

State of Deception

Fact Finding Report on the Detained El Salvador Water Defenders, Mining, and the State of Human Rights under the Bukele Administration

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I. The Delegation:

From October 15-20, 2023, eight delegates from the United States and Canada held 19 meetings with leaders of civil society groups, human rights groups, lawyers, economists, a member of the legislature, and others in El Salvador. The delegation visited organizations in the department of Cabañas, specifically in San Isidro, Guacotecti, Victoria, and Santa Marta. The delegation also participated in a ceremony to mark the 40th anniversary of the human rights organization, Tutela Legal Maria Julia Hernandez, and to present that organization with the 2023 Institute for Policy Studies Letelier-Moffitt Human Rights Award. This is a report of the delegation's findings.

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II. Key Findings of the Delegation:

1. Among the over 70,000 people that Salvadoran President Nayib Bukele has incarcerated under abysmal conditions and the use of torture are tens of thousands of innocent people, including five water defenders and numerous labor leaders. No evidence has been presented by the government to back the arrest of the five water defenders, and charges against them should be dropped under a 1992 amnesty.
2. There is compelling evidence that President Bukele desires to violate a unanimous 2017 vote in the Salvadoran legislature to prohibit mining, a move that would endanger the country's water supply and violate the public will.
3. President Bukele has taken a series of steps to reduce the independence of the judiciary, to violate basic human rights, and to suspend civil liberties and the rule of law in the name of protecting the population from the violence caused by gangs. He is starving city governments of finances while expanding the military and is diverting millions of dollars borrowed from abroad for his cronies.
4. Representatives of the executive branches of the governments of the United States, Canada, Mexico, and the European Union have chosen to ignore these massive violations of human rights as they drop their criticism of Bukele's actions and supply financial aid to his government.

III: Executive Summary

This report begins with a brief description of the January 11, 2023, arrest and incarceration of five men who are members of an environment and social protection group, the Association of Economic and Social Development (ADES). This group has distinguished itself through its work to conserve El Salvador's scarce water supply that has been under threat by a number of factors, among them the mining industry. ADES played a significant role in bringing about the prohibition of metallic mining that was passed by El Salvador's legislature in 2017. During El Salvador's twelve-year armed conflict (1980-1992), the five members of ADES who were arrested in January 2023 were combatants and members of the FMLN, the coalition of rebel forces. Their arrest came as a result of accusations that they were responsible for the murder of a woman in 1989, during the conflict.

In order to better understand the reasons for their arrest more than thirty years later, this report explores the rise to power of Nayib Bukele, the current president of the country. It traces the political maneuvers that has left him with near absolute power in the country and enabled him in March 2022 to enact a "state of exception" in the country. This decree, which has been renewed monthly and is still in effect, gives Bukele a free hand to arbitrarily suspend democratic and fundamental rights and to arrest and confine people without legal representation indefinitely. It has resulted in the imprisonment of an additional estimated 70,000 people, many of whom may be innocent but have not been afforded the opportunity to defend themselves.

The report then returns to why these five men were arrested in 2023. It presents evidence that Bukele is intending to reintroduce mining in El Salvador, in part to address huge financial losses incurred due to his ill-fated decision make Bitcoin one of the country's official currencies just as it was about to suffer a dramatic drop in value. The arrest of these men and the attempt to brand them as murderers appears in part an attempt to diminish the work that they have done to bring about the ban on mining in the country, and to help facilitate a return to mining. It also acts as a warning that opposition to mining and anything else that Bukele proposes will not be tolerated.

The report notes the worldwide negative reaction to these arrests and the subsequent decision of a lower court judge to release the men on house arrest. The report lays out evidence that the charges against the five have no basis, and that the case should be dropped because the five are covered by a 1992 amnesty brokered by the United Nations. It then lays out evidence that the Bukele government is trying to restart mining. The report ends with the delegation's findings on the current situation in El Salvador, and with recommendations on actions that can be taken to drop the charges against the five, to maintain the prohibition against mining, and on how the US, Canadian, Mexican and other governments, and the United Nations, can support the return in El Salvador to democratic rule.

IV. Arrest of the Five Santa Marta Water Defenders

On January 11, 2023, on the orders of the Attorney General of the government of Nayib Bukele, police arrested six men, five of them in the department of Cabañas in the north of El Salvador¹ and one of them in the San Salvador city. The alleged charges are in connection with activity that occurred during the armed conflict that gripped El Salvador from 1980 until 1992. The six men had been members of the FMLN, the armed revolutionary group that opposed a brutal dictatorship that had ruled the country for over 50 years during the 12-year civil war. That conflict ended with the signing of Peace Accords in 1992 brokered by the United Nations in partnership with Spain, Mexico, Venezuela, and Colombia. Both Canada and the United States also signed on to the accords at the time, now more than 30 years ago.²

More recently, the five men from Cabañas, who are members of the Association of Economic and Social Development (ADES) – Miguel Ángel Gámez, Alejandro Laínez García, Pedro Antonio Rivas Laínez, Antonio Pacheco (the director of ADES) and Saúl Agustín Rivas Ortega (the lawyer for ADES) – have been known as “water defenders”.³ This is in reference to their work with ADES where, among other activities, they helped lead the campaign to defend the severely threatened water supply in the country. To that end, they contributed — along with Salvadoran civil society organizations and institutions — to the elaboration of the legislation that completely prohibited metallic mining in El Salvador in 2017.⁴

To better understand the case of the Santa Marta 5 and the claims of criminalization made toward environmental and civil society groups, participants of the delegation held 19 meetings with experts and leaders of civil society, human rights groups, lawyers, economists, and others in San Salvador and Cabañas. Our conclusion is that there are two compelling reasons for the government of El Salvador to drop the charges against the five Santa Marta water defenders. The first is the lack of any evidence of the guilt of the five. The second, if that is the case, is that the five are covered under the 1992 amnesty in El Salvador that was part of a National Reconciliation Law passed following the historic 1992 Peace Accords. We deal with each of these in turn in the following.

