BEHIND THE FAÇADE OF DEMOCRACY: BUKELE'S REGIME OF STATE VIOLENCE

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INTRODUCTION

Since taking office in 2019, Salvadoran President Nayib Bukele has forced citizens to forfeit fundamental human and constitutional rights for the promise of safety.[1] El Salvador, once the country with the highest murder rate in the world, has seen a dramatic reduction in gang related crime under Bukele's policies, but his 2022 state of exception has achieved this by suspending Salvadorans' constitutional and human rights, creating a facade of safety.[2] Through the state of exception, Bukele carved a path to legally enact mass, indiscriminate arrests that have placed thousands of Salvadorans in prison.[3] This Note explores how Bukele suppresses free speech and manipulates the media to create an illusion of broad support, thereby facilitating human rights abuses and crimes against humanity and suggests legal and non-legal avenues for holding Bukele accountable. Part I provides historical background regarding political repression and gang violence in El Salvador and the policy responses aimed at combating gang activity. Part II discusses the state of exception as Bukele's ultimate effort to eliminate gang violence. Part III shows how this effort has resulted in widespread human rights violations and crimes against humanity. Part IV focuses on Bukele's rise to power, and the judicial reforms that Bukele has made to remove checks on government power. Part V examines Bukele's systematic attacks on free

[1] Press Release**,** Hum. Rts. Watch, El Salvador: Sweeping New Laws Endanger Rights (Apr. 8, 2022), https://www.hrw.org/news/2022/04/08/el-salvador-sweeping-new-laws-endanger-rights [https://perma.cc/9GN3-P2R5].

[2] Although gangs once maintained a stronghold in areas plagued by poverty, unemployment, domestic violence, and limited access to education, the Bukele government has yet to put forward a plan to address the underlying social and economic conditions in El Salvador that allowed gangs to proliferate throughout the country. ALEX PAPADOVASSILAKIS, INSIGHT CRIME EL SALVADOR'S (PERPETUAL) STATE OF EMERGENCY: HOW BUKELE'S GOVERNMENT OVERPOWERED GANGS, 47 (2023), https://insightcrime.org/wp-content/uploads/2023/08/El-SalvadorsPerpetual-State-of-Emergency-How-Bukeles-Government-Overpowered-Gangs-InSight-Crime-Nov-2023.pdf [https://perma.cc/27Q8-HEWT]; Diana Roy, *Why Has Gang Violence Spiked in El Salvador?*, COUNCIL ON FOREIGN RELATIONS (May 4, 2022), https://www.cfr.org/articles/why-has-gang-violence-spiked-el-salvador-bukele [https://perma.cc/3FCP-K2DQ]. During a state of emergency, "[u]nder El Salvador's Constitution, the government can invoke a "state of exception" — which temporarily suspends basic rights, including free speech and protest rights — under extreme circumstances, ranging from war to serious disturbances of public order." *El Salvador's State of Exception Explained*, ALIANZA AMERICAS, https://www.alianzaamericas.org/tool/el-salvadors-state-of-exception-explained (last updated Apr. 27, 2022) [https://perma.cc/Y229-55X5]; Jeremy Giles, *The Problem With El Salvador's Crime Numbers,* FOREIGN POL'Y **(**Aug. 8, 2024), https://foreignpolicy.com/2024/08/08/el-salvador-bukele-crime-homicide-prison-gangs/ [https://perma.cc/6BXA-36ZT]. *See* discussion *infra* Section II.A. The Constitutional Framework Behind The State of Exception (this section names El Salvador's constitutional provision that permits the suspension of constitutional rights amidst national emergency).

[3] Press Release, Hum. Rts. Watch, El Salvador: Widespread Abuses Under State of Emergency (Dec. 7, 2022), https://www.hrw.org/news/2022/12/07/el-salvador-widespread-abuses-under-state-emergency [https://perma.cc/JC9B-8ACT].

speech and his control of the media, lending itself to manufactured support and a lack of accountability to citizens. Part VI situates Bukele's tactics within the broader context of authoritarian regimes, drawing comparisons to other leaders who have undermined democratic norms by weaponizing speech restrictions, and demonstrating that even democratically elected leaders can inflict harm on their citizens and violate democratic principles. Part VII then offers recommendations for holding President Bukele accountable and bringing justice to those he has harmed.

I. BACKGROUND

A. History of Political Repression in El Salvador

For much of El Salvador's history, successive regimes have used political repression as a tool to maintain control over the working class.[4] In the early twentieth century, to establish oligarchic power by El Salvador's agro-bourgeoisie, largely tied to coffee exports, the Salvadoran government used military and police forces to suppress resistance, particularly in rural areas where most people lived in extreme poverty.[5] Farm-worker led resistance efforts came to a head in 1932 when military dictator Maximiliano Hernandez Martinez responded with a massacre known as La Matanza, which killed 30,000 farmworkers, characterizing one of the most significant events in El Salvador's history of political repression.[6] From 1932, El Salvador fell victim to uninterrupted military rule for the next fifty years, and political repression carried on.[7] The 1960s-70s were characterized by largescale attacks against rural workers and university student resistors, ultimately laying the groundwork for decades of systemic inequality, political violence, and the eventual eruption of the Salvadoran Civil War in 1979.[8]

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[4] Susan Ram, *El Salvador: Perspectives on a Revolutionary Civil War*, 11 SOC. SCIENTIST 3, 12-13, 23 (1983).

[5] John Beverley, *El Salvador*, 10 SOC. TEXT 55, 56 (1982); Stephanie Huezo, *Marching Back to the Past: Militarism in El Salvador,* ORIGINS: CURRENT EVENTS IN HIST. PERSP. (Feb. 2023), https://origins.osu.edu/read/marching-back-past-militarism-el-salvador [https://perma.cc/DE4K-KVPF].

[6] Ram*, supra* note 4, at 10. This massacre would now be considered as a crime against humanity under Article 7 of the Rome Statute, adopted in 1998, where murder amounts to "a systemic attack" "against any civilian population, with knowledge of the attack." Rome Statute of the International Criminal Court art. 7(1), July 17, 1998, 2 U.N.T.S. 38544 [hereinafter Rome Statute].

[7] Joaquín M. Chávez, *Dreaming of Reform: University Intellectuals During the Lemus Regime and the Civic-Military Junta in El Salvador (1960–1961)*, 9 CONGRESO CENTROAMERICANO DE HISTORIA 1732, 1738 (2008); *see also*, Huezo, *supra* note 5 (parenthetical info).

[8] Raymond Bonner, *America's Role in El Salvador's Deterioration***,** THE ATL. (Jan. 20, 2018), https://www.theatlantic.com/international/archive/2018/01/trump-and-el-salvador/550955/ [https://perma.cc/GBK4-V69Z]. In the 1960s and 70s El Salvador's president ordered raids, violence, and murder of protesting students, faculty, and staff at the University of El Salvador. Huezo, *supra* note 5.

The Cold War and U.S. involvement in El Salvador profoundly influenced both the Salvadoran Civil War and the authoritarianism that characterized the period.[9] Rooted in communist and Marxist ideology, the Farabundo Martí National Liberation Front (FMLN), aimed to represent Salvadorans from the lowest social and economic classes and sought to overthrow the repressive military regime to establish a more equitable and democratic society.[10] The U.S. perceived the FMLN as an instrument of Soviet-influenced communism and in response, heavily funded and trained the Salvadoran military, providing over $4 billion in military aid between 1980 and 1992.[11] In collusion with the U.S., the Salvadoran government violently repressed communist and Marxist speech and ideology in the name of national security.[12] The twelve-year civil war brought about the murder of 75,000 civilians and displaced more than a million Salvadorans, amounting to one-fifth of El Salvador's population who left for the United States.[13] The U.S.-backed anti-communist political repression that manufactured the legacy of the twelve-year war drove an estimated 2.5 million Salvadorans to migrate to the U.S..[14]

B. The Origins of Gang Violence in El Salvador

Displacement, migration, and ultimately, mass deportation, reshaped the fabric of Salvadoran society.[15] Gang violence in El Salvador is rooted in

The rise of a military junta vigilante organization aimed to intimidate rural organizing efforts. Beverley, *supra* note 5*,* at 61.

[9] Bonner, *supra* note 8.

[10] THE HERITAGE FOUND., EL SALVADOR'S MARXIST REVOLUTION 5 (1981), https://static.heritage.org/1981/pdf/bg137.pdf?_gl=1*1rgjzuz*_gcl_au*MTY2MTI3NDM5MC4xNzcxOTc4NDk3*_ga*OTcxODUzMjIwLjE3NzE5Nzg0OTg.*_ga_W14BT6YQ87*czE3NzE5Nzg0OTckbzEkZzAkdDE3NzE5Nzg0OTckajYwJGwwJGgw [https://perma.cc/EE43-NB4P].

[11] Cara McKinney, *Twelve Years of Terror: U.S. Impact in the Civil War in El Salvador*, 2 INT'L RSCH. SCAPE J. 1, 23 (2015).

[12] BRENNA DILLEY & KRISTINA-AID TOSS, IPM, AIDING AND ABETTING TERROR IN EL SALVADOR 27 (2020), https://ipmconnect.org/wp-content/uploads/2020/02/US-Aiding-Abetting-Salvadoran-Civil-War.pdf [https://perma.cc/N9WB-TVWQ].

[13] Dilley & Toss*, supra* note 12, at 1; Alyssa Knapp, "*Burning With a Deadly Heat": NewsHour Coverage of the Hot Wars of the Cold War*, AM. ARCHIVE OF PUB. BROAD. https://americanarchive.org/exhibits/newshour-cold-war/el-salvador [https://perma.cc/BW62-F2E7].

[14] Mohammed Moslimani, Luis Noe-Bustamante & Sono Shah, *Facts on Hispanics of Salvadoran Origin in the United States, 2021*, PEW RSCH. CTR. (Aug. 16, 2023), https://www.pewresearch.org/fact-sheet/us-hispanics-facts-on-salvadoran-origin-latinos/ [https://perma.cc/7MCG-KF84]; Dilley & Toss*, supra* note 12, at 2, 7-9, 24.

[15] William Wheeler, *How the US Helped Create El Salvador's Bloody Gang War*, THE GUARDIAN (Jan. 10, 2020), https://www.theguardian.com/news/2020/jan/10/how-the-us-helped-create-el-salvadors-bloody-gang-war [perma.cc/C9A7-JG5D] ("El Salvador had small, disorganised neighbourhood gangs before. But, according to a popular view in El Salvador, these mass deportations changed everything in

a U.S.-influenced, imperialist, and militarized society shaped by the civil war and resulting political and economic circumstances.[16] These gangs, often referred to as *maras* in Spanish, originated in the United States, emerging within Salvadoran communities in Los Angeles formed by people who fled El Salvador between 1980 and 1992 amidst the civil war.[17] The two strongest gangs in El Salvador are the Maras Salvatrucha ("MS-13") and the Barrio 18 (also referred to as Calle 18 or Dieciocho).[18] FMLN members living in exile formed the MS-13 to defend themselves against the Mexican gangs already established in the area.[19] Many others joined Barrio 18, an already existing, primarily Mexican-American gang.[20] Salvadoran immigrants joined the MS-13 and Barrio 18 to develop networks of support when there were little prospects for work or protection.[21]

U.S.-influenced turmoil in El Salvador became cyclical when, in the late 1990s, President Clinton instituted a major immigration crackdown and began deporting immigrants convicted of crimes by the thousands, including members of the MS-13 and Barrio 18.[22] These mass deportations and the influx of gang culture in El Salvador transformed the country's social order, effectively shipping the U.S.'s gang problem to El Salvador and other countries in the Northern Triangle.[23] Additionally, in the aftermath of the Salvadoran civil war, the U.S. Agency for International Development ("USAID"), followed by the International Monetary Fund ("IMF") and the World Bank, provided El Salvador with loans in exchange for implementing policies largely related to anti-communist privatization, which ultimately

the country. Many have come to believe that the US got rid of its problem at El Salvador's expense. The state's institutions had been gutted by conflict, poverty and corruption.").

[16] Cecilia Menjivar & Andrea Gómez Cervantes, *El Salvador: Civil War, Natural Disasters, and Gang Violence Drive Migration*, MIGRATION POL'Y INST. (Aug. 29, 2018), https://www.migrationpolicy.org/article/el-salvador-civil-war-natural-disasters-and-gang-violence-drive-migration [https://perma.cc/9UUD-E9EM].

[17] Jasmine Garsd, *How El Salvador Fell Into A Web Of Gang Violence*, NPR (Oct. 5, 2015), https://www.npr.org/sections/goatsandsoda/2015/10/05/445382231/how-el-salvador-fell-into-a-web-of-gang-violence [perma.cc/CTV9-MHTD].

[18] Roy*, supra* note 2.

[19] Menjivar & Gómez Cervantes, *supra* note 16; Danny Pirtle & Mara Salvatrucha, *MS-13,* ENCY. BRITANNICA (Feb. 27, 2026) https://www.britannica.com/topic/Mara-Salvatrucha [https://perma.cc/NSX5-AX8V].

[20] CELINDA FRANCO, CONG. RSCH. SERV. RL 34233, THE MS-13 AND 18TH STREET GANGS: EMERGING TRANSNATIONAL GANG THREATS? 3, 4 (2010).

[21] Franco, *supra* note 20, at 7.

[22] Wheeler, *supra* note 15.

