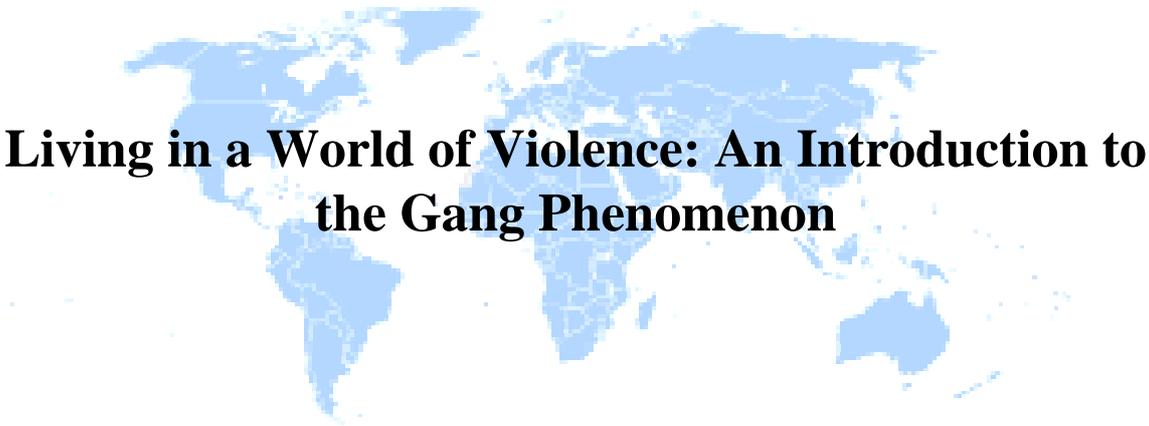


**LEGAL AND PROTECTION POLICY  
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**Living in a World of Violence: An Introduction to  
the Gang Phenomenon**

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## 1. Introduction

'I am certain that if I had stayed in Guatemala the members of the gang MS would have killed me,' Chocoy wrote in an affidavit. 'I have seen them beat people up with baseball bats and rocks and shoot at them. I know they kill people. I know they torture people with rocks and baseball bats. I know that if I am returned to Guatemala I will be tortured by them. I know that they will kill me if I am returned to Guatemala. They will kill me because I left their gang. They will kill me because I fled and did not pay them the money that they demanded.'<sup>1</sup>

Gang violence is a feature of everyday life in some countries, where entire communities are dominated by gangs and gang culture. The violence affects men, women and children alike. Many victims are young people who are targeted by the gangs for recruitment and to carry out criminal activities. In fact, in certain regions, much of the gang violence is committed by children against other children. The gang phenomenon is increasing in certain areas and has proven difficult for many states to address. Some of the repressive measures taken against the gangs, by some of the Central American states for instance, have been found to be at variance with international human rights law. The result of escalating violence has been a steady outflow of people from these countries seeking international protection. Some have sought asylum in countries including the United States (US), Canada, Mexico, Australia and European states.

This paper is an introduction to the gang phenomenon and aims to provide a brief overview of some of its characteristics globally. The reader will be provided with insights into gang culture, an understanding of how different gangs operate, the various forms of harm and violence involved, and how particular groups of persons are affected by gangs. Though gangs tend to vary widely in visibility, structure, activities, and historical and sociological origins, they share a number of common characteristics.

A particular emphasis will be given to societies with serious gang problems where people have become the targets of gang-related violence and have been forced to seek protection across international borders, including El Salvador, Guatemala, Honduras, Jamaica, Brazil and the Russian Federation. The paper also touches on how gang-related violence and government policies designed to combat gangs may cause displacement and lead to asylum claims. Decision-makers, practitioners and others working on refugee status determination, who wish to learn more about the gang phenomenon, may find the present paper helpful as background reading. As the paper is written from a displacement angle, it does not look at prison gangs, which have generally not surfaced in the gang-related asylum jurisprudence.

After setting out the scope of enquiry (Section 2), the paper proceeds with an examination of the roots of gang culture from a historical and sociological perspective, highlighting the linkages between post-conflict situations and the emergence of gangs (Section 3). Gang activities and rituals are then analysed with a view to illustrating the significant levels of

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<sup>1</sup> G. Campbell, 'Death by Deportation: A Denver Judge Denied a 16-year-old's Political Asylum Application—and Sentenced Him to Death', *Boulder Weekly*, 27 May 2004, available online at: <http://archive.boulderweekly.com/052704/coverstory.html> (last accessed 25 October 2010), replicated in M. James, 'Fleeing the Maras: Child Gang Members Seeking Refugee Status in the United States', (2005) 25(3) *Children's Legal Rights Journal* 1. Gang members killed Edgar Chocoy within days of his return to Guatemala.

violence and human rights abuses related to gangs (Sections 4 and 5). Additionally, the impact upon migrants and displaced persons as groups vulnerable to victimization by gangs is assessed (Section 6). The final section of the paper focuses on the issue of state protection and the various approaches that states have adopted in seeking to address gang violence (Section 7).

