

Degradation as salvation: Reflections on El Salvador's punitive prison model

Lutz Oette¹

Introduction

The pictures of shaven men with naked upper bodies, sitting in rows back-to-back with fellow prisoners in close proximity, surrounded by heavily armed guards, encapsulates the essence of El Salvador's ongoing "war on gangs". This "war" is facilitated by a state of exception (emergency) declared on 27 March 2022 (Asamblea Legislativa, Régimen de excepción, 2022; Asamblea Legislativa, Decree No 333, 2022; Office of the High Commissioner for Human Rights, 2023) which itself followed years of repressive security policies and practices (Amnesty International, 2023). It is based on a well-known template of strengthening executive powers; it does so by expanding criminalisation and detention powers, and by reducing safeguards, including effective remedies, against violations and independent judicial oversight of the state's compliance with its human rights obligations (Timmerman, 2023). What stands out, though, is its widely publicised use of punitive mega prisons having the capacity to hold 40,000 prisoners as its flagship project (Al Jazeera, 2023). These prisons serve as highly visible places in which the state displays the exercise of its power to establish a new order. In this order, which forms part of the wider "*populist challenge to human rights*" (Alston, 2017), respect for democracy and the rule of law is exchanged for an all-powerful, autocratic state that guarantees peace and security (see on the underlying ideology, Rocker, 2023). The model, implemented against a backdrop of long-standing and increasing violence by gangs and organised crime (Paúl, 2024), in El Salvador and across the continent, has proved highly popular (Rosen, Cutrona, & Lindquist, 2023). El Salvador's President Bukele was re-elected with an 80%+ majority (Renteria & Kinoshian, 2024) and Ecuador, Honduras and other states are seeking to replicate El Salvador's prison model (Centenera, 2024; Guillén, 2023; International Crisis Group, 2022; Timmerman, 2024; Volpi, 2024;). In a human rights meeting in Peru that I attended in late 2023, one participant spoke out movingly against the discrimination experienced by a young gay man but wholeheartedly approved of

El Salvador's approach to treating suspected gang members in prison. It is not difficult to see why. Plagued by insecurity, violence and fear of crime, El Salvador's model promises a solution that reestablishes a strong state and order, built on the ideal of an almighty, harsh but well-meaning father figure, embodied by President Bukele. This approach, unsurprisingly, has met with approval and admiration amongst right-wing populist actors in the Americas (Beauchamp, 2023). Its appeal is apparent. It enables the state to impose a disciplinarian, binary order along simplistic lines of good (state, security forces, acting on behalf of upright citizens) and bad (gangs, crime) (La40, 2024). Such narrative not only glosses over the widespread human rights violations inherent in and associated with this approach (Timmerman, 2023). It also distracts from the root causes and responsibility of official and elite actors for the state of affairs in the region, stemming from economic policies and engrained discrimination resulting in high levels of inequality and poverty, the war on drugs, securitisation, state-organised crime collusion, corruption, transnational developments and other factors contributing to the prevalence of violence (Rosen, 2021; Sánchez-Ancochea, 2021; Timmerman, 2023; United Nations Development Programme, 2021).

The wider appeal of the mega prisons as a highly symbolic space can also be attributed to the religious connotations it carries: The (alleged) gang members are sinners; they have turned societies into hell on earth; therefore, they must undergo visible punishment. Their pain, suffering and degradation equates with salvation. Salvation for the population blighted by their violence, and salvation for the nation which lost its control (and, from a traditional male perspective, 'honour' and 'dignity'). There is no salvation for the gang members who are portrayed as dangerous and beyond redemption. The Justice and Public Security Minister reportedly expressed this point in stark terms: "*We are eliminating this cancer from society*" and "*Know that you will never walk out of CECOT [Centre for the Confinement of Terrorism], you will pay for what you are ... cowardly terrorists*" (Al Jazeera, 2023). The objective of rehabilitation, which should be central to imprisonment from an international human rights perspective (article 5(6) American Convention on Human Rights; article 10(3) International Covenant on Civil and Political Rights) does not come into the equation. The United Nations Committee against Torture (CAT/C/SLV/CO/3, 2022, para 22), noted rather laconically in its observations on prison conditions in El Salvador that "*[t]he absence of social reintegration policies is another cause for concern.*"

