

Central American Gang-Related Asylum

A RESOURCE GUIDE • MAY 2008



Why a Resource Manual on Central American Gangs?

This resource guide, prepared by the Washington Office on Latin America (WOLA), aims to give attorneys, immigrant activists, policymakers and human rights workers the facts they need to understand the phenomenon of gangs in Central America and gang-related asylum cases. Growing numbers of people from El Salvador, Guatemala and Honduras are seeking asylum in the United States due to gang-related persecution. With this manual, drawing on our expertise on gangs in Central America, we offer the most current information available on gangs to assist advocates who represent people seeking asylum because they were victims of gang violence, were formerly involved with gangs and fear reprisal, or both. The information offered in this manual can be used to support arguments for such asylum claims. With this guide, WOLA also aims to encourage attorneys, immigrant advocates, and policymakers to offer accurate portrayals of Central American gangs in asylum hearings.

In the following pages you will find inserts devoted to describing the gang phenomenon in El Salvador, Honduras and Guatemala. Additionally, the resources guide and the WOLA webpage (www.wola.org) contain citations and links to valuable reports and papers (some in Spanish and some in English) about the phenomenon of Central American gangs.

Central American Gangs: A Brief History¹

Central American gangs, known as *maras* in Central American and Mexican Spanish, are a phenomenon that emerged from the historical context of the civil and military conflicts of the 1980s in Guatemala, El Salvador and Honduras.² The term “Central American gangs” usually refers specifically to two gangs that developed in Los Angeles immigrant communities during the 1980s: *Mara Salvatrucha* or MS-13 and *Barrio Dieciocho* or 18th Street Gang.

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As Central Americans fled their native countries to escape the various civil conflicts that characterized the region during the end of the 20th century, large numbers of these refugees made their way to the Los Angeles area and into what had previously been Mexican and Mexican-American-dominated neighborhoods where they encountered Mexican and Mexican-American gangs.³ In part to defend themselves, some Central American refugee youth formed their own gangs and “clikas” (sub-groups) based on national identities, like *Mara Salvatrucha*, which was originally linked to specifically Salvadoran immigrants. Others joined already existing gangs like the 18th Street gang.

While the origin of the Central American gangs is linked to confrontations with Chicano gangs in Los Angeles, it is important to stress that the literature about the emergence of gangs suggests that no single factor is likely to cause gangs to develop in a given community. It is likely that Chicano gangs were one influence among many that led young people to associate with gangs, along with the lack of parental supervision, poor policing in communities, immigrants’ feelings of alienation, lack of opportunity, and social exclusion.⁴

Once gangs had emerged in Central American immigrant communities in the United States, the arrest and deportation of gang members who were not U.S. citizens to their country of origin helped spread the names, style and influence of *Mara Salvatrucha* and the 18th Street gang back to Central America. Beginning in the mid-1990s, the United States adopted a more aggressive approach to deportation, identifying and deporting not only undocumented and legal non-citizen convicts as they completed federal prison sentences, but also undocumented and non-citizen felons as they completed sentences in state and local prisons.⁵ The deportation of gang-involved Central Americans from the United States complicated an existing local gang phenomenon in Central America, where governments had few resources for prevention and intervention programs for at-risk youth or incarceration and

rehabilitation programs for serious criminals. After arriving in the country to which they had been deported, with few networks and sometimes little or no knowledge of Spanish, many gang members joined forces to establish gangs or joined existing gangs in their home countries, either in prison or on the streets. These deportee gang members, with U.S. gang experience, are believed to have been a key catalyst for the evolution of *Mara Salvatrucha* and 18th Street gang into the dominant gangs that they are today in El Salvador, Guatemala, and Honduras.

Meanwhile, with few economic opportunities in the aftermath of the wars of the 1980s and early 1990s, many Central Americans continued to migrate to the United States. Many have come without documents and are thus at risk of deportation. Nationally, Central Americans are estimated to make up 20 percent of the 11.5 million undocumented immigrants residing in the United States.⁶ The result is a growing pool of youth at risk of joining gangs both in the United States and in Central America. It is in this transnational context that the gangs *Mara Salvatrucha* and the 18th Street (*Barrios 18*) have emerged in Los Angeles, El Salvador, Guatemala, Honduras, the Washington, D.C. area and elsewhere in the United States.

Central American Gangs Today⁷

In recent years, Central American youth gangs have caught the attention of the media, national governments, academic researchers and civil society at large. Reliable reports by academics on the situation in the so-called Northern Triangle of Central America (Guatemala, El Salvador and Honduras) portray a grave situation where, in the face of crack-down policies, gangs have become better organized and more dangerous.⁸ In these three countries, extortion is rampant, prisons are overflowing and homicide rates are soaring. Gangs are one part of this problem; drug trafficking and organized crime are others. A general climate of impunity contributes to the

problem. A recent UN study suggested that only about 4 percent of murders in El Salvador result in criminal conviction.⁹

Fundamental to the problem, sensationalist media coverage has spread misinformation about the gangs' level of organization, structure, and transnational links. The gangs *Mara Salvatrucha* and 18th Street are a serious threat to security in the Northern Triangle of Central America, but despite media coverage to the contrary, rigorous academic research shows that Central American gangs do not have a presence in Mexico and that their level of sophistication varies significantly from city to city in the United States. The most current research coming from the region shows that while gangs are a growing and complex problem, the *transnational* criminal character of youth gangs is quite limited.¹⁰

WOLA's Expertise on Central American Gangs

WOLA's position on gang policy and the Central American gang phenomenon more broadly is based on our own research in the region, as well as on our participation in the Transnational Network for Research on Gangs. The Transnational Network is a group of researchers, coordinated by the Center for Inter-American Studies at the Autonomous Technological Institute of Mexico, studying youth gangs in El Salvador, Guatemala, Honduras, Nicaragua, Mexico, and the Washington, D.C. area. In 2006-2007, each researcher in the network produced a diagnostic of the gang phenomenon in his or her region. The network met regularly over the year and released a comparative research report on Central American gangs in early 2007.¹¹

The violence associated with Central American gangs in El Salvador, Guatemala and Honduras has become more organized and more brutal since the implementation of repression-only policies in 2003 and 2004.¹² Evidence-based research shows that targeted violence committed by gang members is on the rise in El Salvador, Guatemala and Honduras.¹³ After receiving

Throughout this document the term **"Mano Dura"** is used to refer to repressive government policies and law enforcement approaches whose primary aim is to indiscriminately incarcerate youth gang members. These policies often violate civil liberties and human rights.

direct threats from members of *Mara Salvatrucha* or 18th Street, some of the Central Americans who have been targeted, fearing for their lives and the lives of their families, are fleeing their homelands and seeking asylum in the United States.

Our research demonstrates that youth gangs are a serious problem in specific communities in the United States, especially in immigrant communities, where violence is more prevalent. In Central America gangs have evolved into a country-wide threat to citizen security that requires a government response. At the same time, our research demonstrates that youth gangs are not uniform. Their structure, make-up, size, and level of involvement in criminal activity vary greatly from city to city and country to country. Gangs that call themselves *Mara Salvatrucha* in Washington, for example, behave very differently from those in Los Angeles and require different kinds of community and police interventions. Gangs differ, and community, police, and prosecutorial responses to them must vary accordingly.

WOLA's Position on Mano Dura Policies

Since the early 1990s, WOLA has been monitoring and supporting police reform processes in Central America. We have published memos and reports on police reform in El Salvador, Guatemala, Honduras, and Haiti, and we have coordinated research on the issue by regional groups.¹⁴ In response to the growing violence in the region, often attributed to the emergence of Central American youth gangs, and the resulting public demand for

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security, governments in the region have implemented authoritarian approaches, leading to backsliding by the Guatemalan, Salvadoran and Honduran governments in their police reform processes.

The Central American state response to gangs has involved the implementation of “zero tolerance” policies with an almost exclusively enforcement-focused approach, along with deployments of joint police-military patrols in response to gangs. These approaches, known as “*mano dura*,” have been both ineffective and counterproductive. In reaction to these policies, WOLA emphasizes effective, rights-respecting policing, due process, the human rights of Central American youth, and the need for more comprehensive and prevention-oriented approaches to gangs. WOLA opposes the “*mano dura*” or “iron fist” repressive approaches to the problem of youth gang violence in Central America. The policies often undercut human rights and due process protections and do not reduce levels of violence. WOLA promotes balanced, multisectoral approaches to addressing the problem of gang violence at the local, national and transnational levels.¹⁵ We believe that the U.S. and Central American governments should use comprehensive approaches to gangs that are tailored to specific local communities.¹⁶

Mano Dura Policies: An Ineffective Response

Despite reports that heavy-handed policies have failed to reduce gang-related violence and are contributing to overall increasing levels of violence, Central American governments continue to respond with suppression-focused tactics. Additionally, the governments of El Salvador, Honduras, and Guatemala have shown themselves to be unable and unwilling to effectively protect their citizens from gang-related persecution. For example, since the implementation of *mano dura* strategies to combat gangs in El Salvador in 2003, homicide rates have risen from 33 per 100,000 in 2003 to 56 per 100,000 in 2006.¹⁷ (The U.S. homicide

rate was 5.5 per 100,000 in 2004, according to FBI figures.) Even the director of the Salvadoran National Civilian Police has stated publicly that *mano dura* has failed, yet the heavy-handed enforcement policies have not changed substantially.¹⁸ Sensationalist media coverage of the gangs contributes to a climate of fear in which the threat of gangs, though serious, is over-emphasized. There is increasing evidence that other groups and individuals are responsible for the greatest proportion of the violence.¹⁹ Repression-only, gang-focused responses to violence give citizens a sense that the government is responding to the problem, when in fact, research shows that the repression-only efforts are making the gang problem worse and do not address other sources of violence (i.e. organized crime, vigilante groups, police brutality). Central American governments have thus far shown themselves unable and/or unwilling to respond effectively to the gang problem, and in fact their approaches have exacerbated the gang phenomenon.

