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Responses to Information Requests

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13 July 2011

SLV103773.E

SLV103773.E

El Salvador: Anti-gang law enforcement efforts, including anti-gang legislation (July 2010 - June 2011)
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

Anti-gang Legislation

The Law Banning Criminal Gangs, Bands, Groups, Associations and Organizations (*Ley de Proscripción de Maras, Pandillas, Agrupaciones, Asociaciones y Organizaciones de Naturaleza Criminal*) was approved on 1 September 2010 by 78 out of 84 Legislative Assembly members (IHS Global Insight 6 Sept. 2010; NotiCen 14 Oct. 2010). NotiCen, a University of New Mexico news service covering Latin America (ibid. n.d.), notes that the anti-gang law "went into effect" on 19 September 2010 (ibid. 14 Oct. 2010). The new law makes youth gangs and "extermination groups," or death squads (ibid.), illegal (IHS Global Insight 6 Sept. 2010). It allows the police to arrest "anyone suspected of membership" in a gang, "even if the person has committed no other crime" (NotiCen 14 Oct. 2010). It also prohibits the provision of financial support to the gangs (ibid.; IHS Global Insight 6 Sept. 2010). The law is available as an attachment to this Response.

According to a news item on the website of the Salvadoran Legislative Assembly, a reform of Article 345 of the Penal Code defines organized crime in accordance with the anti-gang law (El Salvador 31 Aug. 2010). *El Mundo*, a media source based in San Salvador, notes that the revised Penal Code came into effect on 20 October 2010 (14 Dec. 2010). It is directly related to Article 1 of the anti-gang law, which defines the members of gangs, *maras*, and other organizations (*El Mundo* 14 Dec. 2010). The reformed Article 345 identifies what [translation by the Translation Bureau] "will be considered as illicit groups" and specifies that this includes all the groups mentioned in the *Law Banning Criminal Gangs, Bands, Groups, Associations and Organizations* (El Salvador 2010, Art. 1). The text of the Penal Code Reform law is available as an attachment to this Response.

Reaction to the anti-gang law

In its *Latin American Special Report* for 2010, Latinnews.com reported that gangs responded to the anti-gang law on 6 September 2010 with "[a] wave of threats against bus drivers and operators through pamphlets and phone calls urging buses not to operate, or risk the driver being killed and the bus burned" (2010, 5). The next day, 40 to 60 percent of bus services were halted (Latinnews.com 2010, 5). That same day there were also "three attacks and three arrests" (ibid.). Inter Press Service (IPS) similarly reported that between 7 and 9 September 2010, the bus service "strike, which was ordered and enforced by the gangs" to protest the new law, partially stopped bus service in San Salvador, and resulted in one person being killed, more than eighty arrested, and three buses destroyed (21 Sept. 2010).

El Salvador's human rights ombudsman, Oscar Luna, cautioned people not to expect the anti-gang law to solve the gang problem (NotiCen 14 Oct. 2010; *Diario Co Latino* 21 Sept. 2010; *La Página* 20 Sept. 2011). The ombudsman also added that

the law doesn't spell out clearly how exactly we're supposed to identify someone as a gang member, since things like tattoos and clothing style aren't reliable indicators. That's something that could hinder the effectiveness of the law. (NotiCen 14 Oct. 2010)

ContraPunto, a Salvadoran electronic newspaper, quotes the coordinator of the Public Security and Penal Justice program at the Foundation for Studies of the Application of the Law (Fundación de Estudios para la Aplicación del Derecho, FESPAD), as stating that [translation] "the law by itself will neither prevent nor combat crime" (20 Sept. 2010). He also added that [translation] "if we do not strengthen the institutions so that they are able to suppress crime in a more effective way, no matter how many laws are created, good or bad, they will not work" (*ContraPunto* 20 Sept. 2010).

Other Anti-gang Measures

ContraPunto noted that, in addition to the anti-gang legislation, President Funes has initiated a number of measures to combat crime in El Salvador, including the deployment of the army to assist the National Civil Police (Policía Nacional Civil, PNC) (1 June 2011). The media source points out that the Special Law for the Withdrawal and Rehabilitation of Gang Members, Maras, Groups and Organizations of a Criminal Nature (*Ley Especial de Retiro y Rehabilitación de Miembros de Pandillas, Maras, Agrupaciones y Organizaciones de Naturaleza Criminal*) complements and is mentioned in the anti-gang law, providing gang members with the opportunity to [translation] "re-enter society" (*ContraPunto* 1 June 2011). However, the legislation has yet to reach the Legislative Assembly, and President Funes did not refer to it during a speech before the Salvadoran Congress on the occasion of his second year in office (*ContraPunto* 1 June 2011).

Implementation

On the day the new anti-gang legislation came into force, *El Porvenir*, a Mexican news source based in Monterrey, reported that the PNC and the Attorney General's Office (Fiscalía General de la República, FGR) announced their readiness to implement the new law (19 Sept. 2010). However, they also pointed out that the results of the legislation would [translation] "not come very fast," and that, instead of conducting large-scale raids, they would [translation] "concentrate on exhaustive investigations" (*El Porvenir* 19 Sept. 2010). The PNC director added that the police would concentrate on [translation] "reinforcing investigations that would provide evidence of membership in the maras, as well as monitor the suspects" (*ibid.*).

In December 2010, *El Mundo* reported that in the three months after the government had passed the anti-gang legislation, the new law had not been used to prosecute any cases (14 Dec. 2010). The Attorney General explained that prosecutions have not yet resulted from the anti-gang law because the revisions to Article 345 of the Penal Code require a "lengthy investigation process" before cases can be prosecuted (*El Mundo* 14 Dec. 2010). The 2010 *El Mundo* article also noted that the legal cases that invoke the law had not been presented to the courts (14 Dec. 2010). In March 2011, however, *Diario Co Latino*, a San Salvador-based news source, notes that the Minister of Justice and Public Security described the anti-gang law as [translation] "positive, as it is being implemented in different cases at the national level" (10 Mar. 2011).

