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Analysis of Executive Decree PCM-29-22 (The State of Exception)

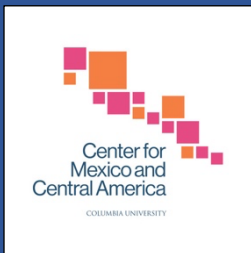
CONADEH

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CONADEH is the **National Human Rights Institution (NHRI) of Honduras** that enjoys functional, administrative, technical, and judgmental independence. It has a constitutional mandate to ensure the promotion, protection and defense of human rights and fundamental freedoms of the inhabitants of the country, especially those of people in vulnerable situations, by monitoring the actions or omissions of State institutions as a whole as well as private entities that provide public services, in order to comply with human rights obligations to achieve respect for the dignity of the human person, strengthening the rule of law and democratic governance.

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Key Words: Honduras, State of Exception, State of Emergency, Human Rights, Policing

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1. INTRODUCTION

As part of the framework for issuance of Executive Decree PCM-029-22 (through which the constitutional guarantees established in articles 69, 78, 81, 84, 93 and 99 are suspended) the Ministry of Human Rights (SEDH) promoted the creation of a “High Level Inter-Institutional Roundtable for Follow-up of the Implementation of PCM-29-22.”

CONADEH has participated permanently in this forum, along with representatives of the Ministry of Security (SEDS); the Ministry of National Defense (SEDENA); the Office of the United Nations High Commissioner for Human Rights; and the National Mechanism for the Prevention of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (MNP-CONAPREV).¹ Recently, there also has been involvement from the Public Prosecutor's Office (Ministerio Público). However, there has not yet been any incorporation of the Judicial Branch, which indicates a lack of comprehensive understanding.

Since the first meeting, the intention was for the Roundtable to serve as an accountability mechanism through which human rights institutions would have the possibility of accessing quality information that would contribute to the construction of joint exercises of qualitative analysis of the different scenarios that could result from police interventions employed under the framework of PCM-29-22. However, while CONADEH welcomes the initiative to create a space for open dialogue of this nature, the Working Group has not been able to become a tool for timely access to information, since the official data on the execution of this first decree were not shared with the institutions of the Working Group until after the extension of the State of Emergency was approved by means of Executive Decree PCM-01-23. The official data were only transferred to CONADEH on January 25, 2023, that is, 19 days after the approval of the extension.

In this regard, the Commissioner of CONADEH has identified the need to conduct a complementary analysis to the preliminary report "State of Emergency and Human Rights: Observation Report to PCM-29-22,"² based on what can be verified with the data officially transferred by the authorities of the SEDS to the Commissioner. This will generate an even more detailed understanding, adding to what this National Human Rights Institution (NHRI) has been able to verify in the first instance, through the review of detainee records and data collected during various site visits.³

2. ANALYSIS OF THE DATA PROVIDED BY THE SEDS

From the first report presented by this NHRI, it was evident that there was a serious discrepancy between the information that was being officially communicated by the National Police to the public and the data that CONADEH had been able to verify through ongoing visits to all detention centers in Tegucigalpa, Comayagüela, and San Pedro Sula, which were enabled during the first period of the State of Emergency. The figures presented also demonstrate a lack of understanding of the purpose, applicability, and geographic scope of the measure.

This is due to the absence of an exhaustive and critical analysis of the proportionality of the suspension, based on the rules of necessity and suitability, and in light of an evaluative exercise. Accordingly, the argumentative capacity of the Decree presents a considerable fragility and suggests the opening of an unpredictable discretionality in the application of the Decree. In this sense, the following official information deepens the problems already elucidated by this NHRI in its first report.

a. General Comparison: Reasons for Detention

Both at the time of presenting its report to the High Level Table for the follow-up of the implementation of PCM-29-22, and at the time of constructing the narrative justifying the extension of the suspension of guarantees to the media,⁴ **the National Police stated that approximately 652 persons belonging to gangs had been detained** as a result of the first period of the State of Emergency.

In response to this, CONADEH compared the data that were actually verifiable in practice, by reviewing the registry books of detained persons and the logbooks of new developments. Thus, in Tegucigalpa and Comayagüela, **it was only possible to verify a total of 159 arrests**, of which at least 132 were reported in Metropolitan Unit No. 2, all of which were related to minor violations and not to the crime of extortion or other crimes related to gangs. This discrepancy in data is a very important concern for CONADEH, since it could have meant an error in the categorization of detentions or a manipulation of the information. Both scenarios would imply a risk of great relevance in the prevention of illegal or arbitrary detentions.

