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Intentional Injustice: Destroying the Rule of Law in El Salvador

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1. INTRODUCTION

In a sweeping March 2022 decree, Salvadoran President Nayib Bukele imposed a countrywide *Régimen de Excepción* (State of Exception, SoE) in response to a rampage of violence in which members of the Mara Salvatrucha (MS13) randomly murdered 92 people between March 25 and 27, 2022.¹ More than two years later, the State of Exception remains firmly in place and is now a defining feature of governance in the country.²

Under the State of Exception, the rule of law is in tatters, and legal due process has been eviscerated. Because of a lack of transparency on the part of the government, it is impossible to know exactly how many people have been arrested but researchers at the Central American University's Human Rights Institute cite a figure of 80,500 at the time of writing,³ while as of April 2024, Amnesty International reported the number may be as high as 102,000, of which up to 78,000 may constitute arbitrary arrests.⁴ The Salvadoran government reports that as many as 10,000 people have been released due to lack of evidence against them,⁵ but many remain concerned about the government's willingness to address cases of those wrongfully detained. In a recent survey, 63 percent of respondents stated that they believe that neither police nor prosecutors will take action to establish the innocence of persons wrongly arrested, and 60 percent felt that judges would be unlikely to release people who have been arrested without cause.⁶

These mass arrests affect more than the detained. For instance, as of June 2023, an estimated 100,000 children and adolescents had been effectively orphaned following their parent's arrests, and the Salvadoran government had taken no meaningful steps to provide support to attend to their care and needs.⁷ In one such incident that Boerman is familiar with, five members of a family were arbitrarily arrested, which resulted in their eight minor children being placed in the care of their single grandmother, who lost all economic support they had been providing her while simultaneously taking on sole responsibility for the care of their children.

In addition to extensive documentation of widespread, systemic use of non-lethal violence,⁸ between March 2022 and late May 2024, at least 301 of those arrested have died in custody.⁹ Critically, according to a 2023 analysis of in-custody deaths up to that time, the majority were classified as "confirmed, possible or suspected violent deaths" in which the victims showed signs of physical abuse up to and including torture (e.g., beatings, electrocution, asphyxiation, burns, fractures, lacerations and/or puncture wounds) and/or died due to the deliberate withholding of medical treatment and/or food.¹⁰ Putting the in-custody death statistics into context, 301 deaths among an inmate population of 80,500 translates to a ratio of 374 deaths per 100,000, a rate 64.5 times greater than the international violent death rate of 5.8 per 100,000.¹¹ Adding to the gravity of in-custody deaths, investigators from *Socorro Jurídico Humanitario*

(Humanitarian Legal Aid) have determined that only six percent of those who have perished in custody were documented as gang members and had no cognizable connection to gangs.¹²

The human rights abuses associated with the State of Exception are so systematic and extreme that in June and July of 2023, two of El Salvador's most prominent human rights attorneys declared publicly that they constitute crimes against humanity.¹³ This perception was reinforced in a June 2024 report by Cristosal, an organization that more than any other has direct knowledge and experience with every dimension of the State of Exception, in which researchers asserted that the Salvadoran government is engaging in crimes against humanity under the guise of a gang response strategy.¹⁴

Rather than being explained as the unintended consequences of resource scarcity, the abuses occurring under the State of Exception reflect a strategy implemented at the highest levels of government with the intention of inflicting cruelty and suffering upon detainees.¹⁵ Through comments in the media and public speeches, President Bukele has frequently reiterated this intention, even to the point of chiding those who are suffering in prison. As one illustration, he responded on Twitter to photos of bloodied prisoners saying, "Maybe they spilled ketchup while eating French fries." This intentionality on the part of government officials is reflected in the experience of a young man who was arrested and later released, who stated:

When we arrived at the prison, they took us off the bus and the first thing they did was to bend us over and force us to kneel on the gravel. We spent half an hour kneeling on the gravel and trembling with fear because we had seen what happened when another group arrived earlier; they were bent over, on their knees, and then they beat you. Next to me there was a guy who had osteoporosis, he was shaking with fear and told me 'They are going to kill me here,' and I told him, 'Calm down.' They didn't beat me, but that guy couldn't run because he was sick. He was going slowly and so they beat him, even though he was sick, they didn't care about that. He told them he had to take a pill, because he was carrying some pills, and he said he was going to have an attack. They didn't care, they threw them away. They have no respect for you, for them you are useless, and you are practically trash.¹⁶

