Immigration and Refugee Board of Canada

Responses to Information Requests

Responses to Information Requests (RIR) respond to focused Requests for Information that are submitted to the Research Directorate in the course of the refugee protection determination process. The database contains a seven-year archive of English and French RIRs. Earlier RIRs may be found on the UNHCR's Refworld website. Please note that some RIRs have attachments which are not electronically accessible. To obtain a PDF copy of an RIR attachment, please email the Knowledge and Information Management Unit.

SLV105259.E

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

1. Legislation and Effectiveness
1.1 Law Banning Criminal Gangs, Bands, Groups, Associations and Organizations

In September 2010, the government enacted the Law Banning Criminal Gangs, Bands, Groups, Associations and Organizations (Ley de Proscripción de Maras, Pandillas, Agrupaciones, Asociaciones y Organizaciones de Naturaleza Criminal) (El Salvador 2010a). A translation of the Law is attached to this Response (Attachment 1). The Law was created as [translation] "a legal instrument within the constitutional framework [to] regulat[e] a ban on gangs and criminal groups" (ibid., VI). Sources indicate that the Law is based on Article 345 of the Penal Code (Noticias Aliadas 12 Nov. 2010; Diario La Página 19 Sept. 2010). According to the 2010 Decree that reformed Article 345 of the Penal Code, the previous article, which had come into force in 1997, required a [translation] "more precise formulation" to facilitate the work of the justice system and increase the penalties when the accused are members of a gang or criminal organization (El Salvador 2010b). A translation of this article is attached to this Response (Attachment 2). Sources report that, after the Law Banning Criminal Gangs, Bands, Groups, Associations and Organizations was approved, officials of the Office of the Attorney General of the Republic (Fiscalía General de la República, FGR) and the National Civil Police (Policía Nacional Civil, PNC) held a meeting to establish the criteria for its application (La Prensa Gráfica 16 Sept. 2010; Diario La Página 19 Sept. 2010) and to set the evidentiary requirements that would be needed to convict someone under it (ibid.).

A report on the application of Salvadoran laws by the FGR in criminal procedures produced by La Prensa Gráfica, a San Salvador-based daily newspaper, indicates that the Law Banning Criminal Gangs, Bands, Groups, Associations and Organizations was applied on eight occasions in 2010, twice in 2011, once in 2012, not at all in both 2013 and 2014, and once between January and June 2015 (La Prensa Gráfica 5 Aug. 2015). The report further indicates that in 2013, 1,688 cases were investigated under Article 345 of the Penal Code, and 2,472 in 2014 (ibid.). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response. Some of the arrests made by authorities and subsequent charges under anti-gang legislation, as posted on the webpage of the PNC, include the following:

- Six people were arrested in Chalchuapa [department of Santa Ana], and charged with illegal possession of firearms and for taking part in an illegal group (El Salvador 15 Jan. 2014).
- Two people were arrested in Jiquilisco, Usulután, and charged for taking part in an illegal group (ibid. 20 Dec. 2013).
- Three people were arrested in San Juan Opico, La Libertad, and charged with illegal possession of firearms and for taking part in an illegal group (ibid. 19 Dec. 2013).
• 30 people were arrested in Ayutuxtepeque and 20 more were summoned in Mejicanos [both in the department of San Salvador] and charged for taking part in an illegal group (ibid. 9 Oct. 2013).

Further information on these cases could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Without providing details, El Mundo, a San Salvador-based newspaper, quotes a specialized pre-trial judge (Juez Especializado de Instrucción) of Santa Ana as saying that the Law Banning Criminal Gangs, Bands, Groups, Associations and Organizations is not working, as [translation] "gang members who are accused of a crime admit to it in court so they can get a summary trial and a commutation of their sentence, and then go back to their territory to continue in their criminal activities" (11 May 2015). Sources report that, during a television interview broadcasted in April 2015, the Minister of Justice and Public Security (Ministerio de Justicia y Seguridad Pública), Benito Lara, expressed the view that the Law Banning Criminal Gangs, Bands, Groups, Associations and Organizations should be modified so that it could be applied [translation] "less rigorously" (Diario La Página 8 Apr. 2015; Diario Co Latino 9 Apr. 2015). Diario Co Latino, a San Salvador-based newspaper, quotes him as saying, during the same interview, that the application of the Law is [translation] "complex" and that it has become "impossible" to meet all the evidentiary requirements set by the FGR to detain a person associated with gangs (ibid.). La Prensa Gráfica quotes the Minister of Defense, David Munguía Payés, as saying that the Law Banning Criminal Gangs, Bands, Groups, Associations and Organizations is [translation] "not working well," as gang members are set free for not meeting the justice system's evidentiary requirements, "approximately a dozen" of which include that the accused has a criminal background and tattoos, and that a witness has testified that they belong to a gang (La Prensa Gráfica 3 July 2015). Further information about the evidentiary requirements for applying the Law could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