1 SOAS. Correspondence to lo8@soas.ac.uk

El Salvador's punitive prison model and its compatibility with international human rights standards

El Salvador's 'war on gangs' and associated detention practices have raised a series of human rights concerns. Reports by human rights bodies and non-governmental organisations (NGOs) provide evidence of large-scale arbitrary arrests, with increasing indications that many of those who are arrested and detained are not actually gang members (Timmerman, 2023), enforced disappearance, torture and other ill-treatment, and extrajudicial killings facilitated by a lack of adequate custodial safeguards and judicial protection (Agrupación Ciudadana por la Despenalización del Aborto et al., 2022; Amnesty International, 2023; Human Rights Watch & Cristosal, 2022; Inter-American Commission on Human Rights, 2021; Inter-American Commission on Human Rights, 2022). El Salvador now has the highest per capita incarceration rate worldwide, which is also due to the automatic recourse to potentially indefinite pre-trial detention for gang-related crimes (Agrupación Ciudadana por la Despenalización del Aborto et al., 2022; Amnesty International, 2023). In general terms, the Inter-American Commission on Human Rights highlighted the "*deplorable detention conditions faced by persons deprived of liberty in El Salvador, which worsened under the state of exception*" (Inter-American Commission on Human Rights, 2022, para. 71). The conditions in prisons such as CECOT are characterised by overcrowding (BBC Mundo, 2023; the space for each person in newly built prisons is 0.58sqm of space, which is around 1/7 of internationally recommended minimum standards), and lack of adequate nutrition (Morbiato, 2023; the food consists of meagre portions of beans and rice that prisoners have to eat with their hands, detainees who have been released recounted that they were "*constantly hungry*"; (Serrano, 2024). Sanitation and health care are inadequate (on prisoners contracting diseases, see Morbiato, 2023) and adequate facilities are lacking (there are no recreational facilities; prisoners spent their time in overcrowded, bare metal cages and with drills, such as roll calls, but with no access to daylight, Morbiato, 2023). These conditions are complemented by humiliating practices (for example, prisoners have their heads shaved every five days, Morbiato, 2023). Singly and in combination, they are not designed to, and clearly do not meet requisite standards. Consequently, they constitute, certainly cumulatively, cruel, inhuman and degrading treatment if not torture (Amnesty International, 2023; United Nations Committee against Torture, 2022). This legal analysis is undoubtedly important. It forms part of an increasing, concerted scrutiny by NGOs and human rights bodies on the nature and extent of human rights violations, which may also give rise to international criminal accountability for crimes against humanity under the ICC Rome Statute to which

El Salvador is a party. However, it risks missing the intensely dehumanising essence of El Salvador's prison model if it does not equally explore it as a deliberate, and deliberately human rights violating, strategy.

The punitive prison model as a torture regime

The strategy of incarcerating suspected gang members in conditions that do not meet basic needs and minimum standards, and are designed to humiliate them, deliberately inflicts pain, suffering and degradation on them, and consequently their families and others impacted. It sets a precedent that popularises torture and other ill-treatment as a spectacle which implicitly or openly celebrates the counter-violent enactment of state power. This prison model bears the hallmarks of torture. It intentionally creates conditions that, cumulatively, result in severe pain or suffering, both physically, including lack of adequate medical care and undernourishment and its effects (Morbiato, 2023; United Nations Committee against Torture, 2022), and psychologically. It attacks the core of prisoner's self-determination, personal control and autonomy, and thereby their dignity. The very architecture of prisons such as CECOT in Tecoluca - high, reinforced concrete walls, metal cages as cells, under constant, high-tech surveillance, and military style guards - communicates coercive state domination designed to intimidate and subordinate their inmates (BBC Mundo, 2023). Prisoners are subjected to a highly regimented, disciplinary regime that deprives them of any sense of individuality and humanity, which are underpinned by conditions of harshness by design, including sensory manipulation, such as exposure to constant bright light (Quesada, 2024). This regime is aimed at annihilating any hope that prisoners may have of freedom or a decent life, which are instead replaced with the prospect of a slow, debilitating and deeply depressing rotting away (on the right to hope, see Judge Power-Forde, 2013). Miguel Sarre, a former member of the United Nations Subcommittee for the Prevention of Torture, reportedly referred to CECOT as a "*concrete and steel pit where there is a perverse calculation to dispose of people without formally applying the death penalty*" (BBC Mundo, 2023). Its multiplicity of stressors creates a torturing environment, namely "*a milieu that is made up of contextual elements, conditions and practices that obliterate the will and control of the victim, compromising the self*" (Pérez-Sales, 2017, p. 284; see also SRT, 2020). The objective of this environment is to break the gangs by breaking the gang members, and establish the monopoly of state violence, over the gangs and society at large. Translated into the legal terms of the purpose element (Zach, 2019), its main purpose is to punish those suspected of or being convicted for being gang members (and associated crimes). It also seeks to intimidate third persons,

