

# (Lack of) Judicial Protection

The response of the Constitutional Chamber during the state of emergency in El Salvador

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# Introduction

On March 27, 2022, the Salvadoran government declared a state of emergency in response to a spike in gang-related homicides. Since then, thanks to ongoing legislative extensions, this measure has prolonged the suspension of important human rights, including some related to due process in criminal proceedings.

Strictly speaking, the state of emergency is a temporary, exceptional, and extraordinary tool authorized by the Constitution under certain conditions and with strict limits. To ensure that these limits are respected in practice, and that state security agents do not apply emergency measures to the population arbitrarily, judicial oversight is essential.

In a state governed by the rule of law, a state of emergency must be implemented under intense judicial scrutiny. Beyond reviewing the constitutionality of the decree that suspends rights and guarantees, the justice system must protect the freedom of individuals from excesses and abuses through appropriate judicial mechanisms, such as habeas corpus and amparo [petition for a constitutional remedy] proceedings, which allow for a review of whether the specific actions restricting rights are illegal or arbitrary, or exceed the bounds of the law.

This document summarizes the findings of documentary research on changes in the case law of the Constitutional Chamber of the Supreme Court in the adjudication of habeas corpus, amparo, and unconstitutionality proceedings during the period from March 27, 2022, to March 26, 2023—that is, during the first year of the state of emergency—as compared to its previous decisions. This study, based on an analytical descriptive methodology, seeks to identify progress or setbacks in access to justice, and to determine whether case law precedents have been upheld, overturned, or ignored.

## The number of lawsuits increased exponentially, but the protection provided by the Constitutional Chamber was negligible.

An intensive case study was conducted using a selection of cases drawn from over 600 court decisions available on the Judicial Documentation Center website, selecting and prioritizing those cases with the most serious alleged facts, such as forced disappearances, violations of the physical integrity of male and female detainees, and the arrest of older adults and adolescents, among others.

	2022	2023
Lawsuits filed with the Chamber	3,359	3,056
Admissible	97	11
Inadmissible	113	369
Unfounded	572	2,157
Favorable judgments	27	4
Unfavorable judgments	36	38

Source: Prepared by the authors using statistics published on the Transparency Portal of the Judicial Branch.

Notably, the study found that the Constitutional Chamber received 6,415 habeas corpus petitions between 2022 and 2023 and, in that period, admitted just 1.6% of those cases for processing, while dismissing the equivalent of 50.5%. Although the percentage of cases admitted for processing is alarmingly low, this minimal number of admitted cases does not necessarily mean that the affected persons' rights have been protected, since only 31 favorable rulings were issued, representing 0.4% of cases filed in the specified period.<sup>1</sup>

A historical analysis of the data shows that the habeas corpus petitions received during 2022 and 2023 exponentially exceed the statistics reported in 2020—a year in which a state of emergency was also in effect because of the pandemic—when 853 habeas corpus petitions were filed,<sup>2</sup> and in 2021, when 465 cases were filed.<sup>3</sup>

During the first year of the state of emergency, the Constitutional Chamber also systematically dismissed habeas corpus petitions filed by citizens, changing, contradicting, or ignoring important constitutional precedents, including some issued by current sitting members of the Constitutional Chamber.

Below we discuss some of the most representative cases from the period under study. They were identified due to the seriousness of the facts involved, or because they concern especially vulnerable individuals and groups who should, on the basis of their vulnerability, receive special protection from the state. These cases have been grouped along thematic axes to facilitate the understanding of the rights violated and their implications, both for the individuals directly affected and for the population as a whole.

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1 These data compare the number of cases filed with the number of decisions issued during the period under study; however, the decisions issued do not necessarily correspond to the same cases filed.

2 Constitutional cases, 2020, published in the Transparency Portal of the Judicial Branch. Available at: <https://transparencia.oj.gob.sv/es/lectura/18494>.

3 Constitutional cases, 2021, published in the Transparency Portal of the Judicial Branch. Available at: <https://transparencia.oj.gob.sv/es/lectura/19357>.

