

DECLARATION OF THOMAS J. BOERMAN, Ph. D.

I, Thomas J. Boerman, under penalty of perjury affirm that the following information is true and correct to the best of my ability:

1. This declaration is at the request of NANSEN regarding the socio-political context of El Salvador vis-à-vis: 1) gangs' political agendas, strategies and tactics; 2) the ability and willingness of the Salvadoran government to control gangs and to protect the public in general and at-risk individuals in particular; 3) the sociopolitical context of extortion; and 4) factors that affect the viability of internal relocation for individuals returned to the country after fleeing gang threats.
2. In order to establish a context for the aforementioned areas of inquiry, it is essential to first provide background information on the broad issue of state presence in areas in which gangs dominate, and the dynamics between gangs and the Salvadoran government.
3. I am a recognized expert on gangs in Central America, including in El Salvador; specifically, their culture, sociology and psychology; the historical, political, economic, social and cultural variables that explain their development, diffusion and persistence; and factors that affect the Salvadoran government's ability and willingness to respond to crime and violence. Relevant experience is described in Appendix A.
4. Since 2006, I have provided expert affidavits and/or expert testimony in an estimated 750 gang related asylum cases in U.S. immigration courts involving petitioners from El Salvador.
5. I maintain awareness of the current socio-political context of El Salvador with respect to gangs and the sociopolitical context in which they exist through multiple extended visits and research trips to the country every year, continual review of research publications and other specialized reports, daily monitoring of the Salvadoran press, routine contact with professional colleagues, and through serving as an expert witness in U.S. immigration courts.

Day to Day Life in Gang Controlled Areas

6. El Salvador's gang dynamic is dominated by the Mara Salvatrucha (MS13) and their rivals, the two factions of the Barrio 18 (a.k.a., Mara 18, Calle 18) the *Revolucionarios* and the *Sureños*. According to the Salvadoran government the gangs have a presence in over 95 percent of the country's 262 municipalities (International Crisis Group, 2018). That does not imply that MS13 and/or the Barrio 18 exert control over 95 percent of El Salvador *national territory*, rather what exists is a situation in which they have varying degrees of influence in the vast majority of the country's municipalities. In the most seriously affected areas gangs exert total control and the Salvadoran government has essentially surrendered the territory and abandoned it to the gangs. In yet other areas, both the gangs and the government have a presence and neither exercises full authority and there are areas where the gangs have no physical presence and do not significantly challenge the government for control.

7. It is critical to note, that the costs associated with living in the secure areas of El Salvador is very significant and completely beyond the financial capacity of those in the low and lower-income sectors. To illustrate, the *cuota mensual* (monthly fee) simply to live in many of the country's gated communities may be between \$400.00 and \$1,000.00—an amount that exceeds the earnings of those in the low and lower-income sector by a factor of multiples—and that monthly cost is in addition to rent or mortgage, food, transportation, costs of schooling for children, medical care and other basic expenses.
8. Within seriously gang-affected areas, MS13 and the Barrio 18 influence or directly control virtual every dimension of day-to-day life. In those areas, gangs impose curfews, erect traffic check points, and subject the population to extortion that is best characterized as an illegal system of parallel taxation that the Salvadoran government is neither able nor willing to control. Young girls are routinely abducted and held in sexual slavery then murdered and dismembered with machetes, their body parts left in public spaces. To the greatest degree possible, including withdraw their children from school and not visiting loved ones in other neighborhoods or communities. Even arranging or attending funerals for victims of gang violence is often avoided because gang members often loiter around—or even invade—the services and threaten and harm the family and friends of the victim. Farmers may allow fertile land to remain idle and small business owners often close due the dangers and hopelessness associated with extortion. Those with family members living outside of El Salvador frequently advise their loved ones not to send items that will draw attention to them and many who receive remittances choose not to buy new clothing, televisions, bicycles for their children, a different car, or do home improvements because doing so makes them visible and puts them at risk of extortion and other forms of victimization.
9. Despite the common and overly-simplified perception that gangs “respect” the church, the dynamics are complex and to the extent that gangs have favorable relationships with the church those relationships are conditional and subject to change at any time. I have interviewed more than 50 members of the clergy and laity who have advised me that they adapt their religiously-based activities (e.g., sermons, youth group activities, community ministry, and even Bible study groups) in order to avoid antagonizing gangs and being targeted for harm or death. Over the last fifteen to twenty years, dozens of members of the clergy and laity have been murdered, some while delivering services in their churches.
10. Religious youth also find themselves at risk, as gang members routinely demand that they engage coerced criminality on behalf of the gang (e.g., transporting drugs and/or weapons, participating in extortion schemes, providing intelligence on police and gang rivals, etc.). I have worked as an expert witness on more than 100 cases involving religious young people being subjected to demands that they act on behalf of gangs, which often amounts to modern-day slavery (Boerman and Golob, 2020). Gang members' logic is that because these youth have reputations for being young people of faith in their neighborhoods and small communities, gangs can use them for criminal purposes without arousing suspicion. Additionally, if gangs are able to coerce religious youth into service it represents a symbolic blow against the church, which for many gang members is their nemesis.

11. As described in subsequent sections of this declaration, for various reasons police and the state are not considered to be a resource for the public in gang-affected communities. To the extent that the police do have a presence in many areas, they frequently operate either in collusion with gangs and are so terrified of them that officers do not act on behalf of the public because it results in them and often their family members being threatened, attacked, and killed. Within these areas, there is little or no trust of the police or other agents of the government and the majority choose not to report gang crime because it is perceived as futile and dangerous because police and other officials routinely disclose complainant's identities to the gangs, which results in reprisals that are as brutal as they are predictable.
12. Gangs' barbarism, coupled with virtual absence of an effective government presence, results in the population in gang-affected areas living in a constant state of terror, trauma, helplessness and hopelessness.
13. A critical element of the population's survival strategy involves the *compartmentalization of information*. Because disclosing information can evoke fear and terror among loved ones and/or introduce risk or exacerbate existing danger, the population has largely been conditioned to silence. People are simply too afraid and/or traumatized to discuss their own experiences of violence or conditions of violence in the community. Young girls who have been raped by gang members often do not seek medical attention, contact police, or inform their parents. Young boys subjected to violence associated with gang recruitment or demands of coerced service to gangs explain their injuries to their parents, teachers and others as the result of a bicycle accident or a fight with a friend. Witnesses to crimes, including murder, flee the scene and typically remain silent for fear that they will be killed by the gang to ensure that they do not cooperate with police and other authorities. Oftentimes political candidates and officials running for re-election do not even address issues of gangs and their criminality and violence during campaigns because of the dangers associated with doing so.
14. A particularly disturbing consequence of the *compartmentalization of information* relates to asylum seekers involved in legal proceedings in other countries; specifically, the fact that once refugees flee El Salvador in response to persecution or threat, their loved ones who remain at home are generally reluctant, if not completely unwilling, to communicate with them about what has been occurring since their departure. This leaves asylum seekers unaware of critical information as they present the facts of their case to attorneys and legal decision makers. This, in turn, puts legal decision makers in the untenable position of making life and death decisions with oftentimes little or no access to critical information.

The Misperception of Ubiquitous Violence

15. Among those not familiar with El Salvador, there is a perception that violence affects everyone across Salvadoran society but this misrepresents the reality. As previously noted, gangs are present and exert some level of influence in over 95 percent of El Salvador's 262 municipalities but their influence is strongest in the low-income areas of those communities. Those with access to financial resources are able to live in areas where gangs do not have a physical presence and organize their lives in such a way as to avoid those dangerous zones and the criminality associated with gangs, including extortion. For this

segment of the population, barring a unique set of circumstances that puts them at risk from gangs, they are able to live without constant fear of gang-related violence.

