Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from El Salvador

United Nations High Commissioner for Refugees (UNHCR)
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UNHCR Eligibility Guidelines are issued by the Office to assist decision-makers, including UNHCR staff, Governments and private practitioners, in assessing the international protection needs of asylum-seekers. They are legal interpretations of the refugee criteria in respect of specific profiles on the basis of social, economic, security, human rights and humanitarian conditions in the country/territory of origin concerned. The pertinent international protection needs are analysed in detail, and recommendations made as to how the applications in question relate to the relevant principles and criteria of international refugee law as per, notably, the UNHCR Statute, the 1951 Refugee Convention and its 1967 Protocol, and relevant regional instruments such as the Cartagena Declaration, the 1969 OAU Convention and the EU Qualification Directive. The recommendations may also touch upon, as relevant, complementary or subsidiary protection regimes.

UNHCR issues Eligibility Guidelines to promote the accurate interpretation and application of the abovementioned refugee criteria in line with its supervisory responsibility as contained in paragraph 8 of its Statute in conjunction with Article 35 of the 1951 Convention and Article II of its 1967 Protocol and based on the expertise it has developed over the years in matters related to eligibility and refugee status determination. It is hoped that the guidance and information contained in the Guidelines will be considered carefully by the authorities and the judiciary in reaching decisions on asylum applications. The Guidelines are based on in-depth research, information provided by UNHCR’s global network of field offices and material from independent country specialists, researchers and other sources, rigorously reviewed for reliability. The Guidelines are posted on UNHCR’s Refworld website at http://www.refworld.org.
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<tr>
<td>ARENA</td>
<td>National Republican Alliance (<em>Alianza Republicana Nacionalista</em>)</td>
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<td>B-18</td>
<td>Barrio-18. The B-18 gang is also referred to as the 18th Street Gang.</td>
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<td>CEAR</td>
<td>Comisión Española de Ayuda al Refugiado</td>
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<td>FMLN</td>
<td>Farabundo Martí Front for National Liberation (<em>Frente Farabundo Martí para la Liberación Nacional</em>)</td>
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<td>IACHR</td>
<td>Inter-American Commission on Human Rights</td>
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<td>IUDOP</td>
<td>El Instituto Universitario de Opinión Pública</td>
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<td>LAWG</td>
<td>Latin America Working Group</td>
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<td>MS</td>
<td><em>Mara Salvatrucha</em>. The MS is also referred to as the MS-13.</td>
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<td>ORMUSA</td>
<td>Organización de Mujeres Salvadoreñas por la Paz</td>
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<td>PNC</td>
<td>Civilian National Police (<em>Policía Nacional Civil</em>)</td>
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<td>UNDP</td>
<td>United Nations Development Programme</td>
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<td>UNHCR</td>
<td>United Nations High Commissioner for Refugees</td>
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<td>UNICEF</td>
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I. Introduction

Over the last few years, Salvadoran nationals have been seeking international protection as refugees in the region of the Americas and beyond in increasing numbers. These Eligibility Guidelines provide guidance on deciding claims for international protection lodged by Salvadoran asylum-seekers who fall within certain risk profiles or who find themselves in certain circumstances. The risk profiles outlined in this document are based on UNHCR’s legal assessment of available country of origin information and informed by UNHCR’s experience in working with asylum-seekers from El Salvador.

This document is based on information available to UNHCR up to December 2015, unless otherwise stated.

II. Overview of the Situation in El Salvador

A. Background

The increasing exodus of Salvadorians in search of international protection is rooted in the human rights, social, political and economic impact of the increasing reach, power and violence of organized criminal groups in El Salvador. The extent of the violence is reflected in the fact that the small and densely-populated country of El Salvador presently has the highest rate of homicides of any country in the world. This surge of violence is driven by the activities of powerful rival and conflictive street gangs that operate across El Salvador and also by the severe response of the State security forces. At the same time, the influence of other organized crime groups, as well as widespread domestic and societal abuse of women and children, also fuels the flight of Salvadorians seeking international protection.

The origins of the current violence can be traced to the brutal civil war that affected El Salvador between 1980 and 1992. This conflict produced over 70,000 deaths and widespread forced displacement in a population that today still only numbers just over six million. It contributed to the large present-day Salvadorian diaspora that is based mainly in the United States of America (USA) but present also in Italy and Spain. The 1992 peace accords between the government and the guerrilla army of the Farabundo Martí Front for National Liberation (Frente Farabundo Martí para la Liberación Nacional - FMLN) reintegrated the FMLN into civilian life as a political party, recreated the formerly highly militarized security forces under new civilian control, and introduced a raft of social measures. Despite positive advances since then, the legacy of conflict and poverty also provided fertile conditions for growing institutional corruption, the consolidation of organized drug- and people-smuggling structures, and the prevalence of violence committed by non-State actors.

The violent street gangs in present-day El Salvador are a consequence of, among other factors, the deportations of Salvadorian gang members back from the USA to El Salvador. Through the 1990s and 2000s, deported gang members built up violent rival street gangs based on the Californian gang

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model. Given the relative institutional weakness and corruption of the State in post-war El Salvador and social deprivation among former combatants and other Salvadorian youth, these gangs rapidly consolidated themselves in many poorer neighbourhoods and quickly spread throughout the territory of El Salvador. Most of these gangs are affiliated to one of the two main gang structures also imported from the USA, the Mara Salvatrucha (MS) - also commonly referred to as the MS-13 and - its rival Barrio-18 (B-18) - also commonly referred to as the 18th Street Gang.

During the 2000s, the Salvadorian State responded to the gangs’ increasing territorial dominance and escalating violence and extortion by implementing a series of ‘Firm Hand’ (mano dura) policies based on increasingly repressive security measures. These began in El Salvador with the mano dura 2003 Anti-Mara Law, and were ramped up further with the 2004 ‘super’ mano dura plan, a special regime giving the authorities greater powers to arrest and prosecute suspected gang members, with fewer judicial guarantees and harsher punishments. Yet the mano dura strategy demonstrably failed to eliminate or contain the gangs or to reduce the rising homicide rate. Instead this strategy is reported to have provided the impetus for gangs to become more organized and ruthless, whilst at the same time engendering among members of the security forces a lack of respect for the human rights of youth suspected of being gang members.

In 2009, after 20 years of government by the right-wing National Republican Alliance (Alianza Republicana Nacionalista - ARENA) party, the left-wing FMLN party of President Funes was elected to power. This government reportedly sought to distinguish itself from the previous ARENA regimes by adopting policies that encouraged a more preventative and social approach to tackling crime and insecurity, including a focus on crime prevention and the rehabilitation of convicts. However, the shooting and burning of a bus in Mejicanos on 20 June 2010, killing 14 passengers inside and injuring another 12, illustrated the gangs’ growing power and brutality. This widely condemned act was characterized by the government as an act of ‘terrorism’ by the gangs and prompted the adoption of a new ‘Anti-Mara’ law in September 2010 that remains in force today. The Funes administration also began investigating citizens and public officials linked to sophisticated drug-smuggling structures operating in El Salvador, such as Los Perrones and the Texis Cartel, albeit with relatively limited success.

In March 2012, the government and MS and B-18 gang leaders endorsed a truce pact that allowed 30 gang leaders to be transferred from maximum-security to less restrictive prisons. It is reported that

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7 See also Section II.B.2.a below.
9 Anti-Mara Law, El Salvador: Ley Anti Maras, Decreto No. 158, 22 January 2016, http://www.refworld.org/docid/56a24ce4b.html. This law was struck down as unconstitutional by the Constitutional Court. See also Special Law to Combat the Criminal Activities of Illicit Groups or Associations, El Salvador: Ley para el Combate de las Actividades Delincuenciales de Grupos o Asociaciones Ilícitas Especial, Decreto No. 305, 2 April 2004, http://www.refworld.org/docid/56a24c624.html.
the national murder rate decreased by 40 per cent as a result of this truce pact, although the practice of extortion by gangs against the population continued unabated. Over the following year, other parties also adhered to the truce pact, including the Organization of American States, the Catholic Church and a number of smaller gangs. However, in May 2013, the Constitutional Court declared that the government had acted unconstitutionally in appointing the architect of the truce (then Defence Minister David Munguía Payés) and other military officials to public security posts. His civilian replacement tried to continue negotiations with the gangs, using a Spanish priest as an intermediary who tried to include NGOs and municipal mayors in a process of local pacification. However, from mid-2013, homicide rates began rising again. This was seen as a reflection of a lack of faith in a truce pact that had always been considered as controversial by some sectors of Salvadoran society and which now was increasingly criticized.

In June 2014, a new FMLN government took office under the presidency of Salvador Sánchez, who from the outset rejected calls to continue dialogue with the gangs. Through 2014 and into 2015, the truce between the MS and B-18 gang structures looked even more fragile as homicide rates increased significantly. In early 2015, reportedly in an attempt to force the government back to the negotiating table, the gangs killed bus drivers who had disobeyed the gangs’ proclaimed public transport strike. The gangs also targeted and killed increasing numbers of police officers, with the police responding in kind. The truce definitively ended in April 2015 when the Sánchez government returned the gang leaders to isolation cells in Zacatecoluca maximum-security prison. Since then open warfare has prevailed between the different gangs and between the gangs and the security forces, impacting directly on the lives of local inhabitants with the homicide level in 2015 higher than during the country’s civil war.

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23 Sala Negra de El Faro, Más represión, más asesinatos, más armas, más reclutamientos, 20 September 2015, http://www.salanegra.elfaro.net/es/201509/cronicas/17376/M%C3%A1s-repres%C3%B3n%C3%A1s,-m%C3%A1s-asesinatos,-m%C3%A1s-armas,-m%C3%A1s-reclutamientos.htm (English version available at: http://www.insightcrime.org/news-analysis/el-salvador-more-weapons-more-recruits-more-chaos).

B. Structures and Patterns of Organized Violence

1. Levels of Violence

Currently, El Salvador is the country with the highest homicide rate in the world, reporting 6,640 homicides between 1 January and 31 December 2015, comparable to an annual rate of approximately 103 homicides per 100,000 inhabitants in 2015. These figures are not an anomaly in the context of Central America, where four of the five countries with the highest homicide rates in the world are located. Rather, for El Salvador the year 2015 represents a return to the decade-long trend of rapidly escalating murder rates that had been interrupted primarily due to the effect of the 2012 truce pact. The year 2015 has seen a dramatic rise also in ‘multiple homicides’, with 89 per cent more double-homicides and 148 per cent more triple-homicides registered by October 2015 than for the whole of 2014.

Despite some variation over the last ten years, the homicide rate is relatively evenly distributed across the four regions of El Salvador. In 2015, 92 per cent of the homicides took place across 100 municipalities containing 77 per cent of El Salvador’s population; however, 70 per cent occurred in just 50 of those municipalities (60 per cent of the population). Disaggregated data from the period before the truce (2009-2011) shows that every year there were more than 25 municipalities with in excess of 100 homicides per 100,000 inhabitants; in some cases, the annual homicide rate exceeded 150 per 100,000 inhabitants and one municipality recorded 303.3 homicides per 100,000 inhabitants.

