

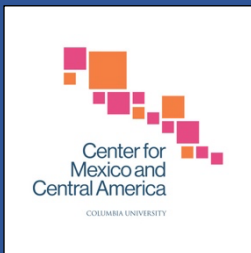
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*Behind the Glowing
Headlines: Social Science
Analysis of the State of
Exception in El Salvador*

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Key Words: El Salvador, State of Exception, Rule of Law, Deterioration of Democracy Human Rights, Incarceration, Gangs, MS-13

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1. INTRODUCTION

In response to a rampage in which members of the Mara Salvatrucha (MS-13) murdered 92 people during a three-day period between March 25 and 27, 2022, Salvadoran President Nayib Bukele declared a 30-day *Régimen de Excepción* (State of Exception), an emergency decree the *Asamblea Legislativa* (the Salvadoran congress) approved without debate and has renewed every month since. The State of Exception, which thus far has resulted in the arrest of nearly 70,000 Salvadorans, has been hailed as a success by government officials, and has received widespread support from the Salvadoran public.

President Bukele uses an undisclosed but formidable amount of government funds to produce highly polished public relations campaigns for radio, television, newspaper, and social media to ensure his reelection in 2024 and to attract foreign investors. His public speeches are replete with rhetoric boasting that he has freed the population from life under gang control, something that no other leader has been able to do, thereby undercutting the credibility of his main political opponents from the *Frente Farabundo Martí para la Liberación Nacional* (FMLN, Farabundo Marti National Liberation Front) and *La Alianza Republicana Nacionalista* (ARENA, National Republican Alliance).¹

Indeed, the State of Exception has led to a reduction in visible gang activity in many parts of the country but, as we demonstrate, these gains are not uniform across El Salvador and there is little or no basis for concluding that they will be sustainable over time. Moreover, this quieting of gang activity has come at the cost of systemic and massive human rights abuses, the destruction of the rule of law, and the undermining of democracy itself.² Still, international news outlets continue to produce journalistic accounts erroneously asserting that the decreased visibility of gang activity throughout El Salvador and President Bukele's considerably high approval ratings among Salvadorans mean that he has successfully vanquished the gangs.

The three authors are social scientists who, both before and during the State of Exception, have conducted extensive fieldwork and published qualitative analyses of El Salvador's sociopolitical conditions. Our continuing empirical research shows unequivocally that gangs have not been exterminated and that there are additional dangers that continue to threaten the lives of many Salvadorans.

2. OBSCURING THE VISIBILITY OF HUMAN RIGHTS ABUSES UNDER THE STATE OF EXCEPTION

Salvadoran officials have gone to great lengths to shroud in secrecy everything but the public relations spectacle around the State of Exception. President Bukele has attempted to prevent public knowledge of continuing and widespread human rights

abuses through strategies that include (1) denying outsiders access to the prisons, including the Salvadoran Human Rights Ombudsman's Office;³ (2) criminalizing the media and threatening journalists;⁴ (3) subjecting family members of the detained to threats of arrest if they speak publicly of their loved ones' experiences;⁵ and (4) routinely charging that individuals and groups who expose the abuses associated with the State of Exception are supporters of gang members and terrorists. In lieu of public access to national data including arrest records, accurate homicide numbers, and prison conditions, Bukele's team instead publishes staged videos and photos of shaved headed, heavily tattooed men in boxers, packed together like sardines in stress positions and running in formation through gauntlets of prison guards.

Despite these attempts to manipulate and obscure public perception, Salvadoran and international journalists and human rights monitoring organizations have revealed deeply disturbing patterns and practices associated with the State of Exception. The first relates to the arbitrary and capricious basis for capture. In an analysis of 690 arrests, investigative researchers working with internationally renowned Salvadoran investigative news outlet *El Faro* identified several dubious and entirely arbitrary categories of characteristics being used as grounds for arrest, including (1) physical appearance associated with gang membership; (2) any previous arrest, irrespective of the disposition;⁶ (3) "nervous behaviors"; (4) having a tattoo; (5) allegations of gang membership on social media; and (6) anonymous tips alleging gang membership or affiliation.⁷ While each of these are of great concern because they serve as a basis for wrongful arrest, the government's reliance on anonymous tips is particularly worrisome. During a September 2022 interview in El Salvador, attorneys associated with the independent human rights organization *Tutela Legal* stated that 51 percent of several hundred arrests they had analyzed were based on unverifiable anonymous tips.⁸