16. Even for those who live in gang-affected areas the risks are not uniform. Anyone living in a gang-affected area is at potential risk but once an individual or family has been particularly targeted by a gang, they are at exponentially higher risk than others living in that same neighborhood or small community that have not been targeted. As an illustration of the particularized nature of violence as a driver of migration, only 4.4 percent of study participants who had fled their homes cited fear of general violence (Cristosal, 2017, pp, 40).¹

State Absence in Gang-Affected Areas

17. The social compact between the state and the population in El Salvador is defined by two fundamental principles: 1) *clientelistic relationships* with political allies, the economically privileged, and organized criminal actors intended to serve the hegemonic needs of these “interest groups”; and 2) the absence of social constructs and norms which define the physical security of those in gang-affected areas as a fundamental responsibility of government.
18. Interest group members enjoy the benefits of political influence and support, security and justice system access, and of concern to some, impunity for crimes and past atrocities. These *clientelistic* relationships are, of course, of mutual benefit to state actors, many of whom are also members of these interest groups.
19. Lacking interest group status and access to these *clientelistic relationships*, the vast majority of El Salvador’s population has been largely abandoned by the government in terms of access to education, social services, health care, functioning justice system institutions, and economic and physical security. Since 2007, I have conducted dozens of interviews with elected officials, rule of law experts, representatives of civil society organizations, international development specialists, human rights advocates, clergy members, and citizens who report that although individuals in the government may be sensitive to the vulnerability and needs of the majority of the population, state efforts to address those needs are tremendously limited or non-existent.
20. According to Dr. Mauricio Gaborit, former head of the psychology department at the University of Central America José Simeón Cañas in San Salvador,

“The state has not invested in the population or in communities by providing adequate access to education, health care, and infrastructure, leaving people highly vulnerable to crime, living in poverty, and lacking employment opportunities”
(Immigration and Refugee Board of Canada, 2016).

¹ Figures exceed 100 percent due to instances in which respondents cited multiple factors.

21. This dynamic of *clientelistic* relationships for the minority and state absence that affects the majority corresponds to Rothberg's (2003, pp 9) analyses in which he states:

“The state increasingly is conceived as being owned by an exclusive class or group, with all others pushed aside. The social contract that binds inhabitants to an overarching polity becomes breached.”

22. According to a United Nations official:

*“People are so accustomed to the non-presence of state that when you ask what they expect from their governments they say, ‘Nothing, we don’t expect anything’ they are already so accustomed to it (being abandoned by the state) that they don’t expect anything from the government.”*²

23. Although there are a number of factors that contribute to state absence (e.g., institutional weaknesses, indifferent and inept public officials, and corruption) the core of problem is the fact that the social constructs and norms which define the well-being of vulnerable individuals and populations as a fundamental responsibility of the state are not deeply enshrined as operating principles of government (Muggah, Robert, and De Boer, John. 2019). As an illustration of this, according to the United Nations Special Rapporteur on Extrajudicial Execution following her 2018 visit to El Salvador:

“I have met many people who were visibly traumatised by the endemic violence. Some had been tortured. Many had witnessed horrific violence. Most told me that they were constantly re-traumatised. They walk the same roads as their rapists; meet their torturers on the street corner; watch their son’s killers pass-by routinely. I was alarmed by the paucity of the services available for victims of violence” (United Nations High Commissioner for Refugees, 2018).

24. The findings of the U.N. Special Rapporteur correspond to the observations of a former representative of the Salvadoran Supreme Court, who advised me during an interview:

*“The State has abandoned vulnerable sectors of the population and they are left to confront threats and lethal dangers from gangs entirely on their own. The State is non-responsive and has no structures in place to assist or protect them. This has contributed to profound trauma; people are afraid to talk to their friends and even family members. They flee the country without telling anyone they are leaving or where they are going because they are so afraid.”*³

25. The Salvadoran *Procuraduría para la Defensa de los de Derechos Humanos*—PDDH (Human Rights Ombudsman) has called upon the government to respond to the needs of victims and their families, but thus far there has been no meaningful response. National Human Rights Institutions (NHRI) such as the PDDH in El Salvador are state-mandated

² Boerman interview, January 28, 2019. For security reasons, the source requested anonymity.

³ Boerman interview, May 26, 2021. Source requested anonymity due to concerns of reprisals from government officials.

bodies, independent of government, with a broad constitutional or legal mandate to protect and promote human rights at the national level. It is understood and expected that the actions and reports from an independent NHRI will contain information that is critical to government or unpopular, as it is the mandate of the NHRI to bring attention to human rights violations or to areas in which human rights may be improved in a country. Recently, the United Nations High Commission for Human Rights, Michelle Bachelet, “sounded the alarm over the rising number of threats, attacks and attempts to undermine and delegitimize independent NHRIs in Latin America,” and flagged the case of threats or harassment against the institution or staff in El Salvador (Relief Web, 2021).

Historical Government Response to Gangs: Mano Dura

26. To the extent that the Salvadoran government is present in gang-affected sectors of the country, that presence tends to be repressive and/or punitive in nature as expressed primarily through police-military gang repression-suppression strategies known colloquially as *mano dura* (tough hand, heavy hand).
27. Rather than acknowledging gangs as an artifact of (1) decades of civil conflict, (2) lack of government investment in people and low income communities, (3) failing justice systems, (4) endemic corruption, (5) family disintegration, and (6) mass deportations from the U.S., Salvadoran officials have defined them as the problem and for over twenty years has failed to implemented any kind of frontal assault on the conditions that predict and explain gangs’ emergence, diffusion, or persistence over time. Instead, they have implemented *mano dura* laws and policies intended to crush them out of existence (Aguilar, 2019; Cruz, 2016; Haugaard, 2017; Ribando Seelke, 2007; Seelke, 2008, 2011, 2014, 2016; Rivera, Strønen, & Ystanes, 2018; Samayoa, Dávila Navarro and Rikkers, 2011; Wolf, 2017).
28. *Mano dura* strategies include criminalization of gang membership itself independent of other criminal acts, deploying police and military personnel, lowering the age of criminal responsibility, long-term pre-trial detention, enhanced sentencing for individuals convicted of gang crime, and the suspension of legal safeguards (Jenner, 2019; Muggah, Garzón and Suárez, 2018; Wolf, 2020).
29. A United Nations representative interviewed by the author and a colleague for an upcoming article on absent, repressive and criminalized state postures in El Salvador, Honduras and Guatemala stated:

“The presence of the State in these areas is mainly a security approach. There is presence of security authorities.... Military, police.... Security interventions that ultimately end up generating fear in the communities but there is very little presence of services of a civil nature.” (Boerman-Umaña Aguilar, January 31, 2019).

30. Mano dura has spawned systematic human rights abuses, draconian and inhumane prison conditions, and the widespread practice of extrajudicial execution.⁴ In terms of its effects, it is commonly agreed that the Salvadoran government's approach to gangs has not only failed to produce positive outcomes but across all measures it has actually worsened the problem it purports to solve. Since its implementation in the early 2000s, gangs have tightened their grip over communities, intensified their use of violence, turned prisons into bases of operations for criminal activity on the streets, overwhelmed and undermined governments, and established themselves as political actors (Aguilar, 2019; Boerman, 2018; Cantor, 2016; Cruz, 2016; Farah, 2012; Garcia, 2015; Immigration and Refugee Board of Canada, 2016; Savenije and Van der Borgh, 2014; Seelke, 2014; Wolf, 2017).
31. *Mano dura* also ensnares stigmatized youth, i.e., young people who are subjected to police and/or military harassment, threats, physical abuses, arbitrary and false arrest, disappearance and extrajudicial killing based on where they live, dress, physical appearance, etc., and the assumption that they are gang members or gang collaborators (Aguilar, 2019; Cristosal, 2018; Cruz, 2016; International Crisis Group, 2018; Rivera, Strønen, & Ystanes, 2018; Samayoa, Dávila Navarro, and Rikkers, 2011; Wolf, 2017).
32. According to a U.S. citizen who for several years worked with youth in high-risk communities in El Salvador:

“Their experience (youth) is that when confronted (by police and/or military personnel) they are at high risk of being verbally harassed, sometimes for hours, and physically abused. If they run to escape, they are shot at because the act of running labels them as a gang member and their peers that do not run are beaten” (Boerman, 2018, pp 9).
33. Beyond the psychological, emotional and physical harm this institutionalized lawlessness causes, these abuses also contribute to irregular migration. “The participation of state security forces (police and military) as provocateurs of displacement cannot be underestimated” (Sistema de Monitoreo, 2018, pp 35). This assessment corresponds with the author's experiences as an expert witness in dozens of asylum claims in U.S. immigration courts involving stigmatized youth from El Salvador, who have reported that abuses by security forces were a central, if not the singular, factor in their decision to flee their countries and that revictimization by security forces represented one of their most significant fears, if deported.
34. Although stigmatized youth are the primary victims of these repressive strategies, their family members and others in gang-affected communities may also be vulnerable to abuses. As an example, during a recent interview, the father and brother of a young man erroneously accused by police of being a gang member reported that they were arbitrarily arrested and jailed on fabricated criminal charges for months before being acquitted by a

⁴ These abuses have been extensively documented for twenty years by the United Nations, the Inter-American Human Rights Court, the Organization of American States, the United States Department of State, international development organizations, Salvadoran and international human rights monitoring organizations, academic researchers, and the Salvadoran and international media.

court. Even after their acquittal, police continued to harass and threaten them, which led to their decision to flee to the U.S.

35. In terms of risk to the broader community in gang-controlled areas, a resident of an area targeted during a joint police-military operation stated:

“At least with the gangs you knew what you were dealing with, you paid your renta (extortion) and they left you alone.... with the police and military, you have no idea what they are going to do or a way to protect yourself from them” (Boerman, 2018, pp. 11).

36. In response to the failures of *mano dura*, in June 2014 then-President Sánchez Cerén disclosed the details of his five-year, 124-point “peace plan,” known as *Plan El Salvador Seguro* (Secure [Safe] El Salvador), which focused on the 50 most violent municipalities, and proposed the development of parks, sports facilities, education and training programs, gang rehabilitation, and improvements in the country’s prison system. Although the plan was a welcomed alternative to *mano dura*, many of its most critical elements have not been implemented or are being implemented in haphazard ways due to a number of reasons that included lack of funding, expertise, political will, and public support.
37. One must bear in mind that although the plan outlines a comprehensive and diverse continuum of responses, in actual practice the majority of funds have been used in support of the pre-existing *mano dura* strategy; according to a 2018 report from the United Nations Human Rights Office of the High Commissioner for Refugees (UNHCR), 70 percent of the funding for *Plan El Salvador Seguro* was directed to police and military operations (UNHCR, 2018). According to a security adviser to the Frente Farabundo Martí para la Liberación Nacional—FMLN (Farabundo Martí National Liberation Front), the combination of lack of political will and public outrage account for the primary challenges in developing alternative approaches to the critical issue of security because “*people fall in love with repression.*” (International Crisis Group, 2017).
38. To the extent that gang prevention, rehabilitation and social reinsertion strategies are being implemented, the overwhelming majority are projects funded by international development and religious organizations that have historically not employed an evidence-based approach, been subjected to monitoring and evaluation, or been replicated in other areas if the projects demonstrated positive outcomes.⁵
39. Even if *Plan El Salvador Seguro*, which remains in place as of today, were being adequately funded in a balanced manner, implemented with maximum fidelity, and with the necessary political will, successfully reducing gang-related violence would require years of sustained effort to affect the political, social, cultural and economic issues that give rise to the gang problem.

⁵ Despite the investment of hundreds of millions of dollars in recent years, it is commonly acknowledged by representatives of dozens of governmental and non-governmental organizations that the outcomes associated with these investments has been generally poor, and that the methodology employed during implementation has traditionally lacked scientific rigor and resulted in few measurable and positive results.

40. Given the context of its implementation, it is unreasonable to conclude that the plan has had measurable impacts in terms of reducing young peoples' movement into—or out of—gangs. Nor is there any basis for concluding that *Plan El Salvador Seguro* is having any meaningful effect in terms of mitigating risk to individuals who currently are, or would be, at risk from them. There are simply no data that support the proposition that the Plan has had a significant positive impact and any improvements that can be noted can be attributed to other factors. For instance, short-term reductions in homicide are recognized as being related to gangs' decision to reduce violence for strategic reasons as opposed to the Plan or other government actions.
41. In addition to *Plan El Salvador Seguro*, in 2015 the government has invoked El Salvador's anti-terrorism laws. The Salvadoran government's decision to invoke anti-terrorism laws to prosecute gang-related matters is both an understandable response to gang violence and a reflection of the government's desperation. Unfortunately, as with the passage of *mano dura* laws, there is no reason to conclude that the application of anti-terrorism laws will have any discernable effect on the problem. Invoking these laws has done nothing to affect the institutional weaknesses and other factors that undermine the government's ability to effectively investigate and prosecute gang cases under existing law nor does it address the complex variables that underlie the dynamics between gangs and the government that contribute directly to the country's gang problem.

Gang Response Strategies: 2019-2021

42. Nayib Bukele Ortez was inaugurated as President in June 2019 and launched his "Territorial Control Plan" as a response to gangs. The strategy organizes around three principal themes: (1) deploying security forces to city centers to reclaim territory through mass arrest of known and suspected gang members, (2) cutting off gang members' ability to communicate between the prisons and the streets, and (3) disrupting gangs' finances.
43. To those uninformed as to previous governmental responses, President Bukele's approach would appear to be an innovative and comprehensive strategy. But in assessing these actions from a historical perspective, according to numerous experts I have interviewed since 2019—as well as my own experience over many years—there is nothing that can be construed as new in the President's approach.⁶ According to one source who has an extensive history working with MS13 and the two factions of the Barrio 18, the Territorial Control Plan is a "tool for publicity," with "no innovations" (Papadovassilaiks, 2020).
44. In terms of deploying security forces to city centers, the vast majority of gang presence and activity occurs in neighborhoods and does not involve city centers. As it relates to the policy of mass arrests under President Bukele this has actually been a centerpiece of *mano dura* since its inception in 2003 and over the course of many years, experts have observed that rather than weakening gang structures, incarcerating gang members has actually strengthened them. The clearest example of that is the fact that gangs took over the prisons

⁶ As is typically the case, official sources and non-governmental experts insist on anonymity for reasons of security and reprisals against them as professionals.

they were housed in and established them as bases of operations from which to organize increasing sophisticated and violent criminality on the streets.

45. In terms of cutting off gangs' communications from the prisons, this is absolutely critical and represented a central objective of the *Medidas Extraordinarias* (Extraordinary Measures) approved on a temporary basis in 2016 and later made permanent in 2018, prior to President Bukele's election. While efforts to work with cell phone carriers to reduce communication were successful in the short-term following the implementation of the *Medidas Extraordinarias* in 2016, in the long-term they did not prove effective and experts question what steps President Bukele can take to bring about a different result, especially in light of the fact that government corrections personnel who are either corrupt or who have been coerced into service by gangs are responsible for many of the phones that make their way into the prisons.
46. With respect to targeting gangs' finances, this was hailed as a critical element of the *Proscripción de Pandillas* (Gang Prohibition) legislation passed in 2010, but it has had no discernible effect on gangs' structures, criminality or violence.
47. As it relates to the effects of the Territorial Control Plan, according to an analysis by the International Crisis group, the decrease in reported homicides actually was in evidence prior to the implementation of the plan and in communities where the plan was never operationalized. Consequently, it is impossible to assess the degree to which the plan has had an impact, or attribute any positive changes to President Bukele's plan (International Crisis Group, 2020). In a March 2021 statement from the Salvadoran police union, the Territorial Control Plan has not lived up to expectations, in part because of detrimental police policy itself (Mejia, 2021).
48. Following the implementation of President Bukele's Territorial Control Plan, a former representative of the Salvadoran Supreme Court stated:

*"This is just more mano dura, and worse."*⁷

Official Corruption

49. An inherent part of the interest group dynamics described previously is corruption that is so endemic and corrosive that it can only be characterized as comically grotesque. As illustrations of the endemic nature of the problem in El Salvador, each of the country's past four presidents have been convicted or indicted on massive corruption schemes including Francisco Flores (1999-2004), Elias Antonio Saca (2004-2009), Carlos Mauricio Funes Cartegena (2009-2014), and Salvador Sánchez Cerén (2014-2019). In addition, dozens of lower-level political officials and over the course of many years, hundreds of police officials and military personnel have been implicated in corrupt activities with gang members and/or other organized criminal groups.