that is other (potential) gang members outside prison, by communicating to them what fate awaits them. To the extent that it is motivated by targeting persons belonging to economically marginalised groups, as emerging evidence suggests (Amnesty International, 2023; further, Rucker, 2023), it also fulfils the purpose element of discrimination (Oette, 2024). The prisoners are under the total control of the state authorities, and thereby rendered powerless, that is unable to resist, and helpless, in terms of being exposed to complete arbitrariness (SRT, 2005).

The model encapsulates several features which can be viewed as defining characteristics of torture, conceptualised as a deliberate attack on, and “*radical denial of human dignity*” (Mavronicola, 2021, p. 46), intense degradation and “*symbolic exclusion from the human community*” (Webster, 2018, pp. 129–130). This treatment, which in El Salvador begins with the arbitrary modalities of arrest, detention and lack of due process in routine, online, mass-administered proceedings (Agrupación Ciudadana por la Despenalización del Aborto et al., 2022; Amnesty International, 2023; Human Rights Watch & Cristosal, 2022; Inter-American Commission on Human Rights, 2022; United Nations Committee against Torture, 2022), and the portrayal of its targets fulfils several “*species of serious degradation*” identified by Jeremy Waldron based on Margalit’s work (Waldron, 2010, p. 310). First, bestialisation and demonisation. Prisoners are treated as de-individualised embodiments and representatives of an inherently dangerous prototype of a criminal-cum-enemy who threatens peaceful community life and the nation. They are therefore treated as “*sub-human*” (Corman, 2022, p. 279), having forfeited their own humanity and respect for their rights on account of their (suspected) violent conduct if not disposition. Secondly, instrumentalisation (Waldron, 2010). Subjecting prisoners to a regime designed to punish and humiliate them, they are treated as a mere means in pursuit of a policy aimed at (re)establishing state power over gangs. Their suffering and degradation serve as a highly visible message that the state is “everything” and gang members are “nothing”. The nature of their humiliation, such as shaving, half-naked lining up under armed guard, insufficient food rations, and lack of exercise also has a gendered dimension. In seeking to destroy the gang’s violent macho culture, the prisons impose a counter-macho regime that seeks to emasculate its targets. Combined, the model results in a grim spectacle of communicating state power, law and order through seeking to break the prisoner’s personality.

A new template combining extraordinary measures and extreme punitivism?

The implications of this model are disconcerting, posing a visible threat to the prohibition of torture. It makes no attempt to discharge the state’s positive obligation to protect the right of its population to be free from violence in a manner compatible with international human rights standards. Consequently, it openly disregards the state’s obligations under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Inter-American Convention to Prevent and Punish Torture and other pertinent regional and international human rights treaties. It also boldly asserts its right, if not duty to deploy drastic measures, including systematic ill-treatment that may amount to torture, if required to establish safety and “peace”. Its underlying message is that it is legitimate to solve organised criminal violence through organised state violence. Embedded in a legal regime of emergency and a discourse of exceptionalism, it has all the hallmarks of Agamben’s state of exception (Agamben, 2005), whereby the reduction of prisoners to their bare humanity functions as a societal “cleansing” ritual. Its populist appeal and “pornographic” media exposure (Quesada, 2024; Ventas, 2024) which resembles visits to colonial-style exhibitions of ‘savages’ and evokes their portrayal to justify “civilised” torture (Brundage, 2020) mask what is a highly retrograde mode of doing politics. It is based on prioritising safety and security whose realisation is traded against respect for human rights and a participatory, redistributive democracy (La 40, 2023). While it addresses a genuine concern over public safety, it does so without addressing the multiple, deep-seated structural causes of violence and factors explaining its more recent explosion (La 40, 2023).

