intended** to eliminate threats to the independence or security of the State, or public order and, consequently, to **preserve and/or recover democratic institutions or the integrity and sovereignty of the State**.<sup>1040</sup> Likewise, the Human Rights Committee has specified that the purpose of a state of emergency is to eliminate actual or imminent dangers that threaten "the life of the nation."<sup>1041</sup> In the same vein, the Siracusa Principles approved by the now defunct Commission on Human Rights emphasize that the purpose of a state of emergency is to protect the integrity of the entire population, the territory of the State, political independence, or the functioning of institutions to ensure and protect rights in a comprehensive manner.<sup>1042</sup> Consequently, as clarified by the Inter-American Court of Human Rights, internal conflict and unrest that do not represent a serious

<sup>1038</sup> ONU, Comité de Derechos Humanos, [Observación General No. 29, Estados de Emergencia \(artículo 4\)](#), CCPR/C/21/Rev.1/Add.11, 31 de agosto de 2001, párr. 3.

<sup>1039</sup> CIDH, [Informe sobre la situación de los Derechos Humanos de un sector de la población nicaragüense de origen Miskito](#), ya citado.

<sup>1040</sup> IACHR, [Annual Report of the Inter-American Commission on Human Rights 1980-1981](#), OEA/Ser.L/V/II.54 doc.9 rev.1, October 16, 1981, "States of Emergency"; [Informe sobre la situación de los Derechos Humanos de un sector de la población nicaragüense de origen Miskito](#), already cited.

<sup>1041</sup> Comité de Derechos Humanos, [Observación General No. 29, Estados de Emergencia \(artículo 4\)](#), ya citado, párr. 2.

<sup>1042</sup> Comisión de Derechos Humanos, [Principios de Siracusa sobre las Disposiciones de Limitación y Derogación del Pacto Internacional de Derechos Civiles y Políticos](#), 28 de septiembre de 1984. Ver, entre otros, Principio 39.

and imminent threat in the aforementioned sense do not justify a legitimate state of emergency.<sup>1043</sup>

8. The purpose of the state of emergency has a broader justification which consists precisely in eliminating threats to democratic rights and institutions posed by the exceptional circumstances. Consequently, the means adopted to confront a serious situation cannot involve the elimination of rights and freedoms of the population or a segment of it, as this would involve a contradiction and contravene the ultimate purpose of the state of emergency. Consequently, **the reasonableness and proportionality of the measures are key** and must be designed "to the extent [and for the period of time] strictly required by the exigencies of the situation" (Article 27, ACHR). In this regard, the American Convention requires that the measure adopted must be proportionate to the end sought, or, in other words, in no way may the degree of restriction be greater than the degree of danger.<sup>1044</sup> In this task it is vital to ensure that reasons (motives) for the measure are provided, and that the need for the restrictions to be imposed is explained.<sup>1045</sup> Thus, the means used to fulfill the purpose of the state of emergency must necessarily comply with the principle of legality, the regulated exercise of power, and accountability.<sup>1046</sup>
  
9. Likewise, it is necessary to highlight the duration of the measure. The **duration** (*temporalidad*) of states of emergency and the consequent suspension of rights entails a very thin line that can turn life in democracy into a political system with autocratic features. It is that delicate.

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<sup>1043</sup> Corte IDH, Opinión Consultiva OC-8/87, ya citada, paras. 20, 35 and 42.

IACHR, Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin, November 29, 1983.

<sup>1045</sup> CIDH, [Informe No. 48/00, Caso 11.166, Walter Humberto Vásquez Vejarano, Perú](#), ya citado, paras. 34 and 36.

<sup>1046</sup> Comisión de Derechos Humanos, [Principios de Siracusa sobre las Disposiciones de Limitación y Derogación del Pacto Internacional de Derechos Civiles y Políticos](#), cit., Principio 51 y siguientes; Corte IDH, Opinión Consultiva OC-8/87, ya citada, paras. 26-27.