According to an April 2024 report from Human Rights Watch:

They (President Bukele and members of his cabinet) thereby have very direct responsibility for giving orders that dehumanize the detained and produce what we have documented: Hundreds of people have denounced poor treatment and torture. And we are talking about constant beatings from other detainees in the presence of guards, as well as the direct participation of guards in acts of torture. History will have to investigate Bukele for his

responsibility in inciting this type of conduct with the orders that he has given.¹⁷

In terms of the population's response, one on hand, the public expresses strong support for the State of Exception but on the other hand, reports significant concerns. According to a March 2024 public opinion survey conducted by the *Instituto Universitario de Opinión Pública* (University Public Opinion Institute) at the Central American University in San Salvador, roughly 80 percent of a sample of 1,270 respondents were supportive of the decree but overwhelmingly they were unfamiliar with—and opposed to—critical elements of its implementation.¹⁸ For example, the majority of respondents (76 to 79 percent) were unaware that Article 12 of the Constitution guaranteeing the right to legal defense; that Article 13 restricting the time people can be held without charges to 72 hours, (except under limited circumstances); and that Article 24 prohibiting monitoring of private electronic communications without a court order had all been suspended. Moreover, 65 percent disagreed with warrantless arrests, 63 percent opposed the lack of the right to a legal defense, and 71 percent disagreed with detaining people beyond the previous legal limit 72-hour limit without charges.

Those in the low and low to middle-income regions, where the government has focused its implementation of the SoE, express their own concerns. On one hand, while many report feeling a greater security, 70 percent state that they are afraid to talk about the State of Exception because they no longer trust others and/or they fear being arrested or being subjected to reprisals.¹⁹ Levels of fear are so extreme that civil society organizers around the country report that people are afraid to involve themselves in community organizing efforts (e.g., health campaigns, women's rights, youth development, water and environmental defense) because doing so exposes them to allegations of illegal gathering and arrest.²⁰

These observations about the anxiety the State of Exception has provoked correspond with our experiences with residents in these communities, who have advised us that they live in fear, knowing that at any moment their spouses, children, and/or grandchildren may be arbitrarily arrested and lost in the prison system for years, subjected to abuses and torture, and potentially die in state custody. They have described overwhelming fear when the government imposes human *cercos* (fences) in which thousands of police and military personnel encircle entire communities, occupy public buildings, and force their way into homes arresting anyone they perceive to be a gang member, collaborator, or sympathizer.

A U.S. citizen who has lived in El Salvador and been involved in human rights issues for nearly 40 years advised Boerman during a recent anonymous interview that the climate of fear in the low-income sectors of the country has not been this extreme since the end of the country's civil war in 1992. Similarly, during an August 2024 interview with

Boerman a U.S. citizen, who resides in a historically gang-affected community and requested anonymity due to fear of government reprisals, stated:

I watch as people I know to have no involvement with gangs get pulled out of their houses by police and military; usually they do not return and when they do, they are in caskets. People don't even attend funerals of those who have died in prison because police go to the funerals and take photos of everyone who is there, and they are afraid of being arrested.

In this paper, we provide a concise overview of the historical and current state of gangs then discuss the sociopolitical context of the State of Exception with an emphasis on the ways in which it is being leveraged to facilitate authoritarian and even dictatorial rule, as well as deepening levels of corruption under the guise of a gang response strategy.²¹

2. 2024 ELECTIONS

One cannot understand the State of Exception without assessing it through the lens of the country's sociopolitical context and President Bukele's role in it, including his 2024 re-election. The Salvadoran Constitution expressly prohibits consecutive presidential terms but as described in Section Six of this paper, President Bukele's firing of all five members of the Constitutional Court and seating hand-picked replacements resulted in a ruling that allowed him to run for re-election in 2024, despite the constitutional ban against it.²²