In a sociological sense, *mano dura* strategies have had several negative effects. They have positioned gang members and police officers against one another so sharply as enemies that there is little space for community policing or a building of trust between youth and the police. The policies have led many gangs and gang cliques to become more clandestine and more organized in order to protect themselves from the police. The mirror image of this behavior is that police, feeling they have lost control, have become both more fearful and more aggressive in their responses to the gangs. *Mano dura* policies have been ineffective in reducing crime and violence, and they have had the effect of increasing tension between gang members and police, turning youth who appear to be involved with gangs into targets for the police, and making police officers the target of gangs.

Additionally, repression-only gang policies in Honduras, Guatemala and El Salvador have resulted in the arrest and detention of thousands of youth in already overburdened prison systems. Prison conditions have deteriorated and there have been reports of

mass inmate deaths or killings in prisons in Guatemala and Honduras. Gang members report that it is from *within* the prison system that the most powerful gang leaders work. Young gang members enter prison and when they leave they have more knowledge and expertise in gang activities than when they entered. Additionally, the focus on gangs as the cause of violence in the region has led politicians to pay less attention to other significant causes of crime and violence such as corruption, organized crime and trafficking.

WOLA's Position on Gang-Related Asylum

Based on our research and reports by colleagues in the region, we believe that many gang-related asylum cases are legitimate claims by individuals who have been persecuted by Central American gangs. These individuals usually fall into one of two categories: 1) they were formerly involved in a gang and will be persecuted for leaving the gang by their former gang-mates, or by rival gang members, if they return to their home country; or 2) they are not personally involved in gangs but have family members who are, or they live in areas where they are unable to avoid gangs and have fled their home country due to persecution by the gangs and fear for their lives. WOLA supports the protection of the human rights of any non-gang involved individual who has been persecuted by gang violence. WOLA also supports the protection of the human rights of formerly gang-involved individuals who seek asylum in the United States and who are frequently victims of gang violence as well as victims of a legal system in which their rights cannot be guaranteed.

The Paradox of Defending Gang-Related Human Rights

Working to help individuals gain asylum based on gang-related persecution and promoting constructive policy responses to gangs both in the United States and in Central America can seem paradoxical. WOLA defends gang members' rights to

due process and rehabilitation and criticizes exaggerated and inaccurate portrayals of gangs, yet also supports asylum seekers' right to flee very real gang violence in Central America.

WOLA started its Central American Youth Gangs Program out of concern for the human rights of Central American youth, including gang members and those treated like gang members, in the face of indiscriminate *mano dura* policies. WOLA's work on gangs has been concerned with the defense of those youth who, even if they are violent, deserve a chance at rehabilitation and fair treatment by the police and the legal system. The sensationalization of gangs and gang violence in the media and the habit of Central American governments of blaming nearly all violence on gangs while neglecting or minimizing the importance of other sources of violence – including that waged by rogue police and vigilante forces – is a significant part of the problem. Inaccurate media coverage and government statements about gangs work to justify counter-productive gang policies like *mano dura* that are both inhumane and have not decreased violence levels. In defense of gang members, perceived gang members, and other people targeted by *mano dura* strategies, WOLA has advocated for fair and accurate portrayals of gangs and gang activity.

So, on the one hand, WOLA supports the asylum claims of forcibly recruited gang members, former gang members, and perceived gang members who will be persecuted by gangs if deported from the United States. On the other hand, through our work in the region and our involvement in the Transnational Network of Gang researchers, we know that gang-related violence in the Northern Triangle has become a serious threat to the safety and security of citizens. WOLA supports asylum for Central Americans such as police officers and other citizens who flee persecution by gangs in their countries. We have provided expert testimony and background information on the seriousness of the gang phenomenon in order to support arguments that the gangs can be very dangerous and

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that they target individuals and families based on their social group, political affiliation and religious beliefs.

Accurate Portrayals of Gangs in Asylum Cases

WOLA encourages advocates to use balanced portrayals and rigorous academic research on the topic of Central American gangs when making legal arguments. WOLA advocates this because the use of sensationalist images and language to portray these gangs does not accurately explain the range of behaviors of individuals involved in gangs, or the complexity of the identity issues that make effectively responding to the gang phenomenon harder than simply locking up gang members or deporting them.

Language about Central American gangs does circulate in the justice system, eventually reaching the ears of powerful policymakers. WOLA encourages advocates working on Central American gang-related asylum cases to use only the best sources when arguing their cases, in the interest of accuracy and, as a human rights issue, in the interest of supporting compelling arguments against heavy-handed, zero-tolerance responses to gangs that do not reduce violence and tend to weaken due process. Heavy-handed policies have been proven to aggravate the problem and lead to

the violation of basic civil rights.²⁰ Distorted images exaggerate the phenomenon, promote myths about gangs and spread the idea that gang members cannot be rehabilitated. Accurately describing the seriousness of the problem will effectively support arguments for asylum claims.

The purpose of WOLA's gang-related asylum project is to educate attorneys who take on Central American gang-related asylum cases about the nature and extent of youth gang violence in Central America and the ineffectiveness of current responses by governments in the region. We focus primarily on trainings, rather than on expert witness testimony in individual cases. Through this project, we will encourage the use of good sources that 1) accurately represent the problem of Central American gangs and that 2) explain the ineffectiveness and injustice of current *mano dura* policies in the region, and 3) provide evidence that supports arguments often introduced in gang-related asylum cases. This resource guide includes WOLA's position on Central American gang-related asylum, country information about the gangs in El Salvador, Honduras and Guatemala, non-technical explanations of the types of legal arguments that have won Central American gang-related asylum seekers refuge in the United States, and a resource page containing links to documents with information about gangs in Central America and the United States.

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Gang-Related Asylum Resources Page

This is a short list of resources, which will lead to further sources of accurate information to use while researching for gang-related asylum cases.

The Washington Office on Latin America (WOLA) www.wola.org

Information on country conditions, historical information, current reports with well-founded information on the gang phenomenon in the Central America as well as in the U.S.

Gang-imm (Gangs and Immigrations)Yahoo listservice

Sponsored by the National Immigration Project of the National Lawyers Guild, this listserv provides sample briefs, strategy ideas, and other information to assist advocates.
Subscribe: gang-imm-subscribe@yahoogroups.com

U.S. Committee for Refugees and Immigrants (USCRI) www.refugees.org

Resource library with sample case law, country reports, and a list of expert witnesses.

The Ansari Law Firm Gang-Related Asylum webpage

Reports, case law, and gang-related asylum information
<http://www.ansarilawfirm.com/index.cfm/hurl/obj=578/GangRelatedAsylumCasesMSAsylumCasesAsylumintheUnitedStates.cfm>

UC Hastings Center for Gender and Refugees Studies on-line Database

<http://cgrrs.uchastings.edu/>

REPORTS

Seeking Asylum from Gang-Based Violence in Central America: A Resource Manual. By the Capital Area Immigrant Rights (CAIR)

Contains a list of the arguments of successful and unsuccessful gang-related asylum cases.
<http://www.ailf.org/lac/GangResourceManual.pdf>

No Place to Hide: Gang, State, and Clandestine Violence in El Salvador.

[http://www.law.harvard.edu/programs/hrp/documents/FinalElSalvadorReport\(3-6-07\).pdf](http://www.law.harvard.edu/programs/hrp/documents/FinalElSalvadorReport(3-6-07).pdf)

UNODC report on Crime in Central America

<http://www.wola.org/media/Gangs/Central%20America%20Study.pdf>

USAID "Central America and Mexico Gang Assessment"

http://www.usaid.gov/locations/latin_america_caribbean/democracy/gangs_assessment.pdf

Congressional Research Service Report on Central American Youth Gangs

http://www.wola.org/media/crs%20gangs_07.pdf

Index of articles on violence by maras (gangs) in El Salvador, treatment of gang members/returnees, collusion between gangs and state security forces.

