



NO PLACE TO HIDE:

Gang, State, and Clandestine
Violence in El Salvador



INTERNATIONAL HUMAN
RIGHTS CLINIC

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El Salvador*

The International Human Rights Clinic
Human Rights Program, Harvard Law School

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Glossary of Terms and Abbreviations

ARENA	<i>Alianza Republicana Nacionalista</i> or Nationalist Republican Alliance
<i>banda</i>	an organized criminal network
BPJ	<i>Bloque Popular Juvenil</i> or Popular Youth Bloc
CEPES	<i>Centro de Estudios Penales de El Salvador</i> or El Salvador Center for Penal Studies
<i>clika</i>	a local sub-group within a gang
CRISPAZ	Christians for Peace in El Salvador
FESPAD	<i>Fundación de Estudios para la Aplicación del Derecho</i> or Foundation for the Study of the Application of the Law
FMLN	<i>Frente Farabundo Martí para la Liberación Nacional</i> or Farabundo Martí National Liberation Front
IDHUCA	<i>Instituto de los Derechos Humanos de la Universidad Centroamericana “José Simeón Cañas”</i> or Human Rights Institute of “José Simeón Cañas” Central American University
IML	<i>Instituto de Medicina Legal</i> or National Institute of Forensic Medicine
IUDOP	<i>Instituto Universitario de Opinión Pública</i> or University Institute for Public Opinion Research (of “José Simeón Cañas” Central American University)
LAM	<i>Ley Anti-Maras</i> or Anti-Gangs Act of 2003
LAM 2	<i>Ley para el Combate de las Actividades Delincuenciales de Grupos o Asociaciones Ilícitas Especiales</i> or Act to Combat Delinquent Activities of Certain Illicit Groups or Associations of 2004
Mano Dura	stringent anti-gang policy initiated by Salvadoran government beginning in 2003, involving large-scale arrests of gang members
<i>mara</i>	a gang
ONUSAL	United Nations Observer Mission in El Salvador
ORDEN	<i>Organización Democrática Nacionalista</i> or Nationalist Democratic Organization
PAHO	Pan-American Health Organization
PNC	<i>Policía Nacional Civil</i> or National Civil Police
<i>renta</i>	money collected by gang members from local businesses, public transportation drivers, households, etc., as part of an organized extortion system
Súper Mano Dura	renewed anti-gang plan that purported to incorporate elements of prevention and social reinsertion, but which

in practice retained the repressive characteristics of its predecessor, the Mano Dura plan

Tutela Legal the human rights office of the Archbishop of San Salvador
UCA *Universidad Centroamericana* “José Simeón Cañas” or “José Simeón Cañas” Central American University

USAID United States Agency for International Development
WOLA Washington Office on Latin America

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Executive Summary

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

Fifteen years after the civil war in El Salvador came to an end, violence and insecurity continue to shape the daily lives of many Salvadorans. This report examines the phenomenon of youth gangs and documents human rights violations associated with gang violence and Salvadoran governmental responses to it. Our examination is situated in the context of an assessment of the current state of the rule of law in El Salvador.

The war in El Salvador during the 1980s was one of the bloodiest and most brutal in a region gripped with civil conflicts throughout that decade. The Salvadoran conflict gained worldwide notoriety for the prevalence of human rights abuses and death squads, that operated with the apparent acquiescence of state authorities, to terrorize civilian populations. Unfortunately, as discussed in Section I of this report, efforts since the war to build functioning democratic institutions in El Salvador have largely failed to overcome the legacies of institutional incapacity and politicization. Current levels of violence are extraordinarily high. El Salvador's homicide rate is nearly double the average for Latin America, a region with high levels of violence by global standards. Continued political polarization, weak judicial and law enforcement institutions, and the persistence of extra-judicial violence seriously undermine citizen security and the rule of law in El Salvador.

Violent street gangs have grown rapidly in this fractured and dysfunctional socio-political context. The deportation of tens of thousands of Salvadorans from the United States since the late 1990s (a consequence of forced emigration of Salvadoran families during the civil war years and subsequent changes to U.S. immigration laws) helped spur the growth and development of these gangs, a process we describe in Section II. In recent years, and as a result of particularized political conditions and law enforcement responses in El Salvador, the dynamics of the gang phenomenon have evolved. The two major rival gangs – the Mara Salvatrucha and the Mara 18, both of which have U.S. roots and a U.S. presence – engage in brutal battles for control of neighborhoods and communities throughout the country. Gangs' methods of recruitment, and the sanctions they impose on members who demonstrate disloyalty or who attempt to withdraw from active gang life, are increasingly violent. Active and former gang members report that it is increasingly difficult, if not impossible, for young people to

escape the pressure of gang recruitment or to leave a gang. Gangs frequently use extortion to gather funds and solidify territorial control. There is evidence that organized criminal networks are operating with growing sophistication and impunity in El Salvador. The relationship between these organized criminal networks and the upper tiers of gang hierarchies is uncertain, as is the role of state actors in these activities, but the effect on Salvadoran citizens – a deepening sense of impunity and insecurity – is clear.

The primary governmental response to the gang phenomenon, which relies heavily on repressive law enforcement-military tactics, mass arrests, and profiling of youth and alleged gang members, has been ineffective and even counter-productive. Governmental responses to the gang phenomenon are explored in great depth in Section III of this report. Homicide rates have soared since 2003, when former President Francisco Flores launched the *Mano Dura* (“Iron Fist”) crackdown. Meanwhile, the government’s focus on anti-gang efforts has distorted the complex nature of violence in El Salvador. The vast majority of homicides in El Salvador remain in impunity. Human rights organizations and civil society observers believe that some of the upsurge in killings in recent years is attributable to death squads who target alleged gang members or other criminals and who operate with impunity. Also in the past several years, the political roots of violence in El Salvador have become increasingly visible. Clashes between protesters and police on July 5, 2006 are one example of the relationship between political polarization and violence in El Salvador, and spikes in unexplained, brutal homicides in periods prior to national elections are another.

In the midst of this social and political conflict, individual Salvadorans living in poor and marginalized communities have no place to hide: they are targeted by violent actors on all sides. Young people and other residents of areas with a gang presence, active gang members, and inactive gang members are targeted for threats, abuses, and even killings by gangs, police, and clandestine actors like death squads. We present narrative excerpts from interviews with victims and witnesses of gang, police, and clandestine violence in El Salvador in Section IV.

The report is based on fact-finding visits to El Salvador in March-April and August-September 2006, and months of follow-up research prior to and after these trips. It draws extensively on interviews with current and former gang members and other victims and witnesses of violence in El Salvador, as well as with staff of non-governmental organizations (NGOs) and governmental officials. To protect the safety of confidential sources, we refer to them only by pseudonyms and initials.

Introduction

This report examines the phenomenon of youth gangs in El Salvador and documents human rights violations associated with the Salvadoran government's response to it. The report presents information on youth gangs and state responses in the context of a broader analysis of the rule of law and generalized conditions of violence in El Salvador fifteen years after the end of the civil war.

This report contains the results of two fact-finding visits to El Salvador, conducted in March-April and August-September 2006, as well as months of follow-up research both prior to and after these trips. Researchers interviewed more than sixty representatives of non-governmental organizations (NGOs), law enforcement officials, judges, attorneys, prisoners, former and active gang members, youth, and others affected by violence in El Salvador.¹ In addition to those formal interviews, we spoke with scores of youth and community members affected by violence in El Salvador. Our research team has consulted with a range of other individual and institutional sources from the United States as well.

Section I outlines the historical context of violence in El Salvador, with a focus on the lasting impact of the civil war that divided El Salvador for over a decade. Section II presents an overview of the gang phenomenon in El Salvador, including an account of how gangs function, recruit, and interact with their communities. Section III describes the state's responses to gang violence and other forms of violence. Finally, Section IV includes transcripts and excerpts from interviews collected from victims and witnesses of gang and police-related violence in El Salvador, grouping these first-hand accounts by class of victim.

¹This report draws extensively on interviews with current and former gang members and other victims and witnesses of violence in El Salvador. To protect the safety and confidentiality of these sources, we refer to them only by pseudonyms and initials. Unless otherwise noted, all translations of Spanish text and interview notes are ours.

I. Background: The History of Violence in El Salvador

El Salvador is one of the most violent countries in Latin America. Its homicide rate in 2005 stood at 55.5 per 100,000 residents² - more than twice the average rate for the region³. Many observers attribute El Salvador's high rates of violence to political and social factors associated with the legacy of the country's brutal twelve-year civil war and the centuries of repressive authoritarian rule that preceded it⁴. Weak democratic institutions, persistent political polarization, and an ineffective judicial system have seriously undermined El Salvador's capacity to ensure the security of its citizens. In addition, the social and economic consequences of the civil war and its aftermath – including widespread proliferation of weapons, families

²Corte Suprema de Justicia, Instituto de Medicina Legal, “Dr. Roberto Mansferrer,” Unidad de Estadísticas Forenses [Supreme Court, National Institute of Forensic Medicine, Forensic Statistics Unit], *Boletín sobre Homicidios*, Año 2, No. 1, Enero 2006, [hereinafter “*Boletín sobre Homicidios 2006*”]. Initial reports indicate that in 2006 the homicide rate increased yet again, to 57.73 homicides per 100,000 residents. See *Organismos Piden Reorientación de la Lucha Contra Homicidios en El Salvador*, YAHOO! TELEMUNDO NOTICIAS, Jan. 4, 2007, http://espanol.news.yahoo.com/s/afp/070104/latinoamerica/salvador_violencia_nota.

³*Boletín sobre Homicidios 2006*, supra note 2. According to the Pan American Health Organization (PAHO), the estimated 2000-2004 homicide rate for Latin America was 25.1 per 100,000 residents. PAN AMERICAN HEALTH ORGANIZATION, OFFICE OF THE ASSISTANT DIRECTOR, HEALTH ANALYSIS AND STATISTICS, HEALTH SITUATION IN THE AMERICAS: BASIC INDICATORS 2006, at 5 (“Mortality Indicators” Table), available at <http://www.paho.org/English/DD/AIS/BI-brochure-2006.pdf>. The most recent country-specific data available from the Pan American Health Organization for El Salvador is from 2002, when PAHO estimated the national homicide rate at 43.4 per 100,000. Pan American Health Organization, Regional Core Health Data Initiative, Table Generator System, <http://www.paho.org/English/SHA/coredata/tabulator/newTabulator.htm>.

⁴See, e.g., UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENTS, CENTRAL AMERICA AND MEXICO GANG ASSESSMENT 49-50 (2006) [hereinafter CENTRAL AMERICA AND MEXICO GANG ASSESSMENT], available at http://www.crin.org/docs/usaid_gang_assessment.pdf (listing “legacy of conflict and violence” as one of the “causes and risk factors of gang activity” in El Salvador); see also Joaquín M. Chávez, *An Anatomy of Violence in El Salvador*, in North American Congress on Latin America (NACLA) Report on the Americas, May/June 2004, vol. 37, issue 6 (“Understanding the high levels of social violence and the acceptance of violent norms in Salvadoran society must begin with a consideration of the historical and cultural processes associated with violence – authoritarianism, state terror, political violence and others.”). See generally COMISIÓN DE LA VERDAD PARA EL SALVADOR, DE LA LOCURA A LA ESPERANZA: LA GUERRA DE 12 AÑOS EN EL SALVADOR (1993) [hereinafter COMISIÓN DE LA VERDAD PARA EL SALVADOR], available at http://www.usip.org/library/tc/doc/reports/el_salvador/tc_es_03151993_toc.html (English version).

torn apart by violence and forced migration, and high levels of poverty and unemployment – continue to thwart El Salvador’s progress toward a secure and stable democratic society.

In this section of the report, we provide an overview of the history of the civil war and El Salvador’s halting transition toward peaceful democracy, with particular emphasis on the weaknesses of the nation’s judicial system and on deeply-engrained patterns of summary and extra-judicial violence. Part (a) of this section gives a brief overview of the war itself, while Part (b) describes the challenges Salvadoran society has faced in building the rule of law and democracy in the post-war period.

A. A Brief Overview of the Salvadoran Civil War

The twelve-year (1980-1991) war between the Salvadoran government and the rebel forces of the Frente Farabundo Martí para la Liberación Nacional (Farabundo Martí National Liberation Front, hereinafter “FMLN”) was one of the most brutal conflicts in a region gripped by political violence during the 1970s and 1980s. The war left an estimated 75,000 Salvadorans dead and forced hundreds of thousands to flee to neighboring countries or the U.S.⁵ Actors on both sides of the conflict committed grave abuses against civilians. Targeted killings by death squads claimed the lives of hundreds, if not thousands, of Salvadoran civilians, students, and human rights and labor activists⁶. By January 1992, when FMLN and government representatives signed U.N.-negotiated peace accords in Chapultepec, Mexico to put a formal end to the conflict, the war had largely destroyed the tiny country’s social and political structures. The United Nations-sponsored international Truth Commission, formed in the months following the signing of the peace accords, opened its final report with a grim depiction of the violence that had consumed the country for more than a decade:

⁵CENTRAL AMERICA AND MEXICO GANG ASSESSMENT, *supra* note 4, at 50 (“El Salvador’s civil war . . . resulted in the deaths of more than 75,000 people”); *id.* at 45 (“By 1990, over 700,000 Salvadorans had settled in [U.S. cities] . . .”); *see also* FEDERAL RESEARCH DIVISION, LIBRARY OF CONGRESS, EL SALVADOR: A COUNTRY STUDY (Richard Haggerty ed., 2nd ed. 1990) (estimating that between 1979 and 1988 more than 500,000 displaced Salvadorans reached the United States, in addition to tens of thousands more who sought refuge in neighboring countries in the region), *available at* [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+sv0042\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+sv0042)).

⁶The U.N. Truth Commission received direct testimony regarding a total of 817 death squad victims between 1980 and 1991 and concluded that “there is no question that what have been classified as murders committed by the death squads in rural areas account for a significant proportion of all killings in El Salvador between 1980 and 1991.” COMISIÓN DE LA VERDAD PARA EL SALVADOR, *supra* note 4, at 131-151.

Violence was a fire which swept over the fields of El Salvador; it burst into villages, cut off roads and destroyed highways and bridges, energy sources and transmission lines; it reached the cities and entered families, sacred areas and educational centres; it struck at justice and filled the public administration with victims; and it singled out as an enemy anyone who was not on the list of friends.⁷

Since 1992, El Salvador's government and its people have struggled to overcome this legacy of violence and the impunity of the civil war years.

The roots of El Salvador's civil war included both domestic and international factors. For centuries, El Salvador had been one of Latin America's poorest and most deeply unequal nations, with wealth and political power concentrated in the hands of a small elite.⁸ This inequality was reinforced by a judicial system that functioned largely in the service of economic and political power brokers in the country, most of whom had close ties to the military⁹. Throughout the 1970s, popular resistance against the Salvadoran government grew. With no access to legal avenues for advancing political change, Salvadoran opposition movements became increasingly militant¹⁰. Though formal opportunities for electoral participation across the political spectrum increased throughout the 1980s, the military continued to operate as the dominant power in the country throughout the decade¹¹. The Salvadoran armed forces became notorious across the world for carrying out brutal human rights abuses in the name of counter-insurgency. This unfortunate distinction was fueled by high-profile political killings such as the assassination of San Salvador Archbishop Monsignor Oscar Romero in 1980¹² and the murders of four humanitarian church workers

⁷*Id.* at 1 (all quotations from this source are taken from the English version of the report, available at http://www.usip.org/library/tc/doc/reports/el_salvador/tc_es_03151993_toc.html).

⁸See MARGARET POPKIN, PEACE WITHOUT JUSTICE 13 (2000) ("In El Salvador in the late nineteenth century, the oligarchy relied on the courts to force peasants off land that was to be concentrated in private hands to increase coffee production and to force the landless peasants to serve as cheap seasonal labor In the late 1970s, El Salvador had the most unequal distribution of incomes in Latin America.")

⁹*Id.* at 12-13; see also Chávez, *supra* note 4.

¹⁰See POPKIN, *supra* note 8, at 2.

¹¹*Id.* at 3.

¹² Monsignor Romero, a vocal opponent of violence and injustice, was killed by an

from the U.S. later that year.

By the 1980s, the Central American region had become a global ideological battleground where Cold War powers engaged in proxy battles for power and influence. Members of the Salvadoran opposition movements that became the FMLN were buoyed by the 1979 Sandinista overthrow of the Somoza regime in Nicaragua, while the Salvadoran government and its supporters in Washington grew increasingly determined to eliminate leftist forces in the country¹³. To support counter-insurgency activities, the United States funneled billions of dollars in economic and military aid to the Salvadoran government and military throughout the 1980s¹⁴. Although Congress conditioned military aid to El Salvador on semi-annual reports certifying that the Salvadoran government complied with human rights standards, human rights organizations charged that the U.S. continued to fund the Salvadoran military despite its responsibility for widespread rights abuses¹⁵. Indeed, the Reagan administration certified four times that the Salvadoran government complied with human rights standards notwithstanding “overwhelming evidence of continuing serious violations and a total failure to investigate past violations.”¹⁶

One of the particularly brutal features of the Salvadoran civil war was the widespread activity of “death squads,” clandestine groups that operated with varying levels of involvement or complicity of state actors to carry out targeted killings of perceived enemies of the government. In its final report, the U.N. Truth Commission for El Salvador cited the prevalence of death squads as one of the most troubling aspects of the conflict because

assassin’s bullet while celebrating mass in a Hospital Chapel. The UN Commission found that the assassination was ordered, planned and carried out by military personnel of the El Salvador government, operating using “death squad” procedures. COMISIÓN DE LA VERDAD PARA EL SALVADOR, *supra* note 4, at 132.

¹³See POPKIN, *supra* note 8, at 2-3.

¹⁴*Id.* at 3; BREN Y CUENCA, *EL PODER INTANGIBLE: LA AID Y EL ESTADO SALVADOREÑO EN LOS AÑOS OCHENTA* 27 (1992).

¹⁵See, e.g., HUMAN RIGHTS WATCH, *THE MASSACRE AT EL MOZOTE: THE NEED TO REMEMBER* 3-4 (1992) (charging that “U.S. denial or willful ignorance of human rights abuses during the 1980s reflected a structural flaw in administration policy. . . . One can only speculate as to whether the war could have ended long ago had the truth about massacres like El Mozote been pursued by the U.S. government.”)

¹⁶POPKIN, *supra* note 8, at 49. U.S. government investigation of human rights abuses during the civil war focused on cases that received significant publicity or were particularly violent, such as the murder of four U.S. churchwomen in 1980. *Id.* at 50-57.

of their roots in Salvadoran state institutions and socio-economic power structures, as well as their strong potential for re-emergence in the future. The Commission wrote in 1993:

The death squads, in which members of State structures were actively involved or to which they turned a blind eye, gained such control that they ceased to be an isolated or marginal phenomenon and became an instrument of terror used systematically for the physical elimination of political opponents. Many of the civilian and military authorities in power during the 1980s participated in, encouraged and tolerated the activities of these groups. Although there is no evidence of latent structures for these clandestine organizations, they could be reactivated when those in high Government circles issue warnings that might trigger the resumption of a dirty war in El Salvador. Since the death squad phenomenon was the problem *par excellence* of that dirty war which ultimately destroyed all vestiges of the rule of law during the armed conflict, the Salvadorian Government must not only be ready and willing to prevent the resurgence of this phenomenon but also seek international cooperation in eradicating it completely¹⁷.

Based on its review of evidence regarding more than 800 alleged death squad killings in El Salvador between 1980 and 1991, which included the testimonies of civilian and military death squad members, the U.N. Truth Commission described the composition and *modus operandi* of Salvadoran death squads in its final report in the following language:

The members of such groups usually wore civilian clothing, were heavily armed, operated clandestinely and hid their affiliation and identity. They abducted members of the civilian population and of rebel groups. They tortured their hostages, were responsible for their disappearance and usually executed them¹⁸.

The Commission also emphasized the blurring of lines between state and non-state actors involved in death squad activities¹⁹. The report concluded

¹⁷COMISIÓN DE LA VERDAD PARA EL SALVADOR, *supra* note 4, at 139.

¹⁸COMISIÓN DE LA VERDAD PARA EL SALVADOR, *supra* note 4, at 139.

¹⁹*Id.* at 139-141. The Commission noted that witnesses who had been members of death squads “admitted and gave details of their involvement at the highest

that “...even the death squads that were not organized as part of any State structure were often supported or tolerated by State institutions,” and that “[f]requently, death squads operated in coordination with the armed forces and acted as a support structure for their activities.”²⁰

Underscoring its concerns that the death squad phenomenon could re-emerge in the future if the Salvadoran government and the international community did not take steps to address the structural and institutional context that fueled it, the Truth Commission traced the roots of state-affiliated clandestine violence in its final report.²¹ The Commission cited the formation of the National Guard in the early twentieth century as giving impetus and informal organization to landowners and other powerful economic interests that sought to harness military force to exercise control over “civilian society” or anyone who presented a challenge to their power.²² A 1932 National Guard-led massacre of at least ten thousand peasants in response to a rural uprising in western El Salvador demonstrated the potency of this loose, clandestine collaboration between military forces and powerful economic interests. From 1967 to 1979, according to the Commission, death squad activities in the country became more organized. In that period, the head of the National Guard established a paramilitary organization called ORDEN (Organización Democrática Nacionalista or Nationalist Democratic Organization; this acronym also means “order” in Spanish) whose “function was to identify and eliminate alleged communists among the rural population.”²³ After 1981, when the FMLN launched its insurgency campaign, clandestine collaborations between military and non-military actors to target perceived subversives and to control the civilian population through fear became increasingly prevalent. Over time, these structures became a central force for violence during the war.

levels in the organization, operation and financing of the death squads . . .” *Id.* at 139. See generally Lauren Gilbert, Center for International Policy, *El Salvador’s Death Squads: New Evidence from U.S. Documents* (1994), available at <http://www.ciponline.org/dethsqd.txt> (detailing U.S. government knowledge of death squads and individuals funding death squad activities from the United States throughout the 1980s).

²⁰COMISIÓN DE LA VERDAD PARA EL SALVADOR, *supra* note 4, at 141.

²¹*Id.* at 139-141.

²²*Id.* at 140.

²³COMISIÓN DE LA VERDAD PARA EL SALVADOR, *supra* note 4, at 140.

B. The Aftermath of the War: A Culture of Impunity and an Ineffective Judicial System

U.N.-brokered negotiations brought a formal end to the armed conflict in El Salvador. Still, even after the signing of the peace accords, serious questions remained about how to address the underlying causes of the conflict, in particular the lack of a functioning judicial system, the limited meaningful space for political opposition in national electoral and governance structures, and the prevalence of the use of violence as a formal or informal means of exercising or challenging state policy. Unlike other Latin American countries engaged in transition or rebuilding their political institutions through popular elections after authoritarian rule, El Salvador had virtually no experience with democratic politics or effective legal systems and had not arrived at a formal political consensus regarding the country's future.²⁴ These historical factors have generated significant obstacles to building democracy and the rule of law in post-war El Salvador. This section addresses challenges to the post-war construction of the rule of law in three areas: the judicial system generally, the national police, and the prison system. The weaknesses of these institutions have nurtured the conditions of violence, insecurity, and lawlessness that permeate public life in El Salvador today. The section concludes with a brief discussion of death squad activity in post-war El Salvador.

i. Reform of the Judicial System: Initial Efforts, Challenges, and the Current State of Affairs

El Salvador's judicial system, whose susceptibility to manipulation by powerful political and economic actors is often cited as one of the primary causes of the civil war,²⁵ continues to be incapable of guaranteeing the rule of law a decade and a half after the end of the conflict. Though domestic civil society organizations and the international community emphasized the need for judicial reform in the post-war period, institutional and political obstacles have precluded the construction of a fair and effective judicial system.

One notable indication of the deeply-rooted weaknesses of the Salvadoran justice system is the fact that in the post-war period, domestic courts have rarely, if ever, investigated or prosecuted the perpetrators of

²⁴POPKIN, *supra* note 8, at 4.

²⁵See, e.g., POPKIN, *supra* note 8, at 11 (“[A]buse of power by state actors and their powerful allies and a lack of legal recourse against such abuses are frequently cited among the causes of the war.”).

human rights violations committed during the conflict.²⁶ The international U.N.-sponsored Truth Commission assigned responsibility for brutal killings and rights violations to a number of high-ranking military and political leaders of the 1980s, including Roberto D'Aubisson, former president and founder of the political party Alianza Republicana Nacionalista (Nationalist Republican Alliance, hereinafter "ARENA"). However, these officials and the vast majority of lower-ranking authorities have never been held accountable in domestic proceedings.²⁷ In part, this failure to seek justice through domestic means stems from sweeping amnesty laws passed in 1992 and 1993, the latter pushed through the Legislature within days of the release of the Truth Commission Report.²⁸ However, the weaknesses of the Salvadoran judicial system itself resulted in a lack of international pressure to try those responsible for human rights abuses in domestic courts. The Truth Commission Report suggested that the Salvadoran justice system was politically and institutionally unable to address the rights violations of the war years and implied that it would have to be built anew before it would be capable of providing justice to the Salvadoran people.²⁹

Unfortunately, efforts to build a functioning judicial system in El Salvador have failed to overcome the legacy of institutional incapacity and politicization that drew the attention of international observers in the 1980s

²⁶This reality stands in marked contrast to the post-authoritarian periods in Argentina and Chile, for example, where domestic courts were used, if haltingly and imperfectly, to initiate investigations and prosecutions of those responsible for human rights violations during military regimes. See Margaret Popkin & Nehal Bhuta, *Latin American Amnesties in Comparative Perspective: Can the Past be Buried?* 13 *CARNEGIE J. OF ETHICS AND INT'L AFF.* 99, 108 (1999) ("Despite the extent of human rights abuses committed in El Salvador during the 1980s, El Salvador lags far behind its neighbors in addressing its past.")

²⁷See POPKIN, *supra* note 8 at 121-123.

²⁸For an extended discussion of the Salvadoran amnesty laws and an analysis of their relatively sweeping nature compared to those of other Latin American countries, see Popkin & Bhuta, *supra* note 26.

²⁹COMISIÓN DE LA VERDAD PARA EL SALVADOR, *supra* note 4, at 190 ("El Salvador has no system for the administration of justice which meets the minimum requirements of objectivity and impartiality so that justice can be rendered reliably. This is a part of the country's current reality and overcoming it urgently should be a primary objective for Salvadorian society. The Commission does not believe that a reliable solution can be found to the problems it has examined by tackling them in the context which is primarily responsible for them. The situation described in this report would not have occurred if the judicial system had functioned properly. Clearly, that system has still not changed enough to foster a feeling of justice which could promote national reconciliation")

and early 1990s. Although legal reforms were a key priority in the years following the civil war, and despite some important formal advances made in the early to mid-1990s,³⁰ the fundamental institutional weaknesses of the judicial system have remained unresolved. Rights groups in El Salvador today cite serious deficiencies in the judiciary, prosecutor's offices,³¹ the Policía Nacional Civil (National Civil Police, hereinafter "PNC") and prison system³² as evidence that the country has yet to develop democratic and effective legal institutions.

ii. Failure to Build Effective Police Institutions in El Salvador

The institutional weakness and politicization of the National Civil Police (PNC) constitute central obstacles to ensuring human rights and establishing the rule of law in post-war El Salvador. This public institution, perhaps more than any other in the country, has directly participated in human rights abuses associated with the recent crackdown on youth gangs, discussed in greater depth in Section II, *infra*.

The PNC was established as part of the peace accords and represented the result of careful deliberation by international negotiators.³³

³⁰Key reforms included the passage of legislation guaranteeing criminal detainees the right to counsel in 1992, *see* POPKIN, *supra* note 8 at 227, and a new Criminal Procedure Code passed in 1996. *Id.* at 231.

³¹INSTITUTO DE LOS DERECHOS HUMANOS DE LA UNIVERSIDAD CENTROAMERICANA JOSÉ SIMEÓN CAÑAS [THE HUMAN RIGHTS INSTITUTE OF "JOSÉ SIMEÓN CAÑAS" CENTRAL AMERICAN UNIVERSITY [hereinafter "IDHUCA"], LOS DERECHOS HUMANOS EN EL 2006 (2007) available at <http://168.243.1.4/publica/idhuca/balance.pdf> (citing politicization and institutional failures within the Fiscalía General de la Republica (Attorney General's Office), a lack of progress in several important cases of rights violations that have remained in impunity for years, and a lack of impartiality and poor administration in the judicial branch). *See also* PROCURADURÍA PARA LA DEFENSA DE LOS DERECHOS HUMANOS, INFORME DE LABORES DE LA PROCURADURÍA PARA LA DEFENSA DE LOS DERECHOS HUMANOS [Office of the National Human Rights Ombudswoman, Report on the Work of the National Human Rights Ombudswoman] [hereinafter INFORME DE LABORES DE LA PROCURADURÍA] (Julio 2005-Junio 2006).

³²IDHUCA, *Los Derechos Humanos en el 2005 (II)*, PROCESO Jan. 11, 2006 at 11-12 (citing continued politicization of the PNC, as well as "inhumane conditions," violence, and a lack of state control in the prison system). *See also* INFORME DE LABORES DE LA PROCURADURÍA, *supra* note 31; THE WORLD BANK ET. AL., PREVENCIÓN Y CONTROL DEL CRIMEN Y LA VIOLENCIA EN EL SALVADOR: LINEAMIENTOS ESTRATEGICOS 10-12 (June 2004).

³³POPKIN, *supra* note 8, at 175.

Unfortunately, however, the PNC failed to develop into a transparent, professional, and competent public institution.³⁴ Domestic human rights organizations and international observers trace many of the PNC's current problems to its initial composition.³⁵ Under the terms of the peace accords, the PNC was to be composed primarily (sixty percent) of civilians who had not participated in combat during the war. The rest of the force was to be evenly divided between former National Police (military) personnel, and former FMLN combatants.³⁶ The post-war government did not abide by the terms of the peace accords, however, going so far as to "plac[e] former military personnel into the new force, including the wholesale incorporation of units slated to be disbanded."³⁷ According to a May 1994 report to the U.N. Security Council by the United Nations Observer Mission in El Salvador (hereinafter "ONUSAL"), among the higher-ranking PNC officials, "[thirty] subcommissioners in the new police force belonged to the old public security system, while only seven are from the FMLN and only seventeen are civilians."³⁸ The strong presence in the PNC of actors associated with the militarized public security institutions from the years of military rule has seriously undermined its capacity to help protect human rights and build the rule of law in El Salvador. A decade and a half after the signing of the peace accords, combat affiliations may not be as visible or as expressly divisive as they were in the mid-1990s; however, the PNC is still seen as an institution that is frequently more responsive to powerful political and economic forces than to the exigencies of the rule of law.³⁹

³⁴See POPKIN, *supra* note 8 at 176.