[23] The Northern triangle is comprised of the countries of El Salvador, Guatemala, and Honduras. Wheeler, *supra* note 15. Diana Roy & Amelia Cheatham, *Central America's Turbulent Northern Triangle*, COUNCIL ON FOREIGN RELS. (Jul. 13, 2023), https://www.cfr.org/backgrounder/central-americas-turbulent-northern-triangle [https://perma.cc/Q524-3ML5].

contributed to nation-wide decline in spending on social services.[24] Once El Salvador adopted the U.S. dollar in 2001, the cost of living increased exponentially, placing many in financial despair.[25] The influx of gangs, poverty, and corruption led to high rates of gang recruitment among Salvadorans desperate for financial opportunity.[26]

C. Policy Responses to Combat Gang Violence (2000-2018)

Former administrations in El Salvador attempted to implement a range of policy solutions to combat gang violence, but these attempts did not prove successful.[27] For example, in October 2003, then-President Francisco Flores launched the first Salvadoran crackdown on gang activity by implenting a policy of mass arrests through operation "Mano Dura" (Iron Fist).[28] However, the arrests of gang members strengthened their networks and led to higher levels of civilian extortion.[29] With so many gang members in prison, at nearly 20,000 arrests, leaders were able to refine their organizing and began executing orders from within prison.[30] Ultimately, 90% of those arrested were released without charges, and the gang epidemic in El Salvador ensued.[31] In 2004 President Antonio Saca announced his "Super Mano Dura" strategy, leading to the arrest of 12,725 suspects, but again, the majority were freed on the basis of lack of evidence.[32] In 2012, President Mauricio Funes again used a zero-tolerance policy and enacted mass arrests, which resulted in an even higher increase in the homicide rate, ultimately leading his administration to negotiate with gang leaders and implement a truce to reduce

[24] Menjivar & Gómez Cervantes, *supra* note 16.

[25] *Id.*

[26] Wheeler, *supra* note 15.

[27] Juan Pappier, *Las Viejas Recetas de Bukele Contra Las Pandillas* [The Old Receipts from Bukele Against the Gangs], EL FARO (Jun. 15, 2022), https://elfaro.net/es/202206/columnas/26226/Las-viejas-recetas-de-Bukele-contra-las-pandillas.htm [https://perma.cc/R2MJ-ERMD].

[28] Mo Hume, *Mano Dura: El Salvador Responds to Gangs*, 17 DEV. PRAC. 739, 747 (2007).

[29] Hume, *supra* note 28 at 747.

[30] Laraib Zehra, *Systemic Human Rights Abuses in El Salvador: Ongoing Abuses, the Mano Dura, and the International Response*, GORSTRA RSCH. GRP., https://www.gorstra.com/latin-america-desk/systemic-human-rights-abuses-in-el-salvador-ongoing-abuses-the-mano-dura-and-the-international-response [https://perma.cc/U23J-WEVD]. Christopher Hernandez-Roy & Ruby Bledsoe, *Democracy Dies Under Mano Dura: Anti-Crime Strategies in the Northern Triangle*, CTR. FOR STRATEGIC AND INT'L STUDS. (Apr. 12, 2023), https://www.csis.org/analysis/democracy-dies-under-mano-dura-anti-crime-strategies-northern-triangle [https://perma.cc/8PZV-JEKR].

[31] Zehra, *supra* note 30.

[32] Carlos Garcia, *Tracing the History of Failed Gang Policies in US, Northern Triangle*, INSIGHT CRIME (Dec. 3, 2015), https://insightcrime.org/news/analysis/tracing-the-history-of-failed-gang-policies-in-us-northern-triangle/ [perma.cc/8E4P-2Q46].

the homicide rate.[33] None of these approaches effected a sustainable solution for solving El Salvador's gang crisis.[34]

D. The Territorial Control Plan

By 2016, El Salvador had the highest murder rate in the world, and years of failed attempts at the "Mano Dura" approach set the stage for Bukele's punitive Territorial Control Plan.[35] Now, gang violence in El Salvador is at an all-time low, and while basic safety and security have been generally restored throughout the country, the Salvadoran government has forced Salvadorans to forfeit their civil liberties for safety.[36] In 2020, Bukele adopted the Territorial Control Plan, which aimed to eradicate gang violence in El Salvador.[37] Though the Territorial Control Plan intended to improve the quality of life for Salvadorans, Bukele implemented it through authoritarian means.[38] When the Salvadoran Parliament met to discuss whether to approve the plan, Bukele threatened lawmakers by deploying armed forces and police to the Legislative Assembly building.[39] He also threatened to forcibly remove lawmakers in opposition to the plan from their

[33] Chris van der Borgh & Wim Savenije, *The Politics of Violence Reduction: Making and Unmaking the Salvadorean Gang Truce*, 51 J. LATIN AM. STUDIES 906, 913-14 (2019) ("The Funes government tried to develop a more integrated gang policy in its first year, but in the face of soaring homicide rates and constant media criticism at its failure to deal with the problem, the emphasis soon shifted back to repressive policeies which made it extremely difficult—if not impossible—to make prevention work.").

[34] PAPADOVASSILAKIS, *supra* note 2. The failure of these policies are evidenced by El Salvador's 2015 murder rate at 103 per every 103,000 people. *Id*.

[35] Roy, *supra* note 2; Giles, *supra* note 2.

[36] Alex Papadovassilakis, *The Road to El Salvador's State of Emergency*, INSIGHT CRIME (Dec. 6, 2023), https://insightcrime.org/investigations/road-el-salvador-state-emergency/ [https://perma.cc/NW6J-76CG]; U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, H.R. AND LAB., EL SALVADOR 2023 HUMAN RIGHTS REPORT (2023) https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/ecuador/ [https://perma.cc/N7UY-MFQ5]; Sonja Wolf, *El Salvador's State of Exception: A Piece in Nayib Bukele's Political Project*, FORUM: LATIN AM. STUDIES ASSN. (Oct. 2023) at 34, 36 (2024).

[37] Eddie Galdamez, *Nayib Bukele's Territorial Control Plan: Transforming El Salvador's Security Landscape*, EL SAL. INFO (Apr. 1, 2024), https://elsalvadorinfo.net/nayib-bukeles-security-plan/ [https://perma.cc/7HND-CKWZ].

[38] Bukele deployed the military to parliament when they were deciding on whether to approve of the Territorial Control Plan. Diego Oré & Nelson Renteria, *Nayib Bukele: The Tough On Crime Former Ad Man Set to Secure New El Salvador Term*, REUTERS (Feb. 1, 2024), https://www.reuters.com/world/americas/nayib-bukele-tough-on-crime-former-ad-man-set-secure-new-el-salvador-term-2024-02-01/ [https://perma.cc/HYA8-45PX]; Galdamez, *supra* note 37 ("The Territorial Control Plan is El Salvador's security measure aimed at restoring safety and eliminating gang influence in the territory, which they have accomplished.").

[39] José Miguel Vivanco, *President Bukele, Brute Force Is Not the Way Forward for El Salvador*, N.Y. TIMES (Feb. 14, 2020), https://www.nytimes.com/2020/02/14/opinion/bukele-el-salvador.html [https://perma.cc/P6M8-KP4F]; Oré & Renteria, *supra* note 38.

positions.[40] Afterward, Legislative Assembly members described Bukele's actions as similar to that of a dictator.[41] The following year, in 2021, Bukele replaced the country's magistrate judges in the Salvadoran Constitutional Court with judges who would ultimately allow him to run for a second term, in violation of the Constitution's prohibition on consecutive presidential terms.[42] During the 2021 elections, President Bukele entered into negotiations with representatives of MS-13 and Barrio 18, seeking to reduce homicide rates in exchange for the gangs' support of his political party, *Nuevas Ideas* (New Ideas).[43] In exchange, the government eased prison conditions for gang members, and provided other unreported benefits to gang leaders.[44] However, in 2022, the Bukele government broke its pact with by arresting a group of members.[45] In response, the gang killed eighty-seven civilians between March 25-27, 2022, making March 26, 2022 El Salvador's deadliest day in history.[46] In turn, the Bukele government enacted the "state of exception."[47] Nevertheless, Bukele's current approval ratings rank at nearly 90%, largely rooted in the steep drop in gang violence.[48]

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[40] Bukele deployed the military to parliament when they were deciding on whether to approve of the Territorial Control Plan. Diego & Renteria, *supra* note 38; Scott Neuman, *Troops Occupy El Salvador's Legislature to Back President's Crime Package*, NPR (Feb. 10, 2020), https://www.npr.org/2020/02/10/804407503/troops-occupy-el-salvadors-legislature-to-back-president-s-crime-package [https://perma.cc/8XFR-SVP5].

[41] Neuman, *supra* note 40.

[42] Constitución de la República de El Salvador art. 152 (El Sal); Margo Jarjoura, *From Mayor to "World's Coolest Dictator": The Rise and Re-Election of Nayib Bukele*, INTER-AM. L.R. (Feb. 13, 2024), https://inter-american-law-review.law.miami.edu/from-mayor-to-worlds-coolest-dictator-the-rise-and-re-election-of-nayib-bukele/ [https://perma.cc/KC2E-BPHR]; Jonathan Blitzer, *The Rise of Nayib Bukele, El Salvador's Authoritarian President*, NEW YORKER (Sep. 5, 2022), https://www.newyorker.com/magazine/2022/09/12/the-rise-of-nayib-bukele-el-salvadors-authoritarian-president [https://perma.cc/YB9L-5VKL]. *See* discussion *infra* Section II.A Bukele's Path to Power and Unconstitutional Re-Election.

[43] Carlos Martínez, Oscar Martínez, Sergio Arauz & Efren Lemus, *Bukele Has Been Negotiating with MS-13 for a Reduction in Homicides and Electoral Support*, EL FARO (Sep. 6, 2020), https://elfaro.net/en/202009/el_salvador/24785/Bukele-Has-Been-Negotiating-with-MS-13-for-a-Reduction-in-Homicides-and-Electoral-Support.htm [https://perma.cc/YHY6-VNBY].

[44] Martinez et al., *supra* note 43.

[45] Carlos Martínez, *Collapsed Government Talks with MS-13 Sparked Record Homicides in El Salvador, Audios Reveal*, EL FARO (May 17, 2022), https://elfaro.net/en/202205/el_salvador/26177/Collapsed-Government-Talks-with-MS-13-Sparked-Record-Homicides-in-El-Salvador-Audios-Reveal.htm [https://perma.cc/YHY6-VNBY].

[46] Martinez et al., *supra* note 45.

[47] Héctor Silva, *States of Exception: The New Security Model in Central America?*, WASH. OFF. ON LATIN AM. (Feb. 22, 2023), https://www.wola.org/analysis/states-of-exception-new-security-model-central-america/ [https://perma.cc/CR4H-WCA2].

[48] Allison Meakem, *Can Anything Stop El Salvador's Bitcoin Loving, Backsliding Leader?*, FOREIGN POL'Y (Jan. 2, 2024), https://foreignpolicy.com/2024/01/02/el-salvador-elections-bukele-bitcoin-crime-gang-policy/ [https://perma.cc/8ZFB-65B3].

II. THE STATE OF EXCEPTION

A. The Constitutional Framework Behind the State of Exception

The Salvadoran Constitution states that during "general disaster[s], or serious disturbances of the public order," the state of exception orders the suspension of the following constitutional rights: freedom of movement;[49] freedom of the press;[50] freedom of assembly;[51] and the right to privacy.[52] The Constitution further provides that, if three quarters of the Legislative Assembly are in favor, the state may also suspend the right to the presumption of innocence and the seventy-two-hour limit on administrative detention.[53]

On March 31, 2022, just four days after Bukele declared the state of exception, El Salvador's National Assembly amended the Penal Code to increase prison sentences for individuals convicted of past or present gang affiliation.[54] Under the revised code, anyone convicted of "illicit association" may face up to twenty to thirty years in prison.[55] In practice, not only does this include gang members, but the Bukele administration has directed the arrests of any individual suspected of providing support to gangs, even including journalists or human rights defenders reporting on gangs.[56] Upon arrest and at the order of Bukele, Salvadorans are stripped of their right to due process and access to counsel, and are held in pre-trial detention indefinitely.[57] In fact, in 2022, there were 3,110 reports of arbitrary arrests, whereas in 2021, there were only 25, representing a 12,340% increase.[58]

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[49] Constitución de la República de El Salvador art. 5 (El Sal).

[50] *Id.* at art. 6.

[51] *Id.* at art. 7.

[52] *Id.* at art. 24, 29.

[53] *Id.* at art. 29, 12, 13.

[54] Press Release, Diputados Aprueban Seis Reformas a Códigos y Leyes Relacionadas a la Protección de la Población, Tras Crímenes de Pandillas [Representatives Approve Reforms to Six Codes and Laws Related to the Protection of the Public], Legislative Assembly (El Sal.) (Mar. 31, 2022) https://www.asamblea.gob.sv/node/12072 [https://perma.cc/MDN2-894E].

[55] *Id.*

[56] *El Silencio No Es Opción* [Silence Is Not An Option], CRISTOSAL 7 (2024), https://cristosal.org/ES/el-silencio-no-es-opcion-informe-completo/ [https://perma.cc/254U-R42S]; CRISTOSAL, ONE YEAR UNDER STATE OF EXCEPTION: A PERMANENT MEASURE OF REPRESSION AND HUMAN RIGHTS VIOLATIONS 4 (May 12, 2023), https://fln.dk/media/otxjniwc/elsa56.pdf [https://perma.cc/9YTY-YVUL].

[57] U.S. DEP'T OF STATE, *supra* note 36; Constitución de la República de El Salvador art. 11 (El Sal) (right to a fair trial); Constitución de la República de El Salvador art. 12 (El Sal) (right to counsel).

