

**GANG-BASED VIOLENCE AND
INTERNAL DISPLACEMENT IN
EL SALVADOR:
IDENTIFYING TRENDS IN STATE
RESPONSE, HUMAN RIGHTS
VIOLATIONS, AND POSSIBILITIES FOR
ASYLUM**

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**Gang-Based Violence and Internal Displacement in El Salvador:
Identifying Trends in State Response, Human Rights Violations, and Possibilities for
Asylum**

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This PAE reflects the views of the author and should not be viewed as representing the views of the external client,
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EXECUTIVE SUMMARY

El Salvador faces an international displacement crisis, which is caused by violence and leads to forced migration. Today, some 289,000 Salvadorans are internally displaced.¹

With a homicide rate of over 100 per 100,000 residents, El Salvador has become the most violent country in the world not at war.² Although violence and human rights violations in El Salvador have historic and complicated roots, gang-related violence is the proximate cause for many individuals and families fleeing. In 2015, the most violent year since the Salvadoran civil war, 6,670 Salvadorans were killed; approximately 25% of these homicides were attributed to gang violence.³

The following document offers a systematic analysis of detailed cases of internal displacement and forced migration involving over 100 people. The purpose of this document is to provide an in-depth examination of the realities faced by internally displaced people, for use by member organizations of the Civil Society Roundtable Against Forced Displacement (the Roundtable), the principal national entity working on the issue of displacement.


This document identifies trends in state deficiencies in preventing and responding to this crisis as well as patterns in human rights violations that the displaced population suffers, and offers a framework for protection for this population under international refugee norms. Throughout, this report highlights the serious and grave nature of the lived experience of internally displaced persons. Recommendations for the future work of the Roundtable and its member organizations follow these findings.

FINDINGS

The events causing forced displacement are violent, terrorizing, and traumatic. Currently, the Salvadoran state is unable to prevent displacement or respond to the immediate needs of displaced persons and families, and is unable to provide for their protection before or after displacement. The violation of human rights and the victimization of this population do not end with displacement; rather, displacement represents the interruption of entire families' life plans and implies the constant re-victimization of vulnerable people. As a result, countless internally displaced people are forced to flee El Salvador, seeking protection through legal or undocumented means in other countries.

The first section, **Security, Justice and Protection: Deficiencies in Salvadoran State Institutions**, highlights state agencies' serious shortcomings and deficiencies in preventing displacement and failing to respond to situations of violence or imminent threats. This section identifies key areas for improving protection systems, enforcing national legislation, and areas for advocacy within state institutions. Trends identified are:

- State authorities prevent, deter, or refuse to receive reports of crime
- Lack of protection for victims and witnesses of violent crime
- General mistrust of state authorities - especially police and prosecutors - which leads to non-reporting of crime
- State institutions fail to recognize and respond to situations in which people are at risk, especially during judicial processes

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- Assault, violence, and sexual abuse committed by state agents
 - Links between government institutions and gangs
 - Discrimination against victims in cases where the victim may have a link to gang members
 - Difficulties obtaining documentation (passports, birth certificates) in order to leave the country
 - Challenges requesting refugee status from abroad

The section on **Human Rights and Displaced Persons** details the deprivation of human rights due to forced displacement, emphasizing that displacement initiates a process of violations of the human dignity and rights of displaced persons. These findings indicate the urgent need to improve state responses to displacement. This section highlights:

- State violations of human rights;
- State failure to protect citizens from human rights abuses committed by others; and
- State failure to create conditions in which people can enjoy and exercise a host of nationally and internationally established human rights.

Finally, the section on **International Norms and Salvadoran Refugees** presents a classification of cases according to their possibilities for refugee or asylum status based on international conventions and domestic case law, suggesting frameworks for these and future cases.

RECOMMENDATIONS

Based on findings and research, four recommendations are presented to the Roundtable and member organizations. These recommendations begin with immediately implementable interventions and conclude with suggestions for long-term strategic advocacy campaigns, moving from support for victims, whose lives are at risk, to advocacy work to address the systemic issues plaguing El Salvador which create internal displacement and cause to forced migration. The recommendations are:

- **Document internal displacement** through improved interview methods and case preparation;
- **Substantiate refugee applications** through additional research and expert testimony;
- **Work with Latin American Embassies and Consulates** to establish a foundation for refugee applications and identify potential settlement countries; and
- Coordinate with key stakeholders to **advance national and US advocacy campaigns**

¹ Norwegian Refugee Council

² Partlow

³ Bargent

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ACRONYMS

- FGR: *Fiscalía General de la Republica* (Attorney General and Prosecutor's Offices)
- IDHUCA: *Instituto de Derechos Humanos de la UCA* (University of Central America's Human Rights Institute)
- PDDH: *Procuraduría de Derechos Humanos* (Human Rights Ombudsperson's Office)
- PNC: *Policía Nacional Civil* (Civilian National Police); created after the Peace Accords in 1992
- UNHCR: United Nations High Commissioner for Refugees
- UTE: *Unidad Técnica Ejecutiva del Sector Justicia* (Technical Executive Unit of the Justice Sector); responsible for administration of the Witness Protection Program among other responsibilities.

I. INTRODUCTION

In 2015, the most violent year El Salvador has seen since the civil war, 6,670 people were killed (Bargent). With a homicide rate of 108 per 100,000 inhabitants, El Salvador has become the most violent country in the world (Partlow). One result of this violence: El Salvador faces a crisis of internal displacement and forced migration. According to the Norwegian Refugee Council, there are some 289,000 internally displaced people in El Salvador.

The causes of violence and injustice in El Salvador are complex, with historical roots, and go much deeper than simply street gangs. Although an estimated 25-35% of homicides are attributable to gangs (Bargent), the majority of the internally displaced today are fleeing their homes because of gang-related violence.

The goal of this document is to identify patterns in documented cases of forced displacement through a systematic analysis of the realities that this population experiences. This document underscores the critical situations these people face, illustrating trends through the lens of the lived experiences of victims and survivors and thus, suggesting possible areas for advocacy and humanitarian responses.


While this report will present a brief background on Salvadoran history and the situation of gangs in El Salvador, this is not a report on gang-related violence in El Salvador, per se. Understanding gang violence as one of the principal causes of internal displacement and forced migration in El Salvador today, this paper first seeks to identify trends in state deficiencies in responding to this crisis and the human rights violations that displaced persons suffer in the process of their displacement.

The client organization is the Civil Society Roundtable on Forced Displacement Caused by Violence and Organized Crime (hereinafter, “the Roundtable”). The Roundtable is the leading national body in El Salvador working on internal displacement; it is comprised of twelve human rights organizations and institutions providing direct assistance to victims. The Roundtable works to aid victims of internal displacement and advocates for protection policies. Because of their work in communities, connections to first responders, and advocacy work, member organizations of the Roundtable have received approximately 500 cases of internal displacement, of which they have been able to directly support, advise, or accompany 146.

The report is presented in the following manner: after a presentation of methodology and two brief background notes – on El Salvador’s history and the context of gangs in El Salvador today – three findings sections are presented: Security, Justice, and Protection; Human Rights and Displaced Persons; and International Norms and Salvadoran Refugees. Based on these findings, a series of recommendations are proposed.

Displaced Persons: The Cases

This report presents a systematic analysis of 23 cases of forced internal displacement and forced migration in El Salvador which were attended to by member organizations of the Roundtable. The 23 cases represent 106 people, including 29 adult women, 15 adult men,



47 children and adolescents under the age of 18, and an additional 15 adults of unknown gender. This does not include family members who were killed as a precursor to displacement. Seven of the cases are families with single mothers, with an additional two cases comprised only of women. A summary of each of the 23 cases, along with a note on de-identification, can be found in Appendix 1.


Analysis and Findings

The situation of impoverishment, exclusion, and violence facing many segments of Salvadoran society today has complicated, historical roots. Gangs do not exist in a vacuum, and many gang members are both victims and victimizers. However, gang threats and violence are the immediate precursors to displacement in the cases analyzed herein. In some cases, violence manifests in forced recruitment of youth in impoverished communities. There are victims of gender-based violence, sexual violence, human trafficking, and violence against the LGBTQI community. Entire families and communities are caught up in violence as gangs struggle for territorial control, fighting each other or the state. Finally, gang violence is directed at those individuals who are seen to challenge or question gang activities. This includes agents of security forces and their families; activists and religious people working for or preaching non-violence; entrepreneurs or small business people refusing to pay extortion; and eyewitnesses of gang criminal activity, participants in police investigations, and witnesses at trials against gang members.

The first section of analysis, **Security, Justice, and Protection: Deficiencies in Salvadoran State Institutions**, seeks to identify patterns in Salvadoran state deficiencies in failing to prevent displacement, respond to situations of violence or imminent threat, and enforce the most basic and fundamental rights of its population, including the right to life and physical integrity. Although gang violence was the immediate cause of displacement, in all cases analyzed the state's failure to respond contributed to, if not exacerbated and hastened, displacement. As such, this analysis allows for the identification of key areas for improving protection systems, enforcing national legislation, and advocacy priorities within state institutions.

The second area of analysis, **Human Rights and Displaced Persons**, identifies patterns of human rights violations suffered by internally displaced persons, emphasizing that in the majority of cases the principal cause for displacement is only one of many affronts to human dignity and basic human rights. These findings, indicating the myriad ways in which displaced persons' rights are violated and this population's increasing vulnerability to future rights' violations, can support advocacy towards a national response to internal displacement. This section highlights the urgent need to improve state responses to displaced persons and state responsibilities towards this population.

Finally, the section on **International Norms and Salvadoran Refugees** presents a classification of cases corresponding to categories of refugee and asylum applications, under a series of international frameworks. This analysis demonstrates how the cases analyzed - illustrative of thousands of other cases - clearly meet requirements for international protection and suggests ways to understand these cases in light of criteria established through international conventions and agreements related to refugees.



Although findings and subsequent recommendations are based on analysis of specific cases, the patterns identified are not limited to the 106 individuals considered in this research. Throughout this report, reference is made to governmental and non-governmental reports, interviews with experts, and media coverage of the situation of internally displaced persons, suggesting that although this report was prepared based on analysis of specific cases, the lessons learned, as well as the deficiencies and rights violations identified, apply to Salvadoran society in general. Displacement represents a crisis for families displaced, and for the country as a whole.

When discussing public policies and state actions, the human person and the human experience should be at the center; as such, the focus on this analysis is centered on the cases themselves. We should not lose sight of the lived experiences of displaced persons, which, in these and so many other cases, are frightening and horrible.

II. METHODOLOGY

The principal focus of this research is a systematic analysis of cases handled by three organizations that participate in the Roundtable: the Foundation for Studies for the Application of the Law (FESPAD), the Institute of Human Rights of the University of Central America (IDHUCA), and the Cristosal Foundation. The main question guiding the analysis was: What can we learn from a systematized analysis of case files of displaced persons about patterns of human rights violations, lack of state response, and possible avenues for international protection?

Case files of internal displacement and consequent forced migration contain legal statements, medical reports, communications with PDDH and other state institutions, extensive interviews with victims and family members, and on some occasions, related news articles. The researcher began by reading and reviewing 35 cases of internal displacement; some cases were not selected for this report because the files were not complete. Of the 23 cases selected, the researcher created a comprehensive summary, noting the events that led to displacement and the history of abuse and harassment against victims and/or the family unit, state responses, victim attempts to seek support or protection, the existence of any investigation or judicial process, and threats or violence suffered post-displacement. In order to ensure the protection of victims' identities, whose lives are in many instances still at risk, a condensed summary of each case is included in Appendix 1. With only one exception, all cases are from 2014 and 2015.

