

Political Refugees from El Salvador: Gang Politics, the State, and Asylum Claims

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ABSTRACT

Social conditions driving refugees from El Salvador to seek asylum in the US have changed dramatically since the summer of 2015. After more than a decade of inter-gang warfare and criminal violence, the *maras* in El Salvador have become political actors. They have declared the formation of a new supra-organization, Mara-503, and announced that they intend to shape the political process in El Salvador and potentially the entire Central American region. As a result, people fleeing violence in El Salvador should be considered political refugees as defined by US immigration courts and United Nations charters. This essay is based on research conducted in El Salvador, and as an expert witness in cases for refugees from El Salvador. It outlines the emergence of a “Third Generation” of gang organizations, the threats to social order in El Salvador, and the approach immigration lawyers should pursue in refugee cases.

KEYWORDS: El Salvador, gangs, refugees, private security

1. INTRODUCTION

For more than 35 years, the path to legitimate political power in El Salvador has been through violence. The Nationalist Republican Alliance (ARENA) began in 1980 as a “death squad”, led by its founder Roberto D’Aubuisson. According to human rights reports and declassified documents from the US Government, ARENA carried out the assassination of Archbishop Oscar Romero, in addition to hundreds of other extra-judicial killings. The Farabundo Martí National Liberation Front (FMLN) began as an armed coalition of five separate leftist organizations who declared war against the Salvadoran Government in 1980. In January 1992, after more than 12 years of protracted civil war, the Government under President Alfredo Cristiani of the ARENA Party signed a peace agreement with the leaders of the FMLN. Known as the Chapultepec Peace Accords, this agreement allowed the FMLN to participate in electoral politics, and set into motion the complete re-organization of El Salvador’s military and police forces.

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The gangs of El Salvador today are following a well-known and successful trajectory towards political legitimacy, despite their history of brutal violence that make this goal appear naïve and misguided. In fact, the decades-long rivalry and hostility between the ARENA and FMLN parties has created a space for the gangs to more effectively enter the political system. Officials estimate that as many as 600,000 family members and allies support the general tactics and political objectives of the gangs.¹ These supporters are people who have not benefited from the political order established after the civil war, or from the new economic programme initiated by the Central American Free Trade Agreement with the US in 2006. Gang leaders argue that they are protecting the most vulnerable people of society from arbitrary abuse of public security forces, that politicians commit open corruption by stealing government funds, and that the economy benefits only a small elite. The gangs or *maras*, along with their civilian constituency, are tired of being ignored, and frustrated by the lack of assistance to relieve extreme poverty.

In this essay, I examine the series of events that reveal how the former street gangs of the Mara Salvatrucha (MS-13) and Barrio-18 (B-18, both factions, *Sureños* and *Revolucionarios*) have become political actors in El Salvador. Clearly, the implications of this transformation are key to understanding current events in that country; but more importantly, the politicization of the gangs has reshaped the context for accurately explaining why thousands of people have fled El Salvador and how their requests for asylum in the US and around the world should be understood. In addition to the US, large numbers of Salvadoran refugees have sought safety in Canada, Mexico, Nicaragua, Costa Rica, Italy, and Australia. Much of this article is based on publicly available newspaper articles and institutional reports documenting social and political events in El Salvador. My goal has been to organize this material into a coherent, systematic analysis that reveals the changing nature of gang violence. In addition, research for this article includes interviews conducted in El Salvador with key representatives of human rights organizations, the National Academy of Public Security (ANSP), and government officials working on issues of gang-related violence. The ANSP supports a robust research and publishing programme through the Centro de Investigación Científica (CINC) and the Centre's journal *Revista Policía y Seguridad Pública* (hereafter and in footnotes *RPSP*). My hope is that this article will highlight the outstanding work being done by the CINC and encourage broader use of their important journal.² Finally, this article draws on a handful of asylum cases for which I have first-hand information. To maintain the anonymity of asylum

- 1 United Nations High Commissioner for Refugees (UNHCR), *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from El Salvador*, Geneva, UNHCR, Mar. 2016, 12; S. Kinoshian, A. Albaladejo & L. Haugaard, *El Salvador's Violence: No Easy Way Out*, Center for International Policy, Latin American Working Group Education Fund, Washington, DC, Aug. 2016, 8.
- 2 The founding documents for the ANSP and CINC emphasized the importance of protecting the rights of citizens to exercise constitutional guarantees of free expression, association, and human rights. See El Salvador, Academia Nacional de Seguridad Pública, "Proyecto: Centro de Investigación Científica de la Academia Nacional de Seguridad Pública (CINC-ANSP)", *RPSP*, 5(2), 2015, 467–481. See also, W. Stanley, *Risking Failure: The Problems and Promise of the New Civilian Police in El Salvador*, Washington, DC, Washington Office on Latin America/Hemisphere Initiatives, 1993; W. Stanley, *The Protection Racket State: Elite Politics, Military Extortion, and Civil War in El Salvador*, Philadelphia, Temple University Press, 1996.

applicants, I will use this information sparingly and generally without citations. Public information taken from newspapers and published reports will be clearly identified for others to use as appropriate.

I demonstrate in this article that the gang factions in El Salvador began to coordinate joint anti-State operations after the collapse of a 2012–2014 truce with the Government. Their aspirations for creating a united supra-organization were revealed in 2015, although the reality of that organisation has generally failed to live up to the announced goals of the gangs. Still, the gangs have continued to cooperate with each other as they have shifted their objectives from simply earning money through criminal enterprises to becoming legitimate political actors in society. Civilian opposition and resistance to gang activities take place now in terms of the political orientation and goals of the gangs. As a result, I argue in this essay that most refugees from El Salvador have fled their homes because of political repression at the hands of the gangs, and the Government's inability to adequately protect them. Refusing to pay extortion, refusing to join a gang, refusing to submit to sexual assault, and refusing to remain silent about crimes committed by the gangs should be understood in terms of this political context.

I begin with a brief historical outline of the post-Civil War years in El Salvador when the entire security apparatus was re-organized and gang members began to locate in areas without a police presence. I then turn to the more recent past since 2014 and the politicisation process of the gangs. Intentional homicide rates increased dramatically in 2015 and early 2016, and the Government appeared unable to contain this wave of violence. I then discuss the evidence that shows how the Government's inability to protect civilians demonstrates that El Salvador has become a failed state in terms of its primary responsibility. I conclude with an examination of how people fleeing violence in El Salvador should be considered political refugees as defined by US immigration courts and United Nations charters.

2. FROM CIVIL WAR TO GANG WARFARE

In the aftermath of a violent civil war in which more than 75,000 people were killed, and hundreds of thousands of people dislocated inside El Salvador and abroad, the warring parties agreed to re-make El Salvador according to new terms of cooperation and transparency. In addition to re-organizing the political process, allowing the FMLN to engage in electoral politics, the two sides agreed to completely overhaul the military and police forces. This focus on the security apparatus was key, as there would be no way to guarantee the safety of former militants on either side, or guarantee the broad participation of civilians in the reform efforts without new personnel and leadership within the police and armed forces. In general terms, military leaders agreed to use the armed forces to protect the country from foreign invasion; the new National Civilian Police (PNC) would be responsible for maintaining security within the country. Both branches of the national security forces began their reformation by adhering to a new philosophy that stressed the protection of human rights. The entire security apparatus of the State was re-organized, using new guidelines emphasizing transparency, intelligence gathering techniques, community policing approaches, and consultation with civil society organizations, particularly in rural

areas. In short, the 1980–1992 Civil War was not just a prelude to the current situation marked by gang violence; the time required to remake El Salvador’s police and military created a temporary power vacuum that could not respond to the growing presence of street gangs.

To create a new police force, the Peace Accords established that the ANSP would assume responsibility for recruiting, training, and monitoring PNC forces. The ANSP had its own leadership and institutional autonomy from the PNC, which created one of the most innovative policing structures in the world. ANSP training and oversight emphasized a Community Police Model where citizens would come to think of the police as “ours”. The ANSP planned to rely on advanced intelligence gathering strategies and scientific investigations for solving crimes. For several years after 1992, the ANSP received insufficient funds to recruit, train, and implement this new public security strategy.³ As a result, the slow process of re-organizing an entirely new police system left much of the country without an established police presence. Given little time to properly establish recruitment protocols, the ANSP followed guidelines included in the Peace Accords: 20 per cent of the new police would come from former FMLN soldiers, 20 per cent from former members of the El Salvadoran Armed Forces (FAES), and 60 per cent of the PNC would be new civilian recruits. Both the FMLN and FAES effectively inserted more than their allotted share into the class of original recruits. In addition, some special investigative units were incorporated into the PNC without careful review. According to H. Silva Ávalos, the “original sin” of the PNC was to allow former members of a special anti-drug unit, the *Unidad Ejecutiva Antinarcótics*, to continue operating without reviewing its ties to organized crime.⁴ Still, some former police units, particularly the Hacienda Police and Treasury Police were completely disbanded, and most of their personnel prohibited from joining the PNC. Some of these former police officers joined former soldiers from the armed forces to create private security companies. Other former police and military members created criminal organizations that robbed banks, carried out kidnappings, and stole cars.⁵

Beginning in 1996, the Clinton Administration implemented tougher legislation against people convicted of gang-related crimes in the US. According to this new policy, “noncitizens sentenced to a year or more in prison would now be repatriated to their countries of origin, and even foreign-born American felons could be stripped of their citizenship and expelled”.⁶ By 2005, more than 46,000 convicted felons with gang connections were deported to Central America, most of them to El Salvador and Honduras. In El Salvador, these gang members, some of whom had left as infants, moved into urban neighbourhoods and small towns without any coordinated

3 L. C. Arévalo Herrera, “La formación policial en El Salvador: desafíos y oportunidades para impulsar un modelo de policía comunitaria”, *RPSP*, 1(1), 2011, 143–164.