### 1.2 Special Law Against Terrorist Acts

Sources report that in April 2014, after gangs increased their attacks against security forces, the Attorney General announced that under the Special Law Against Terrorist Acts (Ley Especial contra Actos de Terrorismo), he would prosecute individuals associated with criminal groups that attack security forces (El Diario de Hoy 15 Apr. 2014; La Prensa Gráfica 16 Apr. 2014). Article 1 of the Law indicates that [translation] "the purpose of this law is to prevent, investigate, sanction and eradicate the crimes described herein, as well as all of their manifestations. These shall include the financing of such crimes and related activities which, by the manner of execution, means and methods used, provide evidence of the intention to cause states of alarm, fear or terror in the population by placing it in imminent danger or affecting the life or physical or mental integrity of persons, material goods of significant value or importance, the democratic system, the security of the State or international peace. The foregoing shall be carried out in strict adherence to the principle of the respect for human rights. In no case shall the crimes envisaged under this Law be considered political crimes or connected with political crimes or as crimes of tax evasion. (El Salvador 2006, Art. 1)

For more information on the increase in attacks against security forces, see Response to Information Request SLV105258.

Sources report that the FGR issued arrest warrants for acts of terrorism against approximately 300 gang members (DPA 17 Aug. 2015; Agencia EFE 11 Aug. 2015), on 9 August 2015 (ibid.). The website of the FGR specifies that 307 adults and one minor have been under investigation (El Salvador 18 Aug. 2015). According to sources, they have been accused of terrorism for causing a shutdown of public transportation in the last week of July 2015 [1] (DPA 17 Aug. 2015; La Prensa Gráfica 17 Aug. 2015), as well as killing police officers, soldiers and an employee of the FGR, on separate occasions (ibid.). Agencia EFE reports that as of 11 August 2015, 130 warrants had been executed against members of Mara 18 (ibid.). The website of the FGR indicates that on 14 August 2015, 112 people were arrested and put in preventive detention, while 28 were already incarcerated for other crimes (El Salvador 18 Aug. 2015). The source adds that 167 people are still at large (ibid.).

Sources report that in a 24 August 2015 ruling, the Supreme Court of El Salvador designated the Mara Salvatrucha (MS-13) and Mara 18 (M-18) as "terrorists" [2] (La Prensa Gráfica 24 Aug. 2015; BBC 25 Aug. 2015; El Diario de Hoy 24 Aug. 2015) and all the gangs and criminal organizations [translation] "who try to arrogate the exercise of the legal authorities that belong to the sovereignty of the state" (ibid.; BBC 25 Aug. 2015). According to the ruling,
"consequently, their leaders, members, collaborators, apologists and financiers are included in the concept of 'terrorists' in their various groups and forms of participation, regardless of whether such armed groups or criminal organizations have political, criminal, economic (extortion, money laundering, drug trafficking, etc.) purposes, or other purposes." (ibid.; El Diario de Hoy 24 Aug. 2015)

Sources further report that, according to the ruling, the government is not allowed to negotiate with these groups (ibid.; BBC 25 Aug. 2015). Further information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response. For more information on the MS-13 and Mara 18, see Response to Information Request SLV104900.

1.3 Law for the Reinsertion of Gang Members

Sources reported in June 2015 that the office of the President of El Salvador was to send draft legislation on the reinsertion of gang members to the Legislative Assembly in order to provide social programs to gang members who want to leave their gangs (DPA 17 June 2015; ContraPunto 16 June 2015). The law would only benefit those who had not committed any crime (ibid.; DPA 17 June 2015). Further information on the draft legislation, including its status, could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

2. Anti-gang Law Enforcement Efforts

In February 2013, the website of the Ministry of Justice and Public Security reported on the creation of an FGR anti-gang unit called the Specialized Anti-gang and Homicide Unit (Unidad Especializada de Homicidios y Antipandillas), to collaborate with the Anti-gang Unit of the PNC (Unidad Antipandillas) in the investigation of homicides and extortions committed by gangs and the prevention of such crimes (El Salvador 21 Feb. 2013). The Minister expressed the view that this FGR unit would [translation] "facilitate the coordination of the National Civil Police's efforts to combat crime" (ibid.). Agence France-Presse (AFP) indicates that the PNC's Anti-gang Unit was created a year earlier, with 500 police officers (21 Feb. 2013). According to the website of the Ministry of Justice and Public Security, the Anti-gang Unit of the PNC is called the Anti-gang Sub-direcetorate (Subdirección Antipandillas), and it celebrated its one-year anniversary in April 2013 (El Salvador 26 Apr. 2013).