[58] U.S. DEP'T OF STATE, *supra* note 36; U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, H.R. AND LAB., EL SALVADOR 2022 HUMAN RIGHTS REPORT (2022), https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/ecuador/ [https://perma.cc/Q2DH-GSCB] ("Cristosal reported that as of August 9, it received 348 complaints of arbitrary arrest, compared with 3,110 such complaints in 2022."); U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, H.R. AND LAB., EL SALVADOR 2021 HUMAN RIGHTS REPORT

Moreover, judges hold administrative hearings with groups of up to 500 people, and of the 58,000 arrested in the first six months of the state of exception, 51,000 have been placed in pre-trial detention.[59] Since the state of exception went into effect, the Salvadoran government has incarcerated an estimated 2% of the entire adult population,[60] in addition to over 3,000 minors.[61]

B. Civil Liberties Under the State of Exception

The erosion of democracy under Bukele has been made evident by his systematic suppression of civil liberties and control over public discourse.[62] Beyond stripping away the right to due process, the state of exception also suspended a number of Salvadoran constitutional rights such as the right to free speech, assembly, and association.[63] The government's 2022 modification to the Penal Code directly undermines freedom of press by criminalizing reporting on gang-related topics and imposing penalties of up to fifteen years in prison for violators.[64] Any journalist who dares to expose the grave abuses under Bukele's rule faces threats of harassment,

(2021), https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/ecuador/ [https://perma.cc/66XD-FRFC] ("As of August 31, the PDDH reported 25 complaints of arbitrary detention or illegal detention, compared with 22 from January to August 2020.").

[59] JUAN PAPPIER, HUM. RTS. WATCH, "WE CAN ARREST ANYONE WE WANT," WIDEPSREAD HUMAN RIGHTS VIOLATIONS UNDER EL SALVADOR'S "STATE OF EMERGENCY" (Dec. 7, 2022), https://www.hrw.org/report/2022/12/07/we-can-arrest-anyone-we-want/widespread-human-rights-violations-under-el [https://perma.cc/R4FB-JRW9].

[60] U.S. DEP'T OF STATE, *supra* note 36; UNIDAD DE DEFENSA DE DERECHOS HUMANOS Y Comunitarios (UNIDEHC), Informe SOBRE LA VIOLACIÓN AL DERECHO A LA SALUD EN LOS CENTROS PENALES DEL PAÍS (2024) [hereinafter UNIDEHC]. Compare 2% to over half of all countries' prison populations at rates below .15% of the general population. Helen Fair & Roy Walmsley, INST. FOR CRIME AND JUST. POL'Y RSCH , WORLD PRSION POPULATION LIST, 2 (14TH ed., 2024), https://www.prisonstudies.org/sites/default/files/resources/downloads/world_prison_population_list_14th_edition.pdf [https://perma.cc/T55E-6T3E]; Camilo Freedman, *'Unwaveringly Loyal': Why El Salvador's Bukele is Poised for Re-Election*, AL JAZEERA (Jan. 31, 2024), https://www.aljazeera.com/news/2024/1/31/unwaveringly-loyal-why-el-salvadors-bukele-is-poised-for-reelection [https://perma.cc/6BES-JKKN].

[61] *El Salvador Has Arrested 3,319 minors and Sentenced Almost 600 as Part of Anti-Gang Crackdown*, ASSOCIATED PRESS (July 16, 2024), https://apnews.com/article/el-salvador-bukele-gang-crackdown-minors-adolescents-jailed-bef309c1917113deed583f9e5d4a2d0c [https://perma.cc/ED23-AUKG].

[62] *Bukele's Legislative Victory Threatens Press Freedom in El Salvador*, HUM. RTS. WATCH (Mar. 17, 2021), https://www.hrw.org/news/2021/03/17/bukeles-legislative-victory-threatens-press-freedom-el-salvador [https://perma.cc/P7N4-KEZP].

[63] Press Release, Hum. Rts. Watch (Apr. 8, 2022), *supra* note 1; Constitución de la República de El Salvador art. 6 (El Sal) (freedom of press); Constitución de la República de El Salvador art. 7 (El Sal) (freedom of assembly).

[64] Press Release, Hum. Rts. Watch (Apr. 8, 2022), *supra* note 1.

surveillance, and criminal investigations.[65] This broader crackdown on expression extends beyond the press itself, as Bukele made an example of this effectively zero tolerance policy on gang representation in the media when he sentenced three unaffiliated children between the ages of twelve to fifteen to five-year prison sentences after they posted a video on TikTok depicting them making gang signs with their hands.[66]

These actions reveal Bukele's true agenda: gaining power not only over government institutions but also over the public narrative that upholds his authoritarian rule.[67] Bukele's suppression of dissent and his systematic erosion of civil liberties indicate an alarming departure from democratic principles.[68] Despite Bukele's invasive methods of government control, he proudly posted on X that he received the highest approval rating for a world leader at 89%, ironically surpassing Vladimir Putin at 78%.[69] Such claims of overwhelming support must be viewed with skepticism: enforced through fear and propaganda, Bukele's approval ratings have been influenced by his control over the media and his authoritarian grip on the public narrative.[70] Far from the democratic leader Bukele claims to be, he is rapidly destroying the very structures that allow for free and fair governance.[71]

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[65] Wolf, *supra* note 36, at 34, 36.

[66] *Salvadoran Court Sentences 3 Youths to Prison After They Appeared in Video Making Gang Signs*, ASSOCIATED PRESS (Jan. 23, 2025), https://apnews.com/article/el-salvador-nayib-bukele-gang-crackdown-state-of-emergency-minors-d8e5345daf8643bd8e77ff5c91938fe9 [https://perma.cc/5MJJ-8M69].

[67] Wolf, *supra* note 36, at 38.

[68] *Id.*

[69] *President Bukele Tops Global Approbal Ratings With 89% Support*, EL SAL. IN ENGLISH (Oct. 17, 2024), https://elsalvadorinenglish.com/2024/10/17/president-bukele-tops-global-approbal-rankings-with-89-support/ [https://perma.cc/8F3C-DBZK].

[70] Sarah Kinosian, *Trolls, Propaganda and Fear Stoke Bukele's Media Machine in El Salvador*, REUTERS (Nov. 29, 2022), https://www.reuters.com/investigates/special-report/el-salvador-politics-media/ [https://perma.cc/C8T4-BNX3]. *See infra* discussion in Section V: Media Control.

[71] Wolf, *supra* note 36, at 37-38 ("Troublingly, amid corruption allegations, Bukele has weakened autonomous bodies such as the Institute for Access to Public Information and ended the cooperation agreement with an international anti-corruption commission. Throughout his administration, the Armed Forces have acquired a political role they did not previously have in the postwar period . . . As the President himself has recognized, El Salvador is no longer the country it once was. In a short time, he has virtually eliminated the checks and balances that existed, and he seems hungry for more changes.").

III. BUKELE'S AUTHORIZATION AND ENCOURAGEMENT OF STATE VIOLENCE

A. Bukele Has Committed Acts of Torture

In 2023, Bukele opened the Terrorism Confinement Center (CECOT), where he has imprisoned El Salvador's highest ranking gang leaders.[72] The documented abuse at CECOT and in other Salvadoran prisons clearly meets the elements of torture under the Inter-American Convention to Prevent and Punish Torture (IACPPT), which El Salvador ratified in 1994.[73] The IACPPT defines torture as the intentional infliction of physical or mental suffering for purposes such as punishment, intimidation, or control, including methods aimed at diminishing a person's mental or physical capacity.[74] Numerous reports document systemic abuse in Salvadoran prisons, including electric shocks; beatings with fists, batons, and rifles; solitary confinement; light deprivation for up to fifteen days at a time; starvation; hanging prisoners by their knees as punishment; tear gas; and denial of medical care.[75] Prisoners have reported that guards beat them to the point of convulsion and then left them without treatment.[76] The sheer scale and consistency of these reports show that the suffering inflicted is neither incidental nor random—it is intentional and systematic.[77]

These acts align with the IACPPT's definition of torture because they serve punitive, intimidating, and coercive purposes.[78] The Bukele administration's uses torture to punish suspected criminals, intimidate the broader population, and facilitate compliance through fear.[79] Even more troubling is the fact that many prisoners were falsely accused of gang membership, reinforcing the conclusion that this abuse is not merely about crime control but about dominance.[80] Bukele's statements that prisoners "are

[72] Leire Ventas, *Coming Face to Face with Inmates in El Salvador's Mega-Jail*, BBC (Feb. 14, 2024), https://www.bbc.com/news/world-latin-america-68244963 [https://perma.cc/8XKA-9NPK].

[73] Inter-American Convention to Prevent and Punish Torture art. 51, (Feb. 28, 1987), O.A.S.T.S. No. 67; El Silencio No Es Opción, *supra* note 56, at 22.

[74] Inter-American Convention to Prevent and Punish Torture, *supra* note 73.

[75] UNIDEHC, *supra* note 60; El Silencio No Es Opción, *supra* note 56, at 22.

[76] UNIDEHC, *supra* note 60.

[77] *See generally* U.S. DEP'T OF STATE, *supra* note 36; UNIDEHC, *supra* note 60, Informe SOBRE LA VIOLACIÓN AL DERECHO A LA SALUD EN LOS CENTROS PENALES DEL PAÍS (2024); El Silencio No Es Opción, *supra* note 56, at 22.

[78] Inter-American Convention to Prevent and Punish Torture, *supra* note 73.

[79] *El Salvador: A Thousand Days Into the State of Emergency. "Security" at the Expense of Human Rights*, AMNESTY INT'L (Dec. 20, 2024), https://www.amnesty.org/en/latest/news/2024/12/el-salvador-mil-dias-regimen-excepcion-modelo-seguridad-a-costa-derechos-humanos/ [https://perma.cc/M8PM-ZRF2]; El Silencio No Es Opción, *supra* note 56, at 7.

[80] UNIDEHC, *supra* note 60.

not human beings" and have no rights demonstrate that his methods are designed not only to punish but also to diminish the prisoners' mental and physical strength.[81] These tactics are consistent with the IACPPT's recognition that torture includes methods designed to obliterate personality and diminish mental and physical capacity, even if they do not leave lasting physical injuries.[82]

This torture reflects a deliberate policy of state violence, not isolated misconduct, in violation of the IACPPT.[83] Prison guards and law enforcement officers are the direct perpetrators of the documented abuse, and the scale and consistency of these practices point to a broader system of state control and approval.[84] Bukele's public statements effectively sanction this behavior, and the government's focus on punitive measures over due process confirms that this is state-sanctioned violence.[85] In sum, this systematic abuse—designed to punish, intimidate, and weaken prisoners mentally and physically—satisfies the elements of torture under the IACPPT.[86]

B. Bukele Has Violated Human Rights

The abuse documented at Salvadoran prisons under the state of exception also violates Aritcle 5 of the American Convention on Human Rights ("American Convention"), which guarantees the right to humane treatment and prohibits torture or cruel, inhumane, or degrading treatment or punishment.[87] The systematic abuse clearly violates this provision, as the suffering caused, including electric shocks, beatings, solitary confinement, and denial of medical care, is intentional, cruel, and degrading.[88]

The abuse also aligns with the American Convention's prohibition on arbitrary detention under Article 7, as the courts falsely accused many prisoners of gang membership, leading to their unlawful and unjust

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[81] *Id.*; El Silencio No Es Opción, *supra* note 56, at 22.

[82] Inter-American Convention to Prevent and Punish Torture, *supra* note 73.

[83] U.S. DEP'T OF STATE, *supra* note 36; Inter-American Convention to Prevent and Punish Torture, *supra* note 73.

[84] U.S. DEP'T OF STATE, *supra* note 36.

[85] José Luis Sanz, *"Bukele Must Be Investigated for Torture Under the State of Exception,"* EL FARO (Apr. 8, 2024), https://elfaro.net/en/202404/el_salvador/27302/bukele-must-be-investigated-for-torture-under-the-state-of-exception [https://perma.cc/XEX7-SQKJ].

[86] AMNESTY INT'L, *supra* note 79; U.S. DEP'T OF STATE, *supra* note 36; Inter-American Convention to Prevent and Punish Torture, *supra* note 73.

[87] American Convention on Human Rights art. 5, *opened for signature* Nov. 22, 1969, O.A.S.T.S. No. 36, 114 [hereinafter Pact of San José] ("Every person has the right to have his physical, mental, and moral integrity respected . . . No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment . . . .") (El Salvador signed the IACHR on November 22, 1969 and ratified on June 20, 1978); UNIDEHC *supra* note 60; El Silencio No Es Opción, *supra* note 56, at 7.

[88] Pact of San José art. 5, *supra* note 87; AMNESTY INT'L, *supra* note 79.

detention.[89] Relatedly, the Bukele government further infringed on the right to a fair trial, ordered by Article 8, by denying due process guarantees to detainees.[90]

Further, the Bukele government violated the right to judicial protection under Article 25, as they failed to provide legal remedies or protection for those subjected to torture or mistreatment, demonstrated by the over 1,825 habeas corpus petitions filed in the first year of the state of exception, of which only 18 had been heard.[91]

Finally, these violations are attributable to the state under Article 1, which imposes a duty on states to not only respect human rights but also ensure that they are protected within their jurisdiction.[92] Since the Bukele government ordered these abuses, evidenced by the actions of law enforcement, and publicly endorsed it through official rhetoric, the state has failed to meet its Article I duty.[93] In sum, the actions of the Bukele government and the widespread abuse in Salvadoran prisons constitute clear violations of multiple provisions of the American Convention, demonstrating a failure to protect human rights and a perpetual system of torture, arbitrary detention, and denial of justice.[94]

C. Bukele Has Committed Crimes Against Humanity

In 2016, El Salvador signed and ratified the Rome Statute and joined the International Criminal Court ("ICC") as a new state party.[95] Under the Rome Statute, the ICC has the power to prosecute individuals for perpetrating crimes against humanity.[96] The Rome Statute defines crimes against humanity as "acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack."[97] Bukele has violated the Rome Statute, specifically specifically under article 7(1), which defines crimes against humanity, including (e)

[89] *Id.*; *see* discussion *supra* Section II.A.

