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

United Nations High Commissioner for Refugees (UNHCR)
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NOTE

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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Abbreviations

B-18  Barrio-18. The B-18 gang is also referred to as the 18th Street Gang or Mara 18, or as Pandilla 18.

CIACS  Cuerpos Ilegales y Aparatos Clandestinos de Seguridad (‘Illegal Clandestine Security Apparatuses’)

CICIG  Comisión Internacional contra la Impunidad en Guatemala (United Nations International Commission against Impunity in Guatemala)

CIDH / IACHR  Comisión Interamericana de Derechos Humanos / Inter-American Commission on Human Rights

FNC  Frente de Convergencia Nacional (National Convergence Front)

IDPs  Internally Displaced Persons

MS  Mara Salvatrucha. The MS is also referred to as the MS-13 or Mara 13.

OAS  Organization of American States

PANDA  Unidad de Acción Nacional contra el Desarrollo Criminal de las Pandillas

PP  Partido Patriota (Patriotic Party)

UDEFEGUA  Unidad de Protección a Defensoras y Defensores de Derechos Humanos de Guatemala (Protection Unit for Human Rights Defenders of Guatemala)

UNDP  United Nations Development Programme

UNE  Unidad Nacional de la Esperanza (National Unity of Hope)

UNHCR  United Nations High Commissioner for Refugees

UNICEF  United Nations Children’s Fund

UNODC  United Nations Office on Drugs and Crime
I. Introduction

Over the last few years, Guatemalan 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 Guatemalan 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 Guatemala.

This document is based on information available to UNHCR up to September 2017 unless otherwise stated.

II. Overview of the Situation in Guatemala

A. Background

The contemporary exodus of Guatemalans 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 linked to international drug-trafficking and a multitude of street gangs, as well as repressive measures taken by the State security forces. At the same time, societal conflicts over land and politics, as well as widespread domestic and societal abuse of women and children, also fuels the flight of Guatemalans seeking international protection.

The population of Guatemala is estimated to be 16.7 million people.\(^1\) In 2012, the latest year for which data are available, 51 per cent of the population were reported to live in rural areas.\(^2\) People of mixed Spanish and indigenous descent comprise an estimated 59.4 per cent of the population; indigenous Mayans make up over 40.3 per cent of the population; and indigenous Xincas, afro-descendent Garífunas and others comprise an estimated 0.3 per cent. The majority of this sizeable indigenous (and afro-descendent) population is reported to live in rural areas.\(^3\) The Maya indigenous group is reported to be comprised of 22 distinct socio-linguistic communities; 24 indigenous languages are reportedly spoken in Guatemala alongside Spanish.\(^4\)

Despite being the largest economy in Central America, Guatemala reportedly has one of the highest inequality rates in the region, with some of the worst poverty, malnutrition and maternal-child mortality rates, especially in rural and indigenous areas.\(^5\) Guatemalan official statistics show that the proportion of the population living below the poverty line increased from 51.2 per cent in 2006 to 59.3 per cent in 2014.\(^6\)

In the 20\(^{th}\) century, Guatemala’s history was marked by extended periods of dictatorship, coups d’etat and an internal armed conflict that lasted from 1960 until 1996 when a peace agreement was concluded between the government and the left-wing insurgency.\(^7\) During this civil war, widespread and systematic human rights violations were reported to have been committed by State security forces and

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paramilitary groups against rural and indigenous communities. These atrocities reportedly included the systematic targeting of rural Mayan Ixil and other socio-linguistic communities during the successive de facto governments of Romeo Lucas García (1979-1982) and Efraín Ríos Montt (March 1982-June 1983). The civil war and its aftermath reportedly saw a rise in institutional corruption, the consolidation of drug-smuggling structures, and high levels of violence committed by State and non-State actors.

Through the 1980s and 1990s, Colombian drug-trafficking organizations are reported to have begun moving shipments of cocaine through Guatemala on the route northwards, relying on the collaboration of local Guatemalan smugglers, military officials and politicians. As a result, new local Guatemalan drug-trafficking structures are reported to have emerged to facilitate this drug trafficking trade with Colombian drug-trafficking organizations and then with Mexican drug-trafficking organizations. The aftermath of the civil war also saw the consolidation of so-called ‘Illegal Clandestine Security Apparatuses’ (Cuerpos Ilegales y Aparatos Clandestinos de Seguridad, CIACS): powerful clandestine networks, often reportedly including both former and current high-level military officials, which carry out sophisticated criminal activities or offer their services to other organized crime groups.

In the same period, violent street gangs are reported to have emerged in Guatemala as a consequence of, among other factors, the deportations of Guatemalan gang members from the United States. During the 1990s and 2000s, deported gang members are reported to have consolidated violent rival street gangs based on the Californian gang model, which rapidly took over existing local gangs to assume control of many poorer neighbourhoods in the larger cities of the country. The vast majority of these street gangs are reported to be affiliated to one of the two main gang structures, reflecting the gang structures in the United States: the Mara Salvatrucha (MS) – also commonly referred to as the MS-13 in Guatemala – and its rival Barrio-18 (B-18) – also commonly referred to as the 18 Street Gang or Mara 18.

During the 2000s, the Guatemalan authorities are reported to have responded to the escalating gang violence and extortion by implementing a series of mano dura (‘Firm Hand’) policies, although the legislature is reported to have consistently voted against proposals to adopt a specific anti-gang law.

The first mano dura element was the adoption in 2003 of a policing strategy, Plan Sweep (Plan Escoba). This was followed by the creation of a special anti-gang unit in the national police force, which

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9 There were reportedly multiple large-scale killings in the Ixil region and at least 70 per cent of Ixil villages were destroyed. Comisión para el Esclarecimiento Histórico, Memoria del silencio, June 1999, http://www.undp.org/content/dam/guatemala/docs/publications/UNDP_gt_PrevyRecu_MemoriaSilencco.pdf, pp. 42-43.
13 See also Section II.B.2.b below.
17 See also Section II.B.2.a below.
reportedly resulted in mass arrests of suspected gang members – although few of them were subsequently convicted – and extrajudicial executions.20 The mano dura strategy reportedly failed to eliminate or to contain the gangs, while it engendered among members of the security forces a lack of respect for the human rights of youths suspected of being gang members.21

During the administration of President Álvaro Colom (2008-2012) of the National Unity for Hope party (Unidad Nacional de la Esperanza – UNE), organized crime reportedly continued to have a negative impact on both the State and society. In 2008, the Mexican Zetas cartel reportedly began a violent offensive into Guatemala, with the aim of gaining exclusive control of the country’s lucrative trafficking routes.22 The resulting violence and killings are reported to have pushed the Guatemalan drug-trafficking organizations into a state of flux.23 At the same time, street gangs operating in the cities reportedly expanded their violent extortion practices.24 During the period 2006-2009, homicide rates are reported to have increased to levels not seen since the height of the civil war, before beginning to decrease from 2009 onwards.25 98 per cent of homicides during this period are reported to have occurred with impunity.26

In this period, widespread corruption was reported in Guatemala’s institutions, with even the Public Ministry (Ministerio Público) acknowledged to be infiltrated by organized crime.27 Against this background, the United Nations (UN)-mandated International Commission Against Impunity in Guatemala (Comisión Internacional contra la Impunidad en Guatemala, CICIG) was established in 2007 and began functioning in 2008.28 Notwithstanding widespread criticism of the CICIG from political conservatives and actors linked to organized crime, the CICIG is reported to have helped to investigate and resolve many complex and politically sensitive cases, and to expose the extent to which the so-called CIACS had permeated government institutions.29 The resulting institutional crisis and ensuing chain of events contributed to the appointment in late 2010 of a new Attorney-General who actively investigated, prosecuted and in some cases extradited key drug-traffickers and other organized crime figures.30

The administration of retired army general President Otto Pérez Molina (2012-2016), leader of the Patriotic Party (Partido Patriota, PP) was notable for its large number of former or active members of

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However, corruption reportedly remained a structural problem that permeated the highest levels of political society.  

In April 2015, in the ‘La Línea’ case, the authorities reportedly revealed the existence of a network involved in a large-scale customs fraud and in which it was alleged that President Pérez, Vice-President Roxana Baldetti and other high-ranking officials participated.  

In May 2015, a separate investigation reportedly uncovered widespread corruption in the Guatemalan Social Security Institute.  

These reports generated a strong public backlash, with crowds of people having taken to the streets in protest.  

Vice-President Baldetti resigned in May 2015 and, following a motion of impeachment, President Pérez resigned in September 2015; both were arrested and face trial on criminal charges.  

In April 2016, it was reported that both politicians were linked to a new corruption case.

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On 14 January 2016, Jimmy Morales, the presidential candidate of the right-wing National Convergence Front (Frente de Convergencia Nacional, FNC), a party founded by ex-military personnel, took office as the newly-elected President of Guatemala. Nevertheless, the legacy of the civil war continues to impact on contemporary Guatemalan politics and society, with the (re-)trials of Ríos Montt and others accused of genocide and grave crimes during the civil war reportedly giving rise to a backlash against individuals seeking justice and the defence of human rights (see also Section III.A.12). Moreover, State and non-State actors reportedly continue to commit acts of violence and intimidation against members of indigenous communities involved in social protests and land disputes. Meanwhile, new spirals of violence are reportedly generated by the newer Guatemalan drug-trafficking structures, as well as by the gang war between B-18 and MS which was reportedly reignited in mid-2015 and the continued extortion of local businesses and inhabitants by the gangs.

B. Structures and Patterns of Organized Violence

I. Levels of Violence

Between 2006 and 2015, the average annual rate of intentional homicides per 100,000 inhabitants in Guatemala was around 39.46 The high rate of intentional homicides over the past decade is not out of place in the regional context of Central America, where four of the five countries with the highest homicide rates in the world are reportedly located.47 The intentional homicide rate in Guatemala is located.


By 2016, the average annual rate of intentional homicides per 100,000 inhabitants in Guatemala was around 39.46 The high rate of intentional homicides over the past decade is not out of place in the regional context of Central America, where four of the five countries with the highest homicide rates in the world are reportedly located.47 The intentional homicide rate in Guatemala is located.


The Economist, The World’s Most Dangerous Cities: The Cities with the Highest Homicide Rates Are Once Again Nearly All in Latin America, 31 March 2017, https://www.economist.com/blogs/graphicdetail/2017/03/daily-chart-23; The Huffington Post, These 10 Countries Have the...
reported to have increased steadily from a low in the early 2000s of around 26 homicides per 100,000 inhabitants to reach a peak of over 46 homicides per 100,000 inhabitants in 2008 and 2009. However, subsequent years have reportedly witnessed a steady general decline in homicide rates in Guatemala. By 2015, different official sources calculated the annual homicide rate in a range of between 30 and 37 homicides per 100,000 inhabitants; in 2016, this dropped to between 27 and 35 homicides per 100,000 inhabitants. The available official figures show that the vast majority of homicide victims are male. Moreover, these figures indicate that the overwhelming majority of homicides are carried out using a firearm. Since 2014, homicides involving decapitation or dismemberment of the body are reported to be on the increase, a tactic reportedly used by gangs and other organized criminal groups as a means of sending messages to rivals and instilling fear among the population. Lynching of suspected criminals by mobs is also regularly reported. National politicians are reported to have suggested repeatedly that a high proportion of homicides in Guatemala are linked to the activities of organized criminal groups (either gang-related or drug trafficking-related homicides), although clear statistical data in support of this assertion is lacking.


