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Juan J. Fogelbach

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Gangs, Violence, and Victims in El Salvador, Guatemala, and Honduras

JUAN J. FOGELBACH*†

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† The author verifies the accuracy of all Spanish-English translations.

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I. INTRODUCTION

In June 2010, street gangs in the San Salvador suburb of Mejicanos opened fire on a bus, then doused it with gasoline, and set it on fire, killing fourteen people.¹ Moments later, gang members opened fire on a second bus on the same route, killing two people.² Although this is a single recent and heinous incident, gangs have terrorized El Salvador, Guatemala, and Honduras since the 1990s.³ Nevertheless, on December 15, 2009, Judge Richard A. Posner, on behalf of the U.S. Court of Appeals for the Seventh Circuit, held that former members of these same violent gangs are a particular social group and may be eligible for withholding of removal or asylum protection in the United States.⁴

1. Alex Renderos, *16 killed in El Salvador bus attacks*, L.A. TIMES, June 21, 2010, at A3.

2. *Gang members burn bus in El Salvador, killing 14*, USA TODAY, June 21, 2010, available at 2010 WLNR 12608523.

3. See Tim McGirk, *Gang-Bangers: A Deadly U.S. Export*, TIME MAGAZINE (online ed.), Nov. 3, 2000, <http://www.time.com/time/nation/article/0,8599,59613,00.html> (last visited Jan. 22, 2011).

4. Although there is no statutory definition of “particular social group,” the Board of Immigration Appeals has defined it as a group whose members: (1) share a common characteristic that they cannot change or should not be expected to change; and (2) possess a

The petitioner testified before the Seventh Circuit that he was a member of *Mara Salvatrucha* (MS-13) in El Salvador from 1994–2003.⁵ After he arrived in the United States, Benitez Ramos became a Christian and quit the gang.⁶ Benitez Ramos claimed that if he is removed to El Salvador, he will not rejoin MS-13 because he is a Christian and the gang will kill him on account of his refusal to join.⁷ Although he left El Salvador approximately seven years prior, the petitioner claimed that the gang will easily recognize him because he has MS-13 tattoos on his face and body.⁸ In regards to his nine years of membership in a violent street gang, Judge Posner stated, “If he is found to have committed violent acts while a member of the gang . . . he may be barred from the relief he seeks . . . for remember the bar for aliens who commit a serious nonpolitical crime.”⁹

Country conditions in El Salvador, Guatemala and Honduras will require U.S. courts to address complex protection law issues involving current and former gang members, as well as their victims. For example, just three months after the Seventh Circuit’s decision, the Sixth Circuit also held that former gang members were a particular social group.¹⁰ In order to ensure proper handling of these cases, advocates, adjudicators, government attorneys, and judges must acquire a high level of understanding of gangs and violence in the affected countries. To facilitate this process, this paper will synthesize and analyze publicly available information on gangs and violence in Central America. The information will be categorized into the following sections: (1) gang origins and structure; (2) gang recruitment, initiation and disassociation; (3) gang crimes and links to organized crime; and (4) social perception, state response, and the

recognized level of social visibility. *In re Kasinga*, 21 I. & N. Dec. 357, 366 (BIA 1996); *Matter of S-E-G*, 24 I. & N. Dec. 579, 582 (B.I.A. 2008). Judge Posner reasoned that former gang membership is an immutable characteristic because it is impossible to change, except perhaps by rejoining the gang. The Court, however, did not specifically address whether former gang members possess social visibility. Rather, Judge Posner said that it is unclear whether the BIA uses the term social visibility in the literal sense or in the external criterion sense. *Benitez Ramos v. Holder*, 589 F.3d 426, 430 (7th Cir. 2009).

5. *Benitez Ramos*, 589 F.3d at 428.

6. *Id.*

7. *Id.*

8. *Id.* Mr. Benitez Ramos, having an indigo MS-13 tattoo on his forehead, returned to El Salvador and lives in the countryside under conditions comparable to house arrest. Julia Preston, *On Gangs, Asylum Law Offers Little*, N.Y. TIMES, June 30, 2010, at A16.

9. *Benitez Ramos*, 589 F.3d at 431.

10. *Urbina Mejía v. Holder*, 597 F.3d 360, 365–66 (6th Cir. 2010).

resurgence of clandestine death squads. An understanding of this information should incline the courts to grant protection to deserving individuals, to wit victims, and not members or former members of the criminal class, irrespective of their membership in a creatively crafted particular social group.

II. GANG ORIGINS AND STRUCTURE

The origin of MS-13 and 18th Street (*Mara 18* or M-18) helps to explain why gang members, irrespective of where they joined the gang, come to the United States. Publicly available reports on gangs only contain general information on the overall structure and character of gangs. Nevertheless, it is believed that the gangs in Central America are organized in much the same way as they are in the United States.

A. *Origin of Mara Salvatrucha (MS-13) and 18th Street (Mara 18 or M-18)*

The largest gangs in El Salvador, Guatemala and Honduras are M-18 and MS-13. Originally known as 18th Street, M-18 was formed in the 1960s by Mexican-American youth in the Rampart neighborhood of Los Angeles, California.¹¹ The founders of the gang started M-18 because they were excluded from the Clanton Street gang.¹² The gang grew by incorporating members of various races and ethnicities, including Central Americans as they arrived in large numbers in the 1980s.¹³

MS-13 was formed in the early 1980s by Salvadoran youth in the Rampart neighborhood of Los Angeles, California.¹⁴ Salvadoran youth complained that they were often the victims of Mexican-American and African-American gangs long established in their new communities.¹⁵ Thus, MS-13 was created to provide a mode of self-protection exclusively

11. CELINDA FRANCO, CONG. RESEARCH SERV., RL 34233, *THE MS-13 AND 18TH STREET GANGS: EMERGING TRANSNATIONAL GANG THREATS?* 4 (2008).

12. Al Valdez, *California's Most Violent Export*, <http://www.streetgangs.com/topics/2002/18thexport.html> (last visited Jan. 22, 2011). Another version explains that 18th Street was originally a clique, or cell, of Clanton 14. The clique eventually grew large enough to separate from Clanton 14. Alex Alonso, *18th Street Gang in Los Angeles County*, <http://www.streetgangs.com/hispanic/18thstreet> (last visited Jan. 22, 2011).

13. FRANCO, *supra* note 11, at 4.

14. PBS Newshour, *FBI Targets MS-13 Street Gang*, Oct. 5, 2005, http://www.pbs.org/newshour/extra/features/july-dec05/gangs_10-05.pdf (last visited Jan. 22, 2011).

15. *Id.*; N.C. Aizenman, *Latino gang study finds few links to overseas groups*, WASH. POST, Feb. 8, 2007.

for Salvadoran youth.¹⁶ Over time, MS-13 reportedly relaxed its membership requirements and began to incorporate anyone that is Latino and speaks Spanish.¹⁷

The end of the Salvadoran and Guatemalan civil wars in 1992 and 1996, respectively, and the passage of the Illegal Immigration Reform and Immigrant Responsibility Act facilitated the removal of many criminals and gang members from the United States.¹⁸ These deportees transplanted the MS-13 and M-18 gangs to Central America.¹⁹ Eventually, the gangs established 112 cells in Honduras, 434 in Guatemala, and 307 in El Salvador.²⁰ Although estimates vary considerably, it is believed that there are approximately 10,500 gang members in El Salvador, 14,000 in Guatemala, and 36,000 in Honduras.²¹ In addition, the Federal Bureau of Investigation (FBI) estimates that there are 8,000–10,000 MS-13 and 30,000–50,000 M-18 members in the United States.²²

Recent reports also indicate that other gangs operate in Central America. *Mao Mao*, *Máquina*, *Pandilla 14*, *Mirada Loca*, *Muro*, and *Familia Unida* are believed to have cells in El Salvador;²³ *Los Cholos*, *Los Nicas*, and *Los Batos Locos* have cells in Guatemala;²⁴ and *Mao Mao*, *Batos*

16. See National Geographic, *World's Most Dangerous Gang* (2006), http://channel.nationalgeographic.com/series/explorer/2564/Photos#tab-Videos/05520_00 (contains interview with Alex Sanchez, an early member of Salvadoran street gangs in Los Angeles).

17. Daphne Saywer, *The Use of Mapping in Analyzing Gang Activity in Fairfax County, Virginia*, *Crime Mapping News* 2 (Summer 2004).

18. THOMAS C. BRUNEAU & RICHARD B. GOETZE, JR., *LAS PANDILLAS Y LAS MARAS EN AMÉRICA CENTRAL*, *AIR & SPACE POWER JOURNAL* 2 (2008), available at <http://www.airpower.maxwell.af.mil/apjinternational/apj-s/2008/2tri08/bruneau.htm>; see *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, Pub.L. 104-208, Div. C, 110 Stat. 3009-546.

19. Between 1998–2004, approximately 12,000 and 9,000 criminals were deported to El Salvador and Honduras respectively. Chris Kraul, *El Salvador comes to grips with gangs; Deportees from U.S. feed the violence of groups targeted in public crackdown*, *L.A. TIMES*, Dec. 17, 2004, at A1; Chris Kraul, *Honduran sees massacre as warning; President Maduro says the bus attack may have been a message from gangs to back off his anti-crime crackdown*, *L.A. TIMES*, Dec. 27, 2004, at A3.

20. Bruneau & Goetze, Jr., *supra* note 18, at Table 1.

21. *Id.*

22. FBI, *THE MS-13 THREAT: A NATIONAL ASSESSMENT*, Jan. 14, 2008 (reporting that MS-13 operates in 42 states and the District of Columbia).

23. BRUNEAU & GOETZE, JR., *supra* note 18, at 3 (estimates of membership in these gangs in El Salvador are small. *Mao Mao* and *Familia Unida* are the largest and believed to have only thirty members).

24. *Id.* at Table 2.

Locos and *Los Rockeros* are found in Honduras.²⁵ Generally, there is little information available on these gangs.

B. Structure and Leadership of MS-13 and M-18

Reports on MS-13 and M-18 do not indicate that the gangs have one central leader or top boss. Instead, the gangs are composed of numerous vertically organized, cooperative cliques.²⁶ It is believed that there are 307, 434, and 112 gang cliques in El Salvador, Guatemala, and Honduras, respectively.²⁷ Each clique typically consists of thirty to sixty members who are charged with maintaining control over a neighborhood.²⁸ The clique leader is known as *primera palabra* (first word).²⁹ Some cliques may have a second and third leader, respectively dubbed *segunda palabra* and *tercera palabra* (second word and third word).³⁰ Gang lexicon varies: for example, some reports refer to leaders as either *palabrerros* or *ranflerros*.³¹ Entry level members of the gang are known as *soldados* (soldiers).

However, there are reports that suggest the gangs may have a sophisticated power structure and a top boss. A presentation prepared by Oscar Bonilla, former director of El Salvador's National Counsel on Public Security (CNSP)—the *Consejo Nacional de Seguridad Pública*—indicates that there is a multi-tiered level of leadership.³² According to Bonilla, leadership begins with neighborhood clique leaders and continues hierarchically with municipal leaders, department leaders, leaders for gang members outside of prison, prison gang leaders, country leaders, and ultimately international leaders.³³ This information suggests that there is

25. *Id.*

26. These cliques hold meetings and discuss strategies to keep rival gangs out of their territory. LAURA PEDRAZA FARIÑA ET AL., NO PLACE TO HIDE: GANG, STATE AND CLANDESTINE VIOLENCE IN EL SALVADOR 57–58 (Harvard Univ. Press) (2010).

27. Bruneau & Goetze, Jr., *supra* note 18, at Table 1 (however, it is possible that the estimate of 112 gang cliques in Honduras is incorrect because this same source states in the paragraph above that 412 gang cliques existed in Honduras by 1999).

28. PEDRAZA FARIÑA ET AL., *supra* note 26, at 58.

29. *Id.*

30. DEMOSCOPIA S.A., MARAS Y PANDILLAS, COMUNIDAD Y POLICIA EN CENTROAMERICA 47 (2007).

31. MARLON CARRANZA, CHILDREN AND YOUTH IN ORGANIZED ARMED VIOLENCE, DETENTION OR DEATH: WHERE THE “PANDILLERO” KIDS OF EL SALVADOR ARE HEADING 14, (2001), <http://www.coav.org.br/publico/media/elsalvadoring.pdf> (referring to the leader as *palabrero*); Robert E. Brenneman, From Homie to *Hermano*: Conversion and Gang Exit in Central America 33 (December 2009) (Ph.D dissertation, University of Notre Dame) (on file with author) (referring to the leader as *ranflero*).

32. Aída Luz Santos de Escobar is the current president of the CNSP. Consejo Nacional de Seguridad Pública, <http://www.cnsp.gob.sv/index.htm> (last visited May 17, 2011).

33. Each leader reportedly has two trusted friends known in gang slang as *chuchos* (dogs). These individuals serve as bodyguards and conduct criminal missions. Oscar E.

a separate leader for El Salvador, Guatemala, Honduras, Mexico, Nicaragua, and the United States and Canada.³⁴ A former gang member behind bars in El Salvador vaguely corroborates this information, stating that MS-13 has a top boss.³⁵

III. GANG RECRUITMENT, INITIATION, AND DISASSOCIATION

How judges choose to define recruitment will play a central role in the asylum claims of current and former gang members. In the Salvadoran theatre, the word recruitment brings to mind the manner in which the military forcibly recruited children as young as twelve-years-old and prepared them to fight in the civil war (1980–1992).³⁶ Children considered fit for combat were literally taken out of schools, neighborhoods, and soccer fields.³⁷ With limited exceptions, there are no reports indicating that MS-13 and M-18 systematically hand select individuals and force them to become gang members. Nevertheless, a United Nations (U.N.) *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs* claims that the gangs “rely heavily on forced recruitment to expand and maintain their membership.”³⁸ The U.N. does not support this assertion, despite that the Guidance Note leaves the reader to believe that a significant amount of individuals are or were gang members against their will.³⁹ This is of utmost importance given that:

In UNHCR’s view, voluntary membership in organized gangs normally does not constitute membership of a particular social group within the meaning of the 1951 Convention. Because of the criminal nature of such groups, it would be

Bonilla, *Pandillas: Amenaza Transnacional* (Jan. 2008) (see slide 16 on structural organization), <http://scm.oas.org/pdfs/2008/CP19439T.ppt#1> (last visited Oct. 30, 2010).

34. *Id.*

35. National Geographic, *supra* note 16.

36. Iris Mann, ‘Innocent Voices’: *Reliving El Salvador’s Civil War*, NPR, Oct. 18, 2005, available at <http://www.npr.org/templates/story/story.php?storyId=4964460>.

37. CLAUDIA RICCA, COAL. TO STOP THE USE OF CHILD SOLDIERS, CHILDREN IN THE FARABUNDO MARTÍ NATIONAL LIBERATION FRONT (FMLN) AND THE ARMED FORCES OF EL SALVADOR (FAES) 5 (July 2006).

38. U.N. High Commissioner for Refugees (UNHCR), *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs*, (Mar. 31, 2010), available at <http://www.unhcr.org/refworld/docid/4bb21fa02.html>.