With a turnout of 52 percent of eligible voters, President Bukele received about 82 percent of the votes cast.²³ It is important to note that his popularity is rooted in more than public satisfaction with the State of Exception. First, after power-swapping for three decades, the right-wing *Alianza Republicana Nacionalista* (ARENA, National Republican Alliance) and the left-wing *Frente Farabundo Martí para la Liberación Nacional* (FMLN, Farabundo Marti National Liberation Front) had both failed abysmally to address the social, economic, and security needs of the population and had become deeply associated with endemic corruption.²⁴ Second, both in his initial victory in 2019 and again in 2024, Bukele, a public relations savvy millennial and popular former mayor of Nuevo Cuscatlán and San Salvador with a charismatic personality and a populist message, was masterful at presenting himself as a clear alternative to both of the traditional parties and appealing to the desperation of the population. Third, public perception is that security conditions have improved under President Bukele's

leadership vis-à-vis the State of Exception, even if those gains involve sacrificing democracy and human rights.

This final point is critical because it demonstrates that, if forced to choose between security *or* democracy and human rights, Salvadorans exhausted by two decades of unrelenting gang violence will choose security—even if tenuous and fleeting, and at high cost. According to Human Rights Watch:

There's this growing rejection of the basic principles of democracy and human rights, and support for authoritarian populism among people who feel that concepts like democracy and human rights and due process have failed them.²⁵

This sentiment is echoed by a Salvadoran man, a legal resident of the U.S. for over twenty years, who during a recent interview with Boerman stated: “Concern for human rights is a luxury we don’t have in El Salvador. Innocent people’s lives are being lost and destroyed under the State of Exception and dictatorship is probably what we are going to end up with, but we’ve never really had democracy anyway and the alternative is that I can’t return to my country without being extorted or killed just for showing up.”²⁶

3. HISTORICAL-POLITICAL CONTEXTS OF GANGS IN EL SALVADOR

In January 1992, El Salvador ended eleven years of civil war with peace accords that, in addition to recognizing the former anti-government guerilla organization FMLN as a legal political party, reduced the size of the armed forces and prohibited their involvement in political life; created a new civilian police force; reinforced the development of a democratic, multi-party political system; and provided the conditions for the establishment of an independent, professional judiciary.²⁷

Advances were made on all these fronts in the following years; however, these efforts were undermined by a development that no one anticipated and that the Salvadoran state was unprepared to confront: the deportation from the United States to El Salvador of thousands of people who, after migrating to the U.S. beginning in the 1980s to escape the country’s civil war, had become directly or indirectly involved with gangs, and who brought gang culture and ethos to El Salvador with them.²⁸

By the early 2000s, the gangs had grown in numbers, geographic presence throughout the country, and power. Their ascent was aided by a succession of governments whose lack of experience, imagination, and political will to confront the problem comprehensively, coupled with deepening collusion with those same gangs. The result was the implementation of counterproductive police-military responses beginning in the

early 2000s known colloquially as *mano dura* (heavy hand, iron-fist) and sporadic, clandestine government attempts to negotiate with the gangs. Together, these approaches had the unintended consequences of increasing the gangs' organizational and criminal sophistication, their dominance in areas under their control, and their eventual influence within virtually every dimension of the country's political process. By the time President Bukele was inaugurated for the first time in 2019, estimates of gang membership ranged from 60,000 to 200,000 members²⁹ with a presence in roughly 95 percent of El Salvador's 262 municipalities in all 14 of the country's departments (provinces).³⁰

4. THE CURRENT STATE OF GANGS IN EL SALVADOR

As has been covered extensively in the U.S. and international media, the State of Exception has been heralded with reducing gang activity across El Salvador, and even exterminating gangs. At a minimum, these claims stretch credulity and at their worst, they are patently false. To illustrate, in a September 2023 analysis of a dozen confidential Salvadoran National Police documents, police confirmed that over one-third of MS13 members and nearly 50 percent of Barrio 18 members—a total of 43,000 gang members identified by the Salvadoran government—remained at large.³¹ Moreover, dozens of interviews we have conducted with professional colleagues, researchers, government officials, and members of the Salvadoran public demonstrate that gang activity continues in many areas, albeit generally in different and more clandestine forms than in the past.³² For instance, an individual who lives near the city of Santa Ana advised Boerman:

Things are different because of the State of Exception but they are not better. It used to be that gang members hung around on the streets and were dangerous if you got near them. Now, they are trying to hide from the police, so they drive around in cars. They still do everything they used to do but they changed how they do it. I still can't leave my house. The scariest thing is that now they force their way into homes to hide when the police and soldiers come and threaten to kill us if we don't let them in.³³

In areas where gang activity has been reduced or even eliminated, members of the public revel in the respite but have routinely advised us that they take a skeptical view when asked whether they believe improvements are sustainable. Most people we speak to, both professionals and members of the general public, express doubt or say “no” because the State of Exception is nothing more than an extreme expression of *mano dura* that, as with government responses in the past, ignores the historical, political, social, cultural, and economic conditions that give rise to gangs.