³⁵IDHUCA, *supra* note 32 at 12 (tracing current problems with the PNC to the time and manner of its creation). See also POPKIN, *supra* note 8 at 176.

³⁶Dominic Murray, *Post-Accord Police Reform*, in *VIOLENCE AND RECONSTRUCTION* 79 (John Darby, ed., 2006).

³⁷POPKIN, *supra* note 8, at 176. See also IDHUCA, *supra* note 32 at 12 (stating that certain existing patterns of police misconduct continued in the PNC from the time of its creation, undermining the integrity of the new force). See generally Jeannette Aguilar, *La mano dura y las 'políticas' de seguridad*, 667 ESTUDIOS CENTROAMERICANOS, ELECCIONES Y MEDIOS DE COMUNICACIÓN: NO. MONOGRÁFICO 441-43 (Universidad Centroamericana José Simeón Cañas [José Simeón Cañas Central American University] [hereinafter "UCA"] (May 2004) (describing the general structure of Salvadoran police forces).

³⁸The Secretary General, *Report of the Secretary-General on the United Nations Mission in El Salvador*, ¶ 36, delivered to the Security Council, U.N. Doc. S/1994/561 (May 11, 1994).

³⁹INFORME DE LABORES DE LA PROCURADURÍA, *supra* note 31, at 15 (stating that the PNC

In addition to the troubling disproportionate presence of actors linked to the militarized national security forces of the pre-1992 era, a lack of resources and political will have impeded the professionalization of the PNC, generating serious deficiencies in its ability to investigate and prosecute criminal activity. International observers and members of the Truth Commission noted these deficiencies in the early 1990s,⁴⁰ and serious problems persist today. International and domestic activists and observers point to a lack of investigative capacity⁴¹ and failures to comply with human rights standards, particularly with regard to arbitrary arrests and physical violence,⁴² as being among the most fundamental institutional weaknesses of the Salvadoran police. These findings are discussed in greater detail in Section III, *infra*.

iii. Failures of the Prison System

Like other criminal justice institutions, El Salvador's prisons in the post-war era, rife with rights abuses, have failed to contribute to ensuring public security or building the rule of law. These failures have as their origins the longstanding problems of the Salvadoran justice system as a whole, particularly with respect to the use of pre-trial detention.⁴³ In the years

has failed to improve in investigative capacity or professionalism, and instead has demonstrated an increasingly authoritarian and repressive mentality). See also IDHUCA, *supra* note 32 at 12 (describing the PNC as a politicized institution).

⁴⁰In 1993 the ONUSAL report to the United Nations noted an “inability to investigate crimes” that was “reflected in the failure of judges to show any initiative in taking the requisite legal steps in the early stages of the investigation; in the slow and delayed participation of the Office of the Attorney General; in the meager or invalid evidence gathered for the purpose of establishing criminal liability; and in lenience in investigating cases involving military personnel or agents of the security forces.” The Secretary General, *Note by the Secretary General*, ¶ 77, *delivered to the Security Council and the General Assembly*, U.N. Doc. S/25521/Annex (Report of the Director of the Human Rights Division of the United Nations Observer Mission in El Salvador up to 31 Jan. 1993), A/47/912 (Apr. 5 1993).

⁴¹Interview with Jaime Martínez Ventura, Coordinador, Oficina de Justicia Juvenil, Corte Suprema de El Salvador (Coordinator, Office of Juvenile Justice, Supreme Court), in San Salvador (Aug. 22, 2006); see also THE WORLD BANK ET. AL., *supra* note 32, at 10.

⁴²Interview with Beatrice Alemmani de Carrillo, Procuradora para la Defensa de los Derechos Humanos de El Salvador [National Human Rights Ombudswoman], in San Salvador (Mar. 27 2006).

⁴³In 1990, for example, a Salvadoran government law reform initiative funded by USAID estimated that approximately 90% of persons detained in Salvadoran

following the peace accords, poor prison conditions, severe overcrowding, and prison violence became major national issues in El Salvador,⁴⁴ prompting ONUSAL to recommend in 1994 that the Salvadoran government declare a state of emergency in the prison system and take systematic steps to address the crisis.⁴⁵

Unfortunately, recent years have instead brought an intensification of the prison crisis in El Salvador. The government's reliance on mass arrests to curb gang violence – one of several repressive strategies of the past several years – has contributed to the overcrowding and deteriorating conditions within the prison system.⁴⁶ In conversations with our researchers, the Director of the Penitentiary System in El Salvador acknowledged that the physical infrastructure of the country's prison system is insufficient for the number of prisoners it holds.⁴⁷ In 2005, 12,500 detainees inhabited a network of prisons that has a capacity for 8,000 inmates.⁴⁸ In addition to severe overcrowding and resultant poor conditions, the mass incarceration of gang members in a system without the resources or capacity to absorb them has generated a situation in which gangs wield vast power inside the

prisons had not been sentenced. POPKIN, *supra* note 8 at 232 (citing CORELESAL, PROBLEMÁTICA DE LA ADMINISTRACIÓN DE JUSTICIA EN EL SALVADOR, 117-118 (1990)).

⁴⁴*Id.* at 231-232; see also *El Salvador Prison Riot Kills 9*, N.Y. TIMES, Feb. 25, 1994, at A6 (“Hundreds of inmates rose up in a crowded prison in Santa Ana, 40 miles west of here, and killed nine fellow prisoners before talks today ended El Salvador’s fourth prison mutiny since November”).

⁴⁵POPKIN, *supra* note 8 at 232.

⁴⁶FUNDACIÓN DE ESTUDIOS PARA LA APLICACIÓN DEL DERECHO [FOUNDATION FOR THE STUDY OF THE APPLICATION OF THE LAW] (“FESPAD”) AND CENTRO DE ESTUDIOS PENALES DE EL SALVADOR [EL SALVADOR CENTER FOR PENAL STUDIES] (“CEPES”), INFORME ANUAL JUSTICIA JUVENIL 2004, at 35 (2004) [hereinafter FESPAD AND CEPES INFORME ANUAL JUSTICIA JUVENIL 2004] (stating that large-scale arrests have exacerbated overcrowding and are responsible for worsening living conditions in centers of detention).

⁴⁷Interview with Jaime Villanova, Director General, Centros Penales de El Salvador (Director General of Penal Centers), in San Salvador (Mar. 28, 2006).

⁴⁸*Id.* The number of people incarcerated in all prisons within El Salvador thus accounts for 0.2% of the overall population. INFORME DE LABORES DE LA PROCURADURÍA, *supra* note 31, at 190. The number of spaces available within prisons appears to vary somewhat depending on the organization providing the relevant statistics. *Id.* Citing to official statistics from the Dirección General de Centros Penales, Departamento de Registro and Control Penitenciario (General Directorate of Penal Centers, Registration and Penitentiary Control Department), the Ombudswoman’s Office estimates that only 6000 spaces are available for the prison population of more than 12,000. *Id.*

prisons. This problem has intensified due to the government's efforts to segregate detainees into separate prisons by gang affiliation (or lack of gang affiliation).⁴⁹ Still, the segregation appears to have been a necessary step to avoid violent inter-gang clashes (such as the notorious gang riots that took place in La Esperanza prison in 2004⁵⁰). In addition to the overcrowded and poor conditions, reports of physical and mental abuses by prison officials are widespread.⁵¹ These problems appear to be systemic and institutional, extending to juvenile detention centers, where deaths of detainees have been reported in recent years.⁵² Human rights abuses in prisons and the role of the penitentiary system in the Salvadoran government's response to gangs are discussed in greater detail in Section III, *infra*.

iv. Apparent Re-emergence of Death Squads and Indications of Extrajudicial Killings

Although the international community singled out death squads as perhaps the most troubling feature of El Salvador's socio-political sys-

⁴⁹ Interview with Hugo Ramírez, Subcomisionado de la Policía Nacional Civil, Jefe de la División de Servicios Juveniles y Familia (PNC Subcommissioner, Head of Juvenile and Family Services Division), in San Salvador (Aug. 31, 2006) (observing that by segregating prisons by gang affiliation, the government has contributed to the gangs' level of organization); Interview with Astrid Torres, Jueza de Vigilancia Penitenciaria y de Ejecución de la Pena (Judge for Penitentiary Oversight and Sentencing), Departamento La Libertad, in San Salvador (Aug. 21, 2006) (stating that the policy of placing members of the same gang together in the same prison strengthens the gang).

⁵⁰ See AMNESTY INTERNATIONAL REPORT 2005: THE STATE'S OF THE WORLD'S HUMAN RIGHTS 99 (2005), available at <http://web.amnesty.org/report2005/slv-summary-eng> (covering events in El Salvador from January-December 2004), describing the August 2004 deaths of 31 prisoners in the La Esperanza prison "allegedly as a result of disputes among prisoners, some of them members of *maras*." Amnesty International reported that in October, "two prison guards and one prisoner were charged with offences including homicide, attempted homicide, illegal association and allowing forbidden materials...to be brought into the prison.")

⁵¹ INFORME DE LABORES DE LA PROCURADURÍA, *supra* note 31, at 188-89 (stating that conditions in Salvadoran prisons are deplorable, that prison authorities frequently employ solitary confinement, and that mistreatment of prisoners and visitors continues to form part of the day-to-day pattern of denunciations received by the Ombudswoman's Office). See also Interview with Astrid Torres, *supra* note 49.

⁵² See FESPAD AND CEPES INFORME ANUAL JUSTICIA JUVENIL 2004, *supra* note 46, at 49-50 (describing two deaths in juvenile detention centers, alongside other deficiencies).

tem throughout the war and during the early post-war period,⁵³ national authorities failed to eradicate extrajudicial violence, which has become increasingly prevalent in the years after the peace accords.⁵⁴ As detailed in Section I.a, *supra*, death squads with varying levels of association with the state have been a part of Salvadoran life for decades and were responsible for thousands of killings between 1980 and 1991. In 1992, the Truth Commission called forcefully upon the Salvadoran government to investigate “the structural connection...between death squads and state bodies.”⁵⁵ The next year, the U.N. continued to emphasize the danger that death squads posed to the nascent Salvadoran democracy.⁵⁶ In particular, ONUSAL reported extrajudicial killings during those two years of both FMLN and ARENA party leaders, as well as human rights activists, and urged the Salvadoran government to investigate death squad activities.⁵⁷ As of 1994, the

⁵³See, e.g., COMISIÓN DE LA VERDAD PARA EL SALVADOR, *supra* note 4; see also *Report of the Secretary-General 1994*, para. 4, *supra* note 38 (reiterating concerns expressed in an earlier report that “so-called death squads” were re-merging).

⁵⁴For accounts of post-war extrajudicial violence in the 1990s generally, see AMNESTY INTERNATIONAL, *EL SALVADOR: THE SPECTRE OF DEATH SQUADS* (1996), available at [http://web.amnesty.org/library/pdf/AMR290151996ENGLISH/\\$File/AMR2901596.pdf](http://web.amnesty.org/library/pdf/AMR290151996ENGLISH/$File/AMR2901596.pdf). See also POPKIN, *supra* note 8 at 186-87. Numerous sources whom our researchers interviewed in El Salvador told us that extrajudicial violence had increased in recent years. Interview with Gerardo Alegría, Procurador Adjunto de los Derechos Civiles e Individuales, Procuraduría para la Defensa de los Derechos Humanos (Adjunct Ombudsman for Civil and Individual Rights, Office of the National Human Rights Ombudswoman), in San Salvador (Aug. 29, 2006); Interview with José Miguel Cruz, then-Director of the Instituto Universitario de Opinión Pública (University Institute for the Study of Public Opinion, hereinafter “IUDOP”), in San Salvador (Mar. 31, 2006). See also WASHINGTON OFFICE ON LATIN AMERICA, *YOUTH GANGS IN CENTRAL AMERICA: ISSUES IN HUMAN RIGHTS, EFFECTIVE POLICING, AND PREVENTION 16* (2006), available at http://www.wola.org/gangs/gangs_report_final_nov_06.pdf (noting that “social cleansing”-style killings have increased in Guatemala, El Salvador, and Honduras in recent years).

⁵⁵COMISIÓN DE LA VERDAD PARA EL SALVADOR *supra* note 4, at 144.

⁵⁶The Secretary General, *Further Report of the Secretary-General on the United Nations Observer Mission in El Salvador*, ¶ 11, delivered to the Security Council, U.N. Doc. S/26790 (Nov. 23 1993).

⁵⁷*Id.*, ¶ 11. (“In recent weeks, a number of murders and assaults have raised fears about the possible resurgence of illegal armed groups with political objectives, including the so-called death squads. In October, the Division of Human Rights of ONUSAL alerted the Government to this danger and stressed the usefulness of establishing an autonomous mechanism for the investigation of these incidents. The subsequent killings of two senior FMLN leaders, a member of the governing party (ARENA) and two former municipal officials belonging to that party, brought this

U.N. Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions reported that death squad activities were still occurring and were “apparently connected to the March 1994 elections.”⁵⁸ Moreover, the Special Rapporteur noted that “no investigations were said to have been opened into most of the extrajudicial killings attributed to such groups.”⁵⁹ Thus even as the international community urged the Salvadoran government to take the opportunity afforded by the peace accords to establish the rule of law and bring an end to extrajudicial violence, death squads continued to operate, targeting political and human rights activists. The post-war situation was so serious, in fact, that in December 1993 the U.N. formed a special commission, composed of representatives of the Salvadoran government and staff of ONUSAL, to investigate continued post-war death squad activity.⁶⁰

As a sense of public insecurity and fear of crime emerged in the years following the peace accords, death squads began to target persons suspected of involvement in ordinary crime, as well as political activists. In 1994, a group calling itself the *Sombra Negra* (“Black Shadow”) appeared in the eastern city of San Miguel, purportedly to combat crime. The *Sombra Negra* targeted alleged criminals for extrajudicial killings, justifying its activities with assertions that “the laws of the country were not working,” “the PNC did not have sufficient resources to combat crime,” and “too many

issue into sharper focus. In view of these killings and the ONUSAL position as expressed by its Human Rights Division, the Government created an Interinstitutional Commission to investigate this type of crime.”) See also The Secretary General, *Report of the Secretary-General on the United Nations Mission in El Salvador* (May 11 1994), ¶ 6, *supra* note 38 (“Since the establishment of the Joint Group, several acts of violence have been committed against representatives of political or social organizations, including the assassination, immediately after the establishment of the Joint Group, of a member of the highest decision-making body of the FMLN. Investigations are under way in an effort to clarify the motives for these acts and to identify the culprits.”)

⁵⁸Special Rapporteur on extrajudicial, summary or arbitrary executions, Baere Waly Ndiaye, *Question of the Violation of Human Rights and Fundamental Freedoms, in Any Part of the World, with Particular Reference to Colonial and Other Dependent Countries and Territories: Extrajudicial, summary, or arbitrary executions*, ¶ 278, delivered to the Commission on Human Rights, U.N. Doc. E/CN.4/1994/7 (Dec. 7, 1993).

⁵⁹*Id.* at ¶ 277.

⁶⁰POPKIN *supra* note 8, at 187.

crimes were committed in El Salvador daily.”⁶¹ In 1995, several alleged members of the group, including four officials of the PNC, were arrested and charged with homicide. By 1999, none had been convicted.⁶² The current mayor of the city of San Miguel was one of those charged.⁶³

The emergence of the *Sombra Negra* exemplifies the transformation of Salvadoran death squads from groups seeking to silence political opposition to ones effectuating social cleansing. Despite this shift away from an overtly political logic, however, death squads that engaged in social cleansing involved many of the individual and institutional actors linked to death squads during the civil war.⁶⁴ It is equally worrisome that the extrajudicial executions of alleged criminals in the 1990s, like those of political activists in prior decades, appeared to be driven by the efforts of powerful actors in Salvadoran society to control the population through fear. Such extrajudicial violence, moreover, was both a cause and a consequence of El Salvador’s post-war failure to establish the rule of law through functioning democratic and judicial institutions.

Today, there are strong indications that social cleansing groups that target suspected criminals and gang members have become increasingly active in response to increased levels of violence. International and domestic human rights organizations have documented a sharp increase in unexplained homicides since 2003, and attribute this increase to the re-activation of death squads.⁶⁵ Since 2003, the homicide rate in the country

⁶¹AMNESTY INTERNATIONAL, EL SALVADOR: THE SPECTRE OF DEATH SQUADS, *supra* note 54.

⁶²*Id.*; DOUGLAS PAYNE, EL SALVADOR: REEMERGENCE OF “SOCIAL CLEANSING” DEATH SQUADS 4 (1999), available at http://uscis.gov/graphics/services/asylum/ric/qa_pdfs/QA-SLV99-001.pdf.

⁶³Yurina Rico, *Una Sombra persigue al alcalde de San Miguel*, LA OPINION (Los Angeles), Nov. 20, 2006.

⁶⁴Amnesty International reported that the *Sombra Negra* likely consisted of former soldiers “with tacit approval of the PNC” (Policía Nacional Civil). AMNESTY INTERNATIONAL, EL SALVADOR: THE SPECTRE OF DEATH SQUADS, *supra* note 54, at 3.

⁶⁵Interview with José Miguel Cruz, *supra* note 54; Interview with Jaime Martínez Ventura, *supra* note 41; Interview with Beatrice Alamanni de Carrillo, *supra* note 42; Interview with Tim McConville, Coordinator of Equipo Nahual, in Ilopango (Aug. 24, 2006). Jeannette Aguilar, Director of the Institute for Public Opinion Research at the Central American University, told our researchers that “[t]here is increasing evidence of social cleansing. Faced with a state that is incapable of guaranteeing citizen security, these groups are coming into play. There is an increase in the last several years of homicides of gang members, committed not just by other gang members.” Interview with Jeannette Aguilar, Director, IUDOP, in San Salva-

has soared, from 36 homicides per 100,000 residents in 2003, to 55.5 per 100,000 in 2005.⁶⁶ Simultaneously, the phenomenon of gang violence has become a central national concern, to which the state has responded with repressive law enforcement strategies and increasingly harsh rhetoric. Several experts with whom we spoke suggested that there is a link between the re-emergence of death squads and extrajudicial killings and the repressive anti-gang policies that were first implemented in 2003 (these policies are discussed in detail in Section III, *infra*). According to José Miguel Cruz, former Director of the Institute for Public Opinion Research at the Central American University in El Salvador, these repressive crime fighting plans have provided “ideological and rhetorical support” for social cleansing groups.⁶⁷

The *modus operandi* of the death squads that have re-emerged since 2003 bears a marked resemblance to that of the death squads of the civil war. For example, in its report on “possible extrajudicial, summary, or arbitrary executions in El Salvador in 2004,” Salvadoran NGO and research institute Fundación de Estudios para la Aplicación del Derecho (Foundation for the Study of the Application of the Law, hereinafter “FESPAD”) collected media reports of unexplained homicides that may constitute extrajudicial killings. According to FESPAD, these homicides presented a common pattern:

[the killings are carried out] from cars and bicycles, shots fired to the head at point blank range, bodies [left] face down, with hands and feet tied behind backs, sometimes bound with shoestrings or with barbed wire. ... Generally [the victims] have been executed by armed men wearing ski masks, and their bodies are left in creeks, rivers, highways...⁶⁸

Other public officials and rights groups in El Salvador also describe current social cleansing operations as bearing striking similarities to the death

dor (Aug. 24, 2006). In a November 2006 report on Central American gangs, the Washington Office on Latin America noted an increase in unexplained murders in Central America and highlighted as a possible explanation increasing extrajudicial killings of gang members. WASHINGTON OFFICE ON LATIN AMERICA, *supra* note 54. See also Interview with Gerardo Alegria, *supra* note 54.

⁶⁶*Boletín sobre Homicidios*, *supra* note 2.

⁶⁷Interview with José Miguel Cruz, *supra* note 54.

⁶⁸FESPAD AND CEPES, ESTADO DE LA SEGURIDAD PÚBLICA Y LA JUSTICIA PENAL EN EL SALVADOR 2004 85 (2004).

squad activities of the civil war years.⁶⁹ The commonalities between these killings and the patterns of death squad activities of the 1980s and early 1990s (see Section I.a, *supra*) indicate that some of the same individual or institutional actors involved in death squads during the civil war may be linked to current social cleansing activities. Though the level of state involvement in current social cleansing efforts is unclear, death squads in El Salvador currently operate with impunity, and human rights groups and other observers suggest that state actors may be complicit in their activities.⁷⁰ In particular, established human rights institutions in El Salvador have documented the involvement of PNC officials in extrajudicial killings in recent years.⁷¹

In sum, the current resurgence of death squad activities in El Salvador indicates that the Salvadoran government has yet to build public

⁶⁹Jaime Martínez Ventura, Director, Office of Juvenile Justice, Supreme Court, described the characteristics of current killings he believes to be social cleansing, including deaths in which victims' bodies are found in isolated areas or have been tortured or mutilated. According to Mr. Martínez, these characteristics are not associated with gang killings, but rather are consistent with killings by groups armed with heavy weaponry and traveling by vehicle. Interview with Jaime Martínez Ventura, *supra* note 41. Additionally, National Human Rights Ombudswoman Beatrice Alamanni de Carrillo, speaking to our researchers about the resurgence in death squad activities in recent years, emphasized the brutality and use of heavy weaponry that characterize these killings. Interview with Beatrice Alamanni de Carrillo, *supra* note 65.

⁷⁰Interview with Gerardo Alegría, *supra* note 54 (stating that the failure of police and prosecutors to address the situation of violence suggests not only inefficiency, but also complicity, particularly in light of the climate of impunity for such crimes. Mr. Alegría also told our researchers that the Ombudswoman's Office believes that officials of the PNC were responsible for the extrajudicial killings of suspected gang members in Sonsonate in June 2006.). See also Interview with Jeannette Aguilar, *supra* note 65.

⁷¹Tutela Legal del Arzobispo de San Salvador (the human rights office of the Archbishop of San Salvador, hereinafter "Tutela Legal") documented one example of an extrajudicial killing committed by members of the PNC in 2005. TUTELA LEGAL DEL ARZOBISPADO DE SAN SALVADOR, INFORME ANUAL DE TUTELA LEGAL DEL ARZOBISPADO DE SAN SALVADOR: LA SITUACIÓN DE LOS DERECHOS HUMANOS EN EL SALVADOR 2005, 10 (2005) [hereinafter "LA SITUACIÓN DE LOS DERECHOS HUMANOS EN EL SALVADOR 2005"]. The office documented eight instances of extrajudicial killings committed by members of the PNC in 2004. TUTELA LEGAL DEL ARZOBISPADO DE SAN SALVADOR, INFORME DE TUTELA LEGAL DEL ARZOBISPADO DE SAN SALVADOR SOBRE LA SITUACIÓN DE LOS DERECHOS HUMANOS EN EL SALVADOR A PARTIR DE LA DEFENSA DE LOS MISMOS Y DE LAS INVESTIGACIONES DE VIOLACIONES A ESTOS DERECHOS, OCURRIDAS DURANTE EL 2004, 7 (2004) [hereinafter "LA SITUACIÓN DE LOS DERECHOS HUMANOS EN EL SALVADOR 2004"]. Note that these are not estimates of the incidence of extrajudicial killings by PNC agents in El Salvador, but rather are individual cases brought to the attention of Tutela Legal and investigated thoroughly by that organization.

institutions capable of providing for public security in accordance with the rule of law. In the absence of such institutions, centuries-old patterns of clandestine violence aimed at social control persist in their most brutal forms today.

II. The Gang Phenomenon in El Salvador

Gang-related and youth violence in El Salvador, the central focus of this report, must be understood as a feature of the country's legacy of deep socio-economic inequalities, pervasive violence, and weak democratic and legal institutions, all of which are discussed generally in Section I, *supra*. The rapid growth in the power and prevalence of Salvadoran street gangs, whose initial ascendance in El Salvador in the 1990s resulted in part from major shifts in U.S. immigration laws during that decade, is both a consequence and a permanent reminder of the failures of the post-war government to establish the rule of law and provide citizen security in El Salvador.

Because gangs are complex and dynamic in their organization, and because they have become such a politicized topic in El Salvador and abroad in recent years,⁷² objective and reliable information about how they function is difficult to obtain. In El Salvador, our researchers interviewed dozens of current and former gang members, staff of government, church, and NGO agencies that work with gang members on a daily basis, and several academic experts at the Universidad Centroamericana "José Simeón Cañas" (José Simeón Cañas Central American University, hereinafter "UCA") who study the gang phenomenon. We have also reviewed extensive secondary source material on the issue. This section provides an overview of the emergence and evolution of the gang phenomenon in El Salvador over the past decade, based on information that we could confirm through interviews, on-the-ground research, and reliable accounts from secondary sources.

A. The Emergence of Youth Gangs

El Salvador's gang history can be traced partly to the 1970s and 1980s, when civil strife forced many families to flee the country and resettle in U.S. cities, such as Los Angeles, where youth street gangs were already an established feature of urban life.⁷³ As newcomers in ethnically divided ur-

⁷²A recent USAID report on Central American gangs noted that "[t]he [Salvadoran] media has tended to over-exaggerate the problem of the gangs while not focusing on other important social issues. While the media bombards the public with news accounts of gangs involved in criminal activity, there is little analysis of the origins and proliferation of the gang phenomenon. Instead, gangs are often the scapegoat for all social ills, which limits the public's deeper understanding of gangs and other issues affecting the country." CENTRAL AMERICA AND MEXICO GANG ASSESSMENT, *supra* note 4, at 48.

⁷³Interview with Oscar Bonilla, President, Consejo Nacional para Seguridad Pública

ban areas in the U.S., many displaced Salvadoran youth sought to integrate into existing gangs or form their own gangs for self-protection.⁷⁴ Salvadoran youth gravitated in particular toward two gangs that became increasingly organized in U.S. cities in the 1990s: the 18th Street gang (“Mara 18”), composed mainly of Mexican-American youth and named after 18th Street in Los Angeles, and the Mara Salvatrucha (“MS-13”), a gang formed by Salvadoran youth.⁷⁵ Over time, these Central American immigrants were absorbed into the broader U.S. street gang culture. In the meantime, youth gangs also existed in Central American cities, but they tended to be smaller, more diverse and tied to a particular neighborhood, without the regional presence or organization that U.S. gangs had begun to attain.⁷⁶

In 1996, changes to U.S. immigration laws dramatically expanded the crime-related deportability grounds for non-citizens, including lawful permanent residents.⁷⁷ These legislative changes, along with others that restricted access to lawful status for non-citizens who had been in the

(National Council for Public Security), in San Salvador (Mar. 27, 2006).

⁷⁴See generally, José Miguel Cruz, *Los Factores asociados a las pandillas juveniles en Centroamérica*, ESTUDIOS CENTROAMERICANOS, JUVENTUD Y DESARROLLO EN CENTROAMÉRICA 1155, 1156 (Nov.-Dec. 2005) (tracing the current gang phenomenon to the migration of Central Americans to the United States and their integration into U.S. street gangs, such as the Mara 18, as well as their formation of new gangs based on shared ethnic identity).

⁷⁵*Id.*; COMUNIDAD CRISTIANA MESOAMERICANA (Mesoamerican Christian Community), UNA APROXIMACIÓN AL FENOMENO DE LAS MARAS Y PANDILLAS EN CENTROAMÉRICA 101, 104 (2006).

⁷⁶Cruz, *supra* note 74 at 1156 (noting the existence of a wide range of small gangs in Central American cities). Cruz, et al emphasize that youth gangs became a problem in El Salvador before they became a problem in other countries in the region; at the beginning of the 1990s, according to these researchers, gangs had been established in the San Salvador metropolitan area. Cruz, Carranza, and Santacruz, *El Salvador: Espacios públicos, confianza interpersonal y pandillas*, in 2 MARAS Y PANDILLAS EN CENTROAMÉRICA 81 (UCA Ed. 2004).

⁷⁷The changes to immigration laws were included in two major pieces of legislation passed in 1996: The Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104-208, 110 Stat. 3009-546 (1996) (codified in sections of 8 and 18 U.S.C.) and the Antiterrorism and Effective Death Penalty Act, Pub. L. No. 104-132, 110 Stat. 1214 (1996) (codified in sections of 8, 18, 22, 28, 40, and 42 U.S.C.). The provisions of these bills that most affected long-term Salvadoran residents of the U.S. were sections that expanded the scope of crime-related grounds that render lawful permanent residents removable (deportable).

U.S. unlawfully and cut off avenues for discretionary relief from removal,⁷⁸ resulted in the deportation of thousands of Salvadorans who had lived in the U.S. for many years.⁷⁹ Some of those thousands were gang members, and their arrival in El Salvador served as a catalyst for the development of a U.S.-style gang culture there.⁸⁰

The deported Salvadorans brought with them not only distinctive fashions and behaviors, but also the “process of violence” that they had been living in the U.S. – particularly the practice of staking out territory to be defended against encroachment by rival gangs.⁸¹ There is some evidence that the experience of having lived in the U.S. and having been associated with U.S. gangs gave deported gang members a certain stature among Salvadoran youth that permitted them to wield particular influence and replicate U.S. gang structures in Salvadoran neighborhoods.⁸² At the least, the deportation of gang members from the U.S. in the late 1990s helped trigger the rapid development of organized gang activity in El Salvador. Further, the U.S. government’s continued deportation of Salvadoran gang members has served to strengthen the transnational presence of these gangs.⁸³

⁷⁸See generally Nancy Morawetz, *Understanding the Impact of the 1996 Deportation Laws and the Limited Scope of Proposed Reforms*, 113 HARV. L. REV. 1936 (2000) (describing the “virtual elimination” of the ability of adjudicators under pre-1996 laws to conduct an assessment of the appropriateness of deportation).

⁷⁹More than 33,000 Salvadorans were deported from the U.S. between 1998 and 2004. DEPARTMENT OF HOMELAND SECURITY YEARBOOK OF IMMIGRATION STATISTICS 2004, Tbl. 43, Aliens Removed by Criminal Status and Country of Nationality Fiscal Years 1998-2004 (2004).

⁸⁰WORLD HEALTH ORGANIZATION, WORLD REPORT ON VIOLENCE AND HEALTH, 38 (2002) (linking these gang member deportations with emergence of U.S.-modeled groups and rising youth violence in El Salvador); CENTRAL AMERICA AND MEXICO GANG ASSESSMENT, *supra* note 4, at 34.