# I. The Chamber's response to possible enforced disappearance, torture, or other cruel, inhuman, or degrading treatment

The historical development of the concept of habeas corpus is closely linked to the crime of enforced disappearance, insofar as it is the ideal tool—and often the only one—available to relatives and victims of enforced disappearance to obtain information from the state about their status or whereabouts. This study identified habeas corpus petitions in which the Constitutional Chamber was presented with facts related to the enforced disappearance, torture, or other cruel, inhuman, or degrading treatment of persons:

- In Habeas Corpus Case 1400–2022, the petitioner stated that Mr. FV. was arrested on April 20, 2022, at his home by police officers who told him they were just going to search him. After that date, the petitioner heard nothing about his relative, and feared for his life and integrity. The petitioner also stated that FV.'s arrest was illegal and arbitrary and that it violated his physical and moral dignity and that of his family, since the deprivation of his liberty was based on the subjective perception of the officers who arrested him for having artistic tattoos.
- In Habeas Corpus Case 599–2022, the petitioner stated that her son was arrested on May 5, 2022, by police officers accompanied by soldiers. They went to his house and told him he was being taken into custody, without stating the reasons for his arrest; they just asked him for his identity document, handcuffed him, and took him away despite his family's pleas. She stated that her son was studying auto mechanics and that he was a law-abiding citizen, with no criminal record or offenses. She said that he was unlawfully detained under the state of emergency.
- In Habeas Corpus Case 908–2022, the petitioner stated that, on April 3, 2022, her partner was arrested by police officers, which she considered arbitrary, since he was not told the reason for the arrest. She alleged that, initially, the officers went to their home, asked for his I.D. and left; however, they returned ten or fifteen minutes later and took him to the police station. She stated that she did not know “where he is being held and for what reason he was arrested,” since he did not belong to any gang or criminal organization. She alleged that the arrest violated his rights to a fair trial and due process, and was based on the subjective perceptions of the arresting officers, thus violating the detainee's physical and moral dignity and that of his family.
- In Habeas Corpus Case 1738–2022, the petitioner stated that his son was apprehended by police on June 23, 2022, and accused of “unlawful association.” He alleged that his son's arrest was arbitrary

because he has committed no crime, does not belong to any terrorist groups, has no tattoos alluding to gangs (only artistic ones), and has his own business selling fast food and pizza. He said that his son has a broken hand and is disappeared because he has not been heard from since his arrest. The petitioner fears for his son's health, since he also has "physical impairments."

- In Habeas Corpus Case 1147-2022, the petitioner refers to the case of a person who was arrested on April 12, 2022, while signing up for a government fertilizer delivery program. The detainee was a farmer who worked to support his two minor children and his partner; the petitioner also indicated that his detention was based on the stigmatization of his location and his physical appearance, because he has tattoos. He was arrested by police officers, who, with no further explanation, tortured him, beat him and "threw" him into the back of the pick-up truck in which they were traveling. They reportedly took him to the police station, and then transferred him to the La Esperanza Penitentiary Center, where he is allegedly being held for the crime of unlawful association. The petitioner also stated that the defendant was ordered to remain in provisional detention at the special hearing for the imposition of measures held on May 25, 2022, at Specialized Examining Court "C" of San Salvador.

The common denominator in these cases is that the petitioners and relatives of the detainees all alleged that this type of detention—in which people are held incommunicado, with no records and without their families being informed—could constitute enforced disappearance.

Despite the utmost seriousness of these assessments, all the cases presented in this section were dismissed by the Constitutional Chamber. In the first two, even though the plaintiffs explicitly alleged the possibility of enforced disappearance, the Constitutional Chamber dismissed them on the grounds that the allegations raised were a "matter of mere legality," meaning that a constitutional issue or question had not been raised. In these rulings, the Chamber maintained two main premises:

- First, the Chamber considered that assessing evidence of the commission of a crime and of a person's participation in it, is within the exclusive purview of authorities such as the police, then the prosecutor's office and the criminal court judges. It held that these considerations also apply to arrests during the state of emergency.
- Second, in the Chamber's opinion, it is incumbent upon those judges to analyze the defendant's participation and decide whether to adopt measures that continue to restrict his freedom, and therefore it is not up to the Chamber to decide whether a crime was committed or examine all the conditions of a person's apprehension in flagrante delicto.

To analyze the Chamber's opinion, it must be assumed that, **by definition, the appropriate and effective remedy against enforced disappearance is habeas corpus.** As the Constitutional Chamber

held in 2017, the practice of enforced disappearance is linked to the violation of various fundamental rights, since it constitutes a multiple and continuous violation that affects both the person deprived of liberty, whose rights can be protected through habeas corpus, and his or her family members.

The position of the current Constitutional Chamber regarding this type of case marks a serious setback in terms of enforced disappearance. The study found that **the Chamber dismissed habeas corpus petitions automatically and without further analysis or reasoning**, characterizing the petitions as a matter “of mere legality,” using reiterative, boilerplate, and ill-considered language, without addressing its own case law precedents—some based on international standards—or providing reasons for its refusal to examine the merits of these constitutional violations, despite the fact that they are based on extremely serious allegations of a possible pattern of enforced disappearance during the state of emergency. The Chamber refuses to exercise its jurisdiction without assessing the gravity of the facts alleged in these petitions.