Sixteen interviews were conducted with experts in the areas of asylum, violence, internal displacement and forced migration, and state and civil society responses to these issues. These interviews included two representatives of Salvadoran governmental institutions, six representatives of member organizations of the Roundtable, two representatives of women's organizations, three immigration and asylum attorneys in the US, and three experts and academics in the United States.

Extensive reports on gang violence, the internally displaced, gender-based violence, the situation of the incarcerated population, etc., serve as excellent background for this report. Given the existence of these reports and briefings, this paper will not attempt to compile background information on gangs and violence. See Appendix 3 for a list of suggested background reports on forced displacement, migration, violence, and gangs in El Salvador and the Northern Triangle.

III. BACKGROUND: SALVADORAN HISTORY


El Salvador has a long, painful history of violence and oppression, beginning with the period of colonization and displacement of indigenous peoples. Cycles of forced displacement and appropriation of land for export crops - indigo and coffee prominent among them - devastated indigenous communities and ways of life. In 1932, a massacre against leftist and communist organizers and indigenous communities occurred, known as *La Matanza* - the killing. After a planned uprising was discovered, the military slaughtered between 10,000 and 40,000 indigenous people in a short time. Indigenous communities all but abandoned traditional customs, dress, worship, and language out of fear of continued repression. Decades of military dictatorship - or military rule in conjunction with the agrarian elite - ensued (Almeida 2008, Stahler-Sholk 1994).

In the 1960s and 1970s, organizing for rights and justice began to spread. *Concientización* - awareness raising - and organizing were led by Christian Base Communities (drawing much inspiration from the Second Vatican Council and the Conference of Latin American Bishops in Medellin), student movements, teachers, *campesinos* - rural farmers - and workers. Demands for basic rights, access to land, and democracy grew alongside increased repression and violence. By the end of the 1970s, thousands of peasants, street vendors, the poor, teachers, students, and workers joined together in protest actions (Almeida 2008). As fraudulent elections - in 1972 and again in 1977 - closed off political spaces, and violent military repression of protests and organization took place along with the disappearance, torture, and summary executions of leaders and organizers, civil society movements turned into armed guerrilla groups.

The Salvadoran Civil War officially lasted from 1980 to 1992 between the government and the Farabundo Marti National Liberation Front (FMLN). An estimated 75,000 civilians were killed and 8,000 people disappeared, while thousands more were forced into refugee camps in the capital city, San Salvador, or into refugee camps in neighboring Honduras and as far as Nicaragua and Costa Rica. Migration to the United States of those fleeing for their lives spiked, while the US government provided an average of one million dollars per day in military aid to support the repressive military regime. According to the Migration Policy Institute, nearly one million Salvadorans entered the US between 1980 and 1989, the bloodiest years of the war.

The UN-brokered Peace Accords - signed in 1992 - marked the beginning of El Salvador's transition to democracy. In addition to a cease-fire and demobilization, the Peace Accords included deep reforms to military and police institutions, along with limited judicial reforms. The FMLN became a political party, and participated in elections beginning in 1994 (Call 2003, Silber 2004).

The UN Truth Commission for El Salvador published its report in 1993, finding that official governmental or paramilitary groups committed 95% of rights violations and identifying the perpetrators of some of the most emblematic human rights violations. Subsequent



amnesty laws led to vast and entrenched impunity for those responsible even for crimes against humanity.

The post-war economy was marked by the continued implementation of neoliberal economic policies, privatization of state services and institutions, and trade liberalization to attract foreign investment and trade (Rodriguez, Pleitéz). While a period of economic growth followed the Peace Accords and many social indicators improved – including literacy, education, infant mortality, and poverty rates – by the mid-90s, growth slowed and inequality rose (Pleitez). El Salvador is now in the top quintile of countries with the highest levels of income inequality (Pleitéz, CIA). El Salvador was the first signatory country to ratify the Central American Free Trade Agreement (CAFTA-DR), which took effect in 2006. While some argue that CAFTA has increased employment and benefitted the poor with less expensive basic goods (Morley), others argue that CAFTA has contributed to economic instability, including negative consequences for food security, access to and quality of public services, employment, labor rights, land ownership, national sovereignty, and the environment, as well as causing increased migration (Moreno).

Environmental destruction in El Salvador is vast; for example, only 2% of primary forest remains (Silber 2014). El Salvador has been ravaged by climate disasters, including Hurricanes Stan and Mitch, and El Salvador has continually been ranked among the most disaster at-risk countries in the world (World Risk Report).

Documented and undocumented migration of Salvadorans to the US has continued; today, nearly one-third of the global Salvadoran population resides in the US. The Salvadoran economy is largely dependent on remittances, which account for over \$3.6 billion annually, or 16.5% of El Salvador's GDP (Pew).


IV. BACKGROUND: GANGS IN EL SALVADOR

As immigration to the US from El Salvador quintupled during the civil war, Salvadorans concentrated in Los Angeles. Salvadoran families and youth in marginalized and impoverished communities increasingly became targets of organized street gangs, and Salvadoran youth began to organize their own gangs to protect themselves. These gangs quickly grew, both in membership and brutality. In the mid-90s, changes in US immigration laws and the war on crime drastically increased deportations, and among the tens of thousands of deportees were Salvadoran gang members (Pedraza-Fariña 2010).

Gang members were deported to environments ripe for gangs and violence: poverty, inequality, unemployment, family disintegration, lack of access to social services, numerous and easily-obtainable weapons, a culture that had seen violence as the principal means of resolving conflict for decades, impunity, new public security forces, and a weak and nascent democracy (Cruz 2011, Malone 2010, Pedraza-Fariña 2010). Struggling to integrate demobilized military, police, and guerrilla forces, El Salvador had little ability to receive or integrate members of gangs. Additionally, many of these young people did not know El Salvador as home; if they migrated with family as infants or children during the war, they did not have family or community to “return” to (Pedraza-Fariña 2010).

Gang membership and activity quickly grew. The US encouraged the right-wing Salvadoran governments of the late 90s and early 2000s to mirror zero-tolerance policies, which came to be known in El Salvador as *mano dura* – iron fist. In El Salvador, this translated into police brutality, targeting of youth in poor communities and profiling based on gang-affiliated attire (especially tattoos), extreme overcrowding and deplorable conditions in prisons, and stigmatization of youth generally. Civil war-era death squads, never fully dismantled, became social cleansing groups, engaged in extra-judicial assassinations of youth suspected of gang involvement (Malone 2010, Pedraza-Fariña 2010). Alongside increased repression and violence, gang membership and violence skyrocket. As incarceration rates rose and gang members were concentrated by gang affiliation in prisons throughout the country, organization and control solidified (Cruz 2011, Malone 2010, Call 2003, De la Torre and Alvarez 2011).

Today, youth in poor, marginalized communities are often caught between victimization by police and armed forces and victimization by gangs. Gangs forcibly recruit young people – getting children as young as five involved in gang activities – in the areas they control. Although connections with drug cartels and trafficking exist and are growing, extortion is the gang’s principal source of income; small business owners, street vendors, and public bus drivers are particular targets. Gang members are also involved in kidnapping, human trafficking, drug and weapons smuggling, and murder-for-hire. Rival gang control of territory limits mobility for many Salvadorans in poor communities, including access to schools and public clinics (Seekle 2014, De la Torre and Alvarez 2011). Gender-based violence and sexual violence are high, and El Salvador has the highest femicide rate in the world (ISDEMU). Gangs routinely threaten and target those who resist gang activity,



witness to gang crime, and increasingly, security agents (Seekle 2014, De la Torre and Alvarez 2011). Gang affiliation marks youth for life, and many gang members live situations of extreme risk and poverty (Pedraza-Fariña 2010).

The *Mara Salvatrucha* MS-13 and the two factions of the *Barrio 18* – 18th Street Gang – *Sureños* and *Revolucionarios* – extend across Central and North America. Estimates of active gang members range from 54,000 to 80,000 in the Northern Triangle, which consists of El Salvador, Guatemala, and Honduras (UNODC, cited in Seelke 2014). In 2016, an average of one person per hour was killed during the first two months of the year (InSight Crime).

V. SECURITY, JUSTICE AND PROTECTION: DEFICIENCIES IN SALVADORAN STATE INSTITUTIONS

Gang-related violence is the direct impetus for internal displacement of the 106 people affected in the cases analyzed, with one exception. In some cases, violence manifests in forced recruitment, sexual violence and exploitation, human trafficking, extortion, or persecution based on sexual orientation. Residents are caught up in battles for territorial control. In other cases, gang violence in response to challenges to gang power is directed at members of the *Policía Nacional Civil* (PNC, National Civilian Police) or government actors and their families, religious leaders who call for non-violence, business people and entrepreneurs who refuse to meet extortion demands, and those who have witnessed crime or participated in investigations or judicial processes against members of a gang. Regardless of the diversity of reasons that lead gangs to target victims, gang threats of violence are the immediate precursors to displacement.

While cases share a common underlying factor, they differ in the ways in which the Salvadoran state was incapable or unwilling to respond on victims' behalf. Throughout all the cases, Salvadoran state authorities consistently fail to aid families or individuals in preventing displacement, show indifference to the plight of victims of violence, and turn their backs on their citizens. The analysis presented in this section identifies the most common patterns of state deficiencies in protecting its citizens. While the gangs commit violence that leads to displacement, the state at best does nothing; at worst, its actions compound experiences of victimization and suffering.

Analysis of the 23 Roundtable cases identified the following trends in state responses to displacement. Details from select cases illustrate each trend, followed by a list of other relevant cases. A complete summary of each case can be found in the appendix.

PREVENTION, DETERRENCE, OR REFUSAL TO RECEIVE CRIME REPORTS

The PNC and *Fiscalía General de la Republica* (FGR, Attorney General and Prosecutor's Office) discourage civilians from reporting crime; refuse to take denouncements; or refuse to take responsibility for accepting reports of crime, referring victims, witnesses and family members to other offices or other agencies. As a result, people give up on their attempts to seek justice.

In a survey conducted by the University Public Opinion Institute of the University of Central America in 2013, only 35.4% of crime victims had reported to authorities. Of this group, 72.1% reported that the authorities "did nothing" (Aguilar and Guevara 2013). Of entrepreneurs interviewed, 31.1% reported being victims of extortion, of which 68.1% reported that authorities "had done nothing to investigate the crime."

Case 1: A young woman (“the victim”) was harassed by another woman and survived numerous attempts on her life. The attacker maintained links not only with gangs and drug traffickers, but also with former employees of the local government. Unknown subjects raped the victim’s sister; the victim believed the intention was to rape her. When the victim went to the PNC to report the rape, they intimidated her, threatening consequences for her and her sister. Moreover, government agency employees (coworkers of the victim) were unwilling to assist in any investigation fearing criminal groups.

Case 2: After attacks against a Pastor and members of his church, the Pastor’s wife and daughter survived attempted murder. The PNC refused to take the wife’s report of the crime because she could not identify the attackers. Subsequently, she went to the PNC in her community, who sent her to the FGR in San Salvador. At the FGR, she was told that she had to report the crime in a different FGR office. At that point, she gave up, believing that her life was at great risk if she continued to travel alone in public transportation.