39. References to forced recruitment are unsupported by research. At no time does the U.N. source these claims by providing direct reference to primary or secondary sources or expert testimony. *See id.*

inconsistent with human rights and other underlying humanitarian principles of the 1951 Convention to consider such affiliation as a protected characteristic.⁴⁰

Per the U.N. Guidance Note, current and former gang members who joined the gang voluntarily should not receive protection benefits in the United States irrespective of whether “former membership in a gang” constitutes a particular social group. Thus, it is extremely important to understand how gangs acquire new members. A close look at country conditions reports does not support the U.N.’s assertion of forced recruitment.⁴¹ Rather, an overwhelming amount of Central American youth is “at-risk” of joining gangs.

Generally accepted risk factors associated with gang membership include, but are not limited to: conditions of poverty, family disintegration or separation, neglect, violent domestic environments, unemployment, scarcity of educational and developmental opportunities, and family membership in gangs.⁴² The presence of one or more of these factors may compel an adolescent or child to turn to gangs in hope of finding a familial environment, social status, and economic opportunities. Thus, it is believed that incentives for gang membership will remain strong in the absence of significant improvements in socioeconomic conditions.⁴³

A. Risk Factors Associated With Gang Membership in El Salvador, Guatemala, and Honduras

According to the U.S. Agency for International Development (USAID), gangs in El Salvador offer social acceptance and alternative means to acquire otherwise unobtainable goods.⁴⁴ Social acceptance is an effective lure for adolescents with low levels of education and who come from impoverished and broken families.⁴⁵ The breakdown of the Salvadoran family structure is a result of the civil war, the weak economy, and migration. The war killed 75,000 people and at least 1,000,000 became refugees or

40. *Id.* at 15.

41. Gang expert Thomas Boerman writes, “It is commonly agreed that the vast majority of gang-joining is voluntary, and according to experts I consulted while in El Salvador recently the percentage of the youth population subjected to forced recruitment is not likely to be more than five percent.” Thomas Boerman, *Youth Gangs in El Salvador: Unpacking the State Department 2007 Issue Paper*, IMMIGRATION DAILY, <http://www.ilw.com/articles/2010,1117-boerman.shtml> (last visited Jan. 23, 2010).

42. DEMOSCOPIA S.A., *supra* note 30, at 61–67.

43. *Latin America Politics: Anti-gang warfare*, ECONOMIST INTELLIGENCE UNIT, Dec. 27, 2007.

44. U.S. AGENCY FOR INT’L DEV. [USAID], CENTRAL AMERICA AND MEXICO GANG ASSESSMENT, ANNEX 1: EL SALVADOR PROFILE (2006) [hereinafter EL SALVADOR PROFILE].

45. See OSCAR E. BONILLA, EL SALVADOR Y LAS PANDILLAS (Consejo Nacional de Seguridad Pública) (El Sal.).

internally displaced persons, with the majority seeking refuge in the United States.⁴⁶ Many of these people were separated from their families for extended periods of time because they were unable to obtain permanent immigration status in the United States.⁴⁷ The family structure continues to suffer from the war's less measurable effect on the mental health of countless victims of extreme violence, persecution, and human rights abuses.⁴⁸ Today's economy, which boasts a poverty rate as high as 40%, forces approximately 70,000 people to leave El Salvador annually to work abroad and send remittance money to their family members who remain behind.⁴⁹ The resulting family separation often leaves children, who drop out of school at an alarming rate, under the care of a relative, resulting in child abandonment, neglect, and the need for social acceptance.⁵⁰

Similarly, gangs have flourished in Guatemala because there is an abundance of youth with low levels of education that come from impoverished and broken families. According to USAID, only 1% of children enrolled in primary school finish secondary school.⁵¹ Reports

46. Andrea Kathryn Talentino, *El Salvador*, in *THE COST OF CONFLICT: PREVENTION AND CURE IN THE GLOBAL ARENA 199–200* (Michael E. Brown & Richard N. Rosecrance eds., 1999).

47. In *American Baptist Churches v. Thornburg*, Guatemalans and Salvadorans filed a class action law suit against the Immigration and Naturalization Services (INS, now U.S. Citizenship and Immigration Services), the Executive Office for Immigration Review and the Department of State, alleging discriminatory treatment of asylum claims in the adjudication of their asylum claims. 760 F. Supp. 796 (N.D. Cal. 1991). The parties eventually reached a settlement entitling members of the class to a de novo adjudication of their asylum claims. U.S. Citizenship & Immigration Services, *American Baptist Churches v. Thornburg (ABC) Settlement Agreement*, Oct. 28, 2008, <http://www.uscis.gov/portal/site/uscis> (follow path Laws > Settlement Agreements).

48. See Ignacio Martín Baró et al., *PSICOLOGÍA SOCIAL DE LA GUERRA: TRAUMA Y TERAPIA*, (Universidad Centroamericana, 1990).

49. Philippe Revelli, *Pandillas Violentas en El Salvador*, *LE MONDE DIPLOMATIQUE*, EDICIÓN CONO SUR, Mar. 2004 (Arg.). In 2008, Salvadorans working abroad remitted \$3.8 billion. At approximately 17%, remittances are the country's largest source of gross domestic product. See U.S. DEP'T OF STATE, BUREAU OF W. HEMISPHERE AFFAIRS, *BACKGROUND NOTE: EL SALVADOR* (2010).

50. BONILLA, *supra* note 45 (stating that most gang members in El Salvador do not finish secondary school, and 80% come from dysfunctional families). Furthermore, it is reported that 40% of children drop out of school before fifth grade and 70% of children age 16–17 do not have access to education. EL SALVADOR PROFILE, *supra* note 44; UNICEF, *AT A GLANCE: EL SALVADOR*, <http://www.unicef.org/infobycountry/elsalvador.html> (last visited May 17, 2011).

51. 90% of Guatemalan primary schools are government funded. In contrast, 80% of secondary schools are private and inaccessible to the poor. U.S. AGENCY FOR INT'L DEV. [USAID], *CENTRAL AMERICA AND MEXICO GANG ASSESSMENT, ANNEX 2: GUATEMALA PROFILE* (2006) [hereinafter *GUATEMALA PROFILE*].

indicate that approximately 90% of gang members come from disintegrated families.⁵² The Guatemalan civil war (1960–1996), which left over 200,000 dead or missing and displaced as many as 1,500,000 people, destroyed and separated families.⁵³ The family continues to suffer today as thousands are forced to flee each year principally due to conditions of poverty. Sources estimate that approximately 56% live in poverty and 15% live in conditions of extreme poverty.⁵⁴ Between 6,000 and 12,000 new Guatemalan migrants arrive in the United States each year.⁵⁵ The inability of migrants to obtain lawful immigration status prior to their departure from Guatemala or shortly after their arrival forces them to separate from their families. As a result, large numbers of youth turn to gangs to fill the void.⁵⁶

Lastly, Honduras demonstrates that a relatively recent armed conflict is not a precondition necessary to gang proliferation. Gangs have taken root in Honduras due to conditions of poverty, lack of opportunities, and family separation. Family separation began in the 1980s, a time when Honduras was considered a repressive society, human rights abuses were common, and the detention and disappearance of leftists was not uncommon.⁵⁷ Family separation continues to date because 71% of Hondurans live in conditions of poverty and the country suffers from urban overpopulation, rural underdevelopment, and natural disasters.⁵⁸ These conditions force families to separate and children are frequently left to the care of a relative.⁵⁹ The Honduran government offers few educational opportunities, skills training, recreation and sports activities, and artistic and cultural activities to its youth.⁶⁰ Due to these conditions, youths turn

52. DEMOSCOPIA, S.A., *supra* note 30, at 65.

53. GUATEMALAN COMM'N FOR HISTORICAL CLARIFICATION, GUATEMALA: MEMORY OF SILENCE (1999), <http://shr.aas.org/guatemala/ceh/report/english/toc.html> (last visited Oct. 31, 2010) (click “The Tragedy of the Armed Confrontation;” see paragraphs 2 and 66).

54. CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK: GUATEMALA (2010), *available at* <https://www.cia.gov/library/publications/the-world-factbook/geos/gt.html> (last visited Oct. 31, 2010). The World Bank defines extreme poverty as living on less than \$1.25 per day. *World Bank Updates Poverty Estimates for the Developing World*, Aug. 26, 2008.

55. In addition, approximately 60,000 and 2,500 Guatemalans are deported annually from Mexico and the United States, respectively. JAMES SMITH, GUATEMALA: ECONOMIC IMMIGRANTS REPLACE POLITICAL REFUGEES, MIGRATION INFO. SOURCE (Apr. 2006), <http://www.migrationinformation.org>.

56. GUATEMALA PROFILE, *supra* note 51.

57. U.S. AGENCY FOR INT'L DEV. [USAID], CENTRAL AMERICA AND MEXICO GANG ASSESSMENT, ANNEX 3: HONDURAS PROFILE (2006) [hereinafter HONDURAS PROFILE]; WASH. OFFICE ON LATIN AM., CENTRAL AMERICAN GANG-RELATED ASYLUM, A RESOURCE GUIDE (2008).

58. HONDURAS PROFILE, *supra* note 57; WASH. OFFICE ON LATIN AM., *supra* note 57.

59. HONDURAS PROFILE, *supra* note 57.

60. *Id.*

to gangs, who offer a welfare structure, protection, a social and substitute family network, and a source of livelihood.⁶¹

Available information does not indicate that gangs selectively recruit adolescents on account of their actual or imputed race, religion, political opinion, or sexual orientation. According to sociologist Maria Santacruz Giralt, gang violence is fundamentally aimed at destroying their perceived enemies, which she describes as similarly situated youth who only differ in what gang they belong to.⁶² The conflict is completely irrational, lacking a racial, religious, or ideological basis.⁶³ Furthermore, there are no reports that indicate that gangs particularly recruit members of indigenous communities. To the contrary, indigenous communities in Guatemala have at times captured, “prosecuted,” and sentenced gang members to forced labor in accordance with their customs.⁶⁴ Thus, the general consensus is that forced or deliberate recruitment is unnecessary.⁶⁵

61. U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, ISSUE PAPER: YOUTH GANG ORGANIZATIONS IN HONDURAS (2006) [hereinafter YOUTH GANG ORGANIZATIONS IN HONDURAS].

62. Revelli, *supra* note 49.

63. *Id.* There are no reports indicating that gangs target racial minorities for “recruitment.” Guatemala has a large indigenous population estimated at 40%. In contrast, only 7% and 1% of the population in Honduras and El Salvador, respectively, are categorized as indigenous. Honduras’ Afro minority accounts for 2% of the population. Furthermore, race in these countries is not a clearly identifiable concept. Although a country like El Salvador claims that only 1% of its people are indigenous, 90% of Salvadorans, including gang members and victims, are of mixed indigenous ancestry and categorized as Mestizo. White European descendants only account for nine and 1% of the population in El Salvador and Honduras, respectively. CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK: GUATEMALA, EL SALVADOR, & HONDURAS (2010), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/gt.html> (last visited Oct. 31, 2010).

64. See EFE, *Indígenas en Guatemala “condenan” a 20 pandilleros a trabajos forzados*, PANAMÁ AMÉRICA (Dec. 28, 2008), http://www.pa-digital.com.pa/periodico/edicion-anterior/nacion-interna.php?story_id=730072.

65. See EL SALVADOR PROFILE, *supra* note 44, at 50; See U.S. AGENCY FOR INT’L DEV., CENTRAL AMERICA AND MEXICO GANG ASSESSMENT, ANNEX 1: EL SALVADOR PROFILE 50 (2006) [hereinafter EL SALVADOR PROFILE]. See DEMOSCOPIA, S.A., *supra* note 30, at 17; See YOUTH GANG ORGANIZATIONS IN HONDURAS, *supra* note 61, at 4. See U.S. DEP’T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, ISSUE PAPER: YOUTH GANG ORGANIZATIONS IN HONDURAS 4 (2006) [hereinafter YOUTH GANG ORGANIZATIONS IN HONDURAS].

B. Why We Joined: Information Provided by Three Former Members of MS-13⁶⁶

In-depth interviews with three former gang members bring to life the factors that put Central American youth at risk of joining gangs. These three former members—anonously identified as B.A., J.D., and M.A.—joined different cells of MS-13 in El Salvador in 1995 and 1996.⁶⁷ Although they remained members of the gang as recently as 2005, it is possible that their experiences significantly differ from today's youth. That is to say, forced recruitment may occur today despite that it is unfounded and unsupported by publicly available reports.

B.A. stated that he voluntarily joined MS-13 when he was sixteen-years-old. He is illiterate and never received formal education. Around 1996, a deportee from the United States returned to El Salvador and frequented B.A.'s town. The deportee, who was Americanized and therefore admired by local youth, offered B.A. and other children money and clothes. B.A. explained that this was an effective lure because he tended cattle in exchange for 12 *Colones* per day (approximately \$1.50). Although B.A. was one of seven children, he was the only one in his family to join a gang. When asked what would have kept him out of gangs as a teen, B.A. stated, "A job."

J.D. joined MS-13 when he was just thirteen-years-old. Despite joining at such an early age, J.D. went on to complete high school and worked in pharmaceutical sales for two years. Upon further inquiry, J.D. revealed that his father was killed in the Salvadoran civil war when he was just seven-years-old. The following year, his mother migrated to the United States and left him under the custody and care of his grandparents along with eight other grandchildren. He explained that this led to feelings of abandonment and neglect. Several of his childhood friends with whom he played soccer had already joined the gang. He felt that this provided his friends with greater standing among females, something he described as "very important" when you are fourteen or fifteen-years-old.

Lastly, M.A. joined the gang at the ripe age of twenty-two. He stated that he only has a fourth grade education and served in the military for two years during the Salvadoran civil war. M.A. stated that he never enjoyed school, where he often fought with other children. He enjoyed military combat, but left the military after the civil war ended because he

66. The information contained in this section was gathered through field research conducted by the author. Field Research, Sept. 2010.

67. B.A. joined MS-13 in Cantón Guascate in Ahuachapán Department in 1996. J.D. joined the MS-13 clique "Sailors Locos Salvatrucha Westside" in Cantón El Niño in San Miguel Department in 1996. M.A. joined the MS-13 clique "San Luises Locos Salvatruchas" in San Luis Talpa, La Paz Department in 1995.

was assigned to plant trees, something he described as boring. He said he voluntarily joined the gang, stating, “The devil took hold of me.” When asked to explain, M.A. stated, “You know, sometimes you just go down the wrong path.”

C. Three Exceptions to Voluntary Association

A look at publicly available information of gangs allows for the identification of three possible exceptions to voluntary association. Although the vast majority of information concludes that most people join gangs voluntarily, it does not exclude the possibility of forced recruitment. This may be the case for the most vulnerable individuals, including those in gang controlled neighborhoods, prison facilities, and at-risk children immune from criminal prosecution.