Another finding of this study is that **the Constitutional Chamber has asked the petitioners for numerous clarifications** that seem unnecessary or unreasonable given the seriousness of these crimes—including inquiries as to why they believe it is a case of enforced disappearance and how the facts relate to the constitutional rights of the persons detained—when in previous case law there was a clear standard that prioritized the need for enhanced protection if a pattern of enforced disappearance emerged. The current justices ignore these precedents, including Habeas Corpus Case 158-2018, in which they admitted the petition despite the petitioner’s failure to address the requested clarifications.

All this raises, at a minimum, reasonable doubt about the effectiveness of this constitutional guarantee in the context of the state of emergency—possibly indicating that this Court has unreasonably limited the protection of individuals from enforced disappearance in El Salvador, and that in practice, habeas corpus has become an illusory remedy, meaningless and ineffective for the protection of individual human rights, leaving potential victims of enforced disappearance even more defenseless.<sup>4</sup>

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4 I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, para. 93.

## II. The Chamber's response to the detention of women and girls

Some of the most serious and emblematic cases found in this study involve the violation of women's and girls' rights.

- One such case is Habeas Corpus Case 2068-2022, filed by the mother of the minor K.R.G.C., who stated that her daughter was taken into custody on June 18, 2022, by members of the Armed Forces of El Salvador (FAES) in the municipality of Sonsonate, even though she had committed no crime and there was no warrant for her arrest. The petitioner stated that her daughter was four weeks pregnant at the time, and that she subsequently received word that her daughter had a miscarriage at the Rosa Virginia Pelletier Juvenile Detention Center. The petitioner alleged that the miscarriage was a consequence of her daughter's detention.

In response, the Constitutional Chamber requested clarification on nine points, including matters relating to whether, at the time of the arrest, the pregnancy had been confirmed with medical documentation, why the petitioner claimed that the young woman had miscarried because of the arrest, and where she had obtained this information, among other considerations.

In answering the request for clarification, the mother stated that there was no medical confirmation of pregnancy or any illness, since her daughter had taken a home pregnancy test. She maintained that her daughter miscarried because the members of the FAES had kept her kneeling on the ground during her arrest, and that her eldest daughter saw one of the soldiers—who carried out the arrest—push her sister with his knee, causing her to fall to her knees, which could have harmed the fetus.

The petitioner further stated that she asked the soldiers not to take her daughter because she was pregnant; that she could not inform the public defender of her pregnancy because he could not meet with her when she went to see him; that it was impossible to contact the relevant court authorities; and that she was unaware of the content of the accusation against her daughter and the measures that had been taken. She also stated that she had not been informed of the medical procedure her daughter underwent, nor did she know the hospital at which it was performed.

- Although the applicant answered all the requests for clarification, the Chamber dismissed the petition on the grounds that there was no harm. In its decision, the Chamber noted that the mother stated that she had not informed the appropriate prison and judicial authorities of her



daughter's pregnancy status, nor requested an expert medical opinion on the loss of the fetus, and that she had alleged that it was impossible to communicate with the authorities without explaining why.

- Another notable case is Habeas Corpus Case 1607-2022, in which the petitioner stated that Mrs. N.T.C., sixty years old, was detained at her home in Sonsonate by eight police officers, who “deceitfully asked her to sell them soft drinks [...] and said that they wanted to drink them inside the house.” Upon entering, they asked for her ID and told her that they had come to take her into custody, but they did not produce an arrest warrant, nor did they mention the reasons for the arrest, “they just handcuffed her and took her away.” The petitioner noted that the detainee is an active member of the Council of Indigenous Communities of Nahuizalco (CCIN), which works to improve the community's living conditions. They alleged that her detention violates human dignity, and that her incommunicado detention, as well as the absence of records and the failure to inform her families of her whereabouts, could constitute enforced disappearance. Documents were also submitted regarding Mrs. N.T.C.'s ties to the community.

In this case, the Chamber asked for clarifications from the plaintiff on eight points, including the detainee's association with the CCIN. Absent a response from the petitioner on the clarifications requested, the Chamber subsequently dismissed the petition.

- In Habeas Corpus Case 2040-2022, the petitioner alleged that Mrs. R.A. was detained on May 15, 2022, and that she is the mother of two children who were five years old and three months and fifteen days old at the time of her arrest. She requested a special hearing for the review of pretrial measures; however, the judge maintained that she lacked ties to the community and that she was a flight risk. The petitioner stated that her family members do not know where she is being held, since the last they heard she was detained in “Jucuapa.” The petitioner added that the Office of the Prosecutor General is requesting an extension of the investigation period. The petitioner further noted that the mother's detention has interrupted the breastfeeding of her youngest child.