Lack of evidence

In the arrest of the Santa Marta Five on January 11, 2023, El Salvador’s Attorney General alleged that the men, while members of the FMLN, kidnapped, tortured, and murdered a woman named María Inés Álvarez García Alvarenga Leiva on August 22, 1989, and that they belonged to a criminal organization during the twelve-year civil war. The case was brought by the woman’s daughter in April 2022.⁵

The only evidence provided by the Attorney General to lay the charges was the testimony of a protected witness who accused the Five of the murder but admitted when questioned by the defendants' lawyer that he had no firsthand knowledge of the alleged crime.⁶ Still, at the first hearing, the judge dictated six months of preventive detention (renewed in August 2023) to allow the prosecution to continue its preliminary investigation, imposed a gag order on the case, and the detainees were sent to a detention center where they had no access to health care, legal support nor family visits. It has later come to light that several of those charged have alibis at the alleged time of her death. In addition, strangely, and after more than 10 months, the body of the woman has never been found. In June 2022, the prosecutor's office carried out an "exhumation process" and was unable to find a body.⁷

In August 2023, after more than eight months of imprisonment, the defendants were finally granted a hearing wherein a lower court judge of Sensuntepeque ordered that they be held under house arrest instead of continuing in the deplorable conditions of the Salvadoran prison system. The Attorney General's office did not appeal this decision, thus making it possible for the men to return home with their families in September 2023.⁸ However, the legal fight continues as the Attorney General has not dropped the charges and the legal defense team has continued to introduce injunctions to have the case dismissed before reaching the trial stage.

The Five are covered under the amnesty provisions of the 1992 National Reconciliation Law

In addition to the lack of evidence against the five, the legal defense team argues that the defendants are covered by a 1992 amnesty.⁹ During the civil war, the FMLN-FDR had achieved international recognition as a belligerent party to the conflict. That recognition began with the Franco-Mexican Declaration which recognized it as a political force with legitimate aspirations to power.¹⁰ Hence, in September 1989, the FMLN and the Salvadoran government initiated a dialogue under the auspices of the United Nations Secretary-General that culminated three years later in the Chapultepec Peace Accords. These were signed on January 16, 1992, in Mexico City.^{11 12} Then, on January 23, 1992, the National Assembly passed the National Reconciliation Law, and this provided amnesty to members of the FMLN in order to permit them to lay down their arms and participate in the political life of the country.¹³ Article 6 of the Law specifies that "this amnesty shall not apply to persons who, according to the report of the Truth Commission, participated in grave acts of violence committed after January 1, 1980, whose impact on society urgently demands that the public know the truth, regardless of the sector to which they belonged." Even if the alleged case brought forward by the Attorney General was true, it is not included in the cases included in the report of the Truth Commission.¹⁴

As part of the Peace Accords, a Truth Commission was set up under the auspices of the United Nations. The Commission presented its report, *From Madness to Hope: The 12-Year War in El Salvador: Report of the Commission on the Truth for El Salvador*, on March 15,

1993.¹⁵ “Based on extensive testimony, the commission determined that 85% of the acts of violence during the conflict had been perpetrated by State agents, predominantly in rural areas. Approximately 5 percent of the acts of violence were attributed to the FMLN”.¹⁶ Five days later, on March 20, 1993, on day one of the newly elected Legislative Assembly, legislators adopted the General Amnesty Law for the Consolidation of Peace.¹⁷ This repealed Article 6 of the National Reconciliation Law, virtually giving amnesty to the military for the many massacres of men women and children carried out during the “scorched earth” policy in pursuit of insurgents, such as the massacre of up to 1,000 people in El Mozote on December 11th and 12th, 1981. Various human rights agencies both external and internal to El Salvador urged the state to amend this general amnesty law, as it clearly provided immunity to serious human rights perpetrators.¹⁸

Salvadoran political leaders routinely rejected requests to annul the general amnesty law of March 1993. It wasn’t until 2016, however, under President Salvador Sánchez Cerén, that the Supreme Court struck down the 1993 amnesty law,¹⁹ thus leaving intact the amnesty for members of the FMLN as established in the 1992 National Reconciliation Law, which today remains in full force. According to legal experts, the Salvadorean Attorney General’s arrest of the Santa Marta Five remains unconstitutional on these grounds.

The arrests of these men raised the questions: Given the lack of evidence and the issue of amnesty discussed above, why these men and why now? In order to address these questions, it is necessary to understand the political climate in El Salvador that emerged with the election of Nayib Bukele in 2019.

V. The Political Context of Bukele’s “State of Exception”

Rejecting previous political parties and espousing “Nuevas Ideas”, Nayib Bukele was elected in 2019 on the promise of restoring order in the country by controlling widespread crime and gang activity.²⁰ Bukele first attempted to negotiate with gang leaders (as revealed by the US Department of Justice²¹ and El Faro²²). When this failed, he resorted to measures that have now become a key source of his widespread popularity as well as of widespread criticism among defenders of human rights. In February 2021, Bukele’s political party, Nuevas Ideas, won a landslide victory in legislative elections giving him effective control of El Salvador’s Congress.²³ On February 5, 2020, in a literal show of force and on Bukele’s orders, heavily armed police and soldiers in El Salvador, carrying rifles and dressed in battle gear, occupied the country’s parliament building to coerce legislators into passing legislation to acquire a loan, that Bukele favored.²⁴

On May 1, 2021, legislators loyal to Bukele replaced five of the fifteen judges from the country’s Supreme Court, including the Attorney General.²⁵ In June of 2021, the Assembly appointed five new judges to the Supreme Court rendering 10 of the 15 Supreme Court judges Bukele appointees. This, even though the law stipulates that any newly appointed

Assembly can appoint only 5 new judges. Additionally, in September 2021, the Assembly passed legislation requiring all judges over 60 years of age to retire. It also legislated changes making it easier to transfer independent minded judges and prosecutors to new posts. Taken together these arrangements gave Bukele almost total control of the judiciary. Finally, also in September, the Constitutional Chamber of the Supreme Court ruled that it would henceforth be possible for a President to run for a consecutive term, a provision forbidden by the constitution.²⁶ In spite of this ruling by the Constitutional Chamber, it is still forbidden by seven articles of the constitution.²⁷ After the ruling there has not been the required constitutional reforms to make it possible for a president to be re-elected.

