

Report on the State of emergency and human rights in El Salvador

Event: Tom Lantos Human Rights Commission Hearing on human rights in El Salvador

Date and hour: December 12, 2024, at 14:00 hours.

Speaker: Commissioner Carlos Bernal Pulido.

I. Introduction

As a Commissioner and Country Rapporteur for El Salvador at the Inter-American Human Rights Commission, I am grateful for the opportunity to participate in this hearing and share relevant remarks about the Commission's Report: "State of Emergency and Human Rights in El Salvador." This report is based on information provided by civil society and the Salvadoran State, assessed with fairness, technical expertise, and objectivity, and based on Inter-American Human Rights standards.

II. Background

Several years of continuous bloodshed and deconstruction of the state produced by gangs' violence led to thousands of victims. With that timeframe, which began in the nineties, between March 24 and 27, 2022, El Salvador experienced a sudden spike in homicides across various regions of the country. This spike, which resulted in at least 92 deaths, was the tip of an iceberg of continuous human rights violation, lack of enjoyment of freedoms and security by the citizens, and institutionalized corruption and state neglect of their population. In response, the President and Congress declared a state of emergency, suspending several constitutional rights and guarantees, including the right not to be compelled to testify, the 72-hour limit for administrative detention, and the inviolability of correspondence and telecommunications.

Within this background, the Commission prepared a special country report. For that purpose, the Commission collected information through public hearings, meetings with civil society organizations, interviews with alleged victims of human rights violations under the state of emergency, and incorporated information provided by the State, civil society organizations, press reports, as well as decisions and recommendations from specialized international organizations. On September 4, 2024, the Commission published the report.

Personally, I issued a partial dissent to the report. I disagree with the lack of evidence of some of the conclusions achieved by the Commission, and with some other methodological matters. Furthermore, I flagged that some of the information that the Commission used for the report, was provided by a Civil Society Organization, Cristosal, that receives funding from foundations that also fund the Commission. From my perspective, this creates a conflict of interest that the Commission should have avoided.

III. Main findings

In any event, in the report, the Commission recognized a significant improvement in citizen security in El Salvador. On the one hand, the Commission acknowledged the severe violations of human rights caused by gang activities. Therefore, the report has an entire section on the criminal actions of the gangs. Gangs are a highly complex phenomenon, that the State failed to address during more than three decades. Gangs' activities and the neglect by the state led to violence on vulnerable populations, especially women and girls. Moreover, violence deprived the poorest from many rights, including life, freedom, justice, and the ability to aspire to a life free from violence. This situation made enjoying simple things—like playing, going to school, or working peacefully—unattainable. In contrast, and as a personal note, during a recent visit to El Salvador, I observed the country's newfound safety. I visited the capital's downtown, once a gang territory, and spoke with waiters and taxi drivers who appreciated the security they now enjoy. In addition, the Commission acknowledges a historic debt of reparation for gang victims and their families.

Beyond the report, public information available in the media reveal that reduction of gangs' activity has reduced crime rates, and in particular, homicide rates, to historic lows. It has also been an economic driver. Salvadorans went back to their economic activities, foreign investment has increased, especially in areas such as energy, construction, technology, infrastructure, and tourism. Furthermore, social benefits of the security policy are the return of the people to their homes (previously taken by gang members), the improvement in

transport systems, and the resurgence of a new generation of youth, who can be educated in an environment of freedom, security, and peace.

On the other hand, in its report, the Commission emphasized that the state of emergency and the measures that authorities take under this framework ought to align with international human rights obligations. Regarding the suspension of guarantees within the context of a state of emergency, the Inter-American Human Rights bodies have established that such a measure can only be exceptional and must adhere to the principles of legality, necessity, proportionality, and reasonableness. In this scenario, the Commission observed that the suspension of certain constitutional provisions was not necessary. Furthermore, the Commission recommended the state to guarantee all the dimensions of due process under the American Convention. Finally, the Commission suggested that a progressive restoration of all rights should be achieved, at the pace of improvements in public safety.

Concerning the due process, the Commission expressed its concern about some legislative changes involving mandatory application of pretrial detention for certain offenses, the withholding of identity of justice operators in criminal proceedings, and the imposition of adult prison sentences to minors. Moreover, the Commission received information from civil society sources about incidents of illegal arrests, the use of discriminatory criteria, violence, excessive force and violation of privacy in the arrests.

The Commission also received information about other limitations on the exercise of judicial guarantees and the defense of the accused, such as the lack of effectiveness of the habeas corpus, and the holding of mass hearings. Concerning the situation of persons deprived of liberty, the Commission received information about overcrowding in both police stations and the prison system, with all the human rights impacts that overcrowding generates. Finally, the Commission also received information regarding certain incidents involving deaths, allegations of torture and ill-treatment of detainees, abuses in the use of disciplinary measures and the use of force against detainees, as well as deficiencies or omissions in the mechanisms for reporting and investigating these incidents.

IV. Recommendations

In accordance with article 41(b) of the American Convention on Human Rights, the IACHR formulated 23 recommendations to the State of El Salvador. Among the most notable recommendations are:

1. Put an end to the suspension of rights and guarantees restricted under the state of emergency.
2. Develop a comprehensive public policy on citizen security with a focus on human rights and civil society participation.
3. Implement a policy for supporting victims of crimes perpetrated by gangs, with their participation.
4. Develop a registry to identify the victims of human rights violations committed under the state of emergency, along with a comprehensive reparation plan.
5. Adapt criminal and criminal procedural legislation, particularly by repealing the mandatory application of preventive detention, provisions that allow for the confidentiality of the identity of justice operators, and provisions that enable the application of adult prison sentences to individuals under 18 years of age.
6. To maintain a system for registering the total number of persons deprived of liberty.
7. Grant approval for a working visit by the IACHR.

V. An Ongoing Dialogue

As rapporteur for El Salvador, I should acknowledge willingness of the State of El Salvador to engage with the Commission in constant dialogue and to implement its recommendations. First, the State has timely replied to all my letters requesting information about general human rights issues and particular violations and incidents. Second, I have held several meetings in the headquarters of the Commission with the highest ranked officials of El Salvador Human Rights Diplomacy to discuss concerns of the Commission. Third, in my recent visit to El Salvador, State authorities informed me that they are already implementing some of the recommendations issued by the Commission in its report. They include the creation of a program of permanent human rights training for judicial operators, the National Civil Police, and Armed Forces, educational programs for youth

which have been involved in illegal activity, and ensuring minimum detention conditions, including shelter, hygiene, food, potable water, and medical access, with a gender and risk-group perspective.

I would like to finish this statement reaffirming my commitment to use all diplomatic and quasi-judicial instruments that the Inter-American Human Rights Commission can display, to guarantee the human rights of the people of El Salvador. I hope that the Commission (or at least, several Commissioners) can undertake a country visit in 2025. I can also hope that the progressive control of the gangs can lead to the end of the state of emergency. Constitutional Law professors know that the enormity of the abnormality is what justify the State of Emergency. The positive outlook of the current situation in El Salvador is a signal of the reduction of the enormity of the abnormality. If this forecast is correct, I am confident that we will see very soon the end of the State of Emergency and the restauration of an strengthened constitutional democracy, after the horrific era of gangs' violence.