[90] PAPPIER, *supra* note 59; Pact of San José art. 8, *supra* note 87.

[91] Pact of San José art. 25, *supra* note 87 (explaining the right to legal recourse for the violation of fundamental rights); Claudia Espinoza, *Presentan Nuevos Habeas Corpus Por Detenciones en* Régmen [New Habeas Corpus for Detention in Regime Presented], LA PRENSA GRÁFICA (Oct. 22, 2022), https://www.laprensagrafica.com/elsalvador/Presentan-nuevos-habeas-corpus-por-detenciones-en-regimen-20221021-0067.html [https://perma.cc/Z5PN-CYKU].

[92] Pact of San José art. 1, *supra* note 87.

[93] *Id.*; Sanz, *supra* note 85.

[94] Pact of San José art. 1, 5, 7, 8, 25, *supra* note 87.

[95] Press Release, Int'l Crim. Ct., ICC Welcomes El Salvador as a New State Party (June 2, 2016), https://asp.icc-cpi.int/press-releases/PR1218 [https://perma.cc/6MPL-D9XF]. El Salvador ratified the Rome statute on March 3, 2016. Rome Statute, *supra* note 6.

[96] Press Release, Int'l Crim. Ct. (June 2, 2016), *supra* note 95.

[97] Rome Statute, *supra* note 6.

"[i]mprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;" (f) torture; and (k) "[o]ther inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health."[98]

Representative of 7(1)(e), El Salvador's widespread imprisonment, prolonged pre-trial detention, denial of access to counsel, and arbitrary arrests evidence deprivation of liberty without due process.[99] The acts of physical and psychological abuse that the Bukele regime has committed against those in custody meet the definition of torture under Article 7(1)(f).[100] This abuse forms part of a systematic and widespread attack on a civilian population, with the perpetrators acting under the knowledge or intent of the government's broader strategy.[101] The systematic abuse also meets the definition of "other inhumane acts" under Article 7(1)(k).[102] Under Bukele's rule, prisoners suffer great physical and mental pain, including through prolonged solitary confinement, starvation, and denial of medical care, all of which cause serious injury to their mental and physical health.[103] This treatment is both inhumane and intended to cause harm, fitting the description of other inhumane acts under the Rome Statute.[104]

Bukele's judicial corruption, legal reforms, and manufactured public approval has made access to justice in El Salvador nearly impossible, thereby requiring intervention from international legal bodies.[105]

IV. THE RISE OF BUKELE

A. Bukele's Path to Power and Unconsistutional Re-Election

Bukele is the self-proclaimed "coolest dictator" in the entire world.[106] His overwhelming success in the 2019 election came as a result of his anti-establishment platform, having tapped into widespread disillusionment, especially among young people, over persistent issues of safety, poverty, and

98 *Id.*

99 *Id.*; *see* discussion *supra* Section II.B.

100 *See* discussion *supra* Section III.A.

101 Rome Statute, *supra* note 6.

102 *Id.*

103 El Silencio No Es Opción, *supra* note 56, at 7; ONE YEAR UNDER STATE OF EXCEPTION: A PERMANENT MEASURE OF REPRESSION AND HUMAN RIGHTS VIOLATIONS, CRISTOSAL 22 (2023).

104 Rome Statute, *supra* note 6.

105 *See* discussion *infra* Sections IV.B, II.A., II.B., IV.A.

106 Mat Youkee, *Nayib Bukele Calls Himself the 'World's Coolest Dictator'—But Is He Joking?*, GUARDIAN (Sep. 26, 2021), https://www.theguardian.com/world/2021/sep/26/naybib-bukele-el-salvador-president-coolest-dictator [https://perma.cc/E29R-LKYF].

political corruption.[107] With a national history of corruption, a stagnant economy, and a culture of violence, Salvadorans embraced Bukele as a leader whom they perceived as an agent of change.[108]

In 2024, Bukele ran for a second consecutive term, in defiance of Article 152 of the Constitution, which prohibits immediate presential re-election.[109] Bukele is the second President in El Salvador's history who has run for a second consecutive term, and the first was military dictator Maximiliano Hernández Martínez in 1939.[110] Although Bukele's second consecutive term was at odds with the Constitution, he maneuvered a way to make it legal.[111] In 2021, the Salvadoran Supreme Court—packed with judges appointed by Bukele—ruled that a sitting president can run for a consecutive election if they step down from the presidency at least six months before the next inauguration.[112] As such, Bukele stepped down from the presidency on November 30, 2023.[113] However, despite the constitutional requirement to appoint a board of directors to replace him, which is supposed to include a new President and three delegates of the Legislative Assembly, he unilaterally appointed Claudia Juana Rodríguez de Guevara, his personal secretary.[114]

Bukele has received international criticism for the unlawful action he has taken to "lawfully" run for a second consecutive term.[115] According to the Council of Europe's Venice Commission, which promotes standards for democracy and human rights, changes to presidential term limits require rigorous democratic deliberation and must adhere strictly to established legal frameworks.[116] The integrity of term limits as a democratic safeguard necessitates that any proposed changes follow legitimate constitutional

[107] *Nayib Bukele Ortez*, CIDOB: BARCELONA CTR. FOR. INT'L AFFAIRS (Jan. 2, 2019), https://www.cidob.org/lideres-politicos/nayib-bukele-ortez [https://perma.cc/XQJ5-CGFR].

[108] Bukele deployed the military to parliament when they were deciding on whether to approve of the Territorial Control Plan. Oré & Renteria, *supra* note 38.

[109] Jarjoura, *supra* note 42; Constitución de la República de El Salvador art. 152 (El Sal).

[110] *How Nayib Bukele Is Breaking Presidential Term Limits in El Salvador*, ECONOMIST (Dec. 6, 2023), https://www.economist.com/the-economist-explains/2023/12/06/how-nayib-bukele-is-breaking-presidential-term-limits-in-el-salvador [https://perma.cc/5ZW3-64JG].

[111] *Id.*

[112] *Id.*

[113] *Id.*

[114] *Id.*

[115] Sandra Weiss, *El Salvador: Unconstitutional Re-election of Bukele*, IPS J. (Feb. 2024), https://www.ips-journal.eu/topics/democracy-and-society/el-salvadors-self-proclaimed-saviour-7295/ [https://perma.cc/3D7Q-GA59].

[116] Eur. Comm'n for Democracy Through Law, *Report on Term Limits, Part I—Presidents*, Study No. 908/2017 (2018), https://www.venice.coe.int/webforms/documents/default.aspx?pdf=CDL-AD(2018)010-e&lang=EN [https://perma.cc/7R2N-VF4Z].

processes rather than circumventing them through institutional manipulation.[117]

B. Electoral Reform

Bukele created the circumstances for a land-slide victory through electoral reforms designed to benefit his re-election. These reforms included replacing independent electoral officials with party loyalists and altering voting procedures to reduce transparency and oversight of the electoral process.[118] Further, the Legislative Assembly reformed the election process in June 2023, just eight months prior to the February 2024 election, by changing their vote-counting method to a policy intended to directly benefit Bukele's re-election.[119] This shift fundamentally altered parliamentary representation by favoring larger political parties at the expense of smaller ones, effectively concentrating more seats in the hands of the dominant party while diminishing the voice of opposition and minority parties in the legislature.[120] This new model cancels votes for candidates that amount to 50,000 or less, and according to civil society studies, this transition provided Bukele's *Nuevas Ideas* party with 20% more seats than they would have won had Bukele not enacted such changes to the electoral process.[121] If not for this transition, minority parties would have won twenty-four seats, as opposed to only six.[122]

Approval of these reforms between October 2022 through 2023, along with Bukele's replacement of magistrate judges in May 2021, suggests that El Salvador's Supreme Electoral Tribunal is not independent from the President.[123] The changes to El Salvador's electoral system effectively transform electoral victory from a product of democratic competition into an entrenchment of *Nuevas Ideas* dominance.

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[117] Ana María Méndez Dardón, *El Salvador's Election Integrity Under Scrutiny*, WASH. OFF. ON LATIN AM. (Jan. 30, 2024), https://www.wola.org/analysis/el-salvador-election-integrity-under-scrutiny/ [https://perma.cc/M82M-D7BH].

[118] This demonstrates the facade of democracy, where citizens may vote, but controlled institutions and the removal of democratic safeguards manipulate the outcome. *Id.*

[119] *Id.*

[120] TERCER INFORME PRELIMINAR DE LA MISIÓN DE OBSERVACIÓN ELECTORAL DE LA OEA EN EL SALVADOR, ORGANIZATION OF AMERICAN STATES 2 (2024).

[121] *Id.*

[122] *Id.*

[123] Méndez Dardón, *supra* note 117.

C. Inequitable Campaigning Financing

Political campaigns in El Salvador traditionally receive public funding to ensure a degree of fairness and equity among candidates and parties.[124] These values arise out of Article 85 of the Salvadoran Constitution, which emphasizes a pluralistic political system, comprised of multiple political parties.[125] Historically, campaign financing in El Salvador has long been marked by corruption and inequality, with officials often distributing resources unevenly and undermining electoral integrity.[126] These issues were glaringly evident in Bukele's most recent election, where, in violation of Article 210 of the Salvadoran Constitution, *Nuevas Ideas* was the only party to receive any public funding.[127]

Such disparities in campaign financing distort the political landscape, particularly through the heavy emphasis on television advertising as a primary expenditure in Salvadoran elections.[128] In the 2009 presidential election, television advertising alone accounted for a staggering 90% of total campaign spending, showcasing the dominance of the media in shaping electoral narratives and influencing voter behavior.[129] This dynamic raises serious equity concerns: when access to television depends on financial resources, well-funded candidates and parties may receive disproportionate visibility, potentially skewing electoral competition and limiting diverse representation in the political arena.

In the 2024 presidential election, *Nuevas Ideas* leveraged access to state resources and dominated media coverage through both state-owned channels and private networks, while opposition parties faced severe financial constraints and limited media access—creating a profoundly uneven electoral

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[124] Constitución de la República de El Salvador art. 210 (El Sal); ÁLVARO ARTIGA GONZÁLEZ, LA FINANCIACIÓN DE LOS PARTIDOS POLÌTICOS EN EL SALVADOR [The Financing of Political Parties in El Salvador] 274-75 (Instituto de Investigaciones Jurídicas, Instituto Internacional para la Democracia y la Asistencia Electoral; Organización de Estados Americanos 2011).

[125] Constitución de la República de El Salvador art. 85 (El Sal).

[126] MIGUEL ÁNGEL LARA OTAOLA & ROTHSAY ROSALES, WESTMINSTER FOUND. FOR DEMOCRACY, THE COST OF POLITICS IN EL SALVADOR: IMPLICATIONS FOR POLITICAL PARTICIPATION 9 (Arturo Velasco Delgado trans., 2021).

[127] Constitución de la República de El Salvador art. 210 (El Sal); Jessica Garcia, *Gobierno Asfixió a la Oposición al Negar Fondos para la Campaña Electoral* [Government Chokes the Opposition by Denying Them Electoral Campaign Funds], ELSALVADOR.COM (Jan 30. 2024), https://www.elsalvador.com/noticias/nacional/deuda-politica-elecciones-legislativas-presidenciales-2024-el-salvador/1119790/2024/ [https://perma.cc/6BKZ-FGFQ].

[128] ROSSANA ANDÌA & YUKIHIKO HAMADA, INT'L IDEA POL'Y PAPER NO. 21, THE SYSTEM OF POLITICAL FINANCE SYSTEMS IN LATIN AMERICA: TACKLING POLITICAL CORRUPTION 19 (Int'l IDEA 2019), https://www.idea.int/sites/default/files/publications/integrity-of-political-finance-systems-in-latin-america.pdf [https://perma.cc/PH4Q-GQ34].

[129] *Id.*

playing field.[130] Celia Medrano, the vice-presidential candidate for Nuestro Tiempo (Our Time), explained that only a small number of private citizen donors were brave enough to risk potential government retaliation for supporting a party known for its vocal criticism of state corruption.[131] The President of Nuevas Ideas, Xavi Zablah Bukele, the President's cousin, further reflected this corrupt financing scheme when he declared that the 2024 electoral strategy would focus on permanently eliminating opposition parties from the political landscape.[132] Taken together, these dynamics cast doubt on the legitimacy of the electoral results and raise concerns about the fairness and integrity of the electoral process.[133]

V. MEDIA CONTROL AS A TOOL TO REMOVE CHECKS ON GOVERNMENT POWER

A. The Bukele Regime's Curbing of Freedom of Speech and Freedom of Information

Under Bukele's administration, freedom of speech is increasingly relevant, as the government's control over media and public discourse threatens the very foundation of democratic principles.[134] According to the United Nations ("UN"), of which El Salvador is a member state, freedom of speech and freedom to access information are human rights protected under international law.[135] Although the UN's International Covenant on Civil and Political Rights ("ICCPR") permits state parties to temporarily suspend

[130] ORGANIZACIÓN DE LOS ESTADOS AMERICANOS, TERCER INFORME PRELIMINAR DE LA MISIÓN DE OBSERVACIÓN ELECTORAL DE LA OEA EN EL SALVADOR 5 [Preliminary Report on the Mission of Electoral Observation of the Organization of American States en El Salvador] (Mar. 5, 2024), https://www.oas.org/fpdb/press/INFORME-PRELIMINAR—-Tercer-informe-preliminar-de-la-Mision-de-Observacion-Electoral-de-la-OEA-en-El-Salvador-Municipales.pdf [https://perma.cc/TL4C-H2S2].

