

LAW LIBRARY OF CONGRESS

EL SALVADOR

GANG VIOLENCE

Executive Summary

El Salvador has one of the highest homicide rates in the world and is among the countries in the Central American northern triangle with the most severe gang violence. To deal with the problem, the Salvadoran government responded in 2003 and 2004 with a hard-line law enforcement strategy. This policy was unsuccessful in lowering the crime rate and created some unintended negative consequences. In the opinion of some observers, this hard-line approach to gangs did not succeed because it was a police solution to a social problem. Responding to criticisms from civil society, the government adopted separate programs for prevention and rehabilitation, which have received much less attention and fewer resources than the previous approach.

In 2010, after an escalation of gang violence and related crimes, the government promulgated new, stiff anti-gang legislation. Some commentators foresee that this continuation of the repressive approach to gangs will fail unless the government commits to implementing social measures, such as opportunities for rehabilitation, education, training, employment, and reintegration into civil life. In March 2012, a gang truce was announced by the two main gangs, whose leaders asked the government for some concessions in exchange. After eight months, the truce's results are not clear and there is contradictory information about it. According to one observer, the truce is still in a "trial period."

I. Background of Gangs in El Salvador

El Salvador, like Guatemala and Honduras, has one of the most severe gang problems in Central America.¹ The Mara Salvatrucha (MS-13) and 18th Street (Barrio 18) are the main gangs in the country. The arrival of gang members deported from the United States who are highly skilled in street gang life contributed to the consolidation of the gangs in El Salvador.² The United States began deporting illegal immigrants after immigration policies changed with the passage of the Illegal Immigrant Reform and Immigration Responsibility Act (IIRIRA) of 1996. Many of them had criminal convictions for drug and/or gang-related offenses.³ In 2005,

¹ CLARE RIBANDO SEELKE, CONG. RESEARCH SERV., RL34112, GANGS IN CENTRAL AMERICA 5 (Jan. 2011).

² USAID, CENTRAL AMERICA AND MEXICO GANG ASSESSMENT 34 (Apr. 2006), http://pdf.usaid.gov/pdf_docs/PNADG834.pdf (paste URL into browser).

³ RIBANDO SEELKE, *supra* note 1, at 4-5.

the United Nations Office on Drugs and Crime (UNODC) cited gang membership totals of some 10,500 in El Salvador.⁴ The same number was estimated by the National Civilian Police, whereas the government's National Council on Public Security (Consejo Nacional de Seguridad Pública, CNSP) estimates a total of 39,000 members (22,000 in MS-13, 12,000 in 18th Street, and 5000 in other gangs).⁵

With an average of thirteen Salvadorans killed daily⁶ and approximately forty homicides per hundred thousand inhabitants,⁷ El Salvador has one of the highest homicide rates in the world and is ranked as one of the most dangerous countries in Latin America. Central American experts have suggested that 40 percent of the homicides involve a gang member as either a victim or a perpetrator. Other violent crimes that concern most Salvadorans include intrafamilial violence, robbery, extortion, and kidnapping.⁸

II. Government Efforts to Protect Citizens

A. Anti-Gang Legislation

Owing to the escalation of criminality and gang violence, President Flores granted broad powers to the National Police and Armed Forces in 2003 and also launched a major military law enforcement operation, described by the term *mano dura* (firm hand), aimed at capturing gang members throughout the country. In addition, he called for the enactment of his proposed anti-gang statute, the Ley Anti-Maras⁹ (the Anti-Gang Law, hereafter LAM), which the Legislative Assembly passed without modifications as a six-month measure in October 2003. This statute was criticized nationally and internationally for violating the country's constitution, several international treaties, and basic principles of criminal law. Ten days before the Anti-Gang Law expired, the Salvadoran Supreme Court of Justice declared the Law unconstitutional.¹⁰

On April 2, 2004 El Salvador promulgated a new, hard-line anti-gang statute entitled "Law to Combat Criminal Activities of Groups or Special Unlawful Associations,"¹¹ (LAM II).