Case 3: A 28-year old man received death threats and, finally, an attempt on his life by two members of a gang. He survived, and went to the PNC to file a complaint. The PNC accused him of having attacked the gang members; reluctantly, they took him to the Red Cross, who then took him to the national hospital for an emergency, life-saving operation that night. The victim fled his home community, but he and his family continued to receive death threats. He tried again to report the attack, as well as ongoing death threats against himself and his family - going to a number of offices of the FGR, the PNC, the *Unidad Técnica Ejecutiva del Sector Justicia* (UTE, the Technical Executive Unit of the Justice Sector, responsible for administration of the Witness Protection Program among other responsibilities), a number of Mayor’s Offices, Embassies, the Office of the President of the Republic, and the Foreign Ministry - but no government institution would meet with him. Institutions responsible for receiving reports and investigating crimes refused to take the victim’s statements and failed to open an investigation into an attempted homicide. (Furthermore, authorities failed to offer any kind of protection for the victim and witness of serious violent crime; see below).

Failure to investigate a crime is punishable by law: for example, the penal code’s Art. 311 dictates three to five years of prison for FGR officials who refuse to “foster the investigation of a crime.”

LACK OF PROTECTION FOR VICTIMS AND WITNESSES

In general terms, the Salvadoran state is unable to protect victims of crime, witnesses of crime, or people who participate in investigations or report crime. This is evident in cases

where families or individuals who suffer violence seek help, support, or protection from state authorities and are, in effect, turned away.

Because they are not offered protection or help of any kind, witnesses and victims are victimized again. In many cases, after having sought out the PNC, FGR, UTE, or other government agencies, victims continued to suffer threats, attacks, violence, and attempts on their lives. When government representatives failed to respond, the victims and survivors in these cases were forced to go hungry, literally sleep on the street, or stay in deplorable conditions in cheap motels. In some cases, victims or family members of victims were killed after seeking state protection. Media reports of the murder of eyewitnesses and those who testify at trial abound.

The Special Law for the Protection of Victims and Witnesses regulates “the protection and services that are to be provided to victims, witnesses, and any other person who is in a situation of risk or danger, as a consequence of their involvement in the investigation of a crime or a judicial process.” Although Art. 2 of the law provides for any person “at risk or danger because of their direct or indirect involvement in the investigation of a crime, a judicial process or because of a family relationships with a person involved in these,” in reality, protection is limited to witnesses at trial and an open investigation or prosecution is required. Therefore, if a victim reports violent crime but a case is not opened on her behalf, or if she is not thought to be participating in an investigation, she does not receive protection under this law.

Art. 10 and 11 of this law stipulate extraordinary measures including shelter, change of residence, work, and school, as well as facilitation of exit from the country. The application process for these measures can be lengthy, and although there is a possibility for application of urgent measures, this is not reflected in practice. According to UTE statistics from 2014, the last year for which complete data exists, 93% of protective measures granted are “ordinary,” limited to concealing the identity and address of a witness or victim.

According to the *Instituto de Derechos Humanos de la UCA* (IDHUCA, the University of Central America’s Human Rights Institute), the PNC and FGR in most cases ask the victim or informant to provide details about the event and to name aggressors on record, which puts victims at even greater risk. Corruption within the FGR or PNC risks exposing victims’ identity: “gang members, through their lawyers, easily discover the names of people that have reported them, and threaten or kill them.”

Case 10: Gang members extorted the manager of a business. The manager reported the extortion and participated in a police operation to capture the extortionists. The operation was poorly planned, and only three employees of the business were caught. In addition, documentation of the direct link between the operation and the victim existed, and the PNC’s offer of protection (designate an escort) would have put the victim at more risk by identifying him as the informant. The PNC demanded that the victim continue to collaborate during the trial, while the defense attorneys of the detained pressured him to testify in their favor and pay for their defense. The victim feared identification as the informant.

Case 12: A woman witnessed a double homicide carried out by gang members. FGR investigators arrived in the community asking for general information and collaboration, in plain view of the community. Two weeks later, the woman was killed, in broad daylight on the street in front of her home. Her husband heard her murder from inside the house but was unable to do anything. Other members of the family received death threats.

Case 13: After the murder of a corporal in the PNC, families of gang members detained for his murder threatened the deceased's wife and two children. Gang members also had them under constant surveillance. State institutions responsible for supporting the family, especially for offering protection and minimal security conditions, and in ensuring that the case did not go unresolved, failed to fulfill these roles. Although the PNC offered support to evacuate the family from the community, they did not offer any kind of protection in the witness protection program, and representatives of the Ministry of Justice and Public Security told the family they could not help. In addition, the family believed that the murder would likely go unpunished, as the only two suspects formally accused were killed and the investigation stalled.

Case 14: Three gang members brutally attacked and killed a PNC officer in front of his children. The attack was classified as an accident (as opposed to a job-related injury), complicating access to benefits (which are mandated when an officer is injured on the job). The protection offered by the PNC to the victim upon recovery was to provide an escort to and from work; this would have only exposed him to more risk, identifying him as a gang target. The victim's brother, also a PNC agent, was killed in 2006; the victim's brother-in-law, also a PNC agent, had received death threats, and he and his wife were forced to constantly move homes and communities to avoid being identified by the gangs.

See also: Cases 5, 8, 9, 11, and 18

DISTRUST OF AUTHORITIES RESULTS IN UNREPORTED CRIME

Those living in areas under gang control understand that any collaboration or cooperation with the PNC, FGR, Armed Forces, or other justice and security institutions puts their lives in greater risk. As evidenced by the cases below, gangs seek retaliation against any person who collaborates in processes of investigation or trials against them. People fear gang retaliation if they cooperate with or speak with the police. There are frequent cases in the national news about violent deaths of those who report or witness crimes; furthermore, it is widely understood that authorities cannot protect these people (see above).

While this issue is directly related to gang control over entire territories of El Salvador and widespread fear of gang retaliation, the PNC and FGR do little to combat this lack of trust in institutions. Their demonstrated inability to protect citizens from consequences results in people not denouncing crime and avoiding interaction with the security apparatus.

According to the US government, victims of extortion and other crimes do not report them out of fear of retaliation and “lack of faith in the ability of the local government to protect the victims” (El Salvador Travel Warning). This same report indicates that the Salvadoran government lacks resources to deter crime and to investigate and bring cases to trial. A study conducted by the University of Central America’s University Public Opinion Institute (IUDOP) confirms this: 73.5% of citizens report that it is not at all likely or very unlikely that the police would detain the person responsible for a crime, while 67.3% believe that it is not at all likely or very unlikely that the justice system would process and punish a person responsible for a crime (Aguilar y Guevara 2013). This includes victims of extortion.

Case 4: A family with a small typical food business began to receive threats from a newcomer to their community. The person said she had family members in the gang, and that the family’s business was competition for her own. Threats turned into attacks, and finally, the woman gave the family 24 hours to leave the community or be killed. The family immediately left their home and sought refuge with extended family, where the children remained shut in. The woman who threatened and harassed the family had accused them, in front of gang members, of being police informants; due to this, they decided not to report the threats or attacks to the police to avoid further problems.

Case 5: Gang members sexually harassed an eleven-year old girl, referencing rape and sexual exploitation: “she’s all grown up now, we’ll finish breaking her in.” Gang members also threatened her five-year-old brother with forced recruitment. The family remained locked in their home out of fear, having nowhere to escape to. The gang had the entire community under surveillance, and gang members as well as community members maintained that the gang always knew when a person reported them. Because of this, the mother did not go to the PNC.

Case 6: After gang members attacked a couple and killed the young man, the deceased’s partner hid in fear that the PNC or FGR would find her and force her to give a statement or participate in the investigation. The family distrusted state institutions, given that any kind of cooperation with authorities would have exposed them to even greater risk.

Case 7: A small business owner refused to pay extortion to a gang in a highly conflictive area. Entrepreneurs in the area were killed, and the man survived an attempt on his life. The family lost the business because the man could not work while hospitalized, and continuing to operate the business after direct threats and attacks would have exposed them to more violence. They were forced to sell all of their belongings to survive. Distrusting authorities, especially the PNC, the family did not make any reports or declarations regarding the attack.

DEFICIENCIES IN STATE INSTITUTIONS IN RECOGNIZING AND RESPONDING TO SITUATIONS IN WHICH PEOPLE ARE AT RISK

Cases demonstrate slowness in the state's response to serious cases of harassment, abuse, or violence that leaves victims in danger, including cases involving children and adolescents. It appears that this slow pace is due in part to highly bureaucratic processes alongside a lack of recognizing the danger that some people face at the moment of seeking help or support with appropriate state institutions. There appears to be a failure on behalf of the judicial branch to acknowledge the danger victims and witnesses face, and evidence of delays or slowness in activating processes in favor of victims and witnesses, including delays in investigations and judicial processes. These delays in response are also evident in cases with the Committee on Human Trafficking and the Children and Adolescents Boards of Protection, among others.

According to Freedom House, the judicial system in El Salvador is weak and plagued with corruption. A 2014 study on Supreme Court case statistics (for common criminal proceedings or ordinary criminal procedures for adults) conducted by the University of Central America's University Public Opinion Institute (IUDOP) found that 11,146 of the 23,008 open cases in 2013 were closed "because the prosecutor did not present sufficient evidence to support the accusation in the time period granted by the court for this purpose." During the 2009-2013 period, 48% of cases were closed due to failures in the investigative or prosecutorial process, which, according to the IUDOP, is an "indicator of lack of prosecutorial efficiency" ("La situación," 2014). According to the US State Department's Country Report on Human Rights Practices for 2014, "some judges denied anonymity to witnesses at trial, and gang intimidation and violence against witnesses contributed to a climate of impunity from criminal prosecution."

Case 19: A member of a gang raped a 13-year-old girl. Her mother reported the crime and sent the girl into hiding at a relative's home. The long trial - lasting over a year - placed the family at increased risk for retaliation. There were a series of irregularities in the case, and although the FGR said it was unable to locate the victim's mother to act as a witness, the accused continually threatened her at her home and the defense attorney located her to pressure her to sign a statement of retraction.

Case 17: When gang members constantly threatened a woman and her family with death, she was forced to become the gang's sexual servant for over a year. After numerous attempts, she was able to escape and participated in a case against her rapists. The judicial process and protection for the victim and her family were seriously flawed and the judge was unwilling to recognize the danger that the victim faced. The judge failed to invoke a suppression order in the case; did not allow the victim or her family to present written testimony to be able to leave the country; did not approve even the most basic forms of protecting witness identity for the victim to testify in court; and did not provide any form of protection for the witness during the process, which lasted for over a year and during which time the victim's life was in danger.

See also: Cases 13, 16, and 18

ASSAULT, VIOLENCE, AND SEXUAL ABUSE COMMITTED BY STATE AGENTS

In the following cases, it is not only that the Salvadoran state is unable to protect citizens from violence or persecution at the hands of civilians or organized criminal structures, but that the state itself, through government officials or authorities, is responsible for violence against citizens. In these cases, victims of violence, rape, and human trafficking, as well as witnesses participating in judicial processes, enter the witness protection program and suffer persecution and violence within that program. In other cases, agents of judicial and security agencies assault civilians.

Case 8: After witnessing a triple homicide, a woman acted as a protected witness at trial. While in the witness protection program, she and her family were sent to homes with inadequate conditions, including a house that had no running water and a second house in an area controlled by a gang, and where she felt she was being watched. She survived two attempts on her life while under protection. The UTE security guards drank alcohol while living and sleeping in the house alongside the woman and her family, and sexually harassed her 16-year-old daughter. The women asked that security be removed out of fear something would happen, but chose not to file a complaint out of fear of retaliation.