<http://www.asylumlaw.org/docs/showDocument.cfm?documentID=890>

UN High Commissioner for Refugees Amicus Curie brief

http://cgrrs.uchastings.edu/documents/legal/unhcr_thomas.pdf

Endnotes

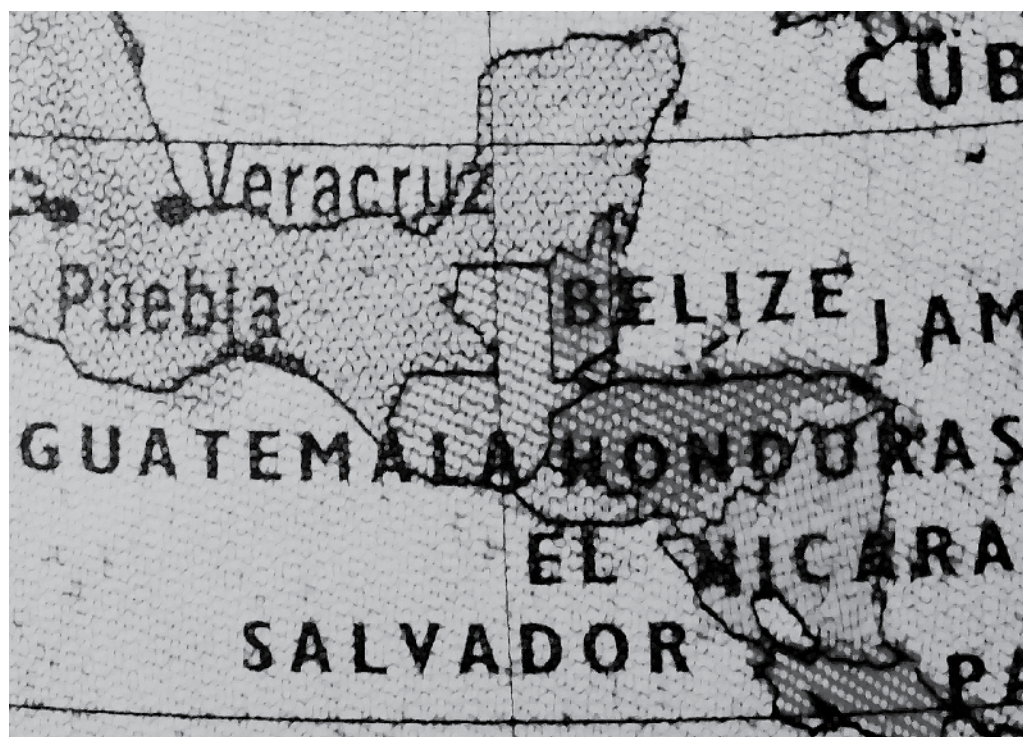
- ¹ This is something of a misnomer, since the commonly understood origin of these gangs is not in Central America, but in Los Angeles, within the political boundaries of the United States.
- ² Discussions of violence in Central America often begin and end with youth gangs and drug dealers, as if these were the only forms of violence that citizens in Central America experience. In fact, citizens confront a broad spectrum of violence, and it is important to locate both youth gangs and organized criminal groups within that spectrum. Governments, international donors, and civil society groups need to understand the different forms of violence that citizens experience and the size and impact of the different forms in order to set priorities and design effective responses.
- ³ Diego J. Vigil, *Barrio Gangs*. (Austin, Texas: University of Texas Press, 1988).
- ⁴ Additionally, one could say that the maras themselves emerged from a political situation for which the United States bears heavy responsibility: the massive immigration of Salvadorans and other Central Americans to the United States fleeing civil wars in which U.S.-backed forces were known for committing human rights abuses.
- ⁵ In 1996, the United States Congress passed the Illegal immigrant Reform and Immigrant Responsibility Act (IIRIRA). See Michael J. Garcia, and Larry M. Eig. *Immigration Consequences of Criminal Activity*. Congressional Research Service Report, 2004. RL32480 <http://digital.library.unt.edu/govdocs/crs/permalink/meta-crs-7848:1> and Gzesh, Susan. *Central Americans and Asylum Policy in the Reagan Era*. Migration Information Source, 2006. <http://www.migrationinformation.org/Feature/display.cfm?id=384>.
- ⁶ The American Immigration Law Foundation, "The Value of the Undocumented Worker," Immigration Policy Report. http://www.aifl.org/ipc/policy_reports_2002_value.asp and Passel, Jeffrey S., "The Size and Characteristics of the Unauthorized Migrant Population in the U.S." Pew Hispanic Center. <http://pewhispanic.org/files/reports/61.pdf>.
- ⁷ Washington Office on Latin America (WOLA) and Instituto Tecnológico Autónomo de México (ITAM), *Transnational Youth Gangs in Central America, Mexico and the United States* (Washington DC: Washington Office on Latin America, March 2007). http://www.wola.org/media/Gangs/executive_summary_gangs_study.pdf.
- ⁸ See WOLA and ITAM, 2007 and H. Sibaja et al, "Central America and Mexico Gangs Assessment," United States Agency of International Development. (Washington DC: April 2006). http://www.usaid.gov/locations/latin_america_caribbean/democracy/els_profile.pdf.
- ⁹ See Francisco Díaz Rodríguez and Sidney Blanco. "Deficiencias policiales, fiscales o judiciales en la investigación y juzgamiento causantes de la impunidad," United Nations Development Program El Salvador, (San Salvador: UNDP May 2007).
- ¹⁰ Note that the so-called transnational nature of the gangs is used in policy to qualify them as an increasing threat despite evidence to suggest that gangs are not readily understood or undermined outside of their local context.
- ¹¹ See WOLA and ITAM, 2007.
- ¹² The terms repression-only and heavy handed refer to policies that focus almost exclusively on identifying gang-members or those associated with gang-members, and putting them jail.
- ¹³ Tomás A. Mencía, *Las maras en la sombra: Ensayo de actualización del fenómeno pandillero en Honduras*. (Universidad Centroamericana "José Simeón Cañas" Instituto Universitario de Opinión Pública, 2006). http://www.wola.org/media/Gangs/diagnostico_honduras.pdf; Elin C. Ranum, *Pandillas juveniles transnacionales en Centroamérica, México y Estados Unidos*. (Universidad Centroamericana "José Simeón Cañas," Instituto Universitario de Opinión Pública, 2007). http://www.wola.org/media/Gangs/diagnostico_guatemala.pdf; Jeannette Aguilar, *Situación actual de las pandillas en El Salvador*. (Universidad Centroamericana "José Simeón Cañas," Instituto Universitario de Opinión Pública, 2007). http://www.wola.org/media/Gangs/diagnostico_salvador%281%29.pdf.
- ¹⁴ See The Washington Office on Latin America, "Security Policy," http://www.wola.org/public_security.
- ¹⁵ See Washington Office on Latin America, *Youth Gangs in Central America: Issues in Human Rights, Effective Policing, and Prevention* (Washington DC, Washington Office on Latin America, 2006). http://www.wola.org/media/gangs_report_final_nov_06.pdf.
- ¹⁶ House Committee on Foreign Affairs, Subcommittee on the Western Hemisphere, Hearing on Violence in Central America, Testimony by Geoff Thale, Program Director, Washington Office on Latin America, 110 Cong., 1st sess., June 26, 2007. http://www.wola.org/media/Guatemala/House%20testimony%20Western%20Hem_Violence%20in%20Cent%20Am.pdf.
- ¹⁷ Jeannette Aguilar, *Situación actual de las pandillas en El Salvador*. (Universidad Centroamericana "José Simeón Cañas," Instituto Universitario de Opinión Pública, 2007), 35.
- ¹⁸ Ibid.
- ¹⁹ Ibid.
- ²⁰ The United States government has recently announced the "Strategy to Combat Criminal Gangs from Central America and Mexico." See US Department of State, Office of the Spokesman. *Combating Criminal Gangs from Central America and Mexico*, (Washington DC, 2007), <http://www.state.gov/t/pa/prs/ps/2007/88659.htm>.

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The Washington Office
on Latin America (WOLA)



Elements of Successful Legal Arguments for Gang-related Asylum¹

This section highlights some of the key legal arguments that have been used in successful gang-related asylum cases. This is not a technical legal document; WOLA staff are not attorneys and are not offering legal advice. It is, rather, a guide to technical and legal resources. As explained in the introductory and country-specific sections of this resource guide, WOLA believes that many former gang members risk persecution if deported to Central America and that many other Central Americans who have fled to the United States because they were harassed by gangs in Central America risk persecution if they return.

Gang-related asylum cases are argued, like all asylum cases, as either affirmative or defensive applications for relief. Cases that involve individuals who are present and seeking asylum in the United States, with or without documents, after fleeing their country are affirmative cases and are adjudicated by the Asylum Office of the Department of Homeland Security (DHS). Adult asylum seekers who are denied entry into the United States at the border or at an airport, or who request asylum after being detained in the United States and transferred to DHS custody, or who are otherwise detained by DHS and placed in removal proceedings, file defensive asylum cases before an immigration judge (IJ). Immigrant minors who are detained are taken into custody by the Office of Refugee Resettlement of the Department of Health and Human Services. Asylum cases must be filed by the asylum seeker within one year of entering the United States.²

Basic Requirements for Asylum

An individual may qualify for asylum if he or she meets the legal definition of a refugee according to the Immigration and Nationality Act (INA). According to the INA a refugee is:

[A]ny person who is outside any country of such person's nationality...and who is unable or unwilling to return to, and is unable or unwilling to avail himself or

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herself of the protection of that country because of persecution or a well-founded fear or persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.³

Individuals who can demonstrate past persecution or fear of future persecution based on one of the five grounds may qualify for asylum. Nevertheless, asylum is discretionary, meaning that applicants may not be entitled to asylum, even if eligible.

In order to gain asylum, an individual must convincingly argue that:⁴

- ❶ he or she has experienced past persecution and/or has a well-founded fear of future persecution,
- ❷ the government is unable or unwilling to protect the asylum seeker from that persecution,
- ❸ the asylum seeker would not be able to re-locate internally to avoid persecution in his or her country, and
- ❹ the asylum seeker has been persecuted because of either her or his race, religion, nationality, political opinion, or membership in a particular social group.

Arguments Used in Gang-related Asylum Cases⁵

There are patterns in successful gang-related asylum cases. Below we cite arguments that have been used in making successful gang-related asylum claims. It is important to note that as asylum is discretionary, even if an advocate successfully presents arguments proving eligibility for asylum, the adjudicator has discretion to evaluate if an individual *merits* asylum. Social group claims, the basis for most gang-related asylum claims, are particularly vulnerable because rules on what can be considered a social group are vague. Most of the cases cited here are unpublished, but much of the case law cited therein may be useful for building arguments to support specific gang-related asylum claims.

► Asylum seeker has suffered past and/or has a well-founded fear of future persecution

In gang-related asylum cases, past persecution and well-founded fear of future persecution are usually argued through presentation of evidence such as police reports in which threats by the gang are reported, death certificates of family members murdered by gangs, and affidavits by family members and expert witnesses who can verify the persecution and/or fear of future persecution that the asylum seeker claims in his or her affidavit. Well-founded fear of future persecution can also be demonstrated by showing a pattern or practice of persecution by similarly situated individuals. Country conditions documents are useful for making these arguments.

► The government is unable or unwilling to protect the asylum seeker from the persecution

As noted in the introduction, there is ample evidence that laws and policies in place to respond to the gang phenomenon in Guatemala, El Salvador and Honduras are ineffective and are probably making the problem worse.⁶ The governments of these countries have continued to pursue heavy-handed policies, in response to which gangs have increased their clandestine operations and raised their levels of organization. Police forces in El Salvador, Guatemala and Honduras do not respond effectively to the gangs and are currently unable to protect citizens targeted by gang members. There is evidence of police corruption and collaboration with gangs. The governments of El Salvador, Honduras and Guatemala have demonstrated that they are not able and/or not willing to protect individuals targeted by gangs because of their social group or anti-gang political opinions. The social groups most at risk of persecution by the gangs, such as abandoned youth living in the streets, are marginalized populations and are even less likely to receive protection from the government.

► Internal relocation to avoid gangs is not possible in El Salvador, Honduras or Guatemala

In Guatemala, Honduras and El Salvador, the three countries of origin of most asylum seekers making gang-related claims, the small

geographical area of the countries and lack of economic opportunity make relocation within the country impossible as an escape from targeted gang violence. Relocation within these three countries can provide neither physical security nor economic security. Even if one were able to move to another city, the gang presence is pervasive and relocation would not provide safety from persecution by gangs. Abandoned children without family support are even less likely to be able to relocate.