⁷ Boerman interview. July 5, 2019. Source requested anonymity.

50. During his campaign and early days in office, President Bukele promoted the development of the International Commission against Impunity in El Salvador (CICIES). In June 2021, however, he suspended the CICIES and officials from the Organization of American States, which had been supporting the development and implementation stated that his administration had “smothered” the investigative body and made its work impossible. A particular concern was the passage of a law in May 2021 that shields officials from investigation; most critically, an investigation that the CICIES was engaged in involving corruption charges against President Bukele and his associates (Papadovassilakis and Robbins, 2021).
51. In May 2021, President Bukele initiated a political firestorm by firing the entire panel of judges from the Constitutional Court as well as the country’s Attorney General. Critically, the court had ruled against the President on a number of occasions, determining that he was acting outside the Constitution, and the Attorney General had initiated investigations of alleged corruption involving the President and some of his political associates. This action drew an immediate rebuke from the OAS, the Inter-American Court of Human Rights, and the U.S. government.
52. It is too early to assess the implications of President Bukele’s actions for the rule of law but in a country with a well-documented and egregious history of authoritarianism, President Bukele’s actions are being viewed across a broad range of experts as indicative of a return to dictatorship. In a September 5, 2021 statement, the U.S. State Department condemned the President’s on-going actions—the most recent of which allows him a second term in office, in direct violation of the Salvadoran Constitution (U.S. State Department, 2021).
53. The relationship between corruption and the absence of an effective state presence in gang-affected areas in El Salvador has never been examined directly but in a manner that at least indirectly addresses this critical linkage, Ernest et al. (2020, pp 7) state:

“... the most important contributing factor to limited growth and social progress in the Northern Triangle is resistance to anticorruption and good governance reforms by a small but powerful set of political and economic actors with a deep stake in maintaining the status quo.”

Gang-Government Dynamics

54. A critical element of the political dynamic in El Salvador involves the paradoxical relationship between gangs and the government, one that is defined by enmity on one hand and symbiosis on the other. Beginning in 2003, as the Salvadoran government approved the first in a series of *mano dura* legislation that resulted in systematic, widespread and egregious abuses of known and suspected gang members which continue to the current day (Aguilar, 2019; Boerman, 2018, 2019; Cruz, 2016; Farah, 2012; Immigration and Refugee Board of Canada, September 2016; International Crisis Group, 2017). The United Nations, the Inter-American Court of Human Rights, the Organization of American States, the U.S. State Department, Salvadoran and international human rights monitoring organizations and

the Salvadoran and international press have documented thousands of extrajudicial executions of known and suspected gang members.

55. For their part, gangs responded to *mano dura* by declaring war on the Salvadoran government and have murdered hundreds of security personnel. As an illustration, in 2015, which at the time had a national police force of approximately 25,000 sworn personnel, 63 officers were killed (Aguilar, 2019, pp. 57). Putting this figure into context, in 2015 there were 635,781 sworn police personnel in the U.S. (Statista, 2020), of which 41 died violently (FBI News, 2016). Gangs also target the family members of police and military personnel as well as threaten and terrorize prosecutors, judges, mayors, and even government employees such as office staff and laborers.
56. Despite the enmity between gangs and the government, there also exists a symbiosis between them that occurs within a sociopolitical space in which neither side exerts total control. Beyond what “live and let live” agreements between gangs and the governments, this symbiosis also includes mutually beneficial political and criminal relationships that are often difficult to disentangle from one another. At the simplest level, political actors frequently enter into agreements with gang leaders to affect elections by coercing voters, disrupting political rallies, intimidating and threatening activists and campaign workers, and engaging in violence on behalf of political candidates and incumbents, including murder (Clavel, 2017; Pacheco, 2011; Pedraza Fariña, Laura, Miller, Spring and Cavallero, James. 2007; Silva Ávalos, 2019; Silva Ávalos and Dudley, 2017; TeleSur, 2017). As an example, the mayor of Apopa was convicted of criminal collaboration with the Barrio 18, including the murder of a political rival (Puerta, Silva Ávalos, and Dudley, 2017).
57. At a deeper level, this gang-government symbiosis goes to the very heart of governance and may involve elected and appointed officials at the highest levels (Arévalo, 2019; Avelar, April 11, 2017; Martínez D'Aubuisson and Martínez, 2016; Farah, 2012). Although there are many, the most commonly recognized example of this symbiotic relationship involves the 2012-2014 gang truce (Farah, 2012) in which in exchange for government concessions, MS13 and the Barrio 18 agreed to reduce homicide rates.⁸ According to former Salvadoran Justice and Public Security Minister Mauricio Ramírez Landaverde, during the time of the truce: “Gangs were a stone’s throw away from merging with the state as a criminal organization” (Arévalo, 2019).
58. In September 2020, investigative journalists revealed that high-ranking officials in the Bukele administration had been conducting clandestine negotiations with MS13 since 2019 (El Faro, September 4, 2020). After reviewing hundreds of pages of documents and conducting interviews with prison staff and gang members, investigators determined that dozens of Bukele administration officials had met with gang members, including incarcerated gang leaders. In what is perceived to have been an effort to keep the negotiations secret, some of the officials were granted access without going through the normal procedure of identifying themselves to security personnel, including some who wore hoods to shield their identities as they were escorted into the prisons. Despite the

⁸ In addition to this citation, the gang truce has been analyzed by dozens of Central American and international governmental and non-governmental experts as well as the Central American and international media.

readily accessible records, Bukele aggressively denies meeting with gang members and not only initiated a smear campaign against the news organization that conducted the investigation, but intimated that the journalists could face criminal charges (El Faro, September 7, 2020).

59. The outcomes of the accord between the government and MS13 included a reduction in homicide and promises of electoral support for Bukele’s party in the 2021 elections in exchange for what were initially unnamed concessions to gang members. According to a follow up to the aforementioned report, investigators later reported that:

“The documents register the administration’s concessions to gang members, spanning across months of negotiations, ranged from small day-to-day privileges at the beginning—such as the pizzas and pupusas, as well as the transfer of prison guards that the gangs viewed as particularly aggressive—to reversing the decision made in April to merge the cell blocks of opposing gangs. Officials even promised to soften the maximum-security regime, repeal laws, and give gang members “benefits” if the government can take control of the Legislative Assembly in the elections in February 2021” (El Faro, September 7, 2020).

60. Subsequent reporting revealed that in addition to MS13, the Bukele administration was also actively engaged in negotiations with both factions of the Barrio 18; attempted to hide evidence of the negotiations; fired the Attorney General who was investigating the allegations; disbanded the Special Anti-Mafia unit in the *Fiscalia’s* (Attorney General) office involved in the investigation, and reassigned all of the prosecutors assigned to the unit (Carlos Martínez, Cáceres and Martínez, 2021).