In addition to the aforementioned arrest categories, it is commonly known that people are being captured due solely to their familial relationships with those who have been detained. To illustrate, in a case with which Boerman is familiar, five members of a family were arrested based on the fact that one of their cousins, an MS-13 member, had been captured. None of the others had any linkages to gangs. Additionally, thousands of women suspected or accused of being in current or past relationships with gang members have been arrested;⁹ members of the LGBTQ community are being singled out for capture;¹⁰ and members of the clergy as well as people in their 70s and 80s are being arrested.¹¹

Marvin Reyes, Secretary of the *Movimiento de Trabajadores de la Policía* (Police Workers Movement) has made numerous public statements in the press alleging that police are pressured to arrest even people who are known not to have any connections to gangs.¹² In one of those public statements, Reyes disclosed that "commanders are telling officers to give 'false statements' against some who have been arrested but have nothing to do with gangs. Some officers were threatened with transfer if they did not follow orders."¹³ In practice, there are no constraints on whom security forces can imprison. This was confirmed when researchers from Human Rights Watch interviewed

an officer from the Salvadoran National Police who stated, “We can arrest anyone we want.”¹⁴

Salvadoran and international investigators have also documented a horrifying pattern of systematic abuses occurring within the prisons including (1) denial of food, water, and medical treatment; (2) cruel and inhumane treatment including massive overcrowding, prolonged solitary confinement, systematic beatings, electric shock, and torture; and (3) as of July 2023, at least 174 in-custody deaths including multiple detainees in their seventies and eighties who have perished.¹⁵ Because those who die in custody in some cases are being buried in unmarked mass graves, it is a foregone conclusion that government figures on the deaths of detainees represent an under-reporting.¹⁶ As of March 2023, investigators from *Socorro Jurídico Humanitario* (Humanitarian Legal Aid) had identified at least 200 deaths.¹⁷ One detainee who had been wrongly arrested and later released described witnessing a 21-year-old being beaten to death by guards: “He was desperate and screaming for medicine or complaining of hunger and pain. The police responded by beating him. He was kicked, smacked with batons and hit with the butt of rifles. One day they beat him so badly that they beat him to death and dragged him out like an animal.”¹⁸ Also among the most appalling cases is that of a 76-year-old woman who was arrested in April 2022, died while in custody the following November, and was buried in a mass grave. Her children were not advised of her death and continued to send care packages to the prison until February 2023 when a duplicitous lawyer told them their mother would be released on bail if they paid \$3,000. When they arrived at the prison to deliver one last care package before their mother’s release, guards told them she had been dead for months.¹⁹

Zaria Navas, former Inspector General for the Salvadoran National Police and now head of Cristosal’s Law and Security program, declared on June 7, 2023: “There is enough evidence for El Salvador to be tried for crimes against humanity.”²⁰ More recently, on July 16, 2023, former *Procurador de Derechos Humanos* (Human Rights Ombudsman) David Morales equated the abuses occurring in the prisons under the State of Exception with the 1932 genocide against the country’s indigenous population and the atrocities committed during El Salvador’s 1981-1992 civil war; like Navas, he described the government’s actions as crimes against humanity.²¹

Amplifying concerns about abuses in prison are recent changes to the penal code that gut legal due process. Sentences for gang members and others who “promote, help, facilitate, or favor the formation or permanence in groups, associations, or organizations” have been increased from 20 to 30 years.²² This is a category so broad as to include potentially anyone and any group that President Bukele or officials of his *Nuevas Ideas* (New Ideas) party deem hostile, such as political opponents, civil society organizations, journalists, human rights advocates, environmental defenders, and union organizers. Additionally, detainees are being processed through a system of “Collective Justice” in which, rather than individual trials, they are tried as a group.²³ Attorneys associated with *Tutela Legal* state that under the “Collective Justice”

approach, the government is not obligated to provide evidence against individual detainees; rather, “the allegation of gang affiliation is the state’s evidence” and may be based on nothing more than where the detainee lives and which gang controls that area.²⁴