10. The prolongation in time of a state of emergency undermines its purpose, since opportunities are lost to recover a situation of normality typical of a democracy, with full rights and freedoms. The Inter-American Court has expressed it very well by understanding that "the suspension of guarantees cannot be disassociated from the "effective exercise of representative democracy" referred to in Article 3 of the OAS Charter [...]. The suspension of guarantees lacks all legitimacy whenever it is resorted to for the purpose of undermining the democratic system."<sup>1047</sup>
  
11. The IACHR has made it clear that a state of emergency prolonged the time strictly needed to attend to the emergency generates concentration of power and undermines the rule of law.<sup>1048</sup> The Sicaracusa Principles emphasize that measures to suspend rights should ensure a return to normality in the shortest possible time.<sup>1049</sup> The temporary and provisional nature of states of emergency is essential to ensure that these extraordinary measures do not become permanent. This has been noted by the Human Rights Committee in its supervision of states of emergency in a number of countries, in which serious human rights violations were committed.<sup>1050</sup> The temporary nature of a state of emergency also implies a **periodic review** of the need to continue with the measure.<sup>1051</sup>
  
12. These considerations point directly to a public security policy based on the declaration of states of emergency. The report on El Salvador, which prompts this concurring opinion, leads to the need to

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I/A Court H.R., Advisory Opinion OC-21/87 , the aforementioned. Series A No.21, par. 20.

<sup>1048</sup> IACHR, [Annual Report of the Inter-American Commission on Human Rights 1980-1981](#), cited above; and [Report No. 48/00, Case 11.166, Walter Humberto Vásquez Vejarano, Peru](#), cit. 35.

<sup>1049</sup> Comisión de Derechos Humanos, [Principios de Siracusa sobre las Disposiciones de Limitación y Derogación del Pacto Internacional de Derechos Civiles y Políticos](#), cit., Principio 48.

<sup>1050</sup> Comité de Derechos Humanos, [Examen de los informes presentados por los Estados parte en virtud del Art. 40 del Pacto, Israel](#), CCPR/C/79/Add.93 (1998), párr. 11; [Examen de los informes presentados por los Estados parte en virtud del Art. 40 del Pacto, Líbano](#), CCPR/C/79/Add.78 (1997), párrs. 10-11.

<sup>1051</sup> Comisión de Derechos Humanos, [Principios de Siracusa sobre las Disposiciones de Limitación y Derogación del Pacto Internacional de Derechos Civiles y Políticos](#), cit., Principio 55.

emphasize this premise. A traditional approach to public security is biased towards excessive repression, centralization of power, limited participation, and violation of human rights. A public security policy disguised by prolonged restrictions under a state of emergency represents the application of a traditional approach, as it weakens or even nullifies human development.

13. It is important to recall that the inter-American system has moved away from the traditional public security approach to adhere to the multidimensional approach. *The Inter-American Democratic Charter* of 2001 is one of the first steps toward this broader approach to security in the region and underscores the importance of democracy, development, and cooperation for security. It believes that democracy is essential for the stability, peace, and development of the region, and promotes the protection of human rights and fundamental freedoms as well as internal security.<sup>1052</sup> The 2003 *Declaration on Security in the Americas* explicitly recognizes the multidimensional approach and goes beyond military threats and the pure exercise of force/violence, including concepts such as human security, economic development, public health, and the environment in the design of public policies.<sup>1053</sup> *The 2011 Declaration of San Salvador on Security in the Americas* broadens the concept of security to include non-traditional threats such as terrorism, organized crime, poverty, and natural disasters. This 2011 declaration states that "public security policies require the participation and cooperation of multiple actors".<sup>1054</sup> Thanks to these developments within the inter-American system, the traditional approach to public security is now rejected and with it the possibility of constituting states of emergency as a normal mechanism for maintaining public order.

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<sup>1052</sup> Organization of American States, *Inter-American Democratic Charter* (2001), arts. 1-3. [https://www.oas.org/dil/esp/carta\\_democratica\\_interamericana\\_11sep2001.pdf](https://www.oas.org/dil/esp/carta_democratica_interamericana_11sep2001.pdf)

<sup>1053</sup> Organización de Estados Americanos, *Declaración de Seguridad en las Américas* (2003), párrs. 1 and 2. <https://www.oas.org/sap/peacefund/VirtualLibrary/KeyPeaceInstruments/DeclarationOnSecurityInTheAmericas/DeclarationSecurityAmericasSpanish.pdf>

<sup>1054</sup> Organización de Estados Americanos, *Declaración de San Salvador sobre Seguridad en las Américas* (2011), art. 5. <https://www.oas.org/sap/peacefund/VirtualLibrary/DeclarationSanSalvadorCitizenSecurityAmericas/DeclaracionSanSalvadorSobreSeguridad.pdf>