5. THE STATE OF EXCEPTION IS PAYING POLITICAL DIVIDENDS

Concerns with the actual effects of the State of Exception, the massive human rights abuses associated with it, and the effects on democracy and the rule of law notwithstanding, it is yielding tremendous political capital for President Bukele, who is receiving accolades not only in El Salvador but throughout much of Latin America for accomplishing what no other Salvadoran leader has been able to do: vanquish gangs.³⁴ Citizens in Peru, Colombia, Chile, Ecuador, Costa Rica, Guatemala, and Honduras have taken to the streets demanding that their leaders replicate President Bukele's tactics. In Argentina, there are murals of Bukele painted on walls; in Peru, there have been proposals to build a monument to him, in Colombia, the State of Exception is being referred to as "The Miracle of Nayib Bukele,"³⁵ and in Ecuador, citizens overwhelmingly approved measures in an April 2024 referendum that will permanently expand the powers of the armed forces, provide immunity to government actors, and dismantle democratic checks and balances.³⁶ In December of 2022, Honduran President Xiomara Castro implemented a State of Exception in that country, although with none of the fanfare, mass arrests, or claims of success seen in El Salvador.³⁷

Not surprisingly, leaders in these countries are considering implementing their own versions of "Plan Bukele," and the fanfare is reaching a point of near cult-like fervor in some places.³⁸ And it is not only in Latin America where Bukele is garnering praise. In February of 2024, he spoke at the annual Conservative Political Action Conference in the U.S and was given what was referred to as a "Rock Star" welcome.³⁹

6. DISMANTLING DEMOCRATIC INSTITUTIONS

As was extensively documented by government and non-governmental sources as well as the international media before implementation of the State of Exception, President Bukele had shown contempt for the Salvadoran Constitution and begun the process of dismantling many of the country's democratic principles, structures, and institutions.⁴⁰ A discussion of the full list of his anti-democratic actions is well beyond the scope of this paper,⁴¹ but one that warrants particular attention relates to the President's undermining of the country's judiciary.

First, as was widely covered in the international media at the time, Bukele fired all five Justices on the Constitutional Court and replaced them with hand-picked successors, many of whom had little or no judicial experience, thereby reversing decades' worth of efforts to establish an independent, professional judiciary. Second, the Bukele-controlled Legislative Assembly passed a law mandating the retirement of judicial

personnel at age 60 or with 30 years of service, a move that immediately affected roughly 200 of the country’s 600 or so judges and allowed for them to be replaced with hand-picked successors.⁴² A particular concern is that the law allows for the “temporary or permanent transfer of members of the prosecutorial career for justified reasons of convenience,”⁴³ meaning any career jurist or prosecutor may be transferred or removed from their position and replaced at any time for failing to demonstrate sufficient fealty to the President. Third, as noted previously, in 2021, President Bukele’s hand-picked Supreme Court ruled that he was eligible to run for a second consecutive term in 2024 in direct violation of the Constitution, a move that was treated either with concern or outward condemnation internationally but widely celebrated internally.⁴⁴

Upon announcing his intention to run for a consecutive second term, the editorial board at *El Faro* responded by saying that the President had “announced a dictatorship.” “From the start,” they write, “Bukele and his circle plotted to put an end to our democracy. Their dictatorial plan involved concentrating power by seizing control of all government institutions and shutting the door on dissent, public oversight, and any possibility for alternation in power.”⁴⁵