After the trial, the woman and her family suffered constant threats and violent attacks by members of the gang from their community of origin. The woman went to the PNC, FGR, UTE, the Office of the President, and the Secretariat for Social Inclusion; although she collaborated in the investigation and legal proceedings and her life was in imminent danger, all these institutions refused to help.

Case 15: Upon leaving a LGBTI pride parade, PNC officers attacked and beat a gay activist and his friend. The victim had suffered a history of harassment by these same police officers. Hospitalized, his skull was fractured and there were visible marks on his neck - from where agents had attempted to choke him - and all over his body. One of the police officers responsible for the attack visited the hospital and threatened the victim. The victim was charged with injuring police officers.

Case 16: A family, comprised of three sisters (one minor) and the four daughters of the oldest sister, entered the witness protection program: the middle sister was a human trafficking victim and the oldest sister participated as a witness in the trial.

In two UTE shelters, UTE security agents threatened and sexually harassed the family, including an attempted rape and harassment of the youngest children. UTE employees threatened shelter residents with withholding food and basic needs in exchange for "sexual favors." Other shelter residents also harassed victims. UTE administration referred to the attempted rape as "a little problem" with the individual aggressor, not as a crime or representation of a serious and systematic problem within the UTE. As supported by an internal *Procuraduría de Derechos Humanos* (PDDH, Human Rights

Ombudsperson's Office) report, this is not the only case of rights violations within the UTE.

Furthermore, an UTE employee attempted to kidnap and fraudulently adopt the infant child. Finally, a number of other state institutions (the General Office on Migration and Immigration, DGME, the Board of Protection, and the Committee on Human Trafficking) were complicit in or failed to recognize the situation.

LINKS BETWEEN GOVERNMENT INSTITUTIONS AND GANGS

The cases studied suggest close ties between some government representatives and organized criminal structures. In a number of cases, links between local government, PNC officers, or FGR representatives and the gangs operating in communities are evident. In the cases presented, this contributes to increased threats, prevents the pursuit of justice, and results in the further victimization of citizens and victims.

The US State Department Human Rights Report identifies corruption as "widespread," highlighting that "weaknesses in the judiciary and the security forces ... contributed to a high level of impunity," weakening the state of law. According to Freedom House, corruption continues to be a serious problem, with few officials facing charges.

Case 3: A man's cousin extorted him and threatened him with death. The cousin worked in local government and her partner was a gang member. Gang members, who participated openly in local government activities, attempted to kill the victim. The local PNC refused to take the victim's report of the attempted murder. It looked as though both the local mayor's office and police maintained ties to the gang.

Case 20: A man active in the leftist party was killed. His wife publicly stated that she saw the attackers and wanted to seek justice. The neighbors were witnesses to the attack as well, but refused to identify anyone out of fear of retaliation. The mayor was a member of the opposing political party and provided benefits to the local gangs, allowing them to maintain uncontested territorial control and control over local businesses. As such, local residents believed the murder was a message from the gang in the area that they did not want the presence of other political parties. Alternatively, it could have been a politically motivated murder, simply carried out by gang members. The victim's adult son and his family (wife and two children) lived in the same community; they did not want to participate in the investigation and, due to the victim's wife's public statements, the family feared continued violence against them.

See also: Case 1

DISCRIMINATION IN CASES WITH POSSIBLE LINK BETWEEN VICTIM AND GANG

Entire areas of El Salvador are associated with one gang or another; youth from these communities face discrimination in finding work, attending school, and in other areas of their lives because they are associated – simply because of their address – with the gangs.

The situation of links to gangs in gang-controlled territories is extremely complicated. In communities where youth are forced to participate in gang activities, are victims of forced recruitment, or are forced to flee the community to avoid repercussions, total avoidance of gang involvement is complicated. In areas under control of the gangs, people are forced to engage in daily interactions with gang members as survival strategies.

In addition, there are many people who have extended family members who are active gang members or involved in gang activity. The fact that members of one's extended family are involved in or implicated in gang activity does not mean that a person herself has links to the gangs – but nevertheless, this extended family gang affiliation places people at increased risk for gang retaliation. Regardless, suspected or supposed links with gangs – despite how removed these supposed links may be – are often the basis for discrimination on behalf of officials, who accuse victims and families of being involved in gangs.

Members of the PNC, the FGR, and others discriminate against those they believe to have gang connections, thereby denying access to limited programs for aid or protection.

Case 18: An entire family, with 10 minor children, received death threats by a gang. An immediate family member was incarcerated at the time. He belonged to a gang, and had decided to cooperate with the PNC in an investigation. He wanted to leave the gang. Due to his cooperation with the PNC, the gang threatened the family, saying they would start by killing the youngest children. The family immediately fled the community, seeking support and help from various state institutions to no avail; the FGR, for example, told them that they could only provide shelter for witnesses and apparently did not ask the family file a crime report. The *Consejo Nacional de la Niñez y de la Adolescencia* (CONNA, National Council for Children and Adolescents) stated that they could only offer shelter to children, but not their mothers. The family spent over a week completely unprotected, living on the street facing death threats. This is evidence of state failures (especially Boards of Protection, CONNA, and the FGR) to respond to a situation of serious danger of a family group with minor children.

A few days after the family had fled the community, the Minister of Justice and Public Security stated on a primetime television program that the family had links to the gangs, and that the situation should be handled with caution as the family could have “some ulterior motive” (Álvarez 2015).

This becomes ever more complicated when the case involves former gang members or those once involved in gang-related activity. Not only are these populations at perhaps the greatest risk for retaliation – gang affiliation is for life – but they are denied any possible assistance by authorities. Furthermore, achieving asylum or refugee status for former gang

members convicted of crimes is incredibly complicated, despite the dire risk these populations face.

Case 23: A 17-year-old girl survived a massacre in which her mother, stepfather, and sister were killed. She had a criminal record for activities related to one of the gangs, and her older brother was a leader of this same gang. The Salvadoran Institute for the Integral Development of Children and Adolescents (ISNA) refused to take responsibility for her after the murder of her parents, because of her criminal record.

DIFFICULTIES REGARDING DOCUMENTATION

When a person or family flees imminent death threats, they are not often able to get their papers and documents in order before seeking protection. Families and individuals faced difficulties in obtaining the documentation necessary to leave the country, especially in regards to inconsistencies with birth certificates and delays in obtaining passports. For some people, this may mean being forced to return to their place of origin - where their life is at risk - to get the necessary documents to leave the country legally. For others, they may need to fix inconsistencies in birth certificates before getting passports, or face difficulties with permission for underage children to leave the country, meaning a delay in their departure, leaving them exposed to attacks or threats.

Case 9: A single mother and four children (17, 15, 11, and 5 years old) lived in a conflict zone with violence between two gangs. The gangs constantly harassed and threatened residents, including this family. One gang threatened the son (age 15) with forced recruitment and the daughter (age 17) with rape. When the mother resisted, the gang violently attacked her. She went to the PNC to report the threats and attack, and even accompanied the PNC to identify the location of the crime and residence of the attackers. Despite this, the PNC did not offer any assistance or information about protection for the victim or her family. Because of the attack and displacement, the family lost all of their belongings, including identification, a situation that made it impossible for them to flee the country.

Case 20: Gang members killed a man active in local, leftist politics. The son and grandchildren of the deceased sought to flee the country, but their visa request was significantly delayed due to inconsistencies in birth certificates.

See also: Case 18

DIFFICULTIES REQUESTING REFUGEE STATUS FROM ABROAD

The Foreign Ministry has demonstrated resistance to assisting people abroad in their requests for refugee status. Although facilitating or directly supporting asylum cases may represent conflicting interests for government institutions, they have the obligation to guarantee the rights of all Salvadorans abroad. This involves support in obtaining necessary documentation from El Salvador for the migration process, regardless of the type of migration process.

Refugee processes vary from country to country, are complicated, and can be costly. There are indications that some receptor countries discourage asylum seekers from presenting requests for refugee status. As a result, people give up, either remaining undocumented or returning to El Salvador - both situations of extreme vulnerability - because of lack of other options.

Case 11: A seven-year-old boy was kidnapped but returned home alive. The family suspected the boy had been a victim of sexual abuse. Given that he refused or was unable to talk about what happened, there was no investigation. Two weeks later, his thirteen-year-old sister was kidnapped and brutally murdered. The remaining family - a single mother, three surviving children, and the elderly grandmother - fled the country under a tourist visa. Outside of the country, they moved to a relative's home and applied for asylum. They then faced difficulties in paying for asylum applications. The family was granted a temporary status that had to be frequently renewed, with a required fee for each renewal. The family struggled to maintain work and found it increasingly difficult to maintain legal status in the receptor country.

Case 21: A witness in a criminal case was forced to flee the country after facing threats, attacks, and harassment following the completion of the case. Once in Mexico, he sought help in obtaining documentation of the judicial process he participated in to present his asylum application. The Foreign Ministry was reluctant to provide support in obtaining documents, arguing that they were not able to coordinate with the FGR in refugee cases, and that it was a conflicting interest for the state to participate in refugee cases.

Case 22: Gang members attacked two young men, killing one. The deceased's friend survived and feared retaliation as an eyewitness to the murder and a victim of gang violence. He fled the country to request asylum in Mexico, where officials discouraged him from continuing the process; despite presenting all necessary documentation for his application, he was told that the process would take months, during which time he would have no way of supporting himself. Thus, he returned to El Salvador, where his life is at risk.

DEFICIENCIES IN SALVADORAN STATE INSTITUTIONS: CONCLUSION

This section of analysis lays out clear trends in Salvadoran state deficiencies in responding to situations of violence and imminent threat. Although gang activity led to displacement in the majority of cases, state failure to respond contributed to and often worsened conditions of displacement. The patterns identified in this section suggest priorities for developing policies and programs to respond to the immediate situation of displaced persons; addressing gaps in the effective enforcement and compliance with existing laws; and rectifying serious flaws within the PNC, FGR, and UTE concerning their interactions with displaced persons and victims.

VI. HUMAN RIGHTS AND DISPLACED PERSONS

Death threats, sexual exploitation, forced recruitment, extortion, physical assault, attempts on peoples' lives, kidnapping, and murder initiate the process of forced displacement. But the brutality against displaced persons does not end with displacement; rather, forced displacement triggers a series of potential violations of the human rights of this population and prevents displaced persons from enjoying even their most basic rights. Once displaced from their homes, these people are unprotected and even more vulnerable.

Displacement ... usually leads to extreme poverty and renders [internally displaced persons] highly vulnerable. It typically results in loss of land, homes and property, loss of employment or livelihood, food insecurity, lack of access to basic services, including water and sanitation and health care, and poor access to education.

- UNHCR Special Rapporteur on the Human Rights of Internally Displaced Persons


This section analyzes the ways in which the Salvadoran state violates the human rights of its citizens; presents cases of violation by omission, when the state fails to protect victims from foreseeable rights violations carried out by non-state actors; and describes how the state, by failing to guarantee an environment in which citizens are able to enjoy or exercise their rights in any meaningful way, may be responsible for human rights violations by omission in a broader sense.

LEGAL FRAMEWORK FOR STATE RESPONSIBILITY: THE CONSTITUTION AND INTERNATIONAL CONVENTIONS

Through its own Constitution and as a signatory to numerous international conventions, the Salvadoran state has the obligation not only to avoid violating the human rights of its citizens, but also to protect citizens from human rights abuses and – of great significance for the situation of the majority of displaced persons – to *create conditions* in which people can exercise their rights.