► **The asylum seeker has been and/or will be persecuted because of his or her identification with a specific social group, because of his or her political opinion, or religion.**

In order to establish eligibility for asylum, the asylum seeker must demonstrate a nexus between the past persecution and/or fear of future persecution and one of the five protected grounds for asylum: race, religion, nationality, political opinion, and membership in a particular social group. Most gang-related asylum cases are argued by demonstrating membership in a specific, persecuted social group, or by demonstrating that the asylum seeker was or will be persecuted because he or she holds or is believed to hold an anti-gang political opinion or because of his or her religion.⁷ Arguments for asylum under these three categories are described below:

a. Social group. When an advocate argues that the asylum seeker was persecuted by virtue of membership in a specific social group, the group must be defined narrowly for the argument to be successful. The group must be defined as a discrete and identifiable entity with immutable characteristics. Attorneys have had success making the social group argument when defining the group very specifically. In making social group arguments, it is important to avoid constructing circular groups that include the persecution in the social group, e.g., “young men who are subject to gang violence.” A more narrowly defined social group would not include gang violence in its definition, e.g., “young men who resist gang recruitment.” Also, the advocate

needs to make the claim that the group is cognizable in society. The following categories have been argued successfully:

- **Former law enforcement officials threatened by gang members**

e.g., *Matter of “Alvarez”* (unpublished case).⁸ In this case, the social group was defined as “former Salvadoran law enforcement officers”⁹ and the immutable characteristic of the group was “shared past experience of working in law enforcement.”¹⁰

e.g., *Matter of X* (unpublished case).¹¹ In this case the social group was defined as: “police officers who are members of the Special Crimes Unit and exclusively investigate organized crime and gang members.”

- **Women threatened by gangs**

e.g., *Matter of “Sandra”* (unpublished case).¹² The social group was defined as: “women who refuse to be the victims of violent sexual crime.”

- **Minors who were forcibly recruited to the gangs**

e.g., *Re Enamorado* (unpublished case).¹³ The social group was defined as “former gang member likely to be persecuted by government and non-governmental entities.”

e.g., *Castellano-Chacon v. INS* (published)¹⁴ Decision finds that “tattooed youth” is not a social group but that “former gang members” might be.

e.g., *Re D-V*, (unpublished case)¹⁵ IJ Castro, Sept. 9, 2004, Ruled that the petitioner was eligible for asylum based on his persecution by gang members on account of his membership in the particular social group of those who “have been actively recruited by gangs, but who have refused to join because they oppose the gangs.” There was no appeal by the Attorney General of this ruling.

b. Political opinion. Some attorneys have successfully argued that their clients are

Relocation within these [El Salvador, Guatemala, Honduras] three countries can provide neither physical security nor economic security.

- e.g., *Matter of “Alvarez”* (unpublished case).¹⁶ The political opinion whose expression led to persecution was defined as “pro-rule of law, anti-gang political opinion.”
- e.g., *Matter of X* (unpublished case). The political opinion was defined as “public opposition to crime and investigation of the gangs.”¹⁷
- e.g., *In re Orozco-Polanco* (unpublished opinion).¹⁸ The political opinion was defined as “anti-gang sentiments.”

- *Matter of J.J.R.* (unpublished case).¹⁹ If returned to El Salvador J.J.R. would be forced to re-join the gang which would “defy his religious beliefs.”

- ▶ 8 U.S.C. §1101(a)(42)(A)
- ▶ 8 USC 1158
- ▶ 8 C.F.R. §208.13
- ▶ *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987)
- ▶ *Matter of Mogharrabi*, 19 I & N. Dec. 439 (BIA 1987)
- ▶ UNHCR Handbook on Procedures and Criteria for Determining Refugee Status
- ▶ EOIR guidelines on unaccompanied minors' cases
- ▶ INS guidelines on children's asylum claims

A client not eligible for asylum does have other options. Attorneys have sought to prevent their client's deportation through seeking Withholding of Removal under the INA; through invoking the Convention Against Torture (CAT); through seeking Temporary Protected Status (TPS) for people from countries for which TPS is in effect; or pursuing "T" visas for victims of trafficking.

- 1 See the resources page for links to specific legal resources
on asylum issues. This section offers basic, non-technical
information about gang-related asylum, but should not be used
in replacement of legal advice from a qualified attorney.
- 2 8C.F.R. § 208.4(a).
- 3 INA §101 (a) (42)(A); 8 U.S.C. §1101(a)(42)(A).
- 4 The REAL ID (H.R. 418) act passed in 2005 may affect the
way the criteria for seeking asylum should be argued. See:
<http://www.AILA.org> for more information on REAL ID.
- 5 Individual cases vary widely, and additional arguments may be
relevant to individual gang-related cases. The non-technical
description of the arguments for gang-related asylum cases may
not be exhaustive but should provide a basis for beginning
research of individual cases.
- 6 Washington Office on Latin America. *Executive Summary:
Transnational Youth Gangs in Central America, Mexico and the
United States*. Washington, D.C., 2007. [http://www.wola.org/
media/Gangs/executive_summary_gangs_study.pdf](http://www.wola.org/media/Gangs/executive_summary_gangs_study.pdf).
- 7 Some attorneys have argued religious persecution, i.e., an
individual won't join the gang due to religious convictions
and is targeted for persecution by the gang as a result, though
fewer of these cases have been successful.
- 8 Memorandum of Law in Support of the Asylum Application
of Juan Alvarez. [http://www.refugees.org/uploadedFiles/
Participate/National_Center/Resource_Library/ES_012\(2\).pdf](http://www.refugees.org/uploadedFiles/Participate/National_Center/Resource_Library/ES_012(2).pdf).
- 9 *Matter of Acosta*, 19 I&N Dec.211, 233-34 (BIA 1985).
- 10 *Matter of Acosta*, 19 I&N Dec 211 233-34 at 233, (“The
shared characteristic might be an innate one such as sex,

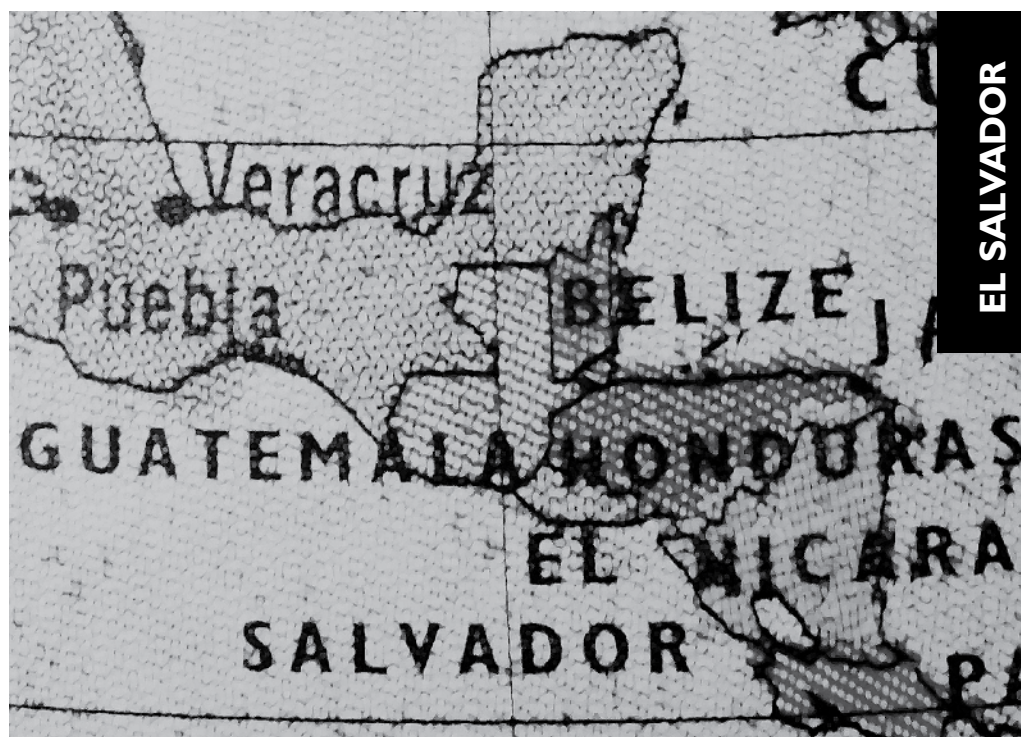
¹⁹ The case can be found on the USCRI website <http://www.refugees.org/article.aspx?id=1890&subm=75&area=Participate&ssm=86>.

Central American Gang-Related Asylum

A RESOURCE GUIDE • MAY 2008



The Washington Office
on Latin America (WOLA)



Gangs in El Salvador¹

Historical Background

Full-scale civil war broke out in El Salvador between guerrillas and security forces in early 1981 following a long history of tension between the Salvadoran government—dominated by the armed forces from the 1930s to the 1970s—and peasant groups, labor and student activists, and others. The guerrilla movement emerged in the 1970s. The assassination of Archbishop Oscar Romero in March 1980 by a right-wing death squad led to a cycle of protest and repression. Worried about communist expansion, the Reagan administration gave economic and military aid to the Salvadoran government throughout the war. In the first three years of the war, over 40,000 people were killed, the overwhelming majority of them civilians killed by military or paramilitary groups because of their suspected support for the guerrillas. Over the next five years, the war shifted to the countryside where the government carried out brutal counter-insurgency campaigns designed to destroy the civilian support base for the guerrillas. Hundreds of thousands of people became refugees; eventually, over a million Salvadorans, about 20 percent of the population, fled the country, most to the United States.² In January 1992, after two years of negotiations, the government and the FMLN signed a peace agreement under which the FMLN guerrillas agreed to lay down their arms in exchange for guarantees for their security, a reform of military and security forces, and other conditions. The FMLN became a political party, which it remains today. The civil war in El Salvador claimed over 75,000 lives.