Accordingly, the concerns the Commissioner identified in the first report are deepened when observing the results presented in the information officially submitted by the SEDS to this NHRI. At the outset, it is disturbing that the results show deficiencies in the categorizations, which implies a significant discrepancy both regarding what CONADEH was able to verify and also what police authorities reportedly presented. It is worth noting that, while arrests are not the only indicator of the effectiveness of the measure, they do constitute a uniquely relevant data point to assess the capacity of the measure to achieve the only tangible and individualizable

goal as identified through a simple reading of the Executive Decree PCM- 29-22: "...to facilitate the search, identification, and arrest of the perpetrators of this scourge."

Thus, **official data show a total of 1,348 arrests**. This would suggest a high level of effectiveness with respect to the above-mentioned purpose. However, of this universe of arrests, **1,284 are for minor violations**, while only 36 arrests were for extortion and 28 for “*asociación ilícita*” (illicit or unlawful association, i.e., gang membership.)

These numbers indicate that, of the total number of arrests, less than 5% correspond to serious crimes (whose possibility of being presented as direct results of the PCM is called into question by the analysis presented below). **This would immediately rule out the possibility of considering 95% of the arrests presented as being a result of PCM-29-22.**

**95% OF
DETENTIONS WERE
FOR MINOR
OFFENSES**

On the other hand, it is important to mention that the data do not indicate people being detained for other extortion-related crimes, beyond that of unlawful association. This suggests that the chances of a police officer having sufficient objective elements to determine, at the time of an intervention, the existence of a crime related to extortion are very low.

Naturally, the categorization of this type of complex criminal relations is possible thanks to previous criminal investigation, from which a diversity of factual relations emerge that nourish certain categories of analysis that enable the establishment of such complex links. All of this reinforces the need to clarify (at the level of authorities, not human rights institutions) that legally established attributions are insufficient to undertake effective police interventions.

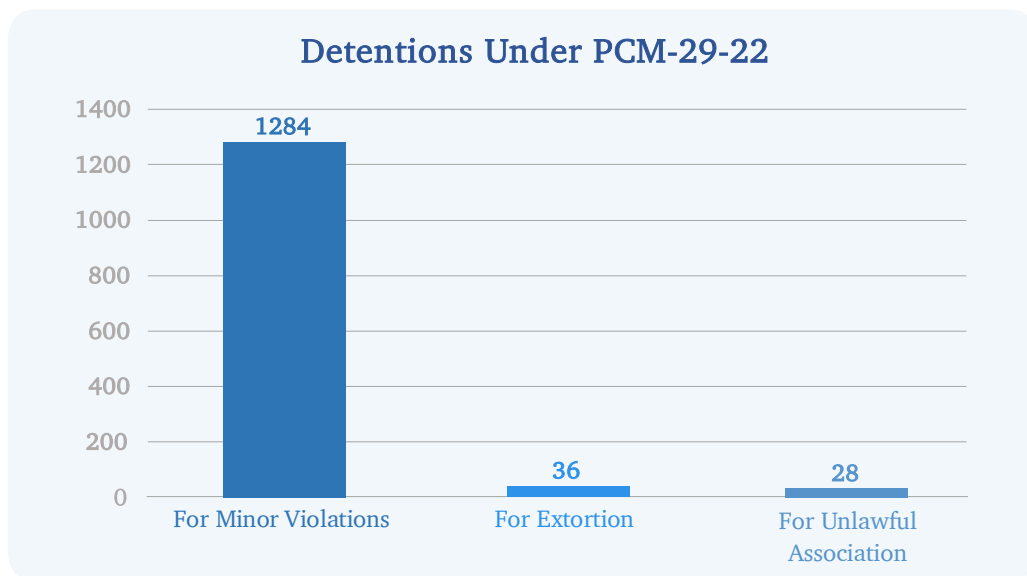


Figure 1. Detentions Under PCM-29-22.