In this case, the Chamber requested numerous clarifications from the petitioner, and ultimately dismissed the case due to the lack of response to those requests. Contradictorily, the same dismissal ruling mentions breastfeeding and advocates for the release of women in vulnerable situations, but then finds the petition inadmissible.

This decision is inconsistent and contradicts judicial precedent. In Habeas Corpus Case 209-2020 of October 7, 2020, the Chamber held that, when restricting the right to physical liberty, the particular conditions of persons in special situations of risk or vulnerability must be taken into consideration, and the grounds for the restriction must be explicitly stated. Thus, it was

established that the standards of the Inter-American Commission on Human Rights (Report on the Use of Pretrial Detention in the Americas, 2013, para. 216) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules, 2010, No. 57), in relation to Articles 1, 3, and 144 of the Constitution are relevant in the case of women with minor children.

In a similar case, Habeas Corpus Case 1175–2022, the petitioner stated that Mrs. M.N., a mother of three children, had been arrested at her workplace without a warrant and then sent to Apanteos Prison. In this case, the Chamber dismissed the petition without hearing the merits and stated that the petitioner had failed to raise a constitutional issue. It also stated that “the Inter-American Court of Human Rights has recognized that, when children are involved, the best interests of the child must be taken into account in decisions regarding their incarcerated parents or primary caregivers.”

**The decisions identified in this study contradict constitutional precedents.** For example, in Habeas Corpus Case 133-2018 of May 8, 2019, the Chamber established that, faced with a plausible allegation of arbitrariness or excess, it is incumbent upon the respective authorities to produce sufficient evidence to rule out the alleged violation of rights. This should be the standard of proof applicable in these cases, the Chamber noted, otherwise the effectiveness of habeas corpus would be illusory, as it would impose a virtually impossible burden of proof on the detainee or petitioner.

By abandoning this line of jurisprudence, the Constitutional Chamber leaves potential victims of human rights violations with fewer defenses, especially in the case of vulnerable persons such as women and girls, since, in its preliminary analysis, the Chamber downplayed the importance of the facts alleged. And it dismissed the petitions by declining to entertain a constitutional case, or by requesting excessive clarifications, when it should—at least—have asked for reports from all the authorities involved in the events, so they could provide the defense arguments and evidence to refute the claim that their actions had resulted in violations or put the victims or their dependents at risk.

### III. The Chamber's redefinition of the role and duties of the Police and the Armed Forces during the state of emergency

The study has identified decisions of the Constitutional Chamber that directly or indirectly reinforce or validate the state of emergency and the actions taken by the National Civil Police (PNC) and the Armed Forces (FAES) in this context.

- In Habeas Corpus 961-2022, Mrs. B.R.M.D.F. stated that she was threatened with arrest by PNC officers who had gone to her mother's business. The first time, she was taken to the downtown police station where she was photographed and interrogated; however, they allowed her to leave, warning her that "she was lucky they hadn't found anything." On a second occasion, the officers returned and asked her for her identity documents.

She then stated that she felt threatened by the possibility that these officers could show up again and want to arrest her for unlawful association; furthermore, she considered that there was no reason for the police to want to detain or interrogate her, since there was no crime to be prosecuted. She said that the state of emergency could result in a rights violation that threatened her physical liberty, since under the emergency decree, individuals may be arrested for the mere fact of having a police record. Because of this, she said she had a latent fear of being arrested due to a past criminal case that ended in her acquittal.

The Constitutional Chamber dismissed the petition and held that it was a matter "of mere legality," because the actions described by the petitioner did not qualify as threats to the right to physical liberty. This decision contradicts the Chamber's previous ruling in Habeas Corpus Case 133-2018 of May 8, 2019, as the petitioner's allegations referred to arbitrary police interventions such as police observation and surveillance of targeted individuals, which constitute threats to individual liberty and are sufficiently serious to warrant the protection of liberty through constitutional proceedings.

In this and other decisions of the current Constitutional Chamber, the role of the PNC has been redefined contrary to court precedents. The most recent rulings of the Constitutional Chamber on this issue hold that:

- a) The lack of an administrative or judicial arrest warrant does not per se violate the Constitution, because both the Constitution and the Code of Criminal Procedure allow for exceptions to this requirement;
- b) Police officers are legally and constitutionally obligated to detain people, either to aid in the investigation of a crime or to prevent the commission of one, and detainees must be referred to the competent judicial authority for a determination of their detention status;
- c) The assessment of evidence of the commission of a crime and of a person's criminal involvement is the exclusive responsibility of the police, then of the public prosecutor's office, and finally of the criminal courts, including in the context of the state of emergency; and
- d) The PNC have the authority to momentarily halt a person's daily activities in order to determine his or her possible involvement in a crime.