The territorial dynamics of extreme violence in El Salvador can shift relatively rapidly. For instance, some areas of the country that were extremely violent before the truce pact are now less so, whilst some zones that were calm before the truce are now violence hotspots again. In 2015 the metropolitan area of the capital San Salvador no longer had the highest homicide rate; instead the central zones of El Salvador (Cuscatlán, La Paz, Cabañas and Usulután departments) were most severely affected. However, violence on public transport – on which 80-85 per cent of the

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26 La Prensa Gráfica, El Salvador con más homicidios en C. A., 3 January 2016, http://www.laprensagrafica.com/2016/01/03/el-salvador-comas-homicidios-en-c-a. For comparison, homicide rates in North America over the last decade have averaged around 1.5 per 100,000 inhabitants in Canada and 5 per 100,000 inhabitants in the USA. UN Office on Drugs and Crime (UNODC), Global Study on Homicide 2013: Trends, Contexts, Data, 10 April 2014, https://www.unodc.org/documents/ghb/pdfs/2014_GLOBAL_HOMICIDE_BOOK_web.pdf.
27 The Huffington Post, These 10 Countries Have the World’s Highest Murder Rates, 4 October 2014, http://www.huffingtonpost.com/2014/04/10/worlds-highest-murder-rates_n_5125188.html. The five countries are Guatemala, El Salvador, Belize, Venezuela and Honduras. This ranking – and the trends for El Salvador over time - is based on data from 2012, the most recent year for which comparable global data on homicide figures were published by UNODC, Global Study on Homicide 2013: Trends, Contexts, Data, 10 April 2014, https://www.unodc.org/documents/ghb/pdf/2014_GLOBAL_HOMICIDE_BOOK_web.pdf, p. 126.
28 By October 2015, 370 double-homicides and 57 triple homicides had been registered in El Salvador, as compared to 196 double-homicides and 23 triple-homicides registered for the whole of 2014. See La Prensa Gráfica, 83 masacres ocurridas hasta octubre de 2015, 3 October 2015, http://www.laprensagrafica.com/2015/10/03/83-masacres-ocurridas-hasta-octubre-de-2015.
29 Traditionally, the region of Oriente had lower annual homicide rates than the other three regions, but since 2013 it has overtaken the region of Occidente. See La Prensa Gráfica, 50 municipios concentran más violencia y población, 25 June 2015, http://www.laprensagrafica.com/2015/06/25/50-municipios-concentran-mas-violencia-y-poblacion.
32 Sala Negra de El Faro, La Tregua redefinió el mapa de asesinatos de El Salvador, 9 March 2015, http://www.salanegra elfaro.net/es/2015/03/cronicas/16490/La-Tregua-redefini%C3%B3-el-mapa-de-asesinatos-de-El-Salvador.htm.
33 Sala Negra de El Faro, La Tregua redefinió el mapa de asesinatos de El Salvador, 9 March 2015, http://www.salanegra elfaro.net/es/2015/03/cronicas/16490/La-Tregua-redefini%C3%B3-el-mapa-de-asesinatos-de-El-Salvador.htm. Note, however, that San Salvador continues consistently to register the highest number of homicides overall (i.e. as distinct from homicide rates that reflect the relative size of the population). For instance, between April and June 2015, San Salvador department registered 567 (32.6%) of the total of 1738 homicides in all fourteen departments of El Salvador. See Instituto de Medicina Legal, Homicidios de abril a junio del año 2015 según Instituto de Medicina Legal y datos consolidados con la Fiscalía General de la República y la Policía Nacional Civil, 2015, http://www.transparencia.gob.sv/Filerman/InformacionGeneral/documentacionordinacion/40/405849/HOMICIDOS%20abr%20junio%202015.pdf. Indeed, some analysts argue that San Salvador (rather than Caracas as commonly reported) was actually the city with the highest homicide rate in the world in 2015. See El Faro, La ciudad más violenta del mundo, 26 January 2016, http://losblogs.elfaro.net/cronicasguanacas/2016/01/la-ciudad-m%20mas-violenta-del-mundo.html.
Salvadoran workforce relays — remains prevalent and increased in frequency during 2015, with 79 transportation employees killed just between January and October 2015.34

The vast majority of homicide victims are reported to be male and between the ages of 15 and 34.35 In this respect, it is notable also that El Salvador was recorded in 2012 as having the highest rate of homicide victims among children and adolescents aged 0 to 19 years per 100,000 population of any country in the world.36 Here again, a gendered division of the homicide victims is evident, with the homicide rate for boys at 42 per 100,000 and that for girls at 11 per 100,000.37 Homicide is the leading cause of death among adolescent boys in El Salvador.38 Domestic abuse of children, both boys and girls, is also relatively widespread in El Salvador.39

In 2011, El Salvador also reported a large number of forced disappearances, mostly of young men, as a result of growing gang violence.40 Although the number of reported forced disappearances fell in 2012 and 2013, it again significantly increased in 2014 with increasing numbers of young women among the victims.41 This upward trend appeared to be continuing in 2015, with San Salvador continuing to be the main location for forced disappearances (followed by Santa Ana and La Libertad), 90 per cent of those disappeared were later found dead.42 Since the late 2000s, the frequency of kidnappings in El Salvador has also been reported to be increasing, with the majority carried out by gangs, mostly by the MS.43

Violence against women is reported to be prevalent.44 A five-fold rise in ‘femicides’ (murders of women because of their gender) was reported during the 2000s, coinciding with the spread of gangs but also reflecting wider gender inequality, that gave El Salvador the highest recorded rate of femicide in the world between 2004 and 2011.45 After a decrease in 2012-2014, the number of femicides again increased drastically in 2015.46 Presently, domestic violence is considered the leading form of


35 Figures from 2009 to 2012 show consistently that around 86 per cent of homicide victims were male; of whom over two-thirds were between the ages of 15 and 34. Fundaunego, Atlas de la violencia en El Salvador (2009-2012), November 2013, http://fundaunego.org/sv/pdf/2014/Atlas_de_violencia.pdf, pp. 33, 37.


violence against women, followed closely by violence perpetrated by gang members.\textsuperscript{47} Indeed, women linked with one gang are reported to be considered a target for rival gangs and they and other women are reported to be abused, (gang) raped and killed as part of gang initiation rites or if they try to leave the gang to which they belong or with which they are affiliated.\textsuperscript{48} Meanwhile, 97 per cent of human-trafficking cases registered in the last few years in El Salvador have reportedly involved sexual exploitation.\textsuperscript{49}

Alongside homicides, forced disappearances, kidnappings, and widespread forms of violence against women, a range of other types of violent crimes are prevalent in El Salvador. Many of these are less easily documented than homicides and are known to be underreported, because victims do not report these crimes to the police for fear of retribution and due to a lack of confidence in the authorities.\textsuperscript{50} Extortion, usually by gangs, is a particularly prevalent example of these other forms of violent crime. Indeed, despite being the smallest country in Central America, the population of El Salvador is reported to pay the highest amount of extortion money, estimated conservatively at around US$400 million per year, and it is reported that those who do not pay are commonly killed or see their businesses burned down as a reprisal.\textsuperscript{51} Whereas homicide levels fell during the truce pact reportedly due to orders from the gang leaders to reduce killings, extortion and other forms of violent crime are reported to have continued unabated and may even have increased.\textsuperscript{52}

2. Armed Actors

The current dynamics of violence in El Salvador stems from the presence and activities of three main forms of armed actors: gangs, including the Barrio-18 and the Mara Salvatrucha; drug-smuggling structures (transportistas); and the State security forces, particularly the police and the army.


a) Gangs

Despite being the smallest country in Central America, El Salvador is the nation reported to be the most affected by the violence of street gangs (pandillas) and reportedly has the highest concentration of gang members of any country in the region.\(^5\) Across most of the departments that make up the territory of El Salvador, many hundreds of local street gangs are reported to operate in both urban and rural zones, with between 30,000 and 60,000 active members in total.\(^5\) These gangs are considered to be the main force that has been driving the increase of violence in El Salvador over the last decade and the surge in murders and population displacement over the past couple of years.\(^5\) Official statistics show that 65 per cent of the murders registered in the country between January and mid-November 2015 were committed by gang members.\(^5\)

As noted above, although El Salvador has a long history of street gangs, the street gangs presently operating in the country are reported to have their origins in the violent California-style gang culture brought back by Salvadoran gang members deported from the United States of America from the 1990s onwards.\(^5\) These gangs are usually based in poor or lower-middle-class urban or rural zones, sometimes comprised of just a single neighbourhood (colonia) or a few such neighbourhoods. However, despite a culture of identification with their home territory, these gangs are also considered capable of great mobility and can rapidly expand their influence to nearby neighbourhoods. They may also relocate to new neighbourhoods to seek refuge from offensives against them by the security forces or other gangs. Similarly, while physical reference points such as streets, squares and graffiti or markings often mark the dividing lines between gang territories,\(^9\) these boundaries can reportedly also shift literally overnight as one gang pushes into, or disputes, the territory of another.

Salvadoran gangs are reported to pursue a strategy of exclusive control over their home territories, using violence to repel other gangs or challengers. Within its own territory, each gang tries to control

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\(^{5}\) UNHCR treats gangs as ‘the relatively durable, predominantly street-based groups of young people for whom crime and violence is integral to the group’s identity. The term is also used to refer to organized criminal groups of individuals for whom involvement in crime is for personal gain (financial or otherwise) and their primary “occupation”.’ See UNHCR, Guidance Note on Refugee Claims Relating to Victims of Organized Gangs, 31 March 2010, www.refworld.org/docid/4b621f02.html, pp. 1-2.


\(^{5}\) Recent and reliable estimates of the numbers of active gang members in El Salvador are always difficult to establish. A 2013 police study estimated that there were 32,310 active gang members distributed across 567 local gangs in El Salvador, of whom 10,961 were imprisoned. However, a study by the Ministry of Justice and Security the same year estimated the figure instead at 58,783 active gang members. La Prensa Gráfica, Hoy: 32,310 pandilleros en el país: Antipandillas, 27 December 2013, http://www.laprensagrafica.com/2013/12/27/hoy-32310-pandilleros-en-el-pais-antipandillas. In October 2015, the Minister of Defence alluded to an unsubstantiated figure of 60,000 gang members in El Salvador, more than the approximately 50,000 members of the State’s own police and armed forces. Panam, Pandilleros de El Salvador superan en número a efectivos de seguridad, 23 October 2015, http://es.panampost.com/la-thabata-molina/2015/10/23/pandilleros-de-el-salvador-supera-en-numero-a-efectivos-de-seguridad/.


the localized criminal enterprises which sustain members’ livelihoods, such as extortion, drug-selling, prostitution and other crimes. Businesses, (public) transport routes and even homes in other nearby (and often wealthier) neighbourhoods may also be targeted for extortion by the gang. Presently, the main source of revenue for most gangs is reported to be extortion (renta), which is increasingly directed and carried out by phone from within prisons by incarcerated gang members.

Each local gang is reported to have its own active membership that can range in size from a handful to a hundred or more initiated ‘soldiers’ under the leadership of senior members (palabreros). In El Salvador are predominantly male and largely composed of youth and young adults, although senior members are often older. Following initiation, members traditionally identified themselves through gang-related tattoos and style of dress and appearance, although there is apparently a move now towards discouraging these visible practices as they also helped to identify members to the security forces. A distinctive special vocabulary, hand signs and other body signs and even written codes are still apparently used by gangs in El Salvador. Imprisoned gang members are reported to remain active and increasingly direct the activities of those on the street.

