

House Foreign Affairs Committee
Tom Lantos Human Rights Commission

Hearing
on
STATE OF EXCEPTION IN EL SALVADOR

September 12th, 2022 - 12:00 m.

Statement of HÉCTOR SILVA ÁVALOS
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IN WASHINGTON, DC

HONORABLE REPRESENTATIVES AND CO-CHAIRS OF THIS COMMISSION,
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HONORABLE DEPUTY ASSISTANT SECRETARY EMILY MENDRALA

HONORABLE DEPUTY ASSISTANT SECRETARY SCOTT BUSBY

DEAR COLLEAGUES

Good afternoon:

The abuses of the Nayib Bukele regime in El Salvador are not a passing threat to Salvadoran democracy and the stability of Central America. What is happening in my country, as analysts, officials and victims have pointed out many times, is the dawn of an authoritarian government whose ultimate goal is to perpetuate itself in power. To achieve this, the president has shown us a path that includes human rights abuses, the hyper militarization of public security, the establishment of fear as the main political argument and the annulment, without contemplation, of any type of criticism and opposition. It is a scenario remarkably similar to the dictatorships that plagued Latin America last century.

El Salvador has been under a state of exception for five months. During this time, close to 52,000 people that the government has imprisoned have not enjoyed all the guarantees that the country's Constitution offers to any Salvadoran. The majority of these people have not had adequate defense and when they have had lawyers, the State has denied them information, even about the crimes of which they are accused. In that time, some eighty people have died in Bukele's jails, beaten or because they have not had medical attention. And in that time many valuable

Salvadorans who have denounced these abuses have been forced to leave the country, threatened with criminalization by the police, the Attorney General's office and other state agencies now controlled by President Nayib Bukele.

To the violations committed during the emergency regime must be added other restrictions on fundamental rights that will remain even when Nayib Bukele decides to lift the state of siege, which is in practice the state in which thousands of Salvadorans live. The packages of legal reforms to the country's criminal and criminal procedure codes, as well as other secondary laws approved last March permanently curtail fundamental rights of defense and have given the Attorney General's office the ability to accuse without complying with the minimum requirements of due process. This is already being used for political purposes, as shown by recent cases of a Twitter user arrested for posting a photo of the president's brother's security detail, that of an opposition trade unionist who died while in jail, and those of journalists whom the regime seeks to create spurious criminal cases against, as it happens also in Nicaragua and Guatemala.

Allow me to offer you a picture of what is happening in the communities, neighborhoods, and towns of El Salvador. It is a picture that I draw from dozens of interviews, testimonies, and documents to which I have had access as a correspondent who publishes weekly on these issues. The MS13 and Barrio 18 gangs continue to exercise territorial control in substantial portions of the country. That control is exercised by the gang leadership, both on the streets and in the prisons. This leadership has not been affected by the state of exception. The best example of this is the refusal of the Salvadoran government, including the Attorney General's Office and the Supreme Court of Justice, to endorse the extradition of gang leaders wanted by the United States for crimes committed here. In other words, while imprisoning thousands of youths, mostly from the country's poorest neighborhoods, and in most cases without solid evidence, the Bukele government keeps the gangs' command structures intact, so their operational capacity is not really affected.

Salvadoran gangs, which as you know were born in the streets of Los Angeles and became sophisticated in Central American prisons, are a complex phenomenon, which has two dimensions. One criminal and the other social. The second, the social dimension, has to do with the conditions of marginality, poverty and hopelessness in which thousands of young Salvadorans live; these conditions were not born with Bukele nor are they his fault, but his government, like those that preceded him, has been inefficient in finding solutions to this marginality. Those solutions are not found in a regime of exception. The other dimension, the criminal one, continues to grow: Salvadoran gangs, although they no longer kill as before, continue to extort, and continue to disappear. In addition, in some areas of the country, such as in the west, cliques or cells of the gangs that the government has given leniency have increased their capacity to work in drug trafficking. None of this has been solved, either, by the state of exception.

This state of exception, moreover, was decreed after a public security emergency that is the direct responsibility of the Salvadoran government. That is to say, the government imposed the regime of exception in the first place to try to remedy a problem that the government itself had created, which was the increase in violence in March after the rupture of the pact with the MS13 and Barrio 18 gangs. About that pact Bukele has tried to say that it does not exist and that it is an invention of investigative journalism in El Salvador; however, that pact has been confirmed by Salvadoran prosecutors who are now in exile and by US agents on whose input the sanctions issued by the Treasury Department last December against Bukele's officials who negotiated on his behalf with gang leaders were based.

That pact never sought a sustainable solution to the gang problem, but only electoral benefits.