In 1996, the U.S. Congress passed the Illegal Immigrant Reform and Immigrant Responsibility Act (IIRIRA), which expanded the categories of eligibility for deportation and specifically mandated the deportation of “criminal aliens.”³ So, in the immediate post war period, a time of significant instability, El Salvador began to receive both criminal and non-criminal deportees from the United States in large numbers. In El Salvador by the time of the civil war of the 1980s, local street gangs had developed.

In response to
mano dura laws,
gang members in El
Salvador have changed
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as not to engage in
activities/customs
that have come to be
associated with gang
membership.

The so-called Central American gangs MS-13 and the 18th Street gang have their origins in Los Angeles neighborhoods where Central American refugee youth, “at risk” for gang involvement due to a history of violence, socioeconomic exclusion and other factors, encountered well-established Los Angeles gangs. *Mara Salvatrucha* and the 18th Street emerged as these immigrant youth organized themselves in response to these existing gangs. But during the 1990s with the deportation of Salvadorans who had been living in the United States, the street gangs *Mara Salvatrucha* and 18th Street, named for street gangs in Los Angeles, emerged as the dominant “confederated” gangs that are now found in Guatemala, Honduras and El Salvador.⁴

Despite the end of the civil conflict in El Salvador in 1992, many forms of violence continue to seriously affect citizen security and economic development. In the years since the implementation of enforcement-only anti-gang laws (*mano dura* laws) in 2003, gangs in El Salvador have restructured themselves and gained more sophisticated internal organization, systems and norms, and organizational objectives. In response to *mano dura* laws, gang members in El Salvador have changed their behavior so as not to engage in activities/customs that have come to be associated with gang membership. Some of these modified behaviors include tattooing themselves less and in less visible places, dressing and wearing their hair in a more traditional manner and refraining from using hand signals in public. One of the effects of these changes is that the gangs are now active not only in marginal neighborhoods, but in more places with less visibility. The change to a more clandestine mode of operation has translated into gangs organizing beyond the neighborhoods with which they had originally been associated. This in turn moves gang members away from their communities of origin and families, making rehabilitation and re-integration more difficult. The recent shift of gangs from defending geographical territory, such as

a block in a neighborhood, to defending “symbolic territory,” which can be created anywhere, has contributed to the spread of gangs throughout the country.⁵

Number and Type of Gangs in El Salvador

It is extremely difficult to estimate the number of people involved in gangs in El Salvador because of the lack of a common definition of “gang,” the dynamic nature of gangs and the fact that gangs are increasingly clandestine. We believe the most reliable estimates come from the Interior Ministry, which estimates 15,000 gang-involved individuals in El Salvador (Tenorio y Varela 2005). Other estimates for gang membership in the 1990s include: 17,000, 30,000–35,000; and 10,500.⁶

Characteristics of Gang Members in El Salvador

The most recent survey of gang members in prison in El Salvador found that:⁷

- 95.3 percent were men and 4.7 percent were women
- 60.1 percent are between 19 and 26 years old, while 8.2 percent are older than 30.
- There is a trend toward younger and younger children getting involved in the gangs. The average age of gang members is 24 years old

Although gangs have been stigmatized and associated with delinquency for more than a decade, studies show that until recently they were not primarily involved in serious violent crime or delinquent behavior. Today, the gang phenomenon has been reconfigured, partly as gangs adapt to repressive government policies; violence between rival gangs, towards their own members, and toward citizens has increased dramatically.⁸ Gangs in El Salvador are becoming more sophisticated in their actions and the logistical capacity to plan and execute illicit activities. The most common delinquent activities of gang members include homicide, extortion, drug sales and drug possession, possession of firearms, and car theft.⁹

Gang Organization¹⁰

In order to avoid infiltration, gangs have begun to make entry into a particular gang more difficult. The 18th Street gang has reportedly stopped allowing new members. The gangs are undergoing a process of institutionalization and now have assigned roles for different members including “palabrer^{os}” who act as spokespersons, “misioner^{os}” who are assigned important tasks or missions for the gangs, and “soldad^{os}” who are in charge of operations like defending territory. This division of labor has resulted in a more effective coordination of gang activities.

Gangs and Anti-Gang Policies and Legislation

In 2003, then President Francisco Flores implemented *mano dura* (iron fist) laws in response to the gang phenomenon. These laws: 1) criminalize membership or association with a gang with up to 6 years in prison, and 2) allow membership in a gang to be determined based on tattoos or the use of hand signals. These heavy-handed, zero-tolerance policies resulted in massive detentions of youth and were criticized by human rights organizations internationally.¹¹ The *mano dura* law was deemed unconstitutional six months after its implementation. Nonetheless, the government followed it up with the similar *super mano dura* laws, implemented in 2005. The *super mano dura* laws were outlined as a four-phase planned response to gangs including: 1) regular raids as a tactic to arrest suspected gang members (still identified by association), 2) citizen participation (i.e. government information campaigns and “voluntary” home searches), 3) an “anonymous tip” campaign to collect intelligence on gang activities, and 4) deployment of military patrols to combat gangs.¹² These laws are still in effect and have not succeeded in reducing levels of violence or the presence of gangs in El Salvador. In many respects these laws have contributed to increased levels of violence and impunity for perpetrators of violence against youth perceived to be gang members.¹³

When *super mano dura* was imposed, President Antonio Saca also created *plan mano amiga* (friendly hand) and *plan mano extendida* (outstretched hand) as counterparts to the repressive policing strategies. Civil society organizations and academics have said that these prevention and rehabilitation programs have received very little funding in comparison to the amount of public relations the government has done promoting them. Despite widespread criticism that these policies are not working to reduce the violence associated with gangs, the Salvadoran government continues to use and enforce the laws.

Gangs and the Prison System

Since 2003, incarcerated gang members have been segregated into separate facilities for *Mara Salvatrucha* and 18th Street in order to reduce prison conflicts between the gangs. Segregation of prison populations by gang has resulted in several unanticipated problems. These problems include an enabling of greater communication and coordination among gang leaders within the prison system and the ability for each gang to take almost absolute control of particular prisons. Gang identity is consolidated and feelings of loyalty and cohesion are fostered, while feelings of hate toward rival gangs increase. Gang participation in criminal activities also increases as a result of these gang-specific prisons.

Gang Members Who are Victims

Gang members are victims of violence or the threat of violence from both within their organizations and from outside forces. From within the gangs, young people are frequently coerced into joining and may be physically assaulted, harassed, or threatened with death if they refuse.¹⁴ Female recruits experience gender-based violence in recruitment and initiation rites, which can include ritualized gang rape.¹⁵ Gang members are typically associated with their role as victimizers by police and are therefore rarely protected when victimized by rival gangs, state agents,

Gang members are victims of violence or the threat of violence from both within their organizations and from outside forces.

social cleansing groups, individual citizens, or members of their own gangs.

Gang members also face increasing attacks from vigilantes and extra-judicial executions that police are alleged to commit. While they are often victimizers, gang members are also members of a highly vulnerable population.¹⁶ Although hard statistics are not available, murders of gang members committed with military weapons and bodies found with signs of torture are becoming more common and are suspected to be the work of groups like *La Sombra Negra*, a vigilante group that was known for targeting former guerrillas in the mid-1990s. There is also some suspicion that members of the police are involved in “social cleansing” campaigns aimed at gangs.¹⁷ In 2005, the office of the plan *super mano dura* of the National Civil Police reported 1,700 deaths of gang members. This was 45 percent of all homicides in the country that year.¹⁸

Crimes attributed to gang members 2004-2005

| Crimes | 2004 | 2005 |
|--------------------------------|-------|--------|
| Homicides | 432 | 964 |
| Illicit association | 3,873 | 8,419 |
| Disorderly conduct | 1539 | 2,149 |
| Resisting arrest | 558 | 950 |
| Robbery | 372 | 603 |
| Petty theft | 129 | 200 |
| Threats | 264 | 430 |
| Identifying as a gang member | 299 | N/A |
| Assault | 197 | 362 |
| Pertaining to a gang | 7720 | N/A |
| Possession of illegal firearms | 197 | 536 |
| Extortion | N/A | 97 |
| Others | 427 | 448 |
| Total | 16007 | 15,158 |

Source: National Civil Police (PNC)

Endnotes

- ¹ The information in this summary comes from the most recent diagnostic of the gang phenomenon in El Salvador, written by Jeannette Aguilar (2007), unless otherwise cited. Aguilar's study, *Situación Actual de las pandillas en El Salvador*. Instituto Universitario de Opinión Pública (IUDOP) de la Universidad Centroamericana José Simeón Cañas (UCA), 2007, is part of the comparative project “Transnational Youth Gangs in Central America, Mexico and the United States,” in which WOLA also conducted research and which is housed at the Instituto Tecnológico Autónomo de México (ITAM) and funded by the Kellogg Foundation. The full text of Aguilar's report and the entire study is available in Spanish at http://www.wola.org/media/Gangs/diagnostico_salvador%281%29.pdf.
- ² According to the U.S. Census, Salvadoran Foreign Affairs Ministry, Salvadoran Ministry of the Interior 90% of Salvadorans outside of El Salvador in the year 2000 were in the United States. See Katharine Andrade-Eckhoff, *Migration and Development in El Salvador: Ideals Versus Reality*. Migration Information Source, 2006. <http://www.migrationinformation.org/Feature/display.cfm?id=387>.
- ³ Michael J Garcia and Larry M. Eig. *Immigration Consequences of Criminal Activity*. Congressional Research Service Report, 2004. RL32480 <http://digital.library.unt.edu/govdocs/crs/permalink/meta-crs-7848:1>.
- ⁴ Washington Office on Latin America (WOLA). *Transnational Youth Gangs in Central America, Mexico and the United States. Executive Summary*. (Washington

DC, 2007). http://www.wola.org/media/Gangs/executive_summary_gangs_study.pdf.