Between 2009 and 2013, the years for which official figures are available, the proportion of homicide victims for each year who are male has consistently been around 88%. See figures produced by INE, available at: https://www.ine.gob.gt/index.php/estadisticas/tema-indicadores. Between 2009 and 2013, the years for which official figures are available, the proportion of homicide victims killed each year by firearms has not dropped below 80%. See figures produced by INE, available at: https://www.ine.gob.gt/index.php/estadisticas/tema-indicadores. See also, Insight Crime, Homicides in Guatemala: The Challenge and Lessons of Disaggregating Gang-Related and Drug Trafficking-Related Murders, October 2016, http://www.insightcrime.org/images/PDFs/2017/Gang-and-DTO-Homicides-in-Guatemala-Final-Report_CARSI-USAID-InSight-Crime, pp. 26, 31.


Government statements repeatedly posit that 40 to 50 per cent of the violence in Guatemala is linked to either the drugs trade or due to drug traffickers and gangs, although the basis for these estimates is unclear and homicide data released by the PNC do not provide clear support for such affirmations. See El Periódico, Narcotráfico se reacomoda en Guatemala bajo la sombra del ‘Chapo’ Guzmán, 18 May 2016, http://elperiodico.com.gt/2016/05/18/pais/narcotrafico-se-reacomoda-en-guatemala-bajo-la-sombra-del-chapo-guzman/; Plaza Pública, Víctimas de intercambio y espacios de (des)información sobre las drogas y la narcoactividad en Guatemala, 12 August 2014, https://www.plazapublica.com.gt/context/victimas-de-intercambio-y-espacios-de-desinformacion-sobre-las-drogas-y-la-narcoactividad-en-Guatemala.

Even so, homicides tend to be concentrated in the zones of Guatemala where organized criminal groups operate. 58 The most recent official figures show that between 2009 and 2015, while around half of Guatemala’s 22 departments registered comparatively low homicide rates, there were other departments that recorded consistently high homicide rates. 59 In particular, the department of Guatemala, where the three most populous urban centres of the country are located (the national capital Guatemala City and the urban spill-over municipalities of Mixco and Villa Nueva), is reported to have registered persistently high homicide rates. 60 Street gangs are reported to have the strongest presence in these three urban zones. 61

Between 2009 and 2015, the other departments with homicide rates that were much higher than the national average were clustered mostly along the eastern border with Honduras and the eastern part of Guatemala’s southern coast (Izabal, Zacapa, Chiquimula, Jutiapa, Santa Rosa and Escuintla), but also included the vast northern expanse of Petén department that borders Belize and Mexico. 62 In this period, these relatively more rural departments reportedly served as important areas of operation and transit for powerful and competing drug-trafficking groups. 63

Violence against women is reported to be a serious problem. 64 This includes violence perpetrated by family members (domestic violence, including sexual violence), 65 and violence perpetrated by gangs and members of organized criminal networks. In 2014, the most recent year for which comparative figures are available, Guatemala had the second highest absolute number of femicides (murders of

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58 See, for example, the qualitative comparison between the municipalities of Puerto Barrios, Izabal department, with that of Sibinal, San Marcos department. Plaza Pública, *Donde más y donde menos*, 21 August 2014, https://www.plazapublica.com.gt/content/donde-mas-y-donde-menos/.

59 According to the National Statistics Institute (Instituto Nacional de Estadística Guatemala, INE), in 2015 a total of 4,778 were recorded; the five departments with the highest homicide rates were: Guatemala (1,550), Escuintla (600), Petén (326), Izabal (259) and Chiquimula (286). See figures produced by INE on homicide rates per department, available here: https://www.ine.gob.gt/index.php/estadisticas/tema-indicadores. Based on data from the National Civil Police and the INE. Mendoza reports that in 2016, there were a total of 4,520 homicides recorded nationwide. The same five departments recorded the highest percentage of homicides during 2016: Guatemala (37.8%); followed by Escuintla (11.0%); Petén (6.5%); Izabal (5.7%) and Chiquimula (5.1%). Reportedly, around 40 per cent of homicides happened in 10 municipalities: Guatemala, Villa Nueva, Mixco, Puerto Barrios, Escuintla, Villa Canales, San Juan Sacatepéquez, Masagua, Chaintula, and Morales. E. Espinoza, C. Mendoza, *Informe Sobre la Violencia Homicida en Guatemala*, 16 March 2017, http://www.dialogos.org.gt/informe-sobre-la-violencia-homicida-en-guatemala/2016/, p. 4. According to the Procurador de los Derechos Humanos, in 2016 the departments Escuintla, El Progreso, Guatemala, Zacapa and Chiquimula recorded homicide rates that exceed 60 or 70 homicides per 100,000 inhabitants. See Procurador de los Derechos Humanos, *Informe Anual Circunstanciado 2016*, 31 January 2017, https://www.pdh.org.gt/biblioteca/categoria/9-informes-anales.html, p. 30.


62 See figures produced by INE and available here: https://www.ine.gob.gt/index.php/estadisticas/tema-indicadores. According to the INE data, in 2015 the homicide rates per 100,000 inhabitants were highest in Escuintla (78.8), Zacapa (77.8), Chiquimula (70.4), Izabal (56.8), Santa Rosa (50.4). See also Procurador de los Derechos Humanos, *Informe Anual Circunstanciado 2015*, 1 February 2016, http://www.pdh.org.gt/biblioteca/file/113.html, pp. 48-49.


65 See figures produced by INE and available here: https://www.ine.gob.gt/index.php/estadisticas/tema-indicadores. According to the INE data, in 2015 the homicide rates per 100,000 inhabitants were highest in Escuintla (78.8), Zacapa (77.8), Chiquimula (70.4), Izabal (56.8), Santa Rosa (50.4). See also Procurador de los Derechos Humanos, *Informe Anual Circunstanciado 2015*, 1 February 2016, http://www.pdh.org.gt/biblioteca/file/113.html, pp. 48-49.

women because of their gender) in Central America, and the third highest rate of femicide in the world. In 2015, the rate of female homicides per 100,000 inhabitants in Guatemala had reduced slightly from the peak of 2008 and 2009 but remained high. Indeed, while the overall general homicide rate has witnessed a steady decline, the percentage of women who suffer violent deaths as well as incidents of sexual violence has reportedly increased in recent years. New forms of gang-related violence have emerged, with women and girls linked with one gang reportedly considered a target for vengeance by rival gangs, or women and girls being 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 or forced to collaborate.

Guatemalan women, girls, and boys are also reportedly exploited in sex trafficking within the country, as well as in Mexico, the United States, Belize and elsewhere. Disappearances connected to violence against women and trafficking in persons were also reported to take place in the country. Moreover, domestic violence against children, both boys and girls, is also reported to be a serious problem.

Alongside homicides and widespread forms of violence against women and children, a range of other types of violent crimes are reported to be prevalent in Guatemala. Many of these forms of violence, such as extortion by gangs and other criminals, are less easily documented than homicides. They are also known to be underreported, as victims refrain from going to the police for fear of retribution and due to a lack of confidence in the authorities. Extortion is reported to affect the transport sector in particular, but also reportedly impacts upon other sectors of society, including owners and workers in the transport sector and public transport owners and workers in particular.

The figures compare only 14 countries in Latin America but include many of those where rates of femicide have traditionally been high. See UN Comisión Económica para América Latina y el Caribe (CEPAL), Femicidio, 16 November 2015, http://www.cepal.org/es/informafias/femicidio.


formal and informal businesses, street vendors and workers, children and adults who receive remittances from abroad, schoolchildren and their parents, householders, politicians and public sector workers, including teachers, and certain returnees. 16 Those who do not pay extortion demands by the gangs are at risk of being murdered. For instance, it was estimated that approximately 20 per cent of all of the murders committed in 2014 were as a result of the victims’ failure to pay such extortion demands. 77

2. Armed Actors

The current dynamics of violence in Guatemala reportedly stems from the presence and activities of four main types of armed actors: gangs, particularly the Barrio 18 and the Mara Salvatrucha; drug-smuggling structures; the State security forces, particularly the police and the army; and private security groups, Local Security Boards (Juntas Locales de Seguridad) and vigilantes.

a) Gangs 78

While Guatemala is seriously impacted by violent gang activity, estimates of gang membership in Guatemala vary considerably; in 2017 it was reported that according to Guatemalan law enforcement sources, there were approximately 15,500 Barrio 18 gang members and 13,950 Mara Salvatrucha gang members. 79 Estimates of gang membership are further complicated by the difficulty of distinguishing between initiated active members, inactive members, aspirant members and collaborators. 80 Gangs are reported to have a strong presence across large parts of Guatemala’s three most populous urban centres: Guatemala City, the national capital, and its surrounding municipalities of Mixco and Villa Nueva, as well as other nearby municipalities of Guatemala department. 81 However, the presence of gangs in

77 per cent of public transport routes in the country are subject to extortion by the gangs. See Prensa Libre, Bandas extorsionan a vendedores y usuarios, 12 October 2015, http://www.prensalibre.com/guatemala/justicia/bandas-extorsionan-a-vendedores-y-usuarios. See also Section III.2.2 below.
74 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/4bb21fa02.html, pp. 1-2.
72 La Hora, Enfrentamiento entre maras: una guerra sin tregua, 11 September 2015, http://lahora.gt/enfrentamiento-entre-maras-una-guerra-sin-tregua/; Prensa Libre, Mara 18 operan en casi toda el área metropolitana, 6 August 2015,
towns and population centres of more ‘provincial’ departments, including Jutiapa, Chimaltenango, Santa Rosa, Escuintla and Quetzaltenango, has reportedly increased rapidly in recent years due, in part, to gang members moving due to anti-gang operations by authorities in Guatemala City.82

As noted above, although Guatemala has a long history of street gangs, the gangs presently operating in the country are reported to have their origins in the violent California-style gang culture, which was brought back to the country by Guatemalan gang members who were deported from the United States from the 1990s onwards.83 These gangs are reported usually to be based in poor or lower middle-class urban or rural zones, sometimes comprising of just a single neighbourhood or a few such neighbourhoods. However, despite a culture of identification with their home territory, these gangs are also reportedly considered capable of great mobility and can rapidly expand their influence to nearby neighbourhoods. They may also reportedly relocate to new neighbourhoods to seek refuge from offenses against them by the security forces or other gangs.84 Similarly, while physical reference points such as streets, streams and – in some cases – graffiti or other markings mark the dividing lines between gang territories,85 these boundaries can reportedly also shift literally overnight as one gang encroaches onto, or disputes, the territory of another.86

Guatemalan 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 reportedly tries to control the localized criminal enterprises that sustain members’ livelihoods, such as extortion, drug-selling, contract killing and other crimes.87 Businesses, (public) transport routes and even homes in other nearby (and often wealthier) neighbourhoods may reportedly also be targeted for extortion by the


gang. Presentemente, the main source of revenue for most gangs is reported to be extortion, which is reportedly increasing annually by phone from within prisons by incarcerated gang members. Different affiliated cliques are reported to sometimes work together to carry out extortion.