The enactment of a visible torture regime, and its cheering on by certain quarters, therefore forms part of a more fundamental policy failure, or success in the eyes of its architects, that leaves much of the status quo in place while giving licence to authoritarian policies and methods. Its punitive prison model risks setting a new template. It differs from prisons such as Guantánamo Bay, the emblematic centrepiece in the “war on terror”. The latter forms part of an extraordinary regime, which has punitive and deterrent features. However, its (potentially indefinite) detention and harsh conditions were justified primarily with reference to the risk posed by the terrorism suspects detained therein (Inter-American Commission on Human Rights, 2015). The prison facility was based on secrecy, creating what has been termed a (legal) black hole (Steyn, 2004), although much of what happened inside became public knowledge eventually. This feature, together with its extraterritorial location and limited number of detainees, contrasts with

an in-country prison that holds large numbers of detainees and is proudly displayed to a wider, effectively worldwide audience.

Facilities such as CECOT turn incarceration as harsh punishment into an integral part of a highly visible strategy that contains risk through both confinement and deterrence. It therefore combines extraordinary measures that, with some variation, are a common feature in securitised contexts with extreme punitivism. Time will tell whether it will serve as a model that gains wider traction or falls apart on account of its extremity, perverse rationale and number of its victims engendering resistance. What is clear is that the model runs counter and is deeply antithetical to international moves towards improved prison conditions if not decarceration (Montford and Chloë Taylor, 2022; United Nations, 2021). From an anti-torture perspective, it is therefore of utmost importance to resist resolutely its dehumanising logic and institutionalisation of cruelty.