It is also important to mention that, according to data provided by the SEDS, most of the persons detained were between 18 and 25 years of age. In addition, at least 26 minors had been detained, including, a 13-year-old girl. The concern of this NHRI is deepened by the fact that it has not been possible to verify the existence of differentiated protocols for the treatment of minors in detention centers.

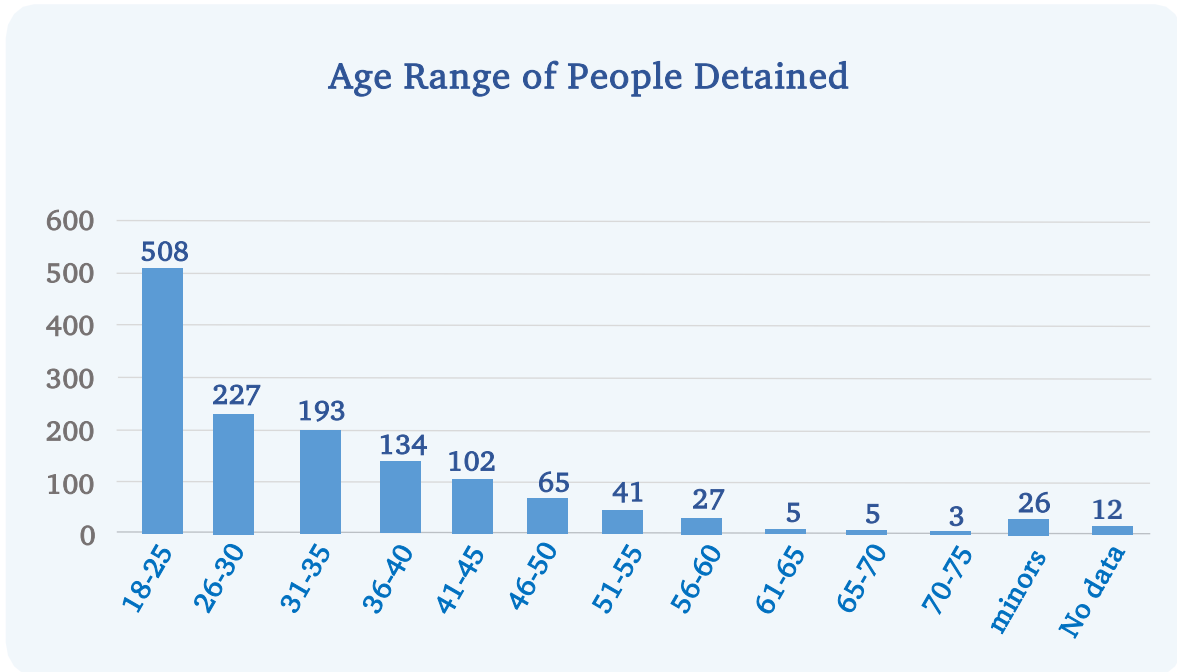


Figure 2. Age Range of People Detained.

Thus, during the first period of the State of Emergency, this NHRI documented instances where minors were found in the same cell as adults. This issue has been duly reported to the authorities of the SEDS within the framework of the Working Group, who claim to have corrected this situation.

However, the failure to adopt differentiated approaches in the treatment of minors when they are subjected to this type of process could imply the State's ignorance of the forms of use, involvement, and forced recruitment (by gangs) to which these persons are exposed. This would imply a violation of the State's duty to protect.

It is also important to mention that these records include a category that identifies whether the person detained belonged to a gang. According to these records, 12 of the 28 persons detained for unlawful association were persons related to a gang. 13 are reported as without data, while 3 were registered under the category of “not applicable” (which could suggest that they do not, in fact, belong to a gang). Likewise, records show that 24 of the people detained for extortion belong to a gang; 7 were reported as without data, while 5 were registered under the category of “not applicable.” It is important to note that only 14 of these 36 persons linked to gangs were detained within the territorial boundaries established by PCM-29-22.