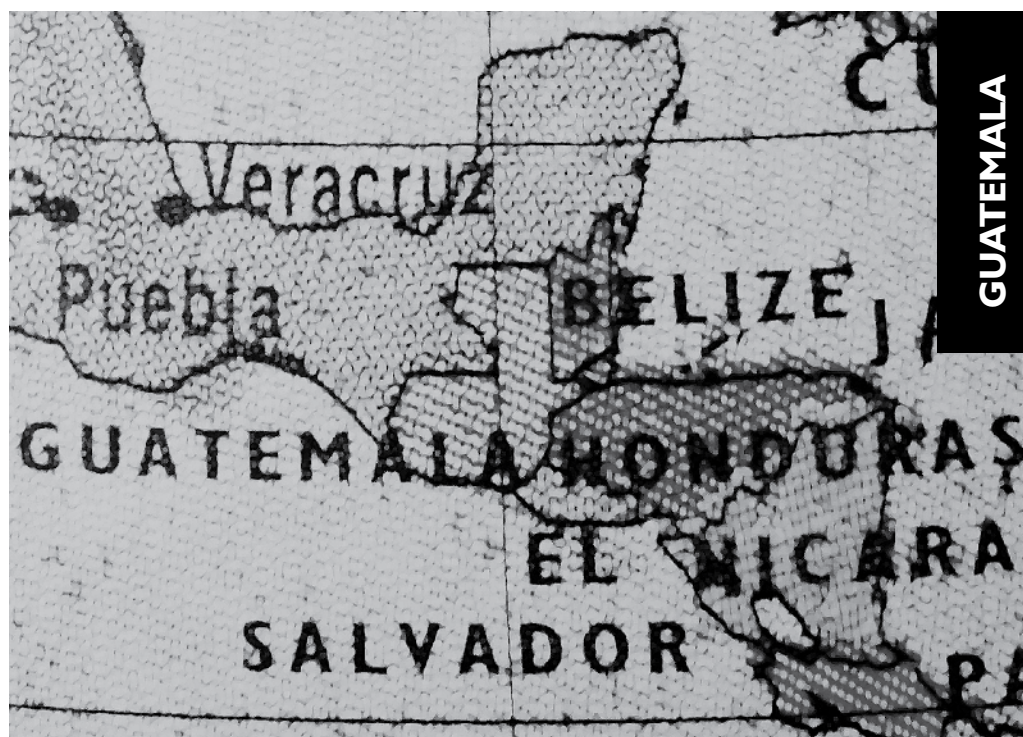
- ⁵ Aguilar, 2007.4 Aguilar uses the term “symbolic territory” to refer to the expansive, non-geographically defined sense of territory now being used by gangs in El Salvador.
- ⁶ Aguilar, 2007 9.
- ⁷ Ibid., 12.
- ⁸ Ibid.
- ⁹ Ibid.
- ¹⁰ Ibid.
- ¹¹ Ibid., 25.
- ¹² Alfonso Gonzales, *Rethinking US involvement in Central America's War on Gangs: The Case of El Salvador*. (2005). http://www.ips-dc.org/downloads/gonzales-war_on_gangs.pdf.
- ¹³ Human Rights Program Harvard Law School. *No Place to Hide: Gangs, State, and Clandestine Violence in El Salvador*. (Harvard Law School: International Human Rights Clinic, 2007), 7. [http://www.law.harvard.edu/programs/hrp/documents/FinalElSalvadorReport\(3-6-07\).pdf](http://www.law.harvard.edu/programs/hrp/documents/FinalElSalvadorReport(3-6-07).pdf).
- ¹⁴ Ibid., 30.
- ¹⁵ Ibid., 32.
- ¹⁶ Aguilar, 2007: 43.
- ¹⁷ Diario Mundial, “Serie de ejecuciones en el país.”, June 20, 2006 section i, p 3.
- ¹⁸ Aguilar, 2007: 45.

Central American Gang-Related Asylum

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The Washington Office
on Latin America (WOLA)



Gangs in Guatemala¹

Historical Background

From 1960 to 1996, civil conflict in Guatemala resulted in the death of between 100,000 and 200,000 people. Repression became most severe in the early 1980s, when government forces carried out a “scorched earth” campaign of massacres against civilians in rural areas where the government believed left-wing guerrilla groups to be active. Although both the government and guerrilla groups committed abuses, a post-war Historical Clarification Commission found that 80 percent of civilian fatalities in the war were committed by state security forces, while only five percent could be attributed to guerrilla groups.² (A later U.N. study found similar numbers.) During the most brutal years of the war, hundreds of thousands of Guatemalans fled the country, many of them arriving in the United States as refugees. As of the year 2000 the U.S. Census Bureau reported that there were 480,665 Guatemalan nationals living in the United States³; the International Organization for Migration, whose figures include many Guatemalans who may not respond to Census Bureau polling because they lack legal immigration status, estimates that there are 1 million Guatemalan nationals living in the United States.⁴

The so-called Central American gangs *Mara Salvatrucha* and the 18th Street gang have their origins in Los Angeles neighborhoods where Central American refugee youth, already at risk for gang involvement due to a history of violence, socioeconomic problems and other factors, encountered well-established Los Angeles gangs. *Mara Salvatrucha* and 18th Street emerged as these immigrant youth organized themselves in response to existing gangs. Some Guatemalan refugee youth became involved in *Mara Salvatrucha* and 18th Street.

After 36 years of war, the Guatemalan government and left-wing guerrilla groups signed a peace accord in 1996 that ushered in the current “post-war” era. That same year the U.S. Congress passed the Illegal Immigrant Reform and Immigrant Responsibility Act (IIRIRA), which expanded the categories of eligibility for deportation and specifically mandated the deportation of “criminal aliens.”⁵ So, in the year that began the immediate post-war period,

While not organized in a centralized fashion like organized crime networks, these cliques have in some cases developed hierarchical structures through which they have contact with drug traffickers or other smugglers.

a time of significant instability, Guatemala began to receive both criminal and non-criminal deportees from the United States in large numbers.

The current post-war era in Guatemala is characterized by a weak state riddled with corruption, organized crime networks that operate with a high degree of impunity, and some of the highest levels of social inequality and exclusion in the Western Hemisphere.⁶ Local street gangs have existed in Guatemala since at least the 1960s. But during the 1990s, with the deportation of Guatemalans who had been living in the United States, the street gangs MS-13 and 18th Street named for street corners in Los Angeles emerged as the dominant “confederated” gangs in Guatemala as well as in Honduras and El Salvador. In this current environment of inequality and lack of opportunity, gangs have emerged as a major security concern in Guatemala.

Number and Type of Gangs in Guatemala⁷

According to the Guatemalan National Police the number of gang-involved youth in Guatemala is between 8,000 and 10,000. Some community organizations that work with gangs believe the number to be much higher.⁸ A 2007 United Nations report, however, says that the percentage of youth involved in gangs is small.⁹ The gangs are concentrated in metropolitan Guatemala City and the southwestern parts of the country, though they have some presence in almost all states of the country.¹⁰ According to an assessment of gangs in Mexico and Central America done by the U.S. Agency for International Development (USAID) in 2006, 80 percent of gang-involved individuals in Guatemala identify with *Mara Salvatrucha* and 15 percent identify with the 18th Street Gang (*Barrio 18*.) Ranum’s study (2007) suggests that there are also neighborhood-based gangs that may or may not identify with *Mara Salvatrucha*, though evidence suggests that these neighborhood-based gangs do have to pay “taxes” to one or both of the dominant gangs.¹¹

Characteristics of Gang Members in Guatemala

Until the mid 1990s, gangs in Guatemala were characterized by diverse, large groups of youth (up to 40 members), with an average age of 14, who were territorial but not exceptionally violent. They used knives, not firearms, in their fights. These local gangs were involved predominantly in petty crime and had individual territorial identities and names.¹² Today gangs in Guatemala are much more violent and organized than in the 1990s and earlier. To talk of gangs in Guatemala today is to talk of *Mara Salvatrucha* and 18th Street. Researchers report that local gangs or subgroups known as “clikas” are usually affiliated with *Mara Salvatrucha* or 18th Street.¹³ While not organized in a centralized fashion like organized crime networks, these cliques have in some cases developed hierarchical structures through which they have contact with drug traffickers or other smugglers.¹⁴ Although there is communication and negotiation between some *clikas* and their leaders and others conducting illicit activities such as smuggling, other *clikas* are not primarily criminal enterprises and remain largely non-violent. Illicit activity is not obligatory in all *clikas*, though it may be in some. The levels of violence of a *clika* are largely dependent on its leader.¹⁵ Of surveyed prisoners, 55.4 percent indicate that there is coordination and communication among *clika* leaders in Guatemala, 43.1 percent said there was not communication among *clika* leaders and 1.5 percent said they didn’t know.¹⁶ In-depth interviews with imprisoned gang members suggest that incarcerated gang leaders sometimes issue orders to gang members on the streets. Other findings:

- In a survey of 65 prisoners in jail for gang-related charges, 20 percent were still active in their gang, 35.4 percent were “*calmados*” (calmed or not active in the gang) and 44.6 percent indicated that they were not affiliated with a gang.¹⁷
- Interviews with gang members indicated that gangs are contacting children at very young ages, starting between age 7 and 11. The youth are usually not “jumped in” (initiated) to the gangs until after they are 12 years old.¹⁸

- Some gang members reported that they do not accept youth younger than 10 years old into their gang because children are more likely to talk to authorities under pressure. Others reported that the gangs recruit younger and younger youth to participate in the gang even if they aren't officially initiated until they are older.¹⁹
- Average age at entering the gang is 14.7 years old, with half entering at age 13 or younger.²⁰
- Women make up 3.4 percent of the incarcerated gang population in Guatemala according to the penitentiary system data²¹
- The majority of the surveyed inmates had lived with a family member prior to entering jail: 25 percent with a romantic partner or spouse and 50 percent with one or both of their parents.²²
- Among polled prisoners in jail for gang-related charges, 78.5 percent were employed before entering jail.²³

Gang Members and Anti-Gang Policy

No anti-gang legislation has been passed in Guatemala, but there have been proposals, similar to those in El Salvador and Honduras, directed at youth gangs, to penalize “illicit association” or conspiracy. This would mean that gang-involved individuals who had not committed crimes, or individuals who are not in a gang and who have not committed a criminal act, could be arrested if they associate with gang members.²⁴ Despite a lack of anti-gang legislation, Guatemalan police have applied policies similar to the zero tolerance, heavy-handed policies implemented in Honduras and El Salvador.²⁵ In 2003 the Guatemalan National Civil Police began to implement *Plan Escoba* (“Plan Broom”), which used mass detentions as a strategy to control gangs.²⁶ Detainees in *Plan Escoba* were usually accused of possession of a small quantity of illicit drugs. Only 1.1 percent of those detained under this accusation were ever charged; most cases were dismissed for lack of evidence. Despite the lack of evidence, large numbers of young men have

been detained for significant periods of time under these and other charges.²⁷ An important criticism of the mass detentions is that they target individuals for whom there is no evidence of committing violent crimes, when violent crime is the most pressing public security concern.²⁸

Gangs and the Prison System

Mass arrests under *Plan Escoba* have resulted in prison overcrowding and have had counterproductive effects. They include:

- While in prison, relationships among gang leaders are developed and the cohesiveness of the *clikas* is strengthened. In response to police repression gangs are becoming more organized and strategic.²⁹
- For low-level and younger gang members, incarceration is an opportunity to learn more about gang life and become

Detainees in Plan Escoba were usually accused of possession of a small quantity of illicit drugs. Only 1.1 percent of those detained under this accusation were ever charged...