[131] Garcia, *supra* note 127; Constitución de la República de El Salvador art. 210 (El Sal.).

[132] G. Villarroel & L. Mondragón, *Impago de la Deuda Política Ahoga la Campaña Electoral de Partidos de Oposición para Elecciones 2024 en El Salvador* [Non-payment of Political Debt Drowns the Electoral Campaigns of Opposition Parties for 2024 Elections in El Salvador], LA PRENSA GRÁFICA (Dec. 5, 2023), https://www.laprensagrafica.com/elsalvador/Impago-de-la-deuda-politica-ahoga-la-campana-electoral-de-partidos-de-oposicion-20231204-0095.html [https://perma.cc/6TZJ-KZK3].

[133] ORGANIZACIÓN DE LOS ESTADOS AMERICANOS, *supra* note 130.

[134] ORGANIZACIÓN DE ESTADOS AMERICANOS, COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS, INFORME ESTADO DE EXCEPCIÓN Y DERECHOS HUMANOS EN EL SALVADOR [Report on the State of Exception and Human Rights in El Salvador] 271 (June 28, 2024), https://www.oas.org/es/cidh/informes/pdfs/2024/informe_estadoexcepcionddhh_elsalvador.pdf [https://perma.cc/T6VL-TQCX].

[135] OFF. OF THE U.N. HIGH COMM'R FOR HUM. RTS., ACCESS TO INFORMATION: 2013 THEMATIC REPORT TO THE HUMAN RIGHTS COUNCIL OF THE SPECIAL RAPPORTEUR ON FREEDOM OF OPINION AND EXPRESSION (2013), https://www.ohchr.org/sites/default/files/Documents/Issues/Expression/Factsheet_5.pdf [https://perma.cc/E4RQ-DUPT].

certain obligations during a public emergency, including those related to freedom of speech, such suspensions are neither unlimited nor indefinite.[136] In July 2024, six UN Special Rapporteurs reminded the government of El Salvador that, under Article 4 of the ICCPR, any suspension of fundamental rights during a state of emergency must be exceptional and temporary, and not prolonged without sufficient justification, as emergency measures should not be extended when they no longer meet the threshold of a national threat.[137] Thus, although El Salvador may have had grounds to suspend the ICCPR's guaranteed right to free speech at the beginning of the state of emergency, the current evidence suggests that gangs no longer present an emergency-level threat, raising concerns that these suspensions could now violate the ICCPR.[138]

Freedom of speech is an essential pillar of a democratic society, where the free exchange of ideas serves as a critical mechanism for strengthening democratic processes, providing citizens with a vital tool for participation.[139] By the same token, a society deprived of access to information cannot be truly free because without access to reliable and diverse sources of information, citizens are unable to make informed decisions about their governance, their rights, or their participation in democratic processes.[140] Informed choices are crucial for holding public officials accountable and for

[136] International Covenant on Civil and Political Rights art. 4, Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR] (entered into force 23 March 1976) (El Salvador ratified the ICCPR on November 30, 1979) ("States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation.").

[137] Consejo de Derechos Humanos, Informe del Grupo de Trabajo Sobre las Despariciones Forzadas o Involuntarias [Working Group Report on Forced or Involuntary Disappearances] A/HRC/54/22 (2023); Consejo de Derechos Humanos, Informe del Relator Especial Sobre La Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes [Special Rappateur on Torture and Other Treatment or Cruel, Inhumane, and Degrading Punishment], A/HRC/RES/16/23 (2011); Consejo de Derechos Humanos, Del Relator Especial Sobre El Derecho A La Privacidad [Special Rappateur on the Right to Privacy] A/HRC/RES/55/3 (2024); Consejo de Derechos Humanos, Del Relatora Especial Sobre La Independencia De Los Magistrados Y Abogados [Special Rappateur on the Independence of Courts and Lawyers] A/HRC/RES/17/2 (July 6, 2011); Consejo de Derechos Humanos, Del Relator Especial Sobre Ejecuciones Extrajudiciales, Sumarias O Arbitrarias [Special Rappateur on the Independence of Extrajudical, Summary, or Arbitratry Executions] A/HRC/RES/17/5 (2011); Consejo de Derechos Humanos, Informe del Relator Especial Sobre la Promoción y La Protección de Los Derechos Humanos y Las Libertades Fundamentales en La Lucha Contra el Terrorismo [Special Rappateur on the Protection of the Fundamental Human Rights and Liberties in the Fight Against Terrorism] A/HRC/34/61 (2017).

[138] PAPADOVASSILAKIS, *supra* note 2.

[139] OFF. OF THE U.N. HIGH COMM'R FOR HUM. RTS., *supra* note 135. *See also* Antecedentes *e Interpretación de la Declaración de Principios* Background and Interpretation of the Declaration of Principles, ORGANIZACIÓN DE LOS ESTADOS AMERICANOS, https://www.oas.org/es/cidh/expresion/showarticle.asp?artID=132&lID=2, [https://perma.cc/45C4-WGDX].

[140] *Free Press 'a Cornerstone' of Democratic Societies, UN Says*, U.N. NEWS (May 3, 2021), https://news.un.org/en/story/2021/05/1091132 [https://perma.cc/UE3P-GCMG].

ensuring that power remains in the hands of the people.[141] As a result, Bukele has limited citizens' ability to challenge authority, participate in decision-making, and shape their country's future.[142]

B. Bukele's Attacks on Dissenters in the Media, Manufactured Support, and Authoritarian Empowerment

Bukele's media strategy uses populism and propaganda to manufacture public support.[143] He has leveraged intimidation, censorship, and propaganda to control El Salvador's media landscape—undermining democracy, silencing dissent, and shaping public discourse to maintain his authority.[144] Nevertheless, Bukele claims he is leading a "true democracy."[145] In his February 2024 election acceptance speech, Bukele positioned himself as a representative of the people and challenged the existing narrative by stating that it was the "pueblo Salvadoreño" (the Salvadoran people) who removed the previous Constitutional Court and Attorney General, thereby enabling the approval of the unconstitutional Territorial Control Plan and state of exception.[146] To a cheering crowd, Bukele announced,

> [International critics] say that Salvadorans are oppressed. They say that the Salvadorans don't like the state of exception, that the Salvadorans live in fear of their government. And I want to tell the jounralists who are here with us tonight, here in total freedom and security, here in the safest country in the entire Western hemisphere . . . Believe 'el pueblo Salvadoreño . . . They

[141] *Id.*

[142] ASOCIACIÓN DE PERIODISTAS DE EL SALVADOR (APES), RÉGIMEN DE EXCEPCIÓN Y AFECTACIÓN A LA LIBERTAD DE PRENSA Y LIBERTAD DE EXPRESIÓN EN EL SALVADOR 28-33 [Regime of Exception and Affectation to Freedom of the Press and Expession in El Salvador] (June 2023), https://apes.org.sv/wp-content/uploads/2023/07/Regimen-de-excepcion-y-afectacion-a-la-libertad-de-prensa-y-libertad-de-expresion-en-El-Salvador.-1.pdf [https://perma.cc/E3EY-8ZSV].

[143] *El Salvador: Critics Blocked on Social Media*, HUM. RTS. WATCH (Dec. 16, 2021, 9:00 AM EST), https://www.hrw.org/news/2021/12/16/el-salvador-critics-blocked-social-media [https://perma.cc/T3VN-T8S2].

[144] *Id.*

[145] Nayib Bukele, *Una Verdadera Democracia…*, YOUTUBE (Feb. 7, 2024), https://www.youtube.com/watch?v=A97FGwi4eac [https://perma.cc/DUF7-XL3T].

[146] *Id.*; Alexander Stehn, *El Pueblo and Its Ptoblems: Democracy Of, By, and for Whom?,* 6 THE PLURALIST 103, 104 (2011) (stating that the use of the term, "el pueblo" is colloquially associated as the people as sovereign, in opposition to the ruling elite).

> told you in all of the national and international opinion polls, even the opposition polls. And if you didn't believe that, they told you again today in these elections . . . If that doesn't convince you, journalists, if that doesn't convince you, representatives from the NGOs, represenatives from the international organizations, the UN, the OAS . . . If that doesn't convince you, nothing will.[147]

Support for Bukele in El Salvador is potent, but he has gone beyond the mere use of propaganda to generate this support.[148] Ultimately, "[t]he coolest dictator in the entire word" is propped up by a media strategy that manipulates public perception, floods social media with manufactured approval, and legitimizes authoritarianism.[149]

Bukele's media strategy not only stifles opposition but also manipulates public opinion, normalizing his authoritatian actions in a country insulated from access to information.[150] As part of his crackdown on gang violence, Bukele has attacked independent journalism by threatening prosecution of those who express dissent.[151] In 2022, Bukele passed a law that established ten- to fifteen-year prison sentences for anyone who, through written, radio, television, or digital media, engages in "transmission to the general population of messages or statements originating or presumably originating from said criminal groups, that could generate anxiety and panic in the population."[152] However, according to Bukele, gang associates include human rights non-governmental organizations and even the Inter-American Commission on Human Rights ("IACHR").[153]

In response to Bukele's actions to restrict freedom of the press, Angelica Carcamo, the President of the Asociación de Periodistas de El Salvador (Association of Salvadoran Journalists), said that "the threat in El Salvador used to be from gangs, now it's from the state."[154] The threat of

147 Nayib Bukele, *supra* note 145.

148 Kinosian, *supra* note 70. *See* discussion *infra* Section V. C. Attacks on Journalism, D. Social Media, and E. CECOT Media Strategy.

149 Youkee, *supra* note 106; Kinosian, *supra* note 70.

150 *See generally* Zelly Martin, Inga Trauthig & Samuel Woolley, *What Role Do Messaging Apps Play in Autocrats' Propaganda?*, CTR. INT'L GOV. INNOVATION (Aug. 23, 2023), https://www.cigionline.org/articles/what-role-do-messaging-apps-play-in-autocrats-propaganda [https://perma.cc/PLM8-QU6R]; Megan Janetsky, *As Free Press Withers in El Salvador, Pro-Government Social Media Influencers Grow in Power*, ASSOCIATED PRESS (Aug. 13, 2023), https://apnews.com/article/bukele-tiktok-youtube-influencers-disinformation-el-salvador-5523937ba0e499af71e7f2ff7e72eeac [https://perma.cc/WKD6-Z9UN].

151 *El Salvador Press Cries Censorship As Anti-Gang Law Targets Media*, THE GUARDIAN (Apr. 6, 2022), https://www.theguardian.com/world/2022/apr/06/el-salvador-press-censorship-gang-law [https://perma.cc/2CYK-PEDX].

152 *Id.*

153 *Id.*

154 Kinosian, *supra* note 70.

lawsuits and other forms of retaliation has—by design—created a chilling effect among Salvadoran journalists. Bukele has even stated in an interview that "[i]t will be incredibly rare to find a negative opinion in the population."[155]

In 2023, the Association of Journalists of El Salvador reported 311 government attacks on journalists through doxing, threats, and criminalization.[156] This was followed by 165 more attacks in the first nine months of 2024.[157] Even without formal charges, the President has called out many of the journalists by name, forcing several into exile, and dozens of journalists have reportedly had their phones repeatedly hacked with spyware.[158]

Bukele employs social media as both a tool of governance and as a platform for shaping a narrative of support. Juan Pappier of Human Rights Watch notes that Bukele relies heavily on social media to manage government affairs and communicate with the public, to the point that his Twitter account has essentially become El Salvador's "Official Gazette."[159] Bukele has effectively replaced independent journalism with his own social media empire, using platforms like Twitter, TikTok, YouTube, and Facebook to control the narrative and suppress opposition.[160]

Bukele's administration leverages "paid influencers and 'likely bot farms'" to create an illusion of widespread support while silencing dissent.[161] Evidence of Bukele's bot farms is represented through hundreds of Twitter accounts who retweet his own and other users' (or bots') pro-Bukele tweets within the same millisecond in which they have been posted.[162] This coordinated manipulation of social media not only amplifies Bukele's message but also drowns out critical voices, making it difficult for dissenting perspectives to gain traction. The use of bot farms and paid influencers in generating hundreds of messages of pro-Bukele support misleads public

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[155] Dánae Vilchez, *A 'Culture of Silence' Threatens Press Freedom Under El Salvador President Bukele,* COMM. TO PROTECT JOURNALISTS (Oct. 11, 2024), https://cpj.org/2024/10/a-culture-of-silence-threatens-press-freedom-under-el-salvador-president-bukele/ [https://perma.cc/S22D-A934].

[156] *Id.*

[157] *Id.*

[158] Blitzer, *supra* note 42; Associated Press, *El Salvador Investigative Journalists Sue Spyware Maker in Federal Court*, NBC NEWS (Dec. 1, 2022), https://www.nbcnews.com/news/latino/el-salvador-investigative-journalists-sue-spyware-maker-us-court-rcna59571 [https://perma.cc/L9Z4-ECZC].

[159] *El Salvador: Critics Blocked on Social Media*, *supra* note 143.

[160] Kinosian, *supra* note 70.