The collapse of the separation of legislative, executive, and judicial powers is widely accepted as detrimental to the functioning of a democratic state and as opening the way to dictatorial powers on the part of the head of state. Scoffing at critics' accusations of dictatorial rule, Bukele took to Twitter calling himself "the coolest dictator in the world".²⁸ Bukele's subsequent behaviour makes it difficult to see the humour in this statement. On March 27, 2022, Bukele called together the Legislative Assembly and issued a decree putting the country under a "state of exception" for 30 days,²⁹ effectively suspending accepted democratic constitutional human rights. This made it possible to arrest and incarcerate people, denying them legal representation and detaining them indefinitely. This "state of exception" has been renewed monthly and is still in place today.

With these increased powers, Bukele has been able to pursue gang activity with a virtual free hand and he has done so with enthusiasm and, for the most part, with the support of most of the El Salvadoran population (polls show him with support in the range of 90 percent) and across much of Latin America.³⁰ At this point, it is estimated that 2 percent of the population of El Salvador is in prison under appalling conditions, giving El Salvador the highest rate of incarceration in the world as of January 2023. In order to accommodate his "success," Bukele has recently opened a new prison labelled a "Terrorism Confinement Center". It is designed to hold 40,000 prisoners where each cell holds 100 prisoners serviced by only 2 toilets and 2 sinks.^{32 33}

On September 19, 2023, Bukele addressed the General Assembly of the United Nations (albeit to a more than half empty chamber) and boasted of his government having achieved a "global benchmark" and as representing a "positive example" in reducing the crime rate and controlling gang behaviour.³⁴ In the same speech, he also took the time to assert the independence of El Salvador to make its own decisions. He claimed that it was outside interference that involved El Salvador in a civil war and outside interference that "made us" sign some "fake peace agreements". Such a stance pits the principle of state sovereignty against the principal of universal human rights and the rule of law and shows his disdain for the legal instruments sanctioned by the UN that gave birth in the early 1990s to the current democratic institutions in the country.

There is no doubt that Bukele has achieved more success in controlling gang behaviour and crime generally than other administration in El Salvador and indeed more than has been achieved in many other Latin American countries. Even though the “Bukele Plan” does not attack the root causes that led the country to the current state of violence, it is obvious that his results have resonated with the Salvadoran population, making his re-election in February 2024 a virtual certainty. Also, attempts are being made in other Latin American countries to emulate his methods. In Guatemala, Peru, Costa Rica, Honduras and even the distant Chile, some politicians and many in the public are looking to the “Bukele Plan” as a way of controlling crime and gang behaviour and some are introducing “states of exception” as a way of achieving it.³⁵

While it is important to acknowledge Bukele’s accomplishment and its resonance among Salvadorans and other Latin Americans, it is imperative that we acknowledge that the costs are inimical to the fundamental principles of democracy and human rights. Among these costs are the arbitrary arrest and the indeterminate imprisonment of innocent people via the criminalization of the poor, the targeting of political opponents, and the dismantling of civil society, labor rights, and the freedom of the media (which are the remaining pillars of dissent in the country now that Bukele controls the judiciary, executive, legislative, military, and the Electoral Commission. Furthermore, the Bukele Plan does not attack the root causes that led the country to the current state of violence, as it continues to apply the neoliberal economic model that excludes and impoverishes the popular majorities of society).

In short, the case of the Santa Marta Five cannot be understood outside of the broader context of the use of arbitrary arrests as one political tool to facilitate Bukele’s overall strategy of control over Salvadoran society. Nor can it be understood, as explained in the next section, outside of the context of El Salvador’s recent economic turmoil and historic metal mining prohibition.

Unfortunately, the lifting of the general amnesty law as it applies to the military has made little difference in terms of victims of the many atrocities that were perpetrated during the civil war. For example, one of the most horrific massacres of the war³⁶ was the El Mozote massacre, perpetrated by the infamous Atlácatl Battalion, trained in Fort Bragg in the United States by U.S. Special Forces. In addition to El Mozote, this battalion was implicated in some of the most barbarous human rights violations of the twelve-year armed conflict,³⁷ including the murder of 6 Jesuit priests and their housekeeper and her daughter at the University of Central America on November 16, 1989.³⁸

This is paradigmatic of the difficulty in bringing perpetrators to justice. Unfortunately, under the Bukele regime, this difficulty remains and, some would argue, has increased.³⁹ Already in 2020, when a judge attempted to execute a warrant to gain access to the military records concerning the El Mozote massacre, he was refused entry by the military. Bukele later backed the military, claiming that the judge had no authority over the military and that

only the president could release the files. He later released a limited number of files, claiming that the others had been destroyed. Clearly for Bukele, there is no political advantage in crossing the military as ultimately the more “dictatorial” his behaviour, the more he must depend on their support.

El Mozote was in the news again recently when on September 25, 2023, the journal *El Faro* reported that a judge in Virginia, US, chose not to deport Roberto Antonio Garay Saravia, a former leader of the US trained Atlácatl Battalion allegedly involved in the El Mozote massacre.⁴⁰ As reason for his decision, the judge cited an “incomplete service record” for Garay Saravia and the refusal of the Salvadoran armed forces to declassify internal records. Garay Saravia has been legally living in the US since 2014 and is the first and only member of the Salvadoran military to be arrested explicitly for his ties to the massacre.