4 See H. Silva Ávalos, *Infiltrados. Crónica de la corrupción en la PNC, 1992–2013*, San Salvador, UCA Editores, 2013. See also a review of this book by W. R. Padilla Mirón, the head of Institutional Planning for the ANSP, *RPSP*, 6(1), 2016, 387–406.

5 See E. Sancho Castañeda, “Cultura de violencia social del Estado y de la ciudadanía”, *RPSP*, 2(1), 2012, 151–168; M. Hernández-Anzora, “Análisis sobre los cuerpos de agentes municipales y su rol en la seguridad pública”, *RPSP*, 6(1), 2016, 83–126; Congressional Research Service Report (CRS) R43616, *El Salvador: Background and U.S. Relations*, by C. Ribando Seelke, Feb. 4, 2016, 9.

6 A. Arana, “How the Street Gangs Took Central America”, *Foreign Affairs*, 84(3), 2005, 100.

police effort to monitor or restrict their activity. Many towns did not yet have police officers assigned to them, and larger cities lacked sufficient police forces, especially in the poorest neighbourhoods.⁷ Thus, criminal organisations and gangs have posed a major threat to social order in El Salvador for more than two decades. The gangs originally formed among the community of Salvadoran refugees who settled in Los Angeles, California, to avoid the violence of El Salvador's civil war. Culturally excluded from joining other Latino/Mexican Gangs in Los Angeles, Salvadoran youth created their own organisations. The two largest and most active gangs are the MS-13 and the B-18.⁸ According to oral history accounts of the founding of these organizations, the two gangs in Los Angeles began initially as allies, drawn together by Salvadoran identity. An awareness of having shared similar experiences and an original, almost mythical alliance in Los Angeles, and of the relative stability established by a 2012–2014 truce has formed the basis for limited cooperation between the gang factions more recently.⁹

MS-13 is the larger and better-organized criminal gang in El Salvador. Experts estimate that there are nearly 35,000 members of this gang. They have connections to criminal organizations in Mexico and Colombia financed primarily by illicit drug trafficking. MS-13 gang members are most closely tied to the Zetas in Mexico, and have sent members to Zeta training camps in Mexico and Guatemala. Some MS-13 gang members have also been hired as violent enforcers for international criminal organisations. MS-13 soldiers have been arrested in the US, Mexico, Guatemala, Honduras, Costa Rica, Peru, Chile, Italy, and Spain.¹⁰ The history of Barrio 18 is more complex as it split into two rival factions in 2004. The larger faction, B-18 *Los Sureños*, has ties to the so-called Mexico Mafia, an organization based in California and particularly active in prisons throughout the western and southwestern parts of the US. More than a decade ago, B-18 *Los Revolucionarios* broke from the larger B-18 leadership structure. The two factions became mortal enemies. Estimates place the total active membership of both groups at around 25,000.¹¹

7 Castañeda, "Cultura de violencia", 158; CRS, *El Salvador: Background*, 4.

8 The history of these gangs is well documented. In addition to Arana, cited above, see especially, E. Zilberg, "Fools Banished from the Kingdom: Remapping Geographies of Gang Violence Between the Americas (Los Angeles and San Salvador)", *American Quarterly*, 56, 2004, 759–779; M. Manwaring, *Street Gangs: The New Urban Insurgency*, Carlisle, PA, Strategic Studies Institute, 2005; J. D. Corsetti, "Marked for Death: The Maras of Central America and Those Who Flee Their Wrath", *Georgetown Immigration Law Journal*, 20, 2006, 407–435; M. Hume, "Mano Dura: El Salvador Responds to Gangs", *Development in Practice*, 17, 2007, 739–751; S. Wolf, "Mara Salvatrucha: The Most Dangerous Street Gang in the Americas", *Latin American Politics and Society*, 54, 2012, 65–99.

9 L. E. Amaya & J. J. Martínez, "Escisión al interior de la pandilla Barrio 18 en El Salvador: Una mirada antropológica", *RPSP*, 5(1), 2015, 165–166.

10 See UNHCR, *Eligibility Guidelines*; C. Sánchez Romero, Ministra de Justicia y Paz de Costa Rica, "Estado de la justicia y de la seguridad pública en Costa Rica. Aproximación comparativa con El Salvador", *RPSP*, 6(1), 2016, 326–340; C. Castro Fagoaga, "Ministro de Seguridad: 'Aquí no hay maras'", *La Prensa Libre* (San José Costa Rica), 15 Jul. 2016, available at : <http://www.laprensagrafica.com/ministro-de-seguridad-pandillas-se-han-beneficiado-con-la-tregua> (last visited 4 Aug. 2017); "Marero ingresa irregular por segunda vez a C.R.", *El Diario Extra* (San José, Costa Rica), 16 Jul. 2016, available at: <http://www.dia.rioxtra.com/Noticia/detalle/299887/marero-ingresa-irregular-por-segunda-vez-a-cr-> (last visited 04 Aug. 2017).

11 Amaya & Martínez, "Escisión al interior de la pandilla", 149–178. This rupture into two groups happened only in El Salvador and not in other countries where Barrio 18 has a presence; see, C. Martínez, "Barrio

Criminal organizations in El Salvador have earned money by transporting drugs throughout the region destined for consumers in the US. A larger source of income comes from extorting “protection” money (called *renta/rent*) from small business owners and individuals with relatives in the US, engaging in human trafficking, fencing stolen goods, and trading guns and other firearms throughout the Central American region. Salvadorian citizens pay more than USD 400 million annually in extortion.¹² In addition, money laundering has become a major operation in El Salvador as the dollarized economy allows for easy conversion from other currencies without rigorous background checks and reporting requirements in place in the US. According to a US State Department report on international drug syndicates, the International Narcotics Control Strategy Report (INCSR), the gangs in El Salvador play an important role in regional and international money laundering:

Organized crime groups launder money through the use of front companies, parking lots, travel agencies, remittances, the import and export of goods, and cargo transportation. Illicit activity includes the use of smurfing operations—whereby small amounts of money are deposited or transferred in a specific pattern to avoid detection by government authorities.¹³

To avoid arrest or prison for these crimes, gang leaders bribe and/or intimidate individual police and court officers. After several coordinated efforts to confront the gangs with “iron fist” and “super iron fist” tactics, municipal governments and the national government of El Salvador proved unable to stop gang violence. Working with leaders in the Catholic Church, the national government negotiated a temporary “truce” between the two gangs in 2012. That agreement only moderately reduced violence between the rival gangs and not violence aimed at civilians. This truce ended in January 2015, and since then violence became more widespread, intense, and seemingly intractable.¹⁴

Gang members rely on physical assault, threats of escalating violence, and ultimately murder to maintain their influence and power over civilians in El Salvador. Threats are real and must be taken seriously. The power of the gangs at the local and national level derives from the willingness of gang members to carry out threats of violence. The gangs generally operate through a hierarchical structure of leaders supported by neighbourhood and small town gang cells, typically called *clicas* or *canchas*. Cells within a *clica* can be composed of just three individuals, while each *clica* has at least 15 members, although some *clicas* are much larger. There are some 700 *clicas* in

18 Sureños retoma propuesta de MS-13 y ofrece discutir fin de extorsiones y localizar desaparecidos”, *El Faro*, 17 Jan. 2017, available at: <https://elfaro.net/es/201701/salanegra/19817/Barrio-18-Sure%C3%B1os-retoma-propuesta-de-MS-13-y-ofrece-discutir-fin-de-extorsiones-y-localizar-desaparecidos.htm> (last visited 4 Aug. 2017).

12 Kinoshian et al., *El Salvador’s Violence*; K. Andrade, “Las pandillas salvadoreñas y el delito de extorsión. Desafíos y prioridades en relación con el fenómeno extorsivo”, *RPSP*, 5(1), 2015, 103–148; UNHCR, *Eligibility Guidelines*, 9.

13 US Department of State, “International Narcotics Control Strategy Report (INCSR)”, Countries/Jurisdictions of Primary Concern, El Salvador, 2015; see also, Kinoshian et al., *El Salvador’s Violence*, 12.