In the decisions analyzed, the Constitutional Chamber distorted previous constitutional case law to grant excessive powers to the PNC and justify the arrests that have been carried out during the state of emergency. The Chamber maintains that police officers are legally and constitutionally obligated to detain people, but declines to rule on the matter when petitioners complain of arrests carried out by agents of the Salvadoran armed forces.

With respect to the state of emergency, the Chamber resorts to generic formulations that it routinely and uncritically inserts in the hundreds of decisions issued, without analyzing whether it was adopted in compliance with constitutional provisions, and without ruling on its indefinite extensions. The Chamber disregards constitutional precedents and assumes, without verifying, that the actions of the Office of the Prosecutor General, the PNC, and the courts are covered by the state of emergency.

The current Court does not cite its precedents because they reaffirm the constitutional limits on the duration of the state of emergency and its extension and specify the situations that may give rise to a state of emergency—which do not include an increase in crime—and because the precedents reaffirm that the declaration of a state of emergency must respect fundamental legal rights and does not suspend the rule of law.

This study finds that, in the cases related to the state of emergency, the Constitutional Chamber has failed to evaluate the multiple rights violations committed by the authorities and the allegations made by each habeas corpus petitioner. Instead, it systematically and uncritically resorts to procedural

rigidity in order to refuse to admit and process the petitions. The delay and the Chamber's own dilatory conduct not only heighten the vulnerability of detainees and their families, but the delayed response leads to the dismissal of their claims, making them wait in vain. The Chamber has abdicated its role as guarantor of rights within Salvadoran society, because it now considers all acts committed during the state of emergency to be exempt from judicial review.

## IV. The Chamber's response to allegations of harm to the health of an HIV-positive person

Another case identified in the study involved an HIV-positive person arrested during the state of emergency.

In Habeas Corpus Case 1964-2022, the petitioner asserted that Mr. E.C. was detained by members of the Armed Forces and that he was later held in Quezaltepeque Prison. The petitioner also stated that Mr. E.C. is HIV positive and that, due to the effects of the virus, he needed certain medications. The petitioner requested “prompt and complete justice” on his behalf, since he had not committed the crime of which he was accused and was not part of any criminal organization. The petitioner therefore contended that the state of emergency was applied arbitrarily and inhumanely due to the subjectivity of the police.

The Constitutional Chamber requested clarification on 10 points of the petition; however, although the petitioner complied with this request, the Chamber dismissed the petition on the grounds that it had not been timely filed.<sup>5</sup> This decision is particularly serious because the Chamber relied on the delay in answering a number of questions that could have been unnecessary and unreasonable. And it did so without considering the seriousness of the restriction of liberty, the health of the detainee as a person with HIV, or the Chamber's own delay in conducting the initial analysis of the petition which—having been filed to challenge an arrest that occurred on May 27, 2022—was ultimately ruled inadmissible only in late February 2023.

<sup>5</sup> It should be taken into account that the extent of the request for clarification was disproportionate to the deadline for reply (3 business days). The excessive formalism of the request for clarification in these cases has a negative impact on access to justice for those who have a very short deadline to provide answers on 10 different points, some of them unnecessary as mentioned above.

## V. The Chamber's response to prison authorities' refusal to comply with court orders for the release of detainees

Another type of case that has come before the Constitutional Chamber through petitions for habeas corpus involves the refusal of prison authorities to release a detainee, in defiance of court orders.

- One relevant case is Habeas Corpus Case 3343-2022, in which the petitioner stated that he was filing the petition against the warden of the Izalco Penitentiary Complex. He stated that Mr. F.P. was being prosecuted before Specialized Examining Judge C2 of San Salvador for the offense of unlawful association, that the provisional detention was replaced by alternative measures, and that the court subsequently ordered his release on November 15, 2022; however, the warden failed to comply with this order and F.P. remains arbitrarily deprived of his liberty.

The Chamber requested clarifications from the petitioner, and the petitioner answered these requests. As of the date of this study, there is no record that this case has been disposed of, and although the filing date of the petition is not specified, the file reference number suggests that it was filed in 2022; the request for clarification was made on May 31, 2023. Thus, the delay in the Chamber's initial analysis of the case is particularly serious.

- In Habeas Corpus Case 3161-2022, the petition was filed against the warden of the La Esperanza Penitentiary Center and the Prosecutor General of the Republic. The petitioner stated that her client was prosecuted for the crime of unlawful association and that he was granted alternative measures to provisional detention, with his release being ordered on December 2, 2022.