Although he promised when elected in 2019 to release military files, Bukele has consistently refused to do so. The *El Faro* article cited above goes on to state that in the last two years in El Salvador, not a single hearing has been held relating to the El Mozote massacre.⁴¹ In fact, this is consistent with Bukele’s casual dismissal of the war and any attempts at historical memory of the enormous losses and of the lingering pain and anguish of survivors. It explains why in December 2020, he chose El Mozote in front of massacre survivors to deliver a controversial speech in which he depicted the 12-year-long conflict and the Chapultepec Peace Accords that ended it as “a farce”.⁴²

The prosecution of the Santa Marta Five has been led by a special war crimes unit set up by the Attorney General called the Unit for the Investigation of Crimes Committed During the Armed Conflict. Significantly, not a single case involving the military has yet been successfully prosecuted by this unit even though the United Nations has found that at least 85 percent of the crimes committed during the armed struggle, including the El Mozote massacre, were committed by members of the military.⁴³

During our visit to Santa Marta, members of our delegation were told that, in 2022, investigators with the Attorney General’s office interviewed survivors of the different massacres that occurred in Cabañas during the civil war. According to testimonies of residents of Santa Marta they are survivors of least four major massacres that took place in Cabañas during the years of armed conflict: the Lempa River massacre that took place between 15 and 17 of March 1981 where at least 200 people were assassinated;⁴⁴ the Santa Cruz massacre where an undetermined number of people (possibly hundreds) were assassinated during a military incursion that took place between November 11 to 17, 1981;⁴⁵ the Massacre of the Los Planes community in June 1980;⁴⁶ and the San Gregorio massacre that took place in December 1981⁴⁷.

With support from human rights organizations such as Tutela Legal Maria Julia Hernandez and the Human Rights Institute of the University of Central America, relatives and survivors of these massacres have over the last three decades demanded that the Salvadorean

Attorney General investigate the massacres to bring truth and justice for the victims. On March 18, 2021, the Salvadorean Ombudsman for the Defense of Human Rights, Jose Apolonio Tobar Serrano, issued a statement urging the Government of Nayib Bukele to issue an apology of behalf of the government to the victims of the Lempa River massacre and to instruct the Attorney General to initiate an investigation to determine administrative and criminal responsibilities.⁴⁸ Ironically, and despite the overwhelming evidence, the investigation carried out by the Attorney General investigators in Santa Marta did not lead to charges against military commanders responsible for the massacres. Instead, they chose to fabricate charges against those who had been pushed to take up arms to defend the population against the gross violations human rights and war crimes committed by the Salvadoran army.

This background of Bukele's attitude to the war, the Peace Accords, and his disdain for survivors of the conflict enable us to return to our earlier question with respect to the Santa Marta Five: Why these men, and why now?

VI. Evidence that the Bukele Regime Wants to Restart Mining

In 2017, El Salvador became the first country in the world to prohibit metallic mining, a notoriously water intensive and polluting industry that threatened the country's main water resource, the Lempa River, and its agriculture, livestock, food industry, and hydroelectric power generation. This courageous move by a small country that has long been the target of a rapacious and predatory mining industry is quite remarkable. Its history has been given close scrutiny by Robin Broad and John Cavanagh^{49 50 51} and others.^{52 53 54} The following is a brief summary of their work.

As the price of gold in the early 2000's began to soar, the vein of gold that runs from Mexico through Central America attracted the attention of corporate miners from Canada, the US, and Australia.⁵⁵ Soon, however, among those whose lives and livelihoods were most drastically threatened by industrial mining, there began to emerge an understanding of the impending threat. Key provinces where this awareness grew in El Salvador were the northern departments of Cabañas and Chalatenango. When prospectors arrived on the scene, community members travelled to Honduras and Guatemala where they witnessed the devastation that accompanied open pit mining, where whole mountains were taken apart and large toxic tailings ponds and dead rivers remained. Out of this resistance in 2005 emerged El Salvador's National Roundtable on Metallic Mining, known simply as La Mesa.⁵⁶

One of the organizations that became interested and involved in the struggle against mining was the Association of Economic and Social Development (ADES) whose interest in water preservation conditioned its attitude to mining. ADES has its roots in the small community of Santa Marta in the far north of Cabañas. Under threat of the military, most of the town evacuated to the refugee camp, Mesa Grande, in Honduras during the war. Upon the return

of the population after the war, the Committee of Repopulated Communities of Cabañas and Cuscatlán (CRCC) was formed to meet the needs of the returning population. It was from this committee that ADES emerged in 1993.⁵⁷ ADES is a well-organized group that provides leadership in community organization, “food sovereignty and agroecology,” and “comprehensive water and sanitation.”⁵⁸ Working with their sister organization — Radio Victoria — born in the same year, ADES quickly took on the water issue on a national level and this meant also taking on the struggle against mining.

Their most public success began in 2005 with their resistance to a Canadian-Australian gold mining company (first Pacific Rim, then bought by OceanaGold in 2013) that threatened to contaminate the country’s water resources. Responding to community demands, several organizations (ADES, the Association of Friends of San Isidro Cabañas (ASIC), and Radio Victoria) accompanied protests at the proposed El Dorado gold mine near San Isidro, Cabañas. The 12-year fight transformed a local outcry into a nation-wide movement with international support.⁵⁹

This struggle did not come without its costs as Vidalina Morales, president of ADES, reminded those present at the 25th anniversary of the founding of both Radio Victoria and ADES. Specifically, these costs included the assassinations of anti-mining activists in 2009: Dora Sorto (who was 8 months pregnant), Ramiro Rivera, and Marcelo Rivera.⁶⁰ In spite of these and other costs, the anti-mining/pro water message gained strength in the ensuing years. Antonio Pacheco, one of the founders of ADES, and Vidalina Morales facilitated the creation of International Allies Against Mining, after she and other members of La Mesa went to Washington D.C. to receive the Letelier Moffitt Human Rights Award from the Institute for Policy Studies, bringing together many organizations in the US, like the Center for International Environmental Law, and in Canada, like MiningWatch Canada. This coalition of international actors has been instrumental in publicizing and bringing international support⁶¹ to the Salvadoran anti-mining struggle, as well as to the current plight of the Santa Marta Five.⁶²