1. Gang Controlled Neighborhoods

Publicly available reports indicate that gang recruitment has spread from the disillusioned poor to children from good homes who are too afraid to remain unaffiliated.⁶⁸ “There is a saying in some El Salvadoran neighborhoods . . . if you’re not in a gang, then you’re against gangs.”⁶⁹ Recruitment of “children from good homes” does not necessarily indicate that gang recruitment has spread to the small middle and upper classes. Rather, it means that good children in gang controlled neighborhoods may be susceptible to repeated harm and recruitment efforts by the gangs. Although observers do not specify the neighborhoods where this may occur, there have been attempts to gather this information.

Research compiled by the *Comisión Salvadoreña Antidrogas* (COSA)—the Salvadoran Antidrug Commission—provides information on gang controlled neighborhoods by municipality.⁷⁰ For example, in Aguilares

68. Andrew Glazer, *Los Angeles summit Wednesday seeks to stop spread of gangs into Central America*, ASSOCIATED PRESS (Feb. 7, 2007), <http://www.elsalvador.org/Embajadas/eeuu/Prensa2.nsf/aac7d56ca8fd884b852563be00610639/e8d0474a84a2b47e8525727b00551455?OpenDocument>.

69. *Id.*

70. COSA is an office within El Salvador’s Ministry of Justice and Public Security. Research was conducted over three months in 262 municipalities and throughout all fourteen departments. *See* COMISIÓN SALVADOREÑA ANTIDROGAS, DROGAS Y DELITOS CONEXOS: MARAS, INICIATIVAS LOCALES DE PREVENCIÓN, <http://www.seguridad.gob.sv/observatorio/Iniciativas%20Locales/WEB/Generales/objetivos.htm> (last visited May 17, 2011).

municipality in San Salvador Department, it is reported that M-18 is present in the neighborhoods San José, Las Pampas, Las Tres Campanas, and Los Palacios. In the same municipality, MS-13 is present in the neighborhoods Las Pampitas, Mangos, Santa Eugenia, Girón, Barrio El Calvario, Cantón El Piñalito, and Caserío El Chorizo.⁷¹ Assessments of other municipalities are not as precise, yet provide other useful information. For example, in San Luis Talpa, La Paz Department, the report states that there are gangs present and that anti-gang initiatives have been ineffective in reducing their presence.⁷² According to locals, there are sectors controlled by the gangs where the police do not patrol.⁷³

2. Detention Centers

A second exception to voluntary association may occur in detention centers or prisons. A negative side effect of anti-gang legislation has been greater prison overcrowding, which provides fertile ground for further recruitment and communication between members of different gang cliques.⁷⁴ For example, El Salvador has nineteen penitentiaries with a total inmate population of 24,051.⁷⁵ However, the prison capacity is only 8,000.⁷⁶ Of the total inmate population, 15,721 are convicted criminals, and the remaining 8,330 are in criminal proceedings.⁷⁷ USAID reports that pre-trial detention centers are often in worse conditions than the prisons and present recruitment opportunities for gangs and elements of organized crime.⁷⁸ For example, some current and former gang members explain that they joined a gang in prison in exchange for protection from other prisoners.⁷⁹

71. See COMISIÓN SALVADOREÑA ANTIDROGAS, DROGAS Y DELITOS CONEXOS: MARAS, INICIATIVAS LOCALES DE PREVENCIÓN, MUNICIPIO DE AGUILARES, DEPARTAMENTO DE SAN SALVADOR, <http://www.seguridad.gob.sv/observatorio/Iniciativas%20Locales/WEB/San%20Salvador/aguilares.htm> (last visited Jan. 19, 2011).

72. See COMISIÓN SALVADOREÑA ANTIDROGAS, DROGAS Y DELITOS CONEXOS: MARAS, INICIATIVAS LOCALES DE PREVENCIÓN, MUNICIPIO DE SAN LUIS TALPA, DEPARTAMENTO DE LA PAZ, <http://www.seguridad.gob.sv/observatorio/Iniciativas%20Locales/WEB/La%20Paz/snlustalpa.htm> (last visited Jan. 19, 2011).

73. According to a map provided by the research group, gangs are present near the intersection of the Comalapa and Cacapa rivers. Across the Comalapa River, there are reports of weapons and drug trafficking. *See id.*

74. ECONOMIC INTELLIGENCE UNIT, *supra* note 43.

75. See Magdalena Flores, *Aplican medidas más drásticas en centros penales*, CONTRA PUNTO (Sept. 14, 2010), http://www.contrapunto.com.sv/index.php?option=com_content&view=article&id=3976:noticias-de-el-salvador-contrapunto&catid=86:gobierno&Itemid=116.

76. *See id.*

77. *See id.*

78. See GUATEMALA PROFILE, *supra* note 51, at 76.

79. See YOUTH GANG ORGANIZATIONS IN HONDURAS, *supra* note 61, at 4.

3. *The Recruitment of Children Immune from Criminal Prosecution*

The third exception involves the recruitment of children.⁸⁰ According to several sources, gangs recruit children less than twelve-years-old because they are too young to face legal charges.⁸¹ Under El Salvador's *Ley del Menor Infractor* (Juvenile Offenders Law) and Honduras' *Código de la Niñez y Adolescencia* (Childhood and Adolescence Code), children less than twelve-years-old are presumed incapable of infringing penal law.⁸² Guatemala's *Ley de Protección Integral de Niñez y Adolescencia* (Comprehensive Childhood and Adolescence Protection Law) provides the same protection for children less than thirteen-years-old.⁸³

80. Because adolescents account for a significant number, if not the majority of members of street gangs, the word "children" exclusively refers to individuals up to age 12.

81. In El Salvador, it has been reported that gangs recruit children as young as eight years of age. *Niños en la mira de pandillas*, EL DIARIO DE HOY (El Sal.), July 19, 2008. The recruitment of children in El Salvador is corroborated by the National Public Security Council (Consejo Nacional de Seguridad Pública). Eric Lemus, *El Salvador: Hungry for members, gangs recruit children*, INTER PRESS SERVICE, Mar. 28, 2008, available at Factiva, Doc. No. IPRS000020080331e43v0000e. According to security analyst Mario Mérida, gangs in Guatemala recruit children as young as eleven years old in an effort to replicate their Salvadoran counterparts. Mariela Castañon, *Delincuencia pone los ojos en la niñez*, LA HORA (Guat.), Sep. 29, 2008, <http://www.lahora.com.gt/notas.php?key=37418&fch=2008-09-29>. There are few sources available indicating that Honduran children beneath the age of twelve are recruited by gangs. Nevertheless, the Honduran ambassador to the United States has provided congressional testimony affirming that gangs recruit kids between the ages of eight and fourteen. *Violence in Central America: Briefing and Hearing before the Subcomm. on the W. Hemisphere of the Comm. of Foreign Affairs*, 110th Cong. 12 (2007) (statement of Roberto Flores Bermudez, Ambassador of Honduras). The U.S. Department of State corroborates these findings, stating that, "gangs appear to favor increasingly the recruitment of children, some as young as eight or nine years old. . . . Children are sometimes brought into the gang structure through getting them hooked on drugs and thereby transforming them into addicts dependent on the gang." YOUTH GANG ORGANIZATIONS IN HONDURAS, *supra* note 61, at 3–4.

82. Decreto No. 863, 27 April 1994, *Ley del Menor Infractor* [Juvenile Offenders Law] art. 2, DIARIO OFICIAL, tomo. 323, no. 106, 8 June 1994 (El Sal.); Decreto No. 73-96, 30 May 1996, *Código de la Niñez y la Adolescencia* [Childhood and Adolescence Code] art.180, LA GACETA, DIARIO OFICIAL, num. 28,053, 5 Sept. 1996 (Hond.). El Salvador, Guatemala and Honduras are signatories of the U.N. Convention on the Rights of the Child. Article 40 of the Convention requires signatories to establish an age below which children shall be presumed incapable of infringing penal law. Convention on the Rights of the Child, G.A. Res. 44/25, U.N. Doc. A/RES/44/25 (Nov. 20, 1989).

83. Decreto No. 27-2003, 4 June 2003, *Ley de Protección Integral de Niñez y Adolescencia* [Comprehensive Childhood and Adolescence Protection Law] art. 138, DIARIO DE CENTRO AMÉRICA, tomo. CCLXXII, no. 13, 18 July 2003 (Guat.).

Reports indicate that street children are particularly vulnerable to gang recruitment. A focus group in El Salvador reports that gangs take children off the streets, clean them up, and improve their standard of living.⁸⁴ Leonel Dubón, director of *Casa Alianza* in Guatemala, states that the number of street children declined from 5,000 to 800 from 2007–2008 because they were recruited by members of organized crime.⁸⁵ Gangs also operate in and around schools. It is believed that there are approximately eight to ten child gang members at 536 out of the 1,021 schools in El Salvador.⁸⁶ Gangs also demand monetary payments from schools and threaten and harass the students.⁸⁷

In extreme cases, gangs may sexually exploit young girls and force children to rob or kill.⁸⁸ Typically, however, it is believed that gangs may coerce, intimidate, or force children to deliver messages; stand as lookouts; and distribute drugs, weapons, and liquor.⁸⁹ For example, Adonai, an eight-year-old from the Soyapango neighborhood in San Salvador, states that gang members shot one of his friends because he did not want to collaborate with the gang.⁹⁰ Adonai now delivers messages for the gang in exchange for 25 cents.⁹¹ Similarly, a thirteen-year-old girl states that gangs remove children from school buses, threaten to kill and rape their families, and force them to commit robberies and homicides.⁹² The use of children in El Salvador has become prevalent enough to prompt the National Republican Alliance (ARENA) to propose an amendment to Article 30 of the Penal Code.⁹³ This amendment would make the use of minors an aggravating circumstance to a crime.⁹⁴ Similarly, the PDC proposed a law that would make the recruitment of

84. DEMOSCOPIA, S.A., *supra* note 30, at 58.

85. *Denuncian reclutamiento de niños para delinquir en Guatemala*, EL ESPECTADOR (Colom.), Nov. 30, 2008, www.elespectador.com/noticias/elmundo/articulo/94848-denuncian-reclutamiento-de-ninos-delinquir-guatemala.

86. *Niños en la mira de pandillas*, *supra* note 81.

87. Castañon, *supra* note 81.

88. *Denuncian reclutamiento de niños para delinquir en Guatemala*, *supra* note 85.

89. Gangs refer to kids as *mascotitas* (“little pets”) or *haynitas* (“little girlfriends”). *Niños en la mira de pandillas*, *supra* note 81.

90. Lemus, *supra* note 81.

91. *Id.*

92. *Niños salvadoreños denuncian en la ONU a las pandillas*, AGENCE FRANCE PRESSE, Oct. 6, 2009.

93. Amílcar Mejía, *ARENA y PDC piden penalizar a quien utilice a menores en delitos*, LA PRENSA GRÁFICA (El Sal.), Feb. 16, 2010, <http://www.laprensagrafica.com/el-salvador/politica/93915-arena-y-pdc-piden-penalizar-a-quien-utilice-a-menores-en-delitos.html>. See generally Código Penal art. 30 (El Sal.).

94. Mejía, *supra* note 93.

children into criminal organizations punishable by ten to fifteen years in prison.⁹⁵

Based on the foregoing, special attention and consideration should be given to protection claims filed by children age twelve or younger.

D. Initiation Rites for Males, Females, and Children

Initiation is the process by which one officially becomes a member of a gang. Typically, prospective members must submit to an initiation rite and complete an initiation mission. The mission usually involves criminal activity and may be committed during a probationary period at the inception of membership.

The traditional initiation rite is known as the “jump-in.” The jump-in requires a new member to submit to a gang beating allegedly lasting thirteen and eighteen seconds in the case of MS-13 and M-18, respectively.⁹⁶ The jump-in typically applies to adolescent males; females may opt to be jumped-in to the gang.⁹⁷ Females may alternatively enter the gang by submitting to a heinous rite known as “the train.”⁹⁸ The train requires a female to successively engage in sex with as many as thirteen or all members of the gang. This notorious rite is physically devastating, sometimes leaving females bloody and unconscious.⁹⁹ It is believed that women who are initiated in this manner are assigned a lower status within the gang than women who are physically beaten or jumped-in to the gang.¹⁰⁰

In contrast to adolescents, observers note that children are not required to submit to the jump-in or the train.¹⁰¹ It is believed that these initiation rites may deter children from collaborating with the gangs. There is no precise age which automatically exempts a child from an initiation rite.

95. *Id.*

96. DEMOSCOPIA S.A., *supra* note 30, at 29; Lemus, *supra* note 81. The three gang members interviewed corroborated these claims, stating that they were each required to submit to a gang beating by three or four members.

97. *See* DEMOSCOPIA S.A., *supra* note 30, at 38.

98. PEDRAZA FARIÑA ET AL., *supra* note 26, at 84.

99. *Id.* at 77.

100. *Id.* at 84.

101. *See* Lemus, *supra* note 81.

E. Initiation Missions

Once initiated, gang members are subject to a probationary period generally lasting two months in the case of both MS-13 and M-18.¹⁰² During probation, new members may be required to complete a “mission” to confirm their loyalty to the gang and cement their status as members. Missions typically involve criminal activity.

Violence in El Salvador, Guatemala, and Honduras is often the result of gang initiation.¹⁰³ Frequently, the cost of admission is the murder of a nominated person, typically a member of a rival gang, but sometimes a person at random.¹⁰⁴ For example, an individual may enter the gang by killing three members of a rival gang.¹⁰⁵ Females are not exempt from missions. For example, a nineteen-year-old female states that when she joined the gang, she accompanied other members of her gang to kill a taxi driver who was supposedly a member of a rival gang.¹⁰⁶ Less information on initiation missions involving children is available. However, a thirteen-year-old girl in El Salvador states that gangs force children to commit robberies and homicides.¹⁰⁷ Aside from homicide, initiation missions may involve assault, robbery, or extortion.¹⁰⁸

Empirical data indicates that most gang members are required to complete an initiation mission. For example, 72%, 25%, and 52% of MS-13 members in El Salvador, Guatemala, and Honduras, respectively, stated that they completed a mission when they entered the gang.¹⁰⁹ Although the data does not provide further detail, 46% of MS-13 members in Guatemala specified that their mission involved an act of violence or murder.¹¹⁰ It is also notable to mention that 28% of M-18 members in Honduras and 50% of M-18 members in El Salvador and Guatemala stated that they did not complete a mission to join the gang.¹¹¹

102. DEMOSCOPIA, S.A., *supra* note 30, at 32. MS-13 members in Guatemala and Honduras, however, are reportedly subject to probationary periods lasting seven months and one month, respectively. *Id.*

103. Anne Barbeliuk, *Gang Fears Death Awaits Ruth if She Returns Home, Says Teacher Ruth Death Target Fear*, HOBART MERCURY (Austl.), Oct. 23, 2003.

104. *Id.*

105. PEDRAZA FARIÑA ET AL., *supra* note 26, at 76.

106. *Id.* See also DEMOSCOPIA, S.A., *supra* note 30, at 38 (stating women must commit an act of violence to gain admission to the gang).

107. *Niños salvadoreños denuncian en la ONU a las pandillas*, *supra* note 92.