14 M.A. Zoethout, “Recuperar el control estatal en territorio de la Mara Salvatrucha: un análisis a partir del acuerdo ‘Santa Tecla Municipio Libre de Violencia’”, *RPSP*, 5(1), 2015, 179–246.

all parts of the country, a plurality of these in the capital city of San Salvador. Gang leadership is composed of individuals inside and outside of prison, sometimes referred to as *ranfla general*, or “the circle” or “the wheel”.¹⁵ Gang members stay in constant contact through cell phones, social media, and personal meetings. Because El Salvador is one of the smallest countries in the world, gang leaders communicate easily and effectively at a local and national scale.¹⁶

Even after being arrested and sentenced to prison, leaders continue to operate their criminal organisations within the prisons. The history of the correctional system in El Salvador allows for relatively free interaction within prison walls. The system is not staffed or organized to control prisoners once they enter the facility. Rather, the goal is to keep convicted prisoners separate from society and to prevent any potential attempt to escape. In one case, the Penal de Ciudad Barrios, 2,600 inmates, in a prison built to hold 800, have completely taken over the interior prison. They have their own bakery, workshops for furniture and toys, and a rudimentary hospital they staff themselves. The outside of the building is guarded by army troops and prison staff who are reportedly too scared to enter.¹⁷

El Salvador’s prisons are dangerously overcrowded and the Government is unable to adequately supervise or house inmates. One of the most insightful analysts of gang-related issues, Óscar Martínez of *El Faro*, quotes an informant who has worked in the prisons for years: “Inside [the prisons] they violate human rights that haven’t even been invented yet”.¹⁸ According to the International Centre for Prison Studies, in 2016 there were 35,028 inmates in prisons in El Salvador. The official capacity for all prisons in the country is 10,035, which means the prisons are at 310 per cent of capacity, the third highest over-capacity rate in the world. The incarceration rate in El Salvador is 541 per 100,000 inhabitants, also the third highest in the world. Male gang members represent approximately 40 per cent of inmates in prison in El Salvador. Female gang members are also serving time in prison, and El Salvador has the second highest rate of female incarceration in the Americas.¹⁹ While the Government is aware of these terrible conditions, and has requested studies to develop plans for how to manage such a large incarcerated population, few tangible changes have been made. On the contrary, new emergency power granted to the

15 See A. Luna “Informe Estratégico: Informe proyectivo sobre las pandillas en El Salvador y las perspectivas de su expansión territorial”, *RPSP*, 5(2), 2015, 424–427.

16 The CIA World Fact Book reports some 9,334,000 cell phone lines in El Salvador, with a population of 6,156,670, a per capita rate of 1.52.

17 S. Moss, “The Gangs of El Salvador: Inside the Prison the Guards Are Too Afraid to Enter”, *The Guardian*, 4 Sep. 2015, available at: <https://www.theguardian.com/artanddesign/2015/sep/04/adam-hinton-el-salvador-ms-13-gangs-prison-portraits> (last visited 4 Aug. 2017); Kinoshian et al., *El Salvador’s Violence*; J. R. Gómez Hecht, “Las Extorsiones desde los Centros Penales en El Salvador (2008–2009)”, *RPSP*, 3(1), 2013, 131–171. For gang infiltration of prison security system see, US Department of State, Trafficking in Persons Report 2013: El Salvador, 19 Jun. 2013, available at: http://www.ecoi.net/local_link/250808/361657_en.html (last visited 4 Aug. 2017).

18 Ó. Martínez, *A History of Violence: Living and Dying in Central America*, trans. John B. Washington & Daniela Ugaz, New York, Verso, 2016, 173.

19 C. Sánchez, “Sobre el Concepto de Crimen Organizado. Significación de su Contenido en la Legislación penal salvadoreña”, *RPSP*, 2(1), 2012, 29–62. According to a CRS Report, “The [US] State Department has described conditions in Salvadoran prisons and temporary holding cells as ‘harsh and life threatening’”; see CRS R43616, *El Salvador: Background*, 2016, 9.

President in April 2016, suspended prison monitoring by all international agencies, including the International Red Cross office in El Salvador.²⁰

Beginning in March 2015, the PNC reported that intentional homicide rates began to rise dramatically. New record high rates of homicide continued for each month until April 2016. The deadliest month, August 2015, recorded 918 homicides, more than 29 per day; the most violent single day that month registered some 57 homicides. A total of 6,657 intentional homicides were committed in El Salvador in 2015. The intentional homicide rate for all of 2015 was 105 per 100,000, the highest in the world.²¹ Murders continued at a record pace through the first three months of 2016. By April 2016, however, the number of intentional homicides began to decline and continued to fall throughout the year, finishing at a level 21 per cent lower than the year before. Still, 2016 saw the second highest number of intentional homicides since the end of the Civil War, a total of 5,278 or 83 per 100,000.

3. FROM STREET GANGS TO POLITICAL ACTORS

In an asylum hearing held in March 2017, a US Immigration Judge asked me: If the gangs are still using extortion, kidnapping, and violence to get what they want, why are these acts suddenly political? She had presided over dozens of asylum cases and knew well how the gangs in El Salvador have terrorized the civilian population, battled the police and army, and attacked each other to gain control over towns and neighbourhoods. But she appropriately wondered how the violence used by the gangs should be characterized any differently than it had always been: as criminal violence used to control space within which to earn money. My answer was that the politicisation of the gangs is apparent by their willingness to form a coalition with rival factions, by new tactics aimed at influencing the political process, and by their stated objectives to do more than earn money. These gangs have never been static, unchanging associations; just the opposite, they have demonstrated an ability to adapt to inconsistent government strategies to arrest or kill suspected gang members, and to new economic and political realities in El Salvador and the US. As a spokesperson for MS-13 stated in an interview with the online newspaper *El Faro*: “We’ve been in these communities since the ’90s, we’ve survived a huge number of things, and we are going to continue to survive [...] and the metamorphosis of the gangs will continue”.²² They have persisted for more than two decades, withstood the loss of leaders because of death and incarceration, and created a network of allies and members

20 Interview, O. Dorigel, Associate Director, International Committee of the Red Cross, San Salvador, 10 Jan. 2017; and Interview, G. L. Pérez, Associate Project Director, International Red Cross, San Salvador, El Salvador, 5 Jan. 2017. For studies proposing plans to deal with prison conditions see, El Salvador, “Disposiciones transitorias de emergencia para el descongestionamiento del sistema penitenciario”, *Diario Oficial*, Tomo No. 410, 31 de marzo de 2016, reprinted in *RPSP*, 6(1), 2016, 303–307; El Salvador, “Disposiciones especiales transitoria y extraordinarias en los centros penitenciarios, granjas penitenciarios, centros intermedios y centros temporales de reclusión”, *Diario Oficial*, Tomo No. 411, 1 de abril de 2016, reprinted in *RPSP*, 16(1), 2016, 308–313.

21 See Appendix I, “Intentional homicides in El Salvador, 2010–2016”.

22 C. Martínez & R. Valencia, “Lo que se le olvida al gobierno es que al matarnos están matando a la gente que los llevó al poder”, *El Faro*, 9 Jan. 2017, available at: <https://elfaro.net/es/201701/salanegra/19750/%E2%80%99CLO-que-se-le-olvida-al-gobierno-es-que-al-matarnos-est%C3%A1n-matando-a-la-gente-que-los-llev%C3%B3-al-poder%E2%80%99D.htm> (last visited 4 Aug. 2017).

throughout the region, in North America and parts of Europe. According to Commander O. Rivera, Subdirector of the ANSP, “the gang leadership has the capacity to continually remake and reform itself”.²³ Their politicisation represents a phenomenon studied by sociologists and military scholars who have increasingly come to realize the powerful influence of “third generation gangs” and violent non-state actors (VNAs).

The broader category of VNAs generally describes criminal organisations as non-political groups that use violence to enhance and protect money-making enterprises. “Third generation gangs” describe former street gangs that have developed strategies and goals that seek more specific social and political objectives.²⁴ Understanding VNAs and gang transformation became crucial after the end of the Cold War, and even more significant after the events of 9/11 in the US. M. Manwaring, a professor at the US Army War College, has argued that street gangs merit greater scrutiny because of their potential to become political insurgents with a desire to influence or control political processes. J.P. Sullivan and R.J. Bunker have highlighted the ways in which street gangs become politicized even as they utilize previous forms of violence. Similarly, C. Smith et al. have examined the overlap between “third generation gangs” and terrorist organizations.²⁵ Two recent studies have looked at this question regarding criminal organizations in El Salvador. M. Lohmuller argues that the gangs in El Salvador indicate the need to rethink a narrow application of the “Third Generation Gang” paradigm. And a report by R.E. Ellis, Professor of Latin American Studies at the US Army College Strategic Studies Institute, concludes with an ominous assessment about El Salvador: “Today, the power of the gangs to effectively exert control over territory, economic activity, and the social life of the country threatens to render hollow the concept of El Salvador as a market economy, a democracy and a free society with respect for human rights”.²⁶

The politicization process of the gangs began during negotiations leading to the 2012–2014 truce signed between the gangs and the Government of Mauricio Funes (FMLN). As government officials signalled they were willing to meet with gang representatives, the three major gang organizations created “a criminal superstructure”

23 Interview, Santa Tecla, El Salvador, 6 Jan. 2017.

24 My purpose here is more descriptive than theoretical. That is, I want to identify the politicization of the gangs in El Salvador using existing literature rather than add to that literature. In general terms, first generation gangs control turf and pursue opportunistic money-making crimes; second generation gangs rely on a centralized leadership to create entrepreneurial national and international networks, usually drug-centered; and third generation gangs have evolved ideological aims that seek social and political changes that go beyond money-making objectives.

25 See Manwaring, “Street Gangs”; J. P. Sullivan & R. J. Bunker, “Third Generation Gangs”, *Journal of Gang Research*, 14, 2007; C.F. Smith et al., “Street Gangs, Organized Crime Groups, and Terrorists: Differentiating Criminal Organizations”, *Investigative Sciences Journal*, 5(1), 2013, 1–18.