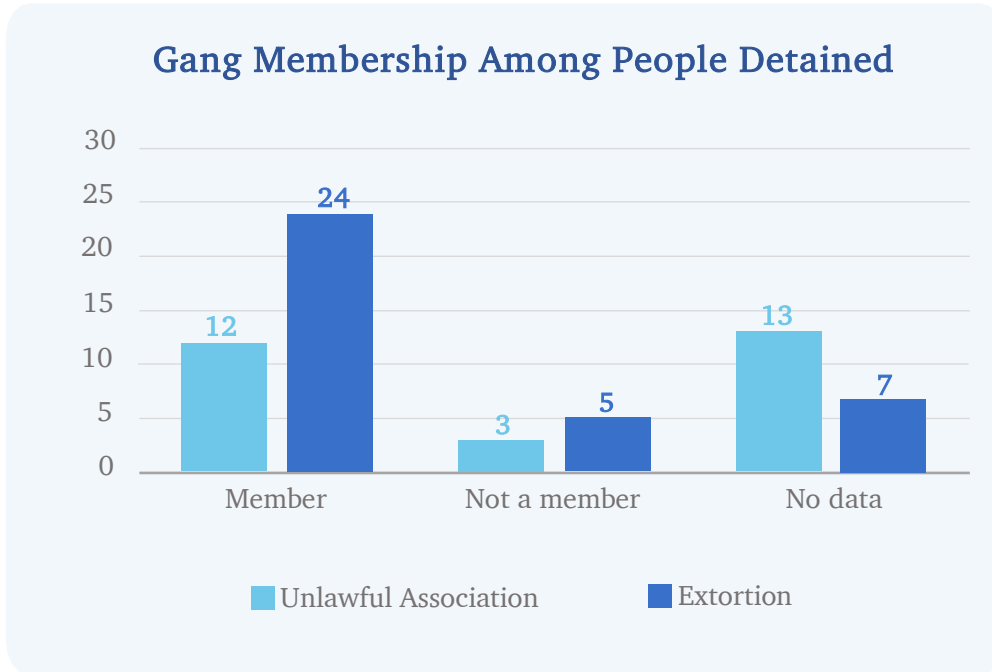


Figure 3. Gang Membership Among People Detained.

b. Detentions for Minor Violations

As mentioned above, detentions for minor violations are not related to the purposes established by Executive Decree PCM-29-22. However, to demonstrate just how unrelated these arrests are from the purposes of the Decree, it is worth noting that of the 1,284 arrests made for a minor violation, 907 were arrests for **provoking a fight** and 304 for **disorderly conduct on public streets**. Meanwhile, other arrests were for things like **drunkenness, vagrancy, disrespect to authority, disturbance of public order**, among others. With this in mind, it is not surprising that the preliminary report of this NHRI noted that holidays were among the days with the highest number of reported arrests.

Additionally, the inclusion of certain categories that could imply the concurrence of several illegal or arbitrary detentions is of great concern. For example, 25 people were detained without any apparent reason for their detention, as they are only registered under the category of **detainee for investigation**. If there are indications that a person is allegedly or apparently linked to the commission of a crime, whether felony or minor violation, this crime should appear on their record as the reason for the detention. Otherwise, any person could be detained without the

**25 PEOPLE
DETAINED WITH NO
REASON RECORDED**

existence of even minimum objective elements to suspect that they are responsible for a crime. There is also 1 detention for not carrying a driver's license, whose legal basis could be called into question.

505 PEOPLE REGISTERED WITHOUT RECORDING THEIR ID NUMBERS

Furthermore, it is deeply disconcerting for this NHRI that, of the 1,284 persons detained for minor violations, at least 505 of them were registered without having provided their identity numbers. This amounts to 39% of people detained for minor violations.

Without the accurate identification of these individuals, it would be very difficult both for the authorities themselves and for this NHRI to be able to verify the circumstances and eventualities of their detention, their procedural status and general conditions. Article 17.3 of the International Convention for the Protection of All Persons from Enforced Disappearance includes the registration of the identity of a detained person as a minimum requirement.