108. DEMOSCOPIA, S.A., *supra* note 30, at 28.

109. *Id.* at 32. This study refers to missions as “pruebas de iniciación,” literally meaning initiation tests.

110. *Id.*

111. *Id.*

F. Disassociation

Available information implies that the term “former gang member” is misleading and inaccurate.¹¹² In gang jargon, the term “*calmado*” or “*calmada*” is used to refer to a member who is basically inactive, but has not left the gang.¹¹³ Gang leaders report that an active member may become *calmado* or *calmada* if: (1) he or she experiences a bona fide religious transformation; (2) a male marries and has children, or a female becomes pregnant; or (3) he or she wishes to dedicate his or herself to their employment to support their family.¹¹⁴ An active member’s request to become *calmado* or *calmada* must be genuine; those who use religious transformation, for example, as pretext to leave the gang may be susceptible to serious harm, including death.¹¹⁵

Gang leaders decide who will—and will not—become a *calmado* or *calmada*. According to a gang leader in Guatemala, it is not impossible to get out of a gang. A member who wishes to leave the gang must follow protocol and have his or her “paperwork” ready.¹¹⁶ The paperwork refers to the member’s track record within the gang which entails having killed someone and done things on behalf of the gang.¹¹⁷ Gang leaders evaluate the individual’s record to decide whether he or she deserves to be released from the gang.¹¹⁸ For example, a former gang member interviewed in 2008 states that she sought permission from the gang to

112. Lorena Cuervo Clavel, a social anthropologist that has worked with gangs for over ten years, explains that, in practice, a gang member never ceases to belong to the gang, but may, in rare circumstances become inactive. PEDRAZA FARIÑA ET AL., *supra* note 26, at 79.

113. Lemus, *supra* note 81. One popular example involves Alex Sanchez, a former member of MS-13 and asylee in the United States who helped set up Homies Unidos, a gang prevention and fund raising group with offices in Los Angeles and San Salvador. Sanchez was recently arrested on conspiracy murder charges and released on \$2,000,000 bail. According to some sources, Sanchez is not a former member, but rather a “calmado” who never really left the gang. Thomas Watkins, *Feds arrest head of anti-gang group in Los Angeles*, ASSOCIATED PRESS ARCHIVES, June 25, 2009; Christina Hoag, *L.A. anti-gang activist granted \$2M bail*, ASSOCIATED PRESS, Jan. 13, 2010.

114. DEMOSCOPIA, S.A., *supra* note 30, at 96. A State Department report identifies religious conversion, marriage, military enlistment and enrollment in a substance abuse program as the few options available for members who wish to leave the gang. U.S. DEP’T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, ISSUE PAPER: YOUTH ORGANIZATIONS IN EL SALVADOR 6–7 (2007).

115. DEMOSCOPIA, S.A., *supra* note 30, at 96.

116. *Id.*

117. *Id.*

118. *Id.*

become a *calmada* because she was pregnant and joined an evangelical church.¹¹⁹ Without their permission, she states, she would not have been able to get out of the gang.¹²⁰ Members who leave without permission are considered traitors, and according to gang norms, all cliques are notified and have the “green light” to kill them.¹²¹

Empirical data published in 2007 suggests that most gang members may become inactive—or *calmados*—without fear of retribution. According to a poll of former gang members, 89%, 79%, and 63% of M-18 members, and 55%, 32%, and 66% of MS-13 members in El Salvador, Guatemala, and Honduras, respectively, stated that nothing prevented or impeded their departure from the gang.¹²² The same study reveals that 83%, 76%, and 88% of female members and 69%, 68%, and 65% of male members in El Salvador, Guatemala, and Honduras, respectively, did not face obstacles or impediments related to disassociation.¹²³ The most commonly reported obstacles to disassociation are death and fear of reprisals.¹²⁴ However, it is unclear whether those who fear death believe they will be killed by members of their former gang who now perceive them as traitors, members of the rival gang who still perceive them as enemies, clandestine actors who perceive them as a social disease, or the state.¹²⁵

A competing report on gangs in El Salvador highlights the testimonies of current and former gang members who express a fear of death. The report states, “Whereas in the past it was difficult, but feasible for a gang member to disassociate safely from a gang, in recent years it has become virtually impossible to do so.”¹²⁶ One former gang member told the research group in August 2006 that, “Right now the only way to leave the gang is to die. They tell you that if you find God you can leave, but even then they still kill you.”¹²⁷ Another current gang member who has been trying to leave the gang for six years states that members of his clique go to his house to collect rent and threaten to kill him.¹²⁸ In essence, his clique treats him like those members of the general public who are forced to make extortion payments at the threat of death.

119. Due to safety concerns, the “calmada” offering this testimony referred to herself by the pseudonym “Fénix.” Lemus, *supra* note 81.

120. *Id.*

121. DEMOSCOPIA, S.A., *supra* note 30, at 96.

122. Literally translated, gang members report that there are no impediments to disassociation. Figuratively, this means that there are no dangers that prevent them from leaving the gang. *Id.* at 33.

123. *Id.* at 97.

124. *Id.*

125. *Id.*

126. PEDRAZA FARIÑA ET AL., *supra* note 26, at 79.

127. *Id.*

128. *Id.*

*G. How We Disassociated: Information Provided by Three
Former Members of MS-13*

B.A., J.D., and M.A. corroborated that members were able to leave MS-13 without harm as recently as 2005. B.A. stated that he left the gang in 2002 by moving from Cantón Guascate to Santa Ana, and then to Chalatenango. Although he remained in El Salvador until 2010, he did not experience any harm. J.D. stated that he left the gang when he migrated to the United States in 2003. He told his gang leaders that he was leaving for the United States and they offered to network him with gang members in Los Angeles, California. J.D. ultimately resettled in Texas and claims he no longer has ties to the gang. Lastly, M.A. stated that he left the gang after he became a Christian in 2005. Members of his former gang, however, severely beat him when they became aware that M.A. continued to use drugs. After the beating, M.A. returned to church and had no further problems with the gang.

IV. GANGS AND VIOLENCE IN EL SALVADOR, GUATEMALA,
AND HONDURAS

Gangs contribute to the generally high levels of social violence in El Salvador, Guatemala, and Honduras. While gangs are disproportionately blamed for crime, they have and continue to engage in serious criminal activity that terrorizes and paralyzes society. The most publicized crimes are homicides and extortion and there are now reports that gangs collaborate with Mexican drug cartels that have spilled over into Central America as a result of the United States and Mexico's war on drugs and organized crime known as the Mérida Initiative.¹²⁹

A. Massacres, Bus Burnings, and Extortions

Two separate violent massacres reportedly committed by gangs occurred in Honduras and El Salvador. On December 23, 2004, gang members in

129. Although the Initiative also includes Central America, the Dominican Republic and Haiti, Mexico is the primary recipient of U.S. funds. From 2008–2010, Congress has extended \$1.15 billion to Mexico to combat organized crime and drug trafficking. In the same time frame, Central America, the Dominican Republic and Haiti have only been allotted \$275 million. U.S. Dep't of State, Bureau of Int'l Narcotics and Law Enforcement, *The Merida Initiative*, June 23, 2009, <http://www.state.gov/p/inl/rls/fs/122397.htm> (last visited Nov. 21, 2010).

San Pedro Sula, Honduras boarded a bus transporting passengers on their way home from a day of Christmas shopping.¹³⁰ The gang opened fire on the passengers, killing twenty-eight, including six children.¹³¹ In June 2010, gang members in the San Salvador suburb of Mejicanos boarded a bus, locked the passengers inside, and burned them alive, killing fourteen.¹³² In a separate bus attack later that day, two more people were killed.¹³³

Bus burnings and the killing of bus drivers and fee collectors have become increasingly common in recent years. For example, in January 2010, three supposed gang members armed with guns approached a bus, doused it with gasoline, and lit it on fire.¹³⁴ The police responded and were able to extinguish the flame, but the perpetrators escaped.¹³⁵ Similarly, supposed gang members boarded and torched a bus on the outskirts of Guatemala City.¹³⁶ Twenty passengers and the driver were able to escape uninjured.¹³⁷ It is reported that gangs burn buses and kill drivers and fee collectors in order to compel bus owners to make extortion payments.¹³⁸ In Guatemala, gangs charge each bus 100 Quetzales (\$13.10) per day. These relatively small collections amount to large amounts of money over time. For example, it is estimated that El Salvador's public transportation sector lost \$18 million in 2009 as a result of extortions.¹³⁹ Extortions also affect the overall economy. Micro-entrepreneurs, including street vendors and market dealers, and small to medium-sized businesses are also heavily affected by extortions.¹⁴⁰ In 2009, approximately 900 small to medium businesses shut down due to criminal activity in San Miguel, El Salvador.¹⁴¹ Individuals who set up a business are subject to extortion demands shortly thereafter because criminal groups perceive them

130. Chris Kraul, *Honduras sees massacre as warning; President Maduro says the bus attack may have been a message from gangs to back off his anti-crime crackdown*, L.A. TIMES, Dec. 27, 2004.

131. *The World; Honduras arrests two more suspects; About 2,000 soldiers comb the slums near San Pedro Sula for the gunmen who ambushed a bus. Families bury some of the 28 victims*, L.A. Times, Dec. 26, 2004.

132. *See infra* at 1.

133. *Id.*

134. Carlos A. Torres, *Buseros evitan que maras quemem bus*, EL DIARIO DE HOY (El Sal.), Jan. 8, 2010.

135. *Id.*

136. *Pandilleros queman bus para exigir extorsión en Guatemala*, RADIO LA PRIMERÍSIMA (Guat.), Mar. 21, 2009.

137. *Id.*

138. *Id.*

139. This estimate was provided by Catalino Miranda, president of the National Federation of Transport Workers. Diego Méndez, *Gang members burn bus, kill 14*, ASSOCIATED PRESS, June 22, 2010.

140. Amadeo Cabrero, *Comercio el más afectado por extorsión en 2010*, LA PRENSA GRÁFICA (El Sal.), Mar. 18, 2010.

141. *Id.*

to have money and lack protection. Within the context of these well organized extortion rings, failure to pay is a death sentence.¹⁴²

According to the El Salvador's Attorney General's Office—the *Fiscalía General de la República*—78% of extortions originate with a phone call made from a prison facility.¹⁴³ The authorities have been unable to control the flow of cellular telephones to prison inmates. In 2010 alone, 2,652 cell phones were confiscated from inmates in El Salvador's prisons.¹⁴⁴ Perhaps more absurd is the fact that inmates are able to recharge their cell phone batteries from electrical outlets available in their holding rooms.¹⁴⁵ Consequently, there have been 3,560 known cases of extortion from January to November 2010, with the departments of San Salvador, San Miguel, La Libertad, and Sonsonate reporting the most cases.¹⁴⁶

B. Homicides

El Salvador, Guatemala, and Honduras have also been plagued with high levels of deadly violence since the mid-1990s. For example, between 1994 and 1998, there were 33,658 homicides in El Salvador.¹⁴⁷ From 1995–1999, Guatemala registered 16,842 homicides.¹⁴⁸ In the same time frame, Honduras suffered approximately 12,000 homicides.¹⁴⁹ Gangs

142. In the first three months of 2009, fifty bus drivers and fee collectors had been killed in Guatemala. In El Salvador, 137 bus drivers and fee collectors were killed in 2009. *Pandilleros queman bus para exigir extorsión en Guatemala, supra* note 136; Torres, *supra* note 134.

143. Fernando Romero & Amadeo Cabrera, *Extorsiones no paran de salir de centros penales*, LA PRENSA GRÁFICA (El Sal.), Nov. 18, 2010.

144. Inmates at the maximum security prison in Izalco do not have access to electrical outlets. There are no reported extortions originating from the Izalco facility. The Attorney General's Office has suggested that this measure should be applied to other facilities. *Id.*

145. In some instances, inmates use lamps to recharge their phones. *Id.*

146. As of November 15, 2010, there have been 673 reported extortions in San Salvador, 341 in San Miguel, 269 in La Libertad, 220 in Sonsonate, 161 in La Paz, 145 in Santa Ana, 139 in Ahuachapán, 115 in Usulután, 89 in La Unión, 58 in San Vicente, 54 in Morazán, 51 in each Cabañas and Cuscatlán, and 26 in Chalatenango. *Id.*

147. This is an average of 6,714 homicides per year. JOSÉ MIGUEL CRUZ ET AL., *THE SOCIAL AND ECONOMIC FACTORS ASSOCIATED WITH VIOLENT CRIME IN EL SALVADOR* 18 (IUDOP-Universidad Centroamericana 1999).

148. ARTURO MATUTE RODRÍGUEZ & IVÁN GARCÍA SANTIAGO, U.N. DEVELOPMENT PROGRAM [UNDP], *INFORME ESTADÍSTICO DE LA VIOLENCIA EN GUATEMALA* 19 (2007).

149. See Agustín Lagos, *De 2000 a 2008 se reportan 28,000 homicidios*, EL HERALDO (Hon.) (Mar. 16, 2009), <http://www.elheraldo.hn/Sucesos/Ediciones/2009/03/17/Noticias/De-2000-a-2008-se-reportan-28-000-homicidios> (reporting an average of 6.55 homicides per day from 1995–1999, resulting in 11,954 total homicides).

took root in these societies amidst these high levels of violence. Consequently, homicidal violence in the region has remained at suffocating levels.¹⁵⁰ In 2009, there were 4,365, 6,500, and 5,265 homicides in El Salvador, Guatemala, and Honduras, respectively.¹⁵¹ These three countries remain among the most violent in the world.¹⁵²

A random sampling of the November 18, 2010 edition of El Salvador's *La Prensa Gráfica* helps contextualize the violent situation. In the edition are six articles reporting on violent homicides. For example, a middle-age couple who owned a dining hall were found dead in Izalco, Sonsonate;¹⁵³ a head was found in San Nicolás Lempa de Tecoluca, San Vicente;¹⁵⁴ three violent deaths were reported in Usulután;¹⁵⁵ three female breasts were found in containers in the outskirts of San Salvador;¹⁵⁶ a twenty-three-year-old female was shot dead as she watched her mother's sales counter;¹⁵⁷ a kindergarten security guard was killed;¹⁵⁸ and lastly,

150. The total amount of homicides occurring in Guatemala increased each year from 1999–2006. In 1999, there were 2,655 homicides. By 2006, there were 5,885, an increase of approximately 122% U.N. Development Programme [UNDP], *Informe estadístico de la violencia en Guatemala 9* (2007).

151. *Crecen los asesinatos en El Salvador*, LA PRENSA (Nic.) (Jan. 3, 2010), <http://www.laprensa.com.ni/2010/01/03/internacionales/12012>; Int'l Crisis Group, Guatemala: Squeezed Between Crime and Impunity 3, June 22, 2010, Latin America Report No. 33, available at <http://www.unhcr.org/refworld/docid/4c2847a72.html> (last visited Nov. 21, 2010); *Fuerte aumento de homicidios en Honduras*, LA PRENSA (Hon.) (Apr. 9, 2010), <http://www.laprensa.hn/Sucesos/Ediciones/2010/04/09/Noticias/Fuerte-aumento-de-homicidios-en-Honduras>.