26 M. Lohmuller, “El Salvador’s Gangs & Prevailing Gang Paradigms in a Post-Truce Context”, *Georgetown Security Studies Review*, Nov. 2015; R. E. Ellis, “The Gang Challenge in El Salvador: Worse Than You Can Imagine”, blog post, War on the Rocks, 2015, 4, available at: <https://warontherocks.com/2015/12/the-gang-challenge-in-el-salvador-worse-than-you-can-imagine/> (last visited 4 Aug. 2017). For more on the *maras* as “third generation gangs”, see, H. V. Santos, “El armamento de las pandillas salvadoreñas: análisis de su letalidad, poder de fuego e implicancias de seguridad pública”, *RPSP*, 4(1), 2014, 209–239; A. R. López Ramírez, “Pandillas en escuelas públicas de El Salvador”, *RPSP*, 5(1), 2015, 247–298.

made up of influential gang leaders.²⁷ Relying on representatives of the Catholic Church to negotiate details of the agreement, the Government recognized that all parties had a legitimate role in the dialog to ease the violence. The gangs agreed to curtail inter-gang violence in exchange for less restrictive prison conditions for leaders, and fewer police raids into gang-held towns and neighbourhoods in the city. In short, the truce provided a framework for separate criminal organizations to create a single opposition political movement. According to D. Farah, the truce began “a profound metamorphosis from street gangs to criminal organisations with territorial and political control”. Ultimately, as the United Nations recognized in a 2016 report, the truce “showed the apparent ability of the gangs to cooperate in lowering (or raising) the national murder rate in an instant”.²⁸

In anticipation of the 2014 presidential elections, both major political parties sought support from the gangs. According to ongoing investigations, the FMLN promised to create a fund of USD 10 million to be used by gang members as a source of micro-grants to create legitimate businesses. FMLN representatives also indicated the terms of the truce would continue if they remained in power. ARENA representatives also met with gang leaders, although the terms of their offer for support remain unclear.²⁹ By all accounts, gang members actively supported the FMLN candidate, Salvador Sánchez Cerén in both rounds of voting. A spokesperson for MS-13 recently confirmed how the political parties courted gang support:

[W]e voted for the FMLN, that’s already known and now we are confirming it. But they lied to us. They offered us businesses, they offered us this and that. And don’t believe they were the only ones. All of the parties come to us and offer all sorts of things when they are campaigning in our communities.³⁰

Gang members controlled access to voting stations, and prevented known ARENA party members and supporters from voting, especially in rural parts of the country. In several cases, ARENA election monitors had their credentials confiscated during the day of voting, were told to stay completely away from polling stations, and threatened with physical harm if they tried to vote or complain to the police. Voter suppression worked just as effectively as advocating for a candidate and appears to have made a significant impact on the outcome. In the March 2014, presidential runoff the FMLN candidate won by just 0.21 per cent, a mere 6,364 votes out of

27 Luna, “Informe Estratégico”, 418–419.

28 D. Farah, “Central America’s Gangs Are All Grown Up: And More Dangerous Than Ever”, *Foreign Policy*, 19 Jan. 2016, available at: <http://foreignpolicy.com/2016/01/19/central-americas-gangs-are-all-grown-up/> (last visited 4 Aug. 2017); UNHCR, *Eligibility Guidelines*, 17. See also Zoethout, “Recuperar”. See below, Appendix 1 for intentional homicide data for 2012–2014. The homicide rate fell by more than 40 per cent in 2012, declined another 3 per cent in 2013, and then returned to pre-truce levels in 2014, the presidential election year.

29 R.F. Noriega, “Will Elections in El Salvador Create a Narco State?”, *Latin American Outlook*, American Enterprise Institute, Feb. 2014; D. Gagne, “El Salvador Gangs Outline Political Motives of Violence”, *InsightCrime.org*, 2 Mar. 2015, available at: <http://www.insightcrime.org/news-briefs/el-salvador-gangs-outline-political-motives-violence> (last visited 4 Aug. 2017); Ellis, “Gang Challenge”; Farah, “Central America’s Gangs”.

30 Martínez & Valencia, “Lo que se le olvida al gobierno”.

2,985,266 total votes cast. Gang leaders learned from this experience that they could play a decisive role in electoral politics – a completely new possibility that could extend their power and influence throughout the country.

While gang leaders expected the FMLN Government to maintain the truce and even negotiate further concessions after the 2014 elections, Sánchez Cerén instead escalated a military approach to suppressing gang activity through arrests and police raids. Six-months into his administration, the truce had ended. In response, criminal organizations increased their attacks against the security forces of El Salvador, both military and civilian police. On average gang members killed more than two off-duty members of the military every month in 2015.³¹ More than 60 police officers were killed during the same time, approximately one-third of those killed while off-duty. The PNC reported more than 400 violent attacks on their personnel, a major escalation from the 140 attacks in 2012 and 200 in 2014. Police stations were attacked with grenades, high-power machine guns, and improvised explosive devices. Gangs have used assault rifles, safe houses, encrypted satellite phones, and, in some cases, drones to monitor police movement. In addition, car bombs were used for the first time to target police.³²

In May 2015, the Government attempted to provoke greater conflict between the gangs by ending the practice of segregating prison populations. Instead of killing each other when occupying the same prison space, as expected, gang leaders created a “Prison Pact” that brought them one step closer to creating a more collaborative structure.³³ At the end of July 2015, the gangs demonstrated a new and dangerous level of coordination. In response to increasing “heavy hand” tactics on the part of the Government, the gangs called for a general bus strike to disrupt the public in the final week of July 2015. The week began with eight assassinations of bus drivers who attempted to defy the illegal ban on bus transportation. Before the week ended, another driver was killed, while the gangs successfully imposed a ban on more than 10,000 daily bus routes for the entire week.³⁴ The Government responded to the transportation blockade by assigning more police work to the military. An escalating wave of violence swept the country for the remainder of the year. In effect, the gangs and the Government waged a war against each other with civilians caught in the middle; the poorest people living in the most marginal parts of cities and towns faced the greatest dangers.³⁵

One month after the transportation strike, the gangs announced the formation of a new supra-organization that represented a powerful opposition movement against the national government, local governments, and civilians who challenged gang demands.

31 Luna, “Informe Estratégico”.

32 Kinoshian et al., *El Salvador’s Violence*; Farah, “Central America’s Gangs”.

33 D. Gagne, “Amid Historic Violence, El Salvador Ends Gang Segregation in Prisons”, *InsightCrime.org*, 8 May 2015, available at: <http://www.insightcrime.org/news-analysis/amid-historic-violence-el-salvador-ends-prison-segregation> (last visited 4 Aug. 2017).

34 R. Valencia “Diez respuestas que ayudan a comprender por qué las maras colapsaron el transporte público”, *El Faro*, 7 Aug. 2015, available at: <https://www.elfaro.net/es/201507/noticias/17237/Diez-respuestas-que-ayudan-a-comprender-por-qu%C3%A9-las-maras-colapsaron-el-transporte-p%C3%BAblico.htm> (last visited 4 Aug. 2017).

35 G.R. Piché, “Assessing the Impact of Orthodox Security Sector Reform in El Salvador”, Centre for Security Governance (CSG) Papers, 10, 2016, 1–50.

Instead of fighting against rival gangs for control over territory, the new organization sought recognition as an active political actor on the local, national, and international stage. Gang leaders named this new political and economic force, “Mara 503”, which is El Salvador’s international telephone code. Mara 503 spokespersons stated that they intended to seek greater political influence by participating in elections, controlling local elected officials, especially mayors, infiltrating police and military forces and taking over civilian associations created in the aftermath of the 1980–1992 civil war.³⁶ The PNC had themselves infiltrated part of the Mara 503 leadership group and knew of the creation and goals of this new organisation. The Government relied on police intelligence to announce their own response to Mara 503, and to publicly warn the countries of Honduras and Guatemala of this enhanced threat. Investigators had found evidence that Mara 503 had plans to facilitate the formation of similar united fronts in Guatemala, which would become “Mara 502”, and Honduras, which would become “Mara 504”. A representative of Mara 503 confirmed that the unification of rival gangs throughout the region was part of a larger process.³⁷

In late August 2015, The El Salvador Supreme Court ruled that the gangs were “terrorist organizations”.³⁸ The Court concluded that the escalation of warfare, particularly the use of car bombs, represented a fundamental shift in the tactics and goals of the gangs. As Supreme Court Justice Sidney Blanco confirmed in an interview, the Court, like the US Department of State, defined acts of terrorism as politically motivated violence designed to destabilize society.³⁹ This designation has major implications for gang leaders and the Government. By law, the Government is prohibited from negotiating with terrorists and prohibited from granting immunity for any past crimes committed by anyone connected to terrorist organizations. In addition, the Government can request anti-terrorist military aid from the US that goes beyond normal requests for police or military assistance.⁴⁰

36 Luna, “Informe Estratégico”; “Mara 503 de El Salvador: una fusión entre la 18 y la MS”, *La Prensa*, 12 Aug. 2015, available at: <http://www.laprensa.hn/mundo/868183-410/mara-503-de-el-salvador-una-fusi%C3%B3n-entre-la-18-y-la> (last visited 4 Aug. 2017); T. Andrade, “Estudio de PNC señala que pandillas podrían mutar a mafias o grupos paramilitares”, *Diario La Página*, 23 Nov. 23, 2015, available at: <http://www.lapagina.com.sv/nacionales/112278/2015/11/23/Estudio-de-PNC-senala-que-pandillas-podrian-mutar-a-mafias-o-grupos-paramilitares-> (last visited 4 Aug. 2017); “El Salvador, un país desangrado por las pandillas”, *El Comercio Mundo*, 14 Dec. 2015, available at: <http://elcomercio.pe/mundo/latinoamerica/salvador-pais-desangrado-pandillas-fotos-252579> (last visited 4 Aug. 2017); El Diario Extra, “Marero ingresa irregular por segunda vez a C.R”.