7. CONTROL OVER INFORMATION AND CRIMINALIZING SPEECH

Since imposing the State of Exception, President Bukele has taken additional steps to further consolidate power and continue his assault on democracy. He suspended the 2011 *Ley de Acceso a la Información Pública* (Law on Access to Public Information) and declared that data related to homicides, arrests (other than the number of arrestees under the State of Exception, which is used for public relations purposes), prison records and conditions, use of public funds, and the contracts and procurements processes are classified as “National Security” information.⁴⁶ Additionally, the *Instituto de Acceso a la Información Pública*—IAIP (Institute of Access to Public Information) has been gutted; staff have been fired and replaced with Bukele loyalists, and the IAIP has lost any semblance of independence and impartiality.⁴⁷

At the time of his 2019 inauguration, President Bukele hired a cadre of tech-savvy specialists charged with crafting his image and manipulating the public discourse, including “ginning fictitious Bukele supporters on social media to praise his policies” while simultaneously discrediting critics and filing complaints with social media platforms in an attempt to block their accounts.⁴⁸ After declaring the State of Exception, he took these efforts to new levels. According to one former member of the tech team, “I didn’t know it when I signed the contract, but I made a deal with the Devil. I became a pro-Bukele troll.”⁴⁹ President Bukele also created a government propaganda outlet, El

Salvador in English, which publishes “news stories” entirely favorable to Bukele and his policies.⁵⁰

Following his declaration of the State of Exception, President Bukele also leveraged his super-majority in the Legislative Assembly to pass laws that would allow him to go after critics and enemies. These included changes to the penal code that mandated sentences of 20 to 30 years for individuals who “promote, help, facilitate, or favor the formation or permanence in groups, associations, or organizations.”⁵¹ The Assembly also passed a law that carried prison sentences of 10-15 years for journalists who “reproduce and transmit messages from or presumably from gangs that could generate uneasiness or panic in the population.” (This law was repealed in November 2023 when the government claimed victory over the gangs and stated it was no longer necessary).⁵² The language in both of these laws was so broad as to include potentially anyone or any group that President Bukele or officials of his *Nuevas Ideas* party deemed hostile, such as political opponents, civil society organizations, journalists, human rights advocates, environmental defenders, and union organizers.⁵³

El Faro has been particularly targeted due to its 25-year history of exposing government malfeasance across the Central American region including in El Salvador and within the Bukele administration. The situation became so extreme that in 2023, *El Faro* moved its administrative headquarters to Costa Rica,⁵⁴ and its director and several of the organization’s journalists are living in exile outside of El Salvador. In a statement from *El Faro*:

Under the government of Nayib Bukele, campaigns originating in the Casa Presidencial (Presidential Palace) have sought to defame and discredit *El Faro* and its employees. We have faced physical surveillance and threats, Pegasus spyware attacks, harassment of advertisers, and defamation from public officials and ruling-party legislators. The president even used state television and radio to falsely accuse us of money laundering.⁵⁵

8. DISMANTLING LEGAL DUE PROCESS AND THE RETURN OF STATE SPONSORED DISAPPEARANCE

Legal due process has been gutted through changes to the Salvadoran Penal Code. Perhaps one of the most extreme examples of the absence of due process under the State of Exception is the fact that once the courts actually begin to adjudicate cases, detainees will be tried in groups of up to 900 at a time.⁵⁶ Furthermore, these trials may not take place until January 2026,⁵⁷ meaning that tens of thousands of people will have been imprisoned on a pre-trial basis for over three and one-half years under inhumane, torturous conditions.

Another significant concern with the mass arrests occurring under the State of Exception involves enforced disappearance. This practice harkens back to El Salvador's most undemocratic and darkest period: the civil war (1981-1992), when tens of thousands of people were "disappeared" at the hands of government forces and detained without due process, tortured, and in thousands of cases murdered.⁵⁸

The Salvadoran media and other sources have extensively documented the fact that the family members of those detained under the State of Exception are often provided no information on whether their loved ones have been arrested, and if so, where they are being held or the charges against them.⁵⁹ For months, the Salvadoran media ran stories that included photos of hundreds of people gathered outside prisons desperately seeking information on their family members, and in May 2024 multiple human rights organizations presented a report to the United Nations Working Group on Enforced Disappearances alleging 327 cases that the various organizations argue constitute enforced disappearance.⁶⁰ Family members are denied any contact with their loved ones while the government fails to provide information on their physical condition or what to expect in terms of future legal proceedings. In essence, tens of thousands of people are being held incognito with no constitutional rights, and at times their families are not even advised of their deaths while in custody.⁶¹

Raising further concerns about a return to El Salvador's dark past is the fact that, as during the civil war, the enforced disappearances occurring under the State of Exception are coordinated between the Executive branch, the Security Ministry, and the country's police and military forces, and occur with guarantees of impunity.⁶² For those who lived through the civil war or were aware of the atrocities that occurred during that period, when anyone could be arrested or "disappeared" at any time, the practices occurring under the State of Exception evoke memories of terror; it is a page torn directly from the Salvadoran government's civil war playbook.