⁴ Testimony of General Bantz J. Craddock, Commander, U.S. Southern Command, Before the Senate Armed Services Committee, 109th Cong. (Mar. 15, 2005); UNODC, May 2007, *cited in* RIBANDO SEELKE, *supra* note 1, at 5.

⁵ USAID, *supra* note 2, at 45.

⁶ *The New Anti-Gang Law Took Affect this Week*, VOICES FROM EL SALVADOR (Sept. 23, 2010), <http://voiceselsalvador.wordpress.com/2010/09/23/the-new-anti-gang-law-took-affect-this-week/>.

⁷ Discussions in August and September 2005 with funding member of the Central American Coalition for the Prevention of Youth Violence, *cited in* USAID, *supra* note 2, at 44.

⁸ *Id.*

⁹ Decreto No. 158 de 9 octubre 2003, Ley Anti Maras [Anti-Gang Law], DIARIO OFICIAL [D.O.], Oct. 10, 2003.

¹⁰ INTERNATIONAL HUMAN RIGHTS CLINIC, NO PLACE TO HIDE: GANG, STATE, AND CLANDESTINE VIOLENCE IN EL SALVADOR 37–40 (Harvard Law School, Human Rights Program, Feb. 2007), <http://www.law.harvard.edu/programs/hrp/documents/FinalElSalvadorReport%283-6-07%29.pdf>.

¹¹ Ley para el Combate de las Actividades Delincuenciales de Grupos o Asociaciones Ilicitas Especiales [Law to Combat Criminal Activities of Groups or Special Unlawful Associations], D.O., Apr. 2, 2004.

This statute was a ninety-day measure, superseded the LAM, and took effect on the day of its publication in the official gazette; that is, April 2, 2004.¹² In June 2004, the UN Committee on the Rights of the Child recommended that El Salvador “immediately abrogate” LAM II because of concerns that, like LAM, it violated the Convention on the Rights of the Child. LAM II was never ruled unconstitutional, but many judges declined to apply it while it was in force.¹³

In August 2004, the newly elected president, Antonio Saca, announced a new strategy to deal with gangs known as “Super Mano Dura” (Super Firm Hand), which was a combined approach of law enforcement and gang violence prevention.¹⁴ The strategy consisted of a package of anti-gang reforms amending the Penal Code,¹⁵ the Code of Criminal Procedure,¹⁶ the Juvenile Offenders Law,¹⁷ and the Law on Surveillance and Control of Execution of Measures to Juvenile Offenders (a penitentiary statute).¹⁸ As noted by Clare Ribando Seelke, “These reforms enhanced police power to search and arrest suspected gang members and prescribed stiffened penalties for convicted gang members, although they provided some protections for minors accused of gang-related crimes.”¹⁹

In response to criticisms from civil groups, the government sponsored two social components to its anti-gang initiative, consisting of youth prevention and rehabilitation plans, known as “Mano Amiga” (Friendly Hand) and “Mano Extendida” (Extended Hand). “Mano Amiga” is a prevention strategy for youth at risk. It aims at keeping youths from joining gangs, participating in delinquent activities, leaving school, or becoming drug abusers. “Mano Extendida” provides rehabilitation assistance to former gang members.²⁰ These two plans have been underfunded, receiving only 20 percent of the available government funding for combating gangs, while law enforcement obtained a larger share of the funding.²¹

Between mid-2004 and late 2005, the Mano Dura initiative enabled the police to incarcerate a large number of gang members, including about 14,000 youths. These detainees provided law enforcement officials with intelligence that allowed them to plan better anti-gang strategies. Most of the youths arrested under the Mano Dura regime were later released for lack of criminal evidence against them.²² According to some law enforcement officials and representatives of civil organizations, the Mano Dura plans were ineffective or even counter-

¹² *Id.* arts. 36, 37.

¹³ INTERNATIONAL HUMAN RIGHTS CLINIC, *supra* note 10, at 41–42.

¹⁴ *Id.* at 42–43.