37 The most complete analysis of Mara 503 is Luna, “Informe Estratégico”. Significantly, the editors of *RPSP* and the commanders of the ANSP determined that this article contained information that could jeopardize their informants. “Antonio Luna” is a pseudonym used to conceal the source of this information. Interview, O. Rivera, Subdirector of the ANSP, and A.R. López Ramírez, Assistant Editor, *RPSP CINC*, Santa Tecla, El Salvador, 6 Jan. 2017; see also “Mara 503”.

38 A. Daugherty, “El Salvador Supreme Court Labels Street Gangs as Terrorist Organizations”, *La Prensa Gráfica*, 23 Aug. 2015, available at: <http://www.insightcrime.org/news-briefs/el-salvador-supreme-court-labels-street-gangs-as-terrorist-groups> (last visited 4 Aug. 2017).

39 Justice S. Blanco, interview, Minneapolis, MN, 13 Nov. 2016; the US Department of State. The 2004 definition of terrorism is contained in Title 22 of the US Code, Section 2656f(d): “premeditated, politically motivated violence perpetrated against non-combatant targets by subnational groups or clandestine agents, usually intended to influence an audience”.

40 See, C. Martínez & R. Valencia, “MS-13 pide diálogo al gobierno y pone sobre la mesa su propia desarticulación,” *El Faro*, 9 Jan. 2017, available at: <https://elfaro.net/es/201701/salanegra/19747/>

The current situation in El Salvador has become much more like a war between the Government and the coordinated activities of the gang coalition. In fact, on 7 March 2016, President Sánchez Cerén declared that El Salvador had become a war zone between the Government and gang members. Included in his statement, Sánchez Cerén announced that he was considering an emergency declaration that would limit constitutional guarantees and give police forces more options for arresting gang members.⁴¹ As expected, El Salvador's National Assembly granted the President temporary (one-year) extraordinary powers to fight gang-related crime; these extraordinary powers were extended another year after expiring in mid-2017. The President's request came after a local B-18 *clica* assassinated eleven utility workers in the town of San Juan Opico. According to later reports, the massacre was carried out without authorisation from senior or mid-level gang leaders. The extraordinary powers granted to the Government included orders to keep imprisoned gang leaders in their cells for 24-hours per day, an end to family visitation rights for gang members, and the elimination of the statute of limitations for gang-related crimes.

On 27 March 2016, the three major gang factions – MS-13, B-18 *Sureños*, and B-18 *Revolucionarios* – announced that they had agreed on a unilateral end to their war against each other. Gang leaders asked the Government to begin formal negotiations to allow the gangs to participate in the political process. They also asked the Government to delay an emergency declaration, lifting constitutional guarantees and granting police and military forces broader authority to detain and arrest suspected gang members. The Government essentially ignored this request to negotiate. In fact, they began arresting civilians who had helped negotiate the 2012–2014 truce, charging them with the political crime of treason. The message was clear; the time for dialogue had passed and the Government intended to defeat the gangs on the street.⁴²

In response to the more aggressive military assault, the gangs solidified a formal united council to discuss broad anti-government strategy and potential ruptures of the existing peace agreement among former rivals. This council began meeting during the 2012–2014 truce negotiations and has continued to address the common interests of the gangs. Significantly, they have not claimed the name Mara 503; rather, they refer to themselves as a “coordinating committee” that meets semi-regularly to organize a unified response to government anti-gang efforts and to deal

MS-13-pide-di%C3%A1logo-al-gobierno-y-pone-sobre-la-mesa-su-propia-desarticulaci%C3%B3n.htm
(last visited 4 Aug. 2017).

41 N.R. Zablah, “Sánchez Cerén: ‘Aunque algunos digan que estamos en una guerra, no queda otro camino’”, *El Faro*, 7 Mar. 2016, available at: https://elfaro.net/es/201603/el_salvador/18180/S%C3%A1nchez-Cer%C3%A9n-Aunque-algunos-digan-que-estamos-en-una-guerra-no-queda-otro-camino.htm (last visited 4 Aug. 2017).

42 “Tres pandillas anuncian cese de homicidios y piden al Gobierno no implementar medidas excepcionales”, *El Faro*, 27 Mar. 2016, available at: https://elfaro.net/es/201603/el_salvador/18289/Tres-pandillas-anuncian-cese-de-homicidios-y-piden-al-Gobierno-no-implementar-medidas-excepcionales.htm (last visited 4 Aug. 2017). Police arrested 21 people for colluding with the gangs, including Raúl Mijanga, the lead negotiator in the 2012–2014 truce and a former FMLN Assemblyman, in G. Correa-Cabrera, “La tregua con las maras que destruyó el Estado”, *Noroeste*, 6 Jul. 2016, available at: <http://www.noroeste.com.mx/publicaciones/view/la-tregua-con-las-maras-que-destruyo-el-estado-en-el-salvador-1030252> (last visited 4 Aug. 2017).

with inter-gang disputes caused by local *clicas*. There are 12 members of the coordinating committee, six from MS-13, and three each from the two B-18 factions. According to *El Faro*, of the 12 original members of the committee, 10 have either been incarcerated or killed. This committee has established a legitimate presence with religious leaders and some members of the foreign diplomatic corps in El Salvador. Medrado Gómez, Lutheran Bishop of San Salvador, has hosted meetings of this committee, and Heinrich Haupt, the German Ambassador to El Salvador, has been a regular observer of their meetings. This group has announced major ideological and tactical changes in response to the Government's heavy-hand confrontation with the gangs. A spokesperson for the council stated that they no longer plan to fight an indiscriminate war against police and military forces: "Nobody is using that logic now". Instead, the gang coalition intends to use the political process to take power: "We learned how to get payback on the government; and that's in elections". In tactical terms, the gangs have prohibited flags and FMLN symbols in territories under their control, and promise to keep all pro-FMLN representatives out of these areas for upcoming legislative elections in 2018 and presidential elections in 2019.⁴³

For all the attention given to the announcement of Mara 503 by the media and the PNC, the consolidation of the gangs into a single organization by that name appears to have stalled or ended completely. In fact, a faction calling itself Mara 503 broke from the larger MS-13 organization in late April 2017, which revealed greater division within the gang than previously recognized. Mara 503 videos and photographs exist on social media, but not in nearly the same number as those that identify with a specific gang faction. Still, as the leadership coordinating committee demonstrates, collaboration around a new set of political goals has continued and shows no sign of abating. A unifying ideology would best be described as a self-defined form of social justice aimed at protecting and improving the lives of the poorest members of Salvadoran society. This ideology resembles somewhat the professed views of criminal organizations in Mexico with whom the gangs have had most contact: the Zetas, and La Familia Michoacana/Los Templarios Caballeros in particular.⁴⁴ The most significant evidence of the political aims of the Mara 503 or of the coordinating council is that they have tried to influence directly the electoral process. By controlling movement through neighbourhoods in major cities and entire towns in rural parts of the country, gang members essentially control who can and cannot vote. This violation of a basic human right has become more egregious and bold.⁴⁵

At the beginning of 2017, gang leaders again asked the Government to negotiate an end to the violence. In their most recent appeal, they revealed how their goals have expanded beyond simply seeking money to enrich their own leadership or criminal enterprises. For the first time, they stated that they would discuss disbanding

43 C. Martínez, "Pandillas caminan hacia un frente común ante medidas extraordinarias", *El Faro*, 10 Jul. 2016, available at: <https://www.elfaro.net/es/201607/salanegra/18899/Pandillas-caminan-hacia-un-frente-com-C3%BAnte-medidas-extraordinarias.htm> (last visited 4 Aug. 2017); C. Martínez "Gangs Find Common Ground in El Salvador Crackdown", *InsightCrime.org*, 11 Jul. 2016, available at: <http://www.insightcrime.org/news-analysis/gangs-find-common-ground-in-el-salvador-crackdown> (last visited 4 Aug. 2017).