Once initiated into a gang, members must follow the rules established by their palabreros. The violation of different rules is reported to lead to different punishments, commonly serious beatings or death. Lifelong loyalty to the gang is required and those who desert or cooperate with the security forces or rival gangs are reported to be routinely pursued and killed by their own gang as a punishment. It is reported that even those former gang members who are sheltered under State-run protection programmes often do not escape punishment. The gangs are reportedly assisted by many ‘anonymous’ voluntary or involuntary collaborators in the territories where they operate, including

family members and younger children from the neighbourhood, who are not gang members but act as lookouts, help to collect and launder extortion money and perform other tasks, and who sometimes collect a salary from the gang.71 The authorities estimated that in 2013 there were 470,000 people affiliated with the gangs in El Salvador, as family members, friends or others; by mid-2015 this figure had risen to between 600,000 and 700,000 people (i.e. 10 per cent of the population).72

Gangs are reported to exercise extraordinary levels of social control over the population of their territories (and, to a lesser extent, over other territories where they practise extortion). In these zones, inhabitants are reportedly required to ‘look, listen and keep quiet’ (‘mirar, oir, callar’) and often face a plethora of gang-imposed restrictions on who they can talk with and what about, what time they must be inside their homes, where they can walk or go to school, who they can visit and who can visit them, what they can wear, and even, reportedly, the colour of their hair.73 It is equally forbidden for inhabitants to show ‘disrespect’ for the gang, a subjective evaluation on the part of gang members that can reportedly encompass a multitude of perceived slights and offences, such as arguing with a gang member or refusing a request, resisting a child’s recruitment into the gang, or rejecting the amorous attentions of a gang member.74

Gangs in El Salvador are reported to achieve this degree of social control principally through the use of threats and violence to create a pervasive atmosphere of fear among inhabitants, especially amongst those without family or other links to the local gang.75 They reportedly exploit this control in many ways. For instance, some local gangs are reported to have required their local community councils (directivas comunales) to apply to the municipality for permission to close and blockade streets, which hamper entry and pursuit by the police, or to issue an authorization to create private security schemes that are then manned by the gang members and afford an additional source of income through extorting fees from local residents.76 Others are reported to have installed gates at the entrance to the neighbourhoods where they review the identity documents of passers-by to control who is able to enter, or have taken over local businesses that residents are then obliged to use for their purchases of bread or bottled water.77

Persons who resist the authority of the local gang or who even just inadvertently cross it, or who collaborate with the security forces or with rival gangs, are reportedly subjected to swift and brutal


75 Indeed, residents of other neighbourhoods and towns have been killed simply for the ‘offence’ of entering the gang’s territory without permission and by accident. See La Prensa Gráfica, Las mascotas de la pandilla, 21 July 2014, http://www.laprensagrafica.com/2014/07/21/las-mascotas-de-la-pandilla; La Prensa Gráfica, Matan a mujer por llegar de visita a zona de pandillas, 11 November 2014, http://www.laprensagrafica.com/2014/11/11/matan-a-mujer-por-llegar-de-visita-a-zona-de-pandillas.


retaliation from the gang. Not only are such persons killed by the gangs but their family members are often targeted as well. Moreover, especially in the current heightened confrontation, the gangs reportedly sometimes impose collective threats and punishments on whole communities – or parts of them – where they believe that the community bears some share of responsibility for the perceived infraction or disloyalty. This is reported to have generated group displacement events involving dozens of families from certain neighbourhoods. Finally, the strongly macho ethos of the Salvadorian gangs expresses itself on an everyday basis through their reported virulent hatred and ill-treatment of persons based on their perceived sexual orientation and/or gender identity and in the widespread sexual and gender-based violence experienced by women and girls living in their territories.

*Mara Salvatrucha (MS) and Barrio-18 (B-18) gang structures*

The vast majority of local gangs in El Salvador are reported to be affiliated with either the *Barrio 18* (B-18) or the *Mara Salvatrucha* (MS), and often reference this affiliation in their gang name. B-18 and MS are large transnational gang structures or identities that have their origins in the Californian gang scene, where B-18 was formed by Mexicans and MS by the children of Salvadorians fleeing the civil war. Both B-18 and MS are themselves affiliated in turn with the Southern (Sureño) gang movement: this reportedly unites Hispanic gangs from southern California under the aegis of the powerful Mexican Mafia and is reported to offer a form of collective security (against attack by non-Sureño gangs) for members of these gangs when incarcerated in the USA. However, on the street both in the USA and in El Salvador, B-18 and MS have long been implacable enemies. During the 2000s, a large number of B-18 and MS gang members were imprisoned as part of the government’s * mano dura* response. However, hundreds of deaths during gang confrontations in the overcrowded prisons reportedly led to B-18 and MS members being sent to different prisons, giving the gang leaders the chance to organize themselves and enforce more hierarchical command structures

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83 For example, an MS-affiliated gang will usually reference this through a suffix, as in the case of an MS clique called the Criminal Mafia Salvartruchos (Criminal Mafiosos Salvatruchos).

84 *Barrio-18* (18 Street) gang structure is sometimes also referred to as ‘*Mara 18*’, reflecting the common tendency in general parlance also to refer to both MS and B-18 (and sometimes other gangs as well) as ‘mara’s’. A Central American shorthand for gang. Note, however, that B-18 members do not generally refer to B-18 as a ‘mara’, a term which they see as associated with their hated rival, the *Mara Salvatrucha*. The term ‘salvatrucha’ derives from the Salvadoran origin of the founders and many original members of the MS in the USA.

85 The *Mara Salvatrucha* and *MS* are also sometimes used to refer to both MS and B-18.

86 Thus, both MS and B-18 add the number 13 after their gang names to reference their *Sureño* gang affiliation status and connection to the Mexican Mafia – the *M* (la *M* is the 13th letter of the alphabet). By contrast, Northern (*Norteño*) gangs from northern California use the number 14 as *N* is the 14th letter. See Revista Factum, *Sureños, los otros pandilleros*, 4 November 2014, http://revistafactum.com/surenos-los-otros-pandilleros/.

run from within the prisons. Their apparent consolidation has coincided with a growing level of confrontation and violence that was interrupted in 2012-2013 only by the B-18/MS truce pact.

In El Salvador, B-18 is believed to be slightly smaller than its arch-enemy, the MS, but it is also considered to be less sophisticated and more undisciplined, “trigger-happy” and unpredictable. Even so, B-18 reportedly has a loose hierarchy in which its imprisoned palabrer os (or tabos or ranfleros) coordinate the criminal activities of the gang and give the orders to the palabrer olos on the street and authorize relevant activities, such as increases in extortion demands. In early 2015, there were reported to be 28 B-18 tribes (tribus) in El Salvador, each composed of dozens or hundreds of B-18 members. These are reported to operate across many smaller local territorial gang divisions known as ‘fields’ (canchas) that make up a tribe. In 2005, B-18 split into two warring factions that call themselves Sureños (Southerners) and Revolucionarios (Revolutionaries). Reports indicate that within these factions, disputes and gang-wars also sometimes arise, such as the bloody local war within the B-18 Revolucionarios faction in Zacatecoluca department in 2014. Meanwhile, the MS gang structure is traditionally seen as more bureaucratic and disciplined than the B-18 but it is no less violent. In El Salvador, now sometimes considered the spiritual home of the MS franchise, MS is reported to be directed by a circle (ranfla or rueda) of imprisoned palabrer os, above whom sits the national leadership. The MS is considered to be a diffuse and fluid organization but has a more intimate and coordinated structure than B-18: this is comprised of some 246 cliques (elikas or clickas), each with up to a few dozen members. A number of MS cliques are often grouped together under each MS ‘programme’ (programa), which is under the control of a mid-level palabro. Powerful MS palabrer os can reportedly control a large number of cliques, who pay ‘tribute’ (financial quotas from criminal activities) to them. It is reported that MS in El Salvador has

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93 In the dispute in Zacatecoluca, it is reported that the rebel gangs fighting against their former allies in the Revolucionarios faction were assisted surreptitiously by gangs from the Sureños faction. See Sala Negra de El Faro, La rebelión por la que sangra Zacatecoluca, 3 November 2014, http://www.salanegra.elfaro.net/es/201411/cronicas/16173/la-rebela%C3%B3n-por-la-que-sangra-Zacatecoluca.htm.
formed an unusual alliance in 2015 with the Sureños faction of B-18 to wage war against the Revolucionarios faction of B-18.100

B-18 and MS gangs reportedly live primarily from extortion, although some MS cliques are also now reported to be heavily involved in selling and distributing illegal firearms in El Salvador.101 Despite the 2012 USA designation of MS as a ‘transnational criminal organization’,102 MS and B-18 gangs have reportedly focused mainly on taking over the small drug distribution markets in their local territories as opposed to transnational activities.103 Even so, some local gangs have an ad hoc relationship with larger drug-trafficking organizations and are reported to have provided minor services for them, such as acting as local ‘muscle’ escorting drug shipments through their territories or carrying out assassinations.104 MS appears to have substantially more contact with these larger criminal organizations than B-18.105 However, during 2015, MS reputedly attempted to wrest control over local cocaine-trafficking routes from Salvadorian transportista structures, reportedly contributing to a bloody retaliatory war between MS and corrupt officials in the security forces who are said to be linked to these structures.106

Certain powerful imprisoned MS leaders in El Salvador are also reported to have a relationship with MS cliques along the east coast of the USA, where they reportedly masterminded a violent MS expansion in 2009 and even ordered a killing there, with monetary ‘tribute’ from illicit activities including extortion and prostitution flowing back to the leaders in El Salvador.107 This development accompanied a reported reversal in the earlier relationship between MS in the USA and in El Salvador, with orders now apparently travelling from the leadership in El Salvador to North America rather than vice versa.108 In 2015, MS reportedly sought to bolster its presence on the east coast of the

107 Revista Factum, El Viejo Santos y la revitalización de las clícas de Maryland, 13 July 2015, http://revistafactum.com/el-viejo-santos-y-la-revitalizacion-de-las-clicas-de-maryland/
USA as a means of generating more revenue and creating a more disciplined and structured organization. MS members have also been arrested in recent years in countries such as Mexico, Chile, Italy, Peru and Spain, reportedly pointing to a strategy of expansion to new territories.

The Salvadorian B-18 and MS gangs are also reported to maintain ties with their counterparts in other countries of Central America and Mexico, via social networks and other media, who are used to arrange for the safe passage of drugs and weapons. Especially following increased police pressure after the breakdown of the truce, gang members from El Salvador are reported to have also travelled to neighbouring countries to seek sanctuary with affiliated gangs there, whom they have trained on how to transmit coded messages, or in isolated zones near the border, where they exercise control and recruit new members. Gang members are also sometimes ‘lent’ between affiliated gangs from neighbouring countries to carry out assassinations and other criminal activities.

The enduring enmity between – and sometimes within – B-18 and MS is deeply rooted. However, of all the countries where B-18 and MS are present, it was in El Salvador that the local gang leaders exerted sufficient organizational influence over their affiliated local gangs at the national level to negotiate a 2012 truce pact that was endorsed by the government. Even if not all affiliated gang leaders on the street agreed with the truce, the pact showed the apparent ability of the gangs to cooperate in lowering (or raising) the national murder rate in an instant. Even prior to the truce pact, contact between B-18 and MS leaders reportedly produced also concerted action in other areas, such as the tabling of common public positions by the gangs and the enforcing of public transport strikes. However, from at least early 2014, as the truce began to fragment, it was reported that B-18 and MS gang leaders simultaneously started to prepare for a return to war, directing their members to prioritize the purchasing of firearms and to increase extortion demands as necessary.

By late 2015, the B-18 and MS affiliated gangs were reportedly more heavily armed than ever, with assault rifles and military hardware commonplace. Since the unravelling of the truce pact they are reported to have also engaged in the mass recruitment of new members, especially youth and children


115 The murder rate was reduced by 40 per cent during the truce and rose steadily as the truce fragmented. See Sala Negra de El Faro, La Tregua redujo el mapa de asesinatos de El Salvador, 9 March 2015, http://www.salanegra.elfaro.net/es/201503/chronica/16940-la-tregua-redefini%C3%B3-el-mapa-de-asesinatos-de-el-salvador.html; UNODC, Global Study on Homicide 2013: Trends, Contexts, Data, 10 April 2014, https://www.unodc.org/documents/csd/pdf/2014_GLOBAL_HOMICIDE_BOOK_web.pdf, pp. 40, 43, 45. This power was evidenced again, temporarily, in the sudden but short-lived fall in homicides after 17 January 2015 when influential MS and B-18 gang leaders gave the order to reduce killings. See El Faro, “Ranflas” de MS-13 y Barrio 18 ordenan reducir asesinatos, 23 January 2015, http://www.elfaro.net/es/201501/noticias/16516/Ranflas-de-MS-13-y-Barrio-18-ordenan-reducir-asesinatos.htm

116 As yet, fears expressed by the government that MS and B-18 will combine to create a single structure remain unrealized. See El Universal, Amenaza a frontera sur alianza entre maras, 12 August 2015, http://www.eluniversal.com.mx/articulo/mundo/20150812/amenaza-a-frontera-sur-alianza-entre-maras


as young as 11-12 years. Following the decision by the Sanchez government in April 2015 to return the gang leaders to isolation cells in Zacatecoluca maximum-security prison, in both B-18 and MS the local-level affiliated gangs have reportedly been allowed to operate with almost complete autonomy in adopting an unprecedented degree of aggression towards security forces, the rival gangs and the local community, without needing to consult incarcerated leaders on big decisions such as whether or not to kill a person or to attack a rival gang. The rival gangs are also reported to have embarked on an aggressive expansion to new territories, turning much of the country into an apparent free-fire zone disputed by the gangs.