⁸¹L. SANTACRUZ GIRALT AND ALBERTO CONCHA-EASTMAN, BARRIO ADENTRO: LA SOLIDARIDAD VIOLENTA DE LAS PANDILLAS 13 (San Salvador: IUDOP, 2001); COMUNIDAD CRISTIANA MESOAMERICANA, *supra* note 75 at 104.

⁸²Interview with Oscar Bonilla, *supra* note 73 (describing how deportees returning immediately after the war commanded a great deal of respect among Salvadoran youth in their neighborhoods, leading the local Salvadoran youth to adopt styles of clothing, music, and behavior that deportees had brought back from cities such as Los Angeles); Interview with C.A., former gang member, in San Salvador (Mar. 30, 2006) (observing that Salvadoran youth give greater weight to the experience of deported gang members).

⁸³See Robert J. Lopez, Rich Connell & Chris Kraul, *Gang Uses Deportation to Its Advantage to Flourish in U.S.*, LOS ANGELES TIMES, Nov. 1, 2005 (“...a deportation

However, academic and non-governmental experts note that the gang phenomenon is not simply a foreign problem imported by deportees, but rather has evolved and grown in response to domestic factors and conditions.⁸⁴ The failure of the post-war Salvadoran government to address the structural causes of the civil war and to construct effective democratic institutions meant that conditions on the ground in El Salvador were ripe for the spread of gang culture, especially in marginalized communities. In particular, steep reductions in government expenditures on social services throughout the 1990s served to limit severely young people's opportunities to pursue decent and dignified lives in El Salvador.⁸⁵ Further, the Salvadoran government has pursued policies aimed at transforming its traditional dependence on the agricultural sector and promoting foreign investment and labor-intensive exports. However, growth in the export sectors has not kept pace with the displacement of rural populations who depended on agriculture for their survival, and the Salvadoran economy has come to depend increasingly on remittances from abroad to remain solvent.⁸⁶ The World Bank estimates that approximately fifteen percent of El Salvador's Gross Domestic Product (GDP) comes from remittances sent home to

policy aimed in part at breaking up a Los Angeles street gang has backfired and helped spread it across Central America and back into other parts of the United States.”).

⁸⁴See, e.g. Interview with José Miguel Cruz, *supra* note 54.

⁸⁵Central America and Mexico Gang Assessment, *supra* note 4, at 44 (“The challenges facing youths in El Salvador are numerous and further exacerbated by a high level of income inequality...the majority of youths aged 14-25 years old face social exclusion characterized by the lack of basic services...that could improve their lives.”).

⁸⁶UNITED NATIONS DEVELOPMENT PROGRAM, HUMAN DEVELOPMENT REPORT: EL SALVADOR, A LOOK AT THE NEW ‘U.S.’: THE IMPACT OF MIGRATION, Part I: Overview at 20 (2005) (hereinafter “UNDP Report 2005”) (“For the past 15 years El Salvador has fostered a growth model aiming to overcome the country’s high dependence on traditional agricultural exports, and turn the country into a platform for investment and labor-intensive exports. However, the country has become a service economy that grows at a slow pace and depends more and more on remittances to fund the growing level of imports.”), available at <http://www.desarrollohumano.org.sv/migraciones/idhes2005pdf/IDHES2005Overview.pdf>.

family members by emigrants working abroad.⁸⁷ Poor, marginalized youth in post-war El Salvador thus have few options for the pursuit of a dignified life. Many international and domestic observers note that this lack of opportunities for young people has fueled the rise of the gang phenomenon.⁸⁸

In addition, generalized levels of violence in post-war Salvadoran society have remained extraordinarily high.⁸⁹ Observers often cite a “culture of violence” in El Salvador as a central factor that has facilitated the rapid development of gangs in the country over the past decade.⁹⁰ The weaknesses of post-war criminal justice institutions, described in detail in Section I, *supra*, also contributed to the expansion of the gang phenomenon by failing to establish the rule of law or provide for citizen security in the country. The following section turns to the ways in which El Salvador’s major gangs currently function.

B. How Gangs Function Today

Current estimates of the total number of gang members in El Salvador vary widely, from approximately 10,500 (a National Civil Police (PNC) estimate) to 39,000 (a National Council for Public Security estimate).⁹¹

⁸⁷Press release, World Bank, Latin America Shouldn’t Bet Anything on Remittances (Oct. 31, 2006), *available at* <http://web.worldbank.org/wbsite/external/countries/lacext/elsalvadorextn/0,,contentMDK:21109448~menuPK:295249~pagePK:2865066~piPK:2865079~thesitePK:295244,00.html>.

⁸⁸Interview with Mirna Antonieta Perla Jiménez, Magistrada de la Sala de lo Civil de la Corte Suprema de Justicia, Corte Suprema de Justicia de El Salvador (Justice of the Civil Chamber, Supreme Court of Justice of El Salvador), in San Salvador (Aug. 25, 2006) (describing a lack of opportunity for youth, among other social and political factors, as contributing to the growth in gangs in El Salvador). *See also*, Claire Ribado, CONGRESSIONAL RESEARCH SERVICE, CRS REPORT FOR CONGRESS, GANGS IN CENTRAL AMERICA, at 2 (May 10, 2005) *available at* <http://www.fas.org/sgp/crs/row/index.html> (noting that extreme poverty, social inequality, and “growing youth populations facing stagnant job markets” are all frequently cited as factors contributing to the growth of gangs in Central America); *Gangs and Crime in Latin America: hearing before the Subcommittee on the Western Hemisphere of the Committee on International Relations*, 109th Cong. 44 (2005) (statement of Stephen C. Johnson, Senior Policy Analyst for Latin America, The Kathryn and Shelby Cullom Davis Institute for International Studies).

⁸⁹Interview with Jeanne Ridders, Program Director, Christians for Peace in El Salvador (hereinafter “CRISPAZ”), in San Salvador (Aug. 21, 2006).

⁹⁰Cruz, *supra* note 74 at 1165.

⁹¹CENTRAL AMERICA AND MEXICO GANG ASSESSMENT, *supra* note 4, at 45.

The two major gangs in El Salvador, the Mara 18 and the Mara Salvatrucha, engage in violent conflict in neighborhoods throughout the country. Both have U.S. roots,⁹² and were among several groups whose members – including top leaders – were deported to El Salvador in the 1990s.⁹³ In the mid- to late 1990s, there were a number of small local gangs in El Salvador, but in the past five years the Mara 18 and the MS-13 have consolidated their power and established themselves as the two dominant gangs throughout the country.⁹⁴ Both gangs are characterized by their fluid, dynamic organization and complex, clandestine hierarchies, which makes it virtually impossible to present a complete picture of their structures and functioning. However, there are several fundamental features of the two gangs that have become increasingly pronounced in recent years. Each of these features will be explored in greater depth below.

i. Sophisticated Organizational Structure

Once organic and territorially-bound, El Salvador's gangs are developing more complex vertical structures, defined member roles, and consolidated chains of command.⁹⁵ The organizational structures of both the MS-13 and the Mara 18 involve local sub-groups within the gangs, or *clikas*, whose members typically include young people from a common neighborhood or sub-neighborhood. A 2002 police study indicated that approximately 300 *clikas* were operating in El Salvador.⁹⁶ In the past several years, these *clikas* have become increasingly organized and effective at communicating and coordinating with one another. The leadership roles within the hierarchy of each gang have become specific and defined, and each gang increasingly operates according to internal rules and values.⁹⁷ In

⁹²COMUNIDAD CRISTIANA MESOAMERICANA, *supra* note 75 at 104.

⁹³Interview with Oscar Bonilla, *supra* note 73; Interview with Rodrigo Avila, Director, PNC, in San Salvador (Mar. 31, 2006).

⁹⁴Interview with J.R., former gang member, in San Salvador (Aug. 21, 2006).

⁹⁵Interview with Jeannette Aguilar, *supra* note 65; Jeannette Aguilar and Lissette Miranda, *Entre la articulación y la competencia: las respuestas de la sociedad civil organizada a las pandillas en El Salvador*, in Vol. IV MARAS Y PANDILLAS EN CENTROAMÉRICA: LAS RESPUESTAS DE LA SOCIEDAD CIVIL ORGANIZADA, 42 (José Miguel Cruz ed., 2006) (noting that the scale of gang operations now transcends individual streets and neighborhoods).

⁹⁶Aguilar and Miranda, *supra* note 95, at 48.

⁹⁷Interview with Jeannette Aguilar, *supra* note 65 (stating that gang organization has

spite of the strengthened leadership and organizational structure of the gangs, however, they have still proven to be flexible and dynamic. According to researchers Jeannette Aguilar and Lissette Miranda of the Institute for Public Opinion Research, the arrest of *clika* leaders has actually resulted in a broadening and diversifying of their leadership, as new leaders quickly assume the responsibilities of those taken into custody.⁹⁸

In fact, most experts attribute the organizational evolution and consolidation of the two major gangs largely to the Salvadoran government's law enforcement crackdowns of the past several years.⁹⁹ Specifically, the "Mano Dura" ("Firm Hand") and "Súper Mano Dura" ("Super Firm Hand") anti-gang policies (discussed in Section III, *infra*) have catalyzed the development of more sophisticated organizational structures within Salvadoran gangs. These policies, for instance, have led to the arrest and detention of high-level gang leaders (as well as many other gang members) and to efforts to segregate the resultant high number of prisoners by gang affiliation. In practice, such efforts have led to the extended congregation of gang leaders in single locations, giving these leaders the opportunity to enhance their level of organization.¹⁰⁰

Police crackdowns have also led to the adoption of more clandestine practices within the two major gangs. Until recently, gang members communicated their gang association through visual images – a particular style of clothing and hair style, tattoos, etc. – and through strong territorial

become more complex, coordinated, and vertically structured, with well-defined roles, clear internal hierarchies extending to the national level, and increasingly rigid systems of norms and values).

⁹⁸Aguilar and Miranda, *supra* note 95, at 43. Jeannette Aguilar has participated in several large-scale studies of the gang phenomenon, including a recent longitudinal study involving hundreds of interviews with gang members, as well as research (conducted jointly with Miranda) drawing upon interviews with a wide range of NGO and government officials who work with gang members. The latter study has led to the publication of four volumes of analysis.

⁹⁹Aguilar and Miranda, *supra* note 95, at 42, 44 (citing these programs' particular effect of concentrating gang leaders together in prisons, from which they transmit orders to *clika* leaders in various communities); see further discussion of the Mano Dura measures at Section III, *infra*.

¹⁰⁰Aguilar and Miranda, *supra* note 95, at 44. Even while the senior members of the gang hierarchy become increasingly sophisticated, however, our researchers were told that the "foot soldiers" of gangs – youth in marginalized neighborhoods who have been recruited or coerced into some form of gang association – continue to face poverty and risk in their neighborhoods, without access to the wealth generated by the upper echelon's illicit activities. Interview with Jeannette Aguilar, *supra* note 70.

associations. In response to the Mano Dura plan and subsequent anti-gang crackdowns that rely on police profiling based on tattoos, however, gangs have shifted tactics, seeking to avoid visibility and gang identification. Behaviors such as walking together in groups and remaining tied to a particular area have changed significantly, as individual gang members and *clikas* have become increasingly mobile and capable of uprooting and reinserting themselves within El Salvador or even in Mexico or the United States.¹⁰¹ Gang experts similarly point to mandated alterations in gang members' appearance, a strategy adopted to conceal members' once easily-discernible identity from law enforcement officials, as a tactical response to the government's anti-gang efforts. For example, many gang members no longer keep their hair in the once-characteristic short-trimmed *rapado* style.¹⁰² Likewise, many now wear much more subtle clothing – “like any normal kid.”¹⁰³ Researchers and NGO workers in El Salvador told us that gangs no longer encourage new members to mark themselves with tattoos, and that in some cases they may even forbid the practice.¹⁰⁴ Far from being weakened by the campaigns against them, El Salvador's gangs “[e]very day become more specialized, more organized,”¹⁰⁵ and more adept at “going unnoticed.”¹⁰⁶

ii. Power

In the 1990s, both Salvadoran gangs concentrated on consolidating their territorial presence and power. In the past six to seven years, however,

¹⁰¹Interview with Jeannette Aguilar, *supra* note 65; Interview with B.F., staff of a youth center, outside San Salvador (Aug. 22, 2006). See also Aguilar and Miranda, *supra* note 95, at 49 (reporting that gangs have increased in mobility in response to state anti-gang initiatives, an adaptation that includes the emigration of some gang members to Mexico and the United States).

¹⁰²Aguilar and Miranda, *supra* note 95, at 43.

¹⁰³Interview with B.F., *supra* note 101; Interview with Jeannette Aguilar, *supra* note 65.

¹⁰⁴Interview with B.F., *supra* note 101; Interview with Jeannette Aguilar, *supra* note 65; interview with Jaime Martínez Ventura, *supra* note 41. Our researchers also interviewed several younger active gang members – ages 16-17 – who did not have tattoos, in marked contrast to their older counterparts.

¹⁰⁵Interview with B.F. *supra* note 101.

¹⁰⁶Aguilar and Miranda, *supra* note 95, at 43.

the aims of gangs have been transformed.¹⁰⁷ Whereas Salvadoran gangs once primarily constituted a space for young people to socialize and engage in local-level delinquency, they are becoming sophisticated organizations seeking wealth and power at, and perhaps beyond, the national level. According to research conducted by the UCA:¹⁰⁸

The motives for joining and staying active in the gang, as reported by young members, are no longer primarily symbolic ones, such as solidarity, friendship, or feelings of belonging and group identity that in the past appeared as the principal attractions for joining those groups. Now, the principal motivations are the benefits that they can obtain, like access to...economic resources, [and] to power.¹⁰⁹

One illustration of this new dynamic is the increasingly widespread practice of extortion carried out against businesses and individuals, commonly referred to as “collecting *renta*.”¹¹⁰ While gangs have engaged in asking for money on the streets for years, the phenomenon of organized extortion is relatively new, and has become a notable problem only during the last three years.¹¹¹ Such extortion has been a particular problem in the transportation sector.¹¹² A former gang member told our researchers about

¹⁰⁷See José Miguel Cruz, *supra* note 74, at 1157 (stating that since roughly the year 2000, the main goal of the gangs has evolved away from solidarity and mutual support for members, and toward greater involvement in drug trafficking and violent activities).

¹⁰⁸COMUNIDAD CRISTIANA MESOAMERICANA, *supra* note 75, at 103; SANTACRUZ GIRALT AND CONCHA-EASTMAN, *supra* note 81, at 26.

¹⁰⁹Aguilar and Miranda, *supra* note 95, at 41.

¹¹⁰FLASCO-UNICEF, UNA AGENDA POR LA NIÑEZ, LA ADOLESCENCIA Y LA JUVENTUD, at 22, (Feb. 26, 2004) (prepared by Carlos Ramos and Antonieta Beltran).

¹¹¹Interview with Jaime Martínez Ventura, *supra* note 41; Aguilar and Miranda, *supra* note 95, at 50-51 (“Demanding attention over recent years have been crimes of extortion that the *clikas* in various sectors are committing against vehicles transporting merchandise, small businesses, prostitutes, and transportation providers.”).

¹¹²See Francisco Mejía, *Extorsión en San Miguel, Soyapango y San Salvador*, EL DIARIO DE HOY, Oct. 2, 2006 (describing extortions as an increasingly common phenomenon in El Salvador, particularly in the transportation sector. The article also quoted police sources as saying that in less than one month, the police had received 987 complaints of extortions nationwide, though a police sub-director estimated that only about 5% of extortions are reported to police because victims are so afraid of retaliation).

one such system of charging bus operators a daily fee of \$1 per vehicle: “We would charge the owners or the drivers.”¹¹³ His gang also exacted *renta* from others in its territory: “We would charge stores and taxi drivers a dollar a day. Every day.”¹¹⁴ This practice appears to be very structured, mandated and overseen by gang leadership.¹¹⁵ A female gang member told us that her gang targeted area stores in particular for collecting *renta*.¹¹⁶ Our researchers in El Salvador also spoke to residents of various neighborhoods who told us that their families were charged *renta* simply because they happened to live in a sub-neighborhood controlled by a particular *clika*.¹¹⁷

One of the most frightening features of the gangs’ recent extortion practices is that the gangs now possess enhanced capacity to fulfill their death threats against those who do not comply with their requests. In 2005, for example, more than 2,000 non-public transportation operators reported being subjected to extortion, and over 100 were killed that year.¹¹⁸ In short, gangs’ systematic and sophisticated efforts to increase their wealth and power have become not only increasingly common in the past several years, but also increasingly aggressive.

iii. Violence

As the gangs’ animating values have shifted, and their leadership structures have become more consolidated, numerous aspects of gang activity have taken on a markedly more violent character. As discussed *infra*, numerous sources with whom our researchers spoke in El Salvador report that in recent years, the violence associated with entry into gang membership, day-to-day gang life, and efforts to leave that life behind has grown much more severe.¹¹⁹

¹¹³Interview with D.M., former gang member, in San Salvador (Aug. 21, 2006).

¹¹⁴*Id.*

¹¹⁵Interview with Jeannette Aguilar, *supra* note 65 (“Gang members must pay daily or weekly dues to the gang. Greater structure of the gangs has facilitated this. Some are charged with gathering funds, and those that do not pay their part ‘get the bill’ (they are threatened and even killed). There is control over the members.”).

¹¹⁶Interview with A.V., gang member, in Ilobasco (Aug. 23, 2006).

¹¹⁷Interview with F.R., outside San Salvador (Aug. 31, 2006); Interview with T.C., in Ilobasco (Aug. 25, 2006).

¹¹⁸IDHUCA, BALANCE DE LOS DERECHOS HUMANOS DEL 2005 8 (2006).

¹¹⁹While there has undoubtedly been an intensification in the violence utilized by

a.). Entry into the Gang

Young people in certain regions of El Salvador increasingly find themselves coerced into some form of association with a gang. Indeed, resisting such association often means being targeted for physical abuse or death.¹²⁰ Our researchers heard this assessment from young people themselves, as well as from staff of organizations that work with at-risk youth. Matthew Eisen, a Catholic community worker who has worked in an urban area on the outskirts of San Salvador for more than a decade, told our researchers: “[young people] do not want to be involved at all [in gangs], but have to in order to survive. There are youth in this country who simply have no choice... This is something that the police, churches, NGOs have found nothing to do about. It happens at 9 p.m., when [these other institutions] are not there.”¹²¹ An NGO coordinator who works with youth in a different marginalized community outside San Salvador likewise reported: “People join gangs because they are forced to. In the past, youth had the luxury of joining voluntarily.”¹²² José Miguel Cruz, former Director of the Institute for Public Opinion Research, added: “[Youth who live in an area dominated by a gang] may be harassed, or physically assaulted. They are left with no other option but to join the gang.”¹²³

Frequently the initial association between young people and a local gang occurs informally and does not rise to the level of actual “member-

gangs in El Salvador in recent years, resulting in a concomitant rise in homicides in which gang members are either victims or perpetrators, reliable statistics regarding the percentage of total violence in El Salvador that is gang-related are difficult to obtain. The Director of Research of the National Institute of Forensic Medicine, Dr. Fabio Molina Vaquero, told our researchers that his office monitored the rates of total homicides attributable to gang members, and that while the IML has recently attributed only 15% of homicides in the country to gangs, the media attributes approximately 30% and the PNC attribute 70%. Interview with Dr. Fabio Molina Vaquero, IML, in San Salvador (Aug. 29, 2006). Aguilar and Miranda, *supra* note 95, also note discrepancies in police estimates of the percentage of homicides for which gang members are responsible, stating in particular that available statistics do not sustain the PNC’s assertion that 60% of El Salvador’s intentional deaths are gang killings. *Id.* at 52.

¹²⁰Interview with T.C., *supra* note 117; interview with D.M., *supra* note 113.

¹²¹Interview with Matthew Eisen, human rights activist and former youth organizer, in San Salvador (Mar. 30, 2006).

¹²²Interview with Tim McConville, *supra* note 65.

¹²³Interview with José Miguel Cruz, *supra* note 54.

ship.” Gang members ask – often with an express or implicit threat of violence – that neighborhood children and youth do “favors” for them, such as giving them small amounts of money¹²⁴ or running errands.¹²⁵ Experts and community workers also told our researchers that gangs were approaching increasingly younger children.¹²⁶ Researcher and IUDOP Director Jeannette Aguilar told our team that her research had uncovered evidence that gangs were targeting children as young as eight or nine years old for recruitment.¹²⁷

Consistent with the trend toward increased levels of violence within gang culture generally, the initiation rites associated with becoming a full-fledged member of one of the two major gangs have become much more extreme in recent years.¹²⁸ Until recently, the typical methods of welcoming new members into the gang involved sexual exploitation of female recruits (sometimes alternatives were offered), and beatings within certain set parameters for males. Our team’s on-site research – in particular, extensive conversations with individuals who have witnessed or themselves undergone these rites – revealed the prevalence and violence of such events.¹²⁹ Our team also documented a recent shift toward yet more violent entrance requirements that involve sending new recruits on “missions” (*misiones*) to kill rival gang members or others. For example, K.T., a nineteen-year-old gang member currently detained in a juvenile detention center, told our researchers that when she joined the gang she went with several other gang members on a mission to kill a taxi driver who was supposedly a member of

¹²⁴Interview with E.R.M., in Ilobasco (Aug. 25, 2006).

¹²⁵Interview with Jeannette Aguilar, *supra* note 65.

¹²⁶Interview with Jeanne Ridders, *supra* note 89.

¹²⁷Interview with Jeannette Aguilar, *supra* note 65.

¹²⁸*Id.*

¹²⁹Interview with A.V., *supra* note 116 (“My initiation was four gang members beating me for eighteen seconds. They beat me hard, mostly on my back and my legs, but I wasn’t severely injured. I wasn’t given any other option for initiation.”); Interview with L.A., female gang member, in Ilobasco (Aug. 23, 2006). A.V. and L.A.’s accounts are consistent with the description that sociologist Lorena Cuerno Clavel gave our team of the differences between the Mara 18’s and the MS-13’s entrance requirements. Specifically, Clavel reported that initiation into the Mara 18 involved beatings lasting 18 seconds (regardless of gender), and that the MS-13 allowed female recruits to choose between being beaten and having sexual relations with members of the gang. Interview with Lorena Cuerno Clavel, Social Anthropologist, in San Salvador (Mar. 29, 2006).

the rival gang.¹³⁰

Rosa Anaya, a Salvadoran human rights activist who has worked with youth in prisons for years, told our researchers that while myths about violent gang initiation were exaggerated for many years by the media, reports of brutal entrance rites are increasingly true today. In particular, she confirmed that beatings lasting either thirteen seconds (for MS-13 recruits) or eighteen seconds (for Mara 18 recruits) are now a standard feature of gang initiation.¹³¹ Other sources who work with young people involved in gangs told our researchers that the notorious practice of the “train” (*tren*), in which female recruits are forced to have sex successively with several gang members as a means of initiation, is also a routine part of a young woman’s transition to full-fledged gang membership.¹³² C.A., once a member of MS-13, explains that “when a girl wanted to be part of the gang, she would sleep with all the members of the *clika*. She had one other option; either she would be forced to have sex with them or she would be beaten by other girls.”¹³³ The “train” can be a physically devastating ritual. Olga Isabel Morales, a nurse with the *Adiós Tatuajes* (“Goodbye Tattoos”) program in Mejicanos, El Salvador, recounts an incident described to her by two young female gang members: “[T]here was one gang rape as a rite of initiation in which the victim had been left bloody and nearly unconscious. She was taken to the hospital but it was hard to get any help.”¹³⁴ While in El Salvador, our team spoke with several gang members who confirmed from their personal experience the veracity of these accounts of gang initiation practices.

¹³⁰Interview with A.V., *supra* note 116.

¹³¹Interview with Rosa Anaya, human rights activist and former youth organizer, in San Salvador (Mar. 29, 2006); *see also* SANTACRUZ GIRALT AND CONCHA-EASTMAN, *supra* note 81, at 37 (stating that many aspects of gang initiation that formerly were exaggerated in popular accounts are true today, and that “[a]ny male that wants to be part of a pandilla must submit himself to a ‘ceremony,’ involving a beating that lasts either 13 or 18 seconds, depending on the rule of the gang he is entering.”).

¹³²Interview with Rosa Anaya, *supra* note 131; *see also* interview with Matthew Eisen, *supra* note 121 (“[Males] get beaten severely[, while] girls have the option of getting beaten or sleeping with various gang members.”).

¹³³Interview with C.A., *supra* note 82.

¹³⁴Interview with Olga Isabel Morales, Administrator, *Adiós Tatuajes* Program, Clínica Octavio Ortíz (Goodbye Tattoos Program, Octavio Ortiz Health Clinic), in Mejicanos (Aug. 25, 2006).

b.) Gang Life and Barriers to Leaving the Gang

Just as the practices associated with entrance into a gang have become more violent in recent years, so too have the lives of young people currently active in gangs as well as those looking to leave gang life (or “calm down”¹³⁵). Numerous sources with whom we spoke in El Salvador referred to the conflict between the MS-13 and the Mara 18 as a war in which members of each side were obligated by internal codes to kill anyone thought to belong to the enemy.¹³⁶ Once a young person is considered to be affiliated with a gang – regardless of whether or not he has actually become a member – he is “marked” by the other gang as a target for life.¹³⁷ Indeed, our researchers spoke with young people who were not members of any gang, but whose simple residence in a neighborhood controlled by one gang rendered them targets for violence by the opposing gang.¹³⁸ In practice, this war mentality and the accompanying intense fighting mean that inter-gang violence and killings are a daily part of gang life.¹³⁹ The ongoing conflict between the Mara 18 and the MS-13 also involves the use of increasingly sophisticated weapons.¹⁴⁰

Intra-gang violence and purges also occur with growing frequency.¹⁴¹ One priest who works with active and non-active gang members in a community outside of San Salvador told our researchers that gang leaders have “intensified the system of internal obedience. ... There’s greater

¹³⁵Many of the current and former gang members interviewed by our researchers used the term *calmarse* (literally, “to calm down”) to refer to the process of withdrawing from active gang membership.

¹³⁶Interview with José Miguel Cruz, *supra* note 54.

¹³⁷Interview with L.F.G., gang member, in Cabañas (Aug. 25, 2006) (reporting that even if he left his gang, he would always be marked as a member in the eyes of the rival gang).

¹³⁸Interview with T.C., *supra* note 117.

¹³⁹Interview with D.M., *supra* note 113; Interview with C.A., *supra* note 82 (reporting that members of the rival gang killed six or seven members of his clika alone).

¹⁴⁰Interview with Jeannette Aguilar, *supra* note 65 (“Hand-made weapons are no longer used. Now used are commercially produced arms, and sometimes those of the armed forces.”).

¹⁴¹*Id.* (noting the increasing prevalence of intra-gang killings, sometimes relating to drug or extortion activities).

control from the top. Punishments can be death.”¹⁴² Gang members seeking to withdraw from active gang life face the same threat of fatal retribution from their fellow members. In this regard, a number of gang members and employees of organizations that work with gangs told our researchers that whereas in the past it was difficult, but feasible,¹⁴³ for a gang member to disassociate himself safely from a gang, it is now virtually impossible.¹⁴⁴ For example, we spoke to one young man who has been trying to leave the MS-13 gang for the past six years following several years of active membership. He told our researchers that his former *clika* has repeatedly threatened him and his family. He reported that recently the targeting had intensified, with members of the *clika* coming to his house to charge him *renta* and to tell him they would kill him. Following an incident in which members of the MS-13 shot at him and killed one of his friends, he sought police protection, but received none.¹⁴⁵ Young people with gang tattoos are particularly at risk when they attempt to leave behind gang life. A staff person of a health clinic outside San Salvador, which offers a tattoo removal program sought by many former gang members, told our researchers that she has received threats and that she has heard that current gang members keep watch on the clinic, presumably to threaten those who seek help there.¹⁴⁶

C. Organized Crime

Finally, there is a widespread sense in El Salvador that organized criminal networks have grown in the past several years to become powerful clandestine actors in the country. The relationship between the emergence of these networks and the two major gangs in El Salvador is complex and – due to the clandestine nature of both phenomena – uncertain. Academic experts,¹⁴⁷ as well as leaders in the Salvadoran and international law enforce-

¹⁴²Interview with B.F., *supra* note 101.

¹⁴³Several sources told us that conversions to evangelical Christianity and becoming a parent used to serve, at least nominally, as accepted reasons for leaving a gang. Interview with E.C.C., in Chalatenango (Mar. 28, 2006); interview with Lorena Cuerno Clavel, *supra* note 129.

¹⁴⁴Interview with D.M., *supra* note 113; Interview with L.F.G., *supra* note 137; Interview with Tim McConville, *supra* note 65.

¹⁴⁵Interview with D.M., *supra* note 113.

¹⁴⁶Interview with Olga Isabel Morales, *supra* note 134.

¹⁴⁷Interview with José Miguel Cruz, *supra* note 54; Interview with Jeannette Aguilar, *supra* note 65; Interview with K.H.D., in San Salvador (Aug. 26, 2006); Aguilar and

ment communities,¹⁴⁸ agree that as gangs have become increasingly organized and well-resourced, some leaders seem to be taking on some characteristics of large-scale organized crime syndicates. Among the indicators of this apparent evolution are the gangs' extortion activities (discussed in Section II.b.2. *supra*), their access to increasingly sophisticated arms,¹⁴⁹ reports of their participation in international drug trafficking activities,¹⁵⁰ and their ability to operate in a coordinated manner throughout El Salvador.¹⁵¹ However, non-governmental observers note that to the extent gangs are engaging in more lucrative, large-scale criminality, this transformation is taking place primarily at the top levels of gang hierarchies.¹⁵² Lower level gang members continue to live in the situations of extreme risk and poverty in marginalized neighborhoods across the country that are documented and discussed in greater detail in Section IV, *infra*.

Salvadoran observers also emphasize that the impetus for increased organized criminal activities comes not just from within gang structures themselves, but from other powerful clandestine criminal networks that operate freely in the country.¹⁵³ This view is reinforced by U.S.-based orga-

Miranda, *supra* note 95, at 51-52; Interview with Jaime Martínez Ventura, *supra* note 41 (noting in particular the increased levels of organization associated with gang members' participation in trafficking of drugs, arms, and persons); Interview with María Julia Hernández, Director, Tutela Legal, in San Salvador (Aug. 25, 2006).

¹⁴⁸Interview with Hugo Ramírez, *supra* note 49; see also Chris Swecker, Assistant Director, Criminal Investigative Division, Federal Bureau of Investigation, Statement Before the Subcommittee on the Western Hemisphere House International Relations Committee (Apr. 20, 2005) (emphasizing in particular the sophistication and organization of the Mara Salvatrucha (MS-13) gang and describing a major law enforcement initiative aimed at suppressing further MS-13 development).

