

House Foreign Affairs Committee  
Tom Lantos Human Rights Commission

Hearing  
on  
State of Exception in El Salvador

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Virtual via Cisco WebEx

Statement of Emily Mendrala  
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U.S. Department of State

Co-Chairs McGovern and Smith, distinguished members of the Commission, I welcome the opportunity to testify regarding the ongoing State of Exception in El Salvador.

As you are already aware, El Salvador has a long history of gang violence, and gang activity has a strong presence in El Salvador and the United States. The Salvadoran Legislative Assembly on March 27 declared a State of Exception in response to a spate of 62 murders over a 24-hour period on March 26. The original 30-day decree has since been extended five times, with Minister of Justice and Security Villatoro announcing a forthcoming wave of reforms aimed at preventing the release of gang members arrested during the Emergency Regime.

The government of El Salvador credits the State of Exception with reducing the number of reported violent crimes in the country. The Department of State has expressed its concerns that the declaration drastically curtails civil rights protections under the laws of El Salvador. The declaration and its subsequent extensions suspend the freedom of association; the right to be immediately informed of the reason for detention; the right to have a defense attorney during initial investigations; and the right to private communication. It also extends administrative detentions from three to 15 days and removes the right to bail for any gang-related offense. The Legislative Assembly also amended the penal code, lowering the age of criminal responsibility to 12 years of age, and increased prison sentences for gang members from a maximum of five years to a maximum of 45 years. The most recent extension of the State of Exception removed the restrictions on freedom of association. The Legislative Assembly separately passed legislation criminalizing reporting on gang activities. While the Department remains unaware of any members of the media arrested pursuant to this gang-reporting law, reporters indicate undue pressure to refrain from reporting facts about the State of Exception. Several members of the media have also fled the country, citing fear of reprisal from the government.

To date, over 51,000 individuals have been detained during the declared Emergency. Presiding judges have released roughly 700 of those detained, citing lack of evidence of gang involvement.

Government officials have acknowledged publicly that some individuals have been mistakenly jailed, but said they have a plan to free what they claim are a small percentage of innocent detainees.

The Department remains resolutely committed to combatting transnational organized crime. However, some of the measures taken during the State of Exception run counter to established human rights standards and are unsustainable from a practical perspective. On April 10, Secretary Blinken urged via Twitter the Government of El Salvador to uphold due process and protect civil liberties, including freedoms of press, peaceful assembly, and expression. During private interactions with the Government of El Salvador, the Department has likewise underscored the importance of respecting human rights, including fair trial guarantees.

Many civil society organizations, NGOs, and attorneys in El Salvador also decry the broad roundup as government overreach, citing numerous reports of human rights violations and deaths stemming from alleged arbitrary detentions and overcrowded prisons. One prominent NGO has recorded more than 2,600 reports of arbitrary arrest during the State of Exception.

In order to truly dismantle organized crime in El Salvador and effect tangible change for years to come, a sustainable approach is needed. Real and sustainable security and prosperity must come through the rule of law. In a democracy, all those accused of crimes should face a transparent system of justice. The Government of El Salvador would need to take extraordinary pains to ensure each individual is afforded access to a defense and a fair trial.

We appreciate the Commission's attentiveness to events in El Salvador. As we move forward, the Department asks for broad bipartisan Congressional support in combatting transnational violence in Latin America and the Caribbean in a sustainable, ethical, and democratic manner.

Co-Chairs McGovern and Smith, Members of the Commission, thank you for the opportunity to testify. I look forward to your questions.