Especially within MS, since the breakdown of the truce there is also an apparently growing military sophistication that is increasingly transforming the affiliated local gangs into a force that can combat the State and hold territory. In some zones, MS cliques have reportedly been ordered to locate and monitor police officers living in their territory and to kill a specified number, with officers from special police units as a priority and prosecutors and other judicial officials to be targeted if no police officers are found. In just the first four months of 2015, 24 police officers were reportedly killed by the gangs, often when they were off-duty and unarmed, and a total of 44 were killed by August 2015. Moreover, in the second half of 2015 a number of State institutions were targeted by car bombs and other improvised explosive devices, with the MS and B-18 gangs as the principal suspects. Additionally, according to the police 32 per cent of all homicide victims registered between the start of 2014 and mid-September 2015 had links with the gangs, a figure that presumably includes gang-on-gang killings and killings by the security forces.

Finally, as evidenced over the past few years, one of the most remarkable changes occasioned by the truce has been the dramatically increasing political sophistication with which the leaders of B-18 and MS have come to couch their grievances with the government and assert their increasingly overt political ambitions. The gangs reportedly continue to decide which political parties can campaign on their territories and they are also reported to have control of several local churches. Indeed, the MS and B-18 gangs claim to be able to influence the elections in El Salvador and, in February 2015, 129


120 Sala Negra de El Faro, Más represión, más asesinatos, más armas, más reclutamientos, 20 September 2015, http://www.salanegra.elfaro.net/es/201509/chronicas/17376/M%C3%A1s-represi%C3%B3n-m%C3%A1s-asesinatos-m%C3%A1s-armas-m%C3%A1s-reclutamientos.htm.


issued a communique asserting that the ruling FMLN almost lost the 2014 presidential election because it lacked their support.\textsuperscript{29}

Other gangs

Other gangs exist in El Salvador that are not affiliated to MS or B-18. Indeed, whilst 70 per cent of gang members deported from the USA were MS or B-18, other deportees belonged to other \textit{Sureño} structure gangs in California.\textsuperscript{30} Some attached themselves to MS or B-18 once back in El Salvador, whilst others left the gang life and tried to avoid confrontations with the existing gangs.\textsuperscript{31} Of the smaller \textit{Sureño} gangs that tried to establish themselves again, only \textit{Mirada Locos 13} reportedly still survives and is the third strongest gang in El Salvador, based in San Miguel.\textsuperscript{32} However, other deportees reportedly joined together as the \textit{Sureños} gang, composed of members from many different \textit{Sureño} gangs in California, and set up in territories not dominated by MS or B-18 and in businesses that did not interest the bigger gangs (such as the trade in methamphetamine and ecstasy).\textsuperscript{33} The \textit{Sureños} gang has reportedly been racked by internal conflicts and killings in recent years.\textsuperscript{34}

Alongside the \textit{Mirada Locos 13} gang and the \textit{Sureños} gang, other notable non-MS and non-B-18 street gangs currently operating in El Salvador reportedly include, among others, the \textit{Mao Mao} and \textit{La Maquina} – both of which emerged during the civil war of the 1980s – as well as the gangs of \textit{La Raza} and \textit{Mara Desorden}.\textsuperscript{35} In numerical terms, none of these gangs comes close to comparing with either B-18 or MS, although some of the larger ones reportedly dispute territories with local gangs that are B-18 or MS affiliates.

b) Smuggling Structures (\textit{Transportistas})

Alongside the widespread street gangs in El Salvador, there are other organized criminal structures that are linked closely to the dynamics of cross-border smuggling and trafficking of goods and people. These smuggling structures (\textit{transportistas}) developed during the civil war of the 1980s when they moved contraband and illicit goods along the country’s unguarded Pacific coast.\textsuperscript{36} Later, as El Salvador became a key transit point for drug smuggling from the Andean region,\textsuperscript{37} Salvadoran \textit{transportista} groups reportedly developed specialized drug-trafficking networks along specific routes in El Salvador.\textsuperscript{38} They reportedly work for whichever larger regional drug-trafficking organization hires them to receive, store and transport drugs through El Salvador, mostly to Mexico but sometimes directly to the United States.\textsuperscript{39} As a result, they are reported to have become increasingly tied to Mexican drug-smuggling cartels.\textsuperscript{40}


These smuggling structures are considered to be more sophisticated organizations than the street gangs. They are reportedly based around complex horizontal networks of connected persons and do not usually pursue exclusive control of the territories where they are based (nor practise extortionthere), but rather work to move goods along particular smuggling routes.\(^{141}\) They are reported to rely primarily on corruption and bribery of local and national political, police and judicial authorities to secure protection for their activities, although violent means are reportedly also used where this is deemed necessary.\(^ {142}\) Assassinations and threats by these organizations usually appear to be limited largely to disputes or punishments of those involved in the structures,\(^ {143}\) or others who pose a direct risk.\(^ {144}\) Although drug trafficking is a lucrative source of income for these smuggling structures, they reportedly also operate other illicit businesses based around the smuggling of other goods and of people.

The oldest of these smuggling structures is ‘Los Perrones’, which reportedly began smuggling food and clothes in La Unión department in south-eastern El Salvador during the civil war in the 1980s.\(^ {145}\) It is now reported to be principally involved in drug smuggling, money-laundering and other profitable illicit activities,\(^ {146}\) and reportedly works with Mexican drug-trafficking organizations, especially the Sinaloa cartel.\(^ {147}\) It reportedly has a horizontal structure, rather than a clear vertical chain of command, such that it can adapt flexibly to arrests and change.\(^ {148}\) Indeed, at some point the structure split into two divisions that continue to work closely together: ‘Los Perrones Orientales’ are based in the east around San Miguel, Usulután and La Unión departments and ‘Los Perrones Occidentales’ are based around Santa Ana department in the west of El Salvador.\(^ {149}\)

Through bribery and corruption, Los Perrones has reportedly built up a sophisticated intelligence network within the Salvadorian State and it can call on an extensive network of collaborators in local and national government, including politicians, police, prosecutors and judges.\(^ {150}\) The structure is also reportedly linked to some MS and B-18 cliques in the areas where it operates.\(^ {151}\) Police


For instance, it appears that MS cliques have recently begun to violently dispute the control of certain smuggling routes with transportistas in El Salvador, who have enlisted the support of their ties to political elites and the police and military structures—especially the Sinaloa cartel.\(^ {149}\) Indeed, at some point the structure split into two divisions that continue to work closely together: ‘Los Perrones Orientales’ are based in the east around San Miguel, Usulután and La Unión departments and ‘Los Perrones Occidentales’ are based around Santa Ana department in the west of El Salvador.\(^ {149}\)

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investigators and other individuals who pose a threat to the structure or competition for its routes have reportedly been killed.\footnote{152} Newspaper journalists investigating the structure are reported to have received threats.\footnote{153} Despite ongoing arrests of its members, including the jailing of many of the original leaders, the structure is reported to have managed to regroup, expand and increase its transport capacity and continues to operate today.\footnote{154}

A more recent and powerful structure to emerge in northwest El Salvador is the so-called Texis Cartel (\textit{Cartel de Texis}). Based originally in Texistepeque and Metapán, Santa Ana department, the Texis Cartel is reported to operate a cocaine- and people-smuggling route known as \textit{El Caminito} that runs from Honduras to Chalatenango department in north-central El Salvador and then northwest through Sonsonate department to Guatemala.\footnote{155} It has reportedly been involved in transporting drugs and other contraband merchandise for Sinaloa Cartel operatives in Honduras, for the Gulf Cartel and for the Zetas.\footnote{156} However, it reportedly also has connections with other drug-trafficking structures such as the Guatemala-based ‘\textit{Los Temerarios\textquotedblright}’,\footnote{157} which also operates sporadically in El Salvador.\footnote{158} Presently: the Texis Cartel is reportedly organized into four main groups dedicated to different illicit activities: transporting cocaine from Panama to Mexico; selling and distributing drugs; car theft; and money-laundering.\footnote{159} The Texis Cartel is reportedly comprised of a ring of individuals with strong ties to El Salvador’s political and business elites, giving them a veneer of respectability,\footnote{160} although it relies also on the connections brought by incarcerated drug-traffickers of the 1980s.\footnote{161} The structure reportedly wields tremendous political power in the territories where it operates and even up to the national level, including important links with politicians, police and judges that allow it to operate with a degree of impunity.\footnote{162} However, in 2015 the Prosecutor’s Office convicted several Texis Cartel members, including one relatively high profile individual.\footnote{163} Texis Cartel members appear to avoid direct...
involvement in violence and rely instead on the protection of local authorities. The Texis Cartel reportedly also has close connections with local MS cliques along the routes that it operates which protect the drugs and carry out assassinations for hire. There are a number of killings that appear to be associated with the cartel. Newspaper journalists investigating the cartel are reported to have received death threats.

c) State Security Forces

The security forces of the Salvadoran State are reported to have contributed directly to the current dynamics of violence in the country. These include the Civilian National Police (Policía Nacional Civil - PNC), a civilian institution created in the aftermath of the civil war to maintain public order whilst ensuring respect for human rights, and the Armed Forces (Fuerza Armada), which are subject to civilian control and encompass the national Army, Air Force and Navy. As well as territorial units, the PNC has a number of more specialized units, such as the anti-gang unit, and a separate police oversight body (Inspectoría).

Alongside their national defence function, the Armed Forces have reportedly been used for many years to support the police and other State institutions dealing with the security situation inside El Salvador, especially in zones with a strong presence of organized criminal groups.

The deteriorating security situation following the break down of the gang truce is reported to have prompted a strong response from politicians and the security forces. In January 2015, high-ranking police officers and politicians were reported to have authorized members of the security forces to use their weapons against criminals “without fear of any consequences”. In February 2015, the Police Inspector General reportedly characterized the confrontations between the gangs and the security forces as a ‘war’, arguing that gang members killed during such confrontations do not count as executions. A total of 3,000 soldiers have also been deployed specifically to support the PNC in high-crime areas within El Salvador.