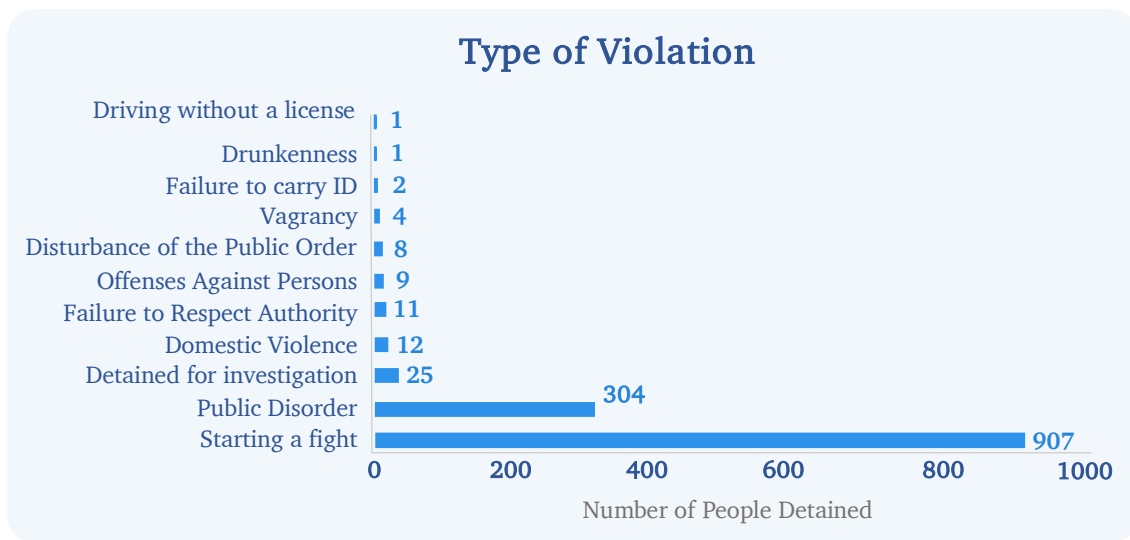


Figure 4. Type of Violation.

c. Detentions for Extortion

As mentioned above, the stated purpose of Decree PCM-29-22 is to facilitate the identification, search, and arrest of persons linked to extortion-related crimes. However, during this first period of the State of Exception, **a total of only 36 arrests of this kind were made.** Of this total, 9 were made outside the departments of Cortés and Francisco Morazán (the two departments with the specific municipalities that appeared as the territorial limit of the Decree). They were reported in the Departments of Santa Bárbara, Olancho, Comayagua, Yoro, Atlántida and Choluteca.

It is also important to mention that, of the 20 detentions reported in Francisco Morazán, only 12 of them were reported within the neighborhoods established in the PCM. Of the 16 arrests reported in Tegucigalpa and Comayagüela, 4 were carried out in Barrio El Edén, Colonia Trinidad, Mercado Zonal Belén, and Barrio el Reparto, respectively, each a neighborhood that does not fall within the areas established by the PCM. Similarly, of the 4 arrests reported in Cortés, 2 of them took place within the established territorial limits. Ultimately, **the execution of PCM-29-22 only facilitated the arrest of 14 persons linked to extortion**, which represents 33% of the total arrests for extortion and approximately 1% of the universe of arrests presented as official results.