[161] *Id.;* Jane Esberg, *All The President's Trolls: Real and Fake Twitter Fights in El Salvador*, INT'L CRISIS GROUP (July 13, 2020), https://www.crisisgroup.org/latin-america-caribbean/central-america/el-salvador/all-presidents-trolls-real-and-fake-twitter-fights-el-salvador [https://perma.cc/35H9-YRGY].

[162] Kinosian, *supra* note 70.

perception because it creates an artificial sense of consensus in Bukele's favor.[163]

Further, Bukele has adopted a practice of blocking journalists on social media who criticize his administration.[164] When the government delivers most of its public messaging and policy announcements through social media, blocking critics restricts access to public information and impedes on transparency.[165] Courts in other countries have recognized this concern and have held that government officials may not block users from offical accounts solely because they have criticized the government.[166] For example, the Supreme Court of Justice in Mexico prohibited a state Attorney General from blocking dissidents, and especially journalists, on his Twitter account, ruling that the purpose behind this prohibition is to promote the public's interest in the access to information.[167] Through threats and surveillance, Bukele has undermined the media's ability to function as a check on power and has deeply affected the Salvadoran populace's access to accurate, diverse information.[168]

C. CECOT Media Strategy

Bukele has incorporated CECOT, El Salvador's notorious new prison complex, into his media strategy by inviting some of the world's leading media agencies to film the conditions inside the facility.[169] Even though the Bukele administration does not permit Salvadoran civilians or El Salvador-based media outlets to enter CECOT, the Bukele administration has invited reporters from CNN and Reuters, among others, for private tours of the

163 *See generally*, Dánae Vílchez, *A 'Culture of Silence' Threatens Press Freedom Under El Salvador President Bukele*, COMMITTEE TO PROTECT JOURNALISTS (Oct. 11, 2024), https://cpj.org/2024/10/a-culture-of-silence-threatens-press-freedom-under-el-salvador-president-bukele/ [https://perma.cc/S22D-A934] (describing the general culture of political repression targeted at journalists, and Bukele's replacement of a free press with his own social media empire, manufactures public approval).

164 *El Salvador: Critics Blocked on Social Media*, *supra* note 143.

165 *Id.*

166 *Id.*

167 Amparo en Revisión, 1005/2018, Derecho de Acceso a la Información, Derecho a la Privacidad de los Servidores Púbicos [Right to Access Information, Right to Privacy of Public Servers], Pleno de la Suprema Corte en Justicia (SCJN) 18, 50-51, Marzo de 2019, (Mex.).

168 Vilchez, *supra* note 155.

169 Stefano Pozzebon, *Why El Salvador's President Nayib Bukele Wants Everyone to Know About His New Prison*, CNN (Mar. 7, 2023), https://www.cnn.com/2023/03/07/americas/el-salvador-prison-bukele-intl-latam/index.html [https://perma.cc/KW28-RTRD]; *see generally* CNN, *'Worst of the Worst': Go Inside El Salvador's Prison for Gang Members,*YouTube Nov. 14, 2024), https://www.youtube.com/watch?v=E-Oz14D5sz0 [https://perma.cc/MR6W-K9C9]; *see generally* REUTERS, *Inside El Salvador Prison Housing 12,000 Gang Members*, YOUTUBE (Oct. 13, 2023), https://www.youtube.com/shorts/AKrHPUNBU6k [https://perma.cc/X4KP-T5X3].

prison.[170] In publicized photos, CECOT prisoners wear white shorts and are asked to take their shirts off to expose their gang tattoos, posing for the camera behind bars.[171] The Salvadoran government provided photos to the BBC depicting hundreds of prisoners, sitting on the floor in tightly-packed rows, with their heads bowed and their hands clasped behind their necks.[172] These carefully crafted media campaigns serve as a cornerstone of Bukele's tough-on-crime image, demonstrating his administration's success in combating gang violence.[173] These images are intentionally dramatic, positioning Bukele as a champion of public safety. To make matters worse, it seems that Bukele's media strategy has been effective as one state-promoted video features a narrator claiming that many Salvadorans view CECOT as a representation of newfound freedom, symbolizing the transformation of El Salvador."[174]

VI. BUKELE'S REGIME AS A REPRESENTATION OF MODERN AUTHORITARIANISM

Post-Cold War authoritarianism represents a shift from overt, repressive tactics to more institutional and indirect methods of control.[175] Unlike the blatant violence, military coups, and open suppression representative of pre-Cold War regimes, modern authoritarian leaders operate within the framework of democratic institutions to create a facade of legitimacy.[176] A hallmark of this shift is the appearance of fair and free elections, hosted by regimes that often manipulate legal systems, control media narratives, and undermine opposition through laws that restrict civil liberties.[177] In these elections, leaders may use voter suppression, gerrymandering, or outright fraud to maintain their grip on power while appearing democratic.[178]

Modern authoritarian leaders use surveillance and censorship to stifle dissent while previous authoritarian regimes relied on outright violence.[179]

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170 *See generally* CNN, *supra* note 169; *see generally* REUTERS, *supra* note 169.

171 Will Grant, *Stuck in One of the World's Toughest Jails—Against Judges' Orders*, BBC (Aug. 25, 2024), https://www.bbc.com/news/articles/c9wjk00dj5ro [https://perma.cc/GP6K-F9L5].

172 *Id.*

173 Pozzebon, *supra* note 169.

174 *See generally* CNN, *supra* note 169; *see generally* REUTERS, *supra* note 169.

175 MILAN W. SVOLIK, THE POLITICS OF AUTHORITARIAN RULE 22 (2012).

176 *See id.* at 22.

177 *Id.* at 22, 28; Fareed Zakaria, *The Rise of Illiberal Democracy*, 76 FOREIGN AFFS. 22, 23 (1997).

178 Zakaria, *supra* note 177 at 22, 23; *see generally* Christina Selzer & Shalina Randeria, *Soft Authoritarianism* (Sep. 2021), https://up2date.uni-bremen.de/en/article/soft-authoritarianism [https://perma.cc/F8PX-YHUU].

179 LARRY DIAMOND, AUTHORITARIANISM GOES GLOBAL: THE CHALLENGE TO DEMOCRACY 7 (2016).

These leaders may silence dissidents through defamation laws or restrictions on NGOs and media outlets.[180] Political systems that fall somewhere between full democracy and full authoritarianism are often described as "soft authoritarianism," "illiberal democracy," or "partly free."[181] The concept of an authoritarian democracy is intentionally contradictory, indicating political systems where the government is formed through a democratic process, but the political environment is highly controlled through restricted civil rights. Modern authoritarian regimes that have followed this framework include Venezuela under Hugo Chávez and Nicolás Maduro, Hungary under Viktor Orbán, and Turkey under Recep Tayyip Erdoğan.[182] Bukele mimics thsee authoritarian democracies by holding free elections while undermining the electoral process.[183] Through populist nationalism, judicial manipulation, constitutional subversion, political repression, and the illusion of free and fair elections, Bukele and his counterparts have been able to remove checks on their power.[184]

Bukele's authoritarian rule has empowered him to commit crimes against humanity and violate human rights without fear of reprisal.[185] For example, he has altered the Constitution by changing term limits, and in January 2025, he loosened the constitutional amendment procedure, paving the way for substantial changes to El Salvador's rule of law.[186] Bukele has

[180] *Id.* at 163.

[181] *Id.*; Edward Schatz, *The Soft Authoritarianism Tool Kit*, 41 COMP. POL. 203 (2009); FREEDOM HOUSE, FREEDOM IN THE WORLD 2024: THE MOUNTING DAMAGE OF FLAWED ELECTIONS AND ARMED CONFLICT 6 (2024), https://freedomhouse.org/sites/default/files/2024-02/FIW_2024_DigitalBooklet.pdf [https://perma.cc/DU8M-TW2C].

[182] Schatz, *supra* note 181 at 218; DIAMOND, *supra* note 179, at 78.

[183] As explained, Bukele has undermined the electoral process through changing the Salvadoran Constitution to allow him a second consecutive term, packing the courts, controlling the media, and threatening dissent. *El Salvador*, FREEDOM HOUSE (2024) https://freedomhouse.org/country/el-salvador/freedom-world/2024, [https://perma.cc/9SRN-RRSY].

[184] See discussion supra Sections III. The Rise of Bukele, II.A. The Constitutional Framework Behind the State of Exception, II.B. Civil Liberties Under the State of Exception.

[185] Manuel Meléndez Sánchez, *Latin America Erupts: Millennial Authoritarianism in El Salvador*, 32 J. DEMOCRACY 3, 19-32 (2021); *see* discussion *infra* Section VII.B.

[186] Roman Gressier, *With a Stroke of the Pen, Bukele Rewrites Constitution to Allow Changes at Will*, EL FARO (Jan 30, 2025), https://elfaro.net/en/202501/el_salvador/27724/With-a-Stroke-of-the-Pen-Bukele-Rewrites-Constitution-to-Allow-Changes-at-Will.htm [https://perma.cc/L99J-GHXU]; Constitución de la República de El Salvador art. 248 (El Sal); William Partlett, *Hugo Chavez's Constitutional Legacy*, BROOKINGS (Mar. 14, 2023), https://www.brookings.edu/articles/hugo-chavezs-constitutional-legacy/ [https://perma.cc/GDJ6-5XAH]. Almost as soon as Chávez was elected in 1999, he rewrote the constitution by expanding presidential powers and allowing for unlimited re-election, laying the groundwork for his 14-year rule followed by the 12-year rule of now-President Nicolás Maduro. *Maduro Declared Victory of Venezuela's Disputed Presidential Election*, AL JAZEERA (July 29, 2024), https://www.aljazeera.com/news/2024/7/29/nicolas-maduro-declared-winner-of-closely-fought-venezuela-election [https://perma.cc/Y7E6-GED5]. Paul Kirby & Nick Thorpe, *Who is Viktor Orban, Hungarian PM With 14-Year Grip on Power?*, BBC (Feb. 13, 2024), https://www.bbc.com/news/world-

also mirrored the actions of these regimes by stifling dissidents, journalists, and NGOs, painting them as threats to national security to conceal his abusive actions, including indiscriminate arrests, removing the right to due process, and abysmal prison conditions.[187] And, as in Venezuela, Turkey, and Hungary, the consolidation has been reinforced through the placement of loyalists in key state institutions and the capture of the judiciary and electoral system.[188] Ultimately, this carefully manufactured illusion of democracy has enabled Bukele to to maintain authoritarian rule, abuse his power, and commit crimes against humanity in violation of human rights.

VII. RECOMMENDATIONS

Bukele's control over media and campaign funding fueled his re-election, with his claimed popularity largely tied to increased safety and with his image as a symbol of hope after decades of government distrust.[189] But

europe-67832416 [https://perma.cc/HJ2C-AY66]. Orbán enacted a series of changes to the Hungarian Constitution, which has amounted to him winning four consecutive elections and controlling over two-thirds of parliament, the portion of votes needed to amend the Hungarian Constitution. Kim Lane Scheppele, *How Viktor Orbán Wins*, 33 J. DEMOCRACY 45-61 (2022), https://www.journalofdemocracy.org/articles/how-viktor-orban-wins/ [https://perma.cc/GA7D-8YPM]. *Turkey*, FREEDOM HOUSE (2024) https://freedomhouse.org/country/turkey/freedom-world/2024 [https://perma.cc/AU5A-YWC5]; KAYAHAN CANTEKIN, LAW LIBR. OF CONG., *No. 2021-020288.* President Erdoğan has gained power over the government through enacting a state of emergency by exercising executive power through emergency decrees and enacting changes to the constitution. After Turkey's failed 2016 military coup, Erdoğan declared a state of emergency, which was supposed to last only three months but was extended into two years. TURKEY: PRESIDENTIAL DECREES (2022) https://tile.loc.gov/storage-services/service/ll/llglrd/2022666100/2022666100.pdf [https://lccn.loc.gov/2022666100]; *Turkey Ends State of Emergency After Two Years*, BBC (July 18, 2018), https://www.bbc.com/news/world-europe-44881328 [https://perma.cc/E4TG-MDZ8].

187 *El Salvador, supra* note 183; *see* discussion *supra* Section III. Since 2016, President Erdoğan has enacted methods of political repression and censorship by shutting down over 200 media outlets and arresting dozens of journalists, accusing them of links to the coup and terrorism. Hannah Warner, *Shifting Away from the West: Erdogan's Post-Coup Attempt Response,* TOWSON U.J. INT'L AFFS. (May 17, 2021), https://wp.towson.edu/iajournal/2021/05/17/shifting-away-from-the-west-erdogans-post-coup-attempt-response/ [https://perma.cc/7EGA-4W3M]. President Erdoğan has shut down over 1,500 NGOs alleging that they present threats to national security. *Turkey*, *supra* note 186. In 2011, Orbán created a media council intended to fine media outlets for bankruptcy if they reported dissenting opinions. Once bankrupt, Orbán loyalists bought these media outlets for cheap, and converted them into engines of propaganda. Ultimately, Hungarian citizens only had access campaign materials promoted by Orbán. Scheppele, *supra* note 186.

188 *El Salvador, supra* note 183; *Chavez Rigging Venezuela's Supreme Court Was the First Step in Destroying Democracy and Freedom*, FIRST LIBR. INSTIT. (Mar. 12, 2021), https://firstliberty.org/news/chavez-rigging-venezuelas-supreme-court/ [https://perma.cc/RX7Y-UAHU]; Roland Paris, *European Populism and the Return of 'Illiberal Sovereignty': A Case-Study of Hungary*, 98 INT'L AFF. 529, 538 (2022); *Turkey*, *supra* note 186.