¹⁴⁹Interview with Jeannette Aguilar, *supra* note 65.

¹⁵⁰Claire Ribado, CONGRESSIONAL RESEARCH SERVICES, CRS REPORT FOR CONGRESS, GANGS IN CENTRAL AMERICA, at 2 (May 10, 2005) available at <http://www.fas.org/sgp/crs/row/index.html>.

¹⁵¹Aguilar and Miranda, *supra* note 95, at 49.

¹⁵²Interview with Jeannette Aguilar, *supra* note 65 (contrasting the increasing wealth found in the highest levels of gang hierarchies with the continuing situation of poverty and risk in which "common" gang members live). See also Miranda and Aguilar, *supra* note 95, at 57-58 (emphasizing that not all gang members participate in organized crime).

¹⁵³Interview with Jeannette Aguilar, *supra* note 65 (stating that non-gang actors take advantage of the climate of violence and insecurity to commit violent acts, knowing that such acts will be blamed on gangs). See also Interview with Santiago

nizations such as the Washington Office on Latin America (WOLA), which noted in a recent policy report on Central American gangs that “[there is] a tendency in much of the discussions about youth gangs to conflate youth gangs with organized crime. While youth gangs can turn into organized crime groups – and some have, sometimes as a response to the Mano Dura strategies – the two are separate, and need to be treated separately by police.”¹⁵⁴

While the dynamics of these phenomena are complicated, there is no doubt that the perceived growing power of clandestine networks with the capacity to operate throughout El Salvador has generated a heightened sense of citizen insecurity and a growing lack of public confidence in public institutions. There are reports that members of the PNC are involved with organized crime.¹⁵⁵ Our researchers interviewed one young mother in the midst of her preparations to flee the country due to extortion and threats that her family received from a *banda*, or organized criminal network. She reported that the person behind these threats had told her family members during threatening phone calls: “[W]e are not *mareros* [gang members]. We are professionals.”¹⁵⁶ Explaining her decision to abandon her home in El Salvador within days of receiving these threats and expressing views common among Salvadoran victims of crime, the young woman told us: “This is organized crime. [The police] capture two people and there are twenty more. The police are [even] involved in it.”¹⁵⁷ Increasing levels of organization among gangs themselves have combined with the threat of separate organized criminal networks to exacerbate the climate of public insecurity that already pervades El Salvador.

Flores, Religious Worker, in San Salvador (Aug. 22, 2006) (noting that not only gangs, but also organized crime and drug traffickers, are responsible for the situation of violence in the country); interview with Dr. Carlos Henríquez Hernández Avila, Centro de Investigación, Facultad de Medicina, Universidad de El Salvador (Research Center, School of Medicine, University of El Salvador), in San Salvador (Aug. 29, ‘06) (positing that most homicides are not committed by gang members).

¹⁵⁴WASHINGTON OFFICE ON LATIN AMERICA, *supra* note 54, at 13.

¹⁵⁵See THE WORLD BANK ET. AL., *supra* note 32, at 5 (reporting that members of the police are allegedly involved in such crimes as drug trafficking, trafficking in stolen vehicles, and sex trafficking of children). In 2004, Salvadoran media reported that a PNC officer’s weapon was found in possession of a Mara 18 member. FESPAD AND CEPES, ESTADO DE LA SEGURIDAD PÚBLICA Y LA JUSTICIA PENAL EN EL SALVADOR 2004, *supra* note 68, at 54; Miranda and Aguilar, *supra* note 95, at 50-51 (reporting that some gang members have been found with heavy weaponry that is exclusively used by the armed forces).

¹⁵⁶Interview with K.H.D., *supra* note 147.

¹⁵⁷*Id.*

III. State Responses to Crime/Gang Phenomenon

In this section of the report, we describe and analyze the Salvadoran state's responses to the gang phenomenon and violence in the country more generally. Part (a) of this section contains an overview of direct state responses, including an examination of the legislative and law enforcement initiatives the government has launched since 2003 and a discussion of the impact of these initiatives on the Salvadoran population. Part (b) of this section analyzes the indirect state responses to the phenomenon, describing the ways in which the Salvadoran government has failed to act to protect its citizenry from gang-related and other forms of violence. Part (c) of the section discusses the relationship among the deep political polarization of the Salvadoran state, its responses to the gang phenomenon, and violence in the country more generally.

A. Direct State Responses to Violence

In 2003, the Salvadoran government launched a major military-law enforcement initiative aimed at cracking down on gangs in the country. The punitive strategies embodied in the Mano Dura plan continue to be the primary focus of the government's anti-gang efforts, though court rulings and unabated violence have forced modifications in the legislative framework and rhetoric associated with the government crackdowns. This section provides an overview of the legislative and policy initiatives the Salvadoran government has launched since 2003 to address gang violence, and then describes the practical effects of these policies on the Salvadoran population, focusing in particular on police abuses and violence, prison conditions, and the institutionalization of discrimination toward certain sectors of Salvadoran society.

i. Legislative Background

In July 2003, then president Francisco Flores announced that he was launching a major military-police operation ("Mano Dura") to capture gang members in urban and rural areas throughout the country.¹⁵⁸ Flores invoked urgent and harsh rhetoric to describe criminality and gang violence in the country and to justify grants of broad powers to the National Civil

¹⁵⁸*El estado de excepción es la última alternativa*, EL DIARIO DE HOY, July 24, 2004, available at <http://www.elsalvador.com/noticias/2003/07/24/nacional/nacio13.html>; FESPAD AND CEPES, ESTADO DE LA SEGURIDAD PÚBLICA Y LA JUSTICIA PENAL EN EL SALVADOR 2004, *supra* note 68, at 21.

Police and Armed Forces in the name of combating gang violence and detaining alleged gang members.¹⁵⁹ He called upon the Salvadoran legislature to pass anti-gang legislation to legalize his planned crackdown, but emphasized that he would be willing to use “exceptional measures” (*medidas excepcionales*) to suspend constitutional guarantees in zones with a heavy gang presence if that legislation did not pass.¹⁶⁰ In the end, the Salvadoran legislature did pass President Flores’ proposed version of the Ley Anti-Maras (the Anti-Gangs Act, hereinafter Anti-Gangs Act or “LAM”) without modifications, as a temporary (six-month) measure in October 2003.¹⁶¹ International and domestic rights groups noted that Flores’ announcement and the passage of the LAM coincided with the intensification of electoral campaigning for the March 2004 presidential elections, suggesting that the legislation and military-police operations were aimed more at garnering political support than at implementing effective anti-crime policies.¹⁶²

The Anti-Gangs Act and the April 2004 Supreme Court Ruling

The original LAM contained numerous provisions that generated strong criticism from national and international organizations, who argued that the LAM violated El Salvador’s Constitution, several international

¹⁵⁹In response to questions about whether the Salvadoran jail system could absorb the numbers of people that could be swept up in this operation, Flores was quoted in the Salvadoran daily *El Diario de Hoy* as saying, “What matters to me is the Salvadoran citizenry. I am not concerned about the well-being of criminals.” *El estado de excepción es la última alternativa*, *supra* note 158.

¹⁶⁰*Id.*

¹⁶¹Decreto (Decree) No. 158/2003, Ley Anti-Maras [“Anti-Gangs Act”] (Oct. 10, 2003), art. 49; Ley Antimaras Aprobada, *EL DIARIO DE HOY*, Oct. 10, 2003, available at <http://www.elsalvador.com/noticias/2003/10/10/nacional/nacio18.html>.

¹⁶²See Amnesty Int’l, *El Salvador: Open Letter on the Anti-Maras Act*, Dec. 1, 2003, available at <http://web.amnesty.org/library/Index/ENGAMR290092003> (“Amnesty International believes that this situation would not have arisen if this controversial legislation - if deemed necessary - had been properly formulated and subject to careful scrutiny, bearing in mind the obligations to respect the Constitution and relevant international treaties. Everything indicates that this was not the case, which may give support to a growing body of opinion that the main reason behind promulgation of the LAM, and the introduction of the so-called Get Tough Initiative, Plan Mano Dura, was political and, particularly, for election’s purposes.”). See also FESPAD AND CEPES INFORME ANUAL JUSTICIA JUVENIL 2004, *supra* note 46, at 21 (observing that while the Mano Dura plan was presented as an innovative measure during the electoral campaign, large-scale arrests of gang members were in fact “nothing new”).

treaties and norms, and basic principles of criminal law.¹⁶³ International and domestic human rights groups highlighted provisions that criminalized gang membership,¹⁶⁴ that permitted juveniles to be prosecuted as adults,¹⁶⁵ and that provided for the imposition of fines against any person “found wandering about without an identity document in (...) any settlement, without justified cause or who is not known by the inhabitants,”¹⁶⁶ as particularly problematic.¹⁶⁷

Just ten days before the LAM was set to expire in April 2004, and after the March 2004 presidential election, El Salvador’s Supreme Court of

¹⁶³See, e.g., IDHUCA, ANALISIS DEL IDHUCA SOBRE LA “LEY ANTI MARAS” Y PROPUESTA DE REFORMAS, SAN SALVADOR, EL SALVADOR 2 (2003) available at <http://www.uca.edu.sv/publica/idhuca/leymaras.pdf> (asserting that the Anti-Gangs Act violated Constitutional principles such as that of proportionality, and that there was no legal basis for a special legislation for gangs when appropriate judicial instruments already existed in the Penal Code); Amnesty Int’l, *El Salvador: Open Letter on the Anti-Maras Act*, *supra* note 162 (asserting that the Anti-Gangs Act contravened international instruments and treaties to which El Salvador is a party, including the Convention on the Rights of the Child and the American Convention on Human Rights). See also Committee on the Rights of the Child, *Concluding Observations: El Salvador*, paras. 67-68, U.N. Doc CRC/C/15/Add.232, p. 13 (June 4, 2004) [hereinafter “Concluding Observations: El Salvador”], (expressing concern that the law allowed for the possibility of prosecuting a child as young as 12 as an adult, and that it undermined the already existing Juvenile Offenders Act by introducing a dual system of juvenile justice).

¹⁶⁴Decreto (Decree) No. 158/2003 (“Ley Anti-Maras”), *supra* note 161, art. 6, para. 1 (making gang membership punishable by a prison term of two to five years. In Spanish: “El que integre una mara o pandilla que amedente u hostigue o de cualquier forma amenace a personas, barrios, o colonias será sancionado con prisión de dos a cinco años.”).

¹⁶⁵*Id.* At art. 2, para. 3 (allowing for youth from twelve to eighteen years of age to be prosecuted as adults if a Juvenile Court Judge and the prosecutor believe that the defendant in question is capable of understanding the illicit nature of his or her conduct as an adult would. In Spanish: “Cuando un menor comprendido entre las edades de doce a dieciocho años de edad, cometa delitos o faltas contempladas en esta ley o en el Código Penal y la Fiscalía General de la República advierta que posee discernimiento de adulto, solicitará al Juez de Menores que evalúe esta situación; si el Juez de menores considera que está en capacidad de discernir la ilicitud de las conductas e infracciones cometidas como un adulto lo declarará como adulto habilitado y se le aplicará la legislación pertinente.”).

¹⁶⁶*Id.* at art. 29 (translated by Amnesty Int’l in *El Salvador: Open Letter on the Anti-Maras Act*, *supra* note 162).

¹⁶⁷See Amnesty Int’l, *El Salvador: Open Letter on the Anti-Maras Act*, *supra* note 162. See also IDHUCA, *supra* note 163.

Justice declared the law unconstitutional.¹⁶⁸ The Court held that Articles 1 and 3 of the LAM, which established a special regime to combat gangs, violated the constitutional right to equality before the law by allowing an arbitrary differentiation for crimes committed by gangs.¹⁶⁹ Article 1, which criminalized gangs and defined them as a group of people that “disrupts the public order and offends decorum or good customs,”¹⁷⁰ was also found unconstitutional for violating the Salvadoran principle of injury (*lesividad*), under which criminal law can only penalize acts that actually put someone at risk or cause him or her injury.¹⁷¹ Other articles found unconstitutional under the same principle were those that penalized people who identified themselves with gangs through tattoos or signs,¹⁷² gang members who gathered in abandoned or deserted property¹⁷³ or in cemeteries at night without justification,¹⁷⁴ and people found wandering without documentation in residential areas.¹⁷⁵

The Supreme Court also found that provisions that authorized punishment based solely on physical appearance or membership in a gang were unconstitutional because they penalized personal characteristics and lifestyles and did not respect the presumption of innocence.¹⁷⁶ An example of such a provision was Article 29, which established that a deportee entering the country whose history, appearance, or conduct indicated that he/she

¹⁶⁸Sala de lo Constitucional de la Corte Suprema de Justicia [Constitutional Chamber of the Supreme Court of Justice] (Dec. 52-2003/56-2003/57-2003) at Falla 16; IV, 3, B (Apr. 1, 2004), available at <http://www.jurisprudencia.gob.sv/exploiiis/indice.asp?nBD=1&nDoc=31904&nItem=32534&nModo=1>.

¹⁶⁹*Id.* See also Decreto (Decree) No. 158/2003 (“Ley Anti-Maras”), *supra* note 161, arts. 1, 3; Constitución de la República de El Salvador, art. 3.

¹⁷⁰Decreto (Decree) No. 158/2003 (“Ley Anti-Maras”), *supra* note 161, art. 1, para. 2.

¹⁷¹Sala de lo Constitucional de la Corte Suprema, *supra* note 168 at IV, 3, B.

¹⁷²Decreto (Decree) No. 158/2003 (“Ley Anti-Maras”), *supra* note 161, art. 18.

¹⁷³*Id.* at art. 19.

¹⁷⁴*Id.* at art. 22.

¹⁷⁵*Id.* at art. 29, para. 1.

¹⁷⁶Sala de lo Constitucional de la Corte Suprema de Justicia, *supra* note 168, at V, 1, c; see also Juan J. Fogelbach, Comment, *Mara Salvatrucha (MS-13) and Ley Anti Mara: El Salvador’s Struggle to Reclaim Social Order*. 7 SAN DIEGO INT’L L.J. 223 (2005).

belonged to a gang would be detained and presented to a judge.¹⁷⁷ Finally, the Supreme Court held that the LAM violated the Constitution and the Convention on the Rights of the Child because, in effect, it did not exempt children of any age from its application.¹⁷⁸ The ruling stressed that the LAM was not only inappropriate but also unnecessary because the Penal Code already provided the legal instruments necessary to respond to gang crimes.¹⁷⁹

The same day the Supreme Court of Justice declared the Anti-Gangs Act unconstitutional, President Flores submitted a new temporary law to the Congress, the Act to Combat Delinquent Activities of Certain Illicit Groups or Associations (hereinafter “LAM II”).¹⁸⁰ President Flores and the bill’s supporters in Congress argued that this new law overcame the legal deficiencies of the original LAM. However, judges and civil society organizations argued that many of its provisions were essentially the same as those found unconstitutional in the first law.¹⁸¹ Like the original LAM, the modified version established a special regime to combat gangs; the principal difference between the two versions was that LAM II added a provision stating that the law would combat gangs’ “delinquent activities”¹⁸² and not just gangs in general. LAM II still criminalized membership in or association with a gang, modifying LAM by adding that gangs were groups of people who “through their actions” affect the public order, decorum, good

¹⁷⁷Decreto (Decree) No. 158/2003 (“Ley Anti-Maras”), *supra* note 161, art. 29, para. 2.

¹⁷⁸The Ley Anti-Maras gave judges discretion to determine whether a child between twelve and eighteen should be tried as an adult and whether a child under twelve should be tried subject to certain modifications for minors. *Id.* At art. 2, paras. 3, 5 and at art. 45; *see also* Constitución de la República de El Salvador, art. 144.

¹⁷⁹Sala de lo Constitucional de la Corte Suprema de Justicia, *supra* note 168.

¹⁸⁰Decreto No. 305/2004, Ley para el Combate de las Actividades Delincuenciales de Grupos o Asociaciones Ilícitas Especiales, Decreto No. 305/2004 (El Sal.) [“Law to Combat Delinquent Activities of Special Illicit Groups or Associations”] (Oct. 10, 2003) [hereinafter “Ley Anti-Maras 2”]; Alexandra Bonilla and Lauri Garcia, *FMLN dice que la aprobación no pasó por proceso normal*, EL DIARIO DE HOY, Apr. 2, 2004, available at <http://www.elsalvador.com/noticias/2004/04/02/nacional/nac21.asp>.

¹⁸¹FESPAD AND CEPES INFORME ANUAL JUSTICIA JUVENIL 2004, *supra* note 46; Wilfredo Salamanca, *Las Fallas del Primer Plan*, EL DIARIO DE HOY, Aug. 31, 2004, available at <http://www.elsalvador.com/noticias/2004/08/31/nacional/nac17.asp>.

¹⁸²Decreto No. 305/2004 (“Ley Anti-Maras 2”), *supra* note 180, art. 1.

customs, etc.¹⁸³ Although LAM II did not contain any specific provision penalizing the use of signs or tattoos to identify individuals with gangs,¹⁸⁴ it still provided that membership in a gang may be determined by tattoos or usage of gang signs.¹⁸⁵ Membership or association with a gang was made punishable by three to six years of prison.¹⁸⁶ Notably, LAM II eliminated the provision allowing for the detention of Salvadoran deportees on the basis of appearance, though many deportees report that police still routinely engage in this sort of profiling.¹⁸⁷ Finally, regarding treatment of minors, while LAM II set twelve years as the minimum age for the application of its provisions, it still allowed a judge to determine whether a minor between twelve and eighteen years should be tried as an adult.¹⁸⁸ In its June 2004 session, the UN Committee on the Rights of the Child expressed concern that LAM II, like LAM, violated the Convention on the Rights of Child and recommended that El Salvador “immediately abrogate” it and apply only the Juvenile Offenders Act in the area of juvenile justice.¹⁸⁹ Despite the fact that LAM II was never declared unconstitutional, many judges refused to apply it throughout the ninety-day period in mid-2004 during which it was in effect.¹⁹⁰

Súper Mano Dura

In March 2004, the ARENA party presidential candidate, Antonio Saca, defeated FMLN candidate Schafik Handal. As discussed *infra*, criminality in El Salvador and Mano Dura plans played prominent roles in the 2004 presidential campaign, and Saca came to power promising to main-

¹⁸³Decreto No. 305/2004 (“Ley Anti-Maras II”), *supra* note 180, art. 3, para. 2.

¹⁸⁴The original Ley Anti-Maras did. Decreto (Decree) No. 158/2003 (“Ley Anti-Maras”) *supra* note 161, art. 18.

¹⁸⁵Decreto No. 305/2004 (“Ley Anti-Maras II”), *supra* note 180, art. 3, para. 4.

¹⁸⁶*Id.* At art. 4.

¹⁸⁷See Part IV, *infra*.

¹⁸⁸Decreto No. 305/2004 (“Ley Anti-Maras II”), *supra* note 180, art. 31, para. 1.

¹⁸⁹Concluding Observations: El Salvador, *supra* note 163.

¹⁹⁰Las Fallas del Primer Plan, *supra* note 181.

tain the “iron fist” policies of his predecessor.¹⁹¹ In August 2004, President Saca announced the Súper Mano Dura plan, another anti-gang initiative that proposed permanent penal code reforms and joint military-police anti-gang operations.¹⁹² Saca insisted that Súper Mano Dura constituted a more effective plan than the previous ones and that it would not be legally challenged.¹⁹³ Unlike the Mano Dura initiatives of the Flores administration, Súper Mano Dura purported to embrace a comprehensive approach to gang violence prevention by establishing civil society-government “working groups” to address issues of reinsertion and prevention of gang violence.¹⁹⁴ Rights groups argued, however, that the emphasis and major focus of the initiative remained on police repression and increased military-police operations, and that the plan failed to address even the basic need for effective criminal investigations.¹⁹⁵ Further, while civil society organizations applauded the government’s acknowledgment that an effective anti-gang strategy must include social components,¹⁹⁶ they report that the state-sponsored youth prevention and rehabilitation plans “Mano Amiga” (Friendly Hand) and “Mano Extendida” (Extended Hand) have been under-funded and ineffective.¹⁹⁷

¹⁹¹Lauri García Dueñas, *René Figueroa, Nuevo ministro de Gobernación*, EL DIARIO DE HOY, Apr. 3, 2004, available at <http://www.elsalvador.com/noticias/2004/04/03/nacional/nac9.asp> (quoting René Figueroa, Saca’s Ministro de Gobernación (Minister of Justice), as promising to continue the work initiated by the Flores administration in citizen security and to redouble its efforts with the “Plan Mano Súper Dura.”).

¹⁹²FESPAD AND CEPES, INFORME ANUAL JUSTICIA JUVENIL 2004, *supra* note 46, at 29; see also *Se Inicia la Súper Mano Dura*, EL DIARIO DE HOY, Aug. 31, 2004, available at <http://www.elsalvador.com/noticias/2004/08/31/nacional/nac18.asp>.

¹⁹³*Se Inicia la Súper Mano Dura*, *supra* note 192.

¹⁹⁴*Id.*

¹⁹⁵FESPAD AND CEPES INFORME ANUAL JUSTICIA JUVENIL 2004, *supra* note 46, at 29.

¹⁹⁶FESPAD AND CEPES, INFORME NACIONAL EL SALVADOR: VIOLENCIA JUVENIL EN CENTROAMÉRICA, RESPUESTAS DESDE LA SOCIEDAD CIVIL (2005) at 51; see also Aguilar and Miranda, *supra* note 95, at 68-69 (praising the government’s recognition of prevention and social reinsertion as necessary components of its anti-gang strategy).

¹⁹⁷Aguilar and Miranda, *supra* note 95, at 51 (emphasizing that the propaganda associated with these programs far outweighs their actual results); see also *id.* at 68-69 (stating that these programs are too limited in their scope and resources to address the gang phenomenon). USAID also gave a lukewarm assessment of these programs in its Central America and Mexico Gang Assessment. See CENTRAL AMERICA AND MEXICO GANG ASSESSMENT, *supra* note 4 (“The prevention and intervention policies of Mano Extendida and Mano Amiga are fairly new, and the impact is

Súper Mano Dura included permanent reforms to the penal code, the penal process code, and the juvenile law. The penal code reforms made membership in an illicit association an aggravating circumstance in a crime.¹⁹⁸ The law amended Article 345 of the penal code, relating to illicit associations to increase the punishment for membership in such an association to three to five years in prison and for leadership in such an association to six to nine years in prison.¹⁹⁹ Under the pre-existing Article 345, only committing or planning to commit crimes was punished.²⁰⁰ The definition of illicit associations was amended to include any group that carries out violent acts or that uses violent means to initiate, retain, or mark the exit of its members.²⁰¹

Since President Saca's announcement of the Súper Mano Dura Plan, the homicide rate in El Salvador has risen markedly.²⁰² The Saca administration has defended the Mano Dura strategies in the face of growing skepticism regarding their efficacy.²⁰³ While administration officials have sought to pin responsibility for rising criminality and homicide rates on the

difficult to measure to date. However, the percentage allocated to prevention and intervention approaches to gangs makes up only 20 percent of the available government funding, while a larger percentage goes toward law enforcement (Súper Mano Dura”).

¹⁹⁸Decreto No. 393/2004 (“Reformas al Código Penal”), art. 1 [“Penal Code Reforms”]; *see also* Decreto No. 1030/199, Código Penal, art. 30 [“Penal Code”].

¹⁹⁹Decreto No. 393/2004 (“Reformas al Código Penal”) *supra* note 198, art. 6; Decreto No. 1030/199, Código Penal, *supra* note 198, art. 345, para. 1.

²⁰⁰Decreto No. 393/2004 (“Reformas al Código Penal”) *supra* note 198, art. 6; Decreto No. 1030/199, Código Penal, *supra* note 198, art. 345, para. 1.

²⁰¹Decreto No. 393/2004 (“Reformas al Código Penal”) *supra* note 198, art. 2, para. 2. (In Spanish: “Serán consideradas ilícitas las agrupaciones, asociaciones u organizaciones temporales o permanentes, de dos o más personas que posean algún grado de organización, cuyo objetivo o uno de ellos sea la comisión de delitos, así como aquellas que realicen actos o utilicen medios violentos para el ingreso de sus miembros, permanencia o salida de los mismos.”)

²⁰²According to the National Institute of Forensic Medicine, the homicide rate in El Salvador in 2004 was 43.4 per 100,000 residents; it rose to 55.5 per 100,000 in 2005. *Boletín sobre Homicidios 2006*, *supra* note 2.

²⁰³*See, e.g.,* Mirna Jiménez, *Saca defiende Plan Súper Mano Dura*, DIARIO COLATINO, Jan. 27, 2005, available at <http://www.diariocolatino.com/nacionales/detalles.asp?NewsID=6818>.

rising number of deportations from the United States,²⁰⁴ there is a growing consensus among many observers, including law enforcement officials, that the plans have been ineffective or even counter-productive.²⁰⁵ This view was widely shared by representatives of civil society organizations interviewed by our researchers in El Salvador. However, with the exception of the underfunded Mano Amiga and Mano Extendida plans cited above, the Salvadoran government has failed to develop any alternative to the Mano Dura-style strategies for addressing the gang phenomenon. A police official who told our researchers that Mano Dura policies were widely recognized as a failure also acknowledged that PNC officers on the ground may continue to employ Mano Dura practices of mass arrests and raids because of institutional inertia and the lack of a coherent alternative approach.²⁰⁶ The following sub-sections explore the effects of these state responses on various sectors of Salvadoran society.

ii. Institutionalized Discrimination Against Targeted Groups, including Tattooed Persons and Deportees

One primary consequence of the Mano Dura laws and policies has been the institutionalization of police profiling enforcement efforts targeted at certain groups.²⁰⁷ The focus in the first and second Anti-Gang Acts on appearance and tattoos as proxies for unlawful gang membership or “illicit association,”²⁰⁸ combined with generalized law enforcement strategies that

²⁰⁴In a March 2006 interview with our researchers, PNC Director Rodrigo Avila told us that “the majority of those who are out committing crimes on the streets are deportees.” Interview with Rodrigo Avila, *supra* note 93. In a December 2005 press conference, President Saca responded to a question about whether a recent shift in the leadership of the PNC reflected weaknesses or failures of the “Súper Mano Dura” plan by emphasizing the threat deportees posed to the security of the country. President Elías Antonio Saca, Reconocimiento a Comisionada de Gobernabilidad, Press Declaration (Dec. 20, 2005) *available at* <http://www.casapres.gob.sv/presidente/declaraciones/2005/12/dec2001.html>.

²⁰⁵In an interview with our researchers, Hugo Ramirez, PNC Subcommissioner and Head of the Juvenile and Family Services Division, stated that “The strategies of Mano Dura and all that stuff have weakened our position [that of the PNC] with respect to institutions... It has been openly admitted that the Plan Mano Dura has been a failure.” Interview with Hugo Ramirez, *supra* note 49.

²⁰⁶*Id.*

²⁰⁷*See generally* Interview with Jeannette Aguilar, *supra* note 65; Interview with Mirna Antonieta Perla Jiménez, *supra* note 88.

²⁰⁸Discussed in Part III, Section 1a, *infra*.

de-emphasize investigation and prioritize arrest of alleged gang members, have nurtured a climate in which police target certain sectors of Salvadoran society for police stops and arrests on the basis of social characteristics, age, and background. For example, individuals with tattoos, gang-related or not, often fear being targeted for arbitrary arrests and detentions in El Salvador.²⁰⁹ At the Adiós Tatuajes program, a tattoo removal clinic run by a parish in San Salvador, clinicians told our researchers that their clients arrive to remove tattoos of all sorts because of discrimination and targeting they experience from police and society at large.²¹⁰ One administrator at the program recalled an incident in which a client ran into the clinic and begged her to come outside to confirm to the police that he was in the midst of the tattoo removal process. When she went outside, the police were waiting.²¹¹ Other clients report that the police beat them for their tattoos, even when they know that they clients are in the process of having them removed. In addition to police violence, clients of the clinic report schools denying them admission on the basis of tattoos (even artistic tattoos) and employers that refuse to hire without first checking the prospective employee for tattoos.²¹²

Our researchers interviewed other former gang members who reported experiencing state or private discrimination or harassment on account of their tattoos.²¹³ For example, one former gang member who had

²⁰⁹Interview with R.S.A., in San Salvador (Mar. 29, 2006) (describing how police officials arbitrarily arrested and detained her son, who has tattoos but is not a gang member, and two of his friends for twenty four hours; authorities later dropped vandalism charges against her son, which she asserted were unfounded. She and her son believe that the police arrested him on account of his tattoos); Interview with Olga Isabel Morales, *supra* note 134 (“Most clients come because of the persecution they face for having tattoos....The police harass people too just for having tattoos. They stop them on the street, and they beat them. That’s happened to lots of our clients. And to get a job, employers make you take off your shirt to see if you have tattoos, especially anything in the government/public sector.”); Interview with R.E., in San Salvador (Mar. 28, 2006) (reporting that he was anxious traveling in public transportation because of his tattoos, and describing efforts to begin to remove them).

²¹⁰Interview with Olga Isabel Morales, *supra* note 134.

²¹¹*Id.*

²¹²*Id.*

²¹³Interview with W.M., in San Salvador (Aug. 30, 2006) (“Another time I was walking with co-workers and we all have artistic tattoos. We were waiting for the bus. Cops were staring at us. One co-worker had his young son with him. The cops put us against the wall and searched us, searched our stuff, opened our sterilized

been deported from the U.S. told our researchers that he had serious difficulties finding a job because of his tattoos. Though he was able to get a job with a moving company, he was fired after a week on the job when his boss caught a glimpse of his tattoo.²¹⁴ In light of this stigmatization of tattoos and persecution of the tattooed, gangs have begun to discourage the use of tattoos among their members.²¹⁵ In spite of this shift in gang behavior, our interviews in El Salvador indicate that targeted harassment and social discrimination of tattooed individuals continues.