From the beginning, La Mesa and ADES continued to link their anti-mining education with El Salvador’s ongoing water crisis, an issue close to the concerns of all Salvadorians as more than 60 percent of El Salvador’s water is sourced from the heavily polluted and overdrawn Lempa River watershed.⁶³ Eventually the influential Salvadoran Conference of Catholic Bishops came on board and to this day has remained in opposition to mining. About this time, things became more difficult for Pac Rim El Salvador. Pacific Rim’s Salvadoran subsidiary applied in December 2004 to convert its exploration licences — which were to expire in January 2005 — into an exploitation concession. The application for an exploitation license — that is, the right to extract the mineral resource rather than just explore — failed to include certain documents required under El Salvador’s Mining Law, such as the environmental permit and the consent of the landowners of property located in the surface area of the requested concession.⁶⁴ By 2006, the anti-mining sentiment was

sufficiently strong that the request for an exploitation license by Pac Rim El Salvador was put on hold by the then conservative ARENA government of Antonio “Tony” Saca.⁶⁵

As early as 2007, opinion polling by the University of Central America in San Salvador showed that over 60 percent of the Salvadoran population was against metallic mining,⁶⁶ and the succeeding governments of the FMLN in 2009 and 2014 continued the moratorium. This, however, also led Pac Rim El Salvador to file a suit against El Salvador demanding to be compensated for the loss of “projected earnings” at the World Bank Group’s International Centre for Settlement of Investment Disputes (ICSID)⁶⁷. During these lengthy legal proceedings, Pacific Rim was acquired by the Australian mining corporation, OceanaGold, which increased the lawsuit claim to more than US\$300 million. The battle eventually ended in a favorable ruling for El Salvador but at a cost of more than US\$12 million. This rare loss by a corporation at ICSID also awarded El Salvador US\$8 million to be paid by OceanaGold.^{68 69}

Following the ICSID tribunal’s ruling against OceanaGold, the water defender forces continued to press for legislative action, leading to the historic vote in 2017 that made El Salvador the first nation on earth to prohibit mining to save its rivers.⁷⁰ To the great credit of the water defenders, another University of Central America poll in 2015 revealed close to 80 percent of the public opposed to mining.⁷¹ This should give pause to any Salvadoran government contemplating an overturn of the prohibition on metallic mining.

Despite this strong support for the mining prohibition, the delegation heard from several organizations that there are strong signs that the Bukele regime wants to restart mining. One source reported a meeting in 2020 when Bukele asked about prospects of restarting mining. Others suggested that the current secret negotiations of a free trade agreement between El Salvador and China includes the possibility of investment in the mining sector. While the previous claims cannot be verified, we know that in 2021, the Ministry of the Economy included in its strategic goals, the regulation of mining. We learned that the Bukele government has joined the Intergovernmental Forum on Mining funded by the Canadian government and requested that it conduct an evaluation of the mining sector in the country. Bukele has also passed a new law to create a new Directorate of Hydrocarbons, Energy and Mines that includes metallic mining, despite it being prohibited in the 2017 prohibition against mining.⁷²

Subsequent actions by the government seem to be installing administrative capacity for the reintroduction of mining: in the 2023 budget the executive allocated \$4.5 million dollars to modernize the mining and energy laws⁷³ and according to the 2024 budget projections, the government will be adding 140 staff members to the Directorate of Hydrocarbons Energy and Mines.⁷⁴ Additionally, land licensed to mining companies prior to the ban was sold last year to the company, Agrícola San José, an anonymous company that ostensibly purchased the land for the purposes of farming in an area that is classified as El Salvador’s least arable land.⁷⁵

Why would a country that has recently won a victory in a multi-million-dollar lawsuit initiated by Canada's Pacific Rim and completed by Australia's OceanaGold⁷⁶ be interested in restarting mining? Why would a country that has banned metallic mining be interested in these initiatives?

The detention of the five Santa Marta water defenders associates the prohibition on mining with a civil war that Bukele has already spent a considerable amount of time characterizing as a disdainful waste of time and a useless loss of life. This strategy also tarnishes the reputation of some of the water defenders who fought in the civil war with a charge of murder and dilutes the perceived merit of their activism around mining in the present day, while also sidelining them from opposition to the reopening of mining in El Salvador. This pattern of criminalization against environmental defenders is a well-established *modus operandi* by governments in the Central American region⁷⁷ in order to spread fear among civil society organizations and human rights defenders.

Others with whom we met noted evidence of Bukele's intention to reverse the mining ban in El Salvador and suggested that his motivation for doing so is grounded in the generally poor economic performance of the Salvadoran economy, exacerbated by the significant economic losses suffered by El Salvador following his elevation of Bitcoin (along with the US dollar) to the national currency.⁷⁸

Under the Bukele administration, El Salvador has accumulated the largest public debt in the Central American region, 83.7% of the gross domestic product according to the Central Reserve Bank⁷⁹. It has registered the lowest economic growth in the region, 2.1 percent according to ECLAC⁸⁰, and in 2022 it closed with a decrease of -133% in direct foreign investment⁸¹ over the previous year.

Bukele's marketing sells the image of El Salvador as a successful country on its way to becoming "the Singapore of Central America", but he knows the economic indicators tell a different story that could at any time burst his popularity bubble, particularly because those most affected by the economic slowdown of the country are the those who had placed hopes on his "New Ideas" party. According to a report published by the Government's Central Reserve Bank, 1,868,206 people, or 29.5 percent of the population, were living under the poverty line 2022, an increase of 6.24% compared to 1,758,434 in 2021. The situation could get worse in 2024 as the government has announced more than \$100 million dollars in cutbacks to social services, health, and education⁸².

The failing economy paints El Salvador with a desperate need to attract foreign investment to stimulate economic growth. Many activists we interviewed argue that it is that desperation that drives Nayib Bukele to play the high-risk gamble of reversing the mining ban.