189 Alex Papadovassilakis, *Too Many Soldiers': How Bukele's Crackdown Succeeded Where Others Failed*, INSIGHT CRIME (Dec. 6, 2023), https://insightcrime.org/investigations/too-many-soldiers-how-bukele-crackdown-succeeded-where-others-failed [https://perma.cc/9TYT-AUJD]; Meléndez Sánchez, *supra* note 185, at 19-32.

doubts persist over the sincerity of his public support, and this mistrust stems from El Salvador's history of political corruption, civil war, and authoritarianism.[190] Importantly, Bukele positions himself as anti-establishment leader, separating himself from El Salvador's history of government corruption[191] Ultimately, his position as an outsider as well as his success in reducing gang violence lends him popular support despite his grave human rights violations.

As a result, the stickiness of Bukele's project, in spite of his long list of human rights violations, lies in his legitimate reduction of gang power in El Salvador. But that perceived security has been achieved through an imposition of limited access to information, thereby removing any domestic accountability mechanisms.[192] Bukele's overbroad, indiscriminate policies offend international human rights standards, punish innocent people, and strip Salvadorans of basic due process and free speech protections, and he must therefore be held accountable.[193]

Accountability, however, typically depends on domestic enforcement, but the state tasked with enforcing these rights is often the principal violator.[194] Any attempt to hold Bukele accountable in domestic courts would be a nonstarter because he has asserted control over the judicial branch.[195] Thus, the most effective method for holding Bukele accountable is by way of international law.

A. The Inter-American Court of Human Rights Should Refer the Case of El Salvador's State of Exception to the Inter-American Court of Human Rights

As discussed, Bukele and other government representatives have committed human rights violations under IACPPT and the American Convention.[196] Nevertheless, El Salvador's presidential commissioner for human rights and freedom of expression, Andrés Guzman, has consistently denied all accusations of human rights violations since his appointment in

[190] Meléndez Sánchez, *supra* note 185, at 19-32.

[191] Charles T. Call, *The Significance of Nayib Bukele's Surprising Election as President of El Salvador*, BROOKINGS (Feb. 5, 2019), https://www.brookings.edu/articles/the-significance-of-nayib-bukeles-surprising-election-as-president-of-el-salvador [https://perma.cc/6FYG-QGLY].

[192] *Barrio 18*, INSIGHT CRIME (Nov. 14, 2023), https://insightcrime.org/el-salvador-organized-crime-news/barrio-18-profile [https://perma.cc/R237-J5SK]; Kinosian, *supra* note 70.

[193] *El Salvador, supra* note 183.

[194] MARK GIBNEY, INTERNATIONAL HUMAN RIGHTS LAW: RETURNING TO UNIVERSAL PRINCIPLES 122 (2d ed. 2016).

[195] Méndez Dardón, *supra* note 117.

[196] *See* discussion *supra* Sections III.A., III.B.

mid-2023.[197] In December 2023, the IACHR unanimously approved a report recommending that the Salvadoran government reinstate the rights that they suspended and end the state of exception, which they shared with the Salvadoran government for review in January 2024.[198] That same month, when asked about his position on the IACHR and other international human rights bodies' declarations regarding El Salvador's human rights violations, Bukele stated that "these institutions want to keep us underdeveloped."[199] Following Bukele's statement, Guzmán disputed the report, and in June 2024, El Salvador submitted a counter-report to the IACHR, defending the state of exception with a series of fabricated assertions.[200]

The report stated that all detainees have the right to trial by an impartial judge, the right to challenge their detention, but it cited only two possible violations of the right to due process and the right to liberty (despite over 1,800 ignored habeas corpus petitions).[201] The report also contained a section titled "Formación de Derechos Humanos" (Formation of Human Rights), detailing the positive working conditions for guards by depicting photos of a fully equipped gym and bedrooms.[202] Yet it did not address allegations of torture whatsoever.[203] In response, three of the seven commissioners who approved the IACHR report in December 2023 voted against it following Guzmán's submission of a counter report.[204] Nevertheless, with a majority

[197] Gabriel Labrador, *Inter-American Commission Reiterates Call to End Salvadoran State of Exception*, EL FARO (Sep. 4, 2024), https://elfaro.net/en/202409/el_salvador/27552/Inter-American-Commission-Reiterates-Calls-to-End-Salvadoran-State-of-Exception.htm [https://perma.cc/AQ76-7LEH]; *see also* Victoria Delgado, *Comisionado Guzmán: "Nadie Que Ha Salido de la Carcel Ha Venido a Hablar Conmigo"* [No One Who Has Left Prison Has Come to Speak With Me], EL FARO (Aug. 28, 2024), https://elfaro.net/es/202408/ef_tv/27539/comisionado-guzman-nadie-que-ha-salido-de-la-carcel-ha-venido-a-hablar-conmigo [https://perma.cc/NE3B-H9NK].

[198] Labrador, *supra* note 197 (quote originally in Spanish).

[199] Kevin Marroquín, *Presidente Bukele Conversó y Respondió Preguntas de la Poblacion Latinoamericana* [President Bukele Spoke and Responded to Questions from the Latin American Population], DIARO EL SALVADOR (Jan. 3, 2024), https://diarioelsalvador.com/presidente-bukele-converso-y-respondio-preguntas-de-la-poblacion-latinoamericana/445992/ [https://perma.cc/U6RR-6XA3].

[200] COMISIÓN NACIONAL PARA LOS DERECHOS HUMANOS Y LIBERTAD DE EXPRESIÓN, UN NUEVO EL SALVADOR (2024).

[201] *Id.* at 67, 84; Espinoza, *supra* note 91.

[202] COMISIÓN NACIONAL PARA LOS DERECHOS HUMANOS Y LIBERTAD DE EXPRESIÓN, UN NUEVO EL SALVADOR 87 (2024).

[203] *See id.*

[204] CARLOS BERNAL PULIDO, ORG. OF AM. STATES, REPORT ON THE STATE OF EMERGENCY AND HUMAN RIGHTS IN EL SALVADOR (Dec. 12, 2024), https://humanrightscommission.house.gov/sites/evo-subsites/humanrightscommission.house.gov/files/evo-media-document/El%20Salvador_Written%20Testimony_Carlos%20Bernal.pdf [https://perma.cc/MV89-3FMZ].

in favor, the IACHR finally released its report in September 2024.[205] As the Salvadoran government failed to adequately address the concerns raised in the report, the IACHR should refer the case to the IACtHR.[206] The following cases outline how the IACtHR has addressed comparable human rights violations concerning prison conditions and torture, and provide guidance on how the IACtHR may respond to the case of El Salvador post-referral.

These cases provide a clear framework for addressing El Salvador's human rights violations under Bukele's rule.[207] In *Lopez-Álvarez v. Honduras* (2006), the IACtHR found that Honduras violated an innocent man's right to the presumption of innocence, due process, and humane treatment by holding him in a prolonged detention, as well as his right to personal integrity by subjecting him to continuous psychological torture, inhumane prison conditions, and denial of medical assistance, among other abuses.[208] In response, the IACtHR ordered Honduras to provide Lopez-Álvarez and his family with monetary damages, publicly acknowledge the damage they inflicted, investigate and punish those responsible for violating his human rights, and establish preventative measures to ensure that government actors and prison officials do not commit the same violations in the future.[209]

The same year, in *Montero-Aranguren et al (Detention Center of Catia) v. Venezuela*, the IACtHR found that Venezuela violated Article 5 of the American Convention by subjecting incarcerated Venezuelans to overcrowded, unsanitary prison conditions, withholding medical care, and imposing inhumane and degrading treatment.[210] The IACtHR ordered Venezuela to compensate each of the incarcerated individuals and their families with monetary damages, improve prison conditions, and implement additional preventative measures against the recurrence of such abuses.[211]

Finally, in 2020, the IACtHR held state of Ecuador responsible for violating the human rights of Ramón Rosendo Carranza Alarcón for arbitrary detention, unreasonable length of detention, violation of the presumption of

[205] *Id.*

[206] Rules of Procedure of the Inter-American Court of Human Rights Art. 41 (approved Nov. 16-25, 2000).

[207] López-Álvarez v. Honduras, Merits, Reparations and Costs, Judgment Inter-Am. Ct. H.R. (ser. C) No. 141 (Feb. 6, 2001); Montero Aranguren v. Venezuela, Merits, Reparations, and Costs, Judgment Inter-Am. Ct. H.R. (ser. C) No. 150 (July 5, 2006); Carranza Alarcon v. Ecuador, Merits, Reparations, and Costs, Judgment Inter-Am. Ct. H.R. (ser. C) No. 12, ¶ 197 (Feb. 3, 2020).

[208] *López-Álvarez v. Honduras*, Inter-Am. Ct. H.R. (ser. C) No. 141, 2, 32-43 (The IACtHR also found that Honduras violated Articles 7, 8, 13, 16, 17, 24, and 25).

[209] *Id.*

[210] *Montero Aranguren v. Venezuela*, Inter-Am. Ct. H.R. (ser. C) No. 150.

[211] *Id.*

innocence, and violations of due process.[212] The IACtHR ordered Ecuador to publish the judgment and its summary and to provide monetary damages to the individual.[213]

The IACtHR should use these rulings as guidance in addressing reparations on a mass scale for the ongoing abuses in Salvadoran prisons. This includes (1) the initiation of domestic court proceedings to hold Salvadoran government actors accountable for human rights violations; (2) providing compensation to victims and their families; and (3) implementing systemic reforms to ensure lasting protection of human rights and prevent further violations in El Salvador's prison system.[214] Though these examples represent reparations on an individual scale, each of those subject to the human rights violations in El Salvador's prisons should receive the same level of care. While these precedents primarily concern individual reparations, the same level of attention, remedy, and respect for human dignity should be extended to each person subjected to human rights violations within El Salvador's prison system.

B. The International Criminal Court Should Investigate Bukele for Crimes Against Humanity

The ICC provides an alternative approach when states fail to hold individuals accountable for atrocities.[215] Rather than addressing the state's responsibility as a whole, the ICC prosecutes individuals, which is crucial given Bukele's role in directing widespread crimes against humanity.[216] Prosecuting Bukele would ensure that those suffering from inhumane treatment, arbitrary detention, and torture in Salvadoran prisons receive justice, while sending a clear message to future government leaders that these abuses will not go unpunished. Prosecuting Bukele could also pressure the Salvadoran government to implement necessary legal reforms, as international attention and accountability could prompt action to improve prison conditions and protect human rights. Specifically, the ICC should investigate Bukele under the Rome Statute, focusing on Articles 7(1)(e) for

[212] The IACtHR ruled that Ecuador violated Article 7 of the American Convention, which protects individuals against arbitrary judicial interference in the right to due process, and Article 8, which protects the right to the presumption of evidence. *Carranza Alarcon v. Ecuador*, Inter-Am. Ct. H.R. (ser. C) No. 12.

[213] *Id.*

[214] *See generally López-Álvarez v. Honduras*, Inter-Am. Ct. H.R. (ser. C) No. 141; *Montero Aranguren v. Venezuela*, Inter-Am. Ct. H.R. (ser. C) No. 150; *Carranza Alarcon v. Ecuador*, Inter-Am. Ct. H.R. (ser. C) No. 12.

[215] M. CHERIF BASSIOUNI, INTRODUCTION TO INTERNATIONAL CRIMINAL LAW 499–503 (3d ed. 2003).

[216] *Id.* at 499-503; *see* discussion *supra* Section III.C.

imprisonment and deprivation of liberty, 7(1)(f) for torture, and 7(1)(k) for inhumane acts, due to the systemic abuses occurring under his administration.[217]

Under the principle of complementarity, the Rome Statute provides that the ICC will only intervene when national courts are unwilling or unable to prosecute serious crimes.[218] Even though this could slow the process, Bukele's actions compromising the judiciary would override this principle, since the national system cannot properly address his crimes.[219]

In prosecuting Bukele, the ICC should follow the precedent they set in 2019 when they charged Al-Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, de-facto leader of the Islamic Police in Timbuktu during the 2012 occupation of Mali.[220] Al-Hassan oversaw brutal detention conditions and physical punishments, directing prison officials to hold detainees in overcrowded, unsanitary cells without sufficient food, water, or medical care, and to inflict acts of violence and humiliation on prisoners, including through public flogging and beatings.[221] Like Al-Hassan's role in overseeing brutal detention conditions, Bukele has subjected prisoners to overcrowded, unsanitary cells, beatings, forced isolation, and denial of food, water, and medical care, causing severe physical and psychological suffering, reflecting a pattern of abuse that mirrors the systematic cruelty seen in Timbuktu.[222] Ultimately, the ICC prosecuted Al-Hassan for the crime against humanity of torture under Article 7(1)(f) of the Rome Statute, in addition to Article (7)(1)(k) by asserting that he contributed to crimes against humanity of persecution and other inhumane acts.[223] Just as the ICC prosecuted Al Hassan for these violations, the ICC should hold Bukele accountable for similar acts under Article 7(1)(e) for imprisonment and deprivation of liberty, 7(1)(f) for torture, and 7(1)(k) for other inhumane acts.[224]

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217 Rome Statute, *supra* note 6.

218 *Id.*

219 Méndez Dardón, *supra* note 117.

220 Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, ICC-01/12-01/18, Setencing Judgment (Nov. 21, 2019) https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd1808b650c.pdf (on file with Cardozo Journal of Equal Rights and Social Justice).

221 *Id.*

222 *See generally*, AMNESTY INT'L, *supra* note 79; El Silencio No Es Opción, *supra* note 56, at 7; UNIDAD DE DEFENSA DE DERECHOS HUMANOS Y Comunitarios (UNIDEHC), INFORME SOBRE LA VIOLACIÓN AL DERECHO A LA SALUD EN LOS CENTROS PENALES DEL PAÍS (2024).