152. Based on 2003–2004 figures, San Salvador was 9, 18 and 21 times more violent than Chicago, Los Angeles and New York City, respectively. For example, there were 599 homicides in Chicago in 2003. However, Chicago would have to register 5,384 homicides to reach the homicide rate level in San Salvador. Juan J. Fogelbach, *Mara Salvatrucha (MS-13) and Ley Anti Mara: El Salvador's Struggle to Reclaim Social Order*, 7 SAN DIEGO INT'L L.J. 223, 235 (2005).

153. Marcos Salguero, *Ultiman a pareja de comerciantes en Izalco*, LA PRENSA GRÁFICA (El Sal.) (Nov. 18, 2010), <http://www.laprensagrafica.com/el-salvador/departamentos/151944-ultiman-a-pareja-de-comerciantes-en-izalco.html>.

154. Juan Carlos Barahona & Cecilia Ortiz, *Reportan homicidio en colonia de Santa Ana*, LA PRENSA GRÁFICA (El Sal.) (Nov. 18, 2010) (this article also reports on the violent killing of an alcoholic in Santa Ana).

155. Carlos Montes, *Reportan tres muertes en 24 horas en Usulután*, LA PRENSA GRÁFICA (El Sal.) (Nov. 18, 2010), <http://www.laprensagrafica.com/el-salvador/departamentos/151936-reportan-tres-muertes-en-24-horas-en-usulután.html>.

156. Ricardo Flores, *Hallan restos humanos en 3 recipientes*, LA PRENSA GRÁFICA (El Sal.) (Nov. 18, 2010), <http://www.laprensagrafica.com/el-salvador/judicial/152013-hallan-restos-humanos-en-3-recipientes.html>.

157. Jessel Santos, *Matan con un arma de fuego a vendedora*, LA PRENSA GRÁFICA (El Sal.) (Nov. 18, 2010), <http://www.laprensagrafica.com/el-salvador/social/152026-matan-con-un-arma-de-fuego-a-vendedora.html>.

158. *Id.*

twenty-seven inmates were killed in a fire that took place at the Ilobasco prison facility.¹⁵⁹

*C. Mexican Drug Cartels in El Salvador, Guatemala,
and Honduras*

The Mérida Initiative, a plan to combat drug trafficking and increase cooperation primarily between Mexico and the United States, has caused Mexican drug cartels to spill over into Central America.¹⁶⁰ According to El Salvador's defense minister, "The more pressure there is in Mexico, the more the drug cartels will come to Central America looking for a safe haven."¹⁶¹ This process is worsened by the disproportionate allocation of the Mérida Initiative funds between Mexico (\$1.15 billion) and Central American and Caribbean countries (\$275 million).¹⁶²

Various Mexican drug gangs are now present in Central America. *Los Zetas*, formerly the armed wing of the Gulf Cartel and staffed by recruits from Mexican special forces, are now present in Honduras, Guatemala, Nicaragua, and El Salvador.¹⁶³ It is also believed that *Los Zetas* has set up training camps and recruit former military forces in rural Guatemala.¹⁶⁴ The Gulf Cartel has extended its operations from Mexico's Caribbean coast to Belize and Nicaragua in cooperation with a Guatemalan gang known as *Los Lorenzana*.¹⁶⁵ The Sinaloa Cartel, known as the biggest gang in Mexico, is now present in Costa Rica, Honduras, Nicaragua, and Panamá.¹⁶⁶

159. Loida Martínez & Ricardo Flores, *Aumenta a 27 el número de fallecidos por incendio en penal de Ilobasco*, LA PRENSA GRÁFICA (El Sal.) (Nov. 18, 2010), <http://www.laprensagrafica.com/el-salvador/judicial/152011-aumenta-a-27-el-numero-de-fallecidos-por-incendio-en-penal-de-ilobasco.html>.

160. ANDREW SELEE, WOODROW WILSON CTR. FOR INT'L SCHOLARS, OVERVIEW OF THE MÉRIDA INITIATIVE 1 (May 2008).

161. Nick Miroff & William Booth, *Mexican drug cartels bring violence with them in move to Central America*, WASHINGTON POST, July 27, 2010.

162. Moreover, a Government Accountability Office report revealed that only 9% of funds allocated to Central America have been spent. *Id.*

163. *Maras Raise the Stakes*, LATIN AM. WKLY. REP., Sept. 16, 2010 at 14. The founders of Los Zetas were members of the Mexican military reportedly trained at the School of the Americas to combat counterinsurgencies and drug traffickers. Arturo Guzmán Decena deserted the Mexican armed forces in 1997. In 1999, Guzmán Decena formed an armed group that became the armed wing of the Gulf Cartel and its then leader, Osiel Cárdenas Guillén. *El origen de "los zetas,"* EL PERIÓDICO (Guat.), Mar. 13, 2009.

164. Miroff & Booth, *supra* note 161.

165. *Maras Raise the Stakes*, *supra* note 163.

166. *Id.*

Lastly, the *Familia Michoacana* has established links in Costa Rica and Honduras.¹⁶⁷

The exact relationship between the Mexican drug cartels and MS-13 and M-18 is not yet fully known. According to police in El Salvador, traffickers are cultivating ties and building alliances with the gangs that could eventually help them mature into international syndicates.¹⁶⁸ Salvadoran President Mauricio Funes has stated that *Los Zetas* have started to make contacts particularly with MS-13.¹⁶⁹ The gangs have allegedly become involved in the drug business and now dispute over territory with the drug traffickers.¹⁷⁰

D. Gang Violence and Inadmissibility

According to the provisions contained in the Immigration and Nationality Act, aliens who have participated in terrorist activity are inadmissible to the United States.¹⁷¹ If an alien is inadmissible, he or she is statutorily ineligible from a receipt of asylum or withholding of removal. Thus, current and former gang members, especially those having voluntarily joined, may be barred from a receipt of asylum. Whether in fact they are will remain at the discretion of the Department of Homeland Security, the Department of Justice (Executive Office for Immigration Review), U.S. Courts of Appeals, and perhaps one day, the U.S. Supreme Court.¹⁷²

The legal definition of terrorist activity includes, but is not limited to, “the hijacking or sabotage of any conveyance (including an aircraft, vessel or vehicle)” or “the seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person to do or abstain from doing any act. . . .”¹⁷³ Country conditions reports indicate that gangs engage in terrorist activity as defined. For example, gangs hijack a conveyance, to wit a vehicle, by boarding and burning a bus. Furthermore, gangs threaten to kill or injure bus drivers and fee collectors in order to compel bus owners to make extortion

167. *Id.*

168. Miroff & Booth, *supra* note 161.

169. *Maras Raise the Stakes*, *supra* note 163.

170. *Id.*

171. Immigration and Nationality Act (INA) § 212 (a)(3)(B)(i), 8 U.S.C.A. § 1182 (West 2010).

172. In *Benitez Ramos v. Holder*, Judge Posner failed to discuss the security related grounds of inadmissibility. Rather, Judge Posner stated that a gang member may be barred under the criminal and related grounds, stating, “for remember the bar for aliens who commit a serious nonpolitical crime.” *Benitez Ramos v. Holder*, 589 F.3d 426 (2009). Thus, the application of the security related grounds of inadmissibility in the context of protection claims filed by current and former gang members will remain at the complete discretion of the courts.

173. Immigration and Nationality Act §§ 212(a)(3)(B)(ii)(I); 212(a)(3)(B)(iii)(II).

payments. Although not all gang members participate in bus burnings or killings, the U.N. High Commissioner for Refugees has issued guidance stating that, "Individual responsibility for excludable acts may be presumed if membership in a particularly violent group is voluntary."¹⁷⁴ The U.N. guidance suggests that current or former gang members that voluntarily joined a gang are ineligible for withholding of removal or asylum protection.

Furthermore, a gang may be considered a terrorist organization. The law defines such an organization as, "a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in" certain activities specified in the law.¹⁷⁵ These activities include, but are not limited to, committing or planning to commit terrorist activity.¹⁷⁶ Again, gangs engage in terrorist activity when they highjack and burn buses and kill or threaten to kill bus drivers and fee collectors in order to compel bus owners to make extortion payments. However, the inadmissibility provisions may be too far reaching if the gangs are indeed qualified as terrorist organizations. Such a qualification would also render inadmissible the spouse and children of a gang member.¹⁷⁷

V. THE SOCIAL PERCEPTION OF GANGS, STATE RESPONSE, AND RESURGENCE OF CLANDESTINE DEATH SQUADS

Violent crime and media coverage play a significant role in shaping the public's perception of gangs. The public's fear is essential for enacting heavy-handed enforcement based responses. However, the perceived ineptitude or corruption of the state, namely dictated by its inability to control violent crime, provides the public with the impetus to take matters into its own hands. In this manner, citizen confidence and faith in government institutions are diminished.

174. Although UNHCR's discussion pertains to the criminal related grounds to inadmissibility, the same argument can be made for the security related grounds of inadmissibility. *U.N.H.C.R.: Guidance Note on Refugee Claims Relating to Victims of Organized Gangs*, *supra* note 38, at 20.

175. Immigration and Nationality Act § 212(B)(vi)(III).

176. *Id.* § 212(a)(3)(B)(iv).

177. *Id.* § 212(a)(3)(B)(i)(IX).

A. *The Social Perception of Gangs*

The media and government shape the public's perception of and attitude towards gangs. In El Salvador, Guatemala, and Honduras, the media and government sensationalize and exaggerate the scope and criminality of gangs.¹⁷⁸ First, numerical estimates of gang members in each country are indeterminate and vary widely. Second, the government's massive campaign against gangs and the media's tendency to over-exaggerate the problem create a misinformed perception that youths in gangs are to blame for the majority of crimes in the country.¹⁷⁹ The public, in turn, lives with a heightened sense of fear and marginalize those perceived as either current or former gang members.

The high estimates of gang members in El Salvador, Guatemala, and Honduras are respectively four, ten, and fourteen times greater than the low estimates. For example, two government sources in El Salvador produce drastically different estimates. According to the National Civilian Police there are 10,500 gang members in the country, yet the National Counsel on Public Security estimates that there are 39,000 members.¹⁸⁰ Similarly, researchers in Honduras state that there are approximately 4,600 active gang members, but police estimates range from 35,000 to 60,000.¹⁸¹ Perhaps most incongruous are two estimates issued by Guatemala's National Civilian Police. In 2007, the police said that there are 6,000 gang members in the country;¹⁸² one year later the police estimate rose to 60,000.¹⁸³ Although differing definitions of what constitutes a gang member may account for the variation, these wide-ranging estimates are printed in the media without explanation.¹⁸⁴

The governments and media disproportionately attribute most violent criminal activity to gangs. Jorge Bolaños, coordinator of the Homicide Investigation Division in El Salvador, claims that gangs are responsible for as many as 80% of all homicides.¹⁸⁵ His claim is based on abstract

178. EL SALVADOR PROFILE, *supra* note 44; GUATEMALA PROFILE, *supra* note 51.

179. HONDURAS PROFILE, *supra* note 57.

180. EL SALVADOR PROFILE, *supra* note 44. 10,500 is also the estimate reported by the U.S. Southern Command and the U.N. Office on Drugs and Crime. CLARE RIBANDO SEELKE, GANGS IN CENTRAL AMERICA (Cong. Research Service, 2009).

181. The low estimate is produced by the Washington Office on Latin America and the high estimate is reported in the news media. WASH. OFFICE ON LATIN AM., *supra* note 57.

182. Glazer, *supra* note 68.

183. *Denuncian reclutamiento de niños para delinquir en Guatemala*, *supra* note 85.

184. WASH. OFFICE ON LATIN AM., *supra* note 57.

185. Edmee Velásquez, *Esclarecen crímenes a partir del perfil criminológico de mareros*, EL DIARIO DE HOY (El Sal.), July 12, 2008. In Guatemala, the authorities attribute 60% of homicides to gangs. ELIN CECILIE RANUM, PANDILLAS JUVENILES

observation of the criminal *modus operandi*, including but not limited to the location of the crime scene, type of weapon used to kill, the type of victim, and the date and time at which the killing occurred.¹⁸⁶ However, the participation of gang members was only proved in less than 12% of all murder cases that made it to court in 2006.¹⁸⁷ Another study published by a Brazilian research group in 2005 reports that gangs only commit approximately 8% of homicides in El Salvador.¹⁸⁸ Current and former gang members corroborate these findings, stating that the media blames them for crimes they have not committed.¹⁸⁹ The media, according to the gang members, also omits the role of other actors in criminal activity and the identity of the individual or institutional benefactor from criminal activity.¹⁹⁰

The inconsistent and exaggerated information printed in the media has a twofold effect on the public. First, public perception of insecurity is disproportionately high given actual crime victimization rates. For example, a poll conducted in El Salvador by the University Institute on Public Opinion (IUDOP) reveals that 55% of respondents feel unsafe in society and an additional 28% feel only somewhat safe.¹⁹¹ Similarly, 45% of Guatemalans and 33% of Hondurans feel unsafe in society.¹⁹² People feel most unsafe on public buses and at markets,¹⁹³ but a surprising amount

TRANSNACIONALES EN CENTROAMÉRICA, MÉXICO Y ESTADOS UNIDOS, DIAGNÓSTICO NACIONAL: GUATEMALA 19 (Instituto Universitario de Opinión Pública, Universidad Centroamericana).

186. Velásquez, *supra* note 185. Statistics based on abstract observations pose a serious problem. For example, M.A. was a former member of MS-13. He stated that MS-13 would sometimes kill members who left the gang. In order to make it look like a rival gang killing, M.A. stated that his gang would stab the victim eighteen times. Thus, it is possible that social cleansing squads could kill gang members in a manner that would make it appear like a rival gang killing.

187. Lemus, *supra* note 81.

188. Children in Organized Armed Violence [COAV], *El Salvador: Nueve en cada diez personas que mueren por año en el país son jóvenes entre 15 y 17 años*, (Jan. 2005). Although El Salvador serves as the primary example, USAID reports that only 7%–8% of crimes in Honduras are committed by members of youth gangs. HONDURAS PROFILE, *supra* note 57.

189. DEMOSCOPIA, S.A., *supra* note 30, at 68–69.

190. *Id.*

191. INST. UNIV. DE OPINIÓN PÚB., VICTIMIZACIÓN Y PERCEPCIÓN DE INSEGURIDAD EN EL SALVADOR 24 (2009) [hereinafter VICTIMIZACIÓN Y PERCEPCIÓN].