On 15 April 2015, sources reported that the Ministry of Justice and Public Security had announced the creation of a new PNC unit to combat gangs, as part of the re-structuring of the PNC (Diario La Página 15 Apr. 2015; La Prensa Gráfica 15 Apr. 2015). The unit, it was announced, would have the ability to operate anywhere in the country (ibid.; Diario La Página 15 Apr. 2015) and would start operating [translation] "in the coming weeks" (ibid.). According to the Ministry of Justice and Public Security, the plan was to concentrate operations in the ten most violent municipalities, including San Salvador, Soyapango, Ciudad Delgado, Colón, Zacatecoluca (ibid.; La Prensa Gráfica 15 Apr. 2015), and, according to one source, Mejicanos and Apopa (ibid.) or, according to the other source, Santa Ana (Diario La Página 15 Apr. 2015). Diario La Página, a digital newspaper based in San Salvador, reported on 15 April 2015 that the PNC would not hire new officers to be part of this unit; rather, the [translation] "best elements" of already-existing specialized units would comprise the new unit (ibid.). According to La Prensa Gráfica, at the end of an operation, the members of the new unit would go back to their regular units (La Prensa Gráfica 23 Apr. 2015). The source adds that the new unit would not receive other funds than those allocated to each separate unit that would participate in its operations (ibid.).

Later in April, sources reported that the new police force was called the National Mobile Battalion (Fuerza Móvil Nacional, FMN), with the nickname [translation] "cleaning battalion" (ContraPunto 30 Apr. 2015; La Prensa Gráfica 23 Apr. 2015). The FMN is composed of PNC officers of the Operations Tactical Unit (Sección Táctica Operativa, STO), the Police Reaction Unit (Grupo de Reacción Policial, GRP), the Public Order Maintenance Unit (Unidad de Mantenimiento del Orden, UMO), the Special Police Operations Unit (Grupo de Operaciones Policiales Especiales, GOPES), the Anti-gang Intervention Unit (Grupo de Intervención Antipandillas, GIAP), and members of the Armed Forces (ibid.; ContraPunto 30 Apr. 2015). The FMN can be [translation] "activated" in cases of attacks against members of the PNC, the FGR, the Supreme Court of Justice, the Armed Forces, and their families, as well as when there is [translation] "excessive violence" in the country (ibid.; La Prensa Gráfica 23 Apr. 2015).

Sources report on the creation of 3 army battalions to combat gangs, known as Special Reaction Forces (Fuerzas Especiales de Reacción, FER), with 200 troops each (AFP 28 July 2015; ContraPunto 12 May 2015). ContraPunto, a digital newspaper based in El Salvador, quotes the Vice-president of El Salvador as saying that as of May 2015, these battalions did not have a start date, but that the government estimated that they would become operational in June 2015 (ibid.). Further information on the implementation of the FER could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.
2.1 Effectiveness

On 11 September 2014, the website of the FGR indicated that its anti-gang unit had raided the Izalco penitentiary and seized 170 cell phones, 54 SIM cards, 38 cell phone batteries, and 5 tablets, among other objects (El Salvador 11 Sept. 2014). According to ContraPunto, the FMN, with 150 police officers and 50 military troops, apprehended 34 alleged gang members on 30 April 2015 in Soyapango (ContraPunto 30 Apr. 2015). On 2 May 2015, La Prensa Gráfica reported that within three days of its implementation, the FMN had apprehended over 130 gang members, mainly in Soyapango, Mejicanos, Apopa, San Marcos, and Ahuachapán (La Prensa Gráfica 2 May 2015). The same source states that according to PNC officials with the FMN, three gang members with arrest warrants for homicide were arrested on 1 May 2015 (ibid.). On 30 June 2015, La Prensa Gráfica reported that the anti-gang unit of the PNC had arrested 47 gang members, whose group is accused of being behind 80 percent of the crimes committed in the municipality of Ilobasco.

Information on convictions under the Law Banning Criminal Gangs, Bands, Groups, Associations and Organizations could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

Note

[1] For more information on the shutdown of public transportation in the last week of July 2015, see Response to Information Request SLV105258.

References


——. 2010a. Ley de Proscripción de Maras, Pandillas, Agrupaciones, Asociaciones y Organizaciones de Naturaleza Criminal (Law Banning Criminal Gangs, Bands, Groups, Associations and Organizations). Translated
Additional Sources Consulted

**Oral sources:** El Salvador – Fiscalía General de la República, Policía Nacional Civil.

**Internet sites, including:** 24 Horas Chile; Agencia Proceso; Al Jazeera; Amnesty International; ecoi.net; El Faro; El País; El Salvador – Academia Nacional de Seguridad Pública, Corte Suprema de Justicia, Ministerio de Justicia y Seguridad Pública, Ministerio de la Defensa Nacional, Policía Nacional Civil, Unidad Técnica Ejecutiva del Sector de Justicia; Freedom House; InformateSV; InSight Crime; International Crisis Group; Jane's Terrorism and Security Monitor; La Gaceta; Latin American Herald Tribune; La Tribuna; Organization of American States; United Nations – Office on Drugs and Crime, Refworld, ReliefWeb; United States – Central Intelligence Agency, Department of the Treasury, Department of State, Department of the Treasury, Embassy in San Salvador; Universidad...
Centroamericana "José Simeón Cañas" – Instituto Universitario de Opinión Pública; Washington Office on Latin America.

**Attachments**


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