Following the arrest of the five Santa Marta water defenders, there has been a worldwide reaction that likely surprised the Bukele government. In a remarkably swift response in the days following the January 2023 arrests, 251 organizations from 29 different countries that supported the work of Salvadoran water defenders in the past issued a statement specifically linking the arrests to the suspected intention of the Bukele government to reopen mining in El Salvador.⁸³ The America's Policy Group in Canada also gathered a list of 37 organizations that warned "that the water defenders' ongoing detention is a direct violation of El Salvador's 1992 Peace Accord and National Reconciliation Law".⁸⁴ The letter quoted Luis Parada, the international lawyer who defended El Salvador's interests in the Pacific Rim/OceanaGold lawsuit, who characterized the case as demonstrating a "complete lack of evidence", "failure to follow due process" and "shrouded in secrecy". In May 2023, the UN Special Rapporteur on Human Rights Defenders, Mary Lawlor, issued a joint statement with the Working Group on Arbitrary Detention; the Special Rapporteur on the question of human rights obligations related to the enjoyment of a safe, clean, healthy, and sustainable environment; and the Special Rapporteur on rights of clean water and sanitation, and asked for the five community leaders in Santa Marta to be freed⁸⁵.

In July 2023, 17 members of the US Congress led by Congressmen Mark Pocan and Jim McGovern wrote a strong letter to Anthony Blinken, Secretary to the Department of State, clearly outlining the concerns about the mistrial of justice involved in the arrest of the Five and linking the arrest to the mining issue.⁸⁶ In August 2023, the Inter American Commission on Human Rights requested information from the Salvadorean Government to investigate a petition for precautionary measures in favor of the Santa Marta 5 requested by the legal defense team⁸⁷. There is also a plethora of critical articles in the international mainstream media expressing concern for the state of human rights and the rule of law⁸⁸. This worldwide reaction may be a partial explanation of why the Five have been released under house arrest and why that decision of the lower court judge has not been challenged by El Salvador's Attorney General. Nevertheless, the continued charges against the Five are scheduled to be heard in February 2024.

VII. Summary Impressions of the Current State of Affairs in El Salvador: From Gang Violence to State-Sponsored Violence

Our interviews in El Salvador indicate that tragically, the country is now a police state. In addition to the military and police, Bukele controls both the legislature and the judiciary and his continuing "state of exception" gives him absolute control. We were told of the presence of "snitch lines" whereby members of the public could report on activity by their neighbors and these reports were then followed up by the police/military. In every town we visited, we saw three or four members of the military usually accompanied by police quietly patrolling the streets, ostensibly in search of gang members.

As we mentioned earlier, Bukele’s popularity in El Salvador is a result of the relief felt by many Salvadorans that the gang activity that menaced the population for the past 20 to 30 years appears to have been curtailed, at least for the time being. It would be a mistake to underestimate the strength of this feeling of relief in many Salvadorans whose lives had long been constrained by so much fear and anxiety due to the violence and threats posed by gang activity in the country. One can appreciate the sense of freedom to move about the streets without worrying about being caught up in the activity of competing gang members defending their territory or that they might be murdered or that their children might be recruited to gang activity. Similarly, businesses for the first time in a long time could now operate without being required to pay “taxes” or face violence or death by the gangs. In spite of this relief and the sense of gratitude to Bukele on the part of many, a number of people — particularly those who themselves or members of their family have been the victims of Bukele’s arrests and intimidation — are beginning to apprehend the costs in terms of democratic liberties. The victims’ complaints are echoed by human rights organizations and social leaders who denounce the lack of a real public security policy and the failure to attack the structural causes of violence⁸⁹.

During our investigation of the circumstances surrounding the arrest of the Santa Marta Five, we had the opportunity to travel to San Isidro and Santa Marta in the department of Cabañas. San Isidro is the site of the former El Dorado gold mine which operated from 1948 to 1953. In the early 2000’s, Pacific Rim tried to re-open it and, although initially granted an exploration license, was denied an exploitation license following community opposition. As mentioned earlier, San Isidro was also the home of the first of four murdered anti-mining activists, Marcelo Rivera.⁹⁰ There, we were able to talk with several members of the mayor’s office. Their account of the desperate conditions facing their municipality is replicated in municipalities across the country and will be discussed further below.

In Santa Marta, we were able to see first-hand the work that the community is doing in agroecology and visit their organic greenhouses and learn about their success in producing vegetables hydroponically. We also learned of the terror felt by this community when Santa Marta was overrun by the military in search of gang members in August 2023. That month, Bukele sent 7,000 military and 1,000 police into the department.⁹¹ Such a presence of heavily armed military re-traumatized many of the people of Santa Marta who had been forced to flee to Mesa Grande refugee camp in Honduras during the war after witnessing the massacre of relatives and close friends.

Community leaders also talked about their fears that the resulting out-migration of these military actions will have on their community, especially on the younger generations.

Likewise, we learned that in the Cabañas municipality of Cinquera, normally a quiet town without the presence gangs or serious crime, the military demanded entrance to the communal house. When told it wasn’t available, they simply occupied it during the night and without permission stayed for weeks.⁹² In the nearby canton of El Cacao, soldiers were

stationed in the communal house for over a year.⁹³ This military intrusion mirrored such scenes in countless towns and villages throughout El Salvador as Bukele's war on gangs unfolded. For many, especially those old enough to have suffered the psychological trauma of the "scorched earth" policy employed by the military during the armed conflict, the result was and remains one of utter terror.

Overall, we were shocked at the level of fear, suffering and corruption in the country. Fear because the detentions are so arbitrary and sudden that many parents fear their teenage kids could get picked up. At least in the north of the country, as mentioned, this fear has led to increased out-migration to the US, particularly by youth. For example, last May, in the community of Santa Marta, Manuel Gamez, son of human rights defender Vidalina Morales, was detained. Manuel was detained by the National Civil Police and released after 40 hours due to national and international pressure, without any explanation and without any charges against him.⁹⁴ There is also fear in social movements because leaders of movements and ordinary people are being picked up when they speak out against Bukele (including municipal workers who complain they aren't being paid).