Well-documented abuses notwithstanding, after two decades of failed *mano dura* (tough-hand, or “iron fist”) police and military anti-gang strategies and being abandoned by politicians from the FMLN and ARENA to cope with incomprehensible levels of gang criminality and violence, the Salvadoran public is largely supportive of the State of Exception, and the President’s approval rating at the time of writing hovered around 90 percent.²⁵ To maintain this popularity, President Bukele attempts to obscure public visibility of the widespread ongoing human rights abuses by embargoing information that was previously publicly available by reclassifying it as a matter of national security.²⁶ Under the State of Exception’s surveillance strategy, the President has also ordered the arrest of Salvadorans who have criticized him or his practices on social media.²⁷ Independent journalists have routinely been subjected to government espionage using Pegasus spyware.²⁸ Professional, non-political civil servants have been fired from their jobs because of perceived or assumed lack of fealty to President Bukele, have found themselves unemployable, and have been harassed, threatened, surveilled, and forced to relocate.²⁹ Several journalists have also fled the country for their safety,³⁰ and *El Faro* moved its administrative and legal operations to Costa Rica due to threats and other hostile conditions related to the State of Exception.³¹

President Bukele’s Assembly passed a revision to the penal code that allows for sentences of up to fifteen years in prison for any media outlet that publishes information deemed favorable to gangs. Amnesty International’s researcher for Central America told *The New York Times*, “Salvadoran journalism has, for years, brought state abuses out of the gloom, and this series of actions indicate they want to silence it.”³² Likewise, U.S. Secretary of State Antony Blinken warned, “The law lends itself to attempts to censor the media, prevent reporting on corruption and other matters of public interest, and silence critics of the Salvadoran government.”³³ This revision to the penal code essentially operates as a gag order to prevent the reporting of gang-related news. Journalists from seventeen Salvadoran community radio programs were recently found to be self-censoring their content under the State of Exception for fear of retaliation and capture.³⁴ Radio program director Óscar Beltrán explained that while direct reporting from the communities they cover has been standard practice for his program’s journalists, they have stopped visiting the communities for information. “Our personnel were afraid that on the way from the radio to the communities or back, some military or police officer would arbitrarily capture them and falsely accuse them of belonging to gangs or say they are criminals,” Beltrán revealed.³⁵ Journalists have been detained and harassed by police for visiting communities in which they do not live in order to get information for their news stories. This gag order furthers President Bukele’s ability to fill this silence with news that reflects more favorably on him,

ultimately ensuring that independently operating investigative journalists do not undermine his international public relations campaign.

3. DECONTEXTUALIZED AND DISTORTED JOURNALISTIC ASSESSMENTS

In recent months, U.S. and international news outlets have looked to President Bukele's high approval rating and the glut of Salvadoran government-funded news as evidence of improved country conditions. These media accounts paint a picture of El Salvador as a country transformed; one in which, through the decisive actions of the President, gangs have been crushed out of existence and where the members of the public in areas once ravaged by their criminality and violence now experience a freedom to live and move that they have not known for over twenty years. There is no question that gang activity in some neighborhoods and communities has diminished and that in these areas there is a sense of liberation. Yet, media reports fail to address the facts that (1) gangs are actively inflicting violence inside the prisons³⁶; (2) gang presence outside the prisons continues in many areas albeit in more clandestine forms, and (3) the Salvadoran government itself is now carrying out much of the life-threatening violence that used to be the purview of the gangs.

While conducting fieldwork in El Salvador in May 2023, Montgomery was advised by a journalist investigating where the gangs are currently operating that they still control and extort vendors in Apopa, near San Salvador, and in the Playa Dorado area of Sonsonate.³⁷ Similarly, during a recent interview, a resident near the city of Santa Ana advised Boerman that:

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.³⁸

The continuing presence and threat of gang activity is reflected in travel advisories issued in March 2023 by the governments of the United States and Canada warning their citizens about the risks of travel to El Salvador.³⁹

Journalistic accounts by their nature also fail to address the uncertainty of the future with regard to gangs. In March 2023, the authors conducted via Zoom an interview with Carlos Dada, the Director of *El Faro* who is currently living in exile outside of El Salvador. During our interview, Dada expressed concern that a February