The breakdown of the pact, which prompted the decree of the state of emergency in the first place, showed that the territorial control plan, as Bukele had called his public security policy, had failed. Bukele needed a plan B to distract attention from that failure and, in the process, limit the rights of Salvadorans, including the right of expression.

When he decreed the regime of exception, Bukele already controlled the entire state apparatus. Today he has, in addition, an extra instrument to intimidate those who go against his narrative. A Salvadoran woman, herself a critic of government abuses and one of the dozens of citizens whose phones have been spied on with software that in El Salvador only the government has, told me: "The exception regime is like a gun on the table, they are not pointing it at you, but you know that at any moment they can grab it and shoot you".

And what is happening in this regime of exception? It happens that the National Civilian Polices conducts massive raids without any investigation. Then, the Attorney General's Office writes accusations without solid evidence most of the time. And it happens that, because of the absolute control that the government exercises over the courts and the prosecutor's office, preventive detention is indefinite. And it happens that in prisons there are no minimum guarantees that the rights of the accused are respected; dozens of families have denounced that their relatives have been tortured in the prison system of El Salvador, that their ribs have been broken, that they have been made to bleed from blows or that they have been left to die without medicines they needed to treat chronic illnesses.

It also happens that legal reforms now allow that, in practice, anonymous complaints are enough for the PNC to capture someone. All this has happened before in El Salvador, in Latin America and in the world. In our region we know it as dictatorships, in Europe as fascism.

The macabre irony of all this is that the regime of exception has not solved the gang and public security issues. The regime of exception is not necessary to combat gangs. The state of exception is, more than anything else, an argument that the president needs to focus public attention on the security issue and take it away from other equally crucial problems for El Salvador, such as its fiscal crisis, the deterioration of its economic situation and the collapse of its democratic

institutions. Nayib Bukele knows that he is more popular when he talks about security, even if his discourse is based on mirages.

Police experience in places where there have been successful public policies against gangs, such as here in nearby Montgomery County, Maryland, indicates that gangs are confronted with effective police intelligence, robust court cases, and inclusive community policies that can draw young people away from these criminal organizations. To do all of this does not require a special regime. And it is definitely not necessary to eliminate indefinitely the constitutional guarantees of Salvadorans.

The success of the measures implemented by the Bukele government during the emergency regime is a fallacy. It is true that homicide rates have dropped in El Salvador; they have been trending downward since 2016. But in Bukele's El Salvador it is unclear how significant that drop is. It is impossible to know because the government has closed all access to public information, which, as several analysts and researchers have already pointed out, detracts from the credibility of the official figures.

Honorable Commission, one of the less visible consequences of the emergency regime is the exile of government critics, which adds to a similar trend that plagues other countries with authoritarian governments in the region, such as Guatemala or Nicaragua. While this hearing is taking place, one of the most respected academics on public security and gang issues is fleeing El Salvador because the National Civil Police has opened a spurious case against him, which will most likely become a criminal case in the Attorney General's Office. As you know, both institutions lack independence and are at the service of the president. Honorable Mr. McGovern, you knew first-hand the hope that the 1992 Peace Accords brought to El Salvador; you were in our country, you helped us a lot in that process. The PNC was one of those promises; today that police force is a repressive arm.

In addition to the thousands of Salvadorans imprisoned, disappeared, extorted, and deprived of their freedom, the regime of exception has caused another victim: the truth. As we speak there are at least 8 Salvadoran journalists who have had to leave the country. In Washington I have listened, stupefied, to officials who minimize this exile by saying that the journalists who have left El Salvador have done so because we want to live, work or study abroad. No, we have done so after the police, the prosecutor's office, the finance, or labor ministries have harassed us by sending agents to our homes, investigating our bank accounts, sending us threats of criminal prosecution. Exile is not a decision; it is an imposition. As Daniel Ortega and Rosario Murillo have done in Nicaragua, in El Salvador Nayib Bukele has made the political decision to persecute without contemplation anyone who criticizes him or exposes his corruption and crimes.

Honorable commission, thank you very much for giving me the opportunity to speak before you and expose before this honorable House the situation that my country is going through. As I said

at the beginning, this is not an accident or a passing evil, we are talking about a president and a regime that seeks to accumulate power and perpetuate itself in it. How many times did we see that movie in Latin America? How many times did we count the victims that these anti-democratic efforts provoked in our countries? How many times did we fail to understand the magnitude of the abyss we were facing? This abyss is dark, and this is the time to do whatever is necessary to avoid falling into it.

Before I take my leave, if I may, Honorable Co-Chairs, I leave you with the words of a Salvadoran whom you knew well, those of Father Ignacio Ellacuría: The search for a critical thinking that seeks to transform reality, said the priest, "requires... great honesty... a claim to maximum autonomy and freedom; (and) it requires, finally, great courage in a country where the weapons of death explode all too often in the most threatening proximity". Thank you very much.