¹⁵ Decreto No. 393, Reformas al Código Penal, D.O., July 30, 2004.

¹⁶ Decreto No. 394, Reformas al Código Procesal Penal, D.O., July 30, 2004.

¹⁷ Decreto No. 395, Reformas a la Ley del Menor Infractor, D.O., July 30, 2004.

¹⁸ Decreto No. 396, Reformas a la Ley de Vigilancia y Control de Ejecución de Medidas al Menor Infractor, D.O., July 30, 2004.

¹⁹ RIBANDO SEELKE, *supra* note 1, at 10.

²⁰ USAID, *supra* note 2, at 54.

²¹ *Id.* at 55.

²² RIBANDO SEELKE, *supra* note 1, at 11.

productive.²³ For instance, gang incarceration has overcrowded prisons, and some youths who were mistakenly incarcerated have been recruited as gang members while in prison. There have been several inmate deaths due to intergang violence within the prisons. It has been reported that extrajudicial killings by vigilante gangs occurred after Mano Dura went into effect; and the response of the gangs to Mano Dura has been a change in their behavior to avoid detection.²⁴ It has been pointed out that, with the exception of the Mano Amiga and Mano Extendida plans, El Salvador has not developed an alternative plan to the 2003 Mano Dura strategies to deal with the gang situation.²⁵

B. Current Law

In 2010, El Salvador was confronted with an escalation of gang violence and associated illicit activities, among them drug and arms smuggling, extortion, and kidnapping. At that time there were an estimated 20,000 gang members, 7000 of whom were already in jail. Their way of operation is exemplified by a brutal incident that occurred on June 20, 2010, when a bus with passengers on board was set on fire, killing 17 people.²⁶ The 18th Street gang was allegedly responsible for the massacre.²⁷ In response to this situation, the government of President Carlos Mauricio Funes sent a draft of a new anti-gang law to the Legislative Assembly.²⁸ The new law, entitled Law Prohibiting Maras, Gangs, Groups, Associations and Organizations of a Criminal Nature (Anti-gang Law of 2010) was approved by the Legislative Assembly on September 1, 2010 and took effect eight days after its publication in the official gazette, on September 10, 2010,²⁹ after MS-13 and the 18th Street Gang organized a 72-hour public transportation strike demanding the law be rescinded.³⁰

The Anti-Gang Law of 2010 complements the provisions of article 345 of the Penal Code, which outlaws gangs and membership in them. Any legal act performed as part of a gang's criminal activity by its members or others on its behalf is to be considered unlawful and therefore generates the corresponding criminal, civil, and administrative responsibilities for its promoters, creators, organizers, leaders, members, partners, financiers and anyone who, knowing

²³ INTERNATIONAL HUMAN RIGHTS CLINIC, *supra* note 10, at 45.

²⁴ RIBANDO SEELKE, *supra* note 1, at 11.

²⁵ INTERNATIONAL HUMAN RIGHTS CLINIC, *supra* note 10, at 45.

²⁶ VOICES FROM EL SALVADOR, *supra* note 6.

²⁷ *El Salvador Passes Anti-‘Mara’ Bill, Maras Retaliate with death threat*, DIÁLOGO (Sept. 13, 2010), http://www.dialogo-americas.com/en_GB/articles/rmisa/features/regional_news/2010/09/13/feature-01.

²⁸ *El Salvador estrena su “ley antimaras”*, LA PRENSA (Sept. 20, 2010), <http://www.laprensa.com.ni/2010/09/20/internacionales/38345-salvador-estrena-ley-antimaras>.

²⁹ Decreto No. 458, Ley de Proscripción de Maras, Pandillas, Agrupaciones, Asociaciones y Organizaciones de Naturaleza Criminal, D.O., Sept. 10, 2010, <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-proscripcion-de-maras-pandillas-agrupaciones-asociaciones-y-organizaciones-de-naturaleza-criminal/?searchterm=None>.