Our researchers in El Salvador found that the *Mano Dura* policies have nurtured state and societal discrimination against other sectors of the Salvadoran population as well. For example, our researchers found evidence that in certain neighborhoods in El Salvador, the simple facts of being young, male, and in a public space were sufficient to trigger frequent police suspicion and arrest.²¹⁶ These findings are discussed in greater detail in the section on arbitrary arrests and police violence below. Individuals deported from the United States, who were explicitly singled out in the original Anti-Gang Act for arrest and detention upon arrival in El Salvador, constitute another group frequently subject to social discrimination and police abuse in El Salvador. Politicians and the media also tend to depict deportees as dangerous gang members and criminals,²¹⁷ though statistics in-

tattooing equipment. We told them not to because they would contaminate it. They pushed me around, but eventually they let us go.”); Interview with M.P. in San Salvador (Mar. 30, 2006) (describing difficulties finding work due to his tattoos); Interview with E.C.C., *supra* note 143 (reporting being stopped for having tattoos and being arrested for illicit association during one of these stops); Interview with J.R.T. in San Salvador (Mar. 28, 2006) (describing how the police stop young men (even in the absence of any illicit behavior) and have them lift their shirts to check for tattoos, frequently abusing those who turn out to be tattooed).

²¹⁴Interview with J.R.T., *supra* note 213.

²¹⁵Interview with Jeannette Aguilar, *supra* note 65.

²¹⁶*See, e.g.*, Interview with T.C., *supra* note 117 (T.C. is an eighteen-year-old boy from Soyapango who has never been a member of a gang. He described to us how, beginning when he was fourteen, the police in his neighborhood frequently stopped, arrested, and beat him, accusing him of “illicit association” without further evidence than having seen him near other young men in the street.); *see also* Interview with A.F. in Mejicanos (Aug. 27, 2006) (A.F. is a 24-year old man from Mejicanos who has never been a member of a gang. He stated to us that the police stop him one or two times each week.).

²¹⁷*See, e.g.*, Jaime García, *Deportados por delitos en EE.UU. llegan a 1,515*, EL DIARIO DE HOY, Aug. 20, 2006; Katlen Urquilla, Enrique Miranda, and Liz Hidalgo, *Preocupa a Gobierno que lleguen mareros*, EL DIARIO DE HOY, Mar. 16, 2005; Enrique Miranda and Nelson Dueñas, *País propone cárcel para los deportados convictos*, EL

dicates that between 1998 and 2004, fewer than half of those deported from the United States to El Salvador had a criminal conviction.²¹⁸ However, this rhetoric can serve to legitimate the increasingly invasive searches and interrogations to which authorities subject some deportees upon arrival in El Salvador, as is discussed in part V of this section, *infra*.

iii. Police Violence and Arbitrary Arrests

A primary aim of Salvadoran law enforcement initiatives since 2003 has been to capture and detain as many gang members as possible.²¹⁹ International and domestic civil society organizations have suggested that this emphasis on mass detentions – carried out by police-military forces with limited investigative capacity and poor human rights records – has resulted in troubling patterns of arbitrary stops and arrests by Salvadoran police.²²⁰ Based on interviews conducted of youth by our researchers in El Salvador

DIARIO DE HOY, Apr. 1, 2005; Edward Gutiérrez and David Marroquín, *Saca preocupado por deportaciones*, LA PRENSA GRÁFICA, Mar. 16, 2005; *Maras deportados, peligro en El Salvador*, UNIVISIÓN NEWS ONLINE, Sept. 20, 2006, available at <http://www.univision.com/content/content.jhtml?chid=3&schid=181&secid=10984&cid=967427>.

²¹⁸According to statistics from the Department of Homeland Security (“DHS”), of the 33,052 Salvadorans deported from the U.S. between 1998 and 2004, in only 14,256 cases the Department had evidence that the deportee had a criminal conviction. See DEPARTMENT OF HOMELAND SECURITY, YEARBOOK OF IMMIGRATION STATISTICS, tbl.43, Aliens Removed by Criminal Status and Region and Country of Nationality, Fiscal Years 1998-2004 (2004).

²¹⁹See, e.g., statement of former President Francisco Flores in announcing the first “Mano Dura” plan in the summer of 2003, emphasizing the government’s determination to capture gang members throughout the country. *El Estado de Excepción es la última alternativa*, *supra* note 158, available at <http://www.elsalvador.com/noticias/2003/07/24/nacional/nacio13.html>; see also *Aplicación de la ley Combate a las pandillas: una mano dura y otra suave*, EL DIARIO DE HOY, Sept. 28, 2005 (describing the government’s emphasis on arrest and capture of suspected gang members in its Mano Dura and Súper Mano Dura strategies), available at <http://www.elsalvador.com/noticias/2005/09/28/nacional/nac21.asp>; see also FESPAD AND CEPES INFORME ANUAL JUSTICIA JUVENIL, *supra* note 46, at 27 (the report includes a graphic display of statistics from the PNC regarding annual numbers of detention of juveniles for illicit association; the number jumped from 98 to 1,462 between 2002 and 2003).

²²⁰See, e.g., Red para la Infancia y la Adolescencia de El Salvador (El Salvador Network for Children and Youth), *Informe Ejecutivo de la RIA El Salvador en el Marco de Reunión con la Comisión Interamericana de Derechos Humanos (CIDH), sobre el tema de pandillas o maras en El Salvador, Audiencia y Reunión de Trabajo realizado en la sede de la CIDH*, Washington, DC, Oct. 26-27 2004 (reporting unlawful detention of children in El Salvador under the 2003 and revised versions of the LAM); FESPAD AND CEPES INFORME ANUAL JUSTICIA JUVENIL, *supra* note 46 at 25.

in 2006,²²¹ as well as observations of human rights advocates,²²² it appears that the police practice of stopping, searching, and arresting individuals based solely on their appearance continues in spite of the formal expiration of the 2003-2004 Anti-Gang Acts.

The Foundation for the Study of the Application of the Law (FESPAD) and the Centro de Estudios Penales de El Salvador (El Salvador Center for Penal Studies or “CEPES”) conducted a quantitative review of police arrest and prosecution statistics after the first year of the Mano Dura policies. The results were disturbing: between July 2003 and August 2004, police detained 19,275 people on grounds that they belonged to gangs, according to police statistics published in the Salvadoran daily *El Diario de Hoy*. Police released eighty four percent of those arrested because there were no cognizable grounds for their arrest, and prosecutors dropped charges against another seven percent due to a lack of evidence. As of August 2004, only five percent of accused gang members arrested after July 2003 were being held by judicial order while criminal proceedings against them were underway.²²³ Summing up the results of this analysis, FESPAD and CEPES concluded that “more than ninety percent of [suspected gang members arrested between July 2003 and August 2004] were arrested because of their appearance, their dress, or because they had tattoos or used ‘signs’, reasons that are insufficient to establish criminal responsibility in court.”²²⁴

Interviews conducted by our researchers in poor neighborhoods on the outskirts of San Salvador suggest that these patterns of profiling and arbitrary arrest continue. Most of the boys and young men from poor and marginalized areas outside San Salvador interviewed by our researchers reported having been stopped and patted down by police on a regular, often weekly or even daily, basis.²²⁵ Several of these individuals reported

²²¹See, e.g., Interview with C.A., *supra* note 82; Interview with T.C., *supra* note 117; Interview with E.R.M., *supra* note 124.

²²²Interview with Beatrice Alamanni de Carrillo, *supra* note 42.

²²³See FESPAD AND CEPES INFORME ANUAL JUSTICIA JUVENIL 2004, *supra* note 46 at 25.

²²⁴*Id.*

²²⁵Interview with C.A., *supra* note 82 (C.A., a twenty-four-year-old former gang member who lives in an urban area on the outskirts of San Salvador, reported that the police stop and search him on a near-daily basis.); Interview with E.R.M., *supra* note 124 (E.R.M., an eighteen-year-old former street child, reported that when he lived on the street, he was harassed and sometimes beaten by the police “almost every day”.); Interview with A.F., *supra* note 216 (A.F., a twenty-four-year-old resident of an urban area on the outskirts of San Salvador who has never been involved with

having been wrongfully accused by police of being gang members.²²⁶ Many reported having been subjected to arbitrary arrest and detention by the police.²²⁷ In some instances, these individuals informed our researchers that the police explained that they were being detained for “illicit association.”²²⁸ Young people who live in areas with a gang presence told us that being stopped arbitrarily by police and told to lift up their shirts for a search of gang tattoos is a regular, often weekly, occurrence.²²⁹ One youth described an incident in which he and several friends were driving to a wake. En route, the police stopped them, took them to a police station, and beat them with their rifles.²³⁰ The police officers told them that they were being arrested for “illicit association,” but authorities never gave the youths a court date and released them five days later.²³¹ This young man reported additional police harassment and violence in the weeks following this detention.²³² Another youth described being arrested for “illicit association” between six

gangs reported that he is stopped and searched weekly by police.); Interview with T.C., *supra* note 117 (T.C., an eighteen-year-old who grew up in a densely populated city near San Salvador and who was never a gang member, reported that he “always” had problems with police when he was on the streets of his neighborhood, and that police had arrested him approximately 10-11 times for illicit association.).

²²⁶Interview with A.F., *supra* note 216; Interview with T.C., *supra* note 117.

²²⁷See *supra* note 225.

²²⁸Interview with C.A., *supra* note 82; Interview with R.S.A., *supra* note 209 (describing the arrest of her son from his home by 15 armed policemen who later announced that they had captured dangerous gang members and then detained her son for 24 hours); Interview with R.E., *supra* note 209; Interview with M.P., *supra* note 213.

²²⁹Interview with C.A., *supra* note 82 (reporting being stopped and searched by police on a near-daily basis); Interview with R.E., *supra* note 209 (reporting having been stopped twice since being deported 3 years ago; taken one time to the police station and held for 5 days after the police saw his tattoos under his shirt); Interview with M.P., *supra* note 213 (reporting having been detained 3 times); Interview with T.C., *supra* note 117 (T.C., who was not a gang member but who lived in an area with a heavy gang presence, reported that he was “always” stopped and searched by police when he went outside in his neighborhood.).

²³⁰Interview with D.H. in Cabañas (Aug. 25, 2006).

²³¹*Id.*

²³²*Id.*

and eight times.²³³ Each time, he was held for three to five days and then released.²³⁴ Another reported being arrested eleven times for hanging out with his friends, who were not gang members. The police officers who arrested him told him that he was being detained for “illicit association” or for walking around at night without any papers.²³⁵

In July 2006, in a particularly visible illustration of the Salvadoran police’s reliance on mass arbitrary arrests, police stormed a church in a poor neighborhood outside San Salvador during a wake for three young gang members who had been killed.²³⁶ The raid, in which police arrested approximately 195 young people, took place several hours after a police officer in the area was killed.²³⁷ Church officials reported that they had visited the local police station with the families of the boys killed in the days before the wake, to notify police officials of their plans for the funeral and to request police protection during the service.²³⁸

According to witness accounts compiled and published by church leaders, the funeral was proceeding peacefully when police entered the church after midnight wearing ski masks and bullet-proof vests, and carrying high caliber weapons.²³⁹ Once inside, the police forced the boys and men present to strip down to their underwear, opened and searched coffins, and searched everyone inside, before arresting 194 youths.²⁴⁰ Church leaders and rights groups contend that in the process of conducting the operation, police officers shouted obscenities and beat the young people they

²³³Interview with P.E.. in Cabañas (Aug. 25, 2006).

²³⁴*Id.*

²³⁵Interview with T.C., *supra* note 117.

²³⁶Parroquia San Bartolo (San Bartolo Parish), Ilopango: *Publicación Especial, Allanamiento* (2006) at 3. It bears noting that the modus operandi by which these youths were killed corresponds highly to a death squad killing. See Tutela Legal, *Sobre los Actos de Profanación y Allanamiento Ilegal a la Capilla de la Iglesia Católica de la Cima I, San Bartolo, Municipio de Ilopango y las Detenciones Arbitrarias Masivas en el Mismo Lugar, Ocurridas el 12 de Julio de 2006* [hereinafter “Tutela Legal, San Bartolo Report”] at 1.

²³⁷*Id.* at 3.

²³⁸*Id.*

²³⁹*Id.* at 2.

²⁴⁰*Id.* at 2-3.

searched.²⁴¹ According to initial reports, the prosecutor's office intended to charge those arrested in the raid with "illicit association" and resistance, but the office dropped criminal charges against all the young people arrested within six days of the incident.²⁴² These events prompted significant outcry from Catholic and other religious communities in El Salvador.²⁴³

Interviews conducted by our researchers in El Salvador indicate that the arbitrary stops and arrests of Salvadoran youths are often accompanied by police abuse and physical violence, including beatings on the street or in police detention centers.²⁴⁴ These firsthand reports of abuse came from active gang members, former gang members, and non-gang members alike.²⁴⁵ One twenty-four-year-old man, interviewed in a neighborhood in the outskirts of San Salvador, described a recent interaction with police on his street:

There were seven of us sitting on a bench outside a store. None of us are gang members. We were drinking there. Then four police officers [approached us and searched us] and told us to open up our legs more, they pushed us and then kicked us. We didn't have any drugs or any weapons, they didn't find anything on us. They

²⁴¹*Id.* at 2.

²⁴²Parroquia San Bartolo (San Bartolo parish), *supra* note 236 at 1. Tutela Legal, *San Bartolo Report*, *supra* note 236, at 3.

²⁴³Parroquia San Bartolo (San Bartolo parish), *supra* note 236 (the publication includes press releases and letters of support from leaders of various religious communities in El Salvador, expressing concern about the raid and the deteriorating human rights situation in the country).

²⁴⁴Interview with C.A., San Salvador (Mar. 30, 2006), *supra* note 82; Interview with R.E., *supra* note 209 (both reporting having been beaten by police). See also interview with E.C.C., *supra* note 143 (reporting having been stopped by police three times in the year since he was deported; the third time he was charged with illicit association); Interview with D.H., *supra* note 230 (describing an incident in which he was beaten by 10-11 police officers, over a two hour period of interrogations); Interview with J.L. in Cabañas (Aug. 25, 2006), (describing an incident in which a group of police officers and soldiers shoved a gun against his chest, held a grenade up to his head, and told him they were going to kill him).

²⁴⁵See, e.g., interview with A.F., *supra* note 216 (not a member of a gang); Interview with E.R.M., (not a member of a gang), *supra* note 124; Interview with C.A., *supra* note 82; Interview with D.H., *supra* note 230; Interview with L.F.G., *supra* note 137.

told us that only ‘whores, thieves, and fags’ were outside at night and then they left.²⁴⁶

An eighteen-year-old boy who became a street child in San Salvador at the age of thirteen reported that when he lived on the streets, he was repeatedly subjected to physical abuse by police:

I had a lot of problems with police on the streets. Sometimes they grabbed me and beat me up hard, sometimes because they saw me rob something. They would hit me really hard, they would take me to dark areas ... they would hit me with guns and sticks ... sometimes when I was asleep in the street they would wake me up to beat me up ... sometimes they beat me up and just left, some times they brought me into the police station.²⁴⁷

Other young people interviewed by our researchers described being subjected to even more serious instances of physical abuse and violent threats by police.²⁴⁸ Excerpts from these interviews appear in Section IV, *infra*. Salvadoran human rights organizations have also documented cases of severe physical abuse and killings committed by PNC officers in recent years. The national Human Rights Ombudswoman’s office reports that complaints of human rights violations committed by the police constitute the single largest category of denunciations that the office receives.²⁴⁹ Tutela Legal of the Archbishop of San Salvador (the human rights office of the Archbishop, hereinafter “Tutela Legal”) investigated in depth nine incidents of killings by PNC officers in 2004 and 2005.²⁵⁰

²⁴⁶Interview with A.F., *supra* note 216.

²⁴⁷Interview with E.R.M., *supra* note 124.

²⁴⁸*See, e.g.*, Interview with L.F.G., *supra* note 137 (describing having part of his earlobe ripped off by police officers).

²⁴⁹Interview with Beatrice Alamanni de Carrillo, *supra* note 42. *See also* PROCURADURÍA PARA LA DEFENSA DE LOS DERECHOS HUMANOS, ACTUACIONES DE LA INSPECTORÍA GENERAL Y LAS SECCIONES DISCIPLINARIAS DE LA PNC EN EL DEPARTAMENTO DE SAN SALVADOR 12-13 (2005) *available at* <http://www.pddh.gob.sv/docs/informeinspectoria-conanexos.pdf> (in 2004, denunciations against the police constituted one quarter of all denunciations received by the office); INFORME DE LABORES, *supra* note 31 at 46.

²⁵⁰LA SITUACIÓN DE LOS DERECHOS HUMANOS EN EL SALVADOR 2004, *supra* note 71, at 74-89; LA SITUACIÓN DE LOS DERECHOS HUMANOS EN EL SALVADOR 2005, *supra* note 71, at 16-17.

The Salvadoran state's decision to involve military agents in civil policing activity is a particularly troubling aspect of its crackdown on youth gangs.²⁵¹ In August 2005, the Salvadoran media reported that 1,000 soldiers would be deployed to support the National Police in "Grupos de Tarea Antipandilla", or anti-gang units, in the eighteen "most dangerous towns in the country."²⁵² International media reported that the government planned to increase the number of military officers patrolling alongside the PNC to 1500 as of November 2005.²⁵³ The government has also introduced joint patrols in rural areas in which soldiers work members of the Rural Police (Policía Rural), a special force formed in 2004.²⁵⁴ The militarization of Salvadoran policing activities poses serious human rights concerns for several reasons. As international organizations such as the Washington Office on Latin America have noted, the separation of military and police functions and the establishment of a civilian police force constituted one of the major accomplishments of the Peace Accords.²⁵⁵ The use of joint patrols undermines that accomplishment, and exposes civilians to a heightened risk of abuse by members of the Armed Forces, an institution whose historic human rights record is extremely poor, as discussed in Section I, *supra*. For example, our researchers spoke separately with two gang members in a small city in central El Salvador who reported being subjected to serious

²⁵¹See FESPAD AND CEPES INFORME ANUAL JUSTICIA JUVENIL 2004, *supra* note 46, at 29.

²⁵²Milton Grimaldi et al., *Mil soldados para combatir pandillas*, LA PRENSA GRÁFICA, Aug. 25, 2005.

²⁵³Marion Barbel, *President Deploys Troops to Curb Violence in El Salvador*, WORLD MARKETS ANALYSIS, Nov. 25, 2005.

²⁵⁴Mauricio Vallejo, *Seguros en toda la zona rural del país*, EL DIARIO DE HOY, June 11, 2004. See also U.S. DEPARTMENT OF STATE, EL SALVADOR: COUNTRY REPORT ON HUMAN RIGHTS PRACTICES – 2002 (2003), available at: www.state.gov/g/drl/rls/hrrpt/2002/18331.htm ("The military provides support for some PNC patrols in rural areas, a measure begun in 1995 by presidential executive order in an effort to contain violence by well-armed, organized criminal bands..."); Intelligence Research Ltd., El Salvador: Government uses army to beef up police, CARIBBEAN & CENTRAL AMERICA REPORT, Aug. 16, 2005 (noting that "for several years now troops have taken part in the Grupos de Tarea Conjunta (GTC, joint task forces) created to protect key export crops, mainly coffee (under Operacion Grano de Oro), from theft.").

²⁵⁵See WASHINGTON OFFICE ON LATIN AMERICA, *supra* note 54, at 10, available at http://www.wola.org/gangs/gangs_report_final_nov_06.pdf.

rights violations by joint police-military patrols.²⁵⁶

iv. Prison Overcrowding and Violence

The massive number of arrests under the anti-gang crackdown of the past four years have placed a severe burden on El Salvador's prison system, exacerbating the conditions of overcrowding and violence that became a central national concern in the 1990s and that are discussed in Section I, *supra*. In 2001, there were 7,500 people in Salvadoran prisons. By February 2006, this number had soared to 12,500 detainees, though the national system had an operating capacity for only 8,000 prisoners.²⁵⁷ Government statistics from February 2006 indicate that there are over 3,000 gang members currently detained in Salvadoran prisoners. According to the Director General of Penal Centers, most of the increase in the national prisoner population since 2001 can be attributed to the arrest and incarceration of gang members.²⁵⁸

The rapid growth in El Salvador's prison population and the increased incarceration of gang members have been accompanied by increasingly poor and dangerous conditions within prisons.²⁵⁹ Over the course of the past four years there have been dozens of killings²⁶⁰ in the Salvadoran

²⁵⁶See Interview with L.F.G. *supra* note 137 (L.F.G. told our researchers that one day while he was eating in a local store/restaurant, he was called out on to the street by two police officers and two soldiers, who told him to lift up his shirt (revealing a large gang tattoo). The officers placed a gun and a knife to his chest, then forced him into a car to an area just outside of town and interrogated him about a recent incident in which a police officer was shot. He denied knowing about the incident and was placed back in the police car and taken to another area. Again the officers placed a gun to his chest and ripped off the lower part of his earlobe. A police officer placed a grenade to his head and told him 'you're going to pay for this; I'm going to kill you (plural) one by one.' The officers and soldiers left him in this area and told him to wait for them to return; he fled instead.) Interview with P.E., *supra* note 233 (P.E. told our researchers that "The last time I had an encounter with the police was on Monday. I was going back after getting medicine for my mother. A girl was with me. There were two police officers and two soldiers. They hit me in the street and I left running. The police officers were the ones who hit me, the soldiers were there as guards. They chased me until I got home.").

²⁵⁷Interview with Jaime Roberto Villanova, *supra* note 47.

²⁵⁸*Id.*

²⁵⁹See FESPAD AND CEPES INFORME ANUAL JUSTICIA JUVENIL 2004, *supra* note 46 at 44-47.

²⁶⁰See, e.g., *Muerto y heridos en el penal*, EL DIARIO DE HOY, Mar. 2, 2004; *Dos muertos en una riña dentro de centro penal*, EL DIARIO DE HOY, Mar. 16, 2004; *Confirman*

prison system, including a massacre in January 2007 that left twenty-one prisoners dead in the Apanteos prison in western El Salvador.²⁶¹ The massacre took place several days after 100 prisoners who were not gang members were transferred to the prison, which mostly holds members of the Mara 18.²⁶² According to press reports, Human Rights Ombudswoman Beatrice de Carrillo attributed the massacre to the transfer of non-gang members into the prison.²⁶³ Another massacre in August 2004 at the “La Esperanza” detention facility outside San Salvador in which thirty-one prisoners were killed also generated international attention and condemnation.²⁶⁴ Salvadoran authorities blamed gang disputes for that massacre, and subsequently stepped up efforts to segregate rival gang members into separate detention facilities.²⁶⁵ However, violence in the Salvadoran prison system has continued, as evidenced by the recent Apanteos massacre and other incidents,²⁶⁶ including six apparently coordinated killings in two separate facilities on a single day in March 2006.²⁶⁷

Human rights organizations and law enforcement officials agree

muerte de reo en Mariona y nuevos túneles de escape en Penal de Cojutepeque, EL DIARIO DE HOY, Mar. 7, 2006; *Identifican a recluso ultimado en el penal*, EL DIARIO DE HOY, Apr. 21, 2006; *Prisiones están en alerta*, EL DIARIO DE HOY, Nov. 15, 2006 (all reporting killings of prisoners).

²⁶¹David Marroquín, *21 reos asesinados en riña en Apanteos*, LA PRENSA GRÁFICA, Jan. 7, 2006.

²⁶²*Id.*

²⁶³*Id.*

²⁶⁴See AMNESTY INTERNATIONAL, EL SALVADOR REPORT 2005, available at <http://web.amnesty.org/report2005/slv-summary-eng>.

²⁶⁵*Saca's anticrime plan bets on specialization*, LATIN AMERICAN WEEKLY REPORT, Sept. 7, 2004 (“In mid August a fight between gang members and other criminals left 31 dead and 30 injured at the La Esperanza prison in Mariona, just outside San Salvador. Last week a similar confrontation was averted at the Apanteos penitentiary in Santa Ana by transferring 702 gang members to two other prisons. Saca intends to make segregation of gang members a keystone of his prisons policy.”).

²⁶⁶The January 2007 killings prompted the Inter-American Commission on Human Rights to release a statement urging the Salvadoran government to address overcrowding and other dangerous conditions in the nation's prison system. See Press Release, Inter-American Commission on Human Rights, The Inter-American Commission Expresses its Concern over Violent Deaths in a Prison in El Salvador, Jan. 9, 2007, available at <http://www.cidh.org/Comunicados/English/2007/2-07eng.htm>.

²⁶⁷*Muertos en Quezaltepeque y Ciudad Barrios*, EL DIARIO DE HOY, Mar. 22, 2006.

that the prison system is severely overburdened and that there exist serious challenges to ensuring security and the rule of law within many Salvadoran prisons.²⁶⁸ However, rights groups criticize the repressive measures the Salvadoran state has taken to address the situation – such as limitations on access to visitors, unannounced transfer of prisoners, and the construction of a new maximum security facility – as ineffective, and sometimes in contravention of Salvadoran law and international rights principles.²⁶⁹ Our researchers interviewed the director of a humanitarian NGO and a government employee who work with prisoners; both told us that rights violations occur regularly in Salvadoran prisons.²⁷⁰ In particular, these sources told our researchers that abuses frequently occur in the context of mass searches of the prisons that are often carried out in conjunction with members of the PNC following the declaration of a state of emergency by prison officials.²⁷¹ Although regulations require that the judge charged with oversight of the prison be called before these mass searches begin, a source who is familiar with the Salvadoran prison and judicial systems told our researchers that judges frequently learn of these mass searches only after they have begun. According to this source, prison directors often declare a state of emergency to justify these crackdowns and searches which sometimes involve physical abuse. This source also told our researchers that when judges arrive at the prisons in attempts to get the names of officers who have

²⁶⁸See, e.g. FESPAD AND CEPES, ESTADO DE LA SEGURIDAD PÚBLICA Y LA JUSTICIA PENAL EN EL SALVADOR, ENERO-AGOSTO 2005 [Hereinafter “FESPAD AND CEPES, ESTADO DE LA SEGURIDAD PÚBLICA Y LA JUSTICIA PENAL EN EL SALVADOR 2005”] 66-67 (2005); Interview with Hugo Ramírez, *supra* note 49.

²⁶⁹FESPAD AND CEPES, ESTADO DE LA SEGURIDAD PÚBLICA Y LA JUSTICIA PENAL EN EL SALVADOR 2005, *supra* note 268 at 66-67. See also PROCURADURÍA PARA LA DEFENSA DE LOS DERECHOS HUMANOS (Office of the National Human Rights Ombudswoman), INFORME PRELIMINAR DE LA SENORA PROCURADURA SOBRE EL TRASLADO DE MIEMBROS DE LAS MARAS “MS Y XVIII” DE LOS CENTROS PENALES DE CHALATENANGO Y QUETZAL TEPEQUE HACIA EL CENTRO DE SEGURIDAD DE ZACATECOLUCA, EL 7 DE FEBRERO DEL 2005, issued Feb. 14, 2005 (criticizing the sudden transfer of gang members from the Chalatenango and Quetzaltepeque prisons to the maximum security Zacatecoluca facility as unlawful under El Salvador’s Prison Law (Ley Penitenciaria) and its Constitution).

²⁷⁰Interview with Astrid Torres, *supra* note 49 (Ms. Torres, whose job entails monitoring the treatment of and advocating for prisoners in the Quetzaltepeque prison, told our researchers that prison guards commit abuses, including verbal provocations and taunting as well as physical abuse, and that judges are frequently reluctant to respond to allegations of abuse); Interview with Jeanne Rikkers, *supra* note 89 (“[The] PNC has participated in many violent, illegal, provocative situations while supposedly conducting searches.”)

²⁷¹Interview with Jeanne Rikkers, *supra* note 89; Interview with Astrid Torres, *supra* note 49.

engaged in abuses, they are often thwarted because the officers involved are wearing masks and do not have any visible identification.

v. Targeted law enforcement efforts aimed at deportees

Finally, it is important to make note of one other effect of the government's policies of the past several years: increased law enforcement and media attention on Salvadorans deported from the United States. As noted in the discussion of anti-gang legislative initiatives, *supra*, the original LAM included a provision that specifically provided for the detention of suspected gang members upon arrival in El Salvador. The Supreme Court ruled that provision unconstitutional in April 2004. However, conversations with civil society advocates and deportees indicate that the reception of hundreds of Salvadorans deported weekly from the United States, which until 2005 included robust participation from civil society groups concerned with protecting the rights and safeguarding the well-being of the deported population,²⁷² has become a process dominated largely by law enforcement interests.²⁷³ While the Salvadoran state has legitimate interests

²⁷²Interview with Gilma Pérez, Director of the Migration Program of the IDHUCA, in San Salvador (Mar. 27, 2006); interview with Luis Fernando Trujillo, Director Nacional (National Director) of CARITAS (a Catholic social services organization), in San Salvador (Mar. 29, 2006). (Both the IDHUCA and CARITAS were involved in providing humanitarian and legal assistance to deportees upon arrival at the airport in El Salvador until oversight of the program changed hands from a joint civil society-government task force to the Ministro de Gobernación in 2005. CARITAS offered a shelter for deportees who had arrived in the country with no immediate prospects for lodging until 2005.) *See also*, IDHUCA, *BALANCE DE LOS DERECHOS HUMANOS DEL 2005*, *supra* note 118, at 3-4 (noting the change in management of the *Bienvenidos a Casa* ("Welcome Home") program and lamenting what it perceived as a decline in the quality of the services provided to deportees.)

²⁷³Interview with Gilma Pérez, *supra* note 272. Our researchers also interviewed recently deported individuals who described intense law enforcement screenings and limited or non-existent offerings of social services or assistance. *See* Interview with W.M., *supra* note 213 (W.M., who was deported in December 2005, told us that during his reception process at the airport, he did not interact with anyone from the "Welcome Home" humanitarian program, only law enforcement officials, who took pictures of all his tattoos); Interview with R.Z. in Mejicanos (Aug. 28, 2006) (R.Z., deported in early 2006, told us that he was interrogated twice when he arrived in the airport upon deportation and that law enforcement officials took pictures of all his tattoos and his face); Interview with M.A.H. in Ilobasco (Sept. 1, 2006) (M.A.H., deported in early 2006, told our researchers that contrary to what he had heard from other Salvadorans deported in earlier years, there were no pupusas or coffee waiting for him in the airport, "only police officers." He reported that police officers took many close-up pictures of his tattoos with multiple cameras and that they asked him questions about his criminal history in the United States (according to him, they had his criminal record in front of them while they inter-

in monitoring and registering the arrival of deportees, rights groups in El Salvador are concerned that violations of deportees' rights might be occurring during the interrogations and searches which appear to be a standard element of the reception process.²⁷⁴ These concerns arise at least in part from rights groups' past experience; staff of civil society organizations that provide services to deportees told our researchers of several instances in which law enforcement officials targeted deportees with no criminal records in El Salvador for investigation and arrest.²⁷⁵ Changes in 2005 to the administration of the "Welcome Home" airport reception program for deportees were accompanied by restrictions in access to deportees upon their arrival in El Salvador. Representatives of several civil society organizations that have historically provided legal and humanitarian services to the deported population told our researchers that they no longer have access to the airport reception process.²⁷⁶ In an effort to investigate independently concerns about possible rights violations in the reception process, our research team requested permission to observe the reception process in March and in August 2006. Authorities refused immediate access, requiring that we wait several days – one longer than our scheduled stay.