Each local gang or clique (clica) is reported to have its own active membership that can range in size from a handful to fifty or more initiated ‘soldiers’ under the leadership of senior members. Gangs in Guatemala are reported to be predominantly male and largely composed of youths and young adults. Following initiation into a gang, members traditionally used to identify themselves through gang-related tattoos and style of dress and appearance, although some gangs – particularly among the Mara Salvatrucha – reportedly now discourage such visible practices so as not to draw unwanted attention to the illicit activities of gang members. A distinctive vocabulary, hand signs and other body signals and even written codes are still apparently used by gangs in Guatemala. Imprisoned gang members are reported to remain active and to direct the activities of those on the street.


La Hora, Golpe a clica que extorsionaba a trabajadoras sexuales, 8 December 2015, http://lahora.gt/golpe-a-clica-que-extorsionaba-a-trabajadoras-sexuales/. International Crisis Group, Mafia of the Poor: Gang Violence and Extortion in Central America, 6 April 2017, http://www.refworld.org/docid/58e74ed64.html. p. 13; Insight Crime, MS-13 Use of Guns in Guatemala Shows Modus Operandi, 8 May 2013, http://www.insightcrime.org/news-briefs/ms-13-use-of-guns-in-guatemala-shows-modus-operandi. “Almost 30% of over 200 people in prison in 2013 were affiliated with the Barrio 18 gang.” International Crisis Group, Drug Wars: Battle for Control in Central America, 23 November 2015, http://www.refworld.org/docid/5613f05e.html. See Plaza Pública, Ni juntos ni revueltos, 2 February 2011, https://www.plazapublica.com.gt/content/njuntos-nirevuelto. Women and girls who participate in Guatemala’s gangs, albeit with the roles that the gang members are strongly gendered, particularly in the Mara Salvatrucha. Barrio 18 in Guatemala appears more open to recruiting women, who can be initiated into the gang as members and were estimated to represent approximately 15 to 25 per cent of the membership in 2011. By contrast, MS is reported to use women and girl initiations for tasks such as collecting extortion money with 90 per cent of the membership as men in 2011.

Once initiated into a gang, members reportedly must follow the established rules and communicated decisions of their leaders.\textsuperscript{97} The violation of different rules is reported to lead to different punishments, commonly serious beatings or death.\textsuperscript{98} Lifelong loyalty to the gang is reported to be required and those who desert (even to raise a family) or are believed to cooperate with the security forces or rival gangs are reportedly to be routinely pursued and killed by their own gang as a punishment.\textsuperscript{99} The gangs are reportedly assisted by many ‘anonymous’ voluntary or involuntary collaborators in the territories where they operate, including family members and 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.\textsuperscript{100}

Gangs are reported to exercise considerable 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 reportedly must stay ‘silent’ about the gang and may face a plethora of gang-imposed restrictions on whom they can talk to and what about, where they can walk or go to school, whom they can visit and who can visit them and what they can wear.\textsuperscript{101} Many gangs are reported to forbid inhabitants to show ‘disrespect’ for the gang, a subjective evaluation on the part of gang members that can reportedly encompass a multitude of perceived slight and offences, such as arguing with a gang member or refusing an extortion demand, resisting a child’s recruitment into the gang, or rejecting the amorous attentions of a gang member.\textsuperscript{102}

Gangs in Guatemala 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.\textsuperscript{103} The gangs reportedly exercise this control in many different ways. For instance, some local gangs are reported to have required bus drivers to accept mobile phones on which gang members can then call them to make extortion demands, killing those

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who refuse to take the phone. 104 Parents living in some gang-controlled neighbourhoods reportedly have to make monthly extortion payments to ensure their daughters are not sexually assaulted by the gang. 105

In the 2015 national elections, politicians from different political groupings reportedly had to ask permission from the gangs to carry out political activities or hold political gatherings in the neighbourhoods controlled by the gangs or face extortion demands and death threats. 106

As noted above, 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 violent retaliation from the gang, which may include being killed. 107 It is reported that their family members are often targeted as well. 108 These dynamics have reportedly resulted in thousands of inhabitants fleeing from zones where the gangs operate, with the abandoned houses sometimes taken over by the gangs. 109 Finally, the strongly macho ethos of the Guatemalan gangs expresses itself on an everyday basis through their reported widespread ill-treatment of persons based on their (perceived) sexual orientation and/or gender identity. 110 and in the widespread sexual and gender-based violence experienced by women and girls living in the gangs’ territories. 111

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

As noted above (see Section II.A), the overwhelming majority of local gangs in Guatemala are reported to be affiliated with either the Barrio 18 (B-18) or the Mara Salvatrucha (MS). 112 Indeed, most of the figures on gang membership presented above refer, either expressly or implicitly, to the members of these two gang structures. 113 Estimates vary as to the relative scale of the two structures and the number of local gangs (cliques) affiliated with each one, due in part to the historically relatively clandestine nature of MS in Guatemala in comparison to the more visible B-18. 114 However, most recent

104 El Periódico, Líderes pandilleros ordenaban matar a pilotos si no recibían celulares, 11 May 2016, http://elperiodico.com.gt/2016/05/11/pais/lideres-pandilleros-orderan-matar-a-pilotos-si-no-reciben-celulares/. According to an interview conducted in Guatemala City by the International Crisis Group, businesses may seek to shield themselves by working with local distributors linked to the gang, as these negotiated agreements can sometimes lead to a “more discriminating use of violence”, such as a verbal reminder to pay a missed payment of an extortion demand rather than a killing. International Crisis Group, Mafia of the Poor: Gang Violence and Extortion in Central America, 6 April 2017, http://www.refworld.org/docid/58e74ed64.html, p.16.

105 La Hora, Éxodo, deserción escolar y violencia afectan a la niñez y la juventud en zonas rojas, 17 February 2015, http://lahora.gt/exodo-desercion-escolar-y-violencia-afectan-la-niniez-y-la-juventud-en-zonas-rojas/. See, for example, Plaza Pública, Barrio 18: Los dos caminos de las hermanas, 17 February 2015, http://www.refworld.org/docid/569f3aaa4.html, pp. 27-28. However, the Guatemalan police in 2012 equally admitted that the MS remained an enigma to the extent that they were aware of the existence of MS cliques but knew almost nothing about them. For twelve of these MS cliques, they did not even know the name of a single member. See Sala Negra de El Faro, Los dos caminos de las hermanas, 13 November 2012, http://www.salanegra elfaro.net/ris/201211/comicas/10617/.
pronouncements by government officials consistently report having identified around 65 to 70 local cliques across Guatemala, divided more-or-less equally between the two main gang structures. Both B-18 and MS are reported to be large transnational gang structures that have their origins in the Californian gang scene, where B-18 was formed by Mexicans and MS by the children of Salvadoreans fleeing the civil war. Both B-18 and MS were themselves originally reported to be affiliated with the Southern (Sureño) gang movement: this reportedly unites Hispanic gangs from southern California under the aegis of the powerful Mexican mafia to offer a form of collective security (against attack by non-Sureño gangs) for members of these gangs when incarcerated in the United States.

B-18 arrived first in Guatemala, creating its first clique in 1993 in Guatemala City, and then went on to recruit heavily throughout the 1990s to become the dominant gang in the prisons, where it and other gangs, including the MS, observed a “Sureño truce”. However, in the late 1990s, the Guatemalan MS broke its link with the Californian MS, and in 2005 launched simultaneous attacks on B-18 and other Sureño gangs in prisons across Guatemala and on the street, which resulted in many deaths. Following these attacks and a violent internal purge within B-18 in Guatemala and outright rejected the Sureño gang rules. In the streets and prisons of Guatemala, B-18 and MS are reported to be implacable enemies.

Despite internal disputes within B-18 and within MS in Guatemala during the 1990s and 2000s, the trend has reportedly been towards increasing centralized coordination between cliques in each structure. Moreover, by separating gangs from the general prison population in 2003, and B-18 prisoners from MS prisoners in 2005, the authorities are reported to have provided the gang leaders with space to organize more hierarchical command structures from within the prisons. Thus, by the 2010s, B-18 and MS reportedly each had established their own council of powerful (and largely imprisoned) clique leaders who meet regularly to take important decisions. Each clique also has its own internal hierarchy of initiated members, who may be imprisoned or on the street, followed by aspirants and other collaborators, with specialist roles including assassinations, finances, logistical support and contact with lawyers.

In 2014, sources identified 70 gang cliques in Guatemala, 33 of which were affiliated with MS and listed by name. See, for example, La Hora, Origen de la Mara Salvatrucha: jóvenes desempleados, con educación limitada e historial delictivo, 1 September 2014, http://lahora.gt/origen-de-la-mara-salvatrucha-jovenes-desempleados-con-educacion-limitada-e-historial-delic/ In 2015, a source identified 65 cliques in Guatemala, of which 33 were affiliated to B-18 and 32 to MS. See La Hora, Enfrentamiento entre maras: una guerra sin tregua, 11 September 2015, http://lahora.gt/enfrentamiento-entre-maras-una-guerra-sin-tregua/ In April 2016, a source identified 62 gang cliques, of which 28 were affiliated to B-18 and 34 to MS. However, a month later, in May 2016, the same institution identified 65 cliques, of which 30 were affiliated to B-18 and 35 to MS. See, respectively, La Hora, 62 clicas delinquen por falta de prevencion y control en cárceles, 10 April 2016, http://lahora.gt/62-clicas-delinquen-por-falta-de-prevencion-y-control-en-carceles/; and Prensa Libre, Gobernación se enfoca en la desarticulación de pandillas, 5 May 2016, http://www.prensalibre.com/guatemala/justicia/gobernacion-prensa-mas-operativos-para-desarticular-pandillas/, It is unclear whether the variation in the total number of cliques, and their relative distribution between the two structures, reflects a relative weakening of B-18 and strengthening of MS in the past two years or simply the difficulty of gathering and analysing information on the different local gangs.


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 Eme), as 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/.


In B-18 in Guatemala, this gathering or committee is called the Rueda del Barrio (Circle of the Barrio) and, in 2013, was said to be composed of 16 individuals. The Guatemalan MS has the Consejo de los Nueve (Council of the Nine) that was reported, in 2013, to be made up of 37 leaders. See El Universal, Maras, el organigrama de la delincuencia, 29 December 2012, http://eluniversal.com.mx/internacional/80745.html.

For instance, in MS, it is reported that the clique leaders (ranfleros) and sergeants-at-arms (llaveros) on the street answer to the council of leaders and are, in turn, served by their own hierarchy, including initiated ‘soldiers’ (hombres brincados) of different ranks and functions and, below them, the aspirants (chequeros) and a range of other local collaborators, including family members. Each level of the hierarchy receives
B-18 is well-established as a violent street gang in Guatemala, with a particularly strong historical presence in Guatemala City that has reportedly spread to surrounding urban and rural parts of Guatemala department, as well as to other departments. B-18 in Guatemala is reported generally to be considered less sophisticated but more aggressive and unpredictable than its arch-enemy, MS. B-18 in Guatemala has a younger, strident leadership and is reported to be a more subsistence-based structure than MS, operating largely like a stereotypical street gang in its vision and tactics. Especially since 2005, extreme and cruel vengeance violence is reported to be a core element of B-18’s identity and *modus operandi* in Guatemala, with such violence being directed as much at the communities that it dominates as at its hated MS rivals and the Guatemalan security forces.