61. According to a U.S. citizen who has been deeply involved in violence reduction, human rights, and the political process in El Salvador for over 30 years:

“Bukele’s power rests largely on a pact negotiated with the gangs in El Salvador in which as long as he can claim a reduction in the homicide rate, the government will not interfere in their internal affairs. Consequently, the gangs operate not only with the acquiescence of the Salvadoran state, but in a symbiotic relationship with it. This symbiotic relationship has created a duopoly of violence in which the population is subjected to gang violence on one hand and state repression the other, leaving people living in gang-affected areas to navigate between gangs and the state as best they can.”⁹

⁹ Boerman interview with Richard Jones. Senior Technical Advisor, Latin American and the Caribbean, Catholic Relief Services (Retired), May 12, 2021. Based on reporting: Gobierno de Bukele Lleva un Año Negociando con la MS-13 Reducción de Homicidios y Apoyo Electoral. El Faro. December 3, 2020. https://elfaro.net/es/202009/el_salvador/24781/Gobierno-de-Bukele-lleva-un-a%C3%B1o-negociando-con-la-MS-13-reducci%C3%B3n-de-homicidios-y-apoyo-electoral.htm; El Pacto Informal del Presidente de El Salvador con las Pandillas. Insight Crime: Organized Crime in the Americas. October 20, 2020. <https://es.insightcrime.org/noticias/analisis/pacto-presidente-el-salvador-pandillas/>

62. The above observation corresponds with the perception of an official in El Salvador's prison ministry who I interviewed in 2021 that stated:

“There is an accord between the government and the gangs, for instance they have established an agreement on homicide. If the gangs want to and have to kill, it is okay to do so, but they must hide the body, they must bury the body, because the government does not want homicides to affect its image. And that's an unwritten rule.”¹⁰

63. This is not the first such arrangement to emerge from clandestine and illegal negotiations between gangs and the Salvadoran government, as then-President Mauricio Funes orchestrated the 2012-2014 Gang Truce. While the truce greatly increased gangs' political capital and authority in areas under their control, researchers determined that it had little verifiable effect on violence. The number of reported murders dropped significantly but the number of disappearances increased in nearly direct proportion with the reduction in known homicides and both the Salvadoran National Police and the Institute of Legal Medicine (Coroner's Office) documented that gangs had simply begun using clandestine cemeteries to dispose of the dead.¹¹
64. The 2012 Gang Truce clearly involved political motives in that a reduction in the murder rate would have had generated enormous political capital for the FMLN, but it did not appear to have included blatant promises of direct support for President Funes' party. Conversely, a central element of the arrangement President Bukele reached with the gangs was clearly recognized as an element of his strategy for consolidating power in the *Asemblea* (the Salvadoran Legislature) during the 2021 elections, which proved effective and he now holds a super-majority in the legislature.
65. The symbiosis between gangs and governments creates a criminalized political context that undermines the ability and political will of the Salvadoran government to confront gang criminality and makes it all but impossible for the public to seek or obtain effective government assistance. It also ensures that gangs' influence extends beyond areas under their physical control.
66. Within this criminalized political context, it is impossible to disentangle gangs' and state actors' criminal motives from their political objectives and any attempt to do so is simply forcing a false dichotomy. As such, from both a practical and conceptual standpoint, attempting to draw lines of demarcation between gangs and the government, or to characterize gang activity as independent from the state, has an inherently arbitrary quality to it that is widely recognized among the broadest range of Salvadoran and international experts as being unmoored from the sociopolitical realities of the country.

¹⁰ Boerman interview. June 25, 2021. Source requested anonymity.

¹¹ For a review see: *Mass Graves Burying the Truth about El Salvador Gang Truce*. InSightCrime: Organized Crime in the Americas. January 1, 2014. <https://www.insightcrime.org/news/analysis/homicides-mass-graves-and-truth-about-el-salvador-gang-truce/>

Gangs' Political Motivations

67. At the most superficial level, it could be argued that gangs' attempts to influence the Salvadoran political process is simply a strategy for facilitating their criminal activity. Critically, however, this represents an overly simplistic view that fails to take into account a number of fundamentally important historical, sociological, and anthropological considerations.
68. Gangs are direct artifacts of the Salvadoran Civil War (1980-1992) and a non-viable post-war state. During their founding in the post-civil war era the state was essentially absent in any meaningful sense and for many gangs represented the only means of physical, economic, and emotional survival.
69. Given their critical role in post-war El Salvador, gangs soon established themselves as a sub-culture that supports the multi-faceted psychosocial needs of its members and their families, and as with any sub-culture, gangs seek to ensure their survival in the face of constant, ever-shifting external pressures. Since their emergence in the current form in Salvadoran society, gangs filled a void created by a state best characterized as "absent" in the low income sector and continue to do so today. The essence of the dynamic is captured by a gang member interviewed during research, who stated:

"The state has forsaken these territories and we have taken control of what it abandoned... The only living force that exists in our communities is the gangs" (International Crisis Group, 2018).

70. An exhaustive sociological-anthropological assessment of gangs is beyond the scope of this declaration but to conclude that gangs' political objectives are singularly directed towards a criminal agenda reflects a limited and distorted understanding of their historical and current role in society and the sociopolitical context in which they exist. During an extensive author interview, an MS13 member shared commonly held observations within the gang's leadership:

"People think we are just about doing crime but for us crime is not why we exist, it is something we have been forced into. Most of us have hopes and dreams for more than this (gang lifestyle), I want to have children and be a good father and do the right things. But the state has abandoned our communities and is not concerned about creating jobs or providing education for the children or health care for our ancianos (the elderly), there are no social services. The government really has no role in our communities other than a repressive force that tries to exterminate us but at the same time also benefits through us (speaking of gang-police collusion and leveraging the gang situation for political purposes).

We understand it is the police's job to arrest us when we break the law but if the state puts us in prison because of how we respond to conditions it created, the state should also offer education and rehabilitation so we can create a different life when we are released but it doesn't do that. They make the

system as hopeless and cruel as possible. It seems like their plan is to force us to become more powerful, so we are in this cycle and until the government accepts responsibility for what it created, we have no choice but to survive and that means we have to grow stronger because this a place where only the strong and politically connected survive.

What are we supposed to do, just die? The only hope we have is each other but we are not just criminals, we need to work with the system that they (the state and the powerful) created and have to play by the same rules and that means power. We have done a lot of bad things but that's not all we do, a lot of times we are the only ones that do anything good here, but people think is that we are just criminals and forget that we are sons and daughters and parents and part of these places.¹²

The Socio-Political Context of Extortion

71. As described previously, gangs are commonly recognized as political actors that engage in activities normally associated with government including imposing “taxes” for using public infrastructure, living in one’s own home, and/or running a business. Schools and churches may even be forced to pay for the privilege of operating. Ironically, gangs may also impose extortion as a “security tax” because police and other agents of government have largely abandoned those areas.
72. Within this context, extortion is best characterized as *an illegal system of parallel taxation that the Salvadoran government is neither able nor willing to control, and through which corrupt officials benefit directly*. Within this context, just as the government of El Salvador has the authority to impose penalties upon those who fail to pay their legal taxes, gangs also subject those who fail to pay to predictable consequences including egregious physical harm, extreme sexual violence, disappearance (a euphemism for being abducted, killed and never seen again) and murder.
73. A critical yet largely unrecognized dimension of gangs’ practice of extortion is that in addition to financial motives, it is also used to punish, terrorize, and control individuals and families that have fallen into disfavor. As examples, gangs may impose extortion on a parents of a young girl who rebuffs the sexual advances of a gang member, or a young male who refuses to comply with demands of coerced service. People may be extorted as a result of cooperating with police or other agents of government, or because they have defied gangs’ orders. Irrespective of the underlying factors, gangs oftentimes impose extortion on members of the public for reasons that go beyond financial gain, and that are more directly related to establishing and maintaining psychological and political control over areas under their control and reinforcing their dominance.
74. Stated differently, beyond financial motives and a means by which to punish, terrorize and control, extortion is also a mechanism through which gangs demonstrate their political

¹² Boerman interview, San Salvador, El Salvador. November 2, 2016. Source requested anonymity.

control and to demonstrate that they—not the government—control these areas and consequently has a decidedly political quality.