Interviews with deportees and governmental officials suggest that authorities from several Salvadoran and international law enforcement agencies, including the Centro de Inteligencia Policial (Police Intelligence Service), the PNC, and possibly INTERPOL have been involved in the pro-

rogated him) and about what his plans for his life in El Salvador were.)

²⁷⁴Interview with Gilma Pérez, *supra* note 272; Interview with Beatrice Alemanni de Carrillo, *supra* note 65; Interview with Gerardo Alegría, *supra* note 54 (describing an alleged instance of a deported woman who was inappropriately strip-searched as part of the reception process).

²⁷⁵For example, Gilma Pérez of the Migration Program of the IDHUCA described several cases in late 2003 in which she defended young men with no criminal records in El Salvador who were arrested and taken into custody, solely on the basis of their appearance and tattoos, upon arrival in El Salvador under Article 29 of the original Anti-Gangs Act, discussed in part 1 (legislative responses) of this section, *supra*. Interview with Gilma Pérez, *supra* note 272. Additionally, staff of CARITAS, which ran a shelter for deportees until 2005, told our researchers that staff of the shelter had clashed on several occasions with police who asked them to investigate deportees who were staying at the shelter and who sometimes monitored the comings and goings of deportees who stayed at the shelter. Interview with Luis Fernando Trujillo, *supra* note 272.

²⁷⁶Interview with Gilma Pérez, *supra* note 272; Interview with Luis Fernando Trujillo, *supra* note 272.

cess of registering deportees upon their arrival in El Salvador.²⁷⁷ Deportees also reported that as they passed through the reception process upon arrival in the airport, law enforcement officials took extensive and detailed photographs of the tattoos of deportees who had them.²⁷⁸ Most deportees interviewed by our researchers indicated that law enforcement officials had asked them to provide the address where they planned to reside in El Salvador,²⁷⁹ and one reported that law enforcement officials arrived at the home address he provided at the airport within months of his deportation to interrogate him about his migratory journey to the United States.²⁸⁰

In sum, the Salvadoran state's direct responses to the phenomenon of youth gangs have primarily involved the use of repressive law enforcement tactics targeting particular sectors of Salvadoran society, including tattooed individuals, youth, and deportees. These tactics have failed to stem gang-related or other forms of violence in El Salvador. The next section of the report explores what we have termed the Salvadoran state's secondary responses to the gang phenomenon. Specifically, it examines the ways in which the state has *failed to respond* effectively, in accord with its international obligations, to gang-related and other forms of violence in the country.

B. Secondary State Responses to the Gang Phenomenon: Impunity

In addition to its direct role in the commission of human rights abuses against actual or alleged gang members or other criminals, the Salvadoran government also regularly fails to uphold its obligation to ensure the security of its population and to investigate and prosecute those responsible for violence. The Salvadoran justice system as a whole is considered weak and ineffective (see Section I, *supra*), but the state's failure to protect the poorest and most vulnerable of its citizens – those most likely to be victims or perpetrators of violence – is especially pronounced.²⁸¹ International

²⁷⁷Several deportees interviewed by our researchers told us that they were interrogated upon arrival in El Salvador by agents of INTERPOL. Interview with R.Z., *supra* note 273; Interview with N.M., in Chaletanango (Mar. 29, 2006).

²⁷⁸See note 273, *supra*.

²⁷⁹Interview with W.M., *supra* note 213 (“The cops asked me where I was going but I lied”); Interview with M.A.H., *supra* note 273 (reporting that police at the airport asked him numerous questions, including where he was planning to live).

²⁸⁰Interview with R.Z., *supra* note 273.

²⁸¹See, e.g., WORLD BANK ET. AL., *supra* note 32, at 6 (reporting that the most vulner-

human rights norms impose affirmative obligations on states to ensure the protection of fundamental rights and to provide public security,²⁸² and the government's failure to protect certain classes of Salvadoran citizens constitutes a serious violation of the most basic international human rights standards, including the rights to life and physical integrity.

In El Salvador, the lack of protection for presumed or future victims of gang and other violence takes a number of forms, including failure to ensure the security of potential victims of violence; a lack of witness protection; and inadequate or non-existent criminal investigations into alleged or presumed inter- or intra-gang violence.²⁸³ The Salvadoran state's failure to protect, investigate, and prosecute violence is especially pronounced in cases of possible extra-judicial killings linked to state actors.²⁸⁴ This section will discuss each of these issues in turn.

i. Failure to Ensure Public Security/Provide Effective Protection

Actual and threatened victims of violence interviewed by our researchers in El Salvador – including former or imputed gang members and residents of areas with a heavy gang presence – reported that Salvadoran police were unwilling or incapable of providing citizen protection.²⁸⁵ A

able sectors of the Salvadoran population suffer the consequences of violence, including death, in part due precisely to their low socioeconomic status). Additionally, the Research Director of El Salvador's National Institute of Forensic Medicine told our researchers that the amount of time government investigators spend collecting evidence at the scene of a homicide "sometimes depends...on how important the victim is." Interview with Dr. Fabio Molina Vaquero, *supra* note 119. Dr. Molina also told our researchers that "homicides are increasing, especially among young people." *Id.*

²⁸²Velásquez-Rodríguez case, Case 4/88, Inter-Am. Ct. H.R. (Ser. C) (1988). INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY, CRIME, PUBLIC ORDER, AND HUMAN RIGHTS, 16-19 (2003) (discussing states' obligation under international norms to provide "basic security to the people they govern.").

²⁸³Interview with Astrid Torres, *supra* note 49; Interview with Jaime Martínez Ventura, *supra* note 41; Interview with F.R., *supra* note 117 (describing the lack of investigation and follow-up in the cases of her two brothers, who were associated with gangs and were killed within the past several years).

²⁸⁴See FESPAD AND CEPES, ESTADO DE LA SEGURIDAD PÚBLICA Y LA JUSTICIA PENAL EN EL SALVADOR 2005, *supra* note 268 at 102-103 (describing the results of a 2001-2005 study in which it identified 622 possible instances of extra-judicial killings, based on Salvadoran media reports.)

²⁸⁵See, e.g., interview with X.D.H. in San Salvador (Aug. 31, 2006) ("There is one

resident of a poor urban region outside San Salvador, emphasizing the ineffectiveness of police presence in the area, told our researchers that police abandon their posts and disappear when gang members take to the streets in her area, leaving citizens vulnerable to extortion, threats, and violence.²⁸⁶ Another resident of that region told us that the two major gangs' geographic control was so complete that residents of an area controlled by one gang could not go into the area controlled by the other gang. "There is no freedom of movement here," she explained.²⁸⁷

Our researchers encountered another sad illustration of the Salvadoran state's utter failure to ensure citizen security in an interview with a seventeen-year-old boy in a juvenile detention facility. The boy grew up in a densely populated poor neighborhood just outside San Salvador with his family, in an area controlled by a *clika* of the Mara 18. Members of the Mara 18 charged *renta* to families in the area, demanding money and threatening them if they did not comply.²⁸⁸ The boy, the oldest male in his family, increasingly became a target for Mara 18 members, who harassed him, threatened him, and stole from him when he left his house.²⁸⁹ Instead of providing protection to the boy or his family, police in the area regularly stopped and searched the boy, sometimes arresting him on illicit association charges.²⁹⁰ After resisting the gang's extortion attempts for two years, the boy "lost control" one day when the leader of the Mara 18 *clika* came to the boy's house threatening to "do away" with his family if they did not give him money. The boy fought with and killed the *clika* leader, thus becoming a perpetrator as well as a victim of the violence that has come to define life in marginalized Salvadoran neighborhoods over the past several years.²⁹¹

In addition to failing to protect many victims of gang violence, including other gang members and residents of poor neighborhoods in

man who was in Mariona who has threatened me. I could file a complaint but why? It won't do any good and I don't want to put my children in danger. Even when walking in the park with my daughters I have been approached by people (threatening me). I've been followed while going on the bus route. I've been told my throat would be cut.")

²⁸⁶Interview with F.R., *supra* note 117.

²⁸⁷Interview with D.L. in San Salvador (Aug. 31, 2006).

²⁸⁸Interview with T.C., *supra* note 117.

²⁸⁹*Id.* (describing the gang's harassment of him and his family).

²⁹⁰*Id.*

²⁹¹*Id.*

which gangs exercise significant power, the Salvadoran state frequently fails to investigate and prosecute violence in which the victim is a member of a marginalized or powerless social group – or presumed to be a gang member.²⁹² The sister of two young men who had been killed in the past several years spoke to our researchers near her home in a poor area in the outskirts of San Salvador. Both brothers allegedly had been connected to gangs, and as far as the woman knew, neither brother's death was investigated by the police:

After my first brother was killed, there was no investigation. My mother asked about it in the hospital but they didn't tell her any thing. After my second brother was killed, they called us to come into the Criminal Investigation Division, but we didn't go. We never heard anything after that.²⁹³

Several other witnesses and victims interviewed reported that governmental authorities display a cavalier attitude toward imputed inter-gang violence. For example, one eighteen-year-old current gang member told our researchers that police who stopped him near his home invoked the threat of inter-gang violence to taunt him:

[the police] told me that someone from the other gang was nearby, that I was going to pass by him. They told me his name and that he was armed. They told me, "you're crying, you're scared."²⁹⁴

Attorneys at the Human Rights Institute of José Simeón Cañas Central American University (IDHUCA) shared with our researchers several case files from 2003 and 2004 involving Salvadorans deported from the United States who sought governmental assistance in securing protection from threats of gang violence. These documents, which include attorneys' file and interview notes as well as copies of communications with the police and prosecutor's office, suggest that law enforcement authorities failed to respond to appeals for protection from deportees formerly associated with gangs.²⁹⁵

²⁹²Interview with Astrid Torres, *supra* note 49; Interview with Fabio Molina Vaquero, *supra* note 119.

²⁹³Interview with F.R., *supra* note 117.

²⁹⁴Interview with L.F.G., *supra* note 137.

²⁹⁵IDHUCA, PROGRAMA DE MIGRANTES (Migration Program), REGISTRO DE CASA, V.M.E. (May 27, 2005) (on file with authors).

ii. *Lack of witness protection*

Another, related factor that plays an important role in the Salvadoran government's failure to provide meaningful protection to certain sectors of society is the absence of an effective witness and victim protection program. Many of the witnesses, victims, and experts interviewed by our researchers emphasized that victims and witnesses in criminal cases in El Salvador become targets for retaliation and violence. Dr. Carlos Henríquez Hernández Avila, of the University of El Salvador School of Medicine, spoke with our researchers about the challenges he and his team faced in forming local citizen-police committees for a Pan-American Health Organization-funded project to reduce homicide levels in El Salvador.²⁹⁶ The mother of a young woman allegedly killed by gang members in a poor neighborhood outside San Salvador told us that she regularly sees the people she believes killed her daughter, but that she has not reported them to the police:

What am I going to do...my son told me not to report [the murder] because the police don't do anything and then [the people who killed my daughter] would come after us.²⁹⁷

The story of the young woman interviewed by our researchers last August as she prepared to flee El Salvador due to threats her family had received by an organized criminal group, discussed in Section II, *supra*, is another illustration of the public's utter lack of confidence in the ability of the state to provide protection to the victims and witnesses of crime.²⁹⁸ Academic researchers examining the phenomena of violence and citizen insecurity also signal the lack of protection for witnesses and victims of crime as a significant contributing factor to the sense of public insecurity that pervades El Salvador.²⁹⁹ In May 2006, the Salvadoran legislature approved a witness protection law.³⁰⁰ However, the law has been criticized by judges and other

²⁹⁶Interview with Dr. Carlos Hernández Henríquez Avila, *supra* note 153. According to Hernández Avila, "there is citizen distrust of the police... because oftentimes if citizens report crimes to the police, they will be killed."

²⁹⁷Interview with A.M., in San Salvador (Aug. 31, 2006).

²⁹⁸Interview with K.H.D., *supra* note 147.

²⁹⁹Aguilar and Miranda, *supra* note 95 (describing how pervasive impunity and lack of witness protection contribute to the environment of public insecurity and reporting that witnesses refrain from testifying for fear of retaliation).

³⁰⁰Decreto No. 1029/2006, Ley Especial para la Protección de Víctimas y Testigos ["Special Law for Witness and Victim Protection"], (May 11, 2006).

legal experts in El Salvador for violating the rights of defendants without ensuring the security of witnesses.³⁰¹ Jaime Martínez Ventura, Coordinator of the Office of Juvenile Justice of the Supreme Court, told our researchers that in his opinion, the law does not “achieve real protection for witnesses because there is no protection program backed by sufficient resources; in addition, it undermines defendants’ constitutional rights...”³⁰²

iii. Persistent Impunity: The State’s Failure to Investigate and Prosecute

Finally, in spite of the repressive law enforcement strategies employed by the Salvadoran state over the past several years, the rates of investigation and prosecution of homicides in El Salvador remain extremely low. Precise statistics on the number of homicide cases that are prosecuted are very difficult to obtain;³⁰³ it is clear, however, that the vast majority of homicides do not result in convictions.³⁰⁴ Researchers at FESPAD compared homicide statistics and homicide conviction totals from the PNC and the Fiscalía General de la Republica (Attorney General’s Office, (“FGR”)) for 2004. Because the PNC and FGR used differing homicide figures for that year, the conviction rates differed slightly, but both were extremely low: 7.4% based on the FGR’s homicide figures and 10.4% based on the PNC’s

³⁰¹Interview with Mirna Antonieta Perla Jiménez, *supra* note 88; IDHUCA *supra* note 31 at 13 (describing judges as being opposed to the law because in their opinion, it violated defendants’ rights); E-Mail from Jaime Martínez Ventura, Coordinator, Office of Juvenile Justice, Supreme Court, to Stephanie Brewer, Harvard Law Student and co-author of this report (Feb. 9, 2007) (on file with authors).

³⁰²E-Mail from Jaime Martínez Ventura, *supra* note 304.

³⁰³In a December 2006 interview with the Salvadoran daily La Prensa Gráfica, the Attorney General (Fiscal General) of El Salvador, Félix Garrid Safie, said that he did not know how many of the approximately 3700 homicides committed each year were prosecuted, though he suggested that it would probably not be a “praiseworthy figure.” Ernesto Mejía and Gabriel Trillos, 2007 *va a ser el año de la mejora en la investigación*, LA PRENSA GRAFICA, Dec. 24, 2006, available at <https://www.laprensa-grafica.com/nacion/680397.asp>.

³⁰⁴See, e.g., José Guillermo Mártir Hidalgo, *¿Por qué se han desbordado los homicidios?*, DIARIO CO-LATINO, July 7, 2005 (quoting Colombian economist Edgard Moncayo as citing a 93% impunity rate for homicides in El Salvador) available at <http://www.diariocolatino.com/documentos/detalles.asp?NewsID=159>. In an interview with our researchers in August 2006, Jaime Martínez Ventura of the Office of Juvenile Justice of the Supreme Court estimated that approximately 90% of homicides remain in impunity. Interview with Jaime Martínez Ventura, *supra* note 41.

homicide figures.³⁰⁵ Because convictions in 2004 do not correspond to homicide committed in that year, this ratio is at best a rough approximation of the efficacy of Salvadoran prosecutorial authorities. Furthermore, because these data tabulate the number of convictions rather than incidents of homicides resolved, two or more convictions may result from the same crime. Additionally, convictions are not necessarily coterminous with successful determination of individual responsibility for particular homicides.

The causes of this persistent impunity are complex, but can be grouped in three general categories. First, and most basically, Salvadoran police and justice institutions still lack the capacity to investigate and prosecute crimes effectively.³⁰⁶ As criminality in El Salvador becomes increasingly organized and complex, these institutional weaknesses have translated into deep limitations on the state's ability to control violence and bring perpetrators to justice.³⁰⁷ Second, there is a lack of political will to dedicate police, investigatory and prosecutorial resources to cases in which the victims are poor and marginalized and/or seen as gang members or criminals themselves.³⁰⁸ There is a widespread perception in El Salvador that gangs constitute the primary threat to public security requiring a tough response from the government.³⁰⁹ This is the case even though estimates from the

³⁰⁵EDGARDO ALBERTO AMAYA CÓBAR AND OSWALDO ERNESTO FEUSIER AYALA, FESPAD AND CEPES, *RELACIÓN ENTRE LA FISCALÍA GENERAL DE LA REPÚBLICA Y LA POLICÍA NACIONAL CIVIL EN EL MARCO DE LA INVESTIGACIÓN CRIMINAL* 72 (2005).

³⁰⁶This assertion is made repeatedly by Salvadoran rights groups and policy research institutions, as well as by members of the judiciary. See, e.g., *Gregori Morán, 984 delincuentes libres por delatar a sus cómplices*, LA PRENSA GRÁFICA, Apr. 15, 2006 (reporting that the police rely on confessions as a primary crimefighting tool while neglecting the need to conduct effective criminal investigations). See also, IDHUCA, Editorial, *Tras la guerra, catorce años de violencia e impunidad*, (Jan. 16, 2006) at http://www.uca.edu.sv/publica/idhuca/ar_editoriales06.html#16012006 (citing ineffective and even counterproductive police investigations and lack of a clear crimefighting strategy, as well as a refusal to acknowledge and correct these shortcomings, as among the main factors impeding the state's attempts to control crime); Interview with Jaime Martínez Ventura, *supra* note 41.

³⁰⁷See, e.g., WORLD BANK, et. al, *supra* note 32 (reporting that investigations of serious crimes such as murder, rape, organized crime, and corruption are ineffective and that state authorities clarify the circumstances of these crimes in only a small percentage of cases).

³⁰⁸See, e.g., interview with Dr. Fabio Molina Vaquero, *supra* note 119.

³⁰⁹A 2006 national survey by the IUDOP found that 82.9% of Salvadorans supported or strongly supported the "Mano Dura" Plan. IUDOP, *Los salvadoreños evalúan la situación del país a finales de 2005 y opinan sobre las elecciones de 2006*, PROCESO, Dec. 7, 2005, available at <http://www.uca.edu.sv/publica/proceso/proc1173.html>. A

National Institute of Forensic Medicine indicate that gangs are responsible for fewer than one in five homicides in the country.³¹⁰ People who work in the criminal justice system in El Salvador told our researchers that the perception that gangs are responsible for most violence in El Salvador, which is often encouraged by the police,³¹¹ can serve to legitimate the under-investigation of homicides that are superficially dismissed as gang killings.³¹² The director of Tutela Legal, the human rights office of the Archbishop of San Salvador, told our researchers that police rarely investigate the killings of gang members.³¹³ In an interview with our researchers in August 2006, Dr. Fabio Molina Vaquero, Research Director of the National Institute of Forensic Medicine, also noted the discrepancy between the figures from his office and those of the police regarding homicides attributed to gangs. He suggested that the quality of police homicide investigations are sometimes determined by the “importance” of the victim.³¹⁴

Additionally, as discussed in Section I, *supra*, there are indications that some Salvadoran state and law enforcement authorities may be complicit in, or at least consciously and deliberately indifferent to, extra-judicial killings and social cleansing. This is perhaps the most worrisome factor contributing to high levels of impunity and a widespread sense of public insecurity in El Salvador. Salvadoran rights groups link the current failures of the Salvadoran state to investigate homicides, including possible extra-judicial and death squad killings, to the legacy of impunity from the civil

separate IUDOP survey found that more than 90% of the Salvadoran population believed that gangs constitute a “major problem”. This survey is cited in CENTRAL AMERICA AND MEXICO GANG ASSESSMENT 10-11, *supra* note 4.

³¹⁰Interview with Jeannette Aguilar, *supra* note 70; Interview with Dr. Carlos Henríquez Hernández Avila, *supra* note 153; Interview with Dr. Fabio Molina Vaquero, *supra* note 119.

³¹¹See, e.g., *Los homicidios en El Salvador aumentaron: en lo que va el año suman más de 800*, UNIVISION.COM, Apr. 3, 2006 (quoting a high-ranking police official stating that gang members are the “principal cause” of murders in the country). See also, Aguilar and Miranda, *supra* note 95 at 52 (stating that available statistics do not sustain the PNC’s assertion that gangs are responsible for 60% of killings in El Salvador).

³¹²Interview with Astrid Torres, *supra* note 49.

³¹³Interview with María Julia Hernández, *supra* note 147. See also TUTELA LEGAL DEL ARZOBISPADO, *supra* note 71, 20 (describing systematic impunity for the groups and people responsible for extrajudicial killings).

³¹⁴See FESPAD AND CEPES, ESTADO DE LA SEGURIDAD PÚBLICA Y LA JUSTICIA PENAL EN EL SALVADOR 2004, *supra* note 68 at 88.

war and decades of authoritarianism that preceded it.³¹⁵

C. Relationship between Political Polarization and Violence in El Salvador

The recent growth in the gang phenomenon, rising levels of criminality, and increased human rights violations in El Salvador must be understood in the context of the country's deeply polarized political climate. International and domestic human rights advocates have frequently criticized the Salvadoran government in the past several years for what they characterize as political manipulation of public insecurity and gang violence.³¹⁶ According to these critiques, Salvadoran political leaders have taken advantage of widespread insecurity and fears of criminality to legitimize repressive law enforcement strategies, to consolidate electoral power, and to justify legislative initiatives aimed at suppressing dissent, such as the anti-terrorism law introduced in the summer of 2006.³¹⁷ Because the aim of our investigation was to research allegations of human rights abuses associated with gang violence, we did not document political exploitation of criminality and public insecurity in an exhaustive or systematic manner. However, this issue arose repeatedly in our research and interviews on the ground in El Salvador, and it became clear that no documentation of gang violence and related abuses would be complete without an acknowledgment of the complex ways in which violence is refracted through, and am-

³¹⁵FESPAD, LOS ACUERDOS DE PAZ, SU AGENDA PENIENTE, Y LOS DERECHOS HUMANOS EN EL SALVADOR DE HOY (2006), available at <http://fespad.org.sv/portal/html/Archivos/Descargas/LAP.pdf>. See also IDHUCA, Editorial, Herederos de la impunidad (Aug. 24, 2006) (identifying impunity as the unifying characteristic of violence in El Salvador both during and following the civil war, and stating that the current lack of criminal investigations is the "legacy" of this longstanding climate of impunity).

³¹⁶For an example of a representative domestic critique, see IDHUCA, *Estado en Crisis*, available at http://www.uca.edu.sv/publica/idhuca/articulos.html#espacio_tres (Nov. 8, 2006) (describing former President Flores' launch of the "Mano Dura" plan as a strategy with "clear electoral purposes"). For an example of a representative international critique, see Memorandum from Geoff Thale, Washington Office on Latin America, to Colleagues, International Assistance in Responding to Youth Gang Violence in Central America 2 (Sept. 30, 2005), available at http://www.wola.org/gangs/international_coop_memo.pdf ("In Central America, everyone agrees that the problem is serious, but there are clearly both press and political agendas at work.")

³¹⁷See, e.g., IDHUCA, Editorial, Terror ante la nueva ley, May 11, 2006 (sic) (criticizing the state's evident use of the deaths of state agents to justify the implementation of authoritarian and unconstitutional measures), available at http://www.uca.edu.sv/publica/idhuca/ar_editoriales06.html#24082006.

plified by, deep political divisions and power struggles in the country. This section addresses two specific examples of patterns or incidents of violence directly linked to the country's growing political polarization and highlights the role the media have played in shaping public perceptions of and policy responses to violence.

i. July 5, 2006 Protests and Anti-Terrorism Legislation

In July 2006, violent clashes between civilian protesters and the national police in central San Salvador highlighted the fragility of El Salvador's democratic transition and the intersection of political polarization, governmental responses to violence, and public perceptions of criminality. Throughout the first half of 2006, transportation workers, students, and other sectors of society frequently took to the streets of San Salvador to protest economic policies, generally, and planned increases in bus fares in particular. On July 5, 2006, university and secondary school students gathered for another protest in the area surrounding the General Francisco Menéndez Institute near the National University in San Salvador.³¹⁸ As tensions between police and protesters mounted that morning,³¹⁹ several special police forces (including the Maintenance Order Team (UMO) and the Police Reaction Group (GRP)), as well as an armed police helicopter, were mobilized in the area.³²⁰ Witnesses and television crews reported seeing police snipers stationed on the roof of the nearby Bloom Hospital.³²¹ The tense confrontations between police officers and protesters that morning came to a violent end when snipers – apparently firing from the University of El Salvador – shot and killed two police officers. The next day, government officials named two students, who were also low-level FMLN party

³¹⁸PROCURADURÍA PARA LA DEFENSA DE LOS DERECHOS HUMANOS (Office of the National Human Rights Ombudswoman), INFORME PRELIMINAR DE LA SEÑORA PROCURADURA PARA LA DEFENSA DE LOS DERECHOS HUMANOS, SOBRE LOS HECHOS DE VIOLENCIA ACACIADOS EN LOS ALREDEDORES DE LA UNIVERSIDAD DE EL SALVADOR DURANTE ACTIVIDADES DE PROTESTA ESTUDIANTIL ANTE EL INCREMENTO DE LAS TARIFAS AL TRANSPORTE PÚBLICO DE PASAJEROS, OCURRIDOS EL DÍA 5 DE JULIO DEL 2006 (hereinafter “Procuraduría 5J Report”) paras. 13, 15.

³¹⁹*Id.* para. 18. (According to the National Human Rights Ombudswoman, the police used tear gas and rubber bullets to control protesters, who threw objects – including rocks and small explosive devices – at police officers.)

³²⁰*Id.* para. 22.

³²¹*Gobernación Acepta que Segundo Helicóptero voló sobre UES*, LA PRENSA GRÁFICA, July 11, 2006.

activists, as suspects in the killings.³²²

In the days following the July 5 protests, government officials and opposition party leaders engaged in heated rhetorical battles that evoked the polarized discourse of the 1980s and revealed the fragility of the country's democratic transition. During a legislative session held several days after the events, legislators from the ARENA and FMLN traded insults that harkened back to the country's civil war. ARENA legislator Norman Quijano called FMLN a party of "terrorists, kidnappers, and murderers" and FMLN legislator Calixto Mejía characterized ARENA as the party of "escuadronistas" [death squad members].³²³ On July 6, 2006, President Antonio Saca was quoted in the national media as saying:

I think very few people in the country doubt that the FMLN is linked with these front groups that, sheltered in the guise of protesters, commit acts of terrorism....the country should know that we are dealing with people who signed the Peace Accords and now are laughing at them.³²⁴

Government officials initially denied that police had fired live ammunition at protesters, that snipers had been positioned on rooftops, or that military helicopters had been sent to the scene of the protests. After the publication of media reports and photographs contradicting these denials, officials retracted their earlier statements.³²⁵

On July 6, ARENA legislators formed a commission to study an anti-terrorism bill which had been languishing in the Legislative Assembly since it was introduced in 2005.³²⁶ El Salvador's Congress passed an updated version of the legislation in September 2006.³²⁷ The legislation

³²²David Marroquín and Ruth Cruz, *Terrorismo Urbano*, LA PRENSA GRÁFICA, July 26, 2006.

³²³Milton Grimaldi, Alexandra Bonilla, and Amadeo Cabrera, *Comisión Especial por Actos Terroristas*, LA PRENSA GRÁFICA, July 7, 2006.

³²⁴Bernardo Valiente, *El FMLN está vinculado con estos grupos de fachada*, LA PRENSA GRÁFICA, July 7, 2006.

³²⁵*Gobernación Acepta que Segundo Helicóptero voló sobre UES*, *supra* note 321.

³²⁶Wilfredo Salamanca, *Sin aprobarse ley contra terrorismo*, EL DIARIO DE HOY, July 7, 2006.

³²⁷Decreto No. 108/2006, Ley Especial Contra Actos de Terrorismo [Special Anti-Terrorism Law] (hereinafter "Ley Especial Contra Actos de Terrorismo") (Sept. 21, 2006).

criminalizes membership in a terrorist organization.³²⁸ It also provides for five- to ten-year prison sentences for those who “simulate,”³²⁹ issue public statements in “defense of” or “incite”³³⁰ terrorism. Rights groups assert that the concepts of “terrorism” and “terrorist organization” that appear in the law are vague, and express concern that the Act could be used to persecute political opponents of the government.³³¹

The violence on July 5 and the government’s actions in the weeks that followed reveal the extent to which the ideological and political battles of the 1980s still shape Salvadoran society and public institutions. Understanding the dynamics of this polarized climate is critical to analyzing gang violence and associated rights violations in El Salvador for several reasons. First, the Salvadoran state has increasingly linked political opposition, gang members, and terrorism in an explicit fashion. The proposed anti-terrorism legislation represents a particularly vivid example of the conflation of these groups, as does the rhetoric employed by government officials in the

³²⁸*Id.* at art. 13. (In Spanish: “Los que formaren parte de organizaciones terroristas, con el fin de realizar cualquiera de los delitos contemplados en la presente Ley, serán sancionados con prisión de ocho a doce años. Los organizadores, jefes, dirigentes o cabecillas, serán sancionados con prisión de diez a quince años.”)

³²⁹*Id.* art. 9. (In Spanish: “El que simulare la realización de cualquiera de los delitos contemplados en la presente Ley o cualquier tipo de prueba en apoyo a tal simulación, será sancionado con prisión de cinco a diez años.”)

³³⁰*Id.* art. 8. (In Spanish: “El que públicamente hiciere apología del terrorismo o incitare a otro u otros a cometer cualquiera de los delitos previstos en la presente Ley, será sancionado con prisión de cinco a diez años.”)