14. Our societies must be warned of the risks posed by security policies based on the traditional approach. In the short term, they can show apparently effective results, due to a "hard line" policy that generally focuses on restricting rights, mass arrests, and legal amendments to maximize the effectiveness of the State's punitive power. Security policies, however, have made little progress in dismantling the highest levels of illegal networks, or in strengthening police and judicial institutions to deal with these criminal phenomena within the parameters of the rule of law. Public opinion in the region has closely monitored the results obtained in El Salvador, and some authorities and candidates for elected office have been tempted to imitate its policy.<sup>1055</sup> Despite the immediate success in controlling the presence of gangs in the streets,<sup>1056</sup> the model has had very high costs in terms of the human rights of many people, while it has made it difficult to devote efforts to the institutionalization of democratic and efficient security policies, sustainable in the medium and long term.

### III. On the process of preparation and approval of the Report

15. The report was challenged by the State of El Salvador and by the dissenting partial vote of Commissioners Carlos Bernal Pulido and Stuardo Ralón Orellana (although Commissioner Gloria M. De Mees voted against the report without specifying in what terms) for an alleged lack of methodological rigor. In this regard, it is important to note that the criticisms formulated in the dissenting partial vote - which this concurring vote will attempt to respond to - were not pointed out during the process of drafting the *Report* by the Commissioners who are now voting in partial dissent, but only when the State of El Salvador sent its observations on the preliminary version.
16. In this regard, it should be clarified that the process of preparing this type of Commission report is complex and involves different stages,

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<sup>1055</sup> Meléndez-Sánchez, M., & Vergara, A., "The Bukele Model: Will It Spread?," en *Journal of Democracy* 35(3), 2024, 84-98; disponible en: <https://doi.org/10.1353/jod.2024.a930429>

<sup>1056</sup> "Sin maras y sin democracia," *El Faro*, 3 de febrero de 2023, disponible en: <https://elfaro.net/es/202302/columnas/26696/Sin-maras-y-sin-democracia.htm>.

which implies several months of work. Even though the technical team of the Executive Secretariat of the IACHR bears the greatest responsibility, it is true that the commissioners - especially those who serve as rapporteurs of the countries concerned - can and should participate in the different bodies involved. Of course, it is the plenary of the Commission that takes the decision to address the issue through a specific report. For their part, the Country Rapporteurs are usually involved in defining the specific topics to be included in the report (work plan), in the questionnaires that are sent to the State and civil society to enable them to participate with contributions, in the requests for working visits, or in the calls for public hearings aimed at compiling the information that will be used in the report. It should also be noted that the preliminary version of the reports, before being sent to the States concerned, requires the approval of the plenary of the Commission.

17. 17. In this particular case, the preliminary version of the *Report on the State of Emergency and Human Rights in El Salvador* -which, of course, already included the essential information systematized by the IACHR and contained practically the same conclusions that are part of the final version- was approved by the seven members of the Inter-American Commission, in its previous composition, including the two commissioners who are now voting in partial dissent. None of the methodological criticisms later formulated in the dissenting vote were expressed at the time.

#### **IV. On the monitoring mandate of the IACHR and its differences with the jurisdictional mandate**

18. A distinctive feature of the IACHR is that it pursues<sup>1057</sup> two unique mandates, which are independent of each other and, at the same time, derive from the same mission: "... to promote the observance

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<sup>1057</sup> Speech by René Cassin at the Inter-American Specialized Conference on Human Rights, 1969, cit. in: Respuesta de la Comisión Interamericana de Derechos Humanos al Consejo Permanente de la OEA respecto de las recomendaciones contenidas en el "Informe del Grupo de Trabajo Especial de Reflexión sobre el Funcionamiento de la CIDH para el Fortalecimiento del Sistema Interamericano de Derechos Humanos," 24 de octubre de 2012, CP/INF.6541/12 corr. 1.

and protection of human rights" (Article 106 of the OAS Charter). Indeed, the Inter-American Commission on Human Rights has a jurisdictional or contentious mandate, and a monitoring and promotional mandate.