The Constitution of the Republic of El Salvador recognizes “the human person as the origin and purpose of state activity;” establishes the “obligation of the state to ensure that residents of the Republic have the enjoyment of freedom, health, culture, economic wellbeing and social justice” in Article 1; and recognizes that “all people have the right to life, to physical and moral integrity, liberty, security, work, to own property, and to be protected in maintaining and in defense of these rights” in Article 2.

El Salvador is signatory to the International Covenant on Civil and Political Rights (ratified 1979), the International Covenant on Economic, Social and Cultural Rights (ratified 1979), the Convention on the Elimination of All Forms of Discrimination Against Women (ratified 1981), the Convention on the Rights of the Child (ratified 1990) and the American



Convention on Human Rights (ratified 1978). These treaties are binding for ratifying states and include obligations to ensure fulfillment of the rights established therein.

The UN Office of the High Commissioner for Human Rights defines the following responsibilities for ratifying states to the International Conventions on Human Rights:

The obligation to **respect** [human rights] means that states must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to **protect** requires states to protect individuals and groups against human rights abuses. The obligation to **fulfill** means that states must take positive action to facilitate the enjoyment of basic human rights.

HUMAN RIGHTS VIOLATIONS: STATE ACTORS

In the cases of forced displacement analyzed for this report, the Salvadoran state was responsible for a series of human rights violations against its population. Section V.5 details a number of these violations: government officials harass and assault persons protected in witness protection programs, clearly violating their rights to protection and physical integrity (Section V, number 5).

These cases suggest potential violations against rights contained in the Convention on the Elimination of all Forms of Discrimination Against Women (Art. 6), which requires that states “take all appropriate measures ... to suppress all forms of traffic in women and exploitation of prostitution of women.” In the cases in which state actors sexually exploit women, the state is clearly responsible for violating these rights (see cases 5, 9, 16, and 17).

The Salvadoran state also violates the rights of displaced persons when officials refuse to take a complaint or investigate a crime. Article 2 of the International Covenant on Civil and Political Rights guarantees that “any person whose rights or freedoms as herein recognized are violated shall have an effective remedy” and will have access to processes of investigation, clarification of crimes, and justice (see cases 1, 2, and 3).

Finally, state agents violate rights to non-discrimination (Art. 7 of the Universal Declaration on Human Rights). In cases involving LGBTQI victims, in addition to physically assaulting gay people, the PNC refused to take crime reports, attempted to prevent access to immediate, urgent medical assistance, and failed to open investigations into crimes (see cases 3 and 15). When a possible link between victims and gangs existed, state actors and agencies discriminated against victims, refusing to investigate, denying access to state programs (including shelter), and harassing victims (see cases 18, 23).

HUMAN RIGHTS VIOLATIONS: FAILURE TO PROTECT AND DENIAL OF JUSTICE

The Salvadoran state is directly responsible for a number of egregious violations of the human rights of its citizens. However, in most of the cases analyzed, gang members, not the state, were responsible for criminal acts that led to displacement.

Although the Salvadoran state did not act in violation of the human rights of citizens, the state failed to create conditions of adequate security for its citizens, failed to respond to situations of violence and criminality, and failed to protect citizens from future violence or crime.

The state may act through its own independent failure of duty or inaction in relation to non-state conduct ... A state has a duty to take reasonable care to protect ... citizens from attack or harm ... Inaction in the face of this duty is conduct attributable to the state quite independently of the status of the perpetrator of the immediate wrongful acts. (Christenson 324)

In other words, regardless of whom the aggressor is, if and when the state fails to protect citizens from foreseeable harm, the state itself may be culpable.

According to the UNHCR, displacement places internally displaced persons at greater risk of violence, "including sexual and gender-based violence, trafficking and other forms of abuse..." (Special Rapporteur). The cases analyzed in this report evidence this extreme vulnerability, demonstrating patterns of sexual exploitation, assault, and violence after displacement. With the knowledge that this population is increasingly vulnerable to violence, the Salvadoran state has a heightened obligation to protect these citizens: an obligation it repeatedly fails to fulfill.

Specifically, we can talk about human rights violations by omission when the state fails to meet its responsibilities to ... protect [residents] from non-state actors' actions... [When] the state or its organs already knew of the risks and did not act in a diligent way to prevent the negative effects ... these situations describe the violation of positive factual obligations of the states. (Barón 8)

In numerous cases, displaced persons went to the PNC or FGR for aid, did not receive protection, and continued to face violence post-displacement. In a country with the highest homicide rate in the world, and in which gang threats are not idle words, the risk of violence against this population is clear. When residents turn to authorities and the state fails to act to prevent negative consequences, the state violates human rights through omission.

Case 8: A woman served as a witness for the prosecution in a triple homicide. While in the witness protection program, gang members and security agents threatened and harassed her and her family. After the completion of the trial, gang members escalated their threats through phone calls and terrifying handwritten notes. Threats forced the family to continually relocate, completely disrupting their lives. The woman approached the Office of the President, the Secretariat of Social Inclusion, the PNC, the FGR, and the UTE, but these institutions offered no support.

See also: Cases 9 and 19.

THE VIOLATION OF OMISSION: EXTREME VULNERABILITY OF DISPLACED PERSONS AND UNMET RIGHTS

The deprivation of human rights are intricately and intimately linked to one another as well as to the initial displacement. Displaced persons lack access to basic services that are part of a right to a dignified life. In the following examples, there is often no specific actor - much less a state actor - preventing a child from attending school, preventing a survivor

from receiving medical treatment, or preventing a person from going to work. It is the situation of fear and violence – created by non-state actors, gangs – that create these situations. However, the state is unable or unwilling to fulfill its responsibility to residents and fails to take sufficient steps to address this extreme vulnerability and protect citizens from non-state actors.

Through its own Constitution and ratification of international conventions, the Salvadoran state assumes the obligation to create an environment in which residents are able to exercise their fundamental human rights. The Salvadoran Constitution lays out a broad range of political, civil, economic, social, and cultural rights and requires the state to guarantee citizens enjoyment of and “protection in maintaining” these rights. Article One of the American Convention on Human Rights includes the state’s positive obligation to guarantee rights, indicating the state’s duty to ensure “the free and full exercise of human rights” (Barón 10).

In the case of internally displaced persons, this duty has been unmet. Although the Salvadoran state does not directly violate human rights or actively deprive people of them, the state has failed to protect citizens from criminality, rendering them unable to exercise a host of fundamental rights. Aware of the situation of criminality, risk, and vulnerability displaced persons face, and fully aware of non-state actors’ (gangs) actions against this population, the state may commit the act of omission – violating fundamental human rights – by failing to act.

Nevertheless, regardless of whether the state is responsible for the violation of rights by omission, displaced persons face extreme and deplorable conditions. Any nation, especially one that professes “respect for the dignity of the human person in building a more just society” in its Constitution, ought to be moved and concerned for the plight of this extremely vulnerable sector of its population.

Confinement

Displacement forces people to abandon their homes. When possible, families or individuals seek shelter with friends or family, and in many cases remain nearly or completely confined out of fear of being identified by attackers. The constant movement and self-imposed confinement for many displaced persons – often facing serious and imminent death threats – implies the cessation of nearly all normal daily activities.

Case 4: After fleeing their home having received death threats, and continuing to receive these threats after being displaced, a family remained completely confined in a relative’s home out of fear of being attacked or killed.

See also: Cases 3 and 19.

Right to Education

The right to education (Article 13 of the International Covenant on Economic, Social, and Cultural Rights, and Article 28 of the International Convention on the Rights of the Child) is one of the rights most clearly absent in the case of displaced persons. Nearly half of the 106 people represented in this analysis are of school age, and nearly all quit their studies as a result of displacement. Children, adolescents and youth who face death threats, flight from their communities of origin, and situations of constant insecurity are forced to drop out of

school. For some children, confinement prevents attendance, while for others, constant movement to prevent being found or identified by criminal groups disrupts education.

Case 5: After gang members threatened an 11-year-old girl with rape and sexual servitude, her mother approached the school Principal. The Principal told her it would be best to remove her daughter from the school, because gang members could come and take her at any time. The girl and her younger brother stopped attending school that same day.

See also: Cases 2, 4, 7, 9, and 20.

The Convention on the Rights of the Child states that "states parties shall ensure to the maximum extent possible the survival and development of the child" (Art. 6). A child locked in her home in fear of her life, without access to school or the following rights, clearly does not have opportunities to develop in any way.

Right to an Adequate Standard of Living

Along with the Salvadoran Constitution's provisions for health and economic well-being, Article 11 of the International Covenant on Economic, Social, and Cultural Rights provides for a series of rights related to an adequate standard of living, including the rights to food and shelter, which displaced individuals and families do not enjoy. The Convention on the Rights of the Child establishes the right "of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development" (Art. 27). Additionally, displacement under duress due to threats forces many families to abandon their homes and all they own inside, carrying only what they are able. Not only is displacement a traumatizing event, if a family is forced to leave everything behind they are likely unable to maintain any standard of living.

Case 9: Gang members threatened a family of four minor children and their single mother, and physically assaulted the mother for resisting forced recruitment of the 15-year old boy and sexual exploitation of the 17-year old girl. The mother reported the crimes to the PNC, who did not offer the family any support. Fleeing imminent violence, the family left all of their possessions behind in gang-controlled territory and were unable to return to retrieve them. With no means of supporting themselves, the family was forced to sleep in motels with appalling conditions and go hungry for days.

See also: Cases 7, 12, 13, and 19.

Right to Health Care

Article 12 of the International Covenant on Economic, Social, and Cultural Rights provides for the rights of all people to "the enjoyment of the highest attainable standard of physical and mental health." Displaced persons often lose access to even the most basic medical care and assistance. Displaced persons who cannot return to their place of origin and local clinic, where their medical files or public health system doctor are located, lose access to medical treatment, follow-up for chronic diseases, and prescription medicine. In a number of cases, victims stated that the national or social security system hospitals are not safe, and in other cases, people simply could not leave houses where they were staying to seek medical

care for fear of retaliation. The Convention on the Rights of the Child also includes the right to health care and medical services (Art. 24).

Case 12: Gang members attempted to kill a young man, who survived despite five bullet wounds. The PNC delayed taking the victim to the hospital. Gang members threatened the victim while he was hospitalized, and fearing for his life, the victim remained locked inside the house where he sought shelter. His medical treatment was interrupted, including operations to remove bullets from his body.

See also: Cases 8, 15, and 22

Right to Work

The very fact of leaving home and community also implies, for many people, leaving a job. This represents not only loss of financial means of survival, but also an inability of the state to guarantee the basic right to work, as established in both the Salvadoran Constitution and Art. 6 of the International Covenant on Economic, Social and Cultural Rights.

Case 7: Gang members attempted to extort a small entrepreneur, who refused to pay. The gang killed other small entrepreneurs in the area, and attempt to kill the victim. While he was hospitalized, in dire condition, his family was forced to sell everything related to the business to survive. Additionally, to continue operating the business after the attack would have put their lives at even greater risk. They lost the business, as well as their home and most of their belongings.

See also: Cases 4, 8, and 10

Right to Family

Family disintegration is a frequent consequence of the violence that plagues communities under control of criminal structures. Displacement can lead to family separation when relatives or friends can only shelter a few people, when threats are most serious against certain members of the family, or when some members of the threatened family unit feel a need or obligation to stay behind.