The MS gang structure in Guatemala is a more clandestine gang structure that is reported to have a presence across two-thirds of the national territory, although it appears to be most entrenched in Guatemala City and the surrounding urban centres of Guatemala department. The secretive MS in Guatemala prefers to operate largely from the shadows and is reported to be much more strategic, calculating and disciplined than B-18. Guatemalan MS gangs have also reportedly moved beyond mere subsistence crime and begun operating as a more sophisticated organized crime structure, laundering money across Guatemala, investing in local businesses as a facade for its activities, purchasing property in exclusive areas and sending members to private schools or university.

B-18 and MS gangs are reported to live primarily from extortion, particularly of the transport industry, sex workers and other local businesses and sectors of the population, killing those who do not pay.

*MS* dominates thirteen zones and Mara 18 does so in seven. Mara 18 runs the two major metropolitan areas in Guatemala, as well as a number of smaller cities and towns. For instance, MS tends to use more clandestine tactics, avoiding gang clothing and visibile gang insignia and uniform, whereas Mara 18 is reported to be much more visible and identifiable. The secretive MS does not have any public face, unlike Mara 18, which uses charity work, sporting events, and other public relations efforts to project a public image.

MS tends to use more clandestine tactics, avoiding gang clothing and visibile gang insignia and uniform, whereas Mara 18 is reported to be much more visible and identifiable. The secretive MS does not have any public face, unlike Mara 18, which uses charity work, sporting events, and other public relations efforts to project a public image.
In its area of operation, one B-18 clique was reported to extort public transport businesses, distribution lorries, taxis, shops, tortillerías, mototaxis, hardware stores, butchers, bakers, restaurants, lorries, garbage-men, food businesses, internet cafes, bookshops, families and others.\textsuperscript{132} B-18 has reportedly even sought to extort prison visitors.\textsuperscript{133} Extortion demands are reported to have extended in 2015 to new and increasingly poverty-stricken sectors.\textsuperscript{134} Both structures are also reported to derive income from drug dealing on the street and in prisons.\textsuperscript{135} However, despite the 2012 United States designation of MS as a “transnational criminal organization”,\textsuperscript{136} MS and B-18 gangs have reportedly focused on control of the small drug distribution markets (\textit{narcomenudeo}) in their local territories as opposed to transnational activities.\textsuperscript{137}

The leaders of the Guatemalan B-18 and MS gangs are reported to maintain ties with their other Central American counterparts via social networks and other media, with whom they discuss strategy and for whom they arrange the safe passage of weapons and other contraband.\textsuperscript{138} There are also reports of B-18 and MS gang members in El Salvador and elsewhere seeking shelter with affiliated gangs in Guatemala to evade law enforcement in El Salvador.\textsuperscript{139} Gang members are also sometimes reportedly ‘lent’ between affiliated gangs from neighbouring countries to carry out assassinations.\textsuperscript{140}
In general, violence by MS gangs often appears more direct and predictable and less impulsive or arbitrary than that of B-18, with MS gangs killing, for example, rival gang members, perceived informants or others who offend against MS.141 This instrumental use of violence can reportedly take extreme forms.142 In contrast, B-18 reportedly actively promotes its reputation for the impulsive use of excessive violence with sometimes arbitrary consequences.143 Similarly, MS gangs are reported to avoid direct armed confrontation with the State security services, whereas B-18 reportedly reacts aggressively towards the Guatemalan authorities.144 MS and B-18 gangs are reported to have access to military-grade weaponry.145 Moreover, ever-younger children are reportedly forcibly recruited to carry out extortion and killings, including girls, partly because minors cannot be prosecuted for criminal offences.146 In 2014, homicide cases involving child assassins reportedly rose six-fold compared to the previous year.147

Since the start of 2015, confrontations between the rival structures of B-18 and MS have become steadily more evident, particularly in prisons and on the streets of Guatemala City and surrounding urban centres of Guatemala department, with increased attacks and violence between affiliated gangs.148 This apparent escalation in hostilities between B-18 and MS has reportedly been accompanied by increased aggression on the part of B-18 towards the Guatemalan police force, including reported assassinations and direct assaults on police stations in or near gang-controlled zones in these areas.149

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142 One such example is the reported kidnapping and decapitation of four citizens at random from the capital that was ordered by MS leaders, with the four heads left in different locations around the city, as a calculated measure to demonstrate discontent with security measures implemented by the government. See La Hora, Perito: Pandilleros cometieron crímenes para causar terror, 23 July 2014, http://lahora.gt/perito-pandilleros-cometieron-crimenes-para-causar-terror/.


148 Prensa Libre, Pandilleros mataron a dos mujeres, 8 March 2016, http://www.prensalibre.com/guatemala/justicia/maras-matan-a-dos-mujeres; Prensa Libre, PNC registra alza de riñas entre pandillas, 4 November 2015, http://www.prensalibre.com/pnc-registra-alza-de-riñas-entre-pandillas; Prensa Libre, Maras actúan sin control en penales, 18 August 2015, http://www.prensalibre.com/guatemala/justicia/maras-actuan-sin-control-en-penales; Prensa Libre, Pandilleros se disputan la zona 6, 26 January 2015, http://www.prensalibre.com/noticias/justicia/pandilleros-disputan-zona_6_0_1291671048.html. Some disputes have also been reported between the gangs in other parts of the country, such as in the departmental capital of Chimaltenango department, where one group has newly arrived to dispute the collection of extortion money from the other gang that was already present there. See La hora, Chimaltenango, bajo asedio de la delincuencia, 3 October 2015, http://elpperiodico.com.gt/2015/09/24/pais/chimaltenango-asediado-por-pandilleros/.

The increase in high impact crimes in 2016 is reported to be an effort by the gangs to test the response of the State authorities. Moreover, overall, the gangs are reported to have strengthened in recent years and expanded their territories outside Guatemala City.

**Other street gangs**

During the deportations of gang members from the United States in the 1990s, members of many other Sureño gangs from California are also reported to have arrived in Central America. However, in Guatemala, these other gangs reportedly found themselves in a quickly-decreasing minority, especially in relation to the rapidly expanding B-18 presence. After the large-scale killings perpetrated by MS in 2005 and the greatly increased animosity between B-18 and MS, little trace appears to remain of most of these smaller Sureño gangs. Similarly, a number of other Guatemalan street gangs were reported to exist in the 2000s; it cannot be discounted that elements of these and other local identity-based gangs that are unaffiliated with either B-18 or MS remain active at the local level in Guatemala.

**b) Drug-trafficking organizations**

Guatemala has reportedly long been home to organized criminal structures dedicated to cross-border drug-trafficking. Since Colombian groups started using Guatemala as a transit point for their cocaine shipments in the 1980s, the country is reported to have become an essential stage of the cocaine distribution chain, with an estimated 90 per cent of the cocaine produced in the Andean region passing through Guatemala on its way northwards. Most cocaine shipments now reportedly enter by land from Honduras, although more recently an increase by sea has been reported. Poppy (for heroin) and methamphetamines, smuggled north via Mexico, are also reportedly produced in south-west Guatemala. The increased influence of Mexican drug cartels from the late 1990s, particularly the...
Sinaloa and Gulf cartels, reportedly culminated between 2008 and 2012 in a violent but ultimately failed offensive into Guatemala by the Mexican Zetas cartel to try and take control of smuggling routes through the country.\(^{161}\)

A sizeable number of Guatemalan drug-smuggling structures are reported to be involved in moving the cocaine shipments through the country and in producing other drugs.\(^{162}\) Their strongholds are reportedly located in particular zones on or near the main Guatemalan smuggling routes, notably on the eastern border with Honduras,\(^{163}\) the south-west border with Mexico,\(^{164}\) the southern Guatemalan coast and the northern departments of Alta Verapaz\(^{165}\) and Petén.\(^{166}\) Moreover, near the Honduran border in particular, certain groups are reported to perpetuate the practice of violent thefts (tumbes) of drug

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Many of the Guatemalan drug-trafficking structures, even those that are nominally ‘independent’, are reported to have close links with one (or more) larger regional drug-trafficking organizations. Presently, the Sinaloa cartel is reported to be the Mexican drug-trafficking organization with the greatest influence in Guatemala, through its manifold alliances with local Guatemalan structures. From 2013 onwards, despite the failure of its long and violent offensive to take control of smuggling routes in Guatemala, the Zetas cartel was reported to remain a buyer at a distance. The Mexican Gulf cartel, despite its historical alliance with structures in Petén, has reportedly virtually disappeared from Guatemala.


The Zetas cartel – formed originally of Mexican ex-special forces soldiers – was initially the armed wing of the Gulf cartel but reportedly began to operate with greater independence following the capture of the Gulf cartel leader in 2003 before finally splitting definitively in 2010. After entering Guatemala via Huehuetenango in 2007, the Zetas cartel based its operatives in Alta Verapaz department, reportedly entering into an alliance with the Overdick family trafficking structure, and in 2008 began conducting exceedingly violent armed offenses to take control of other Guatemalan territories located on strategic drug-trafficking routes, attempting to wrest them from the control of Guatemalan allies of the Gulf and Sinaloa cartels. The Zetas cartel initially used its own operatives and, the Overdick alliance aside, rarely negotiated with local Guatemalan drug-trafficking organizations and instead sought to establish its exclusive territorial control over relevant routes. In territories that they seized, their operatives reportedly extorted local business and killed those who challenged them. The Zetas cartel was reportedly known locally for its excessive violence, instability and untrustworthiness, with social upheaval and violence against women widespread in the areas they controlled. In the face of a sustained government effort to pursue the group and some of its local collaborators, the Zetas structure was largely dismantled by 2013. See Insight Crime, Guatemala’s New Narco-map: Less Zetas, Same Chaos, 16 September 2013, http://www.insightcrime.org/news-analysis/guatemala-new-narco-map-less-zetas-same-chaos; Insight Crime, The Zetas in Guatemala, 8 September 2011, http://www.insightcrime.org/images/PDF/The-Zetas-in-Guatemala.pdf; S.S. Dudley, ‘Drug-Trafficking Organizations in Central America: Transportistas, Mexican Cartels and Maras’, in Arson and Olson (eds), Organized Crime in Central America, pp. 32-33; J. López, ‘Guatemala’s Crossroads: The Democratization of Violence and Second Chances’, in Arson and Olson (eds), Organized Crime in Central America, pp. 192-195.

For instance, even the structure run by Jairo Orellana, although ‘independent’ and involved in stealing drug shipments from a number of organizations, had strong connections for a period of time with the Mexican Zetas cartel and may also have sold to the Sinaloa cartel. See Insight Crime, Guatemala’s New Narco-map: Less Zetas, Same Chaos, 16 September 2013, http://www.insightcrime.org/news-analysis/guatemala-new-narco-map-less-zetas-same-chaos; El Faro, Jairo Orellana Morales, el Rey del Triaje y las extorsiones, 20 February 2013, http://www.elfaro.net/es/201302/internacionales/1196/Jairo-Orellana-Morales-el-Rey-del-Triaje-y-las-extorsiones.htm.