The Reliability of Homicide Data

75. The Salvadoran government’s 2020 reported homicide rate was 19.7 per 100,000 inhabitants (Assman and Jones, 2021), down from 36 per 100,000 in 2019 (Assman and O’Reily, 2020). Putting these figures into context, the current worldwide average homicide rate is slightly more than six homicides per 100,000 inhabitants (United Nations Office on Drugs and Crime. 2019). .
76. There are several critical points to keep in mind when assessing reported homicide statistics: 1) annual figures are aggregated nationally and do not reflect extreme levels of violence in particular areas of the country, where murder rates exceed the national average by a factor of multiples; 2) residents within the most dangerous zones are terrified to report crime, including homicide, to authorities so it must be presumed that many killings go unreported; and 3) police and forensic medical personnel are unable to enter many of the country’s most dangerous areas due to the danger they face, and are therefore unlikely to be aware of killings that occur in those areas. Additionally, thousands of people disappear every year and are never seen again but are not included in the homicide data because there is no way to determine their fate. To illustrate, in 2020, the Salvadoran government received reports of 1,322 homicides as compared to 2,273 disappearances (Espinoza, 2021). Given the aforementioned combination of these variables, it is impossible to conclude that the official figures are accurate, especially in light of President Bukele’s apparent agreement with gangs to conduct killings in a way that artificially lowers the homicide rate.
77. An official of the Institute for Legal Medicine, which among other functions maintains statistics on homicides, stated:

“It is absolutely true that there has been a reduction in homicides but confidence in the reported figures is minimal.”¹³

78. Similarly, according to a former representative of the Salvadoran Supreme Court:

“Homicide statistics reflect the number of bodies that arrive at the morgue, not the number of homicides.”¹⁴

Government Protective Mechanisms

79. The Salvadoran government has various agencies and programs in place which officials state are intended to address the security needs of individuals at risk from gangs. Upon inspection, however, one quickly sees that generally speaking, these government responses do not translate to any kind of meaningful protection. During a series of five interviews

¹³ Anonymous Boerman interview, July 23, 2019.

¹⁴ Anonymous Boerman interview, August 7, 2018.

with governmental and non-governmental experts in El Salvador in May and June 2021, I was advised that while these programs exist on paper, they fail to provide any meaningful protections for those at risk from gangs.

80. A government program that is often perceived as offering support to those at risk is the *Oficina Local de Atención a Víctimas* (Office for the Attention of Victims). According to governmental and non-governmental experts, there is a patchwork of victim's assistance programs, some governmental and some non-governmental, but that none of them are positioned to meet the complex psychosocial needs of returnees to El Salvador.
81. Adding to concerns about program inadequacy is the fact that since the Covid-19 pandemic, staff from the *Oficina Local de Atención a Víctimas* have been tasked with distributing relief supplies rather than attending to the needs of victims.¹⁵
82. A particular concern related to the *Oficina Local de Atención a Víctimas* is the complete inability to address the needs of deportees or other returnees who fled gangs. During a recent interview with a former government official stated:

“In effect, there is legislation on the protection of victims, but it does not work because in practice what they do at the Oficina para la Atención de Víctimas is accept requests for assistance in order to increase the statistics, but then they refer the requests to other civil society organizations. But now, because those organizations are critical of the Bukele government there is friction between them and the Oficina para la Atención de Víctimas is not even referring the requests for assistance. For instance, it is the Instituto de Derechos Humanos de la UCA (The University of Central America Human Rights Institute) that is today being victimized in this way. So, cases remain up in the air. No one is doing follow-up because the cases are not referred.”¹⁶

83. A government sponsored returnee assistance program CONMIGRANTES was developed specifically to address the needs of deportees and returnees. Over the course of multiple interviews with program staff in 2019, I was informed that the program has some ability to assist with employment, job training, housing, etc. but when I asked what resources existed to assist those return to danger from gangs, however, there was literally no response and it became clear to me that addressing protection needs is simply not within the scope of the CONMIGRANTES program. This observation corresponds with the comment of a former government official I interviewed in June 2021, who said:

“There is no protection mechanism, when they (deportees) return the gangs locate them again and assassinate him, it may even have been years since they left and returned, they are immediately located by the gang.”¹⁷

¹⁵ Boerman interview with Richard Jones, Senior Technical Advisor, Catholic Relief Services, Latin America and the Caribbean (Retired). June 24, 2021.

¹⁶ Boerman interview. June 18, 2021. Due to security concerns, source requested anonymity.

¹⁷ Boerman interview. June 16, 2021. Due to security concerns, sources requested anonymity.

84. This conclusion was reinforced during another recent interview with a Salvadoran psychologist, who for many years has worked in governmental child-family welfare programs as well as the Supreme Court, who stated:

“For families escaping from gangs, there is no protection from the state, no one is offering them anything.”¹⁸

85. Another Salvadoran government program that is perceived as offering protection to those at risk from gangs is *La Ley Especial para la Protección de Víctimas y Testigos (The Special Law for the Protection of Victims and Witnesses)*.¹⁹ The program offers various levels of protection including those deemed “ordinary,” “extraordinary” and “urgent.” Witnesses offered “ordinary” protective measures have advised me that the protection was no more than informing police when they left their homes so officers could put them on a missing persons list if they failed to return. In other cases, officers may be assigned to the individual’s home, where they stand guard for a period of time before court proceedings. In extreme cases, witnesses may be physically housed in police stations or placed in clandestine facilities and assigned numbers as identifiers to prevent disclosure of their names to other witnesses currently being sheltered in the facility.
86. During actual testimony, at times, but not always, efforts are made to conceal witnesses’ identities by using voice scrambling software, having them testify from behind a screen, or covering their faces but due to the facts in many cases, gang members are easily able to determine who the witness may be so these efforts may not translate to meaningful protection. At the most basic level, it is child’s play for the accused and their associates to conclude that the testimony and cooperation were given by the victim and/or other known witnesses and/or members of the victim’s family that were involved in the prosecution. Additionally, because of the high levels of collusion between police and other justice system officials, those accused of crimes are routinely informed of the identities of witnesses and other collaborators.
87. Irrespective of which level of protection an individual is offered, the protection is terminated once court proceedings have ended. The obvious concern is that the threat to witnesses does not end simply because court proceedings conclude; incarcerated gang members routinely order murders from within the prisons, and their associates on the street predictably target witnesses and their family members after proceedings have concluded.
88. As it relates generally to El Salvador’s witness protection law, a number of sources I have interviewed since 2010 have advised me that the program exists primarily to preserve the government’s ability to prosecute cases, not to protect witnesses per se. Additionally, street level police officers, homicide detectives, representatives of the Salvadoran Supreme Court, and the *Procuraduría para la Defensa de los de Derechos* have advised me that the protection measures available to witnesses are often wholly inadequate, and that they are occasionally killed while under protection. These same sources have informed me that

¹⁸ Boerman interview. May 29, 2021. Due to concerns about reprisals from officials of the Salvadoran government, source requested anonymity.

¹⁹ *Ley Especial para la Protección de Víctimas y Testigos*. Decreto No. 1029. La Asamblea. Legislativa de La República de El Salvador.

they sometimes counsel witnesses under protection to flee the country because there is no way the government can protect them. One recipient of protective services advised me that she withdrew from the program because it actually increased the danger she was facing; specifically, after officers came to her house to check on her, gang associates of the accused came to her house and escalated their threats against her for involving the police.