State shelters are very limited, and there are restrictions on who can seek protection; the Salvadoran Institute for the Integral Development of Children and Adolescents (ISNA) provides shelter only to children and adolescents, and the Salvadoran Institute for Women's Development (ISDEMU) cannot accept boys over 12 years old (Reynolds 2015). This means that a family may have to decide between protection and staying together as a family during a traumatic time. The right to family is enshrined in the International Covenant on Economic, Social and Cultural Rights' Art. 10: "the widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society," and in Articles 9 and 16 of the Convention on the Rights of the Child.

Case 19: A gang member raped a 13-year-old girl. Fearing retaliation, the victim was sent to live with relatives. The mother was unable to go with her daughter, and in order to protect the girl's life, mother and daughter were forced to separate.

See also: Cases 2, 14, and 16

FAILURE TO RECOGNIZE THE SITUATION: DEEPENING THE PROBLEM

In the majority of the cases analyzed, families or individuals sought to flee the country because of violence, having lost hope in any possibilities for a life in El Salvador. However, while this population is in El Salvador, their safety and security are the responsibility of the national government. According to the UNHCR, national authorities “have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction” (Brookings 11). Until they leave the country, internally displaced persons are the responsibility of the Salvadoran state.

Existing national laws for protection and prevention were created for other contexts. Child protection systems are intended for when a family cannot or will not take responsibility for a child, or when it is the family itself responsible for abuse. Protection systems for women, in many cases, are designed for survivors of domestic violence, not necessarily for victims of violence and threats carried out by criminal structures.

The Cartagena Declaration, to which El Salvador is signatory, calls on countries of the continent to “express ... concern at the situation of displaced persons within their own countries,” and “calls on national authorities and the competent international organizations to offer protection and assistance to those persons and to help relieve the hardship which many of them face.” To date, the Salvadoran government has not publicly recognized the issue of internally displaced persons, nor the links between displacement, migration, and violence. Consequently, according to the International Commission on Human Rights of the Organization of American states, the government does not keep track of how many people are internally displaced, and there is no specialized strategy to “address this growing problem.”

HUMAN RIGHTS AND DISPLACED PERSONS: CONCLUSION

Displaced persons suffer violations of their most fundamental rights and are unable to exercise a great number of these rights throughout displacement. This includes the right to life and physical integrity, access to justice and protection, an adequate standard of living - food, education, medical attention, and housing - work, family, and non-discrimination.

Along with human rights violations carried out by state actors, the violation of omission by the state - in failing to prevent or respond to the actions of non-state actors and failing to guarantee the enjoyment of the human rights of its population - stands out in stark relief. This results in the continued deprivation of the basic human rights of a population already highly vulnerable to victimization - the impoverished, women, children and youth.

While indicating state responsibilities towards this population, the findings in this section underscore the urgent need to improve state responses in regards to displaced persons. The findings in this section can aid advocacy campaigns pressuring state institutions to respond to displacement, both in terms of protection as well as in increasing access to services and support for internally displaced persons. The vast dispossession of rights of the internally displaced demands a comprehensive, national response.

VII. INTERNATIONAL NORMS AND SALVADORAN REFUGEES

Although changes are needed in public policies and resources designated for the crisis of forced displacement in El Salvador, both to prevent as well as to respond to individuals and families in the process of displacement, people are fleeing their homes and communities now. The internally displaced need immediate interventions to safeguard their lives; for many whose lives are at risk, the only option is to get out of the country. Possibilities for international protection and refugee status become extremely important. Facing imminent death threats, these individuals cannot wait.

This section presents an analysis of the cases in relation to international standards and precedents for refugees. This includes the Convention relating to the Status of Refugees of 1951, the Cartagena Declaration, and US case law.

THE 1951 CONVENTION

The Convention relating to the Status of Refugees of 1951 establishes international protection for refugees, defining who can be considered a refugee, the rights of refugees, and the obligations of the signatory states towards refugees. According to the United Nations High Commissioner for Refugees (UNHCR), "refugees are forced to flee because of a threat of persecution and because they lack the protection of their own country." People fleeing gang violence in El Salvador are not protected by the state, and although family reunification or economic issues may be additional factors in migration, a major cause of current forced migration is persecution.

However, there are disagreements as to who qualifies as a refugee, given the language in the Convention: "well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group, or political opinion." Given the sheer numbers of refugees fleeing the Northern Triangle (El Salvador, Honduras, and Guatemala) due to persecution and gang-related violence, the UNHCR has published a "Guidance Note on Refugee Claims Relating to Victims of Organized Gangs."

Cases will be presented based on protected categories and in relation to UNHCR guidelines, along with what additional information may be necessary to support a refugee application. Many cases fall under more than one category of protected status, and it is important to include information from any protected category in applications. As such, links with each category will be discussed. This report is not intended to be a thorough analysis of international refugee law. It will attempt to present a summary of basic information in order to detail how the cases studies may correspond to existing legal frameworks.

Particular Social Group

Membership in a particular social group is one of the five grounds enumerated in Article 1A(2) of the 1951 Convention. The UNHCR suggests that this cannot be interpreted as a "catch all" that applies to any person suffering persecution, but that it must be based on

“protected characteristics” or “social perception.” Protected characteristics can be innate – such as gender or ethnicity – immutable, or so fundamental to human dignity that a person should not be forced to forego them. Social perception can delimit a social group when this group shares a common characteristic that sets them apart from the rest of society, or when this makes them a distinct social group (“Guidelines on International Protection”).

Under this framework, the UNHCR argues that young people vulnerable to forced recruitment represent a particular social group: “Young people of a certain social status are generally more susceptible to recruitment attempts or other violent approaches by gangs precisely because of the characteristics that set them apart in society, such as their young age, impressionability, dependency, poverty and lack of parental guidance” (12). This definition of social group applies to poor youth in areas under gang control, vulnerable and susceptible, who refuse to participate in gangs: subjects of forced recruitment and sexual abuse. For these cases, it is essential to demonstrate that the gang targets impoverished and vulnerable youth specifically because they belong to this particular social group, distinct from other sectors of Salvadoran society.

Case 5: Despite gang threats, a mother living in an impoverished community refused to surrender her daughter and son to the gang. State authorities – exemplified by the school director – did not have power in the community nor the ability to protect students. Rather, it was the gang exercising authority. This case is a clear example of forced recruitment and gang control over a given territory. As a social group, the entire family could also request refugee status.

The UNHCR adds: “Resisting involvement in crime by, for instance, evading recruitment or otherwise opposing gang practices may be considered a characteristic that is fundamental to one’s conscience and the exercise of one’s human rights. At the core of gang resistance is the individual’s attempt to respect the rule of law and, in the case of those who refuse to join the gangs, also the right to freedom of association, including the freedom to not associate” (Guidance Note, 13). This adds another layer to the particular social group argument for youth who resist gang involvement.

There are three other categories of particular social groups that relate to the cases studied: family, gender, and sexual orientation.

Being a member of a threatened family can represent a particular social group. Families are innate, distinct, and one should not be forced to forego them. Of the cases analyzed, this basis for refugee status could apply to family members of PNC agents attacked or killed; family members of young people who have been targets of forced recruitment and who have resisted, and whose families have then faced threats; and for family members in cases of women abused and forced to serve as sexual servants of the gangs. These cases share elements of particular social group, as well as political opinion, in resisting the gang, which will be discussed later.

Case 13: The family of a PNC Sergeant could apply for refugee status as an identifiable family group.

Case 14: The family unit has received threats and attempts on their lives, and relatives have been killed. This case is more complicated because the father was a member of the PNC, and security agents do not qualify for refugee status. However, it may be possible for this family unit to apply as a particular social group, given the history of gang threats and violence against the father's adult siblings.

Gender as a social group has been successful not only in domestic violence cases, but also for women who are victims of gang harassment or persecution (Committee on Immigration and Nationality Law). Women are seen as a distinct social group by society - evidenced in laws designed specifically to protect women - and despite specific laws, the state is unable to protect them. The definition of a social group is tied to the specific context of the country, but in the case of gender-based violence, there is much evidence that women suffer violence or persecution because they are women, and that state authorities are unable or unwilling to protect women (ISDEMU).

Case 1: A young, unmarried woman and her sister could request refugee status on the grounds that they were victimized because of their gender.

Cases involving human trafficking and sexual harassment fit under this social group, as well.

Case 16: Women and children - one of whom was a victim of human trafficking - were sexually harassed while under state protection. They are targets of harassment due to their vulnerable situation as young, unprotected women.

Single mothers qualify as a particular social group as well, given that they are particularly vulnerable to attacks by gangs, who know they have no protection. These women are targeted specifically because of their extreme vulnerability.

Case 4: Local gang members threatened a single mother and her children because of her vulnerable situation and because she was a single mother; in addition, her small business was modestly successful, which questioned and challenged the sexist order of gang and Salvadoran culture. This could also possibly be presented as a case of political opinion, as refusal to obey the gang's order to cease business.

Finally, the LGBTQI community represent a particular social group, as illustrated in Cases 3 and 15, which are examples of persecution based on sexual orientation.

Political Opinion

In many areas of the country, the gang serves as de facto authority, and even as the de facto government; indeed, criminal structures "may directly control society and de facto exercise power in the areas where they operate" (UNHCR, 16). Therefore, any expression against the gang can be understood as a political opinion, one of the protected grounds for refugee status.

This has broad implications for Roundtable cases. Expressions of respect for the rule of law or support for human rights of residents in gang-controlled areas represent anti-gang political views. A person who expresses opinions contrary to the gang or to the fundamental actions of the gang and is then a victim of persecution - in the form of threats, violence, or attempted homicide - can structure their refugee application in this framework.

Specifically, participation in judicial or police investigations against gang members may be evidence of political opinion against the de facto authority in a given area.

Case 12: A woman was seen giving information to the FGR in the investigation of a double homicide. Gang members killed her and threatened her family. This application for refugee status could be based on challenging gang control through participation in a criminal investigation, as well as social group, because a family member was killed and others were at risk.

Activism or participation in groups that seek to address the problem of gang violence may also be included under this framework. If a political party, for example, expresses opinions against a gang, and a person is a member of such a party and expresses these views, this political opinion could be argued as the cause of persecution. This can be applied to human rights defenders and people working in violence prevention, as well.

Case 20: Gang members threatened and then killed an activist of the leftist party, presumably because the ruling party benefitted the gang and the victim and his wife were members of the opposition party. Given that the murdered person's wife participated in the investigation, there is an additional element of anti-gang political opinion. Finally, as relatives of a murdered person, the particular social group applies.

This may be extended to people who refuse to pay extortion - a key part of gang activity and an illegal act in which a person refuses to participate.

Case 7: A small entrepreneur refused to pay extortion and was attacked by the gang. However, in an effort to individualize the case, it could be argued that this man was targeted as a small businessman in an area in constant dispute between gangs fighting for control over an economically vibrant area. Therefore, the refugee application could be based on specific targeting of this small businessman with a clear source of income, distinct from generalized extortion. Furthermore, upon refusing to pay, he challenged the power and control of the gang in his area.

Persecution experienced due to refusal to participate in gang activities, for cooperating with state authorities in investigations, and for questioning or challenging gang authority in words or actions can be linked to political opinion, and as such can constitute the basis for a refugee application.

Religion

Religious people can base their fear of persecution on religious grounds. Although people may not immediately identify with this category, there are people who proselytize in their communities about peace, violence prevention, and love of one's neighbor, and this attracts persecution by gangs, whose power is threatened by this type of message. Moreover, if these people are involved in work to prevent violence or to attract young people to avoid or leave the gang to join the church, this may be part of a refugee application, provided that the exercise of religion is related to gang persecution.

Case 2: A Pastor and his family may include this category in a possible application along with social group (family) and political opinion (work for reintegration challenges the power and activities of the gang).