In the first four months of 2015, there were reportedly more than 250 shootouts between the police and the gangs, or an average of more than two per day, and bulletproof vests were distributed to security forces operating in particularly dangerous areas. The PNC claimed that the gang members killed as a result of this strategy of armed engagement with the

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166 El Faro, Otro concejal de Metapán vinculado por las autoridades al tráfico de drogas, 27 January 2012, http://www.elfaro.net/es/201201/noticias/7378/Otro-concejal-de-Metapa-%C3%A9n-vinculado-por-autoridades-al-tr%C3%A9fico-de-drogas.htm.
169 This power is granted on an exceptional basis to the president of El Salvador by the Constitution. See Constitution of the Republic (Constitución de la República), Legislative Decree No. 38, 15 December 1983, published in Diario Oficial No. 234, Tomo No. 281, 16 December 1983, http://www.refworld.org/docid/3db96c864.html Article 168(12). However, this power has been renewed annually for a number of years, at least since 2008, most recently in 2015. See El Salvador: Decreto No. 61 of 2015, Reforma al Decreto Ejecutivo No. 60 de fecha 28 de septiembre de 2009, mediante el cual se dispone de la Fuerza Armada, con el propósito de apoyar a la Policía Nacional Civil, en operaciones de mantenimiento de la paz interna. 21 May 2015, http://www.refworld.org/docid/56e2a47f14.html.

gangs account for the majority of registered homicides,\textsuperscript{175} although this is not supported by the official figures.\textsuperscript{176}

Moreover, since 2014, reports have begun to emerge of death squads and vigilante groups with possible connections to the security forces engaging in the extrajudicial killing of suspected gang members in El Salvador.\textsuperscript{177} In 2015 this pattern became more evident with reports of death squads dressed like policemen killing suspected MS gang members and other, mostly young, residents of MS gang-controlled neighbourhoods in different parts of the country.\textsuperscript{178} The police, prosecutors and other institutions of the Salvadoran State have reportedly not made any efforts to investigate these killings.\textsuperscript{179} Extrajudicial executions by the PNC of gang members and persons supposed to be affiliated with the gangs have also been reported.\textsuperscript{180} The security forces reportedly also carried out mass arrests without legal basis and made excessive and arbitrary use of detention, especially of youth suspected of being gang members.\textsuperscript{181} The security forces have reportedly subjected suspected gang members in their custody to severe physical mistreatment.\textsuperscript{182} Newspaper journalists reporting on these stories have reportedly received death threats.\textsuperscript{183}

C. Ability and Willingness of the State to Provide Protection

1. Overview

A number of laws in El Salvador are directed at combating organized crime. A new law banning gangs and criminal organizations was adopted in 2010.\textsuperscript{184} In March 2015, a new anti-extortion law was approved that allows police to investigate extortion without waiting for a complaint, introduces longer sentences for the crime of extortion and attempts to prevent extortion phone calls from prisons.\textsuperscript{185} In August 2015, the Supreme Court confirmed the constitutionality of the 2006 anti-terrorism law, which provides for special measures against ‘terrorist’ organizations and harsher

\textsuperscript{175} ContraPunto, PNC: La mayoría de víctimas y victimarios de homicidios son pandilleros, 6 April 2015, http://www.contrapunto.com/s/v/sociedad/Violencia/pnc-la-mayoria-de-victimas-y-victimarios-de-homicidios-son-pandilleros.

\textsuperscript{176} Recent statistics indicate that 32 per cent of the homicides are gang members, which must include those killed during these clashes but also in inter- and intra-gang violence. See El Diario de Hoy, En siete de cada diez homicidios las víctimas no son de pandillas, 15 November 2015, http://www.elsalvador.com/articulo/sucesos/siete-cada-diez-homicidios-las-victimas-son-pandillas-93242.


\textsuperscript{178} Note, however, that gang members sometimes also wear counterfeit uniforms, although apparently with the motive of attacking police. See La Prensa Gráfica, PNC incauta uniformes a pandilleros en Sooyapango, 1 May 2015, http://www.laprensagrafica.com/2015/05/01/pnc-incauta-uniformes-a-pandilleros-en-sooyapango.


\textsuperscript{180} New law banning gangs and criminal organizations was adopted in 2010. In March 2015, a new anti-extortion law was approved that allows police to investigate extortion without waiting for a complaint, introduces longer sentences for the crime of extortion and attempts to prevent extortion phone calls from prisons.

\textsuperscript{181} In August 2015, the Supreme Court confirmed the constitutionality of the 2006 anti-terrorism law, which provides for special measures against ‘terrorist’ organizations and harsher
sentencing for ‘terrorist’ crimes, in their application to gangs. The judgment confirmed that MS, B-18 and other similar groups constitute ‘terrorist organizations’ under the anti-terrorism law and that their ‘leaders, members, collaborators, apologists and funders’ are considered ‘terrorists’. Despite the existence of this legal framework, weaknesses and corruption in the Salvadoran security forces and the judiciary reportedly contribute to creating a high level of impunity for crimes in El Salvador. As early as 2004, transportista smuggling structures and gangs had reportedly penetrated the State through the police force. Bribes are reportedly also paid by the smuggling structures to political operators to guarantee the free operation of such criminal networks and the free passage of their merchandise. Policemen who investigated high-level drug smugglers have reportedly had their investigations shelved and were instead investigated themselves on minor charges by the Attorney General. The gangs reportedly have their own infiltrators in the police and the military, including certain elite units and the General Staff, who warn them about anti-gang operations and with access to intelligence, weapons and uniforms.

Between 2009 and 2015, the PNC was the State institution about which the highest number of complaints was made regarding human rights abuses. In 2014 alone, 900 police officers were reported to have been sanctioned for misconduct, with this figure likely representing only a fraction of those who committed abuses. It is reported that overall public opinion in El Salvador tends to view the police as driven by aggressive and vindictive motives rather than by professional ethics. Indeed, individual officers and entire local forces within the police reportedly sometimes take one or the other side in disputes between rival local gangs. Moreover, it is reported that neither the police nor any other State authorities have investigated recent murders carried out by uniformed and heavily armed death squads that give the appearance of having official links.

In 2015, there was a small increase in the number of prosecutions of gang members compared to 2014. Proportionally many more children were prosecuted for gang-related crimes in 2015 than in the previous year. In general, though, intimidation and violence against complainants reportedly continues to contribute to a climate of impunity from criminal investigation and prosecution. Victims are particularly averse to reporting crimes perpetrated by gangs for fear of reprisals. For example, a survey indicates that 84 per cent of businesses that were subjected to extortion did not lodge a complaint with the police or other authorities due to threats by gangs and the gangs’ practice of killing those who do report them to the authorities. Complaints to the police about gang extortion are reportedly often relayed back to the gangs, which then exact severe retribution on the complainants.

It is reported that the police – even the elite Anti-Gang Unit in high-profile cases – are usually not seen as offering a sufficient form of protection for those residents who are threatened by gangs, since their presence is only temporary and the gangs will return once the police move on after a few hours or days. Reports indicate that often the most that police are able to do is to provide an escort out of the neighbourhood for those who have received threats. Even police officials who live in areas where the gangs operate are reported to acknowledge their fear at the inability of the State to protect them from assassination in their homes or on the way to work.

The judicial system is reported to be particularly inefficient and subject to corruption, a practice that in turn contributes to high levels of impunity for crimes in El Salvador, where the criminal conviction rate reportedly is less than 5 per cent. In 2012 alone, there were reports of ongoing investigations into complaints against 487 of the 600 serving judges in El Salvador. The Salvadorian penal system is reported to have a history of particular weakness when it comes to prosecuting high-level drug-traffickers. Even specialized anti-mafia judges have reportedly been arrested on charges of receiving bribes from organized criminal groups.

In 2006, El Salvador adopted a law that provides for protection and support to victims and witnesses of crimes. Each year, the programme created by this law reportedly supports around 1000 victims or witnesses, about 50 of whom are ‘protected witnesses’ (i.e. criminal turncoats), through measures

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199 Compared with 2014, there was an increase of 52% of minors being prosecuted for gang-related crimes in 2015, leading to calls among some politicians to try such cases as adults rather than under the more favourable penal framework applied to minors. El Nuevo Diario, Aumentan en un 52 % los menores pandilleros procesados en El Salvador en 2015, 10 October 2015, http://www.elnuevodiario.com.ni/internacionales/373365-aumentan-52-menores-pandilleros-procesados-salvadore.
205 Sala Negra de El Faro, La rebelión por la que sangra Zacatecoluca, 3 November 2014, http://www.salenegra.elfaro.net/es/201411/cronicas/16173/La-rebeli%C3%B3n-por-la-que-sangra-Zacatecoluca.htm.
such as the offer of a safe house or a sporadic subsistence stipend. However, there are well-documented examples of these witnesses, especially the protected witnesses, being tracked down and killed by gangs and other organized criminal groups, including after trial judges allowed or ordered their identities to be revealed during trial proceedings.

Fear, shame and lack of confidence in what is generally considered an ineffective and unsupportive justice system reportedly come together to prevent many women from reporting domestic or gang violence. Moreover, a particular issue reported to exacerbate women’s vulnerability is the fact that the penal code in El Salvador prohibits abortion in all circumstances such that, between 2000 and 2011, it is reported that 129 women were prosecuted for crimes relating to abortion, 23 of whom were convicted of abortion and 26 of homicide. By contrast, despite the fact that Salvadoran women, men and children are at risk of trafficking (for forced labour as well as sexual exploitation), the police in El Salvador are reported to have made only 96 arrests for human trafficking between 2012 and 2015, of which only 35 cases were reported.

Conditions in the prison system are reportedly to be harsh and life threatening due to gross overcrowding, unhygienic conditions, and gang activities. While the prisons are built to hold around 8,500 persons, the current prison population is reported to be in excess of 32,000, of whom 74 per cent are convicts and 26 per cent are awaiting trial, with homicide as the most common offence. Around 38 per cent of the current prison population report being members of a gang. Even though members of the MS and B-18 are sent to separate prisons to minimize confrontations, violence in the prisons continues. In August 2015, 14 members of the B-18 Revolucionarios faction were reportedly murdered in an internal purge in Quezaltepeque prison.

211 Sala Negra de El Faro, Asesinaron al Niño de Hollywood (y todos sabíamos que eso ocurriría), 30 November 2015, http://www.salanegra.elfaro.net/es/201411/cronicas/16293/Asesinaron-al-Ni%C3%B1o-de-Hollywood-(y-todos-sab%C3%ADamos-que-eso-ocurr%C3%ADa).htm.


In January 2015, the new government outlined its five-year US$2.1 billion ‘Secure El Salvador Plan’ (Plan El Salvador Seguro), which includes an increased focus on the country’s 50 most violent municipalities and also emphasizes crime prevention and reform of the criminal justice system. However, although the plan was officially launched in July 2015, its implementation is reported to remain contingent on legislative approval of security budget proposals. The Sánchez Ceren administration also proposed a gang rehabilitation law in April 2015 that would be the first of its kind in El Salvador; it was presented to the Legislative Assembly in October 2015. However, in the current political climate this proposed law is reportedly expected to face serious challenges in gaining the requisite political backing.

2. Trends in Internal and External Displacement and Returns

No government system exists to register internally displaced persons or to monitor the dynamics of internal displacement in El Salvador. Nonetheless, academic surveys carried out in El Salvador report that in 2012 alone 2.1 per cent of its total population were newly displaced within the country due to criminal violence and threats. \(^\text{225}\) Scale up to the total population of El Salvador, this equates to approximately 130,000 people newly displaced in 2012 alone. Around one-third of those displaced were reportedly displaced twice within 2012. \(^\text{226}\) In 2014, the same survey found that 4.6 per cent of the population were displaced in that year on the same grounds, \(^\text{227}\) equating to about 275,000 people. Of these, 1.8 per cent was reportedly forced to change homes six times during that year to escape unrelenting threats and fears of violence. \(^\text{228}\)

Government figures on the number of children dropping out of the public education system in El Salvador each year appear to corroborate the magnitude of the crisis of violence and forced displacement in the country. \(^\text{229}\) These figures show that in 2014, approximately 1 per cent of children in the public education system dropped out and reported ‘insecurity’ as the reason, more than twice as many as in 2009. Moreover, some of the other reasons given by children for dropping out of school in 2014, such as ‘change of home’ (2.2% of all public school children), ‘leaving country’ (1.2%) and ‘change of school’ (0.3%), are thought to also be related to threats and forced displacement. \(^\text{230}\)

One of the reported reasons for multiple displacements is that displaced persons often have little choice but to relocate to areas that are also controlled by gangs. \(^\text{231}\) If they move to an area controlled by the same gang, their problems are likely to follow them to the new location; if they move to an area

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226 Ibíd., p. 33a, table 38.