9. ESTABLISHMENT OF A ONE-PARTY STATE: THE STATE OF EXCEPTION AS POLITICAL COVER FOR DISMANTLING DEMOCRACY

The circumstances under which President Bukele declared the State of Exception were, by any standard, a national emergency that demanded an extraordinary response. Both Article 29 of the Salvadoran Constitution⁶³ and Article 4 of the International Covenant on Civil and Political Rights⁶⁴ authorize the implementation of a State of Exception but emphasize that such executive action must remain in effect only as long as it is justified by the emergency conditions. Despite this legal requirement, with full support from President Bukele, the Legislative Assembly has renewed the decree every month since

its implementation in March 2022 without debate, thereby lending it a permanent character.

Among the numerous questions that this situation raises, one of the most critical is this: If the government has effectively exterminated gangs, as it publicly claims, why does the emergency decree remain in effect? The State of Exception now represents the centerpiece of the Bukele government and rescinding it would bring predictable and unwelcome political and public relations consequences for him both in El Salvador and on the international political stage. In addition, states of exception lend themselves to authoritarian rule and it is these political considerations we argue, not the exigencies of the current gang situation, that provide a deeper explanation for the President's insistence on its now permanent character.⁶⁵ During an interview with Montgomery in San Salvador, a police officer stated:

The State of Exception began well. It was justified in that moment but along the way...the measure no longer has a legal basis. There is no justification, not legal, not constitutional. It is an effective instrument for the elections, an election tool, the *broche de oro* [the finishing touch].⁶⁶

In June 2023, President Bukele signed into law reforms that amalgamated the country's 262 municipalities into 44 and reduced seats in the Legislative Assembly from 84 to 60.⁶⁷ His justification was that these changes would reduce corruption and streamline the legislative process. Critics, however, argued that "This [move] aims to do away with electoral transparency, concentrate power, and ultimately undermine democracy."⁶⁸ With the President's 2024 inauguration, El Salvador is now effectively a one-party state in which, practically speaking democracy—to whatever degree it existed prior—no longer exists. His *Nuevas Ideas* party holds 54 of the 60 seats in the Legislative Assembly⁶⁹ and 43 of the country's 44 mayorships, either directly or in alliances with the top vote-getters.⁷⁰ According to the editorial board at *El Faro*:

The now de facto president and his family clan have risen above our laws to assume the throne, without any institution capable of imposing limits to their constitutional trampling. The authoritarian regime has become a dictatorship. All the other elements of a dictatorship are present as well: control of the three branches of government; concealment of public information and lack of accountability; use of security forces and the judicial system for political ends; persecution of the opposition and critical voices; political prisoners; systematic torture in prisons; absence of rule of law; Bukele's demand for obeisance.⁷¹

In an assessment by Cristosal, what now exists in El Salvador vis-à-vis the State of Exception is an "authoritarian model of punitive populism which occurs when political leaders not only use rhetoric and tough-on-crime policies to win elections and popular support but are also willing to allow high levels of police violence to fulfill this goal."⁷²