19. In contentious matters there is a dispute or controversy of fact and/or law, in which the IACHR exercises a quasi-jurisdictional role to determine international liability. For this reason, the contentious procedures are regulated in detail, including procedural arrangement specifically designed for States to make observations, check evidence, and make suggestions. These arrangements are established as genuine procedural rights for States.<sup>1058</sup>
20. On the other hand, the rules governing the exercise of the monitoring mandate are considerably more flexible than those established for the contentious/jurisdictional procedure. Thus, while the American Convention subjects the admissibility of petitions to compliance with a series of substantive and procedural requirements (Article 46), it makes the approval of reports and recommendations subject only to an analysis of "convenience" by the IACHR (pursuant to Article 41.b and c of the ACHR, and Article 18.b and c of the Statute of the IACHR).
21. That said, in strictly procedural terms, even in this monitoring function, the State is given an opportunity to defend its position/disclaimer, by a specific deadline. Apart from the disclaimer, any State disagreement with respect to the monitoring exercised by the IACHR should be channeled through the political bodies of the OAS.<sup>1059</sup> The IACHR, for its part, must study the State observations it receives, and may maintain and/or modify the report or even make decisions regarding the publication of the document, all on the basis of such observations (pursuant to Article 60.a, b and c of the Rules of Procedure). This is

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<sup>1058</sup> I/A Court H.R., Advisory Opinion No. 19/05, Control of Legality in the Exercise of the Powers of the Inter-American Commission on Human Rights, Series A No. 19, November 28, 2005, para. 27.

<sup>1059</sup> *Ibid*, par. 30.

precisely what happened with this *Report on the State of Emergency and Human Rights in El Salvador*.

22. The principle of subsidiarity does not preclude the IACHR's exercise of its autonomous monitoring powers. Indeed, while enshrining the principle of subsidiarity, the Convention grants the IACHR the power to decide, based on its own "expediency" analysis, whether to approve a country report. Therefore, it is up to the IACHR to reconcile the validity of both elements, based on its institutional nature as a principal and autonomous organ of the OAS.
23. The adoption of a thematic report or a country report does not constitute a prejudgment on possible contentious cases.<sup>1060</sup> The adoption of a country report, even when it refers to individual cases, does not rule on petitions, since the latter, depending on the case, "will follow the corresponding regulatory procedure, which, if it has not yet been completed, will end with a pronouncement or resolution on the merits of the matter that has been the subject of the complaint."<sup>1061</sup> In general, mentions of individual cases or complaints in a country or thematic report serve to illustrate the standards and support the interpretative dimension that elucidates the content of rights. For the same reason, there is no *lis pendens* or duplication between the two types of cases.<sup>1062</sup>
24. Moreover, the thematic or country reports do not seek to establish the international responsibility of the State in relation to the situations examined.

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<sup>1060</sup> IACHR, [Report on the Situation of Human Rights in Argentina, OEA/Ser.L/V/II.49 doc.19, April 11, 1980, Introduction](#) OEA/Ser.L/V/II.49 doc.19, April 11, 1980, Introduction; IACHR, [Report on the Situation of Human Rights in Guatemala, October 13, 1981, Methodology](#), October 13, 1981, Method used, paras. 1-3; CIDH, [Informe sobre la Situación de los Derechos Humanos en Panamá](#), 9 de noviembre de 1989, Introducción.

<sup>1061</sup> CIDH, [Informe sobre la Situación de los Derechos Humanos en Argentina](#), ya citado.

<sup>1062</sup> Digesto de decisiones sobre admisibilidad y competencia de la CIDH, OEA/Ser.LV/II.175 Doc. 20, March 04, 2020, paras. 90-91.



## V. On the methodology of monitoring reports

25. On the other hand, the IACHR's sixty-year tradition in the autonomous exercise of its monitoring mandate should be taken into account.
26. First of all, it is important to emphasize that the Inter-American Commission has **full autonomy** to carry out that mandate and, for that reason, it is its own rules of procedure that define the methodology to be followed in doing so (Article 39 of the American Convention). In this regard, the preparatory work for the American Convention reflects an explicit concern to safeguard the autonomy of the IACHR, seeking to prevent the OAS General Assembly from diminishing or altering it through the Statute.<sup>1063</sup>
27. Second, the **flexibility of** the monitoring mandate has allowed the IACHR to deploy, over the last 65 years of its existence, all its wisdom and creativity <sup>1064</sup>to enhance its legitimacy and advocacy capacity. To date, 231 thematic, country, and chapter IV.B reports in its annual report have been approved. In particular, 150 of these reports involve a country or group of countries in the region, while 81 are country reports. In all these cases, the IACHR fulfilled its mandate in an independent, objective, and impartial manner, applying the methodology enshrined in its rules of procedure and tradition.
28. Indeed, from the outset, the IACHR has made use of different sources of information, all of which are duly mentioned in the documents it issues, to carry out this monitoring task. In this regard, it clarified early on that the lack of consent for a visit does not

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<sup>1063</sup> Proceedings and Documents of the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 7-22 November 1969, OEA/Ser.K/XVI/1.2, cit. in: Respuesta de la Comisión Interamericana de Derechos Humanos... cit., párr. 14.