44 Kinoshian et al., *El Salvador's Violence*.

45 Ellis, "Gang Challenge".

their organizations, if the Government granted them immunity for past crimes, improved prison conditions, and delivered better health care, jobs, and education for their communities.⁴⁶ When asked to justify their extortion demands on businesses and individuals in their communities, gang leaders likened extortion to taxes demanded by the government to pay for things that benefitted only a handful of people or, more often, was stolen by politicians through corruption. The past four presidents and various associates have been indicted on corruption charges. While extortion remains the primary source of income for the gangs, they have also expanded into legitimate businesses. Gang members own and operate transportation companies, nightclubs, gas stations, bakeries, pharmacies, and lending companies. They are employed in export manufacturing, busing, and local retail. In addition, gang members have encouraged a new level of professionalization among their ranks, sending the most promising members to universities to become lawyers and accountants.⁴⁷

International observers have recognized the changes that have taken place among the gangs in El Salvador. Dr M. Gaborit, PhD, Chair of the Department of Psychology at the Universidad Centroamericana, argues that “the gangs have more power than any other political party – in terms of money, arms, vertical structure, national presence, and personnel. The gangs are *the* principal political actors for many and they have recognized their common interests”.⁴⁸ The United Nations first reported these changes in March 2016, noting that the gangs, especially MS-13, have demonstrated a “growing military sophistication that is increasingly transforming the affiliated gangs into a force that can combat the State and hold territory”. The import of this transformation signals that “one of the most remarkable changes occasioned by the truce has been the dramatically increasing political sophistication with which the leaders of B-18 and MS have come to couch their grievances with the government and assert their increasingly overt political ambitions”.⁴⁹ Gang members themselves speak more often about a “metamorphosis” that sounds at times like a self-serving way of acknowledging past violent crimes without taking responsibility for victimizing so many innocent civilians. But gang members themselves have been raised in a post-Civil War society where human rights violations, massacres, kidnappings, and extra-judicial killings that occurred during the war have gone unpunished. Organizations, if not individuals, who were responsible for those crimes have become legitimate political leaders. As long-time human rights activist Benjamín Cuellar acknowledges: “The gangs are sons of impunity”.⁵⁰

46 Martínez & Valencia, “Lo que se le olvida al gobierno”.

47 W. A. Fagoaga López, “La economía informal y su conexión con el avance de formas delictivas organizadas: Prospectiva para el decenio 2015–2025”, *RPSF*, 4(2), 2014, 227–254; Farah, “Central America’s Gangs”; Ellis, “Gang Challenge”.

48 Interview, San Salvador, El Salvador, 9 Jan. 2017; emphasis in original.

49 UNHCR, *Eligibility Guidelines*, 17.

50 S. Rudamas, “Cuellar: ‘Las pandillas son hijos de la impunidad’”, *Diario el mundo*, 13 Jan. 2017, available at: <http://elmundo.sv/cuellar-las-pandillas-son-hijos-de-la-impunidad/> (last visited 4 Aug. 2017); Interview, B. Cuellar, former director of the Human Rights Institute of the University of Central America (IDHUCA), San Salvador, El Salvador, 9 Jan. 2017.

4. FROM WEAK STATE TO FAILED STATE

The 12 years of civil war that ended without either the FAES or the FMLN achieving total victory began a new era of state-building in El Salvador based on negotiations designed to reform or create new political institutions. As stated above, the US Government, which had bolstered the FAES with massive military aid and training that ultimately extended the war, ignored the fragility of the State in El Salvador and deported thousands of convicted gang felons back to their country of origin in the 1990s. Weak State institutions, already overwhelmed with post-war reconstruction and thousands of homeless refugees, had no resources or personnel to deal with the growing gang presence. By the early 2000s, the government under President Francisco Guillermo Flores Pérez (ARENA) announced a new “*mano dura*” approach to dealing with gangs. Even after the Salvadoran Supreme Court ruled that policy unconstitutional, the next president, Antonio Saca (ARENA) implemented a revised plan he called “*super mano dura*” in 2006. Mauricio Funes’ 2012–2014 truce with the gangs has become controversial, with many critics saying the gangs used this time to expand to all parts of the country, and amassed more powerful weapons and international connections.⁵¹ The police are outnumbered and often out-gunned by the gangs, which partly explains why the current President has mobilized the military to carryout police operations for which they are untrained. In short, the ongoing war against the gangs has revealed that the State in El Salvador has failed to fulfil its most basic obligations to its citizens. This failure is not the product of one president or one political party; it is the State itself which has failed because the institutions of governing have proven unwilling and unable to protect civilians. Three interrelated issues demonstrate this failure most clearly: 1) gang infiltration of police, military, and civic organisations, 2) judicial ineffectiveness, and 3) reliance on private security for all but the poor majority.

Gang members have infiltrated municipal governments, community organisations, the prison systems, the National Police, and all branches of the military.⁵² While most experts agree that the police are more penetrated than the military, recent evidence of infiltrating all branches of the military indicate there are serious recruitment and control problems throughout both.⁵³ Gang infiltration of rural police forces is particularly dangerous. Many civilians know that it would be dangerous to report crimes committed by gang members directly to the police, because the police often forward that information to gang leaders. Rural police ignore gang-related crimes and acquiesce to the gangs’ demand for impunity.

51 Dr M. Gaborit, PhD, Chair, Department of Psychology, Universidad Centroamericana, argues that “it was a mistake to negotiate with the gangs”; Interview, San Salvador, El Salvador, 9 Jan. 2017. Similarly, D. Morales, former Attorney General for Human Rights (Procuraduría Para la Defensa de los Derechos Humanos) believes negotiating with the gangs is dangerous; Interview, San Salvador, El Salvador, 10 Jan. 2017.

52 Luna, “Informe Estratégico”.

53 Padilla Mirón, review of *Infiltrados*, 2016, 387–406; E. Stevens, “El Salvador Military Official Sold Weapons to Gangs”, *InsightCrime.org*, 19 Oct. 2015, available at: <http://www.insightcrime.org/news-briefs/el-salvador-military-official-sold-weapons-to-gangs> (last visited 4 Aug. 2017); D. Marroquín, “393 pandilleros lograron infiltrar la Fuerza Armada”, *El Salvador.com* 29 Nov. 2015, available at: <http://www.elsalvador.com/noticias/nacional/166375/393-pandilleros-lograron-infiltrar-la-fuerza-armada/> (last visited 4 Aug. 2017).

The new political orientation of the gangs has destabilized the administrative functions of elected officials. Mayors have reportedly negotiated their own agreements with Mara 503 to try to stabilize local communities. Other mayors like Cristóbal Benítez Canales, mayor of San Francisco Gotera in Morazán Department, simply worked for the gang.⁵⁴ In addition to using violence and threats to coerce police and block government action against them, gangs have weakened existing governmental and non-governmental organisations. These organisations include: Rural Police Support Committees, Communal Development Associations (ADESCOs), Community Youth Sports Committees, and local school boards. According to newspaper accounts and government investigators, gangs have killed members of civil organisations, threatened them with murder and extortion, and forced people to resign their positions and/or flee the country. The gangs then infiltrate the organisations to serve their own purposes.

Gang members also control access to public schools. The Government has ordered the military to deploy more than 1,300 troops to help provide security to 651 schools. Still, children endure threats, robbery, beatings, and rape just to attend school.⁵⁵ Despite Government efforts to provide security for schools, the Ministry of Education reported in July 2016, that some 39,000 children have stopped attending school because of gang threats. The National Teachers Union estimates that the number of students who have dropped out of schools because of gang violence is closer to 100,000. Some schools have had to close for weeks at a time until local police could adequately provide protection for children and staff.⁵⁶

Officials within the judicial system in El Salvador have been unable and/or unwilling to adequately investigate and prosecute violent crimes committed by gang members. Data requested by journalists through a government transparency law show that for 2015 only 598 cases, or fewer than 10 per cent of the homicide cases resulted in formal charges filed by prosecutors. More cases (870) have already been closed because of a lack of evidence or witnesses willing to testify. Only 82 homicide cases from 2015 have led to convictions: a conviction rate of 13.7 per cent for cases brought before a judge and only 1.3 per cent for all homicides. A prosecutor interviewed about judicial failures stated that the major challenge was that few people are willing to testify in gang-related homicide cases: “Sometimes they [gangs] kill people in one place and throw them out in another; sometimes they bury them. What happens? Who says, ‘I saw that’? No one, no one. And why won’t anyone say, ‘I saw that’? Because they are going to get killed too. Therefore, the people are

54 M. Yagoub, “El Salvador Mayor Sentenced to 13 Years for Drug Trafficking”, *InsightCrime.org*, 7 Jan. 2015, available at: <http://www.insightcrime.org/news-briefs/el-salvador-mayor-sentenced-to-13-years-for-drug-trafficking> (last visited 4 Aug. 2017).

55 López Ramírez, “Pandillas en escuelas públicas”, 289–290; Ó. Martínez, “Living Within the Boundaries of El Salvador’s Gang War”, *El Faro*, 7 Jan. 2016, available at: <http://www.insightcrime.org/news-analysis/living-within-the-boundaries-of-el-salvador-gang-war> (last visited 4 Aug. 2017); Ellis, “Gang Challenge”.