192. RANUM, *supra* note 185, at 24; HONDURAS PROFILE, *supra* note 57.

193. 90% and 80.5% of Salvadorans feel unsafe on buses and at markets, respectively. VICTIMIZACIÓN Y PERCEPCIÓN, *supra* note 191, at 37, 40.

of people feel unsafe in their vehicles, at work, and at home.¹⁹⁴ Despite this perception of insecurity, only 16.4% and 13% of Salvadoran and Guatemalan respondents, respectively, have been victims of crime.¹⁹⁵ It is this perception of insecurity that is taking the greatest toll on the daily lives of Salvadorans, Guatemalans, and Hondurans.¹⁹⁶

Second, the public marginalizes current and inactive gang members and supports strong enforcement based anti-gang initiatives that fail to address the root causes of gang membership. Former gang members report that employers are often unwilling to hire them.¹⁹⁷ One observer from Guatemala notes that, “Many young people are able to give up gangs by joining a church, but no one will give them jobs.”¹⁹⁸ Deportees or former gang members with visible tattoos or with limited Spanish language skills are especially likely to be discriminated.¹⁹⁹ For example, according to a priest at Colonia Monterrey Church in Honduras, tattooed youth are unable to find work.²⁰⁰ This, he specifies, is absurd especially when they tattooed themselves when they were just fourteen and are now twenty-five-years-old. In this manner, marginalized youth may return to gangs.²⁰¹ This cycle, in turn, ensures public approval for tough anti-gang initiatives.

B. The State Response

The state response to gangs in the region has not been uniform. Whereas El Salvador and Honduras enacted or redefined pre-existing laws to criminalize gang membership, Guatemala failed to follow suit. Regardless, data on homicides has proven that gang specific legislation is ineffective. In addition, efforts to rehabilitate and reintegrate gang members into society have surged in the region.

194. 56% feel unsafe in their vehicles, 61% feel unsafe at work and 33% feel unsafe at home. *Id.* at 36, 38, 44.

195. *Id.* at 98; GUATEMALA PROFILE, *supra* note 51, at 70.

196. GUATEMALA PROFILE, *supra* note 51, at 70.

197. SEELKE, *supra* note 180, at 6.

198. *Ten Young Former Gangsters Start Businesses on Guatemalan Reality TV Show*, FRONTLINES (USAID), Mar. 2006, at 16.

199. SEELKE, *supra* note 180, at 6. Despite the effect of discrimination, the narrow job markets in El Salvador, Guatemala and Honduras present the greatest obstacle to economic participation and integration. Majella van der Werf, Int’l Inst. of Soc. Studies, *Questioning the stage: Gang members participation in Guatemala*.

200. DEMOSCOPIA, S.A., *supra* note 30, at 31.

201. *Id.*

1. El Salvador: Enforcement-Based Efforts

In October 2003, right wing President Francisco Flores signed into law temporary legislation (*Plan Mano Dura*) specifically designed to abate the criminal activities of MS-13 and M-18.²⁰² The law was struck down as unconstitutional by the Salvadoran Supreme Court as it expired in April 2004 because it criminalized and loosely defined gang membership.²⁰³ The law also violated international obligations pursuant to the U.N. Convention on the Rights of the Child because it failed to establish an age beneath which a child is considered incapable of infringing penal law.²⁰⁴ A modified *Plan Mano Dura* law, however, was enacted in April 2004.²⁰⁵ This law applied for a period of only ninety days.²⁰⁶ No suit was filed against this law and it expired pursuant to its own terms.

The anti-gang laws enabled the authorities to round up gang members off the streets. Enforcement of the laws, however, was highly ineffective. Reports claim that eight out of ten gang members were returned to the streets by judges that either refused to apply the law or were afraid of reprisals from the gangs.²⁰⁷ Although publicly available reports do not adequately explore judges' fears, an article printed in a Salvadoran newspaper states that a gang member testified in court that MS-13 planned to kill Judge Delfino Parilla because he sentenced many gang members to jail.²⁰⁸ Furthermore, a Civilian National Police report issued to the Supreme Court of El Salvador warned that MS-13 planned to kill

202. Ley Anti Maras [LAM-1], Decreto No. 58, *Diario Oficial de la República* [DO], Vol. 361, No. 188, pp. 2–10, Oct. 10, 2003, available at <http://190.86.209.40/diarios/do-2003/10-octubre/10-10-2003.pdf> (last accessed Feb. 6, 2011).

203. Fogelbach, *supra* note 152, at 240–42.

204. *Id.* at 243.

205. *Ley Para el Combate de las Actividades Delincuenciales de Grupos o Asociaciones Ilícitas Especiales*, Decreto No. 305, *Diario Oficial de la República*, Vol. 363, No. 65, pp.3–7 (Apr. 2, 2004), available at <http://190.86.209.40/diarios/do-2004/04-abril/02-04-2004.pdf> (last accessed Jan. 23, 2011).

206. *Id.*

207. Wilfredo Salamanca, *El ejecutivo presentará propuesta de reforma a la ley anti maras*, EL DIARIO DE HOY (El Sal.) (Nov. 6, 2003), available at <http://www.elsalvador.com/noticias/2003/11/06/nacional/nacio16.html> (last accessed Jan. 23, 2011).

208. The gang also planned to kill Astor Escalante, former director of detention centers, and the director of a youth detention facility in Tonacatepeque. Karen Molina & Edmee Velásquez, *El Trece planeó atentar contra juez*, EL DIARIO DE HOY (El Sal.) (Dec. 10, 2009) available at http://www.elsalvador.com/mwedh/nota/nota_completa.asp?idCat=6358&idArt=4331189 (last accessed Jan. 23, 2011).

four judges and M-18 closely monitors judges, prosecutors, and police.²⁰⁹ These reports may encourage judges to release gang members back into a society where twelve to fourteen homicides occur each day.²¹⁰ Consequently, nearly 73% of Salvadorans polled believe that the anti-gang laws did little or nothing to reduce the criminal activity of gangs.²¹¹

The legal battle against gangs resurfaced in 2007 when right wing President Tony Saca signed into law the Organized and Complex Crimes Law.²¹² The law established a set of specialized tribunals staffed with politically appointed judges tasked with efficiently adjudicating cases involving organized or complex crimes.²¹³ These crimes typically involve homicide, kidnapping, or extortion.²¹⁴ According to San Salvador Juvenile Court Judge Doris Luz Rivas Galindo, the executive branch wanted their own cadre of judges because judges refused to apply the anti-gang law.²¹⁵ In contrast, the specialized judges contend that they process their judicial dockets more efficiently than their counterparts in the ordinary courts.²¹⁶ Independent observers note that, “The performance of specialized tribunals is still very much an open question. What appears clear, however, is that the selection process has been politicized and that judges have been exposed to pressure to convict defendants.”²¹⁷

The horrendous June 20, 2010 bus burning that took place in the San Salvador suburb of Mejicanos served to remind Congress and the right and left wings that a serious criminal problem continues to destabilize certain

209. *Id.*

210. Juan José Dalton, *Ola de asesinatos en El Salvador*, EL PAÍS (Spain) (Sept. 16, 2009), available at http://www.elpais.com/articulo/internacional/Ola/asesinatos/Salvador/elpepuint/20090916elpepuint_2/Tes (last accessed Jan. 23, 2011).

211. VICTIMIZACIÓN Y PERCEPCIÓN, *supra* note 191, at 45.

212. *Ley Contra el Crimen Organizado y Delitos de Realización Compleja*, Decreto No. 190, *Diario Oficial de la República*, Vol. 374, No. 13, pp. 4–7 (Jan. 22, 2007), available at <http://www.diariooficial.gob.sv/diarios/do-2007/01-enero/22-01-2007.pdf> (last accessed Jan. 23, 2011).

213. The law established special tribunals in San Salvador, Santa Ana and San Miguel. The tribunal in San Salvador has jurisdiction over crimes committed in the departments of San Salvador, La Libertad, San Vicente, Cuscatlán, Cabañas and Chalatenango. The tribunal in Santa Ana has jurisdiction over crimes committed in the departments of Santa Ana, Sonsonate and Ahuachapán. Lastly, the tribunal in San Miguel has jurisdiction over crimes committed in the departments of San Miguel, Usulután, La Unión and Morazán. *Id.* at art. 3.

214. The Special Tribunals had jurisdiction over organized and complex crime involving homicides, kidnappings and extortion. According to the law, organized crimes are those involving an organized group of two or more people acting in concert with the intent to commit a crime. In addition, complex crimes are defined as homicides, kidnappings or extortion when the crime: (1) is committed by two or more people; (2) involves 2 or more victims; or (3) provokes social commotion or alarm. *Id.* at art 1.

215. PEDRAZA FARIÑA ET AL., *supra* note 26, at 25.

216. *Id.* at 26.

217. *Id.* at 28.

sectors of the country.²¹⁸ In response, President Mauricio Funes signed into law El Salvador's latest edition of anti-gang legislation in September 2010.²¹⁹ This marked the first time that the left wing initiated and enacted a heavy handed enforcement based law to combat gangs and organized crime. The law gained approval from the right wing National Republican Alliance (ARENA) and the center left Christian Democratic Party (PDC). This law specifically outlaws the gangs MS-13, M-18, *Máquina*, and *Mao Mao*.²²⁰ It is, however, different from past laws in that it contains forfeiture and seizure provisions that allow the government to seize property that belongs to the gangs or their accomplices, or that is otherwise the gain of organized criminal activity.²²¹ According to Carlos Ascencio, director of the Civilian National Police, operations pursuant to this law will focus on investigations.²²² Ascencio explains that gang sweeps may occur like they did from 2003–2004, but this time they will be preceded by lengthy investigations.²²³ It is too early to tell whether this law will have any effect in reducing violent crime in El Salvador.

2. El Salvador: Rehabilitation and Reintegration Efforts

In conjunction with enforcement initiatives, El Salvador's government, international organizations, and civil society have enacted rehabilitation and reintegration programs. For example, *Proyecto MOJE* (Movement of Young Discoverers), based in Ilobasco, works to eliminate gang rivalries,

218. See Tania Membreño & Liliana Fuentes, *Ley de Proscripción de Pandillas entra en vigor desde hoy*, LA PRENSA GRÁFICA (El Sal.) (Sept. 19, 2010), available at <http://www.laprensagrafica.com/el-salvador/judicial/142340-ley-de-proscripcion-de-pandillas-entra-en-vigor-desde-hoy.html> (last accessed Jan. 23, 2011).

219. *Ley de Proscripción de Maras, Pandillas, Agrupaciones Asociaciones y Organizaciones de Naturaleza Criminal*, Decreto No. 458, Diario Oficial de la República, Vol. 388, No. 189, pp. 23–26 (Sep. 10, 2010) available at <http://www.diariooficial.gob.sv/diarios/do-2010/09-septiembre/10-09-2010.pdf> (last accessed Jan. 23, 2011) [hereinafter *Ley de Proscripción*].

220. In addition to the gangs, the law outlaws the Sombra Negra (Black Shadow). The Sombra Negra is a death squad that has operated in El Salvador since the mid 1990s. *Id.* at Art. 1. For background on the Sombra Negra, see Lawrence Michael Ladutke, *Expressions For and Against the Vigilante Death Squad Sombra Negra*, 8 Sw. J. L. & TRADE AM. 283 (2001-02).

221. According to the law, the Ministry of Justice and Public Security will receive 60% of the value of seized goods and property. The remaining 40% will be evenly split between the Prosecutor's Office and the Judiciary. *Ley de Proscripción*, *supra* note 219, at Art. 4(4).

222. Membreño & Fuentes, *supra* note 218.

223. *Id.*

provides technical job training to gang members, conducts workshops on self-esteem and personal development, and issues an identity card to participants so that the police know they are in a structured rehabilitation program.²²⁴ Similarly, three youth outreach centers were opened in El Salvador with support from USAID.²²⁵ The centers teach participants skills in computer repair and maintenance, welding, banking, and cosmetology.²²⁶ The most recent center opened in Barrio Lourdes and is directed by Carlos Artiga, a former gang member turned evangelical pastor.²²⁷ The National Counsel on Public Security under the administration of former President Antonio Saca also coordinated two programs: (1) *Plan Mano Extendida* (Open Hand Plan), which helped rehabilitate former gang members; and (2) *Plan Mano Amiga* (Friendly Hand Plan), which worked to prevent at-risk youth from joining gangs.²²⁸ These two programs received over \$730,000 annually to carry out their mission.²²⁹ Other programs available include tattoo removal services at San Judas Tadeo health center in the San Salvador suburb of Mejicanos.²³⁰

It is too early to determine the long term success of government sponsored prevention and rehabilitation efforts. *Proyecto MOJE* presents an early success story, with reports indicating that it has reintegrated 300 gang members into society, leaving less than 100 active gang members in Ilobasco.²³¹ On the other hand, it is generally believed that gang prevention programs are small scale, ad-hoc, and under funded.²³² Governments in Central America have generally been less involved in sponsoring rehabilitation programs, with most funding coming from church groups or non-governmental organizations (NGO).²³³

3. Guatemala: Enforcement and Rehabilitation Efforts

Unlike their counterparts in El Salvador, the Guatemalan legislature did not formally enact anti-gang legislation. Guatemala considered *Plan Escoba* in 2003, but the legislation was not passed.²³⁴ It is believed that this encouraged gang members from El Salvador and Honduras to

224. EL SALVADOR PROFILE, *supra* note 44.

225. Embassy of the U.S. in El Salvador, Inauguran Centro de Alcance para jóvenes en riesgo (2009).

226. *Id.*

227. *Id.*

228. EL SALVADOR PROFILE, *supra* note 44.

229. *Id.*

230. Phillippe Revelli, *supra* note 49.

231. El Salvador Profile, *supra* note 44.

232. SEELKE, *supra* note 180.

233. *Id.*

234. ECONOMIC INTELLIGENCE UNIT, *supra* note 43.

migrate to Guatemala.²³⁵ In response, the Guatemalan National Civilian Police began to conduct anti-gang operations under its own auspices as early as August 2003.²³⁶

Police sweeps were ineffective because in the absence of legislation that criminalizes gang membership, prosecutors were forced to raise charges based on preexisting criminal provisions.²³⁷ Prosecutors unsuccessfully raised pretext charges, frequently based on weak evidence involving possession of drugs for personal consumption.²³⁸ For example, of 10,527 persons detained between June 2003 and June 2004, only 1.1% were formally charged in a court of law.²³⁹ Thus, most people detained returned to the streets and there was no reduction in violent crime. To the contrary, homicides increased from 3,632 in 2002 to 5,338 in 2005.²⁴⁰ In 2008, Guatemala averaged fifteen homicides per day which increased to eighteen per day in the first trimester of 2009.²⁴¹ Largely due to this trajectory, a new proposal for a gang injunction was received in September 2010.²⁴²

Rehabilitation and prevention-based programs to minimize gang proliferation have surged in Guatemala. For example, the program *Escuelas Abiertas* (Open Schools), initiated in July 2008, keeps schools in “red zones” open on the weekends.²⁴³ The Ministry of Education also operates 425 centers that provide technical and vocational training.²⁴⁴ APREDE, an alliance of Guatemalan human rights organizations, provides schooling and social development activities to help at-risk youth raise their self-esteem.²⁴⁵ USAID helped establish nine youth outreach centers similar to those operating in El Salvador and faith-based organizations provide

235. GUATEMALA PROFILE, *supra* note 51.

236. *Guatemala: las maras, un blanco en pleno proceso electoral*, INFORPRESS, Sept. 5, 2003, available at <http://www.inforpressca.com/inforpress/infor2003/1527-3.htm>.