We learned that there are at least 17 labour leaders who were arrested under the state of exception and are in jail. Other workers have had their salaries cut or have missed paychecks and if they complain, they have been fired and some arrested⁹⁵. We were also told that the situation of labour in El Salvador is not well known outside the country because some journalists have also been arrested or otherwise harassed to the point that they have left the country for their own safety. There is fear also because Bukele's powers are absolute, and he is expanding the military in a country with no external threats. And there is suffering because food prices are rising and government budgets for health, education, and agriculture are being cut, leading to problems in payment of salaries of personnel.

On June 14, 2023, Bukele signed into law a radical reorganization of the municipal government structure. Municipalities are being reduced from 262 to 44.⁹⁶ While Bukele claims this move is simply cost-saving, others believe that it is also gerrymandering and another method of solidifying his power as many of the municipalities that opposed him will now find their voices submerged in larger political entities. CISPES has recently summarized the consequences of these constraints:

.....over 20,000 public workers have been fired illegally since Bukele took office. The majority worked in national institutions, while 25 municipalities fired 4,444 total workers and about 2,500 were fired from the Legislative Assembly. This downsizing of the public workforce has resulted in the elimination of 10 unions.⁹⁷

We fear that there is a real hunger crisis coming. Bukele faces a fiscal/economic crisis, and he is dealing with it by eliminating municipalities and slashing municipal budgets (the town of San Isidro mentioned above used to get \$157,000 a month from the national government, and it is now getting \$27,000), which means mass layoffs in towns, piling up garbage, and a

crumbling economy held up only by remittances. More than one-fifth of the population of El Salvador lives in the United States and their remittances accounted for 25 percent of the GDP in 2021.⁹⁸

We also learned of growing evidence of corruption around foreign loans coming into the country. In 2020, El Salvador received a US\$389 million emergency loan from the IMF for immediate COVID pandemic relief. Following that loan, the then-independent Attorney General, Raúl Melara, launched a criminal investigation⁹⁹ that became known as Operation Cathedral. It revealed a complex web of fraudulent practices in various departments of Bukele's administration that were overseen by three of Bukele's brothers — Karim, Ibrajím, and Yusef — as well as his cousin and head of Nuevas Ideas, Xavier Zablah.¹⁰⁰ When the pro-Bukele legislative block replaced Melara on May 1, 2021, with Rodolfo Delgado, the latter quickly disbanded the investigation. The Bukele-controlled Legislative Assembly later passed a law blocking any scrutiny of pandemic purchases by government agencies and granted immunity to those accused of embezzling Covid relief funds.¹⁰¹

There is also great fear that Bukele's ruthlessness in the continued arrests under the "state of exception" will get even worse after his re-election scheduled for February 4, 2024, because then he will not have to appease anyone. He will have five years of absolute control and possibly more. So, there is a feeling that outside influence and pressure for ending the "state of exception" and dropping unjust legal cases will be most effective before the election. Outside pressure may have less impact after the elections.

As mentioned, we were also able to interview members of Tutela Legal Maria Julia Hernandez and MOVIR (Movimiento de Víctimas del Régimen), another human rights group that is speaking out about the abuses of fundamental justice inherent in the Bukele "mano dura" approach to fighting gang crime.

The prison conditions described to us by Tutela Legal and MOVIR are horrendous. People used the terms torture and concentration camps. The food is horrible, and cells are packed, the noise is constant, and the lights are on 24 hours a day, 7 days a week. And, when any one prisoner breaks rules, everyone is punished, for example by forcing everyone to do somersaults on concrete floors for up to an hour, punishing every bone of exhausted and emaciated bodies. There have been reports that more than 150 people have died in prison since the beginning of the "state of exception" and that when families finally gain access to loved ones, many of the bodies show signs of beatings and physical torture. The exact number of deaths is difficult to assess because prisons often do not notify the family directly of deaths; the family learns only when they are approached by a morgue or a funeral home to collect the body.

The Bukele government has attacked activists, political opponents, labour leaders, critics, and journalists with equal intensity. Bukele's own social media presence is reinforced by an army of supporting trolls that reproduce his government propaganda. The well-known and respected online critical news outlet, El Faro, moved its administrative and legal operations

to San Juan, Costa Rica, following relentless government harassment, though its newsroom remains in El Salvador.¹⁰²

In summary, the arbitrary arrest and imprisonment of the Santa Marta Five is only the tip of the iceberg of injustice and inhumanity in El Salvador. What our delegation learned is that the government of El Salvador has moved systematically in the direction of becoming an autocratic or authoritarian regime. The fact that this is happening with the tacit acknowledgement of many of the Salvadoran public is no reason for complacency. Nations wishing to continue or increase economic ties with El Salvador, whether to open space for the resumption of Canadian mining or discourage Bukele's flirtations with China¹⁰³ and the proposed free trade agreement,¹⁰⁴ must not turn a blind eye to his attacks on democracy. While it is the delegation's first priority to learn about the legal case against the Santa Marta Five, this goal is now linked to the broader need to expose our governments and the public to the depth of the dangers of the Bukele's dictatorship, especially to those in prison or otherwise victimized by Bukele.

VIII. Recommendations

The delegation was extremely alarmed that amidst the human right abuses, the movement toward authoritarian government and the corruption and lack of transparency of the Bukele government, that neither the US or the Canadian government, or the European Union or others, are currently speaking out publicly for major shifts toward democracy. Members of the US Congress and the Canadian Parliament have been critical, but the executive branches of both governments are now quiet.

Neither government has committed to press for the dropping of charges against the five water defenders. Neither is speaking up to protest the tens of thousands of innocent people in jail. Neither is raising publicly concerns about the continuous state of exceptions.