2023 article the organization published that references the reduction in gang activity outside the prisons is being used to misrepresent the reality of the situation that exists today. “That article has been misquoted several times” Dada clarified. “This is not the new reality by any means. This is what is happening as of the day of the publication in a very dynamic phenomenon, not to portray the situation as one that was static or resolved.”⁴⁰ He went on to say, “We don't know what's going to happen with this situation... The only thing that we know for sure is that this is not the situation that will likely stabilize. This is just a snapshot, and we don't know what's going to come.”⁴¹

To conflate journalistic accounts of the current quieting of gang activity with scientifically valid social science research would be to fail to consider that over the past twenty years, the gangs have indisputably proven that they are resilient. They have adapted to every repressive measure the Salvadoran government has implemented, have leveraged those strategies to their benefit, and have grown stronger. During an interview with Boerman, a long-time, highly recognized Salvadoran expert stated:

The current State of Exception follows a pattern of past presidents. In 2003 Francisco Flores introduced *mano dura*, or zero-tolerance policies, which led to the arrest and imprisonment of approximately 19,000 people in 10 months. The prison system collapsed under the weight of overcrowding and gangs took control inside the prisons, which resulted in a new hierarchical structure and more clandestine and criminally sophisticated operations in the prisons and in the communities. Similarly, rescinding of the gang truce in 2014 and the subsequent crackdown under President Sánchez Cerén also resulted in a restructuring of the gangs and a spiral in violence that ended with El Salvador posting a murder rate of 103 people per 100,000 inhabitants; the highest in the world in 2015. So, history demonstrates that mass arrests of gang members like is occurring under the State of Exception leads to a collapse of an already overcrowded, under-funded, under-staffed prison system; increases in gangs’ organizational sophistication; and overwhelming spikes in retaliatory violence by the gangs.⁴²

The likelihood of gangs’ retaliation when or if the State of Exception is lifted is clearer within this historicized view. The State of Exception echoes earlier *mano dura* crackdowns on gang violence that ultimately resulted in retaliatory spikes in violence rather than lasting change.

It is unrealistic to conclude that improvements, to the extent that they have occurred, will be sustainable over time. This becomes especially clear when considered alongside the ways President Bukele’s regime is dismantling democracy and denying basic due process rights while haphazardly arresting tens of thousands of Salvadorans—many without evidence of gang affiliation. It is simply not possible for El Salvador to arrest its way out of a decades-long pattern of gang violence that is the

product of absent, repressive, and criminalized state postures without also making deep structural changes.⁴³ As with previous incarnations of *mano dura*, the State of Exception makes no attempt to address the historical, political, social, cultural, and economic causes of the gang problem. The only realistic conclusion is that gangs are likely to reconstitute, albeit in a different and as of yet unknowable form.

4. THE IMPLICATIONS OF JOURNALISTIC MISREPRESENTATION FOR POLICY-MAKERS

As scholars of El Salvador, we are deeply concerned that Bukele's efforts to prohibit public visibility of his government's abuses taken together with incomplete and distorted Salvadoran Government-produced accounts of the successes of his gang crackdown are fueling grave misperceptions in the U.S. and other countries. These accounts are not equivalent to empirically valid assessments of the current and evolving status of gangs nor are they generalizable across thousands of neighborhoods within El Salvador's 262 municipalities.⁴⁴ In addition, they do not assess the gang's trajectory in the future nor evaluate their continuing capacity to harm those targeted by gangs in the past.

Many recent journalistic accounts also fail to analyze—or even recognize—that many Salvadorans living outside the country would be at grave risk if deported or upon willing return to El Salvador *because* of the State of Exception. Returning citizens are vulnerable to immediate arrest upon reentry or soon thereafter, indefinite imprisonment, and exposure to all the abuses associated with the decree. Based on our continuing research on the State of Exception as well as our analysis of other emerging empirical reports, those most at risk include Salvadorans with:

- (1) any history of arrest in El Salvador, no matter how long ago, for what reason, or the outcome of the case;
- (2) previous police contact in which gang affiliation was alleged, even if no arrest was made;
- (3) criminal records or allegations of gang affiliation in the U.S. that would be conveyed to Salvadoran authorities prior to removal;
- (4) family members in El Salvador who have been identified or are suspected of being gang members, gang collaborators, or who have been arrested under the State of Exception;
- (5) tattoos, even those of an artistic nature;
- (6) the potential to be perceived, correctly or incorrectly, as members of the LGBTQ community; and
- (7) employment by the government who have failed to enforce the State of Exception.⁴⁵

In assessing the dangers to Salvadoran citizens, one must understand that the State of Exception is not a “policy” or a “practice” that may or may not be enforced in the case of any particular individual based on the whims of a given state official. It is the law and it is not negotiable.