The lawyer reported that the court order had not been complied with and that her client had been sent to the National Police in Zacamil for "screening" to verify that he had no other crime "pending" before they would release him, which is why she filed the habeas corpus petition. She later argued before the Constitutional Chamber that he had been fingerprinted and photographed at the police station and then sent to Ilopango Prison. She contended that the Prosecutor General of the Republic was ordering his rearrest when he had no criminal proceedings pending and, therefore, was in contempt of court for failing to comply with the orders of the examining judge, who had granted alternative non-custodial measures because her client had undergone a medical examination and it was determined that an injury he had sustained required urgent surgery. Four months later, the Constitutional Chamber issued a

ruling requesting clarification on several points, and subsequently, in the absence of a reply, dismissed the petition in June 2023.

In both examples, the Chamber asked for unnecessary or unreasonable clarifications, further delaying the proceedings. Furthermore, it seems that the Chamber sought to conclude that the prison authority's refusal to release the detainees was due to the existence of another case against them, as a way to justify keeping them in custody. Both the content of these rulings and the Chamber's delay in issuing them undermine the detainees' rights to liberty and judicial protection. They are also inconsistent with precedents, even though the Chamber has adjudicated similar cases in the past in which the Constitutional Chamber's response was to admit the petition immediately, seeking to protect the rights violated by these types of refusals and even ordering interim measures and moving forward with the case (for example, Habeas Corpus Case 750-2020 of December 11, 2019).



## VI. Improper use of *amparo* to suspend the effects of habeas corpus for detainees

There is at least one known case in which the Salvadoran authorities have used *amparo* proceedings (petition for a constitutional remedy) to circumvent or suspend the effects of a favorable habeas corpus ruling issued by an appellate court in the lawful exercise of its authority. This is *Amparo* Case 112-2023, which was admitted on May 22, 2023.

According to the decision to admit the case, the beneficiaries were criminally prosecuted for the offense of belonging to terrorist organizations, for which they were deprived of their liberty on March 26, 2022. The Prosecutor General argued that the appellate court had violated the rights to legal certainty and judicial protection, specifically by failing to state the reasons for its decisions, when it ordered the release of the aforementioned detainees without properly interpreting and applying the legislative decree establishing the state of emergency.

In unusual fashion, the Constitutional Chamber not only admitted the Prosecutor General's claim but even ordered an interim measure providing that, while the *amparo* proceeding is pending and until a final ruling is issued, the competent examining judge—and any other judicial or administrative authority—should refrain from coercively enforcing the Chamber's decisions of June 27, 2022, and September 23, 2022, if they have not yet been executed.

The Constitutional Chamber has visibly contradicted itself in this decision, having dismissed hundreds of habeas corpus petitions on the grounds that they were “matters of mere legality,” and even basing such dismissals on the argument that it is the responsibility of criminal court judges to examine criminal involvement and assess the available evidence, rule on the admissibility of the case, and determine whether a custodial measure is appropriate.

However, this same reasoning has not been applied to the Prosecutor General when he has sought, by means of *amparo* proceedings, to have the Chamber substitute the assessment made by the appellate court regarding the application of the state of emergency. In this case, the Chamber admitted the claim and ordered an interim measure to prevent the release of the individuals granted habeas corpus relief and keep them in prison.

This *amparo* decision, together with the mass dismissal of habeas corpus petitions on the grounds of inadmissibility, confirms that the Chamber is not effectively protecting the fundamental rights of persons detained illegally or arbitrarily during the state of emergency, and that it gives differential treatment to the Prosecutor General, who is allowed to use *amparo* proceedings to block the enforcement of writs of habeas corpus.

## VII. The Chamber's excessive delay in adjudicating habeas corpus cases amounts to a denial of justice

The Constitutional Chamber has issued innumerable inadmissibility rulings, which include certain paragraphs to justify its delay in adjudicating the petitions. These references mainly invoke two reasons: (i) the workload; and (ii) that the Chamber is also competent to hear other types of constitutional cases.

The Chamber's **workload** is said to have increased due to the high number of lawsuits related to events that have occurred during the state of emergency, which has prevented the prompt adjudication of those claims. The justices insist that constitutional jurisprudence recognizes workload as an objective parameter in terms of the time the courts may take, since the case flow may limit response times despite their best efforts.

Changes in the workload of the Constitutional Chamber in 2022, compared to 2021	
Amparo petitions received	-25%
Amparo petitions admitted	-44%
Unconstitutionality actions received	-25%
Unconstitutionality actions admitted	-71%

However, the Chamber neglects to mention that constitutional precedents only consider workload to be an objective justification for delay in certain cases, depending on the verifiable circumstances of each judicial proceeding, since the restriction on the individual must be considered when assessing the authorities' delay in responding to or adjudicating the disputes brought before them. This has been established in precedents such as Habeas Corpus Case 103-2018.

