

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 Scott Busby  
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U.S. Department of State

Co-Chairs McGovern and Smith, distinguished Members of the Commission, thank you for the opportunity to testify about the human rights climate in El Salvador, specifically regarding our concerns about the State of Exception.

The Salvadoran Government's primary justification for the State of Exception is the threat posed by gang violence. Certainly, gang violence is an understandable and immediate concern of the Salvadoran people and threatens the national security and prosperity of El Salvador, its immediate neighbors, and the United States. We agree that the problem needs to be urgently and comprehensively addressed. However, while the State of Exception may address short-term goals, as DAS Mendrala has noted, we are concerned that it will not provide a lasting solution to El Salvador's gang violence problem. If it continues, we anticipate lasting impacts on human rights and the rule of law.

El Salvador's security forces are patrolling working-class communities and arresting thousands of alleged gang members and gang collaborators. Soldiers and police officers have erected an extensive network of checkpoints at roads and highways, inspected public transport buses, and entered poor neighborhoods in search of suspected gang members. According to the Government of El Salvador, since the state of exception was first imposed, security forces have arrested more than 51,000 people – we understand this includes 1,979 minors – for allegedly belonging to or collaborating with gangs.

But residents and rights groups say there have been arbitrary arrests of young people from impoverished communities for having tattoos, carrying cash, or protesting the detention of

relatives who have not been brought before a judge. In addition, according to Amnesty International, since the start of the State of Exception at least 73 people have died in police custody as of August 31.

Those arrested are placed in overcrowded and violent prisons. Although over 700 individuals have been released, the rest remain detained, awaiting court proceedings. Some 16,000 imprisoned gang members have also been confined to their cells 24 hours a day and have had their food reduced to two meals a day.

Salvadoran officials have acknowledged publicly that some innocent people may have been arrested during the State of Exception, but officials claim it is a very small percentage and say they will review cases and release innocent detainees expeditiously. That said, very few detainees have been released to date, which suggests that any current mechanism for review is either not working or working too slowly to be effective.

The State of Exception has also created an enabling environment for other concerning legislation. On April 5, the Legislative Assembly passed, with no debate or discussion, changes to the Criminal Code criminalizing reporting on certain gang activities. The legislation establishes penalties of 10 to 15 years in prison for those who “reproduce and transmit messages or communications” attributed to criminal groups, or gangs. We are not aware of any journalists being arrested under this law, but the legislation opens the door to prosecution or possibly also political harassment of reporters or outlets covering gang issues, which has had a chilling effect.

Many civil society organizations have expressed grave concerns over the Government of El Salvador’s actions under the State of Exception, citing abuse of power, excessive use of force by police officers, and harassment and digital surveillance of journalists and human rights defenders.

Local civil society organizations are engaging in self-censorship and becoming more cautious of conducting public activities. Fear of retribution is increasing for advocating for human rights or expressing opposition to actions taken by the government.

The contraction of civic space in Central America also threatens regional stability, prosperity, and security. Accordingly, civil society organizations have underlined the importance of public and private statements from the international community and access to international human rights bodies to provide protection for human rights defenders and accountability for violations and abuses of human rights.

Together with our interagency partners, the Bureau of Democracy, Human Rights, and Labor (DRL) is carrying out the U.S. commitment to protecting, defending, and promoting civic space in Central America, including through the recently announced Voices initiative as well as ongoing programs. The Voices initiative will promote freedoms of association and peaceful assembly, strengthen independent media, and protect civic actors and human rights defenders.

We remain committed to working with El Salvador to address legitimate security concerns while also respecting human rights and fundamental freedoms.