Gang members who are victims

- Extrajudicial killings are on the rise in Guatemala in general, and gang members in particular are victims of these killings. Gang members are targeted as part of “social cleansing” campaigns carried out by vigilante groups.³³ Seventy-eight percent of prisoners polled said that the police are part of the social cleansing groups that operate in Guatemala, and 52.3 percent say that the police are principally responsible for the deaths of gang members.³⁴
- Problems with corruption in the police departments have led to reports of abuses of gang members by police officers including: extortion, kidnappings, beatings and torture such as covering detained gang members with gasoline and threatening to set them on fire.³⁵
- Among homicides of youth (under 25 years), 16.5 percent were reported to have characteristics of extrajudicial killings. This is of grave concern; the United Nations Special Rapporteur for Children has begun a special investigation into the killings.³⁶

more inducted into it, rather than an opportunity for rehabilitation.³⁰

- A lack of control in the prison system has helped to strengthen the rivalries between gangs, resulting in massacres in the prisons, the best-known of which resulted in the murders of thirty-five 18th Street gang members in August 2005.³¹
- Since the implementation of the police's anti-gang strategy, homicide rates have increased and the gang phenomenon has become more complex and integrated into other criminal activities.³²

There is evidence that some gang members collaborate with organized criminal networks, though the collaboration is not "formal" and the relationship is not strategic for the gang members (but perhaps is for leaders of organized criminal networks). Of polled gang

members 38.5 percent reported that gangs collaborated with organized crime, while 44.6 percent reported that they did not.

Cause of detention of gangs members, 2004 (percentages)

| | |
|-------------------------|--------|
| Drug possession | 23% |
| Robbery | 20.4 % |
| Disorderly conduct | 18.4% |
| Possession of a firearm | 10.7% |
| Weapons possession | 7.7% |
| Assault with a weapon | 5% |
| Firing a weapon | 4.7% |
| Assault | 2.1% |
| Homicide | 1.8% |
| Others | 6.1 % |

Source: National Civil Police

Endnotes

¹ The information in this summary comes from the most recent diagnostic of the gang phenomenon in Guatemala, written by Elin Ranum (2007), unless otherwise cited. Ranum's study is part of the comparative project "Transnational Youth Gangs in Central America, Mexico and the United States," in which WOLA has also conducted research and is based at the Instituto Tecnológico Autónomo de México (ITAM) and funded by the Kellogg Foundation. Much of Ranum's research is based on a 2006 survey of 65 gang members in Guatemalan prisons. The full text of Ranum's report and the entire study is available in Spanish at http://www.wola.org/media/Gangs/diagnostico_guatemala.pdf.

² See Jean-Michael Simon "La Comisión para el esclarecimiento histórico y justicia en Guatemala" http://www.ejournal.unam.mx/boletin_md.

³ U.S. Bureau of the Census. *Profile of Selected Demographic and Social Characteristics: 2000*, Bureau of the Census. Washington, DC, 2000 <http://www.census.gov/population/cen2000/stp-159/stp159-guatemala.pdf>.

⁴ James Smith, "Guatemala: Economic Migrants Replace Political Refugees." Migration Information Source <http://www.migrationinformation.org/Profiles/display.cfm?ID=392> (accessed December 14, 2007).

⁵ Michael John Garcia and Larry M. Eig, "Immigration Consequences of Criminal Activity." December 2, 2004. Congressional Research Service Report RL32480 <http://digital.library.unt.edu/govdocs/crs/permalink/meta-crs-7848:1>.

⁶ UNDP, *International cooperation at a crossroads: Aid, trade and security in an unequal world*, 2005. <http://hdr.undp.org/en/reports/global/hdr2005/>.

⁷ The maras are a phenomenon that is still not sufficiently understood. Statistics about gang related crime in Guatemala are difficult to obtain and frequently inaccurate. Here we include some statistics on gang-related crimes and numbers of gang members. The numbers vary widely and are hotly debated by police, academics and other experts.

⁸ Elin C. Ranum, *Pandillas juveniles transnacionales en Centroamérica, México y Estados Unidos*. Instituto Universitario de Opinión Pública, 2007. http://www.wola.org/media/Gangs/diagnostico_guatemala.pdf.

⁹ United Nations Office on Drugs and Crime. *Crime and Development in Central America: Caught in the Crossfire*, 2007. <http://www.unodc.org/pdf/Central%20America%20Study.pdf>.

¹⁰ Some sources suggest that the eastern side of the country is controlled by drug traffickers and organized crime, and thus, the gangs are not able to establish themselves when confronted with such powerful forces (Ranum 2007:7).

¹¹ Ranum, 2007:10.

¹² Ibid., 10.

¹³ Ibid., 11.

¹⁴ Ibid., 11.

¹⁵ Ibid., 12.

¹⁶ Ibid., 13.

¹⁷ Ibid., 8.

¹⁸ Ibid., 10.

¹⁹ Ibid., 10.

²⁰ Ibid., 10.

²¹ Ibid., 8.

²² Ibid., 10.

²³ Ibid., 10.

²⁴ Ibid., 36.

²⁵ The terms repression-only, zero-tolerance and heavy handed refer to policies that focus almost exclusively on identifying gang-members or those associated with gang-members, and putting them jail.

²⁶ Ibid., 36.

²⁷ Ibid., 37.

²⁸ Ibid., 41.

²⁹ Ibid., 41.

³⁰ Ibid., 41.

³¹ Ibid., 42.

³² Ibid., 43.

³³ Washington Office on Latin America. *Executive Summary: Transnational Youth Gangs in Central America, Mexico and the United States*. Washington, D.C., 2007. http://www.wola.org/media/Gangs/executive_summary_gangs_study.pdf.

³⁴ Ranum, 2007:32.

³⁵ Ibid., 31.

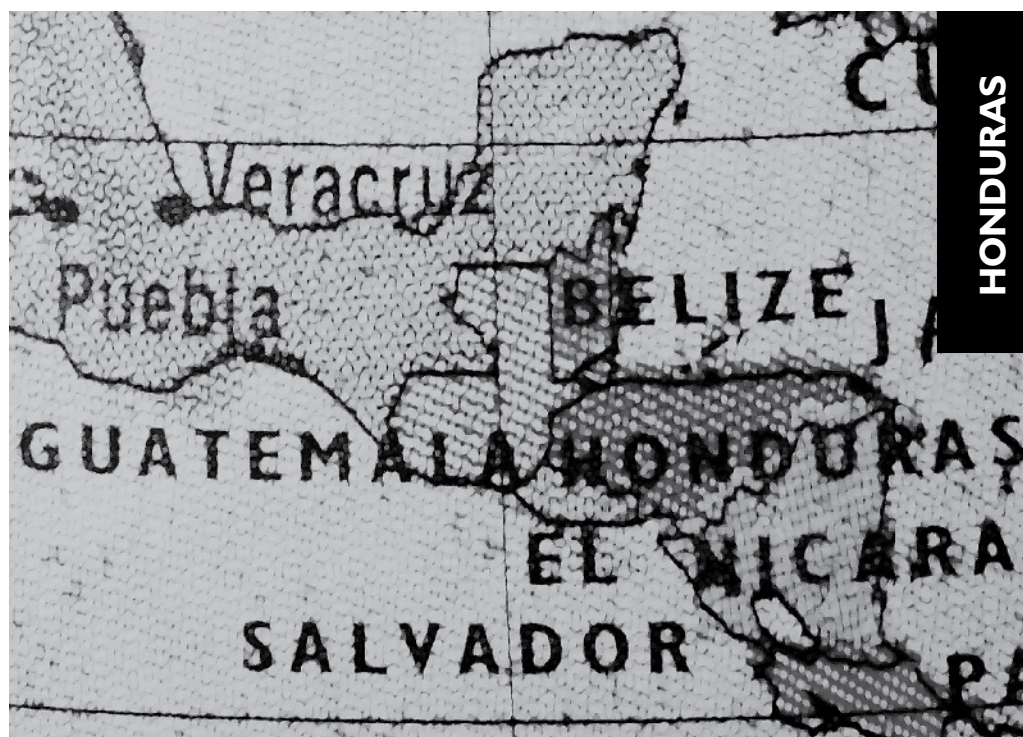
³⁶ Ibid., 31.

Central American Gang-Related Asylum

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The Washington Office
on Latin America (WOLA)



Gangs in Honduras¹

Historical Background

Historically, Honduras has been one of Latin America's poorest countries. During the 1980s, most Hondurans survived as subsistence farmers outside the formal economy; one in ten workers had a steady job. Rates of underemployment and unemployment were estimated to be more than 70%, and the purchasing power of wage earners dropped steadily throughout the decade. While Honduras did not experience civil war during this period, the Cold War proxy wars that played out in neighboring countries affected Honduras as well. Honduras was the main staging ground for the U.S.-supported Contras battling the Nicaraguan government, and the detention and/or disappearance of leftists was not uncommon. Hondurans who migrated to the U.S. during the 1980's were considered economic migrants and had a difficult time qualifying for political asylum. In subsequent years, negative economic conditions were further exacerbated by natural disasters including a severe drought in the mid-1990s and Hurricane Mitch in 1998. Urban overpopulation, rural underdevelopment, and the occurrence of natural disasters are all contributing factors for continued out-migration from Honduras to neighboring countries, including the United States.