10. THE STATE OF EXCEPTION AS COVER FOR CORRUPTION

In addition to supporting authoritarian or dictatorial rule, the State of Exception is also intertwined with President Bukele’s and his corrupt associates’ criminal agenda. Corruption in the Bukele administration did not begin with the March 2022 State of Exception, nor did efforts to conceal that corruption. In 2020, the President fired Attorney General Raúl Melara, who had opened investigations into allegations of corruption involving 20 institutions within the Bukele administration.⁷³ Shortly thereafter, German Arriaza, head of the anti-corruption unit within the Attorney General’s Office, who had also initiated investigations into alleged corruption, resigned after being unceremoniously transferred to another division.⁷⁴ In 2021, the Bukele-controlled legislature passed a law shielding officials from investigation of alleged corruption, and the President disbanded the *Comisión Internacional contra Impunidad en El Salvador* (International Commission against Impunity in El Salvador), an entity of his own creation, because the Commission was investigating him and his associates.⁷⁵ By 2021, several high-ranking members of his administration had been placed on the U.S. government’s Engel List of corrupt Central American officials.⁷⁶ Following implementation of the SoE, additional Bukele administration officials have been added, after it was determined that those officials had engaged in “significant corruption” or undertaken actions to “undermine democratic processes.”⁷⁷

As an example of probable corruption under the State of Exception, family members of those arrested with the means to do so are required to pay each month for food and other necessities for their incarcerated loved ones. Several sources told Montgomery in May 2023 then reconfirmed in July 2024 that no more than one-third of the money provided by family members is reaching the prisoners; the balance is going into the pockets of prison authorities. Investigative journalists have echoed concerns about being able to investigate where these funds, roughly US \$17 million a month, are ending up, due to the lockdown on data.⁷⁸

Another red flag—and arguably the most significant in terms of probable corruption—relates to El Salvador’s new mega-prison, the *Centro de Confinamiento del Terrorismo*—CECOT (Center for the Confinement of Terrorism). The CECOT is a massive facility, reportedly designed to hold 40,000 inmates, making it the largest prison in Latin America. Construction of the facility began shortly before the State of Exception was declared and despite the enormity of the project, it was completed in only seven months. The concerns with corruption arise from the fact that, to this day, the government has not disclosed any data related to the costs of the CECOT, the procurement process, and who was awarded contracts; all data related to its construction remain under seal, classified as issues of “national security.”⁷⁹ In a May 2024 report, investigative journalists revealed that the government had allocated roughly U.S. \$135 million.⁸⁰

Although the figure is likely to be higher, this is the only glimpse as to the costs but the journalists' attempts to obtain additional details were denied as matters of “national security.”⁸¹ Wilson Sandoval, director of the Anticorruption Legal Advice Center of the National Foundation for Development, concludes, “I would say that more than a doubt, it is rather almost a certainty [that there may be mismanagement] because there is a basic formula in public management: discretion plus opacity will normally result in corruption.”⁸²

The construction of prisons as a harbinger of corruption may not be over, as President Bukele has announced his intention to build a “white collar” prison to house those involved in corruption.⁸³ In addition to future prison construction as an opportunity for additional corruption, given his control over the courts and the *Fiscalía* (Attorney General’s Office), this new prison could be used to intimidate and silence opponents, and to incarcerate political foes, critics, journalists, civil society organizers, human rights advocates, environmental defenders, union organizers, and anyone he or his associates view with antipathy.

Additionally, President Bukele has dissolved or reorganized 13 critical institutes, programs, and projects and it remains unclear how, when, and if some of those institutions will be reconstituted.⁸⁴ The affected agencies include the 1) National Directorate of Medicines, 2) Salvadoran Institute of Professional Training, 3) National Youth Institute, 4) Social Investment Fund for Local Development, 5) Salvadoran Institute for Municipal Development, 6) Environmental Fund of El Salvador, 7) Salvadoran Institute for the Integral Development of Children and Adolescents, 8) National Council for Children and Adolescents, 9) General Directorate of Statistics and Census, 10) Maritime Port Authority, 11) Export and Investment Promotion Agency of El Salvador, 12) Salvadoran Coffee Council, and 13) National Council for the Protection and Development of Migrants and their Families.

As the executive, President Bukele has the authority and responsibility to address government efficiency and cost, but because financial data have been embargoed under the State of Exception, it is impossible to know where the funds previously allocated for the affected institutes, programs, and projects went, or are going.