228 Ibíd., p. 10, cuadro 26.

229 El Faro, La deserción escolar por inseguridad se duplicó en los últimos cinco años, 24 August 2015, http://www.elfaro.net/es/201508/noticias/17252/La-deserci%C3%B3n-escolar-por-inseguridad-se-duplic%C3%B3-en-los-%C3%B3ltimos-cinco-%E2%80%93Biost.htm; For different figures but same conclusions, see also La Prensa Gráfica, 68 Estudiantes abandonan la escuela cada día por la delincuencia, 26 August 2015, http://www.laprensaagrifica.com/201508/26/68-estudiantes-abandonan-la-escuela-cada-dia-por-la-delincuencia#shash.cvnwmi5E3.dmpf.

230 Ibíd.

231 Sala Negra de El Faro, Huir de las pandillas ante la mirada de la Policía Antipandillas, 21 January 2015, http://www.salanegra.elfaro.net/es/201501/cronicas/16500/Huir-de-las-pandillas-ante-la-mirada-de-la-Polic%C3%ADa-Antipandillas.htm.
Salvadorans affected by the present dynamics of violence are also fleeing El Salvador in increasing numbers to seek asylum outside the country. As at the end of 2014, 10,965 Salvadorians were recognized as refugees, the majority by the United States of America and Canada (10,006); another 18,037 asylum applications by Salvadorians remained pending a decision at the year’s end. The number of asylum applications by Salvadorians has increased significantly, with 11,742 applications lodged in 2014, almost twice the number of applications lodged in 2013 (6,601 applications) and three times the number of applications in 2010 (3,810 applications). In the first six months of 2015, the number of asylum applications by Salvadorians in the United States of America increased by 125 per cent compared to the same period in 2014, with a total of 8,700 applications. In 2014, 32.7 per cent of all decisions taken on Salvadoran asylum applicants resulted in recognition under the 1951 Convention, while the total protection rate was 38 per cent.

The majority of claims for asylum by Salvadorians are lodged in the United States of America (USA). Although many of these claims are lodged by adults, from 2011 onwards the southern border of the USA also saw a surge in unaccompanied child arrivals from children fleeing El Salvador and the other Northern Triangle countries, many of whom claimed asylum. Interview data from 2013 indicates that 72 per cent of the children from El Salvador claim to have left because of violence in society, with 63 per cent specifying gangs as the source of harm, while 20 per cent of the children mentioned domestic violence as a relevant factor.

Although some Salvadorian migrants have voluntarily returned to the country, the number of Salvadorian refugees voluntarily repatriating to El Salvador in recent years is negligible. However, Salvadorian refugees voluntarily repatriating to El Salvador in recent years is negligible.
a large number of Salvadorian nationals are deported each year from the USA and Mexico by air and land, either pursuant to a deportation order following conviction for criminal activities or due to their irregular migration status.246 Deportees are reported to be easily identifiable by gang members at the point of return to El Salvador, putting deportees who had left El Salvador because of specific problems with a gang at particular risk.247 In some cases, deportees and other returnees who left the country due to insecurity or threats have been killed by gangs shortly after arrival in El Salvador.248 Deportees and returning migrants who bring resources from overseas are also reported to be an identifiable target for extortion by the gangs and thus face heightened threats, as are children and other persons in El Salvador who receive remittances from family members living and working overseas.249

III. Assessment of International Protection Needs of Asylum-seekers from El Salvador

A. Refugee Protection under the 1951 Convention

This Section outlines a number of potential risk profiles for asylum-seekers from El Salvador. UNHCR considers that asylum-seekers from El Salvador falling within one or more of these risk profiles may be in need of international refugee protection under Article 1A of the 1951 Convention relating to the Status of Refugees (1951 Convention), depending on the circumstances of the individual case. Potential risk profiles are based on UNHCR’s legal assessment of available country of origin information at the time of writing as referred to in Section II and the present section.

Examination of claims by asylum-seekers in this context should include a full analysis of applicable Convention grounds.250 In the particular context of El Salvador, where gangs are reported to exercise high levels of social control over all aspects of life of members of the population in the areas under the gangs’ control (see Section II.B.2.a in particular), it would frequently be appropriate for applications for international protection from applicants who flee gang-related forms of persecution to be analysed in relation to the ground of (imputed) political opinion.251 The ground of political opinion needs to reflect the reality of the specific geographical, historical, political, legal, judicial, and socio-cultural context of the country of origin. In contexts such as that in El Salvador, expressing objections to the activities of gangs may be considered as amounting to an opinion that is critical of the methods and policies of those in control and, thus, constitute a “political opinion” within the meaning of the


refugee definition. For example, individuals who resist being recruited by a gang, or who refuse to comply with demands made by the gangs, such as demands to pay extortion money, may be perceived to hold a political opinion.

Not all persons falling within the risk profiles outlined in this Section will necessarily be found to be a refugee. Conversely, these risk profiles are not necessarily exhaustive. A claim should not automatically be considered as without merit simply because it does not fall within any of the identified profiles. There is no hierarchy implied in the order in which the profiles are presented. All claims by Salvadorian asylum-seekers need to be considered on their own merits in fair and efficient status determination procedures and based on up-to-date country of origin information. There is a certain degree of overlap between some of the profiles, and the particular circumstances of an individual asylum-seeker may mean that two or more profiles may be applicable to the applicant.

Where relevant, particular consideration should be given to any past persecution to which applicants for refugee status may have been subjected. In light of the context of organized crime and human rights abuses in El Salvador, the applicability of the exclusion clauses may need to be considered in certain cases.

1. Persons perceived by a gang as contravening its rules or resisting its authority

Gangs in El Salvador reportedly perceive a wide range of acts by residents of the area under the gang’s control as demonstrating ‘resistance’ to their authority. Acts commonly construed as a gang’s authority reportedly include but are not limited to: criticizing the gang; refusing a request or ‘favour’ by a gang member; arguing with or looking mistrustfully at a gang member; refusing to participate in gang activities or to join the gang; rejecting the sexual attention of a gang member; having (perceived) links with a rival gang or a zone controlled by a rival gang; refusing to pay extortion demands; wearing certain clothing, tattoos or other symbols; participating in civil, religious or other organizations viewed as undermining the gang’s authority; and passing on information about the gang to rivals, authorities or outsiders. In some cases, a stranger accidentally turning up in a gang zone is reportedly taken as a serious affront to the gang’s authority.

Persons who live in localities that serve as ‘invisible’ boundaries between the territories of rival

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252 Ibid., paras 46.
253 Ibid., paras 50-51.
254 Based on the specific country information relating to El Salvador, these risk profiles develop those identified in general terms by UNHCR in its typology of victims of organized gangs. See UNHCR, Guidance Note on Refugee Claims Relating to Victims of Organized Gangs, 31 March 2010, www.refworld.org/docid/4bb21fa44.html, pp. 4-6.
gangs, or where the control of one gang is being disputed by another gang, also face a heightened risk of being perceived (sometimes by both sides) as having links with the rival gang.\textsuperscript{258}

The nature of retaliation for perceived acts of ‘resistance’ or ‘disloyalty’ by inhabitants is reported to vary to some degree depending on the ‘character’ of the local gang and the form of ‘resistance’ involved. However, most perceived contraventions of these gang-imposed rules are dealt with severely: individuals whom the gang members suspect of resisting their authority are reported often to be killed without prior warning,\textsuperscript{259} although sometimes the killing is reportedly preceded by threats and/or other attacks against the person concerned.\textsuperscript{260} Religious leaders, and other formal and informal community leaders, who represent an alternative source of authority to the gangs and who oppose them, or are perceived by the gangs as doing so, are equally at risk of violent retaliation.\textsuperscript{261} Since the breakdown of the gang truce, and particularly throughout 2015,\textsuperscript{262} the gangs have reportedly escalated their use of extreme violence against the local population to unprecedented levels.\textsuperscript{263}

Depending on the particular circumstances of the case, UNHCR considers that persons perceived by a gang as contravening its rules or resisting its authority may be in need of international refugee protection on the grounds of their (imputed) political opinion,\textsuperscript{264} membership of a particular social group,\textsuperscript{265} or on the basis of other Convention grounds.

2. Persons in professions or positions susceptible to extortion, including those involved in informal and formal commerce as business owners, their employees and workers, or as street vendors; public transport workers; taxi and mototaxi (tuc-tuc) drivers; public sector employees; children and adults who receive remittances from abroad; and certain returnees from abroad

Extortion is reported to be pervasive in El Salvador and the regular extortion quotas imposed by the gangs can be crippling. Those subject to extortion demands for money, goods and services include, but are not limited to, persons involved in informal and formal commerce as business owners, their employees and workers, or as street vendors; public transport workers; taxi and mototaxi (tuc-tuc)


\textsuperscript{260} See Sections II.A and II.B.2(a) above.

\textsuperscript{261} See also Sala Negra de El Faro, La legión de los desplazados, 1 October 2012, http://www.especiales.elfaro.net/es/salanegra_desplazados/.


\textsuperscript{263} See also Sala Negra de El Faro, Más represión, más asesinatos, más armas, más reclutamientos, 20 September 2015, http://www.salanegra.elfaro.net/es/201509/cronicas/17376/M%C3%A1s-represi%C3%B3n-m%C3%A1s-asesinatos-m%C3%A1s-armas-m%C3%A1s-reclutamientos.htm.


drivers; public sector employees; youngest women who return from abroad with financial resources; children and adults who receive remittances from family members who live and work abroad; and even schoolchildren for the little money they may carry. The level of extortion payments are reportedly often raised steeply and without warning by gangs, sometimes with the apparent intention of bankrupting a business so that the gang can take it over. Moreover, extortion victims may have to simultaneously pay extortion money to two or more gangs, especially where a business operates across one or more territories where these gangs practise extortion. It is reportedly not unusual for victims to lose their livelihood due to excessive extortion demands by gangs, which are reported to have risen sharply since 2014. Extortion demands reportedly sometimes take the form of a requirement to purchase at an inflated price (poor quality) goods or services from businesses controlled by the gangs. Extortion is reportedly the lifeblood of most local gangs in El Salvador and the refusal to pay extortion demands is usually construed by gang members as a serious act of resistance to the authority of the gang itself. Individuals who refuse to pay extortion demands – or who delay in meeting their ‘quotas’ because they are unable to pay – are reportedly subjected to threats and violence against them, as well as against their employees, business partners and family members. The threats and violence reportedly swiftly escalate with any continuing delay or refusal to pay, with persons in these circumstances reportedly commonly being killed by the gangs. Persons found by the gangs to have reported extortion demands to the authorities are also reportedly subjected to severe retribution.

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Depending on the particular circumstances of the case, UNHCR considers that persons in professions or positions susceptible to extortion, including but not limited to those involved in informal and formal commerce as business owners, their employees and workers, or as street vendors; public transport workers; taxi and mototaxi drivers; public sector employees; and certain returnees from abroad may be in need of international refugee protection on the basis of their (imputed) political opinion, or on the basis of their membership of a particular social group, or on the basis of other Convention grounds.\(^{276}\)

3. ‘Informants’, victims of crimes committed by gangs and other organized criminal groups, or by members of the security forces

Witnesses and victims of crimes committed by gangs and other organized criminal groups in El Salvador have reportedly been killed by the perpetrators to ensure their silence, even when they have not sought to formally denounce those crimes to the authorities.\(^{277}\) Those who do denounce the crimes, or who otherwise cooperate with the authorities against gangs or other organized crime groups as ‘informants’, are reportedly pursued for their ‘betrayal’, often along with their family members, even when placed in a witness protection programme.\(^{275}\) Persons giving evidence against corrupt members of the security forces have also reportedly been targeted and killed, even as protected witnesses.\(^{279}\)

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\(^{277}\) Depending on the particular circumstances of the case, UNHCR considers that ‘informants’, witnesses, and victims of crimes committed by gangs and other organized criminal groups or by members of the security forces may be in need of international refugee protection on the ground of their (imputed) political opinions, or on the basis of their membership of a particular social group, or on the basis of other Convention grounds.