169 Rising consumption rates are reported in Guatemala City, where the leaders of the most prominent local drug distribution network – the Caraduras – run their operations from this prison. This network reportedly functions through family alliances and controls territory in Guatemala City, having fought and won a war with two of the other main drug-distribution groups in Guatemala City, led by alias ‘Máracco’ and alias ‘Maco’. It is reported that the Caraduras also undertake contract killings and have recruited many youths as lookouts or assassins, and have support from the local police that patrol their territory. See Prensa Libre, Detienen a presunto líder de estructura Los Caraduras, 27 February 2014, http://www.prensalibre.com/noticias/justicia/los_caraduras-lider_detenido-allanamiento-luis_fernando_gomez_0_1092490894.html; Insight Crime, Guatemala’s New Narco-map: Less Zetas, Same Chaos, 16 September 2013, http://www.insightcrime.org/news-analysis/guatemala-new-narco-map-less-zetas-same-chaos; Persona de interés, Francisco Edgar Domínguez Higueros “Caradura”, undated, https://www.personadenetries.com/personal/1325 (date accessed: 4 May 2017).

Some Guatemalan drug-smuggling organizations – particularly the more established ‘traditional’ ones – are reported to be relatively powerful and complex structures, comprised of as many as hundreds of persons led by a tight-knit nucleus of family members. Some of these families were reportedly formerly landowners, while many had a history of involvement in cattle-rustling and other forms of cross-border smuggling. Each structure reportedly has an armed element that carries out enforcement and security operations as required. Although cocaine trafficking is reported to be a lucrative source of income (as is heroin production for a few groups), some of the Guatemalan drug-smuggling organizations also reportedly engage in other illicit businesses, including appropriation of lands in some rural areas, and involvement in prostitution and sex-trafficking rings.

Most Guatemalan drug-smuggling groups are reported to rely on corruption and bribery of both national and local political, (ex-)military, police and judicial authorities to secure protection for their activities. In general, threats and assassinations appear to be limited largely to disputes or punishments of those involved in the structures, or others who are deemed to represent a challenge to the groups. Small landowners who decline to sell their lands to these groups are reported to face violence, as may other persons who are deemed to oppose the interests of these groups. However, the more established

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178 The Lorenzanas, for instance, were reportedly linked to Plaza Pública, De la traicion de los hijos y la venganza del padre, 22 April 2015, https://www.plazapublica.com.gt/content/de-la-traicion-de-los-hijos-y-la-venganza-del-padre.
structures have reportedly mostly bought the tolerance of local populations by investing in local businesses and financing community events.  

While the smuggling routes have reportedly continued to operate and the flow of cocaine has continued undiminished, recent years have seen considerable upheaval among the Guatemalan drug-smuggling organizations as a result of infighting, the proxy war between Mexican cartels and the capture and extradition of a number of the leaders of these structures by the government. By 2013, many of the longer-established ‘traditional’ Guatemalan structures were reported to be greatly weakened and splintered, whilst an increasing number of new – and often more violent – structures had emerged to compete for control in the drug-trafficking trade or to start stealing drug shipments. These disputes


186 Within a context of competitive violence between gangs and a lack of state protection, it is reported that the “service” provided by gangs is sometimes tolerated and even reluctantly welcomed by businesses, some of whom have established regular payment systems to gangs to protect themselves from more predatory rivals. Information from an interview by the International Crisis Group with a manager and chief of transportation of a large food distribution firm in Guatemala City in November 2016, as well as with a business owner in Guatemala City municipal market on 11 November 2016. International Crisis Group, Mafia of the Poor: Gang Violence and Extortion in Central America, 6 April 2017, http://www.refworld.org/docid/58e74ed64.html. p. 15.  


are reportedly pushing new dynamics of violence in certain territories,\textsuperscript{191} which in turn has an impact on their populations.\textsuperscript{192}

c) State Security Forces

The Army (Ejército) of Guatemala is ultimately subject to civilian control through the President of the Republic and Ministry of National Defence (Ministerio de la Defensa Nacional).\textsuperscript{193} In 2014, the national Land, Air and Sea Forces reportedly comprised an estimated 22,300 troops.\textsuperscript{194} From the early 2000s onwards, alongside its national defence function, the Army has reportedly been increasingly used in joint patrols to support the police with the security situation inside Guatemala in zones affected by organized criminal groups.\textsuperscript{195}

The 35,000-strong National Civilian Police (Policía Nacional Civil) is located under the Government Ministry (Ministerio de Gobernación).\textsuperscript{196} In October 2015, a new Urban Security Plan (Plan de Seguridad Urbana) was launched, involving joint patrols by police officers and soldiers in zones of central Guatemala department affected by gang violence.\textsuperscript{197} However, despite the large-scale recruitment of new police officers into the national civilian police force in recent years, the force reportedly remains seriously underfunded – in stark contrast to the increasing resources budgeted for the Army – and is reported to lack the necessary operational capacity.\textsuperscript{198}


\textsuperscript{195} In 2016, at least 2,527 officers were assigned to the guarding of specific persons and zones of violence and of these in particular in Villa Nueva para la Seguridad Ciudadana, as part of custodial patrolling at 197/58 and 198/55. 192


\textsuperscript{198} In 2016, the PNC was reported to have 37,023 personnel: Procurador de los Derechos Humanos, Informe Anual Circunstanciado 2015, 1 February 2016, http://www.pdh.org.gt/biblioteca/Informe-Anual-Circunstanciado-2015-enilters.html, p. 36.

The security forces are reported to have contributed directly to the current dynamics of violence in the country. Despite increasing militarization as a key component of the security strategies adopted by the Guatemalan government, the civilian authorities are reported to have sometimes failed to maintain effective control over the security forces. Members of the security forces are reported to have engaged in arbitrary or unlawful killings of journalists, human rights activists, political candidates and trade unionists, as well as extrajudicial arrests, illegal detentions, abuse and mistreatment. Children and adolescents living on the street or suspected of being gang members are reported to have been subjected to abusive and discriminatory treatment by the security forces, including assaults and arbitrary and unlawful detentions. Police officers are reported to have also abused gay and transgender individuals, and harassed and extorted those whom they believed to be sex workers. Intimidating and abusive military and police operations are reported to have been conducted to quell public protests by indigenous communities engaged in land disputes.

As noted above (see Section ILA), active and former military officers and high-level government officials are reported to be involved in the powerful CIACS, which carry out sophisticated criminal activities or offer their services to other organized crime groups. While the power of some historical figurehears of certain CIACS has reportedly dissipated in recent years, partly due to the work of the CICIG (see Section ILA), other CIACS are reported to remain influential in politics with links to the criminal underworld. Using their military contacts, former Army officers are reported to have also emerged as the heads of prominent local drug-trafficking organizations, whilst others are reported to have directed bribery rings and other criminal activities.

206 One of the well-known CIACS – the ‘Brotherhood’ (Cofradía) - was reported in 2011 to have split, with some factions working in private security and others in politics. See S.S. Dudley, ‘Drug-Trafficking Organizations in Central America: Transportistas, Mexican Cartels and Maras’, in Arson and Olson (eds), Organized Crime in Central America, p. 34. However, in 2015, it was reported that the Cofradía worked together with a competitor CIACS – the Syndicate (Sindicato) – during the presidency of Pérez Molina, who is himself alleged to form part of the Sindicato, and that such networks continue to be relevant. See Insight Crime, Tracing the Evolution of Military-Criminal Networks in Guatemala, El Salvador, 8 January 2016, http://www.insightcrime.org/news-analysis/tracing-evolution-military-criminal-networks-in-guatemala-el-salvador, (date accessed: 21 June 2016, http://elperiodico.com.gt/2016/06/21/pais/gobernacion-señala-nexus-militares-de-el-fantasma/.
207 This is reported to be the case, for example, with alias ‘El Fantasma’. See El Periódico, Gobernación señala nexos militares de “El Fantasma”, 21 June 2016, http://elperiodico.com.gt/2016/06/21/pais/gobernacion-señala-nexus-militares-de-el-fantasma/.

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Police officials are reported to be involved in extortion, kidnapping for ransom, trafficking in persons and other abuses and crimes against the local population. Moreover, corrupt members of the Guatemalan police force are reported to have been involved in the theft and resale of drug shipments (tumbes). One such structure within the national police force, known as the Charola Cartel, is reportedly estimated to have more than 1,000 active members, including two former deputy police directors and other high-level members. These drug thefts on the part of corrupt police officers are reported to have sometimes led to violent retaliations by the affected drug-trafficking organizations.

**d) Private Security Groups, Local Security Boards and Vigilants**

The proliferation of private security agencies, private justice structures and vigilantism in Guatemala over the past decade reflects the high levels of insecurity, the weakness or absence of the State security forces in certain parts of the country, and distrust of the State security apparatus and frustration with its high levels of impunity. These different private security actors each contribute to the dynamics of violence in Guatemala.

Recent estimates suggest that there are between 43,000 and 48,000 private security guards working for registered security companies in Guatemala, alongside an estimated additional 30,000 to 40,000 guards working clandestinely or for illegal security firms. Moreover, the vast majority of guards working for registered security companies lack individual certification as required by law. Many private security firms are reported to be run by ex-Army intelligence and high-ranking officers, including those with links to organized crime. Some private security firms are reported to collaborate with CIACS, often at the service of organized crime, and they are thought to be one of the main purchasers of illegally-

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trafficked arms in the country.\(^\text{216}\) sometimes also selling them on to gangs.\(^\text{217}\) Individual private security guards are reported to have been involved in kidnapping, executions, theft, extortion, sexual assault and other crimes in recent years.\(^\text{218}\)

It is reported that some private security agencies owned by, or connected with, serving or retired members of the Army have been hired by companies interested in carrying out extractive projects on indigenous lands. Employees of these private security agencies are reported to have been involved in violence against members of the indigenous communities engaged in these land disputes, and to have taken part in joint operations with members of the State security forces including the detention of civilians, court-ordered evictions, as well as extrajudicial evictions of the members of such communities.\(^\text{219}\)

Distinct community-based structures, known as Local Security Boards (Juntas Locales de Seguridad) or Citizen Security Committees (Comités de Seguridad Ciudadana), were first established in 1999 to provide community policing and, by 2012, it was reported that over 1,000 such groups existed, although one-third were unregistered and thus illegal.\(^\text{220}\) Many of these local neighbourhood groups were reported to have gained a substantial degree of autonomy and to engage in executions, extortion and kidnappings, imposehursts, carry out illegal arrests and enforce their own vigilante-style popular justice, against individuals accused – rightly or wrongly – of criminal activities.\(^\text{221}\) Using terror as their principal strategy, these local security boards or committees were reported to commit extra-judicial executions with impunity, sometimes disguised as ‘gang violence’.\(^\text{222}\)

From 2004 onwards Guatemala has also reportedly seen a significant increase in the number of incidents in which of “mob justice”, including lynchings, unlawful detentions and other forms of violence.\(^\text{223}\) Most of the


victims are male, and those who are killed are reportedly often tortured beforehand. In some localities, businesses and inhabitants are reportedly being organized themselves to violently combat extortion and other forms of crime, as in the city of Quetzaltenango where some 300 families were reported to have displayed signs threatening to Lynch anyone who attempts to extort them. In 2015, a mayor in Sololá department was reportedly lynched and set on fire by a mob who believed him to be responsible for an armed attack against a political rival. In instances of mob violence, police officers have reportedly refused to intervene due to fears for their own safety.