With respect to the review of other constitutional matters, the Chamber has indicated that the burden of reviewing other cases has had an impact on its response time in habeas corpus cases. However, according to statistics published on the Transparency Portal of the Judicial Branch, the number of all other constitutional actions filed in 2022—far from increasing in relation to 2021—decreased. In other words, fewer actions have been filed, and fewer constitutional cases have been admitted for processing, both in the case of amparo petitions and unconstitutionality actions. So the second reason invoked by the Chamber is unsupported by its own official data.

# Conclusions

1. In El Salvador, habeas corpus is a remedy designed to protect the right to personal liberty, and to protect against violations of the dignity or the physical, psychological, or moral integrity of detained persons, promptly and without formalities. Within this framework, **the imposition of the state of emergency in March 2022 led to an exponential rise in habeas corpus petitions due to unlawful and arbitrary detentions.** According to the information generated by the Judicial Branch, while 853 habeas corpus petitions were filed in 2020 and 465 were filed in 2021, this number increased to 3,359 in 2022 and 3,056 in 2023. This means that the number of habeas corpus petitions received in 2022 was 7 times greater than in the previous year.

However, **the Constitutional Chamber began a systematic and mass dismissal of petitions,** as reflected in its statistics on cases adjudicated in 2022 and 2023.

To this end, it has resorted to excessive formalisms, ill-considered language, and rigid standards, hindering or directly denying access to justice to people affected by unlawful or arbitrary detention and their family members. **For as long as the state of emergency has been in effect, dismissals of claims relating to the state of emergency have been extremely high:** 1,734 cases filed in 2022 were dismissed as unfounded, and 259 were ruled inadmissible; 33 cases filed in 2023 were dismissed as unfounded, and 5 were ruled inadmissible.

2. A consistent practice of the Constitutional Chamber, even in cases of the utmost gravity and urgency, has been to **request unnecessary or unreasonable clarifications from the petitioners that further delay the judicial process.** These requests are unnecessary because the matters that needed to be clarified did not concern procedural rules or requirements for the admissibility of habeas corpus petitions, but were elements that could have been included during the constitutional proceedings without burdening the petitioner with additional information that could have been provided by the respondent authority. They are unreasonable because the seriousness of the allegations or the special vulnerability of the affected persons—for example, pregnant women or girls—required immediate action, which would be delayed by the request for clarification.

Thus, the Chamber imposes responsibilities on the petitioners that should be borne by state officials, who are the duty-bearers with respect to persons deprived of their liberty.

Rather than acknowledging this responsibility, **the Chamber questions the petitioners as to what they have done to prevent or mitigate the violations committed by the respondent authorities.**

When the petitioners were unable to satisfy the multiple, unnecessary, and excessive clarifications requested by the Chamber, their petitions ended up being declared inadmissible or unfounded. The current judges then chose not to process the habeas corpus petition, despite having been alerted to serious situations and rights violations committed by PNC officers or members of the FAES, judges with jurisdiction over criminal matters, prison wardens, and the Office of the Prosecutor General.

3. The Chamber makes access to the constitutional remedy of habeas corpus even more burdensome (even though it is a judicial proceeding that does not require mandatory representation by an attorney) and imposes an undue burden on the petitioners through by making requests for clarification that cannot be answered in such a short period of time. The Chamber **disregards judicial precedents** like Habeas Corpus Cases 226-2015 and 209-2020, which affirm that this procedure was designed to be expeditious and free of formalities given the nature of the rights it seeks to protect, i.e., the physical liberty and humane treatment of the detained person.

4. As seen throughout this report, the current Constitutional Chamber has resorted mainly to grounds of “mere legality,” using reiterative, boilerplate, and ill-considered language and formulas to dismiss the petitioners’ claims from the outset, even though they contained allegations of possible enforced disappearance, violations of the physical integrity of male and female detainees, and arrests of elderly people and adolescents. These cases, among others, show serious violations to fundamental rights that, based on the case law precedents, should be protected by the Constitutional Chamber.

5. **A gender analysis and a differentiated approach** are notably absent from the Chamber’s decisions, as it dismisses and refuses to hear cases involving violations of the rights of arbitrarily detained women (for example, a pregnant teenager who lost her baby while in detention, an Indigenous leader who was forcibly disappeared, a mother who was detained even though she was breastfeeding one of her two small children); that is, cases in which the violation not only affects their rights but also has an impact on their family group.