4. **Family members, dependants and other members of the household of gang members or other organized criminal groups; inhabitants of areas where gang activities occur; and others who are perceived to be affiliated with a gang**

Persons suspected by one gang of supporting or having links with a rival gang are reportedly subjected to threats and violence. Persons with a family member (or family members) in a gang, as well as other persons perceived to be affiliated with members of gangs or other organized criminal groups, are reportedly treated with suspicion and have been attacked and killed. At the same time, male inhabitants of zones where the gangs operate and persons otherwise perceived – whether correctly or not – to be affiliated with the gangs by members of the security forces or by members of reputed death squads have also reportedly been attacked and killed by these armed actors.

Depending on the particular circumstances of the case, UNHCR considers that family members, dependants and other members of the households of gang members may be in need of international protection on the basis of their (imputed) political opinion, or on the basis of other Convention grounds. Inhabitants of areas where gangs are known to operate, and other persons perceived to be affiliated with gang members or members of other organized criminal groups, may...
also be in need of international refugee protection on the basis of their (imputed) political opinion, or on the basis of other Convention grounds. 284

5. Gang ‘traitors’ and former members; criminal turncoats

Gangs and other organized criminal groups reportedly track down those whom they consider to have betrayed them. The gangs are reported to usually pursue and kill their own ‘traitors’, including not only the so-called pecetas (turncoats) but also those who leave a gang without permission or otherwise seriously breach the rules of the gang. 285 The family members of these ‘traitors’ are reportedly also often attacked. 286 At the same time, an individual who has left a gang reportedly continues to face an undiminished risk of assassination by members of rival gangs, and by members of his/her own former gang if s/he refuses to collaborate with such demands as they may make from time-to-time of the ex-member. 287

Depending on the particular circumstances of the case, UNHCR considers that gang deserters and former gang members, including turncoats, may be in need of international refugee protection on the basis of their membership of a particular social group, or on the basis of their (imputed) political opinion, or on the basis of other Convention grounds. 288 Claims by persons of this profile may give rise to the need to examine possible exclusion from refugee status. 289

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288 For further analysis on exclusion considerations, see Section III.D.
6. Children and youth with certain profiles or in specific circumstances

Children and youth suffer multiple types of violence in El Salvador. Children may fall into any of the profiles listed in these Eligibility Guidelines. However, children in El Salvador may also be at risk of child-specific forms of persecution. Domestic abuse of children, both boys and girls, is reported to be relatively widespread in El Salvador. Moreover, the upsurge in gang violence since the early 2010s has reportedly given the country the highest rate of homicide among children and adolescents in the world, and homicide is the leading cause of death among adolescent boys in El Salvador. Since the early 2010s gangs have reportedly been responsible for the forced disappearance of a significant number of children and youth, with the majority of victims later found murdered.

The fact that children, particularly those living in territories where the gangs operate, are frequently a target of gang violence is partly the result of the reported large numbers of youth in the gangs themselves. Children and youth who have not been recruited by a gang but who live in territories where gangs operate reportedly find it difficult to avoid coming into contact with the local gang, its members and its activities (e.g. being asked to do the gang a ‘favour’, receiving the amorous attention of a gang member, etc.) or being (mis)taken for a member or affiliate of the local group by rival gangs. Students who go to school in an area that is controlled by a different gang than the gang that controls the area where they live are reportedly at risk of being targeted for violence by the rival gangs at school and while they travel to school. Children equally face such risks when they travel to visit relatives or attend a health centre, etc., in an area controlled by a different gang. The gangs are reported to have a presence in schools and some schools have been forced to close due to the violence of the gangs.


Recruitment by gangs of local children and youth — particularly boys but sometimes also girls — reportedly starts from an early age.298 Efforts by gangs to recruit new members from the children and youth have reportedly seen a significant increase since the early 2010s.299 New members are reportedly often required to prove their value through acts of violence, despite their young age.300 Girls are reportedly increasingly targeted from a young age by gangs with demands to become “wives” or girlfriends of gang members.301 The refusal to join a gang or to collaborate with its members by a child or youth and/or their family is reportedly usually interpreted as a challenge to the gang’s authority or as a ground for suspicion of some rival affiliation,302 resulting in threats and violence directed against the child or youth and/or their family members. Even if the child leaves the area where the gang operates, family members who remain there reportedly may continue to face threats and violence.303

Depending on the particular circumstances of the case, UNHCR considers that children, in particular but not limited to those from areas where gangs operate or from social milieus where violence against children is practised, may be in need of international refugee protection on the basis of their membership of a particular social group, or on the basis of their (imputed) political opinion or on the basis of other Convention grounds.304 Asylum claims made by children, including any examination of exclusion considerations for children formerly associated with a gang or other organized criminal group, need to be assessed carefully and in accordance with the UNHCR Guidelines on child asylum claims.305

304 UNHCR, Guidelines on International Protection No. 8: Child Asylum Claims under Articles I(A2) and I(F) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees, HCR/GIP/09/08, 22 December 2009, http://www.refworld.org/docid/4b2f4fd2.html. For further analyses on exclusion considerations, see Section III.D.
7. **Women and girls with certain profiles or in specific circumstances**

Discrimination and violence against women and girls is reported to be prevalent in El Salvador. In the country, there are reported cases of domestic violence against women and girls, which often trap them as any attempt to report the violence or to escape the situation in the home would likely lead to targeting for violence by gang members, and may also put the woman’s family members at risk. Some women and girls also face stigma and prosecution as a result of the government’s restrictive approach to abortion.

In the territories where the gangs operate, sexual and gender-based violence against women and girls is reportedly widespread, as is the recruitment of girls to carry out tasks for the gangs. Women and girls perceived as being linked with a particular gang are reportedly also a target for rival gangs and they and other women and girls are reportedly abused, raped and killed as part of gang initiation rites, or if they try to leave the gang to which they belong or with which they are affiliated, or if they are seen to resist its authority in other ways, including by rejecting the sexual advances of a gang member.


member. Women and girls may be seen by gang members as their partners, even when a woman or girl has never consented to being in a couple. Women and girls in this situation are subjected to persistent violence, while being unable to seek protection due to the authority exercised by their “partner” in the area controlled by the gang. Family members of women and girls who have problems with the gangs are also often targeted on the basis of their affiliation to the woman or girl in question.

Depending on the particular circumstances of the case, UNHCR considers that women and girls, in particular but not limited to women and girls from areas where gangs operate or those from social milieus where violence against sexual and gender-based violence against women and girls is practised, may be in need of international refugee protection on the basis of their membership of a particular social group, and/or their (imputed) political opinion, or on the basis of the other Convention grounds.

8. Individuals of diverse sexual orientations and/or gender identities

Discrimination against individuals of diverse sexual orientation and/or gender identities is reportedly widespread in El Salvador and such persons have consistently been targeted for attacks and murder by the gangs and other sectors of society, including by the police and other public authorities. As noted


above, the Salvadoran gangs are reported to possess a strong macho ethos, which reportedly expresses itself on an everyday basis through their virulent hatred and ill-treatment of persons based on their perceived sexual orientation and/or gender identity. Transgender individuals, in particular transwomen, are reported to be at particular risk of violence.\footnote{319}{Depending on the particular circumstances of the case, UNHCR considers that individuals of diverse sexual orientations and/or gender identities may be in need of international refugee protection on the basis of their membership of a particular social group, or on the basis of other Convention grounds. \footnote{320}{It should be emphasized that individuals of diverse sexual orientations and/or gender identities cannot be expected to change or conceal their identity in order to avoid persecution.}}

9. **Journalists and human rights defenders, especially those working on issues relating to organized crime and corruption**

Depending on the particular circumstances of the case, UNHCR considers that journalists, other media professionals and human rights defenders who are working on issues perceived to be sensitive by either State or non-State armed actors, including but not limited to organized crime and corruption, may be in need of international refugee protection on the ground of their (imputed) political opinion, or on the basis of other Convention grounds.  

10. Teachers and educators working in public schools and educational institutions

Due to the youthful membership of the gangs in El Salvador, gangs reportedly often seek to exert influence in and on public schools and educational institutions in the zones where they operate. Gang members may also be present as students in these schools and educational institutions. Teachers and other educators working in parts of the country where gangs are present reportedly often find themselves subject to extortion demands. Moreover, those teachers and educators who represent an alternative source of authority or resist or oppose the gangs and their recruitment of local youth have reportedly been threatened and killed by the gangs.

Depending on the particular circumstances of the case, UNHCR considers that teachers and educators working in public schools and educational institutions may be in need of international refugee protection on the basis of their (imputed) political opinion, or on the basis of other Convention grounds.

11. Former members of the police and armed forces

Members of the PNC and armed forces have long represented a target for attack by gang members and other organized criminal groups, especially since lower-ranking officials often live in the same neighbourhoods as gang members. However, since the breakdown of the gang truce, some local gangs have reportedly been ordered to kill a specified number of police officers living in their vicinity and on the basis of their (imputed) political opinion, or on the basis of other Convention grounds.


tories. As a result, in 2015 the targeted assassination of policemen and soldiers, often off-duty, by the gangs reportedly escalated sharply. In 2015, a number of State institutions were also targeted by improvised explosive devices, in attacks that were reportedly coordinated by the gangs.

Depending on the particular circumstances of the case, UNHCR considers that members of the PNC and armed forces may be in need of international refugee protection on the basis of their membership of a particular social group, or on the basis of other Convention grounds. In view of the need to maintain the civilian and humanitarian character of asylum, applications for international refugee protection by combatants should not be considered unless it is established that they have genuinely and permanently renounced military and armed activities. Claims by persons of this profile may give rise to the need to examine possible exclusion from refugee status.

12. Other public officials, especially those engaged in investigating or confronting organized crime, including judges, prosecutors and attorneys

Judges, prosecutors engaged in investigating or confronting organized crime, including the gangs, have reportedly been threatened and attacked. Moreover, since the breakdown of the gang truce, some gangs have reportedly ordered their members to kill judicial officials in their territories if no police officers – reportedly the gangs’ principal target – are found there. Other public officials, including both local and national government employees, who are working in


334 For further analysis of exclusion considerations, see Section III.D.


13. **Family members, dependants, other members of the households, and employees of persons falling within the previous risk profiles**

Family members, dependants, other members of the households of individuals with any of the profiles above, as well as employees of such individuals, can reportedly also be a target for attacks and assassination by gangs, sometimes even after the person who was initially targeted by the gang in question has fled or has already been killed.\(^\text{340}\)

B. **Refugee Status under UNHCR’s Broader Mandate Criteria, under the Cartagena Declaration or under Article I(2) of the 1969 OAU Convention and Protection on Other Grounds**

The 1951 Convention forms the cornerstone of the international refugee protection regime. The criteria for refugee status contained in the 1951 Convention need to be interpreted in such a manner that individuals or groups of persons who meet these criteria are duly recognized and protected under that instrument. Only when an asylum-seeker is found not to meet the refugee criteria in the 1951 Convention, for example because the feared persecution is not for reason of a Convention ground, or the threshold for applying the 1951 Convention definition is not otherwise met, should broader

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international protection criteria contained in UNHCR’s mandate and regional instruments be examined.

1. Refugee Status under UNHCR’s Broader Mandate Criteria

UNHCR’s mandate encompasses individuals who meet the refugee criteria under the 1951 Convention and its 1967 Protocol, but has been broadened through successive UN General Assembly and ECOSOC resolutions to a variety of other situations of forced displacement resulting from indiscriminate violence or public disorder. In light of this evolution, UNHCR’s competence to provide international protection to refugees extends to individuals who are outside their country of nationality or habitual residence and who are unable or unwilling to return there owing to serious threats to life, physical integrity or freedom resulting from indiscriminate violence or other events seriously disturbing public order.