C. Ability and Willingness of the State to Provide Protection

1. State Response to Gang Violence and Organized Crime

Guatemala lacks a legal framework specifically on anti-gang measures and proposals to create a specific anti-gang law have consistently failed to be voted into law. Even so, during the 2000s the Guatemalan authorities implemented a number of anti-gang policies and initiatives, which resulted in large numbers of arrests but few convictions. However, the Guatemalan government has created special structures intended to deal more effectively with the impact of organized crime. Since 2009, specially-constituted High-Risk Courts in Guatemala have heard cases involving ‘high-risk’ crimes such as drug-trafficking, corruption and organized crime, as well as genocide and war crimes. In October 2014, a landmark trial judgment by one of the High-Risk Courts that simultaneously convicted 86 of 93 supposed MS gang members of various crimes and sentenced them to jail terms ranging from two to 122 years in prison, set a legal precedent through its juridical characterization of MS as a criminal organization.

In 2009, the government also created a specialized anti-gang group (Unidad de Acción Nacional contra el Desarrollo Criminal de las Pandillas, ‘PANDA’) within the police that was dedicated to investigating gangs and extortion, as well as an anti-extortion unit in the Public Ministry (Ministerio de Agencia Nacional contra el Delito de Extorsión, ‘MANDEEX’).


From the early days of his administration in 2012, President Pérez Molina also created new dedicated elite task forces to address the security situation and reduce homicides in designated territories, to combat drug-trafficking, or to address specific crimes such as extortion.

A number of institutional reforms in Guatemala have been implemented pursuant to recommendations by the UN-mandated CICIG that began operating in 2007. (See also Section II.A.) The CICIG has a mandate to investigate, and to help the Guatemalan authorities to disband and punish, ‘illicit security forces and clandestine security organizations’ (i.e. CIACS), and to make public policy recommendations to eradicate them and prevent their re-emergence. The CICIG also acts as a complementary prosecutor and has assisted the State authorities in investigating and prosecuting cases of extrajudicial executions, extortion, trafficking in persons, corruption and drug-trafficking.

In recent years, these efforts on the part of the Guatemalan authorities have reportedly had a tangible impact on certain organized crime groups. With the assistance of the CICIG, the Prosecutor’s Office (Fiscalía) has prosecuted various criminal networks linked to the State and is also reported to have made progress in investigating violent crimes and extortion.

Particularly during the period that Claudia Paz y Paz was Attorney General (December 2010 – May 2014), the authorities are also reported to have disrupted several powerful drug-trafficking structures operating in Guatemala and

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233 Grupo de Apoyo Mutual, Informe de evaluación de Fuerzas de Tarea 2014, 8 December 2014, http://areadetransparencia.blogspot.co.uk/2014/12/informe-de-evaluacion-de-fuerzas-de.html.


extradited a number of their leading figures to stand trial for drug-related offences in Mexico and the United States.241

However, in certain parts of the country the Government has lost effective control to gangs and other organized criminal groups and is unable to provide protection to inhabitants. For example, even where the police force has a presence in the urban zones where gangs operate, the police force reportedly often fails to provide adequate protection to residents who are threatened by gangs.242 Similarly, where the security forces carry out temporary operations to provide security to gang-affected neighbourhoods, these are reported merely to have the effect of displacing the gangs to other nearby zones.243 In 2015, it was reportedly acknowledged by the Guatemalan authorities that only ten per cent of the reported extortion-related murder cases are resolved by the justice system, with a high proportion of this type of murders apparently never even reported in the first place due to a fear of retribution and lack of trust in the authorities.244

Impunity for violence against women and girls, including domestic violence, is reported to remain a serious problem; stigma, fear of retribution and further violence, and lack of confidence in the justice system reportedly dissuades many women from reporting sexual or domestic violence.245 Moreover, despite the existence of specialized tribunals dealing with femicide and violence against women, women in rural areas reportedly do not have access to them.246

Impunity is reported also to be a particularly acute problem in relation to violence and other crimes committed against a range of other sectors of society, such as human rights defenders, legal and judicial professionals, indigenous populations, children and adolescents, individuals of diverse sexual orientations and/or gender identities, journalists and other media workers.247 Moreover, there are reports of criminal law provisions being frequently used by the authorities as a means of intimidating and harassing members of indigenous communities engaged in land disputes, legal and judicial professionals, human rights defenders and journalists.248


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In 1996, Guatemala adopted a law that created an office for the provision of protection and support to witnesses in criminal processes, which benefited from capacity-building by the CICIG from 2009 onwards. In 2014, the programme reportedly provided financial support to an estimated 551 witnesses and family members, who benefited from temporary protection measures. However, information revealing the identity of protected witnesses is reportedly sometimes released by the authorities, there is reported to be limited follow-up by the authorities on the situation of these witnesses after the criminal trial is concluded, and it is reportedly not uncommon for such witnesses to be threatened, attacked and even murdered.

Conditions in the Guatemalan prison system are reported to be harsh and potentially life threatening due to overcrowding, unhygienic conditions, violence, abuses by prison officials, and the influence of organized crime in prisons. Although the official prison capacity is for around 6,700 detainees, in September 2016 the prison population was reported to be over 20,000 persons; prison authorities reported being unable to guarantee prisoners’ safety.

2. Corruption and Human Rights Violations by State Agents

Corruption within Guatemalan institutions is reported to be a widespread and structural problem. In the political sphere, it reportedly affects all levels, from local to national politicians, including former President Pérez Molina and his vice-President Roxana Baldetti (see also Section II.A). The police and the armed forces have been accused of involvement in serious criminal activities and human rights abuses.


251 La Hora, Testigos se convierten en víctimas ante la falta de protección del Estado, 2 September 2014, http://lahora.gt/testigos-se-convierten-en-victimas-ante-la-falta-de-proteccion-del-estado


abuses, which the government reportedly lacks effective mechanisms to investigate and punish. Corruption is reported to be particularly widespread in the police force, sectors of which are reported to use extortion or work with organized crime groups to facilitate the trafficking of drugs. Corrupt officials in the Public Ministry have reportedly also leaked information about investigations to drug-trafficking structures. Gangs such as MS are reported to have installed sympathisers within certain government agencies, such as the National Persons Register (Registro Nacional de Personas), in order to expedite false identity documentation for gang members.

The judicial system is reported to be particularly inefficient and subject to corruption, intimidation, and delays, which in turn contributes to high levels of impunity for crimes in Guatemala, including those committed by police and military officials and organized criminal groups. In 2012, the CICIG named 18 ‘judges of impunity’ whom it considered to have consistently made rulings that favoured organized criminal groups; further names were added to that list in subsequent years. In 2015, a judge was charged with accepting bribes in the large-scale ‘La Linea’ customs fraud case that precipitated the resignation of President Pérez Molina. Judges, prosecutors and witnesses – especially those engaged in proceedings concerning gangs and other organized criminal groups, corruption or transitional justice – are reportedly subjected to threats, intimidation, attacks and surveillance. Notwithstanding his support for the extension of the CICIG’s mandate until September 2019, in August 2017 President Morales declared the head of the CICIG, Ivan Velásquez, persona non grata and ordered his expulsion from the country.

The Constitutional Court blocked this order, ruling that

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257 See Section II.B.2.c.
259 Ibid.
262 CIACS, Comunicado de Prensa 071, Primera declaración de exmagistrado de la CSJ por trafico de influencias, 8 September 2017, http://www.ciacs.org.gt/index.php?mact=News&cntnt01_detail=0&cntnt01articleid=8398&cntnt01returnid=157;
264 See, for example, CIICS, Comisión presenta otras denuncias contra jueces, 11 April 2013, http://www.ciics.org.gt/index.php?mact=News&cntnt01_detail=0&cntnt01articleid=354&cntnt01returnid=67;
267 “In a televised statement, Morales claimed that Velásquez had exercised ‘illegitimate, illegal, and unconstitutional’ pressure on the Guatemalan Congress by advocating in favor of the constitutional reforms currently under discussion. He also said that Velásquez had violated the right to the presumption of innocence by publicly announcing the cases that CICIG is investigating. […] The national human rights commissioner,
the declaration was improperly issued.\textsuperscript{270} In recognition of the crucial role of the CICIG, on 12 September 2017 the Inter-American Commission on Human Rights issued a resolution on ‘Human rights and the fight against impunity and corruption’, observing that the decision to expel the head of the CICIG casts doubt on the Guatemalan government’s commitment to fight corruption.\textsuperscript{271}

D. Trends in Internal and External Displacement and Returns

Guatemala does not have a government system to register internally displaced persons or to monitor the dynamics of internal displacement.\textsuperscript{272} Where gangs and other criminal groups have serious problems with a person or believe that the person in question could represent an ongoing threat, they are reported to make efforts to try and track the person down even after they have fled their home.\textsuperscript{273} Moreover, because persons who flee their homes due to threats or gang-related violence often have to do so rapidly, they usually incur substantial economic losses as they have little time to make arrangements to sell or rent their houses and businesses or even to collect all of their belongings.\textsuperscript{274} There is no government programme for assisting displaced persons and each new displacement is thus reported to exacerbate the downward spiral in their living conditions.\textsuperscript{275}

Guatemalans affected by the present dynamics of violence are also fleeing Guatemala in increasing numbers to seek asylum outside the country. As at the end of 2016, 12,554 Guatemalans were


274 Ibid., pp. 54-55.

275 Ibid.
recognized as refugees, the majority by the United States (11,328); another 46,227 asylum applications by Guatemalans remained pending a decision at the year’s end. The number of asylum applications by Guatemalans has increased significantly, with 26,657 applications lodged in 2016,278 almost three times the number of applications lodged in 2014 (9,260 applications)277 and over six times the number of applications lodged in 2012 (4,406 applications).278

The majority of claims for asylum by Guatemalans are lodged in the United States.279 Although many of these claims are lodged by adults,280 from 2011 onwards there was a surge in arrivals from unaccompanied children and families fleeing Guatemala and the other Northern Triangle countries arriving at the United States’ southern border, many of whom claimed asylum.281 Interview data from 2013 indicates that 20 per cent of the children from Guatemala said that they left because of violence in society, while 23 per cent of the children mentioned domestic violence as a relevant factor.282

Although some Guatemalan migrants are reported to have voluntarily returned to the country, no Guatemalan refugees have voluntarily repatriated in recent years.283 However, a large number of Guatemalan nationals are deported each year from the United States and Mexico by air and land, either pursuant to a deportation order following conviction for criminal activities or due to their irregular migration status.284 Deportees and returning migrants who bring resources from overseas are also reported to be identifiable targets for extortion, as are children and other persons in Guatemala who receive remittances from family members living and working overseas.285

III. Assessment of International Protection Needs of Asylum-seekers from Guatemala

A. Refugee Protection under the 1951 Convention

This Section outlines a number of potential risk profiles for asylum-seekers from Guatemala. UNHCR considers that asylum-seekers from Guatemala 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


278 Ibid.

279 In 2015, for example, 16,419 of the 16,727 asylum applications lodged by Guatemalans were made in the United States of America. The next largest numbers were in Belize (108) and Mexico (102); see UNHCR, UNHCR Global Trends: Forced Displacement in 2015, 20 June 2016, http://www.unhcr.org/uk/statistics/country/576408ced7/unhcr-global-trends-2015.html, Annex, Tables 11 and 12.

280 From 2009 onwards there has been an increase in the number of Guatemalan adults claiming asylum. See UNHCR, Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection, 13 March 2014, http://www.refworld.org/docid/532180c24.html, p. 4.