Finally, no discussion of potential corruption in the Bukele administration can exclude the President’s curious, if not inexplicable, fixation with Bitcoin. His decision to adopt Bitcoin as legal tender has been the subject of dozens of analyses and damning conclusions—including by the World Bank and the International Monetary Fund, which state that in addition to macroeconomic, financial, and legal issues it also raises concerns about transparency.⁸⁵ Questions about transparency are reinforced by the fact that as with other government data under President Bukele, expenditures associated with Bitcoin are shrouded in secrecy; even the country’s Treasury Department claims it doesn’t have the data.⁸⁶ As of March 2024, the country reported that it held US \$411

million in coins, twice the previously disclosed amount, and that they are physically located in El Salvador.⁸⁷

So, what explains President Bukele’s unshakable commitment to Bitcoin? The investments associated with it are massive, the volatility of the cryptocurrency market is extreme and well-documented, and the vast majority of El Salvador’s population and merchants do not use Bitcoin, and the majority have little confidence or interest in it. In a 2024 public opinion survey, 82.8 percent of respondents stated that they had little or no confidence in Bitcoin and 71.2 percent said that they prefer to use the dollar for transactions.⁸⁸ The most obvious response is the fact that cryptocurrencies lend themselves to money laundering and corruption.⁸⁹ Speaking of the way Bitcoin was rolled out in El Salvador, Lourdes Molina of the Central American Institute for Fiscal Studies stated, “The way Bitcoin was implemented posed risks of converting the country into a fiscal paradise and facilitating money laundering.”⁹⁰ Concerns about Bitcoin-related corruption are reinforced by the fact that President Bukele hosted Binance CEO Changpeng Zhao and granted him license to issue digital assets in El Salvador. In November 2023, Zhao pled guilty in US Federal Court to violating money laundering laws and agreed to pay US \$4.3 billion in fines.⁹¹

A particular concern with the President’s push for the adoption of cryptocurrency is tied to his vision of developing “Bitcoin City,” an entirely new city and international tourist destination in the country’s eastern region. This project, if advanced, would involve billions of dollars in public and private investment and there is no reason to conclude that there would be any transparency in terms of where those funds were coming from, the contracts and procurement procedures, how funds were being expended, or where income accruing from these massive investments was going.

11. EFFORTS TO EXPOSE AND PRESSURE THE BUKELE ADMINISTRATION

A detailed exploration of the efforts by researchers and investigative journalists to document and expose the abuses, assaults on democracy, and criminality occurring under the State of Exception is beyond the scope of this article; however, it is worth noting that those engaged in this work in El Salvador do so at great personal risk. Within El Salvador, a grassroots effort has emerged to expose the abuses occurring under the State of Exception and to demand accountability: *El Movimiento de Víctimas del Régimen El Salvador*—MOVIR (Movement of Victims of the Regime in El Salvador).⁹² The United Nations⁹³ and the Inter-American Commission on Human Rights⁹⁴ have called on El Salvador to reinstate principles of democracy and to adhere to international human rights standards, as have the U.S. and German governments and the European Union. Unfortunately, President Bukele brushes off criticism and pressure from foreign

governments as interference in El Salvador's internal affairs and characterizes domestic critics like MOVIR as supporters of criminals and terrorists.

12. CONCLUSION

At this point, the international community's continued framing of the State of Exception as a "gang response strategy" is problematic for several reasons. First, it lends at least tacit, if not direct, support to what is arguably one of the most extreme and systematic human rights abuses in modern Latin American history. Second, it grants legitimacy to laws, policies, and practices that provide cover for potentially massive levels of government and private sector corruption. And third, it obscures the fact that the decree is being used to facilitate the systematic dismantling of what remains of El Salvador's teetering democratic structures.

Widespread international framing of the State of Exception as a "gang crackdown" also leads to a failure to ask a critical question: What can be expected now that President Bukele has been elected for a second term? He has his hands on all levers of power: the Legislative Assembly, the country's security apparatus (i.e. police, military), the *Fiscalía*, and the courts. He controls the flow of information available to the public and has established a climate of fear in which political opponents, journalists, civil society representatives, community activists, and human rights and environmental defenders know they can be arrested anytime and fall into the black hole of El Salvador's prison system. Given this scenario, as long-term analysts of El Salvador who have conducted extensive research during the Bukele administration, we conclude that, during a second term he will be unconstrained in his authoritarian and criminal aspirations, and we may find El Salvador devolving into a criminal dictatorship.

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Tom Boerman is an independent researcher who has worked in El Salvador for over fifteen years. He has authored, co-authored or contributed to numerous publicly available articles and reports addressing gangs in El Salvador, Honduras, and Guatemala.

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