56 J. López, “Deserción escolar por violencia triplicado últimos dos meses”, *El Diario de Hoy*, 21 Jul. 2016, available at: <http://www.elsalvador.com/noticias/nacional/194932/desercion-escolar-por-violencia-se-ha-triplicado-en-ultimos-dos-anos/> (last visited 4 Aug. 2017); S. Tjaden & M. LaSusa, “El Salvador Gangs Causing Tens of Thousands to Leave School”, *InsightCrime.org*, 22 Jul. 2016, available at: <http://www.insightcrime.org/news-briefs/el-salvador-gangs-cause-tens-thousands-to-leave-school> (last visited 4 Aug. 2017).

afraid”.⁵⁷ Gang members have learned how to disrupt the investigative process all together. They can intimidate potential witnesses, or, they can make “evidence” disappear; as a gang spokesperson for B-18 stated: “Clearly, without a body there is no crime”.⁵⁸

Within established territorial zones of control, poor civilians are left with no protection against gang demands and violence. Gang-organized death squads target witnesses who have reported crimes to the police. For example, Irma Estela Henríquez (age 53 years) was shot at 6 am on the streets of her neighbourhood. She had witnessed a murder and reported it to the police. The police had found her name on a list of people targeted for assassination, but did not warn her.⁵⁹ Reina Isabel Ortíz (age 38 years) was killed in her bed by a six-man hit squad. She had reported the murder of her brother to authorities. Her daughter, Yesenia Ramírez (age 4 years), was sleeping in the same bed and was also killed.⁶⁰ Luis Espinoza (age 58 years) witnessed the killing of police officer Guillermo García Escalante. Four weeks later, the same killers found Espinoza at his job as a grounds keeper for a cemetery and killed him.⁶¹ In effect, gang death squads kill with impunity, rendering an already a failing judicial system more ineffective and essentially dangerous for civilians to use. Even after intentional homicide rates began to decline in April 2016, the director of the PNC acknowledges that at best, they have only “weakened a little” the territorial control of the gangs.⁶²

The inability of the Government to protect citizens targeted by the gangs has led to a massive private security industry in El Salvador. More than 500 companies employ between 35,000 and 40,000 personnel as private security forces for private businesses, government offices, and wealthy Salvadorians who can pay for protection.⁶³ Elites send their children to private schools, and hire their own private security forces to protect their families. They oppose higher taxes on individuals and business, using the language of neo-liberalism to argue for an economic model that has led to the failure of the State to protect everyone equally.⁶⁴ Of course, El Salvador is part of a

57 N. R. Zablah, “La Fiscalía solo ha podido llevar a tribunales uno a cada 10 homicidios cometidos en 2015”, *El Faro*, 18 Mar. 2016, available at: https://www.elfaro.net/es/201603/el_salvador/18189/La-Fiscal%C3%ADa-solo-ha-podido-llevar-a-tribunales-uno-de-cada-10-homicidios-cometidos-en-2015.htm (last visited 4 Aug. 2017).

58 Martínez “Barrio 18 Sureños retoma propuesta de MS-13”.

59 J. Santos, “Asesinan a mujer que fue testigo de homicidio”, *La Prensa Gráfica*, 8 May 2015, available at: <http://www.laprensagrafica.com/2014/05/08/asesinan-a-mujer-que-fue-testigo-de-homicidio> (last visited 4 Aug. 2017).

60 J. Santos, “Matan a testigo de homicidio y a su hija de 4 años”, *La Prensa Gráfica*, 19 May 2015, available at: <http://www.laprensagrafica.com/2015/05/19/matan-a-testigo-de-homicidio-y-a-su-hija-de-4-aos> (last visited 4 Aug. 2017).

61 D. Escalante, “Matan Testigo que habria visto huir homicidas policia”, *El Salvador.com*, 29 Sep. 2015, available at: <http://www.elsalvador.com/noticias/nacional/160234/matan-a-testigo-que-habria-visto-huir-a-homicidas-de-policia-en-joya-de-ceren/> (last visited 4 Aug. 2017).

62 “MS-13 pide diálogo al gobierno,” *El Faro*.

63 Employment figures come from Á.A. Vejarano Anzola, “Exploración de la seguridad privada en El Salvador”, *RPSP*, 4(1), 2014, 79–162. See also, Kinoshian et al., *El Salvador’s Violence*, Piché, “Assessing the Impact”; Asociación Nacional de la Empresa Privada, *Estrategia Integral de Seguridad Ciudadana*, May 2015; R. Bacouillard et al., “Proliferación de armas y violencia armada en el sector de la seguridad privada en América Latina y el Caribe: Desafíos y oportunidades para la acción”, *RPSP*, 4(2), 2014, 31–79.

64 See CRS Report R43702, *Unaccompanied Children from Central America: Foreign Policy Considerations*, by P. J. Meyer et al., 11 Apr. 2016, 25.

much larger trend throughout Latin America, although only Guatemala and Honduras face similar threats from criminal gangs.⁶⁵ Throughout the Northern Triangle region of Central America private security companies have become a major source of employment for men, and increasingly for women, allowing governments to reduce their public sector spending consistent with demands from international lending agencies. But private security employees are often poorly trained, poorly supervised, and poorly paid. In addition, in comparison to regular police forces, the arms acquired by private security companies are more often stolen either from individual guards or from ammunition warehouses.⁶⁶

Spending on private security in El Salvador has increased dramatically over the past 15 years, mostly through larger government contracts to protect government buildings. In 2003, private businesses spent an estimated USD 83 million on private security; that amount more than tripled in 2005, growing to USD 319 million. Significantly, the expansion of the private security sector corresponded exactly to the “*mano dura*” and “*super mano dura*” security plans. According to the National Association of Private Businesses, by 2013, private businesses were spending USD 600 million per year on security costs, or about 10 per cent of their gross revenue.⁶⁷ Another 40 per cent of private security revenue comes now from government contracts to protect buildings. In a study reviewing private security contracts for 24 government buildings, A. R. López Ramírez calculates that the government spends about 1 per cent of its operating budget just on private security companies. B. Saavedra puts that amount in a slightly different perspective; he estimates that the State spends more than 11 per cent of the country’s Gross Domestic Product (GDP) on security, and less than 5 per cent of GDP on education and health *combined*.⁶⁸ If the Government were to train and hire an adequate number of regular police to perform this security work, the PNC would need to grow by more than 10 per cent, another 2,500 officers at least. Even if they could find that many people willing to risk their lives for average police salaries of about USD 300 per month, the Government would be unable to pay for this expansion without more revenue.

In El Salvador, private security companies are cheaper than police because they offer little to no training, and intentionally violate labour laws that guarantee minimum wage standards and hours worked per week. Private security employers argue that nearly all their guards are drawn from former police or military forces so they do

65 See M. Ungar, “The Privatization of Citizen Security in Latin America: From Elite Guards to Neighborhood Vigilantes”, *Social Justice*, 34, 2007, 20–34; F. Caonero et al., “Control y Regulación de las Empresas de Seguridad Privada en América Latina y el Caribe: un análisis comparativo”, *RPSP*, 1(1), 2011, 187–266. The *RPSP* has published extensively on this issue, in part because the ANSP leadership believes private security employees should be required to undergo some minimum training by the Academy; Interview O. Rivera, Subdirector ANSP, Santa Tecla, El Salvador, 6 Jan. 2017.

66 Bacouillard et al., “Proliferación de armas”. According to Gómez Hecht, “Las agencias de seguridad privada en El Salvador: Estado de la colaboración público privada en prevención del delito en el sistema de seguridad pública”, *RPSP*, 4(2), 2014, 120, private security companies have registered on average 1.2 small and large firearms per employee; more arms are likely unregistered.

67 Gómez Hecht, “Las agencias de seguridad privada en El Salvador”, 118.

68 A. R. López Ramírez, “El gasto público en servicios de seguridad privada en El Salvador: aproximación descriptiva preliminar”, *RPSP*, 4(1), 2014, 277–300; B. Saavedra, “Surgimiento y proliferación de las empresas de seguridad privada en El Salvador”, *RPSP*, 4(2), 2014, 327–366; GDP calculations, 333.

not require any further training in handling weapons or performing security services. In fact, just 40 per cent, have any prior police or military training; the rest have had no training at all.⁶⁹ Employers routinely and nearly universally violate labour laws designed to protect workers' rights to minimum wages. In 2014, the hourly minimum wage for security workers was USD 1.01 per hour for an 8-hour workday (in 2017, it rose to USD 1.05). Labour codes require employers to pay twice the minimum wage for time past 8 hours in a single shift, and higher wages still for night time hours (between 7 pm and 6 am). A 2014 survey of private security employees showed that only 2 per cent of employees worked a regular 8-hour daytime shift; 39 per cent worked a 12-hour shift, and 59 per cent worked a 24-hour shift. Just 2 per cent of private security employees received overtime pay for extra hours, and none of them reported receiving the mandatory night-time legal wage. In short, an employee working a 24-hour shift from 7 am to 7 am, nearly 60 per cent of all private security employees, should have received an extra 2.5 times the minimum wage in a month. On average, private security workers are deprived of more than USD 600 per month in wages prescribed by law.⁷⁰

The ANSP and its research arm at CINC have voiced significant concern about the State relying more and more on private security companies to provide protection for government buildings, private corporations, and wealthy individuals who can afford to buy their own security teams. Articles appearing in *RPSP* have asked: "Is there a risk to public security in allowing private businesses to guard buildings where the State carries out its functions?" "Could the privatisation of security put at risk the control over violence on the part of the State?" And, "How could private security affect the ability to contain the use of force within the political process and according to social norms?"⁷¹ As a group, these studies conclude that private security companies are: (1) "exploiting their labour force, and underpaying salaries according to the Law and justice"; (2) that "private security could affect the control of violence on the part of the State and the form in which that control should be carried out"; and (3) "That there exists a direct proportional relationship between the notable increase in private security businesses and the rise in reported concerns about 'criminality, civilian safety, the lack of effective and credible State institutions, and expectations and attitudes towards violence'".⁷²

According to G.R. Piché, a security specialist writing for the Centre for Security Governance, "the Salvadoran government has failed to provide security institutions with the strategic and policy tools necessary to control crime and contribute efficiently to public security."⁷³ The January 2016 travel warning issued by the US State Department states that the Government of El Salvador is unable to adequately

69 Gómez Hecht, "Las agencias de seguridad privada en El Salvador", 118; see also Verjanarano Anzola, "Exploración de la seguridad privada en El Salvador", 114.