³⁰ DIÁLOGO, *supra* note 27.

its illegality, receives benefits either directly or indirectly.³¹ Persons convicted of these crimes may not exercise political rights or receive state benefits.³²

The Law provides for the extinction of the ownership, control, and possession of property, rights, gains, benefits and cash that were acquired as part of a gang's criminal activity by its members, promoters, creators, organizers, directors, employees, financiers, and beneficiaries.³³ The Law empowers the court to order the freezing of bank accounts and the seizure of assets related to a gang's crimes.³⁴

In order for the Anti-Gang Law of 2010 to be effective, a reform of article 345 of the Penal Code was promulgated. The amended article 345 establishes a series of stiff penalties for gang-related crimes and activities; ranging from three to twenty years imprisonment. If the perpetrator or person involved is a public authority or servant, the penalty shall be increased up to one third of the maximum and absolute disqualification from office for twice as long.³⁵

III. Anti-Gang Law Effects

In a university thesis by Marianella Botta Serrano on gangs in El Salvador entitled "Impact of the Anti-Gang Law on the Phenomenon of Gangs in El Salvador, 2013-2010 Study Period,"³⁶ the author analyzes the Anti-Gang Laws of 2003, 2004, and 2010, and comments that with the implementation of the Anti-Gang Laws, both government authorities and civil society expected a change in the situation of violence and insecurity brought on by the gangs. However, the effect of the statutes did not entirely meet the laws' objectives, although the initial results satisfied the residents in neighborhoods where gangs had great influence as well as civil society in general. The author adds that one of the reasons why the anti-gang laws did not produce the expected effects is that they are a police solution to a social problem. Successfully addressing the gang phenomenon in El Salvador and throughout Central America requires more than repressive measures by the state. In particular, it requires the political will to invest in rehabilitation and retraining programs. The author further states that it is imperative that the government of El Salvador commit to implementing such social measures, which should include opportunities for access to education and employment, and that these programs should become a government priority. According to the author, there are some rehabilitation programs for ex-gang members who desire to reintegrate into civilian life; most of which are supported by NGOs and religious institutions like the Catholic Church and various Christian churches. One such program, called "Challenge 100" (Desafío 100), is conducted by the Fundasalva Foundation and

³¹ Decreto No. 458, arts. 1, 2, D.O., Sept. 10, 2010.

³² *Id.* art. 3.

³³ *Id.* art. 4.

³⁴ *Id.* arts. 4, 5.

³⁵ Decreto No. 459, Reforma al Código Penal, D.O., Oct. 12, 2010, <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/reformase-el-codigo-penal-en-su-art.-345-referido-a-las-agrupaciones-ilicitas>.

³⁶ Marianella Botta Serrano, *Incidencia de la ley Anti Maras en el Fenómeno de las Maras en El Salvador* [Impact of the Anti-Gang Law on the Phenomenon of Gangs in El Salvador], Período de Estudio: 2003–2010 (Universidad del Rosario, Bogotá, 2012), <http://repository.urosario.edu.co/handle/10336/3869>.

has the following components: (1) identification and selection of participants, (2) removal of tattoos, (3) rehabilitation and counseling, (4) divulgation, (5) job-training scholarships and internships, (6) reemployment and monitoring, (7) support for institutions, and (8) systematization.³⁷

A blog commentary on the Anti-Gang Law of 2010 states that while it was certainly necessary to attack the problem of gangs with appropriate enforcement measures, it is imperative that the preventive measures be emphasized in order to eliminate the gangs' sustenance, which is excluded and at-risk youth. The Anti-Gang Law does not address the fundamental problem that led to the grouping of youths in this type of structure, i.e., poverty, exclusion, lack of opportunities, lack of access to quality education, and total lack of youth support.³⁸

The USAID Central American and Mexico Gang Assessment lists some socio-economic factors that encourage youths to join gangs, such as crowded living conditions, lack of public space for recreation and sports, high unemployment rates, intrafamilial violence, proliferation of guns, and easy access to drugs and alcohol.³⁹

