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AMR 41/5433/2022

OPEN LETTER TO PRESIDENT NAYIB BUKELE OF EL SALVADOR

Dear President

For years, El Salvador has faced significant public security challenges. The dramatic increase in homicides reported last weekend makes it clear that these challenges persist.

In June 2019, weeks after you took office, you met with an Amnesty International delegation. On that occasion, we asked you to review and evaluate the successes and challenges of the measures implemented to address the high levels of violence that the country has been facing for years and to design strategies that comply with international human rights standards, taking into account the opinions and input of national and international human rights organizations.

As you will recall, during the meeting you [pledged](#) to implement a comprehensive public security strategy with a human rights perspective and to set up an Inter-Ministerial Roundtable with Amnesty International to address the main challenges in this area. You also recognized the important work of Salvadoran civil society organizations and the role of human rights defenders in the country.

However, throughout your administration the organization has observed with concern and publicly denounced how far the commitment expressed in that meeting is from being fulfilled and how many of your administration's actions have violated human rights and undermined the rule of law.

Clearly, the sudden increase in homicides reported recently demands urgent action to protect the lives and physical integrity of the population from crime and the authorities have a duty to implement effective measures to that end, but at the same time they must demonstrate how these actions are proportionate and necessary and in line with El Salvador's obligations under international law. The actions that the Salvadoran State has implemented so far give rise to serious concerns.

First, the State of Emergency Decree issued by the Legislative Assembly, at your request, on 27 March (Decree No. 333/2022) contravenes international human rights standards. It suspends rights that, under international human rights law, cannot be restricted even in the event of a state of emergency, such as elements of due process and judicial guarantees, including the right to know the reasons for one's detention, as well as the right to a defence in criminal proceedings, among others. This prevents detainees from effectively challenging the charges against them and from receiving a fair trial, which is unacceptable and violates fundamental human rights guarantees, while potentially denying victims of criminal violence their right of access to justice.

Further, the Decree in question fails to state the reasons why the suspension of constitutional guarantees for 30 days would be an appropriate, proportionate and necessary measure to address a public security problem. The suspension of judicial guarantees for detainees, which has already

AMR 41/5433/2022



generated public complaints, as well as the alarming statements that you have made on social media threatening to subject detainees to ill-treatment, suggest that, far from being an appropriate measure, it is a punishment outside the bounds of the law.

Second, the state of emergency has been accompanied by a confrontational presidential discourse that stigmatizes and attacks human rights defenders, civil society organizations, international bodies and the independent media simply for expressing concerns or criticism about the measures taken in this period. It is unacceptable for a Head of State to publicly harass human rights defenders and protection mechanisms. Silencing criticisms does not make them any less valid. On the contrary, engaging in in-depth discussions with different sectors could help create effective and comprehensive public policies. It is important to underscore the obligation of the Salvadoran State, and in particular its government, to protect human rights defenders in the country and to create an environment conducive to the defence of rights.

Third, on the night of 30 March, the Legislative Assembly approved an amendment to several laws. Amnesty International considers that many of the reforms set out in the resulting revised texts are in flagrant violation of human rights.

One of the most worrying issues is the restriction of the rights to due process and fair trial, which are indispensable in a state governed by the rule of law. Reforms to laws such as the Criminal Code and the Code of Criminal Procedure, among others, revoked the right of a declaration of *in absentia* for those accused of membership of a gang so that trial and sentencing can proceed without the presence of the accused. Amnesty International considers that any trial *in absentia* is per se unfair, with a few exceptions that do not apply in this case.

In addition, the limit on pre-trial or provisional detention (where a sentence has not been handed down within the time prescribed by law) has been removed, so that a person may be deprived of their liberty *sine die* pending a decision and without their guilt having been proved. In addition, pre-trial detention cannot be modified and trials may proceed without the identity of judges being made known – a situation observed by the Inter-American Court of Human Rights many years ago.

Further, some of the amendments raised concerns on account of their vagueness and subjectivity, such as, for example, the amendment to the Criminal Code that establishes penalties between 20 and 30 years in prison for those who “directly or indirectly benefit from relationships of any nature with such organizations” (maras, gangs or any other criminal organization). Such a provision does not meet the requirements of the principle of legality, which is an obligation under international law on El Salvador.

Finally, the Budget Act has also been amended to provide additional resources for national defence. The organization is concerned that instead of a gradual and orderly reduction of the involvement of the armed forces in public security operations and the strengthening of the capacities of the National Civilian Police, there appears to be a continuing strong preference for the militarization of public security, which has failed in every country and has aggravated the context of human rights violations. This is a violation of international human rights standards that state that public security operations should be mainly the preserve of civilian police forces.



In view of the foregoing, Mr President, we ask you and the Salvadoran State to:

1. Comprehensively review Decree No. 333/2022, which violates numerous human rights;
2. Review the legal reforms approved on 31 March that violate rights relating to due process and fundamental judicial guarantees;
3. Guarantee the human rights of people deprived of their liberty, including the right to physical integrity and freedom from torture and other cruel, inhuman or degrading treatment or punishment;
4. Ensure that the use of the military is an extraordinary measure and that its actions are in full compliance with international standards on the use of force and firearms, always subject to ordinary civilian jurisdiction and excluded from any exceptional jurisdiction, in particular military jurisdiction;
5. Publish the Territorial Control Plan as soon as possible in order to make the measures taken by the government transparent; and
6. Establish a high-level, formal and public dialogue between your government, national and international civil society organizations and international human rights protection mechanisms, with a view to reaching agreements and establishing public policies that respect human rights.

Yours sincerely

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