70 C. A. Coca Muñoz, "Los derechos laborales de los trabajadores de las empresas de seguridad privada en El Salvador y su relación con los riesgos psicosociales", *RPSP*, 4(1), 2014, 198–204, especially Figures 7, 8 & 9; see also Verjanarano Anzola, "Exploración de la seguridad privada en El Salvador", 107, 149.

71 López Ramírez, "El gasto público en servicios de seguridad privada", 284; Saavedra, "Surgimiento y proliferación", 359.

72 Verjanarano Anzola, "Exploración de la seguridad privada en El Salvador", 149; Saavedra, "Surgimiento y proliferación", 358–359; Coca Muñoz, "Los derechos laborales", 166.

73 Piché, "Assessing the Impact".

protect civilians and unable to properly investigate or solve crimes committed against civilians: “A majority of serious crimes are never solved; only seven of the 38 murders of US citizens since January 2010 have resulted in convictions. The Government of El Salvador lacks sufficient resources to properly investigate and prosecute cases and to deter violent crime”.⁷⁴ After 20 years and four presidential administrations, the inability of the State to protect citizens must also be considered an unwillingness to do so. The State is able or should be able to make the case for increased tax revenue to provide security. The unwillingness to raise sufficient government funds to hire and train adequate police officers is a political and policy decision that benefits private security firms at the risk of poor citizens. Enlisting the military to perform police functions is more likely to lead to an authoritarian regime than it is to restore democratic processes to a failed State. In short, “citizens have lost confidence in State institutions in charge of enforcing the law”.⁷⁵ In some cases, according to gang expert Dr M. Gaborit, “the government has simply abandoned parts of the country and the duties of governing; the gangs have taken over that space”.⁷⁶ For the poorest members of society, that is, most of the population, the lack of reliable police protection and the cost of private security guarantees that they remain vulnerable to gang extortion, threats, and violence. There is no place for the poor to find safety in El Salvador.

5. CONCLUSION: FROM EL SALVADOR TO THE US

The politicisation of gangs in El Salvador necessarily alters the nature of civilians fleeing gang violence. Local gang *clicas* have targeted members of both major political parties to keep them from voting in elections, to deter them from serving as local elected officials, and to force them to abandon positions on civil organisations created after the civil war. The determining factor here is not which political party the gang may support or oppose at any specific time or in a specific place, but rather that activists for both parties are often engaged in anti-gang political projects. In other words, civilians are not targeted because they belong to either ARENA or the FMLN, but because these political parties each sponsor anti-gang programmes for youth, anti-gang economic development programmes, anti-gang safety programmes, and anti-gang political plans intended to weaken criminal organisations. It is easier for immigration judges and government attorneys in immigration cases to recognize that asylum applicants have been persecuted because of their imputed political opinions if the applicant has a history of working closely with an established political party. But focussing on presumed ties between one political party and a local gang or on the possibility that the potential dangers of an asylum applicant have diminished because the gangs have turned against one political party misrepresents the broader political context in El Salvador currently. That is, from the perspective of the gangs, someone is either an ally or an opponent regardless of any other political affiliations.

74 US Department of State, “El Salvador Travel Warning”, 15 Jan. 2016, available at: <https://travel.state.gov/content/passports/en/alertswarnings/el-salvador-travel-warning.html> (last visited 4 Aug. 2017).

75 Gómez Hecht, “Las agencias de seguridad privada”, 107. Pedro Martínez, a human rights attorney and member of the Civil Society Roundtable Against Forced Displacement in El Salvador, states: “the people no longer believe in the institutions of the State”. Interview, San Salvador, El Salvador, 7 Jan. 2017.

76 Interview, El Salvador, El Salvador, 9 Jan. 2017.

For this reason, anti-gang political opinion is manifest even by people who are not engaged in established party politics.

Gang members themselves view a person's refusal to comply with their demands as being anti-gang. From the perspective of the gangs, civilians commit acts of political resistance when they report crimes to the police, when they sponsor or participate in anti-gang youth programmes, when they refuse to pay extortion demands, and when they abandon their homes to try to find safety rather than submit to gang authority. According to legal scholars D. Anker and P. Lawrence, the US Supreme Court case guiding many of these asylum applications, *Immigration and Naturalization Service v. Elias-Zacarias*,⁷⁷ has been misinterpreted by immigration judges to assert that applicants must demonstrate evidence of the political opinion persecuted by political actors. Anker and Palmer argue instead: "The doctrine of imputed political opinion focusses on the persecutor's *perception* of the applicant's beliefs; the applicant's own opinions are irrelevant".⁷⁸

At issue here is a more complete understanding of "political". The gangs are now committed to more than simply earning money. They seek power and influence to protect allies and to improve the lives of people who support them. Poor people, young people, and women have political opinions even if they do not use obvious or partisan political language to express those views. While thousands of women, mostly young, have willingly become gang members or *jainas* ("Janes"), other women have been pursued by the gangs to become sexual slaves. This status is a far more dangerous and brutal fate than that experienced by willing gang girlfriends. Women are engaged in political resistance when they resist the sexual demands made by the gangs. One asylum applicant expressed her opposition to submit to sexual assault and rape by describing the inhumane way women are treated by gang members:

For the MS gang members, women are things, property. They see a girl they want and force her to join them and become one of theirs, a 'maras girl'. The women are forced to engage in their illegal activities, and are also considered the sexual property of all the gang members. I refused and I ran, twice. I resisted all their efforts.

Some applicants state that they did not want to give money to the gangs because of "the evil" the gangs commit. In Spanish, the concept of evil or "*mal*" is much broader than a spiritual orientation implied by the English word; "*mal*" describes crimes, violence, immorality, and lawlessness. Similarly, asylum applicants have used terms to describe gang-imposed rules as "laws" that must be obeyed, even though these are not codified rules passed by law-making authorities. The punishment for ignoring gang "laws", however, is even more severe than any sentence imposed by a court of the State.

Refusing to pay extortion is not an act of economic resistance or preservation; it is an act of political resistance. One asylum applicant stated in an affidavit: "I didn't

77 502 U.S. 478 (1992).

78 D. Anker & P. Lawrence, "'Third Generation' Gangs, Warfare in Central America, and Refugee Law's Political Opinion Ground", *Immigration Briefings*, 14(10), 2014, 3; emphasis in the original.

want to pay the gangs because I am against their criminal activities. My moral values and religious values are against the terrible things they do to people and I did not want to support them by giving them money". This view is supported by the UNHCR, which stated in a 2016 report on El Salvador:

Acts commonly construed as challenging a gang's authority reportedly include but are not limited to: criticizing the gang; refusing a request or 'favour' by a gang member; arguing with or looking mistrustfully at a gang member; refusing to participate in gang activities or to join the gang; rejecting the sexual attention of a gang member; having (perceived) links with a rival gang or a zone controlled by a rival gang; refusing to pay extortion demands; wearing certain clothing, tattoos or other symbols; participating in civil, religious or other organizations viewed as undermining the gang's authority; and passing on information about the gang to rivals, authorities or outsiders.⁷⁹

The US Supreme Court has concluded that financial contributions to political actors are protected political speech in the US. This right was first established in *Buckley v. Valeo*,⁸⁰ for individuals, and again in *Citizens United v. Federal Elections Commission*,⁸¹ for corporations. Whether one agrees with extending this right to corporations matters less than the fact that financial contributions to political actors is understood as exercising one's political rights. In addition, the Supreme Court ruled in *Communications Workers of America v. Beck* that individuals could not be compelled to make political contributions; they could opt out of fees collected by unions or other associations that were used to make political contributions.⁸² My point is that refusing to pay extortion demands made by gangs in El Salvador should be considered an act of political resistance, as it is recognized as such by the gangs, and as it has been established as protected speech in the US, where the asylum hearings are often held. The gangs are pursuing political objectives and the money they collect is used to advance those goals.

Gangs in El Salvador have plagued the Government and civilians for more than two decades. They have transformed from street gangs interested in earning money and extending their criminal enterprises into "third generation gangs" pursuing broader political and social goals. Their use of violence in the past, as well as in the present, contributes to the fear and intimidation civilians experience as they try to avoid becoming victims of extortion, beatings, rape, and murder. The Government of El Salvador has proven unwilling to dedicate the necessary police presence and policies needed to protect civilians, and unable to contain criminal activity and violence directed against thousands of innocent civilians. While wealthy citizens and businesses pay for private security protection from the gangs, poor citizens with relatives in the US and working within the informal economy are left to submit to criminal exploitation, resist and hope the gangs do not inflict violence, or flee their

79 UNHCR, *Eligibility Guidelines*, 29.

80 424 U.S. 1 (1976).

81 558 U.S. 310 (2010).

82 487 U.S. 735 (1988).

country. The political goals and actions of the gangs, engaged now in a broader political struggle with the Government, have created a wave of refugees who face persecution because of their opposition to the gangs. Many if not most of these people are political refugees.