IV. Gang Truce

A gang truce was brokered in March 2012, when two leaders of rivals MS-13 and 18th Street, Aristides Umanzor and Victor García, who were locked up together in a maximum security prison on the outskirts of San Salvador, issued a joint statement announcing the end of violence and of the recruitment of new members, especially near schools in poor neighborhoods.⁴⁰ García, the leader of the 18th Street gang, who is serving a sentence of twenty-eight years in prison, also announced that “[w]e will not demobilize the 18th Street gang, and we will continue to be gang members, but we will be renouncing crimes as we find space for reinsertion into society and work.”⁴¹ In exchange for the truce, Umanzor and García asked for better conditions for jailed gang leaders who manage their operations from jail. The government transferred thirty leaders of each gang from Zacatecoluca, a jail with maximum security measures, to a regular jail, where they would give orders to their comrades outside of jail to continue the truce.⁴² Because the initial results were positive, as indicated by a decline in homicides, the negotiations continued. In a meeting gang representatives and the OAS discussed issues of the truce, and the gang leaders presented a list of demands to the government. Botta Serrano states that as this truce is so far in a “trial period,” it is not possible to report the final

³⁷ *Id.* at 28–31.

³⁸ *La Ley Antimaras es repression necesaria, pero no es la solución* [Anti-gang Law Enforcement is Necessary, But Not the Solution], HUNNAPUH (Sept. 2010), <http://hunna.org/la-ley-antimaras-es-represin-necesaria-pero-no-es-la-solucion/>.

³⁹ USAID, *supra* note 2, at 34.

⁴⁰ Nelson Rentería, *El Salvador: Tregua Entre Maras Rinde Frutos* [El Salvador: Truce Between “Maras” Bears Fruit], EL UNIVERSAL (July 16, 2012), <http://www.eluniversal.com.mx/internacional/78645.html>.

⁴¹ *Id.*

⁴² Mike Allison, *El Salvador: Historic Gang Truce Brings Mixed Results*, THE CHRISTIAN SCIENCE MONITOR (Sept. 10, 2012), <http://www.csmonitor.com/World/Americas/Latin-America-Monitor/2012/0910/El-Salvador-Historic-gang-truce-brings-mixed-results>.

results, but only those apparent in the few months of its application.⁴³ The truce is currently in its eighth month and has lasted longer than expected, and there is contradictory information about its results. For instance, an article posted on the web in September 2012 states that “[m]urders, disappearances, extortion, and robberies by gangs continue” and that “people can’t even agree if the numbers have improved or remained unchanged. While the government supports figures that show a decrease in each category, some outside analysts are unconvinced and say that the truce is simply a farce, with gangs adopting new approaches, including making more frequent use of disappearances.”⁴⁴ Another article posted in October 2012 states that “[h]omicide rates are down to five from more than 14 daily prior to the truce, and now the government is exploring ways to bring more permanence, involving more stakeholders and approaching the truce as a ‘peace process’ that will include initiatives addressing the economic and social roots of the problem.”⁴⁵

V. Concluding Remarks

El Salvador has adopted a hard-line law enforcement strategy to deal with gang violence. Tough legislation promulgated in 2003 and 2004 is not considered to have been effective. Responding to a further escalation of gang violence and crimes, the government promulgated new tough legislation in 2010. According to some observers, these enforcement measures will not succeed unless they are accompanied by social measures to address the problems that have led the youths into gang life, which are poverty and lack of education and opportunities, among other factors. The final results of a gang truce initiated in March 2012 are still not clear.

Prepared by Norma C. Gutiérrez
Senior Foreign Law Specialist
December 2012

⁴³ BOTTA SERRANO, *supra* note 36, at 33–35.

⁴⁴ Allison, *supra* note 42.

⁴⁵ Lauren Villagram, *Can a Gang Truce in El Salvador Open the Door to Lasting Peace?*, THE CHRISTIAN SCIENCE MONITOR (Oct. 24, 2012), <http://www.csmonitor.com/World/Americas/2012/1024/Can-a-gang-truce-in-El-Salvador-open-the-door-to-lasting-peace>.