**1% OF DETENTIONS
LINKED TO EXTORTION**

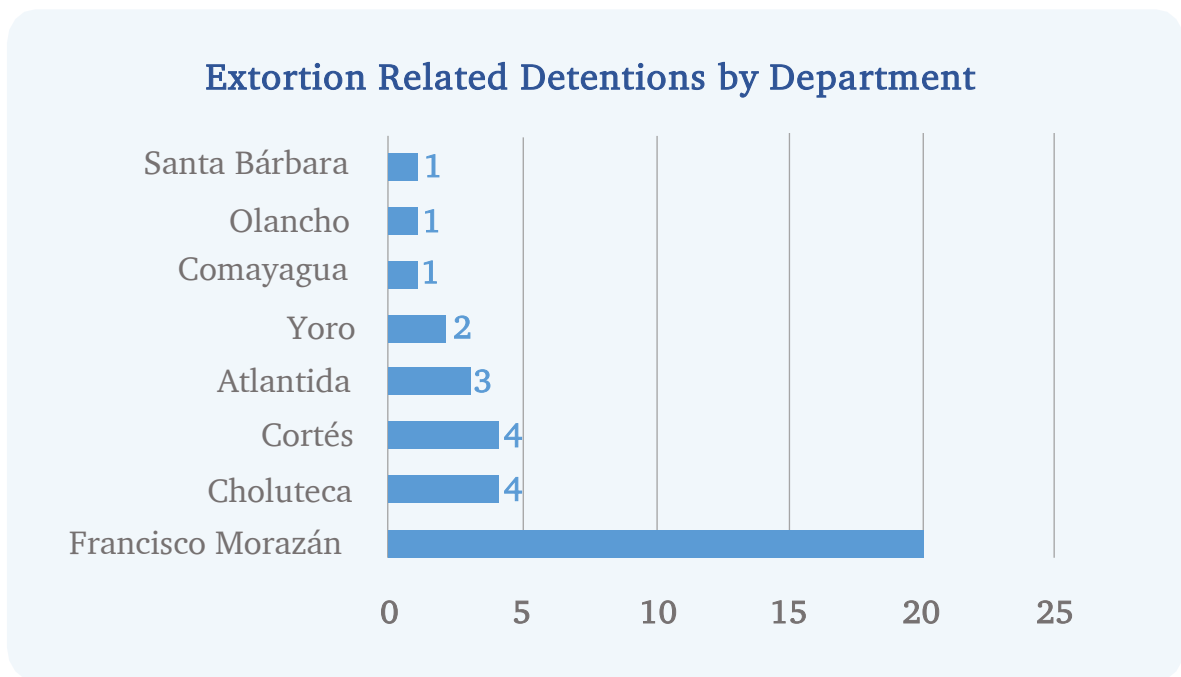


Figure 5. Extortion Related Detentions by Department.

d. Detentions for Unlawful Association

From the data provided to this NHRI by the SEDS, the crime of unlawful association is the only one that is related in practice to the execution of PCM-29-22. During this first period of the State of Emergency, **only 28 arrests were made for the crime of unlawful association**. Of this total number of arrests, 8 were made outside the departments of Cortés and Francisco Morazán (the two departments with the specific municipalities that appeared as the territorial limit of the Decree), being reported in Choluteca, Colón, Comayagua and Intibucá.

Of the 8 detentions reported in Francisco Morazán, only 3 of them were reported within the neighborhoods established in the PCM. Three were made in Colonia Cerro Grande Zona-8 and two in Colonia Villeda Morales. Similarly, of the 12 detentions reported in Cortés, 8 were reported within the neighborhoods established in the Decree. **In sum, the execution of PCM-29-22 only facilitated the arrest of 11 persons linked to unlawful association, which represents 39% of the total arrests for unlawful association, and approximately 1% of the universe of arrests presented as official results.**

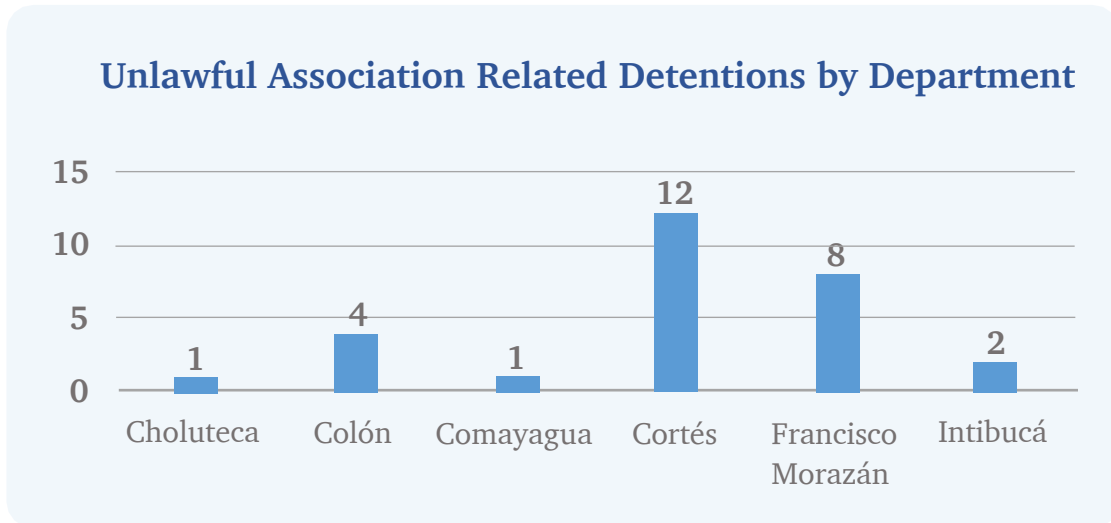


Figure 6. Unlawful Association Related Detentions by Department.