89. Critically, according to these sources, one of the reasons the witnesses' protection program is ineffective is because corrupted and coerced state officials provide gangs with information about those under protection. Another concern is that the gangs have infiltrated directly the witness protection system itself, including the shelters where high-risk witnesses are housed.

“Two witness protection safe houses, one in San Miguel and the other in San Salvador, were controlled by gang members who had been given witness protection, which removed any real protection for witnesses who were not affiliated with them.”²⁰

90. One must also bear in mind that the witness protection program does not offer protection to witnesses in crimes in which there is never any investigation or prosecution and as a result, they are left completely vulnerable and unprotected.

91. In terms of state efforts to protect children and adolescents, El Salvador has well established laws and structures in place to address the needs of this population including (1) *El Consejo Nacional de la Niñez y la Adolescencia*—CONNA (the National Council for Children and Adolescents); (2) the *Instituto Salvadoreño Para el Desarrollo Integral de la Niñez y la Adolescencia*—ISNA (Salvadoran Institute for Child and Adolescent Development); (3) *Centro de Atención de la Niñez, Adolescencia y la Familia*—CANAF (Center for the Attention of Children, Adolescents and the Family), an appendage of the ISNA; and (4) the *Ley de Protección Integral de la Niñez y Adolescencia*--LEPINA (Integrated Child and Adolescent Protection Law).

92. While these systems are well established, they are overwhelmed, under-funded, understaffed, and not supported by the necessary systems infrastructure required to address the needs of children and youth. Speaking of the LEPINA, a Salvadoran psychologist stated:

“It is a good law, but it is not functional, because the protection system as required by law does not exist and the Protection Committees do not work.”²¹

93. Additionally, while the child welfare system is somewhat able to address issues such as child neglect and abuse, CONNA, the ISNA, CANAF, and LEPINA are not designed or positioned to deal with the extreme and unique security needs of children and adolescents at risk from gangs, including those who return to El Salvador after fleeing gangs after being

²⁰ Boerman interview with Richard Jones, Senior Technical Advisor, Catholic Relief Services, Latin America and the Caribbean (Retired). June 24, 2021.

²¹ Boerman interview. May 29, 2021. Source requested anonymity.

deported. For instance, CONNA offers psychosocial and medical services to children and adolescents returning to El Salvador from abroad, but those services do not include protective mechanisms for those facing risk from gangs.

94. Another problem is the fragmentation of services. For instance, according to one recent source:

“The ISNA can only protect children or mothers with children. If they have children who are over 18 who are also threatened by gangs these overage children cannot be included in services, which creates real barriers to the family participating.”²²

95. The same problem of service fragmentation affects governmental organizations charged with providing services to women experience sexual and gender-based violence. As an example, in cases of women with children, the *Instituto Salvadoreño para el Desarrollo de la Mujer*—ISDEMU (Salvadoran Institute for the Development of Women) only offers services to those under the age of two so if a woman has children past that age they must look elsewhere in hopes of finding assistance for her older children. Another grave concern is that according to ISDEMU representatives I have interviewed in recent years, the program does not involve itself with adolescent females or adult women who are at risk of, or actually experiencing, sexual and gender-based violence from gang members because the dangers to staff and program recipients so too extreme.
96. A Salvadoran government prison-based rehabilitation effort that gained a degree of notoriety in recent years was the “Yo Cambio” (I change) program. The program was implemented in stages between 2009 and 2011 but it was not developed as, nor was it intended to be, a gang rehabilitation program. In fact, gang members were not even eligible to participate in the program until 2016-2017, and then on a limited basis. It is also critical that of the country’s six then-designated gang prisons, Yo Cambio was never implemented in three of them: Izalco, Zacatecoluca and Ciudad Barrios.
97. I spent a day in the Apanteos prison 2019 observing the program and speaking with prison officials, clergy members involved in the program, and participants. According to all sources, the program resulted in a number of positive changes but critically, Apanteos was not a gang prison. A clergy member who volunteered with the Yo Cambio program in Apanteos advised me that although the program had proven effective with non-gang involved inmates, it did not address a number of critical factors that affect gang-involved prisoners, either during their incarceration or after their release. Not only did he believe that Yo Cambio would be ineffective for gang members but that their involvement would have undermined the program in terms of benefits for non-gang involved inmates.
98. At this point, the Yo Cambio program is no longer in operation. One former government official, who worked with the Yo Cambio program for several years stated:

²² Boerman interview with Richard Jones, Senior Technical Advisor, Catholic Relief Services, Latin America and the Caribbean (Retired). June 24, 2021.

“As far as implementation, the problem is that new governments often discard everything the previous government had done and say it was bad. At present, the program has been deactivated and all the policies that had to do with the Yo Cambio program have disappeared.”²³

Anti-Gang Strategies do not Translate to Ability and Willingness to Protect the Public

99. The fact that the Salvadoran government has some ability and political will to carry out law enforcement anti-gang operations is often erroneously perceived as reflective of—or even synonymous with—its ability and will to protect those at particularized risk from gangs, a perception that for at least two reasons quickly collapses under scrutiny. First, developing and implementing law enforcement anti-gang strategies requires a mindset, resources, experiences, and institutional structures that are radically different than those required to establish a system of protective mechanisms necessary to address the extreme security needs of people at imminent risk from gangs and none of the elements necessary to operationalize these types of protective mechanisms exist in El Salvador.
100. Second, the social contract that defines the protection of vulnerable individuals and populations as a central responsibility of the state is not enshrined as an operating principal of government in El Salvador. Plus, it is illogical to argue that the ability and political will to protect individuals at risk from gangs can co-exist within a context of state absence, as the two are at direct odds with each other.
101. A former U.S. government contractor with decade’s experience developing and implementing measures to promote citizen security in Central America, including El Salvador, stated:

*“The principle of protection is not built into *mano dura*.”²⁴*

102. Stated most succinctly, the ability and willingness to engage in *mano dura* and anti-gang law enforcement measures is distinct from the ability and willingness to protect individuals and families at particularized risk from gangs and in fact, one is largely unrelated to the other.

The Inability and Unwillingness of the Salvadoran Government to Protect Deportees

103. Within this context of state absence and inability to protect vulnerable populations, a particular concern relates to the security of deportees and long-term residents of other countries returning to El Salvador. According to a 2020 study by Human Rights Watch (HRW), between 2013 and 2019, 138 deportees from the U.S. were killed and approximately 70 more subjected to sexual violence, tortured, or disappeared following their return (Human Rights Watch, 2020). Critically, in many of these cases, researchers

²³ Boerman interview. June 15, 2021. Due to security concerns, source requested anonymity.

²⁴ Boerman interview. December 3, 2020. Do to their position with the U.S. Government, source requested anonymity.

documented that the outcomes were linked directly to the factors that caused the victims to flee El Salvador in the first place.