In light of the information provided in Section II above, UNHCR considers that most if not all violence in Salvadorian society is indiscriminate, targeting individuals or groups of individuals for specific reasons. Where these reasons are related to one or more of the 1951 Convention grounds, it is appropriate to consider eligibility for refugee status under the 1951 Convention.

While the need to consider eligibility for refugee status under UNHCR’s broader mandate on the basis of indiscriminate violence is thus unlikely to arise, there may be exceptional cases where it is necessary to assess the threat to life, physical integrity or freedom resulting from events seriously disturbing public order. In the exceptional circumstances of El Salvador, relevant considerations in this regard include the fact that in certain parts of the country the Government has lost effective control to gangs or other organized criminal groups and is unable to provide protection to civilians.

In the context of El Salvador, the available information indicates that the exercise of control over key aspects of people’s lives in areas controlled by gangs is repressive, coercive and undermines an ordre public based on respect for the rule of law and human dignity.

Relevant indicators to assess the threat to life, physical integrity or freedom resulting from events seriously disturbing public order include: (i) high rates of murders, disappearances, attacks, kidnappings, sexual, gender-based and other forms of violence, particularly in areas where gangs are active (see Section II.B); and (ii) the number of people who have been forcibly displaced due to criminal violence, whether in urban or in rural settings (see Section II.C.2); (iii) the extensive measures of control, including social, economic, and political control, over local populations by gangs in certain parts of the country, including by means of threats, intimidation and extortion, thereby seriously affecting the State’s ability to provide protection; (iv) the ability of gangs and other organized criminal groups and government officials to commit violent crimes, extortion and a range of human rights abuses with impunity; (v) the forced recruitment of youth and others by gangs; (vi) the impact of organized criminal violence on the humanitarian situation as manifested by poverty and the systematic undermining of livelihoods in urban and rural settings; and (vii) systematic constraints on access to education and other basic services as a result of insecurity.

Against this background, UNHCR considers that individuals who have been found not to meet the

Note in particular that in some armed conflicts or other situations of violence, harm may appear to be indiscriminate. However, the underlying causes, character and/or impact of the violence causing harm may reveal that it is in fact discriminating. UNHCR, Summary Conclusions on International Protection of Persons Fleeing Armed Conflict and Other Situations of Violence; Roundtable 13 and 14 September 2012, Cape Town, South Africa, 20 December 2012, http://www.refworld.org/docid/50d32e5e2.html, para 17.


See Section II.C.1 and references therein.

See Section II.B.2.a and references therein.

refugee criteria contained in the 1951 Convention and who originate from areas where organized criminal groups, particularly gangs, have a strong presence and are operating, may, depending on the individual circumstances of the case, be in need of international protection under UNHCR’s broader mandate criteria on the grounds of serious threats to life, physical integrity or freedom resulting from events seriously disturbing public order.

2.  **Refugee Status under the Cartagena Declaration**

Salvadorian asylum-seekers who seek international protection in any of the countries that have incorporated the refugee definition included in the 1984 Cartagena Declaration on Refugees (Cartagena Declaration)\(^{349}\) into their national legislation may qualify for refugee status on the grounds that their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances that have seriously disturbed public order.\(^{350}\)

Following similar considerations as for UNHCR’s broader mandate criteria, UNHCR considers that individuals who have been found not to meet the refugee criteria contained in the 1951 Convention but who originate from areas in El Salvador controlled by gangs or where gangs otherwise have a strong presence and are operating, may, depending on the individual circumstances of the case, be in need of international protection under the terms of the refugee definition of the Cartagena Declaration, on the grounds that their lives, safety or freedom were threatened by one or more of the objective situations listed in that definition. Whether these criteria are met in a specific area needs to be assessed in each case at the time of adjudication.

3.  **Refugee Status under Article I(2) of the 1969 OAU Convention**

For the same reasons as above, UNHCR considers that individuals who have been found not to meet the refugee criteria contained in the 1951 Convention but who originate from areas in El Salvador where street gangs have a strong presence and are operating, may, depending on the individual circumstances of the case, be in need of international protection under the terms of Article I(2) of the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention).\(^{351}\)

4.  **Eligibility for Subsidiary Protection under the EU Qualification Directive**

Persons originating from El Salvador who seek international protection in Member States of the European Union and who are found not to be refugees under the 1951 Convention may qualify for subsidiary protection under Article 15 of the Qualification Directive (recast), if there are substantial grounds for believing that they would face a real risk of serious harm in El Salvador.\(^{352}\)

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\(^{349}\) *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984, [http://www.refworld.org/docid/3ae6b36018.html](http://www.refworld.org/docid/3ae6b36018.html).* Unlike the OAU Convention [see below], the Cartagena Declaration is not a binding legal instrument; its provisions acquire the force of law only through incorporation in national legislation. For guidance on the interpretation of the Refugee Definition in the Cartagena Declaration, see: UNHCR, *Summary Conclusions on the Interpretation of the Extended Refugee Definition in the 1984 Cartagena Declaration; Roundtable 15 and 16 October 2013, Montevideo, Uruguay, 7 July 2014,* [http://www.refworld.org/docid/53c52e7d4.html](http://www.refworld.org/docid/53c52e7d4.html).

\(^{350}\) *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984,* [http://www.refworld.org/docid/3ae6b36ec.html](http://www.refworld.org/docid/3ae6b36ec.html), para. III(3).


\(^{352}\) Serious harm for the purposes of the Qualification Directive is defined as (a) the death penalty or execution; or (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict. *European Union, Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 13 December 2011,* [http://www.refworld.org/docid/4f06fa5e2.html](http://www.refworld.org/docid/4f06fa5e2.html), Articles 2(1), 15. In light of the information presented in these Protection Considerations, applicants may, depending on the individual circumstances of the case, be in need of
In light of the information provided in Section II above, UNHCR considers that most if not all violence in Salvadorian society is discriminate, targeting specific individuals or groups of individuals for specific reasons. Where these reasons are related to one or more of the 1951 Convention grounds, it is appropriate to consider eligibility for refugee status under the 1951 Convention. In these circumstances, the need to consider eligibility for international protection under Article 15(c) of the Qualification Directive (recast) is unlikely to arise.

C. Considerations Relating to the Application of an Internal Flight or Relocation Alternative

Assessment of the possibility of the application of an internal flight or relocation alternative (IFA/IRA) requires an evaluation of the relevance as well as reasonableness of the proposed IFA/IRA. 353

1. Relevance of IFA/IRA

Where the claimant has a well-founded fear of persecution at the hands of the State and/or its agents, there is a presumption that consideration of an IFA/IRA is not relevant.

Where the agents of persecution are non-State agents, consideration must be given to whether the persecutor is likely to pursue the claimant in the proposed area of relocation. Considering the small territorial size of El Salvador, and given the ability of the gangs and other organized criminal groups to operate country-wide, and indeed internationally – both independently and as part of international criminal networks – a viable IFA/IRA is unlikely to be available to individuals at risk of being pursued by such actors. It is particularly important to note the operational capacity of certain organized structures, particularly the MS and B-18 and the larger smuggling structures, to carry out attacks in any part of El Salvador, irrespective of territorial control of the specific zone. Further consideration should be given to: (i) the reach and ability of organized criminal networks to trace and target individuals, both in rural areas and in urban centres, including in the capital city of San Salvador, and including individuals who are covered by State-run protection programmes; (ii) the profile of the asylum-seeker and the existence of any reasonable grounds to believe that he or she will be traced and targeted; and (iii) the profile of the asylum-seeker and the existence of any reasonable grounds to believe that he or she will attract adverse attention and be targeted anew by organized criminal groups, especially gangs, that control the proposed area of relocation or which have a strong presence and operate there.

2. Reasonableness of IFA/IRA

Whether an IFA/IRA is “reasonable” is determined on a case-by-case basis, taking into account the personal circumstances of the applicant, including the impact of any past persecution. 354 Other factors that must be taken into account include the safety and security situation in the proposed area of relocation; respect for human rights in that area, and the possibilities for economic survival, 355 in order to evaluate whether the individual would be able to live a relatively normal life without undue hardship in the area of relocation, given his or her situation.

UNHCR considers that particular attention must be given to: (i) the level of violence and general security conditions in the area of proposed relocation, including the presence of organized criminal

subsidiary protection under Article 15(a) or Article 15(b) on the grounds of a real risk of the relevant forms of serious harm, either at the hands of the State or its agents, or at the hands of non-State armed actors.

The decision-maker bears the burden of proof of establishing that an analysis of relocation is relevant to the particular case. If considered relevant, it is up to the party asserting this to identify the proposed area of relocation and provide evidence establishing that it is a reasonable alternative for the individual concerned. See UNHCR, Guidelines on International Protection No. 4: “Internal Flight or Relocation Alternative” Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees, HCR/GIP/03/04, 23 July 2003, http://www.refworld.org/pdfid/3f2791a44.pdf, paras 33-35.


354 Ibid., paras 24, 27-30.
groups; (ii) the scale of forced displacement in the area of proposed relocation; (iii) the availability of basic infrastructure and access to essential services in the proposed area of relocation; (iv) the availability of housing in the proposed area of relocation; (v) the presence of livelihood opportunities in the proposed area of relocation; (vi) the general lack of government support for persons displaced by the violence; (vii) the extent to which the applicant can expect to receive genuine support from any members of his or her (extended) family who may be living there and, for women and children, the possible impact of widespread domestic violence and abuse; and (viii) the overall sustainability of the relocation in light of the fact that displaced persons in El Salvador are frequently forced to displace multiple times.

D. Exclusion from International Refugee Protection

Among nationals or habitual residents of El Salvador seeking international protection, there may be individuals who have been associated with acts falling within the scope of the exclusion clauses provided for in Article 1F of the 1951 Convention. Exclusion considerations would be triggered, in particular, in cases involving possible participation in acts of violence, including extortion, robbery, murder, homicide, violent assaults, rape, prostitution, kidnapping and trafficking in people, drugs and arms, and other violent crimes. In all such cases, it will be necessary to examine carefully any issues of individual responsibility for crimes which may give rise to exclusion from international refugee protection. Given the potentially serious consequences of exclusion from international refugee protection, the exclusion clauses need to be interpreted restrictively and applied with caution. Mere membership in a criminal group or organization is not a sufficient basis to exclude. A full assessment of the circumstances of the individual case is required in all cases.

In view of the particular circumstances and vulnerabilities of children, the application of the exclusion clauses to children needs to be exercised with great caution. Where children associated with a gang or other organized criminal group are alleged to have committed crimes, it is important to bear in mind that they may be victims of offences against international law and not just perpetrators.

357 In some cases, individual responsibility for excludable acts may be presumed if membership and participation in the activities of a particularly violent group is voluntary. Detailed guidance on the interpretation and application of Article 1F of the 1951 Convention can be found in UNHCR, Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention Relating to the Status of Refugees, HCR/GIP/03/05, 4 September 2003, http://www.refworld.org/docid/3f5857684.html; and Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention Relating to the Status of Refugees, 4 September 2003, http://www.refworld.org/docid/3f5857d24.html.
358 For further guidance on the application of the exclusion clauses to children, see UNHCR, Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, HCR/GIP/09/08, 22 December 2009, http://www.refworld.org/docid/4b2b4f6d2.html, paras 58-64.
359 The Paris Principles, which concern children associated with armed forces or armed groups, provide useful guidance by analogy for children associated with gangs. The Principles state: “Children who are accused of crimes under international law allegedly committed while they were associated with armed forces or armed groups should be considered primarily as victims of offences against international law; not only as perpetrators. They must be treated in accordance with international law in a framework of restorative justice and social rehabilitation, consistent with international law which offers children special protection through numerous agreements and principles”. See UNICEF, The Paris Principles: Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, February 2007, http://www.refworld.org/docid/465198442.html, paras 3.6 and 3.7.