According to an article in *La Página*, a newspaper based in San Salvador, the Investigations Branch (Subdirección de investigaciones) [translation] "will create units in the new Central Division for Investigations to address major crimes ... and the application of the Law Banning Gangs" (*La Página* 8 Jan. 2011).

Arrests

La Página reports that the Attorney General's Office of Soyapango ran an operation with the PNC under the framework of the anti-gang law that resulted in the capture of 18 Mara Salvatrucha members for the crime of belonging to illicit groups (Agrupaciones Ilícitas) (*La Página* 18 Mar. 2011).

ContraPunto reports that in April 2011, a joint FGR and PNC operation led to the arrest of 61 gang members in Lourdes and San Miguel (14 Apr. 2011). The arrests were carried out under the anti-gang law (*ContraPunto* 14 Apr. 2011). In addition, 26 gang members were arrested in Apopa for the crime of belonging to illicit groups (*ibid.*). The Deputy Director of the PNC noted that the anti-gang law was applied after the arrests (*ibid.*).

In May 2011, *La Página* reported that the FGR's Specialized Unit Against Organized Crime arrested 34 members of the Mara Salvatrucha 13 (MS 13), which was operating on a national level in the municipalities Nueva Concepción and Chalatenango, and a week later, captured 20 more members who were operating in the Sonsonate department (26 May 2011). A lawyer from the case explained that [translation] "because of the investigations of the District Attorney, they were successful in locating and arresting [the gang members] using the reforms to Article 345 of the Penal Code" (*La Página* 26 May 2011). The reforms to Article 345 of the Penal Code [translation] "provide for very severe sentences for those that participate and plan a crime within a criminal organization, like maras or gang members" (*ibid.*).

Military and Police

El Salvador.com, a news source based in San Salvador, reports that the armed forces have 8,500 members to provide security to the public in the 29 zones with the highest number of homicides (26 Feb. 2011). Similarly, *La Página* notes that there are at least 8,500 soldiers participating in patrols on a national level (12 May 2011). *La Página* also adds that the military provides border security and provides support in controlling the entry into 21 penitentiaries (12 May 2011).

Voces, a digital news source based in San Salvador, reports the Defence Minister as stating that the deployment of 3,000 soldiers in the 29 high-crime areas has [translation] "helped to reduce the criminal activities of maras and gangs by 70 percent" (*Voces* 7 Jan. 2011). *El Salvador.com* also notes that since the army began monitoring the streets on 6 November 2009, homicide rates in the 20 most violent municipalities has started to decrease [translation] "considerably" (*El Salvador.com* 26 Feb. 2011). However, [translation] "[t]he military presence in these places forced the exodus of the gangs to areas that did not have problems with maras or even a lot of crime" (*ibid.*).

On 11 May 2011, President Funes announced the continuation of the military support provided to the PNC in public security tasks for one more year (El Salvador 11 May 2011). *Janes's Intelligence Weekly*, a defence and security information magazine produced by IHS (IHS Jane's 2 June 2009), reported the President announcing in February 2011 that an additional 1,000 PNC officers would be recruited by the end of 2011 to increase the force to 21,500 (IHS Jane's 3 Feb. 2011).

Threats against military and police

Elsalvador.com reports that from December 2010 until February 2011, there has been an increase in attacks against the military and the police, resulting in the murder of ten soldiers and at least seven policemen (26 Feb. 2011). The Minister of Defence noted that the responsible parties were captured in 60 percent of the cases of the murdered soldiers (*Elsalvador.com* 26 Feb. 2011). He also said that the gangs have had a plan in place to kill soldiers ever since the military began its operations against the gangs (*ibid.*). However, the Minister of Justice and Public Security did not see it that way, pointing out that [translation] "the investigations revealed that not all of the attacks are linked to being a police officer or soldier" (*ibid.*).

Elsalvador.com adds that, according to police sources, near the end of 2010, [translation] "gangs issued threats against police officers and their families if the government started to apply the anti-gang law" (26 Feb. 2011). The same sources said that the police authorities are not taking the necessary precautions to protect their officers (*Elsalvador.com* 26 Feb. 2011). They also say that the police authorities do not believe that there is a gang plan targeting police members and treat events as [translation] "isolated" incidents (*ibid.*).

Future Plans

An article on the Ministry of Justice and Public Security's website reported on the new projects that the President and the Security Cabinet are proposing as part of the fight against crime, organized crime, and drug trafficking (El Salvador 1 June 2011). In addition to increasing the number of police officers by 1,000, the projects include a new, more flexible plan to increase the presence of joint PNC and military groups in the country; and the creation of a commission to evaluate the cases managed by the FGR, as well as to coordinate, facilitate, and speed up the investigation and prosecution of cases and to be involved in the application of the anti-gang law (*ibid.*).

Another initiative is the implementation of compulsory military service for 5,000 youths at risk of joining a gang (*ibid.*). The Obligatory Military Service for Civil Protection program includes six months of vocational and unarmed military training (*ibid.*). The youths will live in Citizen Training Centres during their training and are expected to learn civil protection tasks (*ibid.*). *ContraPunto* notes that the legislation required for this new kind of military service, which targets youths between 14 and 17 years of age, should be drafted by 1 May 2012, with the program potentially starting in 2013 after the legislature approves it (1 June 2011).

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.

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Attachments

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