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. In the particular context of Guatemala, 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. 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 Guatemala, 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. In addition, applicants who flee gang-related forms of persecution may also be analysed in relation to the ground of membership of a particular social group.

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 Guatemalan 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.

While past persecution is no requirement for recognizing an applicant as a refugee, 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 Guatemala, the applicability of the exclusion clauses may need to be considered in certain cases.

1. Persons perceived by a gang or other organized criminal group as contravening its rules or resisting its authority

Gangs in Guatemala 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 challenging a gang’s authority reportedly include but are not limited to: criticizing the gang; refusing a request 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; participating in community policing groups; refusing to pay extortion demands; wearing certain clothing, tattoos or other symbols; and passing on information about the gang to rivals, authorities or outsiders.

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281 Ibid., paras 45-51.
282 Ibid., paras 46.
283 Ibid., paras 50-51.
284 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/4db21fa02.html, pp. 4-6.
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 any wider gang structure with which it is affiliated) and the form of ‘resistance’ involved.\(^{293}\) Most perceived contraventions of gang-imposed rules are reportedly dealt with severely by the gangs of Guatemala: individuals whom the gang members suspect of resisting their authority are reported often to be killed without prior warning, although sometimes the killing is reportedly preceded by threats and/or other attacks against the person concerned.\(^{294}\)

Persons living in areas where other organized criminal groups such as drug-trafficking organizations operate are also reported to face threats and attacks if they are seen as resisting the authority of the local group, for example, by refusing when required to collaborate or to sell lands to the group, or otherwise provoking or opposing the group.\(^{295}\)

Against this background, and taking into account the limitations on the ability and willingness of State agents to provide protection to civilians (see section II.C), UNHCR considers that depending on the particular circumstances of the case, persons perceived by a gang or other organized criminal groups as contravening its rules or resisting its authority may be in need of international refugee protection on the grounds of their (imputed) political opinion,\(^{296}\) membership of a particular social group,\(^{297}\) or on the basis of other Convention grounds.\(^{298}\)

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

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\(^{300}\) See UNHCR, Guidance Note on Refugee Claims Relating to Victims of Organized Gangs, 31 March 2010, www.refworld.org/docid/48b21fa0f2.html, particularly paras 34-44.

their parents; householders; politicians; public sector workers, including teachers; and certain returnees

Extortion is reportedly widespread in Guatemala and the regular extortion quotas for money, goods and services imposed by the gangs can be crippling. It is reported that 1,723 public transport workers, including taxi and mototaxi (tuc-tuc) drivers, have been murdered between 2009 and 2015, with a sharp increase in numbers in 2015, the vast majority for resisting extortion. Owners, employees and workers in formal and informal businesses, including street vendors and workers, are also reported to be frequently extorted in the territories where gangs and bandas operate. Many gangs are also reported to extort a wider range of inhabitants in the territories where they operate, particularly children and adults who receive remittances from abroad, but also schoolchildren and their parents; householders; politicians; public sector workers, including teachers; and certain returnees.

The level of extortion payments can reportedly be raised steeply and without warning by gangs, for example as a measure taken in retaliation against local community members following police operations

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in the territory,304 and it is reportedly not unusual for victims to lose their livelihood due to excessive extortion demands by gangs. Moreover, extortion victims reportedly may have to simultaneously pay extortion money to two or more gangs.305

Exortion is reported to be a principal source of income for most local gangs in Guatemala and the refusal to pay exorton demands is usually construed by gang members as a serious act of resistance to the authority of the gang itself.306 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, which swiftly escalate with any continuing delay or refusal to pay; persons in these circumstances are reportedly commonly killed by the gangs.307 In 2014, it was reported that an estimated 20 per cent of all of the murders committed in Guatemala were related to the failure to pay such extortion demands.308 Persons found by the gangs to have reported extortion demands to the authorities can reportedly expect severe retribution.309

**Against this background, and taking into account the limitations on the ability and willingness of State agents to provide protection to civilians (see section II.C), UNHCR considers that depending on the particular circumstances of the case, persons in professions or positions susceptible to exortion, including but not limited to those involved in informal and formal commerce as business owners, their employees and workers, or as street vendors or workers; children and adults who receive remittances from abroad; schoolchildren and their parents; householders; politicians; and public sector workers, including teachers; and certain returnees may be in need of international refuge remittances 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.**310

### 3. ‘Informants’, witnesses and 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 Guatemala have reportedly been killed by the perpetrators to ensure their silence.311 Those who do denounce the crimes, or who otherwise cooperate with the authorities against gangs or other organized crime groups

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309 *La Hora*, *La impunidad se suma a la violencia que enluta a los transportistas*, 22 January 2015, [http://lahora.gt/la-impunidad-se-suma-la-violencia-que-enluta-a-los-transportistas](http://lahora.gt/la-impunidad-se-suma-la-violencia-que-enluta-a-los-transportistas/).


as ‘informants’, are reportedly routinely pursued for their ‘betrayal’, often along with their family members, even when placed in a witness protection programme.132

Persons giving evidence against corrupt members of the security forces and political figures have sometimes also reportedly been killed, even as protected witnesses.133

Against this background, and taking into account the limitations on the ability and willingness of State agents to provide protection to civilians (see section II.C), UNHCR considers that depending on the particular circumstances of the case, ‘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 opinion, or on the basis of their membership of a particular social group, or on the basis of other Convention grounds.134

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

Persons suspected by one gang of having links with a rival gang or organized criminal group are reportedly subjected to threats and violence. Persons with a family member (or family members) in a gang or other organized criminal group, as well as other persons perceived – even incorrectly – to be affiliated with members of a gang or other organized criminal group, are reportedly treated with suspicion by rivals; there are reports of such persons having been attacked and killed.135 At the same time, members of the security forces are reported to attack and arbitrarily detain children (boys and girls) and youths living in zones where the gangs operate, on the basis of a perceived affiliation with the gangs.136 Children (boys and girls) and youths suspected of being gang members have also reportedly been lynched and killed in Guatemala by vigilantes and mobs.137
Against this background, and taking into account the limitations on the ability and willingness of State agents to provide protection to civilians (see section II.C), UNHCR considers that depending on the particular circumstances of the case, family members, dependants and other members of the households of gang members may be in need of international refugee protection on the basis of their (imputed) political opinion, or on the basis of other Convention grounds.318 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.319

5. Gang and criminal ‘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.320 The family members of these ‘traitors’ are reportedly sometimes also the object of reprisals.321 At the same time, an individual who has left a gang with permission 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.322 Drug-trafficking groups are also reported to track down and kill those whom they choose to have betrayed them.323

Against this background, and taking into account the limitations on the ability and willingness of State agents to provide protection to civilians (see section II.C), UNHCR considers that depending on the particular circumstances of the case, deserters and former members of gangs and other organized criminal groups, 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.324


6. Children and youths with certain profiles or in specific circumstances

Children and youth suffer multiple types of violence in Guatemala. Children may fall into any of the profiles listed in these Eligibility Guidelines. However, children in Guatemala may also be at risk of child-specific forms of persecution. Domestic abuse of children, both boys and girls, is reported to be a serious problem in Guatemala.

Children, particularly those living in territories where the gangs operate, are frequently a target of gang violence. This is partly the result of reported efforts by gangs to recruit growing numbers of new collaborators and members from among children and youth, efforts that have reportedly intensified since 2014. Girls are reportedly targeted from a young age by gangs with demands to become “wives” or girlfriends of gang members.

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 of or affiliate of the local gang 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. The gangs are reported to have a presence in the public schools of these urban areas.

Claims by persons of this profile may give rise to the need to examine possible exclusion from refugee status.


For further analysis on exclusion considerations, see Section II.D.


where they engage in extortion armed disputes and other activities. Many children threatened by gangs reportedly withdraw from school.\textsuperscript{332} 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, resulting in threats and sometimes fatal violence directed against the child or youth and/or their family members.\textsuperscript{334} Even if the child leaves the area where the gang operates, family members who remain there reportedly may continue to face threats and violence.\textsuperscript{335} Moreover, children suspected – even mistakenly – of involvement with gangs also face discrimination and violence from the State security services and from vigilante groups and mobs.\textsuperscript{336}

Against this background, and taking into account the limitations on the ability and willingness of State agents to provide protection to civilians (see section II.C), UNHCR considers that depending on the particular circumstances of the case, 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.\textsuperscript{337}

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.\textsuperscript{338}

7. **Women and girls with certain profiles or in specific circumstances**

Discrimination and violence against women and girls is reported to be widespread and systematic in Guatemala by members of gangs and other organized criminal groups, the security services and other individuals.\textsuperscript{339} According to figures published in 2015, the country had the second highest absolute


\textsuperscript{336} See section III.A.4 above.


\textsuperscript{338} 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/4b2f4f6d2.html. For further analysis on exclusion considerations, see Section III.D.


In the territories where the gangs operate, sexual and gender-based violence against women and girls is reportedly widespread, as is the forcible recruitment of girls to carry out tasks for the gangs.\footnote{Procurador de los Derechos Humanos, Informe Anual Circunstanciado 2016, 31 January 2017, https://www.pdh.org.gt/biblioteca/category/9-informes-anuales.html, p. 35; CICIG/UNICEF, Human Trafficking for Sexual Exploitation Purposes in Guatemala, 2016, http://www.cicig.org/uploads/documents/2016/Trafa_Ing_978_9929_40_829_6.pdf; International Development Research Centre, Violence Against Women Rooted in Conflict Over Land, 17 November 2016, https://www.idrc.ca/en/article/violence-against-women-rooted-conflict-over-land; Siglo 21, La trata de personas se duplicó en un año, 30 July 2016, http://www.s21.gt/2016/07/30-la-trata-de-personas-se-duplico-en-un-an.} Women and girls perceived as being linked with a particular gang are reportedly also a target for vengeance by 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.\footnote{Note 54}
Women and girls may be seen by individual gang members as their partner, even when a woman or girl has never consented to being in a couple. As noted above (see Section II.B.1), domestic violence against women reportedly continues to be a serious problem, prompting the reactivation in 2016 of the National Coordination Office for the Prevention of Domestic Violence and Violence against Women (Coordinadora Nacional para la Prevención de la Violencia Intrafamiliar y Contra las Mujeres; CONAPREVI). There are reported cases of domestic violence by gang members against their wives and other female members of their own household; the victims are often trapped 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.

Against this background, and taking into account the limitations on the ability and willingness of State agents to provide protection to civilians (see section I.I.C), UNHCR considers that depending on the particular circumstances of the case, women and girls, in particular but not limited to women and girls from areas where gangs operate or those from social milieus where sexual and gender-based violence against women and girls is practised, may be in need of international refugee protection on

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**References:**


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

There are no explicit references in Guatemala’s anti-discrimination laws to discrimination of the basis of sexual orientation or gender identity. Discrimination against individuals of diverse sexual orientation and/or gender identities is reportedly widespread in Guatemala and such persons have reportedly been targeted for abuse, attacks and murder by gangs and other sectors of society, including by the police and other public authorities. Transgender individuals, in particular transwomen, are reported to be at particular risk of violence.

