

House Foreign Affairs Committee  
Tom Lantos Human Rights Commission

Hearing  
on  
The State of Exception in El Salvador: Taking Stock

December 10, 2024 – 2:00 p.m.  
2360 Rayburn House Office Building

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Good afternoon, Congressman McGovern and distinguished members of the Commission. On behalf of the Due Process of Law Foundation (DPLF), I thank you for the opportunity to report on the human rights crisis that has been taking place in El Salvador since the State of Exception was put in place in March 2022.

Let me begin by stating that DPLF stands with the victims of gang violence as well as the victims of State-perpetrated violence in El Salvador, and across the Americas, including in the eight Latin American countries where we work with civil society, governments, and the international community to promote respect for human rights and the rule of law.

The State of Exception in El Salvador was promoted as a public security policy to crack down on gangs who had terrorized the country for years. It seems that it has been effective: crime rates have plummeted, and the crisis of gang violence appears to be over. Nearly 2 ½ years later, however, it is legally and factually unjustifiable that what should have been a temporary emergency measure is still in place. To understand why the State of Exception remains in force, we must understand that while it has been sold as necessary for crime reduction and public safety, it is *actually* being used to maintain control and generate fear among the population. It has set a dangerous precedent—signaling that it is acceptable and indeed, essential, for a government to eliminate human rights protections in the name of public security—and created a framework for the systematic commission of human rights abuses, which have been well-documented by Salvadoran and international organizations, and international human rights bodies such as those here today.

Since the State of Exception took effect, we have seen an increase in militarization, particularly in marginalized communities formerly dominated by gangs, as well as the construction of a mega prison. Over 82,000 people have been arrested, including children as young as 12; some were targeted for having tattoos, wearing the wrong cap, or living in a poor neighborhood. Nearly 300 of those detained have died while in State custody. It is likely that some of those deaths can be classified as extrajudicial killings under international law, that is, the deliberate killing of

individuals outside of any legal framework. It is also likely that some of the torture, enforced disappearances, and extrajudicial executions that have been documented may constitute crimes against humanity, which implies the existence of a plan or a policy to commit them, involving a chain of command of government actors. In El Salvador, if crimes against humanity are being committed, it is probable they are being ordered by, or at least with the knowledge of, senior government officials, including President Nayib Bukele.

The State of Emergency occurs within an increasingly authoritarian context, where President Bukele—who was unconstitutionally reelected this year—has successfully consolidated executive power. But, to be clear, the current scenario was not created exclusively by the executive. The judiciary has played a key role in facilitating the abuses occurring under the State of Exception: due process and the presumption of innocence have been all but eliminated for those detained under the policy, with prosecutors and judges failing to question these practices, even though they have a duty to do so. When people are arrested, it is not uncommon for them to be brought before judges in “group hearings,” without any due process guarantees.

At the same time, there has been a series of legal reforms to facilitate harsher penalties and fewer protections for detainees: reforms to the Penal Code and the Special Law against Acts of Terrorism, put in place in March 2022, allowed for expedited processes to prove gang participation, increased sentences for gang-related convictions, and permitted children as young as 12 accused of gang membership to be tried as adults. These reforms are antidemocratic, as they do away with the rights and protections we are all entitled to in judicial processes, and they will have consequences for the Salvadoran people far beyond the State of Exception, if and when it is lifted. While public security must be a top government priority, it is unacceptable to indefinitely eliminate due process under the pretext of making the country safer.

The situation in El Salvador has also raised alarm at the Inter-American Commission on Human Rights. The IACHR published a solid and thorough report about the human rights situation in El Salvador under the emergency regime—which detailed violations including those against children and adolescents; mass-scale illegal and arbitrary detentions; abuses in the use of force by security forces; and due process violations. We are grateful to the Commission, represented here today, for centering the voices of victims, listening to civil society, and playing a vital role in holding governments in the region accountable to human rights standards.

There are no easy answers when it comes to addressing the scenario in El Salvador. There are, however, some things that can and should be done. Among the immediate necessary steps to reestablish due process, in addition to revoking the State of Exception, is the revision of the legal cases of those detained under the State of Exception by a commission of experts, and the immediate liberation of those who should not be incarcerated (along the lines of The Innocence Project here in the US). At the same time, avenues for international accountability should be pursued, including an international criminal investigation into potential crimes against humanity—whether a in a third

country or before the International Criminal Court –as well as a UN fact finding mission to investigate and document what is occurring.

I thank you, Congressman McGovern, for your commitment to the Salvadoran people, and thank the Commission again for its time today. I look forward to your questions.