REQUESTING ASYLUM IN THE US

There is a certain irony in seeking refugee status in the US, given its history of contributing to the main causes of gang violence, internal displacement and forced migration. Mass deportations, financing the war and repression, exporting tough on crime policies, CAFTA, and many other US policies contribute to the need to flee. At the same time, thousands of Salvadorans have family and social networks in the US, which means they look to the US to re-settle. Facing increasingly harsh removal and deportation policies and a great deal of anti-immigrant rhetoric, Salvadorans who are currently in the US seeking protection need to identify avenues for presenting successful asylum applications, not only based on international norms, but also in the context of US jurisprudence.

Many people no longer want to reach the US to seek protection for their lives, but simply to escape. Some of the individuals and family groups in the cases analyzed expressed no intention of reaching a specific receptor country; they only wanted to leave El Salvador. Given that US case law and immigration courts are known to be the most limited or strict in terms of granting refugee status or relief, successfully presenting and winning refugee cases in the US offers hope for refugees in other countries, where the same ways of conceptualizing refugee applications will be met by less restrictive courts.

According to experts in the area of immigration law and refugee applications, although the UNHCR guidance note represents an ideal for the international protection system for asylum seekers, the system does not work this way in practice. In addition to Customs & Border Protection practices that limit people's abilities to present asylum claims, US case law regarding asylum cases has drastically limited the possibilities for submitting a successful refugee application, adding complexity to UNHCR recommendations. In sum, a person must present a specific and individualized case to support her application for asylum.

Limits to Particular Social Group

According to Greenstein (2015), the particular social group must have a common immutable characteristic that distinguishes or differentiates its members from others in a society in a meaningful way. In the context of a society, this group must be perceived as different from others. While the UNHCR suggests that young people in marginal areas

represent a particular social group, US courts have not accepted this argument, and these cases must be further substantiated.

Forced Recruitment

According to Anker, et al, "a claim is less likely to succeed if the adjudicator believes that the gang only recruited the applicant for purposes of increasing its membership" (712). Thus, a victim of forced recruitment should demonstrate why the gang targeted him specifically for recruitment, and should detail his reasons for resisting - for example, either because of deep religious or political beliefs, or based on instances of past persecution against the victim or his family. This can also be connected with political opinion: in areas where a gang maintains control, "it may also be possible to argue that resistance to recruitment is a direct expression of political opposition in the same way as refusal to affiliate with the ruling political party would be" (713). Anker, et al suggest that this type of social group be presented in combination with another category as evidence of a religious belief or political opinion, or additional evidence of persecution against a family.

Witnesses

Anker and Lawrence (2014) maintain that those who testify in court against gang members may be classified as "a particular social group of witnesses who testify against gang members" (4). However, different courts in the US have presented differing judgments as to people who testify in court proceedings (Anker 2015). It is important to emphasize the existence of a program to protect witnesses in El Salvador as a basis for this argument - since the state itself recognizes this group as a special group in need of protection - while demonstrating that the program is unable to protect these people, during and after their participation in the program. This is evidenced in the number of witnesses killed and testimonies in cases 8 and 16: family groups participated in the witness protection program but were unprotected by it, facing harassment, abuse, and violence while in the program. Qualifying a particular social group in this way - noting the existence of a special law for protection alongside the inability of the state to enforce compliance with that law - has worked historically, especially in cases of gender-based violence.

Family

Anker (2015) suggests that, given that some courts have required that at least one member of a family fulfill one of the five protected categories, care is taken to develop the basis of persecution against the family.

Gender

Although women do successfully represent a particular social group, it is always important when filing an asylum application to demonstrate that the gangs seek out women and threaten women based on their gender, in order to have control and power over them, as well as use them as sexual objects.

Limits to Political Opinion

The foundations for political opinion in gang-related cases are complicated and not all US courts have been willing to accept them. According Anker et al, the application based on political opinion must be well supported: it is "essential to build strong evidentiary record to demonstrate the applicant's activities, the gang members' knowledge of and reaction to those activities, and the gang's operation as the de facto government in the relevant

country" (726). The application must show that the decision to challenge the authority of the gang "stem[s] from a political opinion or may cause the gang to impute an opposing political opinion to the challenger, who may be perceived as threat to the gang's power" (724). If it is not shown that the gang acts as de facto authority, that the person was acting on his "political" opinion against the gang or their activities, that the gang was aware of the applicant's actions (as in the case of a person who reports crime without the gang's knowledge), or that the gang responds in order to protect their power and control - not only to avoid justice - these applications for asylum are likely to be denied in the US.

Anker and Lawrence suggest that the public expression of a desire for a relative to not join a gang or not participate in gang activities could be considered the expression of political opinion against the gang, as well. In this sense, cases where mothers or family members publicly reject the forced recruitment or sexual exploitation of their children could well qualify as persecution based on political opinion.

Extortion


While the UNHCR argues that refusal to pay extortion could be understood as an act of political resistance to gangs, or an act based on moral belief in the state of law or ethics, US courts have not ruled favorably in cases of refusal to pay extortion as a political opinion. Despite the fact that people are killed for refusing to pay extortion, this does not meet standards in the US for asylum applications. As such, it is important for refugee applications to explain specifically why the *individual applicant* was the target of extortion - or his or her particular social group - and how the gang understands the negation of extortion payments as a public act of questioning their power.

It would help, for example, to demonstrate other ways in which the applicant has publicly resisted gang influence, questioned gang power, or challenged social norms imposed by them. Evidence supporting the notion that the gang views resistance as a political act, one that questions or challenges their authority and control, can reinforce political opinion claims (Greenstein). This evidence could be presented through news reports, statements by gang leaders, or expert affidavits.

If everyone is exposed to extortion, it is difficult to frame an individual case against a specific person. Upon presenting a refugee application for a person or family group fleeing threats or attacks after refusing to pay extortion, the applicant must demonstrate why she *in particular* has been targeted for extortion. One possibility is to present the argument alongside an accepted particular social group, including the cases analyzed where women or single mothers were targeted. US courts have agreed with the claim that these groups are more vulnerable, and this same vulnerability may expose them to greater threats and extortion by the gang.

Victims, Eyewitnesses, and Police Cooperation

Although many cases of internal displacement are caused by threats or attacks, the mere fact of surviving an attack is not sufficient for a successful asylum application; this mixes the elements of harm and persecution. One must establish the reason for the initial threat or violence on one of the five protected categories - most likely, particular social group, political opinion, or religion - to support an asylum claim.



This also applies for people who have witnessed gang-related violence; simply witnessing a crime is not enough to meet one of the five protected categories. In this case, an eyewitness must demonstrate the expression of a political opinion against the gang, or that he is a member of a particular social group.

If reporting a crime is done in a public manner - if members of a gang see a person collaborating with the PNC or FGR - it can be argued that the political opinion of the person is public. However, if the report of the crime is made in private, it will be important to demonstrate that the gang has many ways of finding out who reports to the police - for example, that they have entire communities under surveillance, that they have links to the PNC or FGR, or that the PNC or FGR do not protect the identity of informants.

THE CARTAGENA DECLARATION AND REFUGEES IN LATIN AMERICA

As compared to the Convention of 1951, the Cartagena Declaration is much broader, extending the concept of asylum to people fleeing generalized violence:

The definition or concept of a refugee...includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.

In the current context, displaced persons seeking refuge are fleeing El Salvador precisely because their lives, security, and liberty have been threatened, both by generalized violence as well as massive violations of human rights. There is a drastic trend in refugees seeking protection in Central and Latin America: asylum requests in Belize, Costa Rica, Mexico, Nicaragua, and Panama increased by 1179.4% between 2008-2014 (according to the US Committee for Refugees and Immigrants, USCRI, as cited in Mathema).

According to the UNHCR, the Norwegian Refugee Council, and various news outlets, the South American countries of Argentina, Bolivia, Brazil, Chile, Costa Rica, Panama, Paraguay, Peru, and Uruguay have accepted thousands of refugees and offered humanitarian visas for those who may not qualify for refugee status. In addition, these countries have national laws and programs that encourage refugee integration and self-sufficiency.

The Brazil Declaration and Plan of Action, signed in celebration of the 30 year anniversary of the Cartagena Declaration and in recognition of the new challenges in the hemisphere, was adopted by 28 Latin American countries, including: Argentina, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, El Salvador, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela.

People seeking refuge fleeing El Salvador ought to be able to request refugee status under the Cartagena Declaration in countries that have incorporated the Declaration into national legislation. However, the fact that the Declaration is part of national law does not necessarily mean that its contents are respected in their entirety in practice - as evidenced by cases of Salvadoran refugees seeking protection in Mexico, but being turned away or discouraged from applying (See cases 21 and 22).



INTERNATIONAL NORMS AND SALVADORAN REFUGEES: CONCLUSIONS

Although we may believe that internally displaced persons need, deserve, and have the right to international protection, legal regimes regarding refugees may not align with these sentiments. The 1951 Convention on Refugees, written and ratified in a different global reality, does not reflect the context of people fleeing generalized violence at the hands of non-state actors. The Cartagena Declaration and Brazil Plan of Action more appropriately respond to the new context facing Central America, but countries' commitments to Central American refugees have yet to be demonstrated.

VIII. RECOMMENDATIONS

There is an inherent tension in this work: do civil society organizations attempt to respond to the immediate need of individual victims and family groups whose lives are in imminent danger, or do they focus efforts on addressing the systemic issues that cause violence and displacement to begin with? If the latter is not done, there will be no end to the flow of refugees; at the same time, those seeking protection cannot afford to wait years while advocacy efforts are set into motion and produce impact – simply put, they may not survive to see the fruits of those efforts.


How can the Roundtable improve its current work to better serve the immediate needs of victims and survivors, while bringing its strengths and expertise to bear on long-term policy and advocacy alternatives? The recommendations put forth seek to leverage the strengths of the Civil Society Roundtable Against Forced Displacement and balance this tension: member organizations can continue to engage in direct, client-based work to aid victims, while as an advocacy network, organizations can combine limited resources and diverse expertise to address complex policy issues.

The Salvadoran state has been unable or unwilling to prevent and respond to the crisis of internal displacement, while Salvadorans seeking protection abroad are too often received with indifference. These recommendations begin with the most immediate need – supporting victims, whose lives are at risk, in requesting asylum abroad – and end with an eye towards the longer-term advocacy work to address the systemic issues that create internal displacement and forced migration. These recommendations also range from immediate implementation steps, within the ability of individual organizations through their intake and client work, to short-term recommendations for further research, and finally, medium- and long-term strategic education and advocacy.

Based on findings and research, four recommendations are presented to the Roundtable and member organizations: 1) document internal displacement through improved interview methods and case preparation; 2) substantiate refugee applications through additional research and expert testimony; 3) work with Latin American Embassies and Consulates to establish a foundation for refugee applications and identify potential settlement countries; and, 4) coordinate with key stakeholders to advance advocacy campaigns.

DOCUMENT INTERNAL DISPLACEMENT: INTERVIEWS AND CASE PREPARATION

One of the challenges in winning refugee or asylum cases is the degree of specificity needed based on the five protected categories. A person experiencing daily violence and submission to the gang may not necessarily see how the gang has sought her out in particular for harassment or victimization, especially if her entire community lives under the same threat. The protected categories laid out in the 1951 Convention simply may not correspond to the current realities in El Salvador; however, that framework is still applied in many countries throughout the world. As such, it behooves organizations working with



this population to find ways in which these individual experiences can fit into the framework of the Convention.