104. Methodological challenges make it unreasonable to conclude that the actual number of victims will ever be known but in speaking with the HRW researcher who coordinated this study, I was advised that these figures are believed to represent but a fraction of the total number killed or harmed upon return.
105. The issue of time outside of El Salvador was not analyzed as a dependent variable in the HRW study, but it is commonly recognized by all stakeholders I have interviewed since 2007 in El Salvador that generally speaking, the passage of time does not translate to a diminishing of risk for those who fled gang threats. One highly recognized expert who has played a prominent role in shaping recent Salvadoran government policy towards gang-driven forced displacement advised me that based on their experience, it would take at least ten years before one could reasonably assume that the danger would have passed and depending on the factors that drove the individual's departure even that may not apply.
106. These observations not only correspond with my experience but in fact I have found that the passage of time may actually *increase* the risk from gangs if the person is returned to El Salvador. Gang members view fleeing the country to escape as an attempt to thwart them so the level of risk to the individual is likely to be substantially higher upon return to the area than prior to their departure. In part this reflects gang members' desire to "punish" the individual for attempting to escape and in part is intended to convey a message to the larger community that fleeing will result in even more serious reprisals when the gang eventually locates the targeted individual.
107. The findings demonstrated in the HRW study merely confirm what has been commonly known among experts and residents of gang-affected and controlled areas in El Salvador for many years, but which have been questioned, minimized, denied or ignored: Returnees who flee gang violence and are forced to return are frequently—if not predictably—killed or subjected to the most egregious forms of harm following their return.
108. There are also political priorities that undermine efforts to assess the scope of the problem of risk to deportees and to develop mechanisms to address it. Across the widest spectrum of governmental and non-governmental experts I have interviewed since 2007, there is consensus that the Salvadoran government has avoided any research intended to document the post-deportation experiences of citizens returned to the country. These experts point to a lack of political will to investigate and document these outcomes and assert that if the Salvadoran government wanted to conduct this type of analysis, it would—with the assistance of the U.S. and/or other international partners—have initiated research efforts years ago when the problem became obvious but to date no efforts have ever been undertaken to gather or analyze these data.
109. As it relates to the psychosocial needs of deportees, numerous analyses have identified the importance of social services, job training, employment assistance, housing, etc. and to a degree there are services in place to provide these needs but critically, there are no governmental programs to address the critical security needs of deportees who fled gangs

and are forced to return to El Salvador. According to Amnesty International (2016), the government of El Salvador (as well as the governments of Honduras and Guatemala) have been unwilling to acknowledge the ways which violence affects deportees, and that “efforts to protect their returned citizens appeared to end the moment they walked out the doors of the reception centres” (pp. 35) and that states “are failing to provide protection to those who are deported back to the same dangerous climates from which they ran” (pp. 5).

110. Much of the risk to people who fled gang-related threats and violence is rooted in the most fundamental principles of gang culture and mentality itself. First, once targeted, the gravity of the threat toward an individual does not diminish across time, even over the course of years. I am familiar with many individuals who fled gang related threats by migrating to other countries in the region or the U.S. Either because they believed the risk had diminished or after being forced by circumstances to return, they found the threats renewed as if no time had passed. It is critical to note that, once threats are issued, it must be presumed they will be acted upon, but this may not occur along timelines that are necessarily predictable or explainable by outsiders. At times, threats are acted on immediately. In other instances, there may be a passage of time—even a significant amount of time—before the targeted individual is subjected to harm. There are many factors that may affect the timing of a gang’s decision to act on threats. Those factors are not likely to be known to those outside the gang. But the passage of time without harm cannot be taken to mean the risk no longer exists; this would violate the very foundation of gang culture and mentality.
111. Second, gangs are largely defined by a group identity and “institutional memory,” and operate with a sense of solidarity wherein members are almost unconditionally willing to act violently on behalf of those with whom they share favorable relationships such as other gang members, family, and friends. This means that, in addition to being at risk from any particular gang member, a targeted individual may be at predictable risk from the gang as a whole, or other *clicas* (individual gang cells) associated with that gang. Additionally, due to gangs’ “institutional memory,” even if the members through whom the threat originated are now dead or no longer involved with the gang, the targeted individual would typically remain at risk. Further, the fact that members that initiated the threats may be in prison has no meaning whatsoever, as gang members routinely order assaults and murders from within the prison system.
112. Given the totality of circumstances, it is implausible to conclude that the Salvadoran government has an ability or willingness to protect at-risk deportees and in fact if one were to conduct research into this issue one would find that there is no documentation of any meaningful government strategy or program that would call this conclusion into question; the government strategies and institutional structures necessary to implement protection mechanisms simply do not exist.

Internal Relocation as a Strategy for Addressing Risk

113. Due to a combination of social, cultural and economic factors, internal relocation within El Salvador is not generally regarded as a viable option for individuals and families fleeing gang violence. In part because of the population’s exposure to violence and vulnerability

arising from the absence of state protection, the population lives in a hyper-vigilant state with respect to their social environment. Within this context, it is common knowledge that newcomers to neighborhoods and small communities in violence-affected areas are immediately recognized and predictably approached by local residents to determine who they are and where they are from. The newcomer's presence and the details of their situation soon become known within their new community. Through normal family and social interaction, this information is then often communicated back to the newcomer's home community, at times within hours or days. As such, internally displaced persons' (IDP) recognizability and the social dynamics around strangers often render a strategy of internal relocation implausible and, depending on the particular case facts, virtually impossible.

114. For those who lack the very significant financial resources necessary to situate themselves in a more secure upper-middle or upper-class area, there are a number of variables that undermine internal relocation in anything other than the immediate or short-term (Knox, 2017). These include, but are not limited to: 1) lack of family able to take IDPs in, and/or who are willing to do so despite the dangers associated with harboring people fleeing gangs and other criminal elements; 2) the high probability of being located by the gang they fled; 3) IDPs' social visibility and the likelihood of victimization by other gangs and/or violent groups in the new community, including corrupt police; 4) inability to secure employment after relocating; and 5) the absence of any government assistance or protection for deportees with security needs and who are at risk of *refoulement*.
115. For those fleeing gangs, the probability of being located is of extreme concern. Gang members are obsessive about knowing who lives and moves within areas under their control, which translates to real time knowledge of what is happening in the community. Gangs post lookouts at their territorial boundaries, erect traffic checkpoints, impose and enforce curfews, and collude with police and other state officials who provide them with information and intelligence. Gangs' intelligence apparatus, which rivals or exceeds that of the Salvadoran government, provides them with a near continual stream of information which ensures that they will learn of the presence of deportees who are forced by circumstances to return to a previous community, and will recognize, confront and identify those who attempt to settle in a new community. When confronting strangers to a new community, gangs routinely rob them of their identification and collaborate with their associates in the individual's home community to conduct investigations to determine who the person is, whether they are on the run from that gang or affiliated with a rival gang, and whether they or members of the family have *pendientes* (outstanding issues) with the gang.
116. The combined effect of the factors described in paragraphs 113-115 results in the perception commonly held among state officials and the public at-large, that safe internal relocation for individuals and families fleeing gangs is a fallacy that exists only in the mind of those unfamiliar with the social context of the country and gangs' place within it.

“People from all three NTCA (Northern Triangle of Central America—El Salvador, Honduras and Guatemala) countries who moved internally prior to leaving the country said that they had experienced the same problems and

insecurity after their internal relocation – and that this had resulted in their subsequent external migration” (Knox, 2017).

117. Finally, due to dire economic conditions and wariness of strangers, it may be impossible for IDPs to attend to their own most basic needs in communities in which they lack an intact network. While there is a formal economy, many people generate their earnings through the informal economy. And within this sector of the economy, one’s ability to secure employment is often tied directly to their family-social network. Lacking such a network, it is generally considered unrealistic to conclude that an individual would be able to integrate into a new community and attend to their own most basic needs.

Conclusion

118. The internal conditions associated with the absent, repressive and criminalized state contributes to—and in certain critical respects actually creates—the violence that drives forced migration from El Salvador and the proposition that the Salvadoran government can protect at-risk individuals and families from the same violence that it co-creates is simply implausible and is, in fact, is incongruent with the defining characteristics and operating principles of such a state.
119. Due to the totality of circumstances described in this declaration, across the widest range of experts, the proposition that individuals targeted for harm by gangs who have fled the El Salvador can return without being located and subjected to renewed threats is considered to be a fallacy. Avoiding detection from gangs is generally agreed to be all but impossible in the majority of cases, the government lacks mechanisms for protecting at risk individuals and families and in certain critical respects the will to do so, and the notion that people other than those with very significant financial resources can relocate internally and remain safe is regarded as a fiction.

Under penalty of perjury, I affirm that the information contained within this declaration is true and correct to the best of my ability:

DATED this 7th day of September, 2021


Thomas J. Boerman, Ph. D.

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