237. RANUM, *supra* note 185, at 31.

238. *Id.*

239. *Id.* at 31–32.

240. *Id.* at 21.

241. Claudia Palma, *Aumentan homicidios en tres primeros meses*, EL PERIÓDICO (Guat.), Apr. 16, 2009.

242. Congreso de la República de Guatemala, *Patriotas reciben respaldo para aprobar ley antimaras* (Sept. 14, 2010), available at http://www.congreso.gob.gt/gt/ver_noticia.asp?id=11390 (last visited Feb. 6, 2011).

243. Areas suffering from high criminal and gang activity are dubbed “Red Zones.” *Denuncian reclutamiento de niños para delinquir en Guatemala*, *supra* note 85.

244. GUATEMALA PROFILE, *supra* note 51.

245. Global Youth Connect, *Guatemala Program Report*, Human Rights Delegation for Young Leaders January 2–16, 2005, 4 (2005).

services to youth.²⁴⁶ Lastly, a modern reintegration effort involved a reality television show that featured ten former gang members.²⁴⁷ The participants were split into two competing groups tasked with operating a shoe shine and repair business in an upscale office building and a car wash in downtown Guatemala City.²⁴⁸

The long term effect of prevention and reintegration efforts cannot yet be measured. One observer reports that, “Some left the gang eight or ten years ago [and] the lucky ones have found employment.”²⁴⁹ Nevertheless, there is little private sector support for rehabilitation programs and the faith-based organizations and NGOs that service at-risk youth and former gang members are restrained by limited resources.²⁵⁰

4. Honduras: Enforcement and Rehabilitation Efforts

Honduras, in contrast to El Salvador, did not enact special legislation to combat gang activities. Rather, the enforcement based response revolved around Article 332 of the Penal Code. What became known in Honduras as “*Mano Dura*” or “*Ley Anti Mara*” referred to amendments made to Article 332, enacted in special consideration of the increasing levels of gang violence.

Article 332 was initially a criminal provision intended to primarily target the heads or directors of gangs or illicit groups. Heads and directors could be sentenced to three to six years imprisonment and subject to a fine ranging from 100,000 to 200,000 *Lempiras*.²⁵¹ Members of the same groups were subject to lesser sentences.²⁵² The first amendment, published in the Official Register on August 15, 2003, enabled law enforcement to round up gang members on the basis of “illicit association.”²⁵³ Sentences for bosses or heads of *maras*—gangs—and other criminal groups were

246. Embassy of the U.S. in El Salvador, *supra* note 225.

247. *Ten Young Former Gang Members Start Businesses on Guatemalan Reality TV Show*, *supra* note 198.

248. *Id.*

249. van der Werf, *supra* note 199.

250. GUATEMALA PROFILE, *supra* note 51; SEELKE, *supra* note 180, at 17.

251. These terms are contained in the 1983 version of the Honduran Penal Code. These provisions intended to criminalize organized crime groups or gangs that pre-existed the arrival of *maras* (MS-13 and M-18). Art. 332, para. 1, *Decreto No. 144-83, Código Penal* [Hond.], 144–83 (Sept. 26, 1983), available at <http://www.unhcr.org/refworld/docid/46d7cebe2.html>.

252. Members were only subject to one-third of the sentence as a leader or director; one to two years imprisonment and approximately 33,000 to 66,000 *Lempiras*. *Id.*

253. See HONDURAS PROFILE, *supra* note 57; Decreto No. 223-2004, LA GACETA: DIARIO OFICIAL DE LA REPÚBLICA DE HONDURAS, No. 30163, Mar. 12, 2005, pp. 1–2, available at <http://www.glin.gov/download.action?fulltextId=98913&documentId=176535&glinID=176535>.

raised to nine to twelve years in prison.²⁵⁴ Sentences for members were set at three to four years in prison.²⁵⁵ The next amendment was enacted on March 12, 2005.²⁵⁶ Sentences for bosses or heads of *maras*, gangs, and other criminal groups were once again raised to twenty to thirty years in prison.²⁵⁷ Sentences for members were also raised to seven to ten years in prison.²⁵⁸

These amendments present two significant developments. First, by introducing the word “mara” to Article 332 in 2003, the government shifted its focus from organized crime groups to the MS-13 or M-18 gangs specifically. Although the Spanish words *mara* and “*pandilla*” both mean gang, the term *mara* is typically associated with the gangs that proliferated in Central America after their members were deported from the United States.²⁵⁹ Second, it is unclear whether these heightened sentences were permanent or temporary in nature. In April 2010, a representative from the U.N. Committee on the Rights of Children requested Honduras to abolish Article 332 from its criminal code.²⁶⁰ News articles reporting on the U.N.’s request make reference to the sentences contained in the 1983 version of the Penal Code, indicating that the heightened references may have been temporary in nature.²⁶¹

254. ONU, Comité de los Derechos del Niño, Examen de los Informes Presentados por los Estados Partes con Arreglo al Artículo 44 de la Convención, CRC/C/HND/3, July 27, 2006 at p.20 (para. 17), available at [http://www.unhchr.ch/tbs/doc.nsf/0/49d08d48b2d420d5c125725d002fa1b4/\\$FILE/G0643345.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/49d08d48b2d420d5c125725d002fa1b4/$FILE/G0643345.pdf) (last accessed Feb. 7, 2010).

255. *See id.*

256. Decreto No. 223-2004, La Gaceta: Diario Oficial de la República de Honduras, No. 30645, Mar. 12, 2005, pp.1–2, available at <http://www.glin.gov/view.action?GlinID=176535>.

257. *Id.*

258. *Id.*

259. SEELKE, *supra* note 180, at 4.

260. This request was made by U.N. representative Susana Villarán de la Puente. She advocated for the abolishment of all provisions of law inconsistent with the U.N. Convention on the Rights of Children. The U.N. request, however, appears to have been made without special consideration of the serious criminal activities of gang affiliated youth and fails to offer enlightened alternatives to controlling the activities of criminal gangs. Rather, the U.N. argues that the law violates the freedom of association and its provisions may be too broadly applied. *ONU: Piden a Honduras derogar ley antimaras*, LA PRENSA (Hon.), Apr. 10, 2010, available at <http://www.laprensa.hn/Pa%C3%ADs/Ediciones/2010/04/20/Noticias/ONU-Piden-a-Honduras-derogar-ley-antimaras>; *Representante de la ONU aconseja derogar “Ley anti maras,”* LA TRIBUNA (Hon.), Apr. 20, 2010, available at <http://www.latribuna.hn/web2.0/?p=121965>.

261. *Representante de la ONU aconseja derogar “Ley anti maras,”* *supra* note 260.

Although the Honduran government initially hailed the anti-gang initiative a success, empirical evidence indicates that it was highly ineffective. According to then President Ricardo Maduro, prior to the Penal Code amendment, most gang members were released due to insufficient evidence.²⁶² This was partly due to the prosecutor's inability to procure witnesses, who feared harm from the accused and his or her gang.²⁶³ The anti-gang law reduced the need for witnesses because it criminalized gang membership. Nevertheless, homicides actually increased by 17% in the first year following the enactment of the anti-gang law, and remain high to date.²⁶⁴ For example, the U.N. Development Program reports that there were 4,473 murders in 2008, giving Honduras, a nation of approximately 7.3 million people, one of the world's highest per capita murder rates.²⁶⁵

Enforcement based initiatives have also been accompanied with rehabilitation and prevention efforts. For example, Adios Tatuajes, a tattoo removal service established by the Catholic Church in 2000 in San Pedro Sula, has serviced an estimated 16,000 youths.²⁶⁶ According to USAID, the *Centro para la Tortura, Centro para la Prevención Victoria, Casa Alianza, Instituto Hondureño de la Niñez y Familia*, and Save the Children (United Kingdom) in partnership with local NGO Jha-Ja address issues of unemployment and provide drug prevention services to former gang members.²⁶⁷ Furthermore, the Inter-American Development Bank has provided \$32 million for violence reduction programs; one quarter of the funds will be used to train gang members in micro-business and reintegrate them to society.²⁶⁸

The prevention and rehabilitation programs have suffered two setbacks. First, there have been reports of violence directed at participants. For example, twenty-three participants in Save the Children programs have been killed, prompting the NGO to close operations in March 2007.²⁶⁹ Second,

262. Heather Berkman, *The Politicization of the Judicial System in Honduras and the Proliferation of Maras*, 4 J. INT'L POL'Y STUD. 5, 6 (U.C. San Diego, 2006).

263. *Id.*

264. In 2002 there were 3,480 reported homicides; in 2003 there were 4,073. *Id.*

265. U.S. DEP'T OF STATE, BUREAU OF CONSULAR AFFAIRS, *Honduras: Country Specific Information*, (Mar. 19, 2010), http://travel.state.gov/travel/cis_pa_tw/cis/cis_1135.html.

266. Anne Pérez Rivera, *Jóvenes quieren eliminarse tatuajes*, LA PRENSA (Nic.), June 21, 2006, available at <http://archivo.laprensa.com.ni/archivo/2006/junio/21/noticias/nacionales/125491.shtml>; HONDURAS PROFILE, *supra* note 57.

267. HONDURAS PROFILE, *supra* note 57.

268. *Id.*

269. *Id.* Save the Children continues to operate PROGRESA, a food security initiative in southwest Honduras, and RICA, a childhood development and primary education program. SAVE THE CHILDREN, *Honduras: Save the Children*, <http://www.savethechildren.org/countries/latin-america-caribbean/honduras.html> (last visited Feb. 7, 2010).

despite generous grants from international donors, observers report that rehabilitation and prevention efforts are generally underfunded.²⁷⁰

C. The Resurgence of Social Cleansing and Clandestine Death Squads

El Salvador, Guatemala, and Honduras have struggled to protect the public from violent crime and gang activity. Two major problems hinder the security forces' ability to control gangs: (1) a lack of resources and (2) corruption. The public, consequently, has lost confidence in the government's ability to protect them from criminals and gangs.

The security forces lack human and financial resources.²⁷¹ According to one estimate, there are 16,500, 19,000, and 5,000 police officers in El Salvador, Guatemala, and Honduras, respectively.²⁷² In contrast, official estimates indicate that there are as many as 39,000 gang members in El Salvador, 60,000 in Guatemala, and 60,000 in Honduras.²⁷³ Gangs are aware of this and feel that the police are unable to control them. For example, in December 2009, two alleged gang members threw a grenade at a police facility in San Miguel, El Salvador.²⁷⁴ The attack was intended to "punish" the police for their efforts to control extortionist gang rings operating at the local market.²⁷⁵ The police are so overwhelmed that all three countries have mobilized the military to provide greater security.²⁷⁶ This move has been strongly criticized by some observers owing to the memory of human rights abuses during the civil wars.²⁷⁷ Notwithstanding,

270. SEELKE, *supra* note 180, at 11.

271. *Latin America Politics: Anti-gang warfare*, *supra* note 43.

272. *Id.*

273. *See supra* text accompanying notes 20–21.

274. *Pandillas perciben \$15 mil mensuales de las extorsiones*, EL DIARIO DE HOY (El Sal.), Jan. 5, 2010.

275. *Id.*

276. *Latin America Politics: Anti-gang warfare*, *supra* note 43. President Mauricio Funes has deployed over 4,000 soldiers to support the National Civilian Police. *Extorsiones y pandillas, relato de una víctima*, AGENCE FRANCE PRESSE, Nov. 6, 2009. Approximately 1,500 forces have been present in the following Salvadoran prisons since June 2010: San Francisco Gotera, Zacatecoluca, Izalco, Chalatenango and Ciudad Barrios. Magdalena Flores, *Aplican medidas más drásticas en centros penales*, CONTRA PUNTO (El Sal.), Sept. 14, 2010. In Honduras, it is reported that the 3,000 armed servicemen were committed to track down and arrest gang members. Berkman, *supra* note 262, at 6.

277. For example, during the civil war, El Salvador's military was linked to the killing of three American nuns, six Jesuit priests and dozens of civilians at El Mozote. Anthony Lewis, *The U.S. Role in the Horror and Coverup in El Salvador*, S.F. CHRON., Mar. 23, 1993.

citizens have expressed favor for military participation in the state's gang control efforts since at least 2004.²⁷⁸

Police, judicial, and government corruption debilitates the security forces' ability to take command of public safety.²⁷⁹ Gang members refer to police officers as "uniformed gang members" and 77% of former gang members indicate that they paid bribes to the police.²⁸⁰ There are also reports that accuse the police of extortion of the gangs.²⁸¹ In this manner, the police encourage gang members to extort more businesses and individuals.²⁸² The police are also aware of internal corruption, with 52% of active duty police officers in areas heavily affected by gangs stating that their unit is corrupt.²⁸³ One well-known example involved the arrest of Guatemala's national police chief and the head of the anti-narcotics unit in connection with an April 2009 gunfight that left five police officers dead.²⁸⁴ Similarly, reports indicate that judges and prosecutors may be bribed to prevent gang members from being charged with a crime or convicted.²⁸⁵ In February 2010, Salvadoran President Mauricio Funes publicly stated that organized crime has infiltrated the police, judiciary, and detention facilities.²⁸⁶

1. *El Salvador*

According to official sources, 2009 was the most violent year in the last decade, with 4,365 murders.²⁸⁷ Nearly 46% of Salvadorans believe that the police are involved in criminal activity.²⁸⁸ Against this backdrop, certain groups have taken the law into their own hands. Although there

278. For example, in 2004, Rafael Guardado, a mechanic from Ilopango, El Salvador, stated, ". . .they should tighten it even more. Bring in the army to patrol too." Chris Kraul, *El Salvador Comes to Grip with Gangs: Deportees from U.S. feed the violence of groups targeted in public crackdown*, L.A. TIMES, Dec. 17, 2004; *Miembros de pandillas han tratado de infiltrar el Ejército*, EL DIARIO DE HOY (El Sal.), Jan. 20, 2010.

279. ECONOMIC INTELLIGENCE UNIT, *supra* note 43.

280. DEMOSCOPIA S.A., *supra* note 30, at 87, 91.

281. For example, one gang member in Guatemala states that he has paid the police as much as \$530 per day in extortion. Ranum, *supra* note 185, at 33.

282. *Id.*

283. DEMOSCOPIA, S.A., *supra* note 30, at 91–92.

284. Elisabeth Malkin, *2 Top Guatemalan Police Officials Are Arrested on Drug Charges*, N.Y. TIMES, Mar. 3, 2010 at A11.

285. ECONOMIC INTELLIGENCE UNIT, *supra* note 43.

286. Liset Orellana, *Funes dice que el crimen se infiltra en Organo Judicial*, Diario El Mundo (El Sal.), Jan. 1, 2010, available at <http://agacorporativa.net/salas/wp-content/uploads/2010/02/monitoreo-local-el-salvador-16-de-febrero-2010.pdf>.

287. Jaime López, *El Salvador cerró 2009 como el más letal: 4,365 asesinatos*, EL DIARIO DE HOY (El Sal.), Jan. 1, 2010, http://www.elsalvador.com/mwedh/nota/nota_completa.asp?idCat=6358&idArt=4392824.

