

5 things you should know about criminal detention in EL SALVADOR

in 2022-2023

1 Prison system

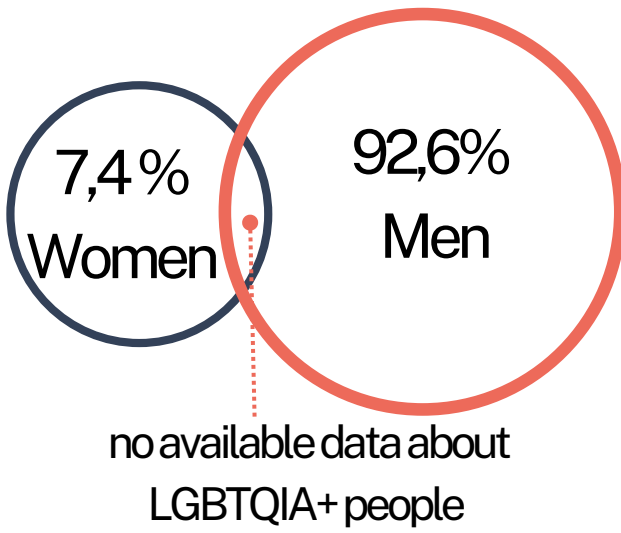
DGCP (Dirección General de Centros Penales)

- Head of the prison system
- It follows policy instructions of Ministry of Justice and Security



2 Prison population

- 71 000 detainees in prison system in 25 prisons
- 1086 detainees/100 000 people of national population. Prison population grew almost twice compared to 2021
- Overcrowding rate 236,7%
- By 2023, more than half of detainees are suspected or accused of being members of gangs
- Women represent 7,4% of the total prison population



3 A state of emergency in 2023

- March 27, 2023: the National Assembly declared a state of emergency that has extended every month ever since. 75 000 persons have been arrested, 3 000 released and 90 deaths have taken place in custody
- The authorities announced the construction of a new prison facility (center for confining terrorism) with capacity for 43 000 detainees



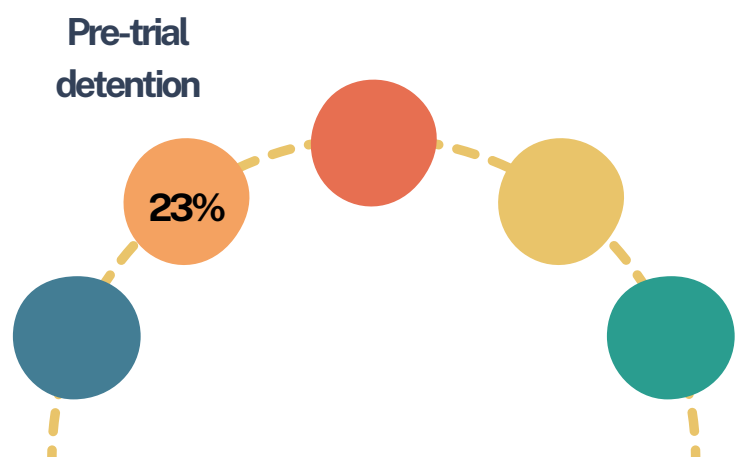
4 The perspective of the Constitutional Chamber of the Supreme Court of Justice in 2016

- The Court held that critical overcrowding, insanitary conditions, lack of access to health, proclivity to violence and lack of control of authorities over detainees are contrary to the constitutional legal order
- Overcoming such situation requires action by different authorities, compliance with international and domestic law



5 Pre-trial detention

23% of detainees are on pre-trial detention. This number increased due to the massive arrests after the decree of state of emergency in march 2022



CASE MANUELA AND OTHERS VS EL SALVADOR

A case dealing with obstetric emergencies, intersectionality and criminal punishment

FACTS

- Manuela was a poor and illiterate woman living in a rural area of El Salvador
- In 2008, she suffered an obstetric emergency after a fall
- She was taken to the hospital after considerable blood loss and unconsciousness
- A doctor reported her to the authorities claiming she committed abortion (which is illegal in El Salvador)
- The authorities inspected her house and claimed to have found the body of a newborn in a septic tank
- Manuela was detained in 2008 and handcuffed to her bed
- A week later, Manuela was discharged of the hospital and immediately transferred to a police station → pre-trial detention
- 6 months later Manuela was convicted to 30 years of prison for the commission of aggravated homicide
- In 2009, Manuela was diagnosed with Hodgkin Lymphoma and nodular sclerosis for which she did not receive periodic medical treatment
- In 2010, Manuela died after 3 months of hospitalisation

The Court ruled

- The court ruled that El Salvador violated Manuela's rights to...
 - Personal liberty
 - Presumption of innocence
 - Defense and to be judged with impartiality
 - Be informed of reasons of detention
 - The obligation not to apply laws in a discriminatory manner
 - The right not to be subjected to cruel, inhuman or degrading punishment
 - The obligation to ensure that the purpose of a prison sentence is social rehabilitation and reform
 - Life, personal integrity, privacy, health and equality before the law

The Court ordered

- To modify criminal procedure regarding mandatory pre-trial detention to a fixed list of crimes
- The Court considered that pre-trial detention should only be imposed when there is a risk of flight or obstruction to justice
- To adopt a protocol for treating obstetric emergencies
- To train the judiciary, public defenders and medical staff on discriminatory nature of the use of presumptions and gender stereotypes in investigation and persecution
- To regulate medical secrecy, protection of medical records and exceptions
- To amend criminal law so punishment for infanticide is not disproportionate
- To adopt a sexual and reproductive education program in schools



Interested in more?

See the hearing of this case before the Inter-American Court of Human Rights

<https://www.youtube.com/watch?v=PPOkQEQugkk>



Click [here](#) for references