In the 1970s in Honduras, a student and youth movement emerged demanding social reforms. Youth gangs participated in this movement, in part because they were already organized. In the 1980s, many Honduran youth fled to the United States, either on their own or with their families. In immigrant communities, especially in Los Angeles, some of these young people became involved in gangs or were exposed to California-style gang culture. In the mid-1990s the predecessors of *Mara Salvatrucha* and the 18th Street gang emerged in Honduras as local gangs with names like "los Roqueros," "los Cholos," "los Poison," "los Macizos," "los Pitufos" and "los Vatos Locos." The economic downturn of the 1990s created conditions that led in part to gangs shifting their focus away from defending territory and toward robbery and assault as ways of gaining income. The concurrent return

Greater efforts by police and other actors, to enforce the Anti-Mara law have led gang members to stop tattooing themselves and become more organized.

of thousands of deportees from the United States — some of whom had been involved in U.S.-originated gangs such as *Mara Salvatrucha* and 18th Street — is thought to be a key factor in the evolution of some of the local gangs into gangs of the same name in Honduras.

In 1996, the U.S. Congress passed the Illegal Immigrant Reform and Immigrant Responsibility Act (IIRIRA), which expanded the categories of eligibility for deportation and specifically mandated the deportation of “criminal aliens.”² So, while already in a period of economic and social instability, Honduras began to receive both criminal and non-criminal deportees from the United States in large numbers. Gang members arriving in Honduras from the United States at the time brought with them a new gang culture of tattoos, new styles of dress, and new modes of speech. At the time, the deportees were seen as more powerful than local gang leaders, and the new, imported gang style was adopted by many youth. The imported gang style was also much more violent than that of the traditional Honduran gangs, and a “live for the gang, die for the gang” mentality became the norm in Honduras. This meant that many gang members believed that the only way to leave the gang was through death.

Number and Types of Gangs in Honduras

As in El Salvador and Guatemala, differing definitions of what constitutes a gang have led to very different estimates of the number of members. Researchers in Honduras examining the phenomenon counted 4,621 people actively involved in gangs in 2006. The figure was significantly lower than police estimates, which ranged from 35,000 to 60,000. Researchers say that police numbers are inflated, inaccurate and based on the subjective criteria or opinions of individual police officers.³ *Mara Salvatrucha* and 18th Street are described as the most powerful and feared gangs in the country, as in Guatemala and El Salvador, but there are also numerous “local” gangs.⁴

Characteristics of Gang Members in Honduras

Gangs are a highly dynamic phenomenon in Honduras and since the implementation of anti-gang laws, the character of the gang has changed significantly. Certain attributes have remained constant over the past years, however, including that most gang members are male, come from poor backgrounds although not extreme poverty, come from dysfunctional and frequently violent families, and use drugs and alcohol.⁵ Greater efforts by police and other actors, to enforce the Anti-Mara law have led gang members to stop tattooing themselves and become more organized.⁶ They have also become more likely to leave the homes of their families and live on their own. Police persecution has also led gangs to set tighter limits on membership of women and girls. Researchers have seen that gangs, when under more extreme threat, become more violent with female members. In some extreme cases, female gang members have been killed by their fellow gang members because of the perception that they are less trustworthy.

Profile of *Mara Salvatrucha* and 18th Street Gangs in Honduras⁷

Mara Salvatrucha and 18th Street in Honduras are increasingly mobile due to concerns for their personal safety. A total of 79.5% percent of gang members surveyed in the Valle de Sula said they constantly traveled, visiting their families only occasionally. Researchers theorize that the nomadic nature of the gangs has contributed to the change from territorial or neighborhood-based identification of gang members to the new modality of identifying with the gang itself (through its name, symbols, etc.), which is not necessarily connected to a physical territory.

Gangs and Anti-Gang Policy

The Honduran state has responded to this evolving phenomenon, not with efforts to respond to the causes of gangs with prevention and rehabilitation programs,

but by trying to repress the gangs with heavy-handed policies, which include arrest based on association. “The state hasn’t the least understanding of the nature of the phenomenon, much less clarity on what to do to [effectively] confront the problem,” one researcher wrote.⁸ The 2003 anti-gang law passed in Honduras (the first of its kind in the region) is a heavy-handed law focused on identifying and detaining gang members. The law makes “illicit association” with a gang a crime and has also rolled back police reforms of the 1990s, allowing for joint military-police patrolling in Honduras.⁹

The Honduran government has responded with repression and segregation of the gangs in jails and prisons. This has exacerbated the problem in an already weak penitentiary system. Gang-specific jails have become centers for the perpetuation and strengthening of *Mara Salvatrucha* and 18th Street, rather than spaces for rehabilitation.

Since the implementation of the anti-gang law, homicide rates (46.2 per 100,000 in 2006) have increased and extrajudicial killings of perceived gang members have increased, with about 2,000 youths killed since 2003.¹⁰ The Inter American Court of Human Rights found the Honduran state guilty of participation in many of these deaths.¹¹ The anti-gang law has encouraged police to see *all* gang members, whether they have engaged in criminal activity or not, as the “enemy.” In fact gang members report that the police, rather than rival gangs, are their number one enemy.¹² This places both the police and perceived gang members at risk.

Gangs and the Prison System

In 2003, Honduras passed legislation that established a maximum 12-year prison sentence for gang membership, a penalty which was stiffened to up to 30 years in December 2004.¹³ As a result of the increased detentions, the prison system has deteriorated; inmates and prison workers are at risk of violence. The system offers little or no rehabilitation.

Several massacres in prisons have occurred. In 2003, 68 prisoners were killed in the El Porvenir detention center. In May 2004, 104 inmates, predominantly gang members, were killed in a fire in an overcrowded prison in San Pedro Sula. To date no one has been held responsible for the deaths of the inmates in the San Pedro Sula case and the government has closed the case.

Gangs and Organized Crime

Youth gangs in Honduras have *not* become organized, hierarchical criminal enterprises. Nonetheless, incarcerated gang members have reported in prison interviews that organized crime leaders hire gang members to commit crimes like car theft, kidnappings, and drug trafficking.¹⁴ Based on reports from the region, WOLA believes that organized crime organizations and gangs operate very differently and thus need different policy responses, despite some overlap in criminal activities.

The National Commissioner of Human Rights estimated that more than 1,000 gang members were murdered in 2001. Since this time, many gang members have also been murdered in massacres.

Accurate information about the rates and types of crime committed by gang members in Honduras is not available. According to a 2002 study entitled “La Violencia en Honduras y la Región del Valle de Sula,” written by Mauricio Rubio and published by the Inter-American Development Bank, suspected gang members were arrested and charged with theft and robbery, assault, threats, damage to property, and sex crimes.¹⁶

The anti-gang law has encouraged police to see all gang members, whether they have engaged in criminal activity or not, as the “enemy.”

Examples of massacres in Honduras¹⁵

| | |
|------|---|
| 2002 | 1 event (14 victims) |
| 2003 | 4 events (88 victims—this includes 68 victims from the killings at the El Porvenir detention center) |
| 2004 | 11 events (175 victims—this includes the murders of 104 youth members of Mara Salvatrucha in the San Pedro Sula Detention Center and the Chamelecon massacre) |

Endnotes

- ¹ Unless otherwise cited, information in this summary is based on Tomás A. Mencía, *Las maras en la sombra: ensayo de actualización del fenómeno pandillero en Honduras*. San Salvador: Universidad Centroamericana "José Simeón Cañas" Instituto Universitario de Opinión Pública, 2006. http://www.wola.org/media/Gangs/diagnostico_honduras.pdf.
- ² Michael J. García, and Larry M. Eig. *Immigration Consequences of Criminal Activity*. Congressional Research Service Report RL32480, 2004. <http://digital.library.unt.edu/govdocs/crs/permalink/meta-crs-7848:1>.
- ³ Mencía, 2006: 15.
- ⁴ Ibid., 16.
- ⁵ Ibid., 17.
- ⁶ Ibid., 6.
- ⁷ Ibid., 10.
- ⁸ Ibid., 6.
- ⁹ Thelma Mejía, "In Tegucigalpa, the Iron Fist Fails," *NACLA Report on the Americas* 40, no. 4 (July 1, 2007): 26-29, 47.
- ¹⁰ Ibid.
- ¹¹ Casa Alianza. *Análisis Mensual Sobre Problemáticas de la Niñez Hondureña*. Honduras, 2006. <http://www.casa-alianza.org/docs/2006/2006-12-26-hond-ejec.pdf> and U.S. Department of State, *Honduras: Human Rights Report 2006*. <http://www.state.gov/g/drl/rls/hrrpt/2006/78896.htm>.
- ¹² Ibid.
- ¹³ Clare Ribando Seelke, Gangs in Central America. *Congressional Research Service Report* RL34112, 2007. <http://www.fas.org/sgp/crs/row/RL34112.pdf>.
- ¹⁴ Mauricio Rubio, *La Violencia en Honduras y la Región del Valle de Sula*, Serie de Estudios Económicos y Sectoriales Banco Interamericano de Desarrollo, (Tegucigalpa, Banco Interamericano de Desarrollo, December 2002).
- ¹⁵ See CODEH, "Violencia, seguridad y Derechos Humanos. Enero-Noviembre de 2004." Departamento de Comunicación. Diciembre 2004, as cited in Mencía, Tomas Andino. *El Fracaso de la Estrategia Antimaras en Honduras*, *Revista Centroamericana Justicia Penal y Sociedad*, No. 22, Instituto de Estudios Comparados en Ciencias Penales de Guatemala, pgs: 85-157.
- ¹⁶ Ibid., 52.