5. CONCLUSION

The State of Exception represents the most extreme human rights crisis in El Salvador since the end of the country’s civil war in 1992, and arguably the most significant in modern Latin American history. Independent journalistic accounts are important and necessary but should not be construed as equivalent to scientifically valid research. Journalistic accounts offer anecdotal, locally oriented assessments—in Carlos Dada’s words, “snapshots”—of a complex and fluid situation that experts argue is defined by uncertainty and unpredictability. Those who equate journalistic accounts with predictive empirical scholarship do a disservice to both journalism and scholarship by failing to recognize the important and necessary differences between the two.

Moreover, in a context where journalists are forbidden by an authoritarian government from explicitly reporting on gang activity, one cannot look to journalistic accounts alone to gain an accurate picture of current Salvadoran country conditions or make dependable predictions about the future. Doing so would be to fail to acknowledge that serious questions exist about the sustainability of any improvements that have occurred, would ignore entirely the ways in which the State of Exception puts many innocent Salvadorans at high risk of arrest and exposure to abuses associated with the State of Exception, and would overlook the current anti-democratic conditions under which Salvadoran journalists currently operate. The Bukele administration continues to block efforts to develop a comprehensive, unbiased understanding of country conditions and the situation inside the prisons. Given these concerns, it is clear that journalistic accounts of the State of Exception alone do not provide a basis for informed policy and legal decision-making as it relates to Salvadorans claiming fear of gangs and/or the Salvadoran government.

ABOUT THE AUTHORS

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- ⁶ e.g., no charges filed, charges filed but dismissed, acquitted, or convicted, and sentence completed.
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¹² As an example, the officer described a case of a young man who had been captured and was released because police determined that he had no connection to gangs; the officers involved in his release were charged with “dereliction of duty.” He also observed that “The State of Exception began well. It was justified in that moment but along the way.... now, after 13 months there is no justification and the measure no longer has a legal basis, it is not constitutional. It is an effective instrument for the elections, an election tool.” Montgomery interview with Marvin Reyes, San Salvador, May 9, 2023.

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³⁷ Montgomery interview with Efren Lemus, San Salvador, May 17, 2023.

³⁸ Boerman interview with a resident of Santa Ana, June 6, 2023.

³⁹ *El Salvador Travel Advisory*. U.S. State Department. March 6, 2023. <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/el-salvador-travel-advisory.html>; *El Salvador Travel Advice*. March 30, 2023. Government of Canada. <https://travel.gc.ca/destinations/el-salvador>

⁴⁰ Carlos Dada. Director of El Faro. Recorded interview with Sarah C. Bishop, Thomas Boerman, Julie Bourdoiseau, Tommie Sue Montgomery, and Michael Paarlberg. March 7, 2023.

⁴¹ Ibid.

⁴² Boerman interview, April 26, 2022. The source requested anonymity due to his organization’s relationship to the Salvadoran government and for reasons of his security. Dr. Alvaro Artiga, a political scientist at the Central American University offered the same historical analysis to Montgomery in an interview in his office, May 11, 2023.

⁴³ Boerman, Thomas, Aguilar Umaña, Isabel, and Jones, Richard. (In Press). “Absent, repressive and criminalized states: Forced internal displacement and irregular migration in El Salvador, Honduras and Guatemala.” *Latin American Perspectives*.

⁴⁴ Bukele signed into law in July 2023 a bill to cut the number of municipalities in El Salvador from 262 to only 44 in a move that will work to consolidate his political power even further. “El Salvador consolidates local governments, opposition warns of power grab.” June 14, 2023. *Reuters*. <https://www.reuters.com/world/americas/el-salvador-consolidates-local-governments-opposition-warns-power-grab-2023-06-14/>

⁴⁵ To this last point, state officials who fail to enforce it are subject to discipline, up to and including arrest as was recently demonstrated in the case for three police officers in Soyapango who arrested a young man but released him after determining there was no evidence of gang affiliation. The police chief then ordered the officers’ arrest for “dereliction of duty”. Montgomery interview with Marvin Reyes, San Salvador, May 9, 2023.