223 Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, ICC-01/12-01/18.

224 *See generally id.*

C. Proposal to Condition Economic Aid to El Salvador

In conjunction with IACtHR and ICC proceedings, foreign governments and international bodies should condition economic aid to El Salvador on the Bukele administration terminating its human rights violations and crimes against humanity. El Salvador currently receives economic aid from a series of international development institutions. The International Monetary Fund (IMF) provided El Salvador $1.4 billion in aid intended to generate fiscal growth,[225] while the World Bank, Inter-American Development Bank, Latin American and Caribbean Development Bank, and Central American Bank for Economic Integration have collectively committed hundreds of millions of dollars in loans and grants for infrastructure and technological development between 2023 and 2024.[226] Together, these funds demonstrate how much El Salvador relies on international aid, and conditioning this support may have capacity to induce change amidst mounting human rights concerns.

Economic aid should be differentiated from humanitarian aid, where economic aid provides governments with grants for the purpose of infrastructure development, whereas humanitarian aid responds to resolving the problems that arise from more finite disasters.[227] In El Salvador, this might come in the form of suspending the aid supporting Bukele's effort to build "Surf City" along the Pacific coast to attract tourism, as well as a planned Bitcoin-operated city at the foot of Conchagua Volcano.[228] While

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[225] Press Release, IMFd, IMF Reaches Staff-Level Agreement with El Salvador on an Extended Fund Facility Arrangement, IMF Press Release No. 24/485 (Dec. 18, 2024).

[226] Juan Martinez, *El Salvador Secures $465 Million for Key Infrastructure Enhancements*, RIO TIMES (July 19, 2024), https://www.riotimesonline.com/el-salvador-secures-465-million-for-key-infrastructure-enhancements/ [https://perma.cc/CGT4-ZS3H]; Press Release, WBG, World Bank to Facilitate Employment and Skills Development Opportunities for Young People in El Salvador (Nov. 28, 2023); Press Release, World Bank Group, World Bank, Japan, and El Salvador to Team Up to Connect Farmers to Markets and Promote Food Security (July 23, 2024); Press Release, World Bank Group, El Salvador to Expand Access to Home Loans with IDB Support (Dec. 17, 2024); Xiomara Alfaro, *Inciativa DINÁMICA II Destina $2.8 Millones Para Potencia Emprendimientos y Pequeños Negocios en El Salvador* [Initiative DINÁMICA II Allocates $2.8 Million to Improve Entrepreneurship and Small Business in El Salvador], ELSALVADOR.COM (Apr. 20, 2024), https://www.elsalvador.com/noticias/negocios/bcie-destinara-mas-de-2-millones-para-potenciar-emprendimientos-y-pequenos-negocios-en-el-salvador/1137296/2024/ [https://perma.cc/8DGJ-3M95].

[227] Sean Ross, *Types of Foreign Aid: Bilateral, Military, Humanitarian & More*, INVESTOPEDIA (Nov. 20, 2025), https://www.investopedia.com/articles/investing/082616/what-are-different-types-foreign-aid.asp [https://perma.cc/JT6U-GW69].

[228] COMISIÓN NACIONAL PARA LOS DERECHOS HUMANOS Y LIBERTAD DE EXPRESIÓN, UN NUEVO EL SALVADOR 28 (2024); Steve Colantuoni, *Investment in Rail Transportation in El Salvador Will be More Than $1.8 Billion*, THE CENT. AM. GRP. (Dec. 3, 2023), https://www.thecentralamericangroup.com/rail-transportation-in-el-salvador/ [https://perma.cc/2X2S-QPQ3]; Rose Bridger, *Pacific Airport Displaces Communities, Destroys Agriculture and is Intended to Serve a Planned Bitcoin City*, GLOBAL ANTI-AEROTROPOLIS (Sep. 19, 2024), https://antiaero.org/2024/09/19/pacific-airport-displaces-communities-

building a tourism industry in El Salvador could contribute to the economy and create jobs for a largely impoverished nation, the potential economic benefits of job creation and infrastructure development are minimal when weighed against the urgent need to enforce human rights.[229]

The IMF and U.S. Agency for International Development (USAID) modeled what suspension of economic aid might look like, and the IMF's effort was proven successful.[230] The IMF's December 2024 $1.4 billion aid agreement was stipulated on El Salvador scaling back their bitcoin project, which introduced bitcoin as one of the two national currencies (the other being the U.S. dollar) in 2021.[231] Of note, however, the agreement did not consider Bukele's human rights policies.[232] In 2021, USAID reallocated aid from the Salvadoran police and a defunct Salvadoran public information institute to Salvadoran civil society organizations.[233] According to USAID Administrator, Samantha Powers, this came as a result of 'deep concerns' with judge dismissals as well as 'larger concerns about transparency and accountability.'[234] As recognized by the Biden administration, the challenge in withholding aid toward governments with problematic civil and human rights abuses can risk harming vulnerable populations.[235] The United Nations Office for the Coordination of Humanitarian Affairs estimates that of the 6.3 million people who live in El Salvador, 1.1 million live in poverty.[236] In response, instead of withholding all funding, the Biden administration

destroys-agriculture-and-is-intended-to-serve-a-planned-bitcoin-city/ [https://perma.cc/UVC8-H64T]; Robyn Wilson, *The Salvadoran Beach Town That Became A Bitcoin Testbed*, BBC (July 1, 2025), https://www.bbc.com/travel/article/20250625-the-beach-town-that-became-a-bitcoin-testbed, [https://perma.cc/2MJS-WHP5].

229 Bridger, *supra* note 228.

230 *U.S. To Pull El Salvador Funds on "Deep Concerns' Over Recent Dismissals*, REUTERS (May 21, 2021), https://www.reuters.com/world/americas/usaid-pull-el-salvador-government-aid-due-transparency-concerns-2021-05-21/ [https://perma.cc/Z4RV-YUUE].

231 David Zaslowsky, *The IMF's $1.4 Billion Loan to El Salvador Required Bitcoin Concessions From The World's First Crypto Nation*, BLOCKCHAIN (Dec. 20, 2024), https://blockchain.bakermckenzie.com/2024/12/20/the-imfs-1-4-billion-loan-to-el-salvador-required-bitcoin-concessions-from-the-worlds-first-crypto-nation/ [https://perma.cc/WUA4-UTMA]; Santiago Pérez, *El Salvador Made Bitcoin an Official Currency. Now It's Backtracking for IMF Loan.*, WALL ST. J. (Dec. 18, 2024), https://www.wsj.com/world/americas/el-salvador-made-bitcoin-an-official-currency-now-its-backtracking-for-imf-loan-874c6623 [https://perma.cc/5FAP-E2R2].

232 Pérez, *supra* note 231.

233 *U.S. to Pull El Salvador Funds on "Deep Concerns' Over Recent Dismissals, supra* note 230.

234 *Id.*

235 *Id.*; *El Salvador*, *Plan de Respuesta Humanitaria* [Humanitarian Action Plan], *Population,* HUMANITARIAN ACTION (Mar. 3, 2024), https://humanitarianaction.info/plan/1172/population#page-title [https://perma.cc/E3WB-AHLH] (Humanitarian Action is an initiative created by the United Nations Office for the Coordination of Humanitarian Affairs).

236 *El Salvador*, *supra* note 235.

rerouted, pulling their financial support for the Salvadoran government and rerouting it to civil society groups.[237]

Though the Trump administration has called for the closure of USAID, the State Department released a report the day of Trump's inauguration, affirming their commitment to providing hundreds of millions of dollars in aid to El Salvador.[238] Since the beginning of the second Trump presidency, the U.S. relationship with El Salvador has shifted significantly, where on February 3, 2025, Secretary of State Marco Rubio entered into an agreement with Bukele to "unfreeze assistance."[239] Further, the Trump administration began to materially embrace Bukele's prison system on March 15, 2025 by deporting 238 Venezuelan migrants to CECOT.[240] This staunch support for El Salvador indicates that the Trump administration will not only refrain from holding the Bukele government accountable for human rights concerns but that the Trump administration supports Bukele's punitive, inhumane prison system.[241] Once the U.S. has an executive branch that shifts back to recognizing the international standards that constitute human rights violations, that administration should return to Biden's 2021 policy of conditioning aid.[242] USAID's economic aid suspension did not lead to policy

[237] *U.S. To Pull El Salvador Funds on "Deep Concerns' Over Recent Dismissals, supra* note 230.

[238] Karoun Demirjian, *Trump Calls Directly for Closure of USAID*, N.Y. TIMES (Feb. 7, 2025), https://www.nytimes.com/2025/02/07/us/politics/usaid-trump.html [https://perma.cc/H27W-2ZU5]; *U.S. Relations With El Salvador*, U.S. DEP'T OF STATE (Jan. 20, 2025), https://2021-2025.state.gov/u-s-relations-with-el-salvador/ [https://perma.cc/NEU9-7SV4].

[239] Tammy Bruce, *Secretary Rubio's Meeting With Salvadoran President Nayib Bukele*, U.S. EMBASSY SAN SAL. (Feb. 5, 2025), https://sv.usembassy.gov/secretary-rubios-meeting-with-president-bukele/ [https://perma.cc/SCH6-6E3J].

[240] While many of the migrants deported were alleged members of Venezuelan gang, Tren de Agua, others were deported merely for having benign tattoos, including many seeking humanitarian relief in the United States. Marcos Alemán. *Venezuelan Migrants Deported by the US Ended Up in a Salvadoran Prison This Is Their Legal Status*, ASSOCIATED PRESS (Mar. 25, 2025), https://apnews.com/article/el-salvador-trump-tren-de-aragua-venezuela-dde4259e5dcd502101b7b8fbd3c03659 [https://perma.cc/68MJ-ABRF]; Mekhalo Medina & Benjamin Gamson, *Venezuelan Asylum Seeker Deported, Sent to El Salvador Mega Prison*, NBC L.A. (Mar. 25, 2025), https://www.nbclosangeles.com/news/local/venezuelan-asylum-seeker-deported-sent-to-el-salvador-mega-prison/3662760/ [https://perma.cc/6UAZ-MGFX]; Malcolm Ferguson, *ICE Deported Someone to El Salvador Mega Prison Over Paperwork Error,* NEW REPUBLIC (Mar. 27, 2025), https://newrepublic.com/post/193284/ice-deported-man-el-salvador-megaprison-paperwork-error [https://perma.cc/93AA-E78L].

[241] *Unlawful Expulsions to El Salvador Endanger Lives Amid Ongoing State of Emergency*, AMNESTY INT'L (Mar. 25, 2025), https://www.amnesty.org/en/latest/news/2025/03/unlawful-expulsions-to-el-salvador-endanger-lives-amid-ongoing-state-of-emergency/ [https://perma.cc/ZEF4-ZZUY].

[242] Jamil Dakwar, *The Targeted Chaos of Trump's Attacks Against International Human Rights Law and Justice*, ACLU (Feb. 13, 2025), https://www.aclu.org/news/human-rights/the-targeted-chaos-of-trumps-attacks-against-international-human-rights-law-and-justice [https://perma.cc/P2X5-BTCP].

shifts, but the IMF's suspension did.[243] While there has not been a 100% success rate in terms of policy reformation in response to suspending El Salvador from economic aid, with an eye toward the needs of El Salvador's impoverished society, the international community may consider a combined effort to threaten suspension.[244]

CONCLUSION

Bukele's authoritarian mechanisms for gaining and maintaining power, his violations of human rights and civil rights, and the potential crimes against humanity that he has committed represent a grave threat to Salvadorans and sets a dangerous example for governments of similarly situated countries plagued by organized crime.[245] Where organized crime threatens civilians and democratic institutions, reforms are necessary, but such reforms must abide by standards of international law by protecting civil and human rights.[246] However, the Bukele regime prioritizes maintaining power over upholding constitutional and human rights, and his control over the media and the judiciary makes it impossible to hold him accountable through legal means within El Salvador.[247] For the foregoing reasons, the international community must take on the responsibility of defending human rights in El Salvador through (1) the IACHR referring El Salvador to the IACtHR; (2) the ICC conducting an investigation into potential crimes against humanity; and (3) the conditioning of economic aid on El Salvador until they address their human rights violations and enact meaningful criminal justice and civil rights reforms.

[243] Pérez, *supra* note 231; *U.S. to Pull El Salvador Funds on "Deep Concerns' Over Recent Dismissals, supra* note 230.

[244] *See generally* Pérez, *supra* note 231; *U.S. to Pull El Salvador Funds on "Deep Concerns' Over Recent Dismissals, supra* note 230.

[245] ASOCIACIÓN DE PERIODISTAS DE EL SALVADOR (APES), *supra* note 142, at 28; Méndez Dardón, *supra* note 117; Youkee, *supra* note 106.

[246] *See* discussion *supra* Section III; Rome Statute, *supra* note 6; Inter-American Convention to Prevent and Punish Torture, *supra* note 73.

[247] *How Nayib Bukele Is Becoming "The World's Coolest Dictator*," DIRECTORIO LEGISLATIVO, https://directoriolegislativo.org/en/how-nayib-bukele-is-becoming-the-worlds-coolest-dictator/ [https://perma.cc/HF4V-SN88]; MARK GIBNEY, INTERNATIONAL HUMAN RIGHTS LAW: RETURNING TO UNIVERSAL PRINCIPLES 122 (2d. ed. 2016) (describing domestic legal proceedings against state actors as non-starters because the adjudicating body is part of the same entity that committed the violations).