288. In contrast, only 40% believe that the police protects the public. VICTIMIZACIÓN Y PERCEPCIÓN, *supra* note 191, at 72.

is no direct evidence indicating that the state participates in clandestine killings, it is believed that low to mid level police officers participate in or facilitate the operations of clandestine groups.²⁸⁹

In August 2007, a group self-identified as “E.L.” distributed flyers in the town of Chalchuapa to announce that they were imposing a ten o’clock curfew.²⁹⁰ The group warned that they will engage in a cleansing campaign to get rid of criminals.²⁹¹ According to observers, residents closed their businesses and returned to their homes by nine o’clock.²⁹² Local police claim that they have no information about either E.L., or the persons who distributed the flyers.²⁹³

In early 2010, three gunmen wearing black hoods killed twelve young men in two separate coordinated attacks.²⁹⁴ In the first attack, the gunmen killed seven men near a stream in Milingo (*Cuscatlán* Department).²⁹⁵ Three victims had M-18 tattoos on their bodies and two others are believed to have belonged to the gang.²⁹⁶ Four days later, similarly dressed gunmen entered a restaurant in the outskirts of San Salvador and forced five men into a room, stripped their clothes, and scanned their bodies for gang tattoos.²⁹⁷ Although none had such tattoos, the gunmen killed all five young men.²⁹⁸ Subsequent police investigations revealed that the victims were students and construction workers.²⁹⁹ President Funes, although concerned, expressed that he does not believe the killings were

289. DEMOSCOPIA, S.A., *supra* note 30, at 86.

290. “E.L.” may be an acronym for “*Escuadrón de Limpieza*,” or cleansing squad. Jorge Beltrán, *Asesinatos conmocionan a Chalchuapa*, EL DIARIO DE HOY (El Sal.), Aug. 29, 2007, http://www.elsalvador.com/mwedh/nota/nota_completa.asp?idCat=6342&idArt=1666039.

291. Juan José Dalton, *Chalchuapa, territorio del miedo*, EL PAÍS (Spain), Sep. 5, 2007, http://www.elpais.com/articulo/internacional/Chalchuapa/territorio/miedo/elpepuint/20070905elpepuint_4/Tes.

292. *See id.*

293. Beltrán, *supra* note 290.

294. Edgardo Ayala, *Killings Bear Hallmarks of Death Squads*, INTER PRESS SERV., Feb. 17, 2010, <http://ipsnews.net/news.asp?idnews=50369>.

295. *Id.*

296. Jorge Beltrán & Jaime López, *PNC aún sin hipótesis sobre massacre de Milingo*, EL DIARIO DE HOY (El Sal.), Feb. 3, 2010, http://www.elsalvador.com/mwedh/nota/nota_completa.asp?idCat=6358&idArt=4488179.

297. Four of the victims were between 23 and 25 years of age; one victim was 52-years-old. Claudia Huete, *Masacre en Tonacatepeque*, LA PRENSA GRÁFICA (El Sal.), Feb. 7, 2010, <http://www.laprensagrafica.com/el-salvador/judicial/91626-masacre-en-tonacatepeque.html>; Ayala, *supra* note 294.

298. *See* Ayala, *supra* note 294.

299. *Id.*

orchestrated by death squads.³⁰⁰ Nevertheless, analysts believe that “it is practically inconceivable that three gang members would decide to attack a group of ten people. That is only done by ‘special forces’ or so called ‘commandos,’ who are trained precisely to use just a few men to overcome or annihilate larger units or groups.”³⁰¹

Other reports also indicate that social cleansing groups may be at work in El Salvador. For example, the Mayor of San Miguel acknowledged that two extermination groups, *La Sombra Negra* and *Comando Maximiliano Hernández* have ordered criminals and extortionists to abandon the city.³⁰² In 2007, five police investigators in the eastern region of El Salvador were detained in prison after a court of law determined that there was sufficient evidence indicating that they may belong to extermination groups.³⁰³ Lastly, in January 2010, human rights ombudsman Oscar Luna said that he received telephone death threats from persons claiming to belong to a death squad.³⁰⁴ The callers warned Luna to leave the country and ordered him to stop interfering with their clandestine operation.³⁰⁵

2. Guatemala

According to the National Institute for Forensic Science, Guatemala registered 5,975 homicides in 2009.³⁰⁶ Guatemalans are frustrated with the government’s inability to provide public security and justice for its citizens.³⁰⁷ Wealthier businesses and citizens are increasingly relying on the private sector for security and 31% of Guatemalans surveyed believe that it is acceptable to take justice into one’s own hands.³⁰⁸

In a December 2009 report, Amnesty International (AI) accused the Guatemalan government of tolerating extrajudicial killings of criminals supposedly committed by members of the Civilian National Police.³⁰⁹ According to AI, victims are commonly found in open fields or trash

300. *Id.* at 3.

301. *Id.* at 1–2.

302. *Aparición de grupos de “limpieza social” en Centroamérica enciende alarmas*, AGENCE FRANCE PRESSE, Sept. 14, 2006, available at <http://www.radiolaprimerisima.com/noticias/3628>.

303. Dalton, *supra* note 290.

304. Alma Vilches, *Arzobispo repudia amenazas de muerte contra el Procurador Oscar Luna*, DIARIO CO LATINO (El Sal.), Jan. 25, 2010, <http://www.diariocolatino.com/es/20100125/nacionales/76097/?tpl=69>.

305. Ayala, *supra* note 293.

306. *Asesinatos en Guatemala centrados en 5 departamentos*, Radio La Primerísima (Guat.), Jan. 11, 2010, <http://www.radiolaprimerisima.com/noticias/68291>.

307. GUATEMALA PROFILE, *supra* note 51.

308. *Id.*

309. Amnesty Int’l, *Allegations of Police Killings in Guatemala must be Investigated*, Dec. 15, 2009, available at <http://www.amnesty.org/en/news-and-updates/report/allegations-police-killings-guatemala-must-be-investigated-20091215>.

cans, exhibiting signs of torture, and either strangled or shot at close range.³¹⁰ Although there is no tangible proof that the state participates in social cleansing, local observers note that the police and judicial authorities fail to investigate extrajudicial killings and are complicit in the activities of death squads.³¹¹

There are few, but notable reports on clandestine groups and killings. For example, in 2006, a group self-identified as *Guardianes de la Ciudad* (Guardians of the City) distributed flyers in Coatepeque to inform residents that they will eliminate all gang members because the police are incapable of securing society.³¹² In February 2006, the cadavers of seven alleged gang members were found along a desolate highway southeast of the capital.³¹³ Lastly, a number of corpses, nearly all young males exhibiting gang-style tattoos, were discovered in and around Guatemala City in 2000.³¹⁴ The victims displayed signs of torture and violent death, leading some to suspect the government of social cleansing.³¹⁵

3. Honduras

In 2009, Honduras had the highest homicide rate in Central America.³¹⁶ A significant portion of the victims are believed to be street children. It is estimated that 2,000 youth were killed between 2000 and 2007.³¹⁷ The Inter American Court of Human Rights found Honduras guilty of participation in many of these deaths.³¹⁸ In addition, the Honduran police have been accused of carrying out child executions as part of a prolonged

310. *Amnistía Internacional acusó a Guatemala de tolerar “limpieza social,”* EFE (Guat.), Dec. 15, 2009, available at <http://noticias.com.gt/nacionales/20091215-amnistia-internacional-acuso-a-guatemala-de-tolerar-limpieza-social.html>.

311. Ayala, *supra* note 294; *Aparición de grupos de “limpieza social” en Centroamérica enciende alarmas,* *supra* note 302.

312. *Surge ‘escuadrón de limpieza social’ contra las ‘maras’*, EFE (Guat.), Sep. 26, 2006, available at <http://noticias.terra.com/articulo/html/act234693.htm>.

313. *Imparable criminalidad hace temer “limpieza social” en Guatemala*, EFE, Feb. 11, 2006, available at <http://noticias.terra.com/articulo/html/act338024.htm>.

314. GUATEMALA PROFILE, *supra* note 51.

315. *Id.*

316. The homicide rate was 66.8 per 100,000 inhabitants. From 2005–2009, it is estimated that 36% of homicides were committed by hired assassins. *Honduras registra la mayor tasa de homicidios en Centroamérica, según informe*, EFE, Mar. 30, 2010, available at <http://www.terra.com.ec/noticias/articulo/html/act2263740.htm>.

317. WASH. OFFICE ON LATIN AM., *supra* note 57.

318. *Id.*

social cleansing campaign.³¹⁹ Hundreds of children are discovered each year, often with their hands bound, killed by a single gunshot to the back of the head.³²⁰ It is possible that street children are likely targets because they may be considered at-risk of future gang membership.

There are few reports of social cleansing and clandestine death squad activity. In 1998, a clandestine group known as *Papá Commando* (Father Commando) issued a statement to the media threatening to kill members of youth gangs.³²¹ Similarly, a clandestine group self-titled *Los Magníficos* (literally The Magnificents, popularly The A-Team) has operated in and around San Pedro Sula.³²² The group is composed of twenty-five member units.³²³ It is believed that *Los Magníficos* is made up of police and former military members who may have been members of Battalion 316, a military death squad that carried out extrajudicial killings of political opponents in the 1980's.³²⁴

4. Prison Fires and Riots

In the last decade, there have been various prison riots and fires that claimed the lives of many inmates, including gang members. Although there is little to no evidence that the states engage in purposeful social cleansing of the prison population, observers note that the authorities fail to intervene in riots and extinguish fires.³²⁵ Furthermore, the weapons used by inmates during riots suggests that the authorities are either complicit in, or have no ability to control the violence.

Gangs in prisons have reportedly used guns, improvised grenades, machetes, and knives to kill rivals or members of the general prison

319. Jenny Kleeman, *Zero Tolerance for the Child Gangs of Honduras*, TELEGRAPH (U.K.), Oct. 11, 2007, <http://www.telegraph.co.uk/news/worldnews/1565985/Zero-tolerance-for-the-child-gangs-of-Honduras.html>.

320. *Id.*

321. DOUGLAS PAYNE, U.S. BUREAU OF CITIZENSHIP & IMMIGRATION SERVICES, HONDURAS: UPDATE ON HUMAN RIGHTS CONDITIONS 19 (2000), available at <http://www.unhcr.org/refworld/docid/3de8d7a64.html>.

322. *Aparición de grupos de "limpieza social" en Centroamérica enciende alarmas*, *supra* note 302.

323. *Id.*

324. FREEDOM HOUSE, FREEDOM IN THE WORLD 2006 THE ANNUAL SURVEY OF POLITICAL RIGHTS & CIVIL LIBERTIES: HONDURAS 313, (Aili Piano, et al. eds., 2006).

325. In May 2004, 105 alleged gang members burned to death in a Honduran prison while guards did nothing. Tom Hayden, Commentary, *When Deportation is a Death Sentence; Sending U.S. Gang Members Back to Honduras Can Amount to Killing Them*, L.A. TIMES, June 28, 2004, at B9, available at <http://articles.latimes.com/2004/jun/28/opinion/oe-hayden28>. In Guatemala, a fight between rival gangs left seven prisoners dead, five of them beheaded. The riot lasted approximately five hours before prison guards and police regained control of the prison. *Beheadings in Guatemala Jail Riot*, BBC NEWS (U.K.), Nov. 23, 2008, <http://news.bbc.co.uk/2/hi/7744335.stm>.

population. For example, a 2004 riot in La Esperanza prison (El Salvador) began when members of M-18 threw an improvised grenade at inmates.³²⁶ Similarly, a riot broke out at the San Pedro Sula Prison (Honduras) after the shooting of an inmate.³²⁷ In the ensuing violence, inmates hacked eight gang members to death with knives and machetes.³²⁸ Lastly, it is believed that inmates in Guatemalan prisons have easy access to weapons.³²⁹ It is apparent that the detention centers either provide weapons to inmates or lack sufficient security measures to prevent inmates from obtaining them.

Prison fires have also left large amounts of inmates dead. In 2003, a supposedly accidental prison fire claimed the lives of sixty-eight inmates in Honduras.³³⁰ Investigators, however, later discovered that the killings started with a mass execution by police firing at close range.³³¹ Most recently, in November 2010, a fire at the Ilobasco detention center (El Salvador) left twenty-seven inmates dead.³³² Initial reports say the fire broke out after an electrical wire overheated.³³³

326. Jaime García, *Masacre en la cárcel*, EL DIARIO DE HOY (El Sal.), Aug. 19, 2004, <http://www.elsalvador.com/noticias/2004/08/19/nacional/nac13.asp#>.

327. *Nine Killed with Machetes in Honduran Prison Riot*, REUTERS, Apr. 26, 2008, <http://www.reuters.com/article/idUSN2628387120080427>.

328. *Id.*

329. *Beheadings in Guatemala Jail Riot*, *supra* note 325. Prison riots have also taken place in Guatemala. *See Deadly Guatemala Jail Riot Ends*, BBC NEWS (U.K.), Feb. 26, 2007, <http://news.bbc.co.uk/2/hi/americas/6398945.stm>; *Masacre en cárcel de Guatemala*, EL NUEVO DIARIO (Nic.), Sept. 25, 2006, <http://impreso.elnuevodiario.com.ni/2006/09/25/internacionales/29776>.

330. Hayden, *supra* note 325.

331. *Id.*

332. Loida Martínez & Ricardo Flores, *Aumenta a 27 el número de fallecidos por incendio en penal de Ilobasco*, LA PRENSA GRÁFICA (El Sal.), Nov. 18, 2010, <http://www.laprensagrafica.com/el-salvador/judicial/152011-aumenta-a-27-el-numero-de-fallecidos-por-incendio-en-penal-de-ilobasco.html>.

333. Fernando Romero & Loida Martínez, *Incendio Ilobasco por recalentamiento de cable*, LA PRENSA GRÁFICA (El Sal.), Nov. 17, 2010, <http://www.laprensagrafica.com/el-salvador/judicial/151748—incendio-ilobasco-por-recalentamiento-de-cable.html>.

VI. CONCLUSION

The information contained in this report is intended to provide the reader with a wide view of gangs, violence, and the state response in El Salvador, Guatemala, and Honduras. What started as Los Angeles, California based street gangs, have transformed into full-fledged transnational gangs. Gang violence has contributed to, but is not the sole cause of violence in the region. Gangs commit homicides, operate organized extortion rings, and at times carry out massacres of civilians. The state has primarily responded by enacting a series of gang injunctions that have been ineffective and failed to reduce violent crime in the region. Gangs have become more violent and have reportedly started to forge ties with Mexican drug cartels. If this is true, violence will likely increase and negatively affect citizen security in Central America. This is dangerous in a setting where law enforcement is considered either inept or corrupt. Some citizens will flee; others may continue to form violent clandestine groups intended to cleanse society of individuals they perceive as a social disease. In the medium to long term this may affect the stability of the regional democratic institutions as the perception of socially diseased individuals may encompass not only gang members, but also the governing authorities.