

Tom Lantos Human Rights Commission
Hearing on the State of Exception in El Salvador
September 12, 2022
Statement for the Record Submitted on September 23, 2022 by
Lisa Haugaard, Co-director, Latin America Working Group Education Fund

Over [51,000](#) people have been detained and grave human rights violations have been committed by the Salvadoran government and security forces in the state of exception that has been renewed five times since March 27, 2022. We welcome this hearing by the Tom Lantos Human Rights Commission, which is particularly important because as the state of exception is repeatedly extended, it is as challenging as it is essential to maintain a high level of international community scrutiny. The abuses during the state of exception are part of wider concerns about the closing of democratic space for civil society and deterioration of the rule of law in El Salvador.

The state of exception was declared in response to a surge in violence by gangs, with [over 60](#) people killed on March 26 as gang members attacked vendors, bus passengers, and shoppers. Salvadoran magazine El Faro [revealed](#) May 17th that a breakdown in covert negotiations between the Bukele Administration and gangs, which had reduced gang violence since 2019, led to the explosion of gang violence.

A government should respond to such violent actions by gangs. However, it should respond with respect for the human rights and civil rights of its citizens and its methods should aim to reduce and prevent violence in the long term. **Today, the Salvadoran government's actions under the state of emergency neither respect the rights of its citizens nor advance an effective violence prevention and public security strategy.** To date, “no one has been individually responsible for the killings at the end of March which were the justification for the state of exception,” according to Salvadoran NGO Cristosal’s [testimony](#) at this hearing. The impact on many Salvadoran young people, families, and poor communities has been devastating.

Massive Arbitrary Detentions

Since the start of the state of emergency in March 2022, thousands of people are being detained arbitrarily without warrants, taken from their homes or off the streets. Many of them are young men from poor neighborhoods. At least [1400](#) children, as well as women and older people, have also been detained. Families are seeking their relatives whose whereabouts are unknown, in what amounts to enforced disappearances. A searing El Faro [photo essay](#), for example, shows women searching for their missing family members. Police, army, and joint police-army operations are carrying out the detention operations.

Authorities often give no reason for the detention and do not have a warrant. According to data collected by Cristosal, people are detained for reasons such as not carrying IDs, carrying IDs with out-of-date addresses, carrying uncharged cellphones, having photos of themselves wearing caps like gang members, having any kind of tattoo, and having previous arrests, even if charges were dropped or their prison sentences had been fulfilled. Human Rights Watch documented numerous detentions carried out

“in large measure, if not exclusively, [based](#) on the age of the people, their physical appearance, or the fact that they live in an area controlled by gangs.”

Under the state of exception, those detained can be held up to 15 days without being charged with a crime. They also have no right to be informed of the reasons for their detention. In general, detainees do not have access to a lawyer or public defender during the first days of detention. Hundreds of people at one time are being arraigned in mass hearings, which, [according](#) to Human Rights Watch, “makes it difficult for judges, prosecutors, and detainees’ lawyers to assess the evidence and arguments concerning each individual detainee.” As these massive detentions take place, the police and justice system are carrying out minimal investigations of specific crimes.

The constitutional right to freedom of association is suspended, and safeguards on unauthorized wiretaps and searches were removed. Moreover, the National Assembly passed legal reforms that disproportionately increased the penalty for certain crimes, including for [minors](#) 12 years and older.

Beyond arbitrary detention, abuses taking place under the state of exception include violations of the right to life, torture, cruel, inhumane, and degrading treatment. According to [Cristosal](#), at least 76 individuals have died in state custody. For example, Walter Vladimir Sandoval was reportedly beaten by police after he denied belonging to a gang. He later died April 3 in Izalco prison. The Salvadoran Institute of Legal Medicine [asserted](#) that he died of “severe thorax trauma.” To date, [according](#) to Cristosal, “the Attorney General’s Office has not opened investigation into any of the deaths of Salvadorans in state custody.”

Cruel, inhumane and degrading treatment is widespread. Family members of those detained report that detainees were physically and verbally abused, and family members themselves were threatened for questioning detentions. Physically and mentally handicapped persons have been demeaned and physically abused, held in inhumane conditions, and denied access to prompt medical treatment.

Not a Crime Prevention Strategy

Moreover, the methods used under the state of exception are far from a successful crime-prevention strategy—indeed, they are counterproductive. Youths without gang affiliation swept up in the massive detentions are at risk of violence or being forced to join gangs by gang-affiliated detainees. The mass detentions are overwhelming the already overcrowded prison system and may make gang recruitment within prison easier. Detention of hundreds of innocent young people diminish the disincentives to join gangs. The policy of massive detentions also means careful, detailed investigations of gang leaders get short shrift.

Some gang members who have fulfilled their sentences or fully reintegrated into civilian life are being detained or publicly denounced by government officials. **These disturbing actions create a climate which makes it far more difficult for gang members to leave gang life and pursue rehabilitation opportunities. They undercut any strategy to reduce or prevent gang violence by helping young people transition out of gang life.**

Closing Space for Journalists and Civil Society

As human rights violations are intensifying under the state of exception, so too are steps by the Bukele administration to close space for civil society to organize and defend rights and for journalists to cover the news. The Salvadoran legislature at the behest of President Bukele passed Penal Code [reforms](#) on

April 5, 2022 to criminalize media or journalists who “reproduce and transmit messages from or presumably from gangs that could generate uneasiness or panic in the population.” This new crime is punishable with up to 10 to 15 years in prison and will make it harder for the media to report on any policies related to gangs, the human rights abuses against those detained, or the lack of due process for people accused. These laws, and government attacks against journalists, are leading more journalists to flee into [exile](#). The president of the Salvadoran legislative assembly [said](#) of the measures against journalists: “Go. We don’t need you here.” President Bukele has also directly attacked various national and international civil society organizations on Twitter, opening the space for further harassment of these organizations on social media and shutting down critique of his government’s policies.

Recommendations to members of the U.S. Congress:

- **Express strong concern about the human rights and civil rights violations under the state of exception via social media, statements, and in conversations with Salvadoran government or embassy officials.** Urge the Salvadoran government to immediately cease these widespread human rights violations and pursue a balanced crime-prevention strategy which respects due process and includes, as well as investigating and prosecuting violent crime, tackling the root causes of why young people join gangs, including an absence of educational and job opportunities, the need for investment in violence prevention, and the need to strengthen an independent judiciary. In addition, express concern regarding attacks against and restrictions on journalists and civil society organizations and activists.
- **Urge the State Department to strongly express its concern with the human rights and civil rights violations expanding under the state of emergency and attacks against and measures to restrict journalists and civil society organizations and activists. Urge the State Department to take these violations into account in policy decisions on aid, visa sanctions, and certification** of whether the Salvadoran government is meeting the human rights and rule-of-law conditions the Congress placed on aid to central governments in northern Central America.