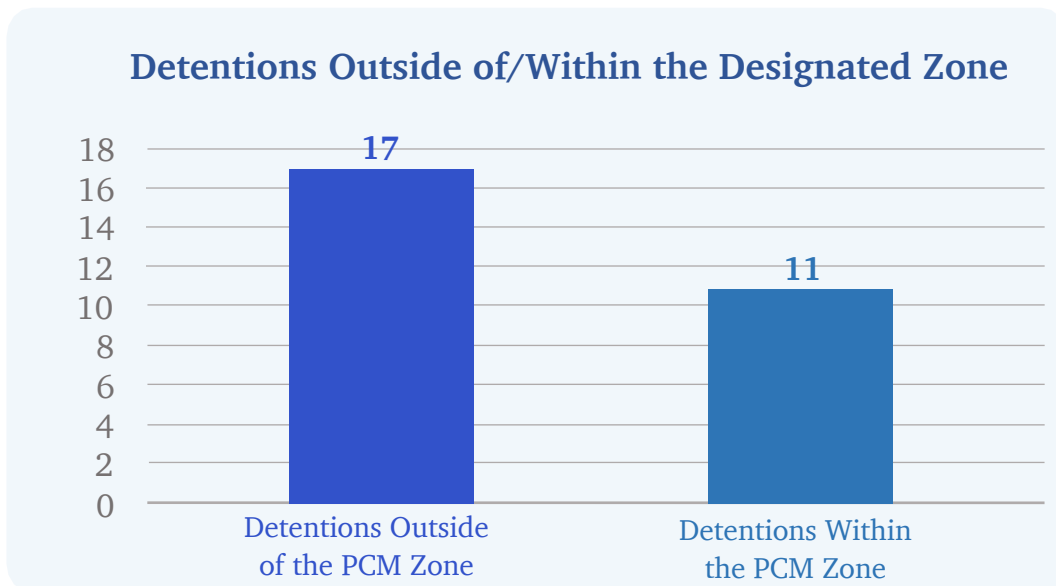


Figure 7. Detentions Outside of/Within the Designated Zone.

3. CONCLUSIONS

Based on the foregoing, it is possible to conclude the following:

- Fewer than 3% of total detentions presented as a result of the execution of PCM-29-22 can truly be considered as such, considering the nature and place of detention. Only 25 of the 1,348 arrests were both for crimes of extortion or other related crimes (unlawful association) and were made within the territory established by the same Decree.
- It is highly worrying for CONADEH that in view of these data, the State of Emergency that was established by Executive Decree PCM-01-23 has been extended. This extension necessarily implies two scenarios: either 1) these data were not analyzed, meaning the State's duty to build a broad and sufficient justification capable of arguing the suitability, necessity, and proportionality of the extension of the measure was not taken seriously; or 2) the information presented here was ignored, constituting an excessively discretionary decision on the part of the corresponding authorities.
- There are fundamentally worrisome shortcomings in the recording of information, which compromises the international responsibility of the State in the face of possible forced disappearances and arbitrary or illegal detentions. Particularly alarming is the failure to record the identity of the persons detained.
- The State authorities are obliged to sufficiently justify the reasons for the decision to extend the State of Emergency measure in the terms set forth in Executive Decree PCM- 01-23. The implementation of any suspension of rights of this nature must be always subject to a restrictive interpretation, which requires that the corresponding authorities provide sufficient justification.

NOTES

¹ The acronyms included here correspond to the institutions' titles in Spanish: SEDH is the Secretaría de Estado en el Despacho de Derechos Humanos; SEDS is the Secretaría de Estado en el Despacho de Seguridad; SEDENA is the Secretaría de Estado en el Despacho de Defensa Nacional; and MNP-CONAPREV is the Mecanismo Nacional de Prevención Contra la Tortura, Otros Tratos Crueles, Inhumanos o Degradantes.

² This prior, preliminary report can be found here: <https://www.conadeh.hn/wp-content/uploads/2023/01/Informe-de-Observacion-Estado-de-Excepcion-2023.pdf>.

³ The full original report, in Spanish, can be found here: <https://www.conadeh.hn/wp-content/uploads/2023/02/Informe-de-Analisis-sobre-datos-presentados-por-la-SEDS.pdf>

⁴ El Herald, 06 de enero del 2023. [Amplían el Estado de Excepción en Honduras hasta el 20 de febrero.](#)

⁵ This and all charts were prepared by the authors of the original report in Spanish, based on data provided by the SEDS.