<sup>1064</sup> Medina Quiroga, Cecilia; "The Role of Country Reports in the Inter-American System of Human Rights"; in: Netherlands Quarterly of Human Rights 14(5), 1997, págs. 457-473.

prevent it from issuing a country report "... based on the use of other sources it has been able to collect."<sup>1065</sup>

29. The **collection of testimonies** from victims, family members, social sources, and human rights activists, among others, is an established practice in monitoring activity.<sup>1066</sup> For example, the IACHR used the testimonies in its first reports on Cuba<sup>1067</sup> and, more recently, when it was prevented from visiting Venezuela. This practice was also adjusted to overcome restrictions imposed by the pandemic by making intensive use of virtual and remote media.
30. On many occasions, the Commission decides not to reveal the identity of the persons heard or interviewed and to keep the testimony confidential,<sup>1068</sup> for security reasons. Particularly in the context of El Salvador, the Commission frequently encountered fear of reprisals for the information provided.
31. The contribution of **reports and documents from civil society organizations** is also vital for the IACHR to carry out its mandate. These organizations play a key role in any monitoring activity (requests for information, public hearings, working visits, on-site visits, country reports, thematic reports, etc.), due to the embodiment of these types of organizations in the political and social fabric of each

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<sup>1065</sup> Vargas Carreño, Edmundo; "Funciones de la Comisión Interamericana de Derechos Humanos: observaciones in loco e informes de la Comisión Interamericana de Derechos Humanos"; in: AA.VV, El sistema interamericano de protección de los derechos humanos en el umbral del siglo XXI, T. 1, Corte IDH, San José, 2003, pág. 512.

<sup>1066</sup> United Nations High Commissioner for Human Rights, "Commissions of Inquiry and Human Rights Fact-finding Missions. Guía y práctica," 2015, pág. 49.

<sup>1067</sup> Vargas Carreño, Edmundo, "Funciones...", cit.

IACHR, Second Report on the Situation of Human Rights in Peru, June 2, 2000. **30 y 31**; [Informe sobre la Situación de los Derechos Humanos en Guatemala](#), 13 de octubre de 1981, Capítulo II, C, "Muertes Atribuidas a las Autoridades Gubernamentales o a sus Agentes", párrs. 1 y 2; [Informe sobre la Situación de los Derechos Humanos en Argentina](#), 11 de abril de 1980, Capítulo III; CIDH, [Honduras: derechos humanos y golpe de estado](#), 30 de diciembre de 2009, párr. 161.

country and/or region.<sup>1069</sup> The IACHR's tradition has involved, to a large extent, an alliance with the continent's human rights organizations, whose work it must promote and protect.<sup>1070</sup>

32. The consistent methodology also contemplates the **systematization and analysis of official information** obtained by the Commission or expressly provided by the State referred to in the report. In this sense, although in the preparation of thematic or country reports a contradictory opinion is not adopted, the State is assured the opportunity to present its observations on the text, as provided for in Article 60 of the IACHR Rules of Procedure. The opportunity for States to present information to enrich the report should not be confused, as the dissenting vote suggests, with exercise of the right of defense provided for in contentious proceedings (because it is not an adversarial process), and, even less so, maintain that this State right is guaranteed by Article 8 of the American Convention, which is dedicated exclusively to the protection of the rights of individuals.
33. In this regard, the practice of the IACHR is to send a specific questionnaire to the State during the preparation of the report, to gather documentation and the State's position on the different issues to be addressed in the document; as well as to provide the draft report once it has been prepared so that the State can send its observations and final comments by a given deadline that may be extended at the request of the State.
34. Finally, the methodology of this type of report establishes a **time frame** in which the specific situation will be evaluated. The definition of this time frame does not prevent the IACHR from resorting to previous data, initiatives, or events precisely to contextualize the policies or practices that are being analyzed on this occasion; that is, to establish comparisons, showing progress and/or setbacks.