The Chamber also declines to apply a gender perspective when the petitioner is a woman alleging violation of the rights of a detained family member—cases in which the Chamber responds by ruling that the case unfounded, or by making an excessive or unreasonable request for information, or by finding the case inadmissible. In this respect, the Chamber also goes against its own precedents. In Habeas Corpus Case 204-2020, it held that women bear a large part of the care burden in households and that female-headed households are especially vulnerable at all times. Accordingly, it found that unconstitutional restrictions on liberty<sup>6</sup> may have even more serious repercussions if they involve women and their dependent family members.

The Chamber **has failed to consider the principle of the best interests of the child in these cases**, despite the fact that it had established in previous case law, such as Unconstitutionality Action 128-2012 of September 28, 2015, that both the Convention on the Rights of the Child and the national legal framework support the principle that all people, including children and adolescents, enjoy the rights recognized in international human rights law, and that promoting and ensuring them is a duty of the state. However, in the recent habeas corpus rulings, the Chamber ignores this principle since it does not seek to protect or satisfy the interests of the child; on the contrary, it further aggravates the situation of children and their family group. Lastly, the Chamber also failed to consider the vulnerable status of a person with HIV who was detained during the state of emergency and required medication. In that case, the Chamber ruled the petition inadmissible, without considering the merits of the case and without protecting the detainee's rights to integrity and health.

6. Dismissing cases as unfounded has been the Constitutional Chamber's tool for twisting constitutional precedents and **asserting, for example, that police officers are legally and constitutionally obligated to detain persons**, whether in the course of their duties to aid in the investigation of a crime or to prevent one from being committed. This reinforces the heightened profile of the PNC in line with the government's crime and communication policies.

The Chamber has thus departed from settled case law which held that the constitutional and legal limits on police action are the only possible framework under which police duties should be carried out; that the constitutional formula of "strict adherence to respect for human

<sup>6</sup> Paragraph 48 of General Recommendation No. 33 on women's access to justice made by the Committee on the Elimination of Discrimination against Women (CEDAW), highlighted the fact that women suffer discrimination in criminal cases due to the following factors:

(a) lack of gender sensitive, non-custodial alternatives to detention, (b) a failure to meet the specific needs of women in detention, and (c) an absence of gender sensitive monitoring and independent review mechanisms. The secondary victimization of women by the criminal justice system has an impact on their access to justice, owing to their heightened vulnerability to mental and physical abuse and threats during arrest, questioning, and detention.

rights”<sup>7</sup> is a clear and deliberately categorical limitation against police excesses, arbitrariness, or abuses. Neither the PNC nor the FAES is at any time authorized to make discretionary or arbitrary arrests, nor to unreasonably injure people in such procedures, on the principle that respect for fundamental rights should never be subordinated to simple considerations of efficiency or abstract invocations of the needs of public order or citizen security.

**7. The setbacks in the case law of the Constitutional Chamber are particularly serious, for example, when it considers that complaints of the enforced disappearance of persons under State control are a matter “of mere legality,”** thus reversing an essential standard for the legal concept of habeas corpus.

Prior case law established that the Chamber was authorized to examine claims alleging enforced disappearance, since this practice is unquestionably linked to violations of fundamental rights inasmuch as it begins with a mandatory restriction of freedom that will remain in effect until the person is located. **The current members of the Chamber even contravene their own previous opinions:** for example, in Habeas Corpus Case 311- 2017 of June 16, 2021, they granted a habeas corpus petition filed on behalf of the victims of enforced disappearance perpetrated by members of the PNC and the FAES, citing violations of the rights to personal liberty and humane treatment.

**8.** Simply put, an analysis of the decisions issued by the Constitutional Chamber during the period under study shows that it believes the state of emergency allows state agents to act without oversight and without limits; it directly and indirectly validates their actions, normalizes them in its decisions, and uncritically abdicates its role as the guarantor of personal liberty.

**9. Although the dismissal orders of the Constitutional Chamber continue to affirm that habeas corpus is still in force as an effective remedy for the protection of personal liberty, the study of its decisions shows the opposite.** In reality, none of these petitions has succeeded in ensuring that the Constitutional Chamber protects personal liberty or provides a check on the actions of state agents. This is supported by the fact that the cases brought before it that are related to the state of emergency are dismissed systematically and en masse. The statistics presented in this report are sufficient to conclude **that the judicial guarantee of habeas corpus is de facto suspended in El Salvador.**

<sup>7</sup> Described in the last clause of Article 159 of the Constitution.

10. It is extremely troubling that, at the same time it is curtailing constitutional remedies for individuals seeking the protection of their personal liberty, **the Chamber is opening the door for the heads of the public agencies responsible for implementing the state of emergency to use *amparo* proceedings to review, suspend, or reverse judicial actions that have protected the liberty of detained persons.** This is in clear opposition to the very nature of constitutional proceedings, which should protect individuals against the power of the state, and not the other way around.