Individual Roundtable organizations can use the profile of successful refugee cases presented in this and other reports to work with victims in identifying important information for later refugee applications. Currently, case files are designed to document cases and provide follow-up, not necessarily to support asylum applications or bring legal cases in the Salvadoran legal system.

There are cases presented in this analysis that would need more information to substantiate a refugee application. For example, Case 6 is lacking in terms of explaining why the gang sought out this particular family. Although the young woman could try to seek asylum based on a social group - because her life partner was killed - no information individualizing the case against this family in particular was included in the case file. Case 22 provides another example; a young man survives an attack in which his friend is killed, but in the presentation of the case, the reason the gang targeted them in particular is not explored. Such detail would be required for a successful refugee application.

This is a difficult and sensitive issue and there can be many reasons why a person does not want to share all this information. This includes traumatic stress; the need to develop trust with the NGO or case worker receiving a person's case; the fear of being blamed for the situation (i.e., accused of having links to gangs); the desire to protect one's family; or fear of gang retaliation for sharing information. In an extremely violent situation, mistrust is the norm.

This work - of seeking out information relevant to protected categories - is the responsibility of the person that conducts an initial interview or does follow-up work with internally displaced persons. As such, it is important for these people to have knowledge and understanding of international norms and the presentation of successful asylum cases. With the profile of successful cases provided in Section VII, Roundtable member organizations, and specifically those who do intake interviews and follow-up with internally displaced persons, can seek out this information in a case with the person or family group, in order to better respond to this framework.

The ability to successfully gather this information will depend in part on the level of trust in the relationship an interviewer or advocate can engender with the victim(s), as well as methods for interviewing and data collection. These methods will vary with the age and experiences of the victim(s), as well as the specifics of persecution and violence experienced.

This recommendation would require an interviewer or advocate to become familiar with the grounds for protected status and, after developing trust with victims and explaining the process, probe the victim to develop a stronger case. This most immediate recommendation has the potential to strengthen the cases of those seeking immediate relief.

SUBSTANTIATE REFUGEE APPLICATIONS: TOWARDS STRENGTHENING CASES

There is a general lack of evidence and data in many areas related to forced displacement and public security in El Salvador. According to immigration and asylum lawyers and recent literature in this field, it would be helpful to have evidence, documentation, and support from some key elements of asylum cases, in the US as well as other countries. Evidence in three specific areas may help support asylum claims, as well as strengthen or promote advocacy efforts in terms of public safety: gang control over broad swaths of Salvadoran territory, retaliation for resistance to forced recruitment and sexual servitude, and violence against witnesses of gang-related crime.

This work could take the form of written declarations, briefings, or reports, or extend into expert testimony in asylum cases. While some of this information could be compiled and provided by Roundtable member organizations, the Roundtable could also involve university students or a hired consultant to conduct more in-depth research projects and track news outlets.

Gang Control


In cases based on political opinion, the ability to demonstrate that the gang exercises de facto authority in a given area is of great importance – an action or opinion can only be seen as political in nature if the gang is the acting authority in a given territory. This includes evidence that the gang establishes rules, norms, and behaviors; that they are the ones who impose said rules; and that it is not the official state authorities who impose laws in areas under gang control. This evidence or documentation can support cases of threats, forced recruitment, sexual servitude, extortion, and witnessing criminal activities of the gang. This evidence could include compilation of news reports and/or statements from experts in the field.

Retaliation for Resistance

In cases of retaliation and threats for resisting forced recruitment and extortion, evidence should show that gangs retaliate not only in order to increase their membership or raise funds, but that the gang views refusal as a political action, one that questions or challenges their power. According to Anker and Lawrence, “evidence that a group regards those who refuse to join it as its enemies” would contribute to these refugee applications, providing basis for the argument that gang opposition is a political opinion (5). This is even more important in cases of extortion, given the widespread nature of extortion and that courts have refused to consider denials to pay extortion as political opinions in themselves.

Witnesses of Gang-Related Crime

In terms of witnessing a crime, judges in the US have found that gangs threaten witnesses to avoid trial or incarceration, not because these actions challenge gang power. In cases of gang retaliation against eyewitnesses, victims, or those who report gang crime, it is important to present evidence that the gang retaliates against or threatens these people as an exercise of power and control, not solely to avoid prosecution. It would be relevant, therefore, to explore ways of presenting information to demonstrate that the gang considers persons who witness crimes not only as potential informants who put their



freedom at risk, but that the gang considers this a challenge to, undermining, or questioning of their authority.

Information on the number of people who witness gang crimes and are later targets of threats or murder could bring a great deal to asylum cases. In the cases analyzed, it is clear that many people do not report crime and do not participate in PNC and FGR investigations for fear of reprisals. However, this is not a sufficient basis for an asylum application. Demonstrating that gangs target witnesses of crime as part of their de facto power in communities under their control, not only in an effort to avoid prosecution but as a way to maintain control, exercise power, and in effect, replace the state judicial authority with its own form of justice, could change the landscape.

Collection of data regarding the number of witnesses in court proceedings that are killed could also contribute to improvements in protection programs for people who participate in trials or investigations. Official data on this do not exist; a first step would be to collect news reports on witnesses killed, thereby suggesting the dimensions of the problem and the need to address it, while simultaneously underscoring the widespread mistrust on behalf of civilians towards the PNC and FGR.


These research documents could be provided to the numerous legal aid organizations that support refugee and asylum cases pro-bono throughout the US, in support of asylum applications. Such work would also aid national advocacy organizations in the US campaigning for an end to deportations, in favor of humanitarian relief for Central Americans, and against harmful US policies including the Southern Border Protection Plan, among others.

WORK WITH EMBASSIES AND CONSULATES: SETTING THE FOUNDATION FOR REFUGEE APPLICATIONS

An increasing number of Salvadoran refugees are seeking protection with countries in Latin America, bucking historic trends in undocumented migration to the US. Given this new reality, Roundtable organizations would benefit from developing relationships with and tracking outcomes in refugee applications in Latin American countries.

Roundtable organizations can provide background information on internal displacement and security challenges in El Salvador to Embassy and Consulate staff, so as to sensitize representatives of these countries to the situation internally displaced persons face and prime them for receiving refugee applications under the Cartagena Convention. While Embassy and Consular representatives will be aware of the general security situation in El Salvador, the details of state deficiencies and human rights violations against internally displaced persons may contribute to an increased willingness to accept and advocate for refugee cases.

Furthermore, existing relationships with sympathetic countries and a deeper understanding of their processes for receiving refugee applications from internally displaced persons from El Salvador could help pave the way for refugee applications. With prior knowledge of the specifics of a given country's process, Roundtable organizations or other legal advocates working with internally displaced persons will be better equipped to



collect necessary information and documentation for a successful refugee application prior to approaching a Consulate or Embassy with a specific case. This may also allow Roundtable organizations to identify key allies within diplomatic representations, in order to present cases to the most sympathetic people or to people with the most sway over decision-making and resources.

Finally, Roundtable organizations can work to identify which countries tend to accept asylum applications based on generalized violence versus countries that are more stringent in their application of refugee policy, so as to provide guidance to asylum seekers.


COORDINATE WITH KEY STAKEHOLDERS: ADVANCING NATIONAL ADVOCACY CAMPAIGNS AND IMPACTING US POLICY

Finally, the Roundtable should work to identify key foreign governments and international NGOs to engage in advocacy campaigns alongside the Roundtable.

The Roundtable can use the case summaries and findings sections of this report to inform and educate these stakeholders, in addition to their own recently published report. The current report serves to illustrate the human impacts of state failures to address and respond to internal displacement and the subsequent deprivation of basic rights. While officials and directors of international NGOs are likely aware of the vast security challenges Salvadorans face on a daily basis, the lived experiences of internally displaced persons are not always made visible or widely known. Sharing the human stories of these systemic issues may move and motivate those with resources, political power, and influence to action.

While the members of the Roundtable should identify the key advocacy areas they believe to be of highest potential impact and most likely to gain traction with international stakeholders, one key area may be calling on the Salvadoran government to officially recognize the internal displacement crisis. Without this recognition, international mechanisms to protect and respond to the internally displaced with the UNHCR and other agencies cannot be set into motion, and specific policies and efforts to respond to root causes of displacement – gang violence – and protect those fleeing will not be implemented.

In Honduras, official recognition of a crisis of internally displaced people paved the way for the creation of a governmental inter-agency Task Force, which the UNHCR was able to support and with which it coordinated. Although moving slowly and with many deficiencies, this Task Force is able to make specific policy recommendations in response to the urgent needs of internally displaced persons, including emergency shelter for women and girls, improved community policing programs to increase reporting of crime, and identification of collusion between criminal structures and government officials. These policies respond to many of the trends identified in the present report. While there is still much work to be done, official recognition of the crisis has at least created space for national conversations, government interventions, and support from the international community (OHCHR 2015).



The political implications of recognizing a crisis of internal displacement for the current Salvadoran government are complex; however, with support and pressure from international agencies offering to contribute to solutions, this may be more likely.

This work may additionally set the stage for future campaigns to extend Temporary Protected Status or other humanitarian relief for the thousands of undocumented Salvadoran refugees in the US, as well as refugees from other Northern Triangle countries. Many NGOs present in El Salvador engage in advocacy efforts in the US and participate in advocacy networks in the US capital. The Roundtable should evaluate the potential impacts of engaging with US-based advocacy networks involved in policy work regarding immigration enforcement; access to detailed information about the situations of internally displaced persons, as well as their efforts to exhaust possibilities of remaining in their home countries before migration, may well impact future detention and removal policies.

While the Roundtable may continue to focus on impacting Salvadoran policies towards the internally displaced - and towards long-term prevention efforts - the information contained in this document has the potential to allow hundreds, if not thousands, of Salvadorans seeking protection to remain legally in the US and avoid removal back to violence.

IX. CONCLUSION

There is a crisis of internal displacement in El Salvador. Vulnerable people and families, often impoverished and marginalized, endure violence, persecution, and other traumatic events at the hands of gangs. The Salvadoran state is unable to prevent displacement or respond to the serious situations of abuse, violence, and dispossession of rights displaced persons suffer. Facing death threats, thousands of Salvadorans are forced to flee their homes and country, many without documentation and in situations of extreme vulnerability.

There is an urgent need for public policies to respond to and address the crisis of internal displacement, to support displaced families, and seek ways of preventing violence and displacement in the future.

Awareness of the problem - in facts and numbers as well as the horrors of the lived experience of internally displaced Salvadorans - is a key step in demanding attention and response to this crisis. It is the hope that this and similar documents can serve to create that awareness, thereby making a small contribution to improving the lives of internally displaced persons and refugees.

X. APPENDIX

1. PRESENTATION OF CASES

The 23 cases registered here represent 106 people; this group is made up of 29 women, 15 men, 46 children and adolescents, and 15 adults of unknown sex. These numbers do not include family members killed as a precursor to internal displacement. Of the total, seven cases are families with single mothers, and two additional cases are comprised of women only.

A note on cases: case de-identification has included not only removal of victims' names, communities of origin, temporary residence upon displacement, and other details that could potentially identify them and put their lives at greater risk, the specific gang responsible for their immediate displacement has also been left out. In part, this is intended to protect victims' identities. It also avoids suggesting sympathies towards one group, or that one organized criminal structure is more or less responsible for internal displacement and forced migration than another. Furthermore, while based on and focusing on the lived experiences of Salvadorans suffering forced displacement and migration, this report seeks to avoid sensationalizing gang-related violence and gang activities in El Salvador.

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