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<sup>1069</sup> United Nations High Commissioner for Human Rights, Commissions of Inquiry and Verification Missions..., cit.

<sup>1070</sup> OAS, General Assembly, AG/RES.1671 (XXIX-0/99), June 7, 1999.

## **VI. On the methodology used in the *Report on the State of Emergency and Human Rights in El Salvador***

35. The methodology applied is explicitly described in this report (paragraphs 17 to 20). In particular, it should be noted that, in the absence of consent for an on-site observation, after successive requests from the IACHR, the use of the different types of primary and secondary sources provided for in the Rules of Procedure, which the IACHR has used on similar occasions, was especially relevant.<sup>1071</sup>
36. Specifically, the IACHR interviewed persons who were detained or their relatives or representatives, and/or relatives of persons who died in state custody (footnote 11). In addition, it held public hearings, held meetings with civil society organizations that defend human rights and with alleged victims of human rights violations, and used the information available in other proceedings (footnote 12). The Commission also referred expressly and in detail to the long list of contributions from human rights organizations whose documents it consulted, identifying the respective link in each case (footnote 14).
37. The Report also details its extensive dialogue with the State of El Salvador. Specifically, the report explains that in 2023 a questionnaire was sent to the State requesting information on 33 issues and a request for additional information on 3 additional topics. In addition, the information provided by the State through other letters, data obtained in multiple public hearings, meetings, among other sources provided for in Article 59.5 of the Regulations, was also considered. It should also be noted that, once the draft document was submitted, the State prepared a report of 134 pages and 124 annexes, in which observations were made and various requests were formulated. Many of these observations were taken into account by the IACHR and led

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[CIDH, Democratic institutions, the rule of law, and human rights in Venezuela: Informe de país](#), 31 de diciembre de 2017, párrs. 60, 67; CIDH, [Democracia y derechos humanos en Venezuela](#), 30 de diciembre de 2009, Introducción, paras. 6, 8, 9, 11, 13 y 14; CIDH, [Informe sobre la Situación de los Derechos Humanos en Guatemala](#), 13 de octubre de 1981, A. Introducción párr. 10, B, Método empleado, paras. 1-3; CIDH, [Informe sobre la Situación de los Derechos Humanos en Panamá](#), 9 de noviembre de 1989, Introducción.

to modifications in the final version of the report. As can be seen, the Report incorporates excerpts from the State's statements in order to reflect its position on the different issues.

38. In short, in the report under analysis, the Commission applied the methodology established in its Rules of Procedure. Indeed, the IACHR is empowered to use "reliable and convincing" information (Article 59.5). In particular, it may "freely and privately" interview individuals and organizations (pursuant to Article 57.a and e). The State, for its part, is obliged to provide such persons and organizations with "guarantees" and to refrain from taking "reprisals" against them (Articles 56 and 57.b). Likewise, Article 59.5.g explicitly empowers the IACHR to consult contributions from civil society organizations and individuals. In summary, the methodology employed in the *Report on the State of Emergency and Human Rights in El Salvador* is consistent with the nature, tradition, and regulations of the Inter-American Commission's monitoring mandate over the past 65 years.

## **VII. On the transparency and independence of the IACHR**

39. Finally, it is necessary to refer briefly to the issue of transparency regarding the funding and independence of the IACHR.
40. Transparency in the financing of the Inter-American Commission on Human Rights is fundamental for guaranteeing its credibility and effectiveness in the region. The accountability information published year after year in Chapter VI of the Annual Report, which has the approval of the plenary of the IACHR, is a clear commitment to transparency. In this chapter, the IACHR exhaustively details the origin and use of its financial resources, allowing member states and the general public to evaluate the proper management of funds. In addition, in compliance with the mandate established by operative paragraph I.4 of resolution AG/RES. 2957 (L-O/20), since 2020, the Commission has reported annually to the Permanent Council of the Organization of American States on the execution of its resources, ensuring continuous and transparent oversight of its financial activities.

41. Consequently, possible allegations of alleged conflicts of interest generated by sharing funding sources with civil society organizations should be analyzed on a case-by-case basis, based on concrete evidence that the decisions of the Inter-American Commission were not adopted in an autonomous and independent manner; especially considering that the IACHR receives funds from a variety of state or inter-state public agencies or foundations that usually finance other human rights institutions and even programs or policies promoted by governments in the region.



**65** YEARS  
**IACHR**

Inter-American Commission on Human Rights