Against this background, and taking into account the limitations on the ability and willingness of State agents to provide protection to civilians (see section II.C), UNHCR considers that depending on the particular circumstances of the case, 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. 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. Judges, prosecutors and lawyers, especially those engaged in proceedings concerning gangs and other organized criminal groups, corruption or transitional justice

Judges, prosecutors and lawyers, especially those engaged in proceedings concerning gangs and other organized criminal groups, corruption or transitional justice, are reported to be subjected to threats, the basis of their membership of a particular social group, and/or their (imputed) political opinion, or on the basis of other Convention grounds. 351


intimidation, attacks and surveillance.\textsuperscript{357} Reports indicate that between 2012 and May 2015, 26 lawyers were killed in Guatemala,\textsuperscript{358} while between March 2015 and mid-July 2016, 13 lawyers were killed.\textsuperscript{359} Lawyers defending gang members have also reportedly been assassinated by the gangs in retaliation for unfavourable outcomes in their legal cases.\textsuperscript{360}

Against this background, and taking into account the limitations on the ability and willingness of State agents to provide protection to civilians (see section II.C), UNHCR considers that depending on the particular circumstances of the case, judges, prosecutors and lawyers, especially those engaged in proceedings concerning gangs and other organized criminal groups, corruption or transitional justice, may be in need of international refugee protection on the basis of their (imputed) political opinion, or on the basis of other Convention grounds.\textsuperscript{361}

10. Persons with certain political profiles

In the political campaigning leading up to the 6 September 2015 primaries in Guatemala, 352 acts of violence were recorded across 163 of the country’s 340 municipalities. The violence was reportedly concentrated principally around elections to political office at the municipal (i.e. mayoral), rather than the national level and resulted in 25 homicides of candidates for political office and others linked to the political parties. It is reported that this election violence tends to reflect conflicts over political control at the municipal level by local powers that, particularly in the border regions, are often linked to organized criminal groups or entities backing controversial mining or hydroelectric projects.\textsuperscript{362}

Outside of electoral campaigning, there have been occasional reports of death threats and killings of mayors linked to apparently political motives.\textsuperscript{363} Other mayors are reported to have been threatened and attacked in circumstances that apparently suggest a link to organized crime, including drug-trafficking organizations.\textsuperscript{364}


\textsuperscript{362} See UNHCR, Guidance Note on Refugee Claims Relating to Victims of Organized Gangs, 31 March 2010, www.refworld.org/docid/4bb2f1af0.html, paras 12(b) and 17.

\textsuperscript{363} Plaza Pública, Muerte y destrucción: la cara vergonzosa de las elecciones, 21 October 2015, https://www.plazapublica.com.gt/content/muerte-y-destruccion-la-cara-vergonzosa-de-las-elecciones.

Against this background, and taking into account the limitations on the ability and willingness of State agents to provide protection to civilians (see section II.C), UNHCR considers that depending on the particular circumstances of the case, persons with certain political profiles may be in need of international refugee protection on the basis of their (imputed) political opinion, and/or their membership of a particular social group, or on the basis of other Convention grounds.365

Claims by persons of this profile may give rise to the need to examine possible exclusion from refugee status.366

11. Journalists and other media professionals, especially those working on issues relating to organized crime, social justice and corruption

Journalists and other media professionals, especially those working on issues relating to organized crime, social justice and corruption in Guatemala, are reported to have frequently been attacked and killed by gangs, organized criminal groups and elements of the security services.367 Threats from organized criminal groups and heavy-handed politicians have reportedly created an environment of censorship and self-censorship among such media professionals in Guatemala.368

In 2016, eight journalists were reported to have been killed.369 Reported acts of violence and aggression against journalists and media workers rose from 35 cases in 2012, to 73 in 2014 and to at least 133 in 2015, with the majority of such attacks reportedly carried out by public servants and particularly by police officers.370 Between January and mid-November 2016, there were 87 reports of violence and...
aggression against journalists. Threats and attacks against journalists and other media workers are reported to intensify during electoral periods.

Against this background, and taking into account the limitations on the ability and willingness of State agents to provide protection to civilians (see section II.C), UNHCR considers that depending on the particular circumstances of the case, journalists and other media professionals who are working on issues perceived to be sensitive by either State or non-State armed actors, including but not limited to organized crime, social justice, and corruption, may be in need of international refugee protection on the ground of their (imputed) political opinion, and/or their membership of a particular social group, or on the basis of other Convention grounds.

12. Human rights defenders and other social and political activists

Human rights defenders and other social and political activists who are working on issues perceived to be sensitive have reportedly been the frequent subject of harassment, threats, attacks and murder by gangs, organized criminal groups, elements of the security services and powerful political groups.

Those who are subject to such mistreatment reportedly include but are not limited to persons working on issues perceived to be sensitive by either State or non-State armed actors, including but not limited to organized crime, social justice, and corruption, may be in need of international refugee protection on the ground of their (imputed) political opinion, and/or their membership of a particular social group, or on the basis of other Convention grounds.

Between 2000 and August 2014, it is reported that 174 human rights defenders were murdered. In 2014 seven human rights defenders were reportedly murdered, 13 in 2015, and 14 in 2016; in the first half of 2017 seven such murders were recorded. In 2013, 657 attacks were recorded against human
rights defenders; this figure rose to 813 attacks in 2014 before falling to 493 attacks in 2015 and to 263 in 2016.378 However, the first half of 2017 showed a sharp upward trend, with 236 attacks recorded in just six months, or 90 per cent of the total number registered during the whole of 2016.379 A large proportion of these attacks are reportedly directed against those working on the rights of indigenous peoples and environmental and land rights issues.380 Attempts to intimidate human rights defenders reportedly frequently include prosecutions based on the misuse of criminal law provisions, arbitrary arrests and prolonged use of pretrial detention, as well as defamation campaigns by powerful special interest groups.381

Against this background, and taking into account the limitations on the ability and willingness of State agents to provide protection to civilians (see section II.C), UNHCR considers that depending on the particular circumstances of the case, human rights defenders and other social and political activists who are working on issues perceived to be sensitive by either State or non-State armed actors may be in need of international refugee protection on the ground of their (imputed) political opinion, and/or their membership of a particular social group, or on the basis of other Convention grounds.382

13. Leaders and members of indigenous communities working to defend community land and other community assets

Alongside efforts by indigenous communities to recover ancestral lands taken from them during the civil war, many indigenous communities across Guatemala are reportedly involved in efforts to stop the exploitation of natural resources in or around ancestral indigenous territories – i.e. predominantly mining, hydroelectric and oil exploration projects.383 The predominantly rural and indigenous communities involved in such conflicts represent a sector of the population that already faces high levels of exclusion, inequality, discrimination and poverty.384


Land disputes related to large-scale extractive projects are reported to have led to serious unrest in several parts of Guatemala, generating social protests and sometimes violent incidents. State security forces are reported to have responded to such incidents with disproportionate use of force, accompanied by repressive and intimidating operations aimed at silencing the voices of the communities. Moreover, leaders and members of these communities are frequently reported to have been subjected to a wide range of abuses by members of the security forces and private security companies, including harassment, threats, physical attacks, arbitrary detention, to violent and unlawful evictions and killings, as well as restrictions on their freedom of movement, the burning of their crops and houses, and the arbitrary use of criminal law provisions against them. Private security companies engaged in these acts are reportedly hired by companies and others with financial interests in the projects opposed by local communities.

Against this background, and taking into account the limitations on the ability and willingness of State agents to provide protection to civilians (see section II.C), UNHCR considers that depending on the particular circumstances of the case, leaders and members of indigenous communities working to defend community land and other community assets may be in need of international refugee protection on the basis of their membership of a particular social group, their (imputed) political opinion and/or their race, or on the basis of other Convention grounds.

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

Family members, dependants, other members of the households of individuals with any of the profiles above can reportedly also be a target for attacks and assassination by gangs, organized criminal groups and elements of the security forces, sometimes even after the person who was initially targeted has fled or has already been killed.


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 international protection criteria contained in UNHCR’s mandate and regional instruments be examined.390

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,391 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.392 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.393

In light of the information provided in Section II above, UNHCR considers that most if not all violence in Guatemalan society is discriminate, 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


391 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 discriminate. 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/50d432c9e2.html, para 17.


to assess the threat to life, physical integrity or freedom resulting from events seriously disturbing public order. In the exceptional circumstances of Guatemala, relevant considerations in this regard include the fact that in certain parts of the country the Government has lost effective control to gangs and other organized criminal groups and is unable to provide protection to inhabitants.\textsuperscript{394} In the context of Guatemala, the available information indicates that the exercise of control over key aspects of people's lives in areas controlled by gangs and some other organized criminal groups is repressive, coercive and undermines an \textit{ordre public} based on respect for the rule of law and human dignity.\textsuperscript{395}

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.D); (iii) the extensive measures of control, including social, economic, and political control, over local populations by gangs and certain other organized criminal groups 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 youths 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.\textsuperscript{396}

Against this background, UNHCR considers that individuals who have been found not to meet the refugee criteria contained in the 1951 Convention and who originate from areas where organized criminal groups 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

Guatemalan 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)\textsuperscript{397} 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.\textsuperscript{398}

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 Guatemala controlled by gangs or certain organized criminal groups, or where they 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...

\textsuperscript{394} See Section II.C and references therein.

\textsuperscript{395} See Sections II.B.2.a and II.B.2.b and references therein.

\textsuperscript{396} For general considerations (not specific to Guatemala), see UNHCR, \textit{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, \url{http://www.refworld.org/docid/50d32e5e2.html}, paras 10-12.

\textsuperscript{397} \textit{Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama}, 22 November 1984, \url{http://www.refworld.org/docid/3ae6b36ec.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, \textit{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, \url{http://www.refworld.org/docid/53c527d4.html}.

\textsuperscript{398} \textit{Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama}, 22 November 1984, \url{http://www.refworld.org/docid/3ae6b36ec.html}, para. III(3).
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 Guatemala where gangs or certain other organized criminal groups 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). 399

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

Persons originating from Guatemala 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 Guatemala. 400

In light of the information provided in Section II above, UNHCR considers that most if not all violence in Guatemalan 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. 401

I. **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 Guatemala, 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.


400 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 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, Articles 2(f), 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 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.

401 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.
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 drug-trafficking structures, to carry out attacks in any part of Guatemala, 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 Guatemala City and surrounding municipalities, 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. 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, 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 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 and the absence of a relevant legal framework and protection mechanisms 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; (viii) for members of indigenous communities in particular, the presence of members of the relevant indigenous community in the proposed area of relocation; and (ix) the overall sustainability of the relocation in light of the fact that displaced persons in Guatemala are often forced to displace multiple times.

D. Exclusion from International Refugee Protection

Among nationals or habitual residents of Guatemala 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 murder, torture and other forms of ill-treatment, kidnappings, rape and other forms of sexual violence, extortion, robbery, violent assaults and other violent crimes, forced displacement and recruitment and use of children. 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

403 Ibid., paras 24, 27-30.
is not a sufficient basis to exclude. A full assessment of the circumstances of the individual case is required in all cases.\(^{405}\)

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.\(^{406}\) 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.\(^{407}\)

\(^{405}\) 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](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](http://www.refworld.org/docid/3f5857d24.html).

\(^{406}\) 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/4b2f46d2.html](http://www.refworld.org/docid/4b2f46d2.html), paras 58-64.

\(^{407}\) The Paris 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/465198447.html](http://www.refworld.org/docid/465198447.html), paras 3.6 and 3.7.