The delegation asks, why the complete shift in policy. When Bukele's Nuevas Ideas party in February 2021 won 64 of the 84 seats in the National Assembly, and he proceeded to dismiss and replace five judges as well as the Attorney General, there was an international outcry that included several members of the US government.¹⁰⁵ US Secretary of State Antony Blinken called President Bukele and expressed his "grave concern" and impressed upon him the fact that "an independent judiciary is essential to democratic governance." US Vice-President Kamala Harris also expressed her concerns in a tweet. Internationally, Human Rights Watch referred to the move as "an assault on democracy". At the time, Bukele responded to international criticism by tweeting that, "... with all due respect: We're cleaning our house...and that is none of your business."¹⁰⁶

The members of this delegation ask: Where are these voices now that every significant pillar of democracy in El Salvador has been dismantled by the Bukele government?

Inexplicably, in the summer of 2023, the US government has shifted gears to cozy up to Bukele. Earlier, they spoke out clearly about Bukele’s plans to illegally remain in office two years ago¹⁰⁷ – and now nothing. Over the past few months, we’ve seen an increase in the level of public appearances between the U.S. State Department and Salvadoran public officials, including Secretary Blinken welcoming Salvadoran Foreign Minister Alexandra Hill in DC with a press conference. What message does this send just a few months ahead of an election in which Bukele is running unconstitutionally? The U.S. has been an active participant in El Salvador’s security and prison systems for decades and the skyrocketing level of human rights violations seems to have made no impact on continued U.S. support. In October 2023, the U.S. donated two more military helicopters and other military equipment in a major photo op with the Embassy. Similarly, the Canadian government remains silent; we learned of at least one Canadian in Bukele’s prison as Canadian mining corporations no doubt salivate over the prospect of Bukele’s reversal of the mining ban.

And currently, neither the US nor the Canadian government is currently opposing a \$1.3 billion loan that Bukele is negotiating with the IMF.¹⁰⁸ Previously, the US Treasury Department and the IMF expressed great reluctance in the loan, citing lack of budget transparency and El Salvador’s adoption of Bitcoin as legal tender. However, the US administration’s about-face on Bukele – embracing him even as he violates the constitution, suspends civil liberties, and undermines democratic checks on executive power – has coincided with signals from IMF officials that they are approaching an agreement on the loan. Rodrigo Valdes, director of the IMF’s Western Hemisphere Department, recently said “The engagement with El Salvador has been very productive. We just had a mission there, a negotiating mission, but we knew that it would be a first step. We’re not there yet.” He added that before agreement can be achieved “certain structural measures” are needed.¹⁰⁹

We have great concerns that this loan will only fund further repression, and corruption, and that much of the money will be misused or embezzled by cronies of Bukele, as have prior loans. For example, in 2021, El Salvador received a US\$600 million loan from the Central American Bank for Economic Integration (CABEI) to provide relief to small businesses negatively affected by the COVID pandemic. An investigation by the Organized Crime and Corruption Reporting Project found that Bukele diverted US\$200 million of that loan to pay for the adoption of Bitcoin.¹¹⁰

Hence, our recommendations:

To the Salvadoran Government: Based on the principles of respect for the rule of law, due process, democracy, and human rights, and commitment to the protection of civil society actors in El Salvador, including human rights and environmental defenders, we urge you to:

- Drop the charges against the Santa Marta Five;
- Withdraw the state of emergency and implement a real public security policy;
- Re-establish suspended rights;

-Restore the independence of the different branches of the state: executive, legislative and judiciary.

-Maintain the prohibition on metallic mining.

To the governments of the United States and Canada, we urge you to advocate now for the dropping of the charges against the Santa Marta Five based on:

- the principles of the respect for the rule of law, due process, democracy, human rights, and commitment to the protection of civil society actors in El Salvador, including human rights and environmental defenders.
- the 1992 Peace Agreement and National Reconciliation Law adopted one week after the historic Peace Agreement and which is still in full force to this day. This law was passed as fulfillment of the commitments signed by the Government of El Salvador, the FMLN, and the United Nations Secretary-General, with the full support from governments such as Canada, the United States, Mexico, Spain, Colombia, and Venezuela. It is critical that the Salvadoran Peace Agreement be upheld as it has greatly shaped subsequent peace accords in the region and around the world.

In addition, we urge you to:

1. Attend, as international observers, all upcoming trials of the Five. If attendance at the trial proceedings is not possible, the Embassy's request to attend would be a significant demonstration of international interest and concern.
2. Call for a return to democracy in El Salvador, the cancellation of the "state of exception", and the restoration of the independence of the different branches of the state: executive, legislative and judiciary.
3. Instruct the US and Canadian IMF Executive Directors to vote no on Bukele's request for a \$1.3 billion loan.

To the Government of Canada, we urge you to implement these recommendations as an integral part of "Voices at Risk: Canada's Guidelines on Supporting Human Rights Defenders".¹¹¹ These guidelines recognize the key role played by human rights and environmental defenders in protecting and promoting human rights, water, and the environment and strengthening the rule of law, often at great risk to themselves, their families, and their communities, and to the organizations and movements they represent.

To the Government of The United States, we urge you to diligently implement Assistant Secretary of State Nichol's October 2023 comment at IDHUCA about the US government's "unbreakable commitment to supporting and protecting civil society actors in El Salvador." This should include immediate US government advocacy to drop the legal case against the five water defenders and free the labor leaders from prison.

To the government of Mexico (and Spain, Colombia, and Venezuela):

- State your intent to protect the commitments made in the Peace Agreement signed in 1992 in Mexico City. It was negotiated under the auspices of the Secretary General of the United Nations and was signed by representatives of the government of El Salvador and the FMLN insurgency.
- The president of Mexico, Andres Manuel López Obrador, should uphold what he expressed in May 2022, when he visited El Salvador, that Mexico proposed the creation of the Contadora Group, through which peace was achieved, and “that it is a source of pride for us Mexicans, because those agreements were signed in Chapultepec Castle, in Mexico City”.
- Mexico should lead the defense of the Peace Agreement and urge Spain, Colombia, and Venezuela, who acted as friends of the Secretary General in the peace process, to lead as well.

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