References

- Agamben, G. (2005) *State of Exception*. Chicago, University of Chicago Press.
- Agrupación Ciudadana por la Despenalización del Aborto, Asociación Azul Originario (AZO), Centro de Derechos Reproductivos, CRISTOSAL, Fair Trials International, Fundación para el Debido Proceso (DPLF, por sus siglas inglés), Instituto de Derechos Humanos de la UCA (Idhuca), Mujeres Libres, Organización Mundial Contra la Tortura (OMCT), Servicio Social Pasionista (SSPAS). (2022). *Informe de Organizaciones de Derechos Humanos de la Sociedad Civil al Comité Contra La Tortura de las Naciones Unidas*. Retrieved from https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCAT%2FCSS%2FSLV%2F50554&Lang=en
- Al Jazeera. (27 February 2023). Photos: Inside El Salvador's new 'mega prison' for gang members. *Al Jazeera*. Retrieved from <https://www.aljazeera.com/gallery/2023/2/27/photos-inside-el-salvadors-new-mega-prison-for-gangster>
- Alston, P. (2017). The Populist Challenge to Human Rights. 9(1) *Journal of Human Rights Practice*, 1-15. <https://doi.org/10.1093/hux007>
- Amnesty International. (2023). *Behind the veil of popularity: Repression and regression of human rights in El Salvador*. Retrieved from <https://www.amnesty.org/en/documents/amr29/7423/2023/en/>
- Asamblea Legislativa. (27 March 2022). Pleno legislativo aprueba régimen de excepción para frenar ola de violencia.
- Asamblea Legislativa. (27 March 2022). Decree No 333.
- BBC Mundo. (14 July 2023). El Salvador's secretive mega-jail. *BBC Mundo*. Retrieved from <https://www.bbc.com/news/resources/idt-81749d7c-d0a0-48d0-bb11-eaab6f1e6556>
- Beauchamp, Z. (8 April 2023). Meet the MAGA movement's new favorite autocrat. *Vox*. Retrieved from <https://www.vox.com/2023/4/8/23653324/nayib-bukele-trump-american-right-crime>
- Brundage, F. (2020). *Civilizing Torture: An American Tradition*. Harvard: Harvard University Press.
- Centenera, M. (12 March 2024). Cuatro asesinatos al azar y terror narco en las calles: Milei endurece su política de seguridad en Rosario. *El País*. Retrieved from <https://elpais.com/argentina/2024-03-12/cuatro-asesinatos-al-azar-y-terror-narco-en-las-calles-milei-endurece-su-politica-de-seguridad-en-rosario.html>
- Corman, L. (2022). Trauma as a Möbius strip: PTSD, animal research, and the Oak Ridge prisoner experiments. In Montford, K.S. & Taylor, C. (Eds.), *Building Abolition: Decarceration and Social Justice* (pp. 269-285). London and New York: Routledge.
- Guillén, B. (4 October 2023). Honduras, the country where the Bukele method failed. *El País*. Retrieved from <https://english.elpais.com/international/2023-10-03/honduras-the-country-where-the-bukele-method-failed.html>
- Human Rights Watch and Cristosal. (2022). "We Can Arrest Anyone We Want" Widespread Human Rights Violations Under El Salvador's "State of Emergency". Retrieved from https://www.hrw.org/sites/default/files/media_2022/12/elsalvador1222web.pdf
- Inter-American Commission on Human Rights. (2015). Towards the Closure of Guantanamo Bay. OAS/Ser.L/V/II.Doc. 20/15.
- Inter-American Commission on Human Rights. (2021). Situation of human rights in El Salvador. OEA/Ser.L/V/II.Doc. 278.
- Inter-American Commission on Human Rights. (2022). Follow-up of recommendations issued by the IACHR in its Country or Thematic Reports, El Salvador, Annual Report, Chapter V.
- International Crisis Group. (2022). A Remedy for El Salvador's Prison Fever. Retrieved from <https://www.crisisgroup.org/latin-america-caribbean/central-america/el-salvador/96-remedy-el-salvadors-prison-fever>
- Judge Power-Forde. (2013). Concurring Opinion, *Vinter and Others v United Kingdom*, European Court of Human Rights, Application nos 66069/09 130/10 3896/1.
- La 40: arte y justicia. (2024). 'Mega Prison' Dearq 38, 106. <https://doi.org/10.18389/dearq38.2024.09>
- Mavronicola, N. (2021). *Torture, Inhumanity and Degradation under Article 3 of the ECHR: Absolute Rights and Absolute Wrongs*. Oxford, New York and Dublin: Hart Publishing.
- Morbiato, C. (1 December 2023). Detainees in El Salvador's gang crackdown cite abuse during months in jail. *Independent*. Retrieved from <https://www.independent.co.uk/news/pedro-ap-el-salvador-mexico-city-nayib-bukele-b2456601.html>
- Oette, L. (2024, forthcoming). *The Transformation of the Prohibition of Torture in International Law*. Oxford: Oxford University Press.
- Office of the High Commissioner for Human Rights. (22 May 2023). El Salvador: Extended state of emergency undermines right to fair trial, UN experts say. Retrieved from <https://www.ohchr.org/en/press-releases/2023/05/el-salvador-extended-state-emergency-undermines-right-fair-trial-un-experts>
- Paúl, F. (26 February 2024). 4 cambios que muestran cómo se ha transformado el crimen organizado en América Latina. *BBC El Mundo*. Retrieved from <https://www.bbc.com/mundo/articles/cjmd4v847ewo>
- Pérez-Sales, P. (2017). *Psychological Torture*. London and New York: Routledge.
- Quesada, J.D. (7 February 2024). Inside Nayib Bukele's Alcatraz:

- 'It is impossible to escape. These psychopaths are going to spend their whole lives behind bars here'. *El País*. Retrieved from <https://english.elpais.com/international/2024-02-07/inside-nayib-bukeles-alcataz-it-is-impossible-to-escape-these-psychopaths-are-going-to-spend-their-whole-lives-behind-bars-here.html>.
- Renteria, N. & Kinoshian, S. (4 February 2024). El Salvador's Bukele re-elected as president in landslide win. *Reuters*. Retrieved from <https://www.reuters.com/world/americas/el-salvador-president-bukele-poised-another-landslide-voters-head-polls-2024-02-04/>
- Rocker, S. (2023). La mega cárcel de Bukele: una oportunidad para preguntarse por la prisión y su ideología. *Revista Hekatombe*. Retrieved from <https://www.revistahekatombe.com.co/la-mega-carcel-de-bukele-una-oportunidad-para-preguntarse-por-la-prision-y-su-ideologia/>
- Rosen, J.D. (2021). Corruption, Crime, and Gangs in Central America: Understanding the Root. *Small Wall Journals El Centro*. Retrieved from <https://smallwalljournal.com/jrnl/art/corruption-crime-and-gangs-central-america-understanding-root-causes>
- Rosen, J.D., Cutrona, S. & Lindquist, K. (2023). Gangs, violence, and fear: punitive Darwinism in El Salvador. *Criminal Law and Social Change*. 79(2), 175–194. doi: 10.1007/s10611-022-10040-3
- Sánchez-Ancochea, D. (2021). *The Costs of Inequality in Latin America: Lessons and Warnings for the Rest of the World*. London: IB Tauris.
- Serrano, G. (7 February 2024). Photos: A tour of Nayib Bukele's mega-prison. *El País*. Retrieved from <https://english.elpais.com/international/2024-02-07/photos-a-tour-of-nayib-bukeles-mega-prison.html>.
- Steyn, J. (2004). Guantanamo Bay: The Legal Black Hole. *International and Comparative Law Quarterly*, 53(1), 1-15.
- SRT. (2005). Report of the Special Rapporteur on the question of torture, Manfred Nowak. UN Doc E/CN.4/2006/6.
- SRT. (2020). Torture and other cruel, inhuman or degrading treatment or Punishment: Report of the Special Rapporteur. UN doc A/HRC/43/49.
- Timmermann, J. (14 November 2023). Noah Bullock: "El estado de excepción instaló un gulag tropical en El Salvador". *cenital*. Retrieved from <https://cenital.com/noah-bullock-el-estado-de-excepcion-instalo-un-gulag-tropical-en-el-salvador/>
- Timmerman, J. (15 January 2024). Ecuador is copying El Salvador's war on gangs – but it will only add to the spiral of violence. *Guardian*. Retrieved from <https://www.theguardian.com/commentisfree/2024/jan/15/ecuador-el-salvador-war-gangs-spiral-violence-latin-america-organised-crime>
- United Nations (2021). United Nations System Common Position on Incarceration.
- United Nations Committee against Torture (2022). Concluding observations on the third periodic report of El Salvador. UN doc CAT/C/SLV/CO/3.
- United Nations Development Programme (2021). Regional Human Development Report: Trapped: High Inequality and Low Growth in Latin America and the Caribbean.
- Ventas, L. (15 February 2024). Coming face to face with inmates in El Salvador's mega jail. *BBC*. Retrieved from <https://www.bbc.co.uk/news/world-latin-america-68244963>
- Volpi, J. (12 March 2024). Una epidemia de violencia. *El País*. Retrieved from <https://elpais.com/opinion/2024-03-12/una-epidemia-de-violencia.html>
- Waldron, J. (2010) *Torture, Terror, and Trade-Offs: Philosophy for the White House*. Oxford: Oxford University Press.
- Webster, E. (2018). *Dignity, Degrading Treatment and Torture in Human Rights Law: The Ends of Article 3 of the European Convention on Human Rights*: London and New York: Routledge.
- Zach, G. (2019) Article 1: Definition of Torture. In Nowak, N., Birk, M. & Molina, G. (Eds) *The United Nations Convention against Torture and its Optional Protocol* (pp. 23-71). 2nd edn. Oxford: Oxford University Press.

Submitted 14th of March 2024
Accepted 16th of March 2024