³³¹IDHUCA, *La Ley contra el terrorismo*, PROCESO, Aug. 16, 2006, at 15, and IDHUCA, *El IDHUCA ANTE LA LEY ANTI-TERRORISMO* (2006) available at <http://www.uca.edu.sv/publica/idhuca/leyanti.pdf>. See also, *PGR espera que no se cometan abusos al aplicar Ley Antiterrorismo*, DIARIO COLATINO, Sept. 26, 2006 (quoting Human Rights Ombudswoman Beatrice de Carrillo as describing the law as unnecessary and inconsistent with human rights standards). The term “terrorism” is not defined in the law, though the concept of terrorism is laid out in broad terms in Article 1, which states that the law applies to acts whose objective is to provoke fear among the population, such as by placing individuals in danger or threatening the democratic system, state security, or international peace. [In Spanish: “La presente Ley tiene como objeto prevenir, investigar, sancionar, y erradicar los delitos que se describen en esta, así como todas sus manifestaciones, incluido su financiamiento y actividades conexas, y que por la forma de ejecución, medios y métodos empleados, evidencian la intención de provocar estados de alarma, temor o terror en la población, al poner en peligro inminente o afectar la vida o la integridad física o mental de las personas, bienes materiales de significativa consideración o importancia, el sistema democrático o la seguridad del Estado o la paz internacional; todo lo anterior, con estricto apego al respeto a los Derechos Humanos.”] Decreto No. 108/2006, Ley Especial Contra Actos de Terrorismo, *supra* note 327 art. 1.

days following the July 5 violence. Opposition political activists interviewed by our researchers report having been targeted by police and falsely accused of gang association.³³² In August 2006, the Director General of Penal Centers in El Salvador, Dr. Jaime Villanova, told our researchers that he had reason to believe Salvadoran gangs had ties to international terrorist organizations, including Al Qaeda.³³³ He provided no evidence of this connection beyond the assertion itself. In a contradiction that may reveal the politicized nature of these allegations, the Director of the National Council for Public Security told our researchers in March 2006 that reports of a relationship between Al Qaeda and Central American gangs were untrue and nothing more than “an invention of a Honduran legislator.”³³⁴ More generally, the polarization of the Salvadoran government and public life nurtures a climate in which the rule of law is subordinated to political power struggles and in which rights abuses flourish.

ii. Pre-Election Violence

While in El Salvador, our researchers heard from a range of experts and observers that the periods preceding three major Salvadoran elections since 2003 have been marked by spikes in media attention to violence and in actual violence, often imputed to gangs.³³⁵ These observations – which came from sources as varied as academic researchers, government employees, and human rights activists, and which have also been documented to some extent in published reports – include two components. First, sources noted a shift in media coverage of homicides and gang violence in the months prior to elections. Generally, this coverage increased and intensi-

³³²Interview with N.O., activist with the Bloque Popular Juvenil (Popular Youth Bloc, hereinafter “BPJ”) in Ciudad Delgado (Aug. 31, 2006) (describing an incident in which police pulled him off a bus and beat him); and with other activists from the BPJ, including D.R.O., who told us that his picture was published in the media along with accusations that he was a member of the Mara 18, limiting his ability to travel in certain areas for fear of the MS-13 and the police.

³³³Interview with Dr. Jaime Villanova, *supra* note 47. (“We have information, about this international terrorism. Especially Al-Qaeda... We have a newly created department which is the Service of Penitentiary Intelligence. It detects the sort of elements that could be operating in the prisons”).

³³⁴See interview with Oscar Bonilla, *supra* note 73.

³³⁵See interview with José Miguel Cruz, *supra* note 54. See also interview with Dr. Carlos Henríquez Hernández Avila, *supra* note 153. See also UCA, ELECCIONES Y MEDIOS DE COMUNICACIÓN, NÚMERO MONOGRÁFICO, ESTUDIOS CENTROAMERICANOS 667 Mayo 2004, Año LIX.

fied, helping to fuel the centrality of violence and criminality as issues in electoral campaigns.³³⁶ Second, we also heard widespread anecdotal reports of an increase in the number of homicides prior to elections, particularly in brutal, gruesome killings that bear the hallmarks of death squad killings from the civil war years.³³⁷ These observations, even if only partially true, suggest that any depiction of violence in El Salvador as common or apolitical criminality is seriously incomplete.

The Salvadoran media's frequently-sensationalistic focus on gang violence is not unique to election cycles. A number of experts inside and outside the government interviewed by our researchers asserted that the media consistently overstates the numbers of homicides that can be attributed to gang members. According to Dr. Fabio Molina of the National Institute of Forensic Medicine (IML), a study conducted by his office found that the media attributed twenty-nine percent of homicides to gangs, while his own office attributed only fifteen percent of homicides to gangs.³³⁸ Recent election cycles in El Salvador have been characterized by particular emphasis on the gang phenomenon and the threat of gang violence in the country. Political candidates in El Salvador have invoked criminality and violence, frequently in a sensationalized fashion, for political gain. Media coverage of gang violence fuels this phenomenon. Public security has been a central theme in recent election cycles, and the ARENA party – which has held the presidency since 1994 – has so far been successful at winning elections by emphasizing its tough approach to crime.³³⁹ Jeannette Aguilar, of the University Institute for Public Opinion Research (IUDOP), wrote in 2004 that:

the manipulation of the feelings of citizen security, through the deliberate exploitation of citizen fear for political-electoral ends, has been recurrent. In this way, the incapacity of the governing party to control criminal violence and resolve the structural

³³⁶See interview with Astrid Torres, *supra* note 49 (“There is manipulation before elections. In the newspapers, there are lists of the dead. And people say automatically, oh, that’s a gang killing.”).

³³⁷See interview with José Miguel Cruz, *supra* note 54; Interview with Astrid Torres, *supra* note 49; Interview with Matthew Eisen, *supra* note 121; Interview with Rosa Anaya, *supra* note 131.

³³⁸See interview with Dr. Fabio Molina Vaquero, *supra* note 119.

³³⁹Aguilar and Miranda, *supra* note 95 at 61 (noting that despite its poor results, the Mano Dura plan has served as a successful and central campaign platform for the current administration).

problems that generate and reproduce it has been hidden.³⁴⁰

A related but distinct question is whether there has been an actual increase in violent crimes before elections. José Miguel Cruz, former director of the IUDOP, told our researchers in March 2006 that:

In the last three elections, there have been very brutal crimes. When we start to investigate, this issue remains very gray. The information is very inconsistent... So it makes us think that although there are certainly gang members behind these crimes, there must be some other factors involved, groups with political interests. Gang members often act as paid assassins (*sicarios*); these could be crimes that aren't instigated by gangs themselves.³⁴¹

In an effort to investigate further this widely-reported phenomenon, our researchers reviewed homicide statistics from the IML for 2004 (the most recent presidential election took place on March 21, 2004). We also reviewed newspaper reports of killings for the one-month period prior to presidential elections on March 21, and compared that information to newspaper reports of killings for the one-month period between May 21-June 21, 2004. Quantitatively, we found that March was the bloodiest month in El Salvador in 2004 – there were 291 homicides reported by the IML for that month, compared to a rough monthly average of 244³⁴². We also found a clustering of particularly brutal killings – in particular, those of unidentified women whose bodies were found dismembered – in the one-month period prior to the elections on March 21, 2004, as compared to the month May 21-June 21, 2004.³⁴³ These killings were sometimes attributed to gangs

³⁴⁰Jeannette Aguilar, *La Mano Dura y las Políticas de Seguridad*, in UCA, ELECCIONES Y MEDIOS DE COMUNICACIÓN, NÚMERO MONOGRÁFICO, ESTUDIOS CENTROAMERICANOS 440, 667 Mayo 2004, Año LIX.

³⁴¹Interview with José Miguel Cruz, *supra* note 54.

³⁴²CORTE SUPREMA DE JUSTICIA, INSTITUTO DE MEDICINA LEGAL (National Institute of Forensic Medicine, Supreme Court), DEFUNCIONES POR HOMICIDIOS, EL SALVADOR, AÑOS 2003, 2004 165, Table: Homicidios por mes, por departamento, donde ocurrió agresión, según reconocimientos del IML, de El Salvador, Año 2004.

³⁴³For purposes of this comparison, we looked for “particularly brutal killings,” which according to experts like José Miguel Cruz of the IUDOP do not bear the markings of gang murders. Specifically, we looked for killings that involved unidentified victims and dismemberment or other visible signs of torture. We found six such killings reported in *La Prensa Gráfica* from February 21-March 21, 2004 and five such killings reported in *El Diario de Hoy*. From May 21-June 21, 2004, La

by the media. However, many experts in the country note that these killings are inconsistent with the *modus operandi* of gangs and suggest that political forces interested in nurturing fear in the population prior to the elections could be behind them.³⁴⁴

The legacy of the civil war and a halting transition toward democracy have impeded the development of judicial and police institutions needed to ensure citizen protection.³⁴⁵ The information we gathered through interviews and research, however, indicates that powerful political forces in El Salvador – including some possibly connected to the current government – may perceive public insecurity as serving their political or electoral interests. This information also suggests that, in moments when it suits their perceived interests, these political forces may directly or indirectly participate in the perpetration of violence. The polarization of Salvadoran society and government constitutes a serious impediment to the state's capacity to provide security and ensure the protection of its citizens.

Prensa Gráfica reported three such killings, as did the Diario de Hoy.

³⁴⁴See interview with José Miguel Cruz, *supra* note 54; Interview with Mirna Antonieta Perla Jiménez, *supra* note 88.

³⁴⁵See Section I, *supra*.

IV. Human Rights Violations Grouped by Type of Victim

The following pages contain testimonies from some of the interviews conducted by our researchers with victims and witnesses of violence in El Salvador. These testimonies are not intended to provide a complete picture of the situation of human rights in El Salvador, nor are they analytical in focus. Instead, we hope that these excerpts of victim and witness narratives will help the reader to understand the gravity and human dimension of violence in El Salvador. For the sake of clarity, we have grouped the narratives based on the characteristics of the victim and the underlying motives behind the violence.

A. *Those Who Oppose Gangs*

Salvadorans who oppose gangs, whether by refusing to join, leaving a gang, or not complying with gangs' demands, may face violent retribution on account of this opposition. Those who attempt to resist coercive recruitment into gangs risk constant harassment, extortion, and even death.³⁴⁶ Those who were once part of gang life and decide to change their life paths face severe consequences; gangs consider abandoning the gang as a betrayal that justifies a death sentence.³⁴⁷ Moreover, the transformation of gangs and their tactics has extended gang aggression to include anyone who interacts with gangs and those from whom gangs extort lucrative tolls.³⁴⁸ As the cases below illustrate, the state has failed to provide protection to these victims of gang violence.

i. *People Who Refuse to Join Gangs*

"It's like being in a war and being the only one without a weapon."³⁴⁹

-30-year-old former gang member in San Salvador, referring to daily life for non-gang-members in El Salvador, August 21, 2006

"Today if you're not part of the gang, they kill you; joining a gang is the only

³⁴⁶See testimonies in part i below.

³⁴⁷See testimonies in part ii below.

³⁴⁸See testimonies in part ii below.

³⁴⁹Interview with J.R., *supra* note 94.

way of surviving in the environment. Before the gang was like your family; now you have to join or they kill you . . ."³⁵⁰

-30-year-old former gang member in San Salvador, August 21, 2006

Several former gang members interviewed for this report told researchers of the International Human Rights Clinic that they had initially joined gangs because they lived troubled lives at home and faced a violent environment in the streets.³⁵¹ They had hoped that gangs would provide them with the support, protection, and financial resources they lacked.³⁵² However, many of the interviews conducted by our researchers also revealed that gang recruitment increasingly involves pressure, threats, and intimidation. Gang members harass potential members through direct physical abuse, by bothering their families, extorting regular payments from them, theft, and by direct acts of violence, even murder.³⁵³ This leaves many who oppose recruitment by gangs in a difficult situation – they face intimidation, threats, and physical harm from the gang recruiting them, while their residence in a certain neighborhood signals gang affiliation to outsiders and leaves them vulnerable to police violence and to violence from other gangs.³⁵⁴ Youths with whom our researchers spoke in El Salvador, for example, reported an incident in which gang members attacked and killed a man who lived in gang territory but had failed to join the gang,³⁵⁵ as well as multiple incidents in which gang members murdered youths who rejected

³⁵⁰Interview with J.R., *supra* note 94.

³⁵¹Interview with M.P., *supra* note 213 (explaining that in the gang he found the support that his family was not providing him); Interview with J.R.T., *supra* note 213 (explaining that he joined a gang after his father did not accept him at home following several days of being absent because of problems he had with his father); Interview with R.E., *supra* note 209 (explaining that he left his home to join the gang to contradict his mother and that his friends in the gangs fed him, gave him clothes, and even cut his hair); Interview with J.R., *supra* note 94 (explaining that as he was growing up during the Civil War there was so much violence and so many conflicts that a group banded together for protection).

³⁵²*Id.*

³⁵³Interview with L.A., *supra* note 129.

³⁵⁴Interview with José Miguel Cruz, *supra* note 54; Interview with T.C., *supra* note 117.

³⁵⁵Interview with A.Y., in San Salvador (Aug. 30, 2006).

the members' explicit invitations to join them.³⁵⁶ These deadly recruitment practices create an environment of pervasive fear that leads to a sense of inevitability among the youths. The thought of being harassed, abused, or even killed makes them feel that they have to join gangs in order to survive, even when they have not received a direct threat from gang members.³⁵⁷

Victim/Witness Narratives

1. *"We would tell the young people to join. . . . We recruited four or five at a time. We killed several [people in the neighborhood] for not wanting to join us. . . . Ever since I was eleven, I was always with them. We killed about six guys around thirteen or fourteen years old. . . . It wasn't my job to do that, kill those who did not want to join."*³⁵⁸

-25-year-old former gang member who left his gang seven years ago and is currently facing death threats by former fellow members, San Salvador, August 21, 2006

2. *"Before my time in the gang, in 2001-2002, they forced everyone from the 41 gang to join Mara 18. Someone was killed then for not joining."*³⁵⁹

-19-year-old former gang member, Ilobasco, August 23, 2006

3. One young man told our researchers of the constant pressure to join a gang, including physical violence that eventually led to a deadly confrontation:

"The ones from Mara 18 were always harrassing me [for not joining the gang]. They wanted to rob things from me and my family. This was happening for like two years before I killed that guy Tiny. Tiny did this to a lot of people in our area. Whenever a kid was twelve or thirteen years old, he'd want that kid to do what he said. The ones in 18 would always bother me in the streets. If they saw that I had money, they'd take it away from me. If I rode a bike, they'd take that away from me. They had a strong presence in my neighborhood. And I couldn't go to another neighborhood, because that neighborhood was MS, and they thought that I was in the 18, just because of my neighborhood.

³⁵⁶Interview with A.Z., in Ilobasco (Sept. 1, 2006).

³⁵⁷Interview with José Miguel Cruz, *supra* note 54. Interview with José Miguel Cruz, *supra* note 54.

³⁵⁸Interview with D.M., *supra* note 113.

³⁵⁹Interview with A.V., *supra* note 116.

*They said that I hung out with the 18 and they threatened me. I didn't want to get involved with any gang, because I didn't like how they are. The gang members are always in the streets harrassing people. At night, they were being loud, shooting guns, throwing stones at whatever. They charge renta; they wanted to do this to my family. They started to bother my family when we didn't do what they said.*³⁶⁰

- 17-year-old, Ilobasco, August 25, 2006

ii. People Who Try to Leave a Gang

*"Before [the] mano dura [plan], it was possible to leave the gang. Difficult, but possible. Now it's no longer possible."*³⁶¹

- Tim McConville, Coordinator of Equipo Nahual, Ilopango, August 24, 2006

There was consensus among those we interviewed that joining a gang is a life commitment.³⁶² While there are success stories about those who have left the gangs, these are rare exceptions. Occasionally gangs will allow people to leave who have become parents or who have undergone a religious conversion.³⁶³ Lorena Cuerno Clavel, a social anthropologist who has worked with gangs for over ten years, explains that in practice, a gang member never ceases being part of a gang but may, in certain rare circumstances, become inactive. She also suggested that there are three ways of becoming inactive in a gang: embracing evangelical Christianity, forming a family, and migrating.³⁶⁴ Even migration is not always effective: Gilma Pérez, Director of the Migrants Program at the Human Rights Institute of José Simeón Cañas Central American University (IDHUCA), explained to our researchers that those gang members who leave the gang and migrate to the United States face very serious threats to their safety if they are deported back to El Salvador.³⁶⁵ We address the threats faced by deportees in part C of this Section, *infra*. Likewise, for those who remain in El Salvador, join-

³⁶⁰Interview with T.C., *supra* note 117.

³⁶¹Interview with Tim McConville, *supra* note 65.

³⁶²Interview with E.C.C., *supra* note 143; Interview with C.A., *supra* note 82; Interview with Lorena Cuerno Clavel, *supra* note 129.

³⁶³Interview with J.R., *supra* note 94; Interview with L.A., *supra* note 129.

³⁶⁴Interview with Lorena Cuerno Clavel, *supra* note 129.

³⁶⁵Interview with Gilma Perez, *supra* note 272.

ing an evangelical sect may not suffice to allow them to leave gang life; one ex-gang member reported, “Right now the only way to leave a gang is to die. They tell you that if you find God you can leave, but even then they still kill you.”³⁶⁶

The following excerpts from our interviews further demonstrate that the threat of getting killed after leaving a gang is not just a reason for members of gangs to fear leaving, but is further considered an inevitable element of gang life. For example, one former gang member told us that killing people who left the gang was part of the initiation for new gang members.³⁶⁷ Moreover, as the testimonies below show, members know that if they leave a gang they have to think not only about possible threats to their lives by fellow members but also from members of other gangs,³⁶⁸ as they will forever be associated with the gang to which they once belonged.

Victim/Witness Narratives

1. “I could leave the gang but I would always have ‘mi color.’³⁶⁹ I could always get killed by those in the other gang.... There are many cases in which [gang members] have left the gang and they have been killed.”³⁷⁰

-18-year-old gang member, Cabañas, August 25, 2006

2. “If people tried to leave the gang, we would kill them. This happened maybe six times during my time, always guys. This was a ‘mission’ for new gang members.”³⁷¹

-18-year-old former gang member, Ilobasco, August 23, 2006

³⁶⁶Interview with J.R., *supra* note 94.

³⁶⁷Interview with L.A., *supra* note 129.

³⁶⁸See excerpts *infra* pp. 87-88.

³⁶⁹“Mi color” is a slang term used in El Salvador to refer to affiliation in a group; it is a common way for gang members to refer to their affiliation with a gang.

³⁷⁰Interview with L.F.G., *supra* note 137.

³⁷¹Interview with L.A., *supra* note 129.

3. “Once I get out of here [detention] . . . I’m going to go [elsewhere] to live with my aunt. If they knew where I was they’d kill me. Either my gang or the other gang.”³⁷²

-19-year-old former gang member, Ilobasco, August 23, 2006

4. “I told them I wanted to get out because my wife was pregnant. They told me that if they found me smoking or with alcohol they would kill me... About five months ago they surrounded me. There were about four of them. They said, what’s up? Why aren’t you paying renta? This was with a gun in my stomach. It was...the leader.... I got nervous. He is not the leader but he is in charge of the clika. He takes care of the guns, etc. My son and daughter hugged me and cried and said “not my daddy.” My children saved my life.... They later sent someone to tell me that they would kill me.... About eight or nine months ago I was with [someone] who left the [Mara Salvatrucha]... They killed him with five shots in the head... They wanted to kill me but killed someone else.”³⁷³

-25-year-old former gang member in San Salvador, who still faces persecution and death threats. The day after we interviewed him (August 21, 2006), he and his family were forced to move in the middle of the night to escape this persecution.

iii. Other People Targeted for Living in the Same Territory as Gangs or Refusing To Comply with Gang Demands

Our interviews revealed that gangs increasingly target people outside their own territory, whether neighbors who happened to be in the wrong place at the wrong time³⁷⁴ or local businesses or individuals who do not comply with gangs’ demands for *renta*.³⁷⁵ Gang violence has greatly limited the freedom of movement for ordinary people, who often live in fear of moving around their neighborhoods and who face violence because of their residence in gang-controlled areas. Former gang members and community residents interviewed by our researchers reported that residents of areas controlled by gangs are constantly subjected to extortion and threats of violence by gang members. Former gang members explained to

³⁷²Interview with A.V, *supra* note 116.

³⁷³Interview with D.M., *supra* note 113.

³⁷⁴See excerpt from Interview with D.L, *infra* footnote 380.

³⁷⁵See *supra* Section II for more discussion of gang extortion practices.

the clinic that it is common to extort the owners of local stores and supermarkets in the neighborhood.³⁷⁶ Other common targets for extortion are buses and taxis, with gangs charging either the operators or the drivers.³⁷⁷

These people who live under constant threats or in fear of being threatened with renta collections have legitimate reason to be concerned. As María Julia Hernández, Director of Tutela Legal explains, “those who don’t pay renta run the risk of being executed, among other things.”³⁷⁸

Victim/Witness Narratives

1. *[My son’s grandfather told me that his family had begun receiving telephone calls from people threatening to hurt our family if he did not give them money. They knew about different members of the family and threatened them, saying they would come for my son’s father first] They asked him, ‘where are your detectives now?’ They told him they could kill him if they wanted, that they were in front of his house and that he could come out and see. He looked and they were outside ... We have not received any form of protection since we filed the complaint. We know a lot of people who have been extorted. This is a recent phenomenon...³⁷⁹*

-Young mother who was packing to flee El Salvador as we spoke with her because of repeated threats of extortion that made her fear for her child’s life, San Salvador, August 26, 2006

2. *“At first we thought that the violence was only between [the gangs]. But now we know that is not the case. My sister-in-law, her husband, and his brother were killed. They were between eighteen and twenty-three years old. None of them was involved in gangs. . . . [They] were taking water [to a communal house] at ten p.m., and they ran into a group of gang members. It was a fight between the two gangs. And the police were following the gangs. [My sister-in-law, her husband, and his brother] were with another woman and two kids. The woman said that the gang members said ‘raise your shirts’ and they did and then they just shot them. And they killed them. The woman survived. The gang members were armed with heavy weapons. There were only three police there. The gang members were well armed... [There is] a theory that someone had killed one from the [Mara Salvatrucha] and so they were*

³⁷⁶Interview with A.V., *supra* note 116; Interview with L.A., *supra* note 129.

³⁷⁷Interview with D.M., *supra* note 113.

³⁷⁸Interview with María Julia Hernández, *supra* note 147.

³⁷⁹Interview with K.H.D., *supra* note 147.

*looking for vengeance, [and were] ready to kill whomever. There is delimitation of territory. There is no freedom to move. People from here cannot pass to the other side.*³⁸⁰

-Woman living in a marginalized community of San Salvador,
August 31, 2006

3. *“They send you on a mission... [The victims were] from the other gang, or competition in the drug business. And those who weren’t paying. We charged each bus \$1 daily. We charged the owners or those who drove. We charged \$1 daily to stores and taxi drivers. Every day. Today it is in dollars. Before it was in colones, 10 colones per day.”*³⁸¹

-25-year-old former gang member, San Salvador, August 21, 2006

4. *“They don’t extort me now, but I heard that they are going to pass from house to house charging us renta. . . . They charge for the water – because my neighbor gets me water. Her boyfriend’s in a gang and makes sure she gets water. And they told me to pay them.”*³⁸²

-Resident of a marginalized community of San Salvador, August 31, 2006

The following summarized narrative of the case of a deportee, who was represented by the IDHUCA, further evidences how victims and witnesses feel unprotected by the government and will therefore choose not to denounce or testify against gang members:

VME was deported to El Salvador from the United States in late 2003. Upon his arrival he was detained by the National Police in the context of the Anti-Gang Law, because he had formerly belonged to a gang and had tattoos. He was not convicted of any charges and was released after trial. However, he started receiving death threats from his former fellow gang members who had learned about his return. One of them beat his wife and his two children, who are four and two years old. He and his wife went to the Police to report the case and he was scheduled for an appointment to identify that person, but he decided not to attend for fear of being captured by gang members

³⁸⁰Interview with D.L., supra note 287.

³⁸¹Interview with D.M., supra note 113.

³⁸²Interview with F.R., supra note 117.

*when he came out of the police station. Instead, he tried to apply for political asylum.*³⁸³

B. Targeting of Actual and Imputed Gang Members

*“I get hit from all angles. The . . . gangs, organized crime groups, the cops . . . Everyone who sees me, the first thing they say to me is, ‘Wow, you’re still alive? I can’t believe you’re still alive!’”*³⁸⁴

- A former gang member in San Salvador, who currently plans to flee the country for fear of being killed, August 30, 2006

Another class of individuals targeted for severe, systematic human rights violations of the type described in this report is those who are presumed to be gang members. Some of these individuals are actual or former members of gangs; however, others are targeted simply for looking suspicious, a term which, in certain urban neighborhoods, requires nothing more than being young and male.³⁸⁵ There was overwhelming agreement among those interviewed for this report that having one or more tattoos renders an individual suspicious in the eyes of the police and of society at large; tattooed youths in particular face discrimination and run a high risk of being attacked as gang members.³⁸⁶ In other cases, people may perceive an individual as a gang member solely because he or she lives in a neighborhood known to be the territory of a certain gang.³⁸⁷

Individuals presumed to be gang members face danger and stigmatization from all sides. They are blamed by government representatives and much of the public for the high level of violent crime in the country,³⁸⁸

³⁸³IDHUCA, PROGRAMA DE MIGRANTES (Migration Program), REGISTRO DE CASO, *supra* note 295.

³⁸⁴Interview with W.M., *supra* note 213.

³⁸⁵*E.g.*, Interview with Mirna Antonieta Perla Jiménez, *supra* note 88; Interview with A.Y., *supra* note 355.

³⁸⁶*E.g.*, Interview with Beatrice Alamanni de Carrillo, *supra* note 42; Interview with Jeanne Rikkers, *supra* note 89; Interview with Jeannette Aguilar, *supra* note 70; Interview with Olga Isabel Morales, *supra* note 134; Interview with M.A.H., *supra* note 273; Interview with R.Z., *supra* note 273; Interview with V.R., in San Salvador (Aug. 28, 2006).

³⁸⁷*E.g.*, Interview with F.R., *supra* note 117; Interview with A.F., *supra* note 216.

³⁸⁸*E.g.*, Interview with Astrid Torres, *supra* note 49; Interview with Santiago Flores, *supra* note 153.

demonized in the media,³⁸⁹ harassed and physically abused by the police,³⁹⁰ and targeted for assassination by rival gangs³⁹¹ and by death squads engaged in social cleansing.³⁹²

The police rarely, if ever, provide protection to presumed or former gang members facing any of the foregoing threats.³⁹³ By contrast, the police themselves generally view these individuals as enemies³⁹⁴ rather than citizens whose rights they should protect. Indeed, PNC officers are thought to be complicit in the targeted killings and abuse of numerous members of this population.³⁹⁵ In this manner, tattooed youth and other individuals presumed to be affiliated with gangs – a class of individuals already targeted for severe human rights violations – cannot depend on the government of El Salvador for protection against such violations.

The excerpts that follow provide a more detailed picture of the pervasive human rights violations facing Salvadoran youth who are presumed – rightly or wrongly – to be affiliated with gangs. In particular, these narratives illustrate four main problems facing this population: police harassment and violence, killings by rival gang members, extrajudicial execution by death squads, and discrimination in areas such as employment and school enrollment.

³⁸⁹*E.g.* Interview with Mirna Antonieta Perla Jiménez, *supra* note 88; Interview with Astrid Torres, *supra* note 49; Interview with W.M., *supra* note 213.

³⁹⁰*See* interview excerpts below in part i of this subsection.

³⁹¹*See* pp. 36-42 of this report.

³⁹²*E.g.*, Interview with Beatrice Alamanni de Carrillo, *supra* note 65; Interview with Jaime Martínez Ventura, *supra* note 41; Interview with Jeannette Aguilar, *supra* note 70; Interview with A.Y., *supra* note 355.

³⁹³*E.g.*, Interview with Beatrice Alamanni de Carrillo, *supra* note 65; Interview with Gerardo Alegría, *supra* note 54.

³⁹⁴*See* part i of this section.

³⁹⁵*E.g.*, Interview with Gerardo Alegría, *supra* note 54; Press Release, Tutela Legal del Arzobispado, Ejecución arbitraria de cuatro jóvenes en San Bartolo, Ilopango (July 19, 2006), at <http://www.tutelalegal.org/paginas/prensa.htm#ejecucion>; Leonel Herrera, *PDDH insiste en investigar a grupos de exterminio*, DIARIO COLATINO, <http://www.diariocolatino.com/nacionales/detalles.asp?NewsID=13629> (Aug. 30, 2006).

i. Police Harassment and Violence Against Suspected Gang Members

Nearly all individuals interviewed for this report spoke of targeted harassment and violence against gang members, tattooed youth, or young males in general by the police. In the words of Gilma Pérez, Director of the Migrants Program at the Human Rights Institute of José Simeón Cañas Central American University (IDHUCA), gang members and ex-gang members are “under siege” by authorities.³⁹⁶ Further, the PNC’s use of repressive tactics against suspected gang members has increased since the implementation of the *Mano Dura* policies.³⁹⁷ Members of one community youth group observed, “for the police, every group of young people is an illicit association.”³⁹⁸

Public officials and NGO workers interviewed for this report discussed several deaths thought to constitute summary executions and unjustified killings by the police. For example, an NGO coordinator working in a poor neighborhood outside San Salvador told our researchers about an incident in December 2005. According to this source, police arrested more than a dozen youths attending a Christmas party at which members of the Mara 18 were present, and then summarily shot them to death, blaming the massacre on gangs.³⁹⁹ In another case reported to the National Human Rights Ombudswoman on June 6, 2006, witnesses assert that two police officers unnecessarily shot and killed a seventeen year-old member of the Mara 18 from behind; according to the complaint filed with the Ombudswoman’s Office, a preliminary investigation was opened against the officers, but after the witnesses decided not to testify out of fear for their safety, the case was dropped.⁴⁰⁰ Between 2001 and 2005, FESPAD monitored media reports of homicides for possible instances of extrajudicial killings, using a methodology similar to that applied by the United Nations Joint Group for the Investigation of Politically Motivated Illegal Armed Groups in El Salva-

³⁹⁶Interview with Gilma Pérez, *supra* note 272.

³⁹⁷Interview with Jaime Martínez Ventura, *supra* note 41; Interview with María Julia Hernández, *supra* note 147; Interview with A.F., *supra* note 216; Interview with A.Y., *supra* note 355.

³⁹⁸Interview with A.Y., *supra* note 355.

³⁹⁹Interview with Tim McConville, *supra* note 65.

⁴⁰⁰PROCURADURÍA PARA LA DEFENSA DE LOS DERECHOS HUMANOS [Office of the National Human Rights Ombudswoman], RESUMEN DE EXPEDIENTE [File Summary], COMPLAINT FILED BY THE S.G.A. (June 6, 2006) (on file with authors).

dor in 1994.⁴⁰¹ FESPAD identified 622 cases of possible extrajudicial killings during that period.⁴⁰²

The excerpts below illustrate a more frequent pattern of human rights violations against suspected gang members (mostly tattooed youth), involving police stops and searches on the street. These stops often include threats, beatings, and other forms of abuse. It is striking to note the frequency with which individuals report experiencing such stops, which in some cases are said to occur every few days or even multiple times per day. Equally or more significant is the fact that in most cases, the police target the youth in question based on their appearance, focusing on their tattoos or the fact that they are seen out of doors in the company of other young males. Moreover, participation in community youth groups, rehabilitation programs, and even tattoo removal treatment appears to have little impact on individuals' likelihood of being stopped and abused by police, demonstrating that once a person is considered a "suspected gang member" or is known to have any past affiliation with gangs, his efforts at positive engagement in the community generally will not alter the tendency of the police to treat him as a gang member.

Victim/Witness Narratives

1. *[The police] always beat me up. Sometimes they stop me up to twice in the same day; on Fridays they stop me more often than other days. On Tuesday [two days ago] they stopped me, and on the way back they stopped me a second time... They still beat me up [though I am no longer in any gang]... [one time] they asked me where I was coming from, told me they were going to register me, asked me if I was in a gang, made me lift up my shirt. They're corrupt: they tried to plant marijuana in my pocket. Thank God a man witnessed it from behind. These types of encounters can last from five to thirty minutes. There are two or three police. At times they punish you when they stop you. One time when I was [still] in the gang, they found a knife on me and they made me do push-ups in the street. When you get too tired, they hit you.*

⁴⁰¹FESPAD AND CEPES, ESTADO DE LA SEGURIDAD PÚBLICA Y LA JUSTICIA PENAL EN EL SALVADOR, ENERO-AGOSTO 2005, *supra* note 268 at 104. See also E-Mail from Jaime Martínez Ventura, *supra* note 304.

⁴⁰²FESPAD AND CEPES, ESTADO DE LA SEGURIDAD PÚBLICA Y LA JUSTICIA PENAL EN EL SALVADOR, ENERO-AGOSTO 2005, *supra* note 268 at 104.

*These things normally happen at night... Even though your tattoo may not be from a gang, if you have one the police think that you're suspicious.*⁴⁰³

-24-year-old former gang member, San Salvador, March 30, 2006

2. *"There's one policeman who would always follow and harass us. When he would see us in the street, he would always come to register us. One time my friend opened his garage because he knew that this policeman was going to follow us. The policeman followed us and we ran to the garage and went inside. The policeman said that he would be back, that when we left the garage he would get us. This was four months ago. This kind of thing happens to us all the time. The police have registered me about three times this month... They started to stop me and register me more in the street in 2003-2004; this was when the situation worsened and they started to register us more."*⁴⁰⁴

-24-year-old resident of San Salvador, not a member of any gang, Mejicanos, August 27, 2006

3. *"One time there was a group of twenty of us hanging out and drinking in the street. Five police officers arrived and told us, 'everyone against the wall.' They have this tactic where they hit you on the legs to get you scared. They took one guy's finger and bent it over backwards. Then a patrol showed up with four more police. The owner of the house had to come out and look at us; he told the police that we weren't gang members and that he knew us."*⁴⁰⁵

-26-year-old male resident of San Salvador, not a member of any gang, San Salvador, August 30, 2006

4. *"If [the police] see you on a bus, even though you're minding your own business, they tell you to lift your shirt up, and if they see tattoos, it's 'mano dura' for you. I've served time in prison, but I've also been picked up for nothing more than having tattoos and detained for three to five days. They put me under investigation, put my name in the system. One day I was moving into a new house, my television broke, the police were coming by, and they detained me. If you tell the police, I'm rehabilitating myself through Homies Unidos, they say, 'Homies Unidos – that means nothing to us!' And you can say, I'm*

⁴⁰³Interview with C.A., *supra* note 82.

⁴⁰⁴Interview with A.F., *supra* note 216.

⁴⁰⁵Interview with T.V.L., in San Salvador (Aug. 30, 2006).

employed now, but they say, ‘But you’re not working now – you’re in the street, so let’s go inside’ – and they arrest you.”⁴⁰⁶

-28-year-old former gang member, San Salvador, March 28, 2006

5. *“One Saturday about a month and a half ago, I was eating in a shop when some police came and told me to go outside. They lifted up my shirt; they put a gun to my chest; this was two police and two soldiers. They took me in their car... they told me that it was me that shot another police officer. Supposedly someone had shot a police officer and they said it was me, but it wasn’t me. They took me to the other side [of this area] and put a gun to my chest. They tore the lower part of my ear and put a grenade up against my head to threaten me. The police told me, ‘You’ll pay for this, we’re going to kill you slowly’... When they left me there, they told me, you have to wait here until 7pm, we’re going to come back and if we don’t find you here, we’ll kill you. But when they left I went home... the neighbors in that place told me later that the police had come back looking for me.... They’ve taken me to Bartolina [police lock up] twice, but they’ve registered me a ton of times, more than I can even tell you.... Since the last time that I got out of Bartolina, I don’t leave my house much.”⁴⁰⁷*

-18-year-old gang member, Cabañas, August 25, 2006

6. *“When I would walk around in my neighborhood, every time the police saw me, they would take me into custody and beat me.... They’ve detained me maybe ten or eleven times.... They would always say I was guilty of illicit association, but I wasn’t going around with gang members, I would just wave to other guys in the street and the police said that I was with them, that that was illicit association. All of this started when I was maybe fourteen years old. Sometimes they would also say that they were arresting me for not having papers, for being out at night without papers.... They would take me to Bartolina [police lockup]; normally I was there for only three days, but sometimes I was there for six or seven days.... One time they wanted to send me to an adult prison, but I told them I was a minor. They took my [identity] card from me and tore it up; they said that I was an adult.”⁴⁰⁸*

-17-year-old from Soyapango, not a member of any gang,
Ilobasco, August 25, 2006

7. *“A month ago the police [arrested me].... I was going to a friend’s wake. There were four of us. We were driving to the wake, and there was a team of*

⁴⁰⁶Interview with J.R.T., *supra* note 213.

⁴⁰⁷Interview with L.F.G., *supra* note 137.

⁴⁰⁸Interview with T.C., *supra* note 117.

police. They told us to get out of the car... they put us in their car and took us to the police station. In the station they beat us up. They hit us with guns. They beat all of us for like two hours; there were ten or eleven police officers. They were asking us questions about past cases. [Then] they put us in Bartolina [police lockup] for five days.... They told us they had arrested us for illicit association, but they never gave us any court date.... One time, here near the chapel, the police got me. I was walking from the chapel after a meeting of my [youth group]. When I reached this isolated part, they approached me. They told me to come with them... we walked to an isolated place and they tore out my eyebrow-ring and beat me. They left me there and I went home.... Since then I've stayed indoors.... [During my lifetime] they've stopped me to register me like 100 times.⁴⁰⁹

-17-year-old gang member, Cabañas, August 25, 2006

ii. Killings of Suspected Gang Members by Rival Gangs

As discussed in Section II, *supra*, one of the fundamental characteristics of gang life is the constant warfare between the two main, opposing gangs, with inter-gang killings taking place both as required initiation rites and as routine occurrences. The following testimonies demonstrate that the threat of murder by members of a “rival” gang is not only a source of legitimate fear for gang members themselves, but also for individuals who are stereotyped as gang members due to appearance, having acquaintances in a gang, or simply living in the wrong area.

Victim/Witness Narratives

1. [They killed one of my brothers one year and eight months ago. He was coming from his girlfriend's house and they killed him. He was twenty-two years old. The place where his girlfriend lived, there were MS there.... They killed my other brother this year. He was about to turn 18. It was members of the MS who killed him. My brothers lived in the area of the Mara 18 and everyone thought they were from the Mara 18... it is assumed that people who come and go in this area are members of the Mara 18.⁴¹⁰

-Resident of a marginalized community of San Salvador, August 31, 2006

2. “I don't leave my neighborhood, I can't get on any bus, because who knows if someone from the other gang may get on. To them it doesn't matter that

⁴⁰⁹Interview with D.H., *supra* note 230.

⁴¹⁰Interview with F.R., *supra* note 117.

*you've left the gang – it's enough that you were once in the gang.*⁴¹¹

-28-year-old former gang member, San Salvador, March 28, 2006

3. *"I've had problems with the other gang because I have friends in the gang from this area, the MS, and the members of the other gang think that if you walk around with people in a certain gang then you are one of them. And they also think that everyone who lives in a certain gang's territory is a member of that gang."*⁴¹²

-24-year-old resident of San Salvador, not a member of any gang, Mejicanos, August 27, 2006

4. *"One kid [from an area where CRISPAZ works], a nine-year-old... he was killed by the MS – for having family in the Mara 18 – while playing sports.... Someone can't just relocate within El Salvador [to avoid the gangs]; the gangs are everywhere and they move quickly, so they can find you. People are identified, so nobody feels safe just by going to another part of the country. The communication between gangs (or different groups within gangs) is rapid and efficient. One can't be sure if one is on the list of people to be killed, but one can be sure that if one is on that list, one will be found and killed."*⁴¹³

-Jeanne Ridders, Coordinator of CRISPAZ, San Salvador, August 21, 2006

5. *"I decided to leave the gang because I was full of problems. The members of the other gang were looking for me to kill me.... I had to hide myself because of that.... Now the level of violence has begun to rise again.... There are killings in plain daylight. Fifteen days ago one of my friends was shot; he half-belonged to a gang but never made up his mind. He went around with members of one, then the other, which is why he was in danger."*⁴¹⁴

-27-year-old former gang member, Ilobasco, September 1, 2006

6. *"When I get out of here I don't want to go to the school that my mother wants to send me to. Because members of the Mara 18 are studying there, the same gang as the guys that I fought with in here. I was one of the ones, along with the members of the MS-13, that used to beat up some guys from the Mara 18, and they'll think that I'm a member of the MS-13. So now the members of*

⁴¹¹Interview with J.R.T., *supra* note 213.

⁴¹²Interview with A.F., *supra* note 216.

⁴¹³Interview with Jeanne Ridders, *supra* note 89.

⁴¹⁴Interview with E.D.R., in Ilobasco (Sep. 1, 2006).

*the Mara 18 are going to want to get me.*⁴¹⁵

-18-year-old from Soyapango, not a member of any gang,
Ilobasco, August 25, 2006

7. *“Luckily a lot of the guys who wanted to kill me are dead or in prison. I know it’s messed up to be happy that anyone is dead, but it’s a relief for me.... I try to hide my tattoo of three dots because it’s the most common gang tattoo, so I move my hand in a certain way to cover it.... I still feel in danger.... There are still some guys on the loose that I need to avoid.”*⁴¹⁶

-35-year-old former gang member who currently plans to flee El Salvador in fear for his life, San Salvador, August 30, 2006

8. *“I could file a report [of the threats against my life] but why? It won’t do any good and I don’t want to put my children in danger. Even when walking in the park with my daughters I have been approached by people [threatening me]. I’ve been followed while going on the bus route. I’ve been told my throat would be cut.”*⁴¹⁷

-25-year-old former gang member, San Salvador, August 31, 2006.

While writing this report, the authors received word that this same woman was in the hospital, having been shot just weeks after the above interview took place.

iii. Targeting of Suspected Gang Members by Death Squads

When asked about the reemergence of death squads in El Salvador, Jaime Martínez Ventura, Director of the Office of Juvenile Justice of the Supreme Court, observed, “There are strong indications that these groups are operating. All that has changed is the profile of the victims.”⁴¹⁸ Indeed, whereas during the time of the civil war, Salvadoran death squads targeted victims mainly on the basis of political beliefs, current death squads focus largely on so-called social cleansing⁴¹⁹ – eliminating supposedly undesirable members of society (see Section I, *supra*, for more detailed descriptions of former and current patterns of reported death squad activity). Thus it is

⁴¹⁵Interview with E.R.M., *supra* note 124.

⁴¹⁶Interview with W.M., *supra* note 213.

⁴¹⁷Interview with X.D.H., *supra* note 285.

⁴¹⁸Interview with Jaime Martínez Ventura, *supra* note 41.

⁴¹⁹Interview with Beatrice Alamanni de Carrillo, *supra* note 42.

unsurprising that the profile of modern death squad victims is disproportionately that of gang members and those suspected of being gang members. Human rights activist Rosa Anaya likewise reports with regard to the widely-known Sombra Negra death squad, “Gang members are denouncing [the Sombra Negra] for exterminating them. There came a time when the gang members said, ‘We’re not the ones killing each other.’ They started to report that they were being killed.”⁴²⁰

Beyond the failure to investigate death squad killings of gang members, there is evidence of complicity on the part of state authorities in the actual execution of these crimes. One NGO director working in a poor neighborhood on the outskirts of San Salvador notes that death squad killings of gang members in his area “coincide with weapons going missing from the police station.”⁴²¹ Another community activist who asked to remain anonymous reports that following a youth program carried out by his organization with the cooperation of the National Council for Public Security (CNSP), “There was a period in which fifteen youths were killed. We suspect that the CNSP has effectively become an intelligence service for the state.”⁴²² The conclusion drawn by this activist is that allowing the state to gain information on the identities and whereabouts of gang members resulted in their being targeted for extrajudicial execution.

The Office of the National Human Rights Ombudswoman reports, based on documented cases of extrajudicial executions of gang members, that death squads operate from within police departments themselves or in cooperation with police to target the suspected gang population. In this regard, the Ombudswoman classified the killings in Sonsonate of presumed gang member Abimeleth Ramírez Ayala in April of 2005, along with alleged Mara 18 members Hilario Vivas Contreras and Jorge Alberto Corona, as evidence of this illicit arrangement.⁴²³ Another example of this pattern, cited by Tutela Legal, is the alleged execution by police officers of 19-year-old Roberto Carlos Rivera in Comalapa, Chalatenango, also in April of 2005; Tutela Legal reported in mid-2006 that “as of today, those responsible for this crime continue to enjoy absolute impunity.”⁴²⁴

⁴²⁰Interview with Rosa Anaya, *supra* note 131.

⁴²¹Interview with Tim McConville, *supra* note 65.

⁴²²Interview with B.F., *supra* note 101.

⁴²³Leonel Herrera, *PDDH insiste en investigar a grupos de exterminio*, DIARIO CON LATINO, Aug. 30, 2006, available at <http://www.diariocolatino.com/nacionales/detalles.asp?NewsID=13629>.

⁴²⁴Tutela Legal de Arzobispado, *Ejecución Arbitraria de Cuatro Jóvenes en San*

Our researchers also obtained documentation prepared by Tutela Legal regarding another apparent recent example of the death squad targeting of gang members.⁴²⁵ On July 10, 2006, four suspected members of the Mara 18 were killed in San Bartolo, Ilopango. The victims (Ricardo Alberto Álvarez, Manuel Antonio Reyes Góchez, Juan Carlos Cabrera, and Juan Carlos Dimas Fuentes) were taking shelter from a downpour of rain on the side of a street when a black vehicle approached them.⁴²⁶ At least two armed men emerged from the vehicle, forced the youths to lie down on the ground, shot them to death, and fled the scene.⁴²⁷ In this case, rather than investigating the killings, the police later staged a late-night raid on the wake held for the four victims, under the pretext that the wake was being used to plan a gang attack on the police.⁴²⁸ Members of the PNC searched those present for weapons, struck some of the young people they searched, used verbally abusive language, and allegedly searched the coffins of the deceased as well.⁴²⁹ Such events demonstrate that death squads and state authorities, even if they do not function in explicit cooperation, in practice may operate to reinforce each other and generate a climate of terror for gang members and those who are (rightly or wrongly) presumed to be gang members.

Finally, our researchers also spoke with one youth who had witnessed a death squad killing in his neighborhood and who knew others who had witnessed other death squad killings. He described a group of six men, wearing black ski masks and driving in a large vehicle without license plates, who shot a man in the head.⁴³⁰ He also described reports from other neighborhood residents of similar targeted killings carried out by groups of men dressed in black.⁴³¹

Bartolo, Ilopango (July 19, 2006), available at <http://www.tutelalegal.org/paginas/prensa.htm>.

⁴²⁵*Id.*

⁴²⁶*Id.*

⁴²⁷*Id.*

⁴²⁸Parroquia San Bartolo (San Bartolo Parish), *supra* note 236.

⁴²⁹*Id.*

⁴³⁰Interview with A.Y., *supra* note 355.

⁴³¹*Id.*

iv. Targeting of Suspected Gang Members for Discrimination in School Enrollment and Employment

Finally, individuals who are presumed by others to be gang members (e.g. individuals with tattoos) face pervasive social discrimination even apart from the violence and threats described above. Indeed, such discrimination is often institutionalized in the form of rules (whether official or unofficial) prohibiting individuals from attending school or obtaining jobs solely because they are tattooed. Even those with artistic tattoos report pervasive discrimination and violence. We spoke with one man who had a tattoo of his wife's name who reported being turned away from jobs on account of this tattoo.⁴³²

Victim/Witness Narratives

1. *"It's very difficult to get a job, they ask you if you're in any gang, and if they see tattoos on you they won't hire you. I was working about two weeks ago, unloading trucks. But they saw my tattoos and they let me go. They told me that I couldn't work with them any more.... I want to work but can't."*⁴³³

-28-year-old former gang member, San Salvador, March 28, 2006

2. *"Most clients come [to this tattoo removal clinic] because of the persecution they face for having tattoos.... We have people come [] who have artistic tattoos, because for instance one man worked at a business and they told him to have his tattoo removed or he couldn't come back to work. Some schools won't enroll kids who have tattoos, even if they're only artistic. And to get a job, employers make you take off your shirt to see if you have tattoos, especially any jobs in the public sector."*⁴³⁴

-Olga Isabel Morales, Administrator, Adiós Tatuajes [tattoo removal] Program, San Salvador, August 25, 2006

C. Persons Deported from the United States

As deportations from the United States have transformed the gang phenomenon in El Salvador and gang violence has intensified in correlation with the increase in deportations, deportees have become scapegoats for

⁴³²Interview with W.Z.H., in San Salvador (Aug. 31, 2006).

⁴³³Interview with J.R.T., *supra* note 213.

⁴³⁴Interview with Olga Isabel Morales, *supra* note 134.

worsening crime and other societal problems.⁴³⁵ Our interviews revealed that deportees, whether tattooed or not, are widely treated as gang members,⁴³⁶ which leads to stigmatization by society and abuses by the police. Gabriel Trillos, editor-in-chief of *La Prensa Gráfica*, one of El Salvador's main newspapers, told us that the police assert that the strengthening of the gangs is due to the deportations from the United States, although officials have provided scarce information to support this proposition.⁴³⁷ Trillos asserted that deportees are stigmatized, citing arrests of deportees who have no relation to gangs whatsoever.⁴³⁸

The view of deportees as presumptively dangerous is shared and advocated by high government officials. For example, the President of El Salvador, Antonio Saca, has referred to deportees coming from the United States in general as “extremely dangerous people that have to be watched.”⁴³⁹ The Director of the National Civil Police, Rodrigo Avila, told us that deportees are “a problem for public security.”⁴⁴⁰ As explained in Section III of this report, this perception of deportees as a menace to society, in conjunction with law enforcement and anti-gang crackdowns, has exposed many deportees to abuse and persecution. Across the board, members of El Salvador's civil society emphasized to our researchers that the situation for deportees is dire and that the government is failing to provide appropriate protection.⁴⁴¹ In the sections that follow, these abuses suffered by deportees are described in more detail.

i. Deportees as particular targets for rights abuses committed by police

Abuses against deportees start from the moment they arrive at the

⁴³⁵See Section III.A.v, *supra*.

⁴³⁶See Interview with Gerardo Alegría, *supra* note 54.

⁴³⁷Interview with Gabriel Trillos, Editor-in-Chief, *La Prensa Gráfica*, in San Salvador (Mar. 28, 2006).

⁴³⁸*Id.*

⁴³⁹Saca Preocupado por Deportaciones, *LA PRENSA GRÁFICA*, Mar. 16, 2005.

⁴⁴⁰Interview with Rodrigo Avila, *supra* note 93.

⁴⁴¹See interview with Mirna Antonieta Perla Jiménez, *supra* note 88; Interview with Beatrice Alamanni de Carrillo, *supra* note 42; Interview with Jeanne Rikkers, *supra* note 89.

airport in San Salvador. There, Salvadoran law enforcement authorities, often working with INTERPOL,⁴⁴² subject arriving deportees to a process known informally as registration.⁴⁴³ During this process, authorities photograph and interview deportees regarding their criminal history, previous gang associations, and where they plan to live and work.⁴⁴⁴ Frequently, authorities have the immigration and criminal records of the deportees at the moment of registration.⁴⁴⁵ There have been reports of cases in which newly arrived deportees have been detained for pretextual reasons.⁴⁴⁶ While Salvadoran law does not permit the police to trail the deportees once they have left the airport, civil society organizations have documented cases in which the police have followed deportees and then arrested them when there is any excuse, such as a nearby crime.⁴⁴⁷

The testimonies below, taken from interviews with deportees and one human rights activist, illustrate the police abuses faced by deportees when they arrive at the airport and shortly thereafter. Several statements

⁴⁴²See Interview with R.Z., *supra* note 273; Interview with N.M. *supra* note 277.

⁴⁴³See Section III, *supra*.

⁴⁴⁴See Interview with Gilma Pérez, *supra* note 272 (explaining that everyone who had tattoos was subject to registration, which included taking their fingerprints and photos); Interview with José Miguel Cruz, *supra* note 54 (explaining that police take information from the deportees, including why they have been deported and what is the address where they are headed); Interview with N.M., *supra* note 277 (reporting that the police took pictures of his tattoos and asked him what gang he belonged to); Interview with E.C.C., *supra* note 143 (reporting that the police took photos and a video of him); Interview with M.A.H., *supra* note 273 (reporting that the police took close-up photos of his tattoos); Interview with W.M., *supra* note 213; Interview with R.Z., *supra* note 273 (reporting that the police interrogated him and INTERPOL took photos of his tattoos).

⁴⁴⁵See Interview with M.A.H., *supra* note 273 (reporting that the police had his whole record and they knew “everything” about him); Interview with Astrid Torres, *supra* note 49 (explaining that the police already have all the deportees’ information).

⁴⁴⁶Interview with Rosa Anaya, *supra* note 131; Interview with N.M., *supra* note 277.

⁴⁴⁷Interview with Astrid Torres, *supra* note 49; Interview with Gerardo Alegría, *supra* note 54 (explaining that if the police consider that the deportees are dangerous they will stay close to them, they will follow-up). The National Human Rights Ombudsman, Beatrice Alamanni de Carrillo, confirmed this in our interview when she explained that following deportees’ registration at the airport, “When a crime is committed, one of these people will be detained.” Interview with Beatrice Alamanni de Carrillo, *supra* note 42.

also reflect a general discontent with the government “Welcome Home” program, “Bienvenidos a Casa.”

Victim/Witness Narratives

1. “[Immigration] received us at the airport, then they passed us to the police... they took photos and videos of us. There were twenty five of us who got here together. I had my mom here, I went to live with her. I started a beer business... One day, three detectives arrived, they had an administrative order to arrest me because of three thefts. I don’t even know the dates of the thefts.... When they arrested me they took me in a truck without license plates.”⁴⁴⁸

-26-year-old former gang member, Chalatenango, March 28, 2006

2. “I got to the airport and the representatives of ‘Bienvenidos a Casa’ and immigration interviewed me. After that they took us to a room of INTERPOL. There were INTERPOL and police there. They questioned me. INTERPOL took photos of my tattoos. They took photos of my face, one in profile, one of my face next to numbers. They did this to everyone...”⁴⁴⁹

-29-year-old former gang member and deportee,
Mejicanos, August 28, 2006

3. “When we got here after being deported, there were no pupusas [stuffed corn tortillas that are a Salvadoran staple], coffee, nothing. Only the policemen. They took photos of all of us. They took photos of my tattoos close-up; I think they used more than three cameras to do this. The policeman in the airport had my whole record, they knew everything about me, they asked me lots of questions, they asked me where I was going to live.”⁴⁵⁰

-31-year-old former gang member and deportee,
Ilobasco, September 1, 2006

4. “When I arrived in the airport...I went straight to the police. I was scared. I didn’t want to get locked up again. The police put us in different lines, one for felons and one for immigration violations. They make you take off your shirt and photograph your tattoos. They did this to everybody in both lines. I was

⁴⁴⁸Interview with E.C.C., *supra* note 143.

⁴⁴⁹Interview with R.Z., *supra* note 273.

⁴⁵⁰Interview with M.A.H., *supra* note 273.

*the first name called and the last one to be let go. The cops asked me where I was going but I lied.*⁴⁵¹

-32-year-old former gang member and deportee,
San Salvador, August 30, 2006

5. *“They get you at the airport if you appear suspicious. There was a case of a guy called Spider. They got him [in the US] when he was about fifteen years old, he was in federal prison for about fifteen years... [h]e was deported. They got him at the airport and took him to jail; they did not even pass him through a tribunal.... Spider did not know anyone here in El Salvador; they didn’t even give him a chance. Only because he comes from the US, he belonged to a gang and he had a criminal record... He was in prison for six years...”*⁴⁵²

-Rosa Anaya, human rights activist, San Salvador, March 29, 2006

ii. Deportees as particular targets for gang violence

In the same way that gang members who try to leave a gang are targeted by fellow gang members, members who return to El Salvador are considered potential traitors and are targeted if they do not rejoin the gang.⁴⁵³ In this context, adequate support provided by the state and society is crucial. Unfortunately, as the following testimonies illustrate, the lack of support and protection by the state is the rule, not the exception.

Victim/Witness Narratives

1. *“I was scared when I got back because you hear about groups that kill gang members, plus there are the gang members themselves. I didn’t fit in when I got back here. At first I tried to look different, like take on a different identity and hide who I was.... Since I had no place to stay I had no choice but to call up some old friends that I’d rather avoid in Santa Tecla, gang members. I stayed in a room there for thirty days. The saddest thing that happened was that soon after I got back, my friend, another gang member from L.A., called me to say he was coming to visit me the next day. Then that day he got killed by one of the two main gangs. What I heard is that they took him down a [street] and asked if he was with them [e.g. would join the gang] and he said ‘I’m not with anyone.’ They said, ‘if you’re not with us, you’re against us,’ and they shot him.... He was from the White Fence gang. He was killed shortly after my*

⁴⁵¹Interview with W.M., *supra* note 213.

⁴⁵²Interview with Rosa Anaya, *supra* note 131.

⁴⁵³See IDHUCA, REGISTRO DE CASA, *supra* note 295.

*deportation, and he had been back here for about four years I think.... Here I took my daughter to a fair, and another deportee came up to me asking where I was from. I told him. He'd been deported three to four months before that, he said, and he lifted up his shirt and had bullet wounds – he had already been shot after getting back here.*⁴⁵⁴

-32-year-old former gang member and deportee,
San Salvador, August 30, 2006

2. *“We have deportees here. In March of 2006, four deportees were killed here. Two of them had become involved in maras in the US, and two here. They were all MS. People say that it’s the rival gang that killed them. They had been here five or six months.... They died in four separate incidents; one was waiting to meet his girlfriend, one was in the street, etc. They were all from around here.”*⁴⁵⁵

-José Salvador Hernández Munguía, Director of Youth Movement (MOJE)
in Ilobosco, August 30, 2006

3. *“Here where I live is a Mara 18 zone and I am somewhat nervous because I am from the Mara Salvatrucha and I have lots of tattoos.... Having tattoos here is very hard, they have to be hidden. I am lucky because I have known the leaders of the 18 clika here since I was a kid and they tell the others who want to do something to me not to do anything. I am ‘calm,’ I don’t want trouble, I don’t want to be involved with the gang.... My problem comes when others from the Mara 18 come from other places, because the leaders of the clika here cannot control them.... In the time that I have been here, three or four deportees have been killed. One of them [was killed] only a block away from here.... Here to kill a deportee is like a trophy. My son [who was born and lives in the U.S.] was here with me for two months during the summer. He told me ‘Daddy I want you to come back because I don’t want them to kill you.’ I am very careful about where I go. I stay here in the area I know. If I were to leave the town it would be very dangerous.”*⁴⁵⁶

-31-year-old former gang member and deportee in Ilobosco,
September 1, 2006

⁴⁵⁴Interview with W.M., *supra* note 213.

⁴⁵⁵Interview with José Salvador Hernández Munguía, Director, Movimiento de Jóvenes Encuentristas (MOJE, or “Youth Movement”), in Ilobosco (Aug. 30, 2006).

⁴⁵⁶Interview with M.A.H., *supra* note 273.

iii. Deportees as targets for additional societal stigma and discrimination

Finally, even if deportees are lucky enough to escape abuse from the police and gangs, they still face stigma and discrimination in society at large. The problem for deportees is that, as José Miguel Cruz from the IUDOP explains, they are victims of a cycle that seems to leave them with few options.⁴⁵⁷ As violence has increased in El Salvador, the press and government officials increasingly blame and demonize gangs and deportees, which in turn leads to fear and reproach among the population, making it harder for former gang members to reintegrate into society by finding jobs.

The following testimonies are from deportees, who expressed frustration in our interviews because of their current situations after having been deported to El Salvador. The testimonies highlight the stigma that comes from having tattoos, which, as an employee at a tattoo removal clinic told us, seems to be the main impediment for them to land jobs and opportunities.⁴⁵⁸

Victim/Witness Narratives

1. *“I’ve been unemployed since I got back. I do tattoos in the tattoo parlor but I can’t make a living just from that. When I came back I also had no place to stay. I can’t live with my baby’s mom’s family because they’re in La Campanera, and that’s too dangerous a place for people like me.... Since returning I have wanted to leave, not back to the States, just anywhere other than here. I can’t rent many places to live because of my tattoos. They turn you away or charge you very high rent. So I’ve already spent all my savings on high rent.”*⁴⁵⁹

- 32-year-old former gang member and deportee,
San Salvador, August 30, 2006

2. *“It’s a problem to have tattoos here, they don’t want to give you a job, I can’t find a job.”*⁴⁶⁰

-31-year-old former gang member and deportee from Ilobosco,
September 1, 2006

⁴⁵⁷Interview with José Miguel Cruz, *supra* note 54.

⁴⁵⁸Interview with Olga Isabel Morales, *supra* note 134.

⁴⁵⁹Interview with W.M., *supra* note 213.

⁴⁶⁰Interview with M.A.H., *supra* note 273.

3. *“I tried to get a job but nothing. Nobody told me about the call centers. Now Homies Unidos is helping me with my resume. Reintegration to society is costly. My mom and Homies have helped a lot. Here the situation is ugly. When I go to the beach I cannot take off my shirt. I cannot go out freely.”*⁴⁶¹

-22-year-old former gang member and deportee,
San Salvador, March 28, 2006

⁴⁶¹Interview with R.E., *supra* note 209.