## 2. Defining gangs

There is no single, universally-accepted definition of a gang. The term ‘gang’ is often used broadly to cover a wide range of groups, including youth gangs, skinheads, and other types of organizations such as drug cartels and ‘organized criminal groups’ (OCGs).<sup>2</sup> Indeed, any group of three or more individuals, which has an involvement with criminal activity, is at risk of being labelled a ‘gang’. For the purposes of the present paper, the term ‘gang’ shall refer to any group of persons meeting all of the following criteria:

a self-formed association of peers, bound together by mutual interests, with identifiable leadership, well-developed lines of authority, and other organizational features, who act in concert to achieve a specific purpose or purposes, which generally include the conduct of illegal activity and control over a particular territory, facility or type or enterprise.<sup>3</sup>

Early research suggested that gangs did not meet the basic criteria for an organization because of their weak goal orientation, loose or lacking hierarchical structure, unstable leadership, few rules and small numbers of specialized roles within the structure.<sup>4</sup> Others have argued that, in fact, there is no hard distinction between youth gangs and criminal groups of younger and older adults. Indeed, there are well-structured gangs, sustained over time and which commit serious and even transnational crimes.<sup>5</sup> As suggested by Hazen:

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<sup>2</sup> Art. 2 of the UN Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 29 September 2003) UN Doc. A/55/383 stipulates that an ‘organized criminal group’ shall mean ‘a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit’, available online at: <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf> (last accessed 27 May 2011). The Canadian Criminal Code (R.S.C., 1985, c. C-46), art. 467.1, defines organized crime as ‘serious crime planned and carried out by a group of at least three or more people to benefit one or more members of the group’. The ‘serious crime’ element of this definition refers to the commission of any crime for which the sanction would be a custodial sentence of at least 5 years (available online at: <http://laws.justice.gc.ca/eng/c-46/page-9.html> (last accessed 27 May 2011)).

<sup>3</sup> W. B. Miller, ‘Gangs, Groups and Serious Youth Crime’ in D. Schichor and D. H. Kelly (eds) *Critical Issues in Juvenile Delinquency*, (Lexington, MA: DC Heath 1980) , 115–138. The definition provided by Miller is based on the responses of 309 respondents to a national sample, representing 121 youth service agencies in the United States. These include police officers, prosecutors, defenders, educators, city council members, state legislators, ex-prisoners and past and present gang members. Of the 1,400 definitional characteristics that were provided by his sample, the definition replicated herein represents the six criteria with which more than 85 per cent of respondents agreed. See R. J. Bursik Jr. and H. G. Grasmick, *Neighborhoods and Crime: The Dimensions of Effective Community Control* (New York: Lexington Books, 1993), replicated in A. Egleby Jr. *et al*, *The Modern Gang Reader* (3<sup>rd</sup> edn., Oxford: OUP, 2006) 2.

<sup>4</sup> D. L. Weisel, *Contemporary Gangs: An Organizational Analysis* (New York: LFB Scholarly Publishing LLC, 2002) 51–56.

<sup>5</sup> For instance, as noted by José Siméon Cañas of Central American University, ‘the profile of the *maras* resembles more and more that of organized crime, insofar as they are well-structured criminal groups engaging

Rather than stereotyping gangs as violent, criminal enterprises, conceptualizing them as a particular form of social organization within a community moves the discussion beyond a subjective judgement of good and bad to a focus on the gangs, their actions, and their impacts. Gangs are one of many social actors in a community.<sup>6</sup>

The above definition distinguishes gangs from most other types of peer groups, such as sports teams, youth groups and church clubs, on account of both their criminal activity and territorial requirements. Indeed the latter criteria of territorial control would also effectively separate gangs from many less serious youth delinquent groups,<sup>7</sup> which may otherwise satisfy the definition of a gang. The term ‘delinquency’ is generally used to imply the commission of violations of juvenile law by juveniles.<sup>8</sup> Where youth groups are involved in the commission of serious crimes such as murder and rape, there is a degree of overlap between gangs and ‘delinquent groups’. However, the majority of delinquent youths are engaged in minor deviant behaviour such as graffiti, vandalism and petty theft and it would be misleading to generally include these for the purposes of this paper.

At the other end of the spectrum, one finds the OCGs. Drawing lines of distinction between gangs and OCGs is far more difficult than with delinquency groups. Certainly, both gangs and OCGs may exhibit similar attitudes towards public safety, and may promote the same ethos regarding territorial control. Generally speaking, however, OCGs are unlike gangs in that they do not form spontaneously. OCGs are generally far less embedded in the culture which is associated with their criminal activities than gangs. Unlike gangs, they do not, as a rule, proclaim their existence to members of the public.

The members of OCGs will usually only come together to work or discuss work and are engaged in criminal activity for explicit financial or political gain. Unlike gangs, they do not spend large amounts of time ‘hanging out’<sup>9</sup> and do not generally commit crimes such as vandalism and public harassment, as a way of making a statement to local members of the public and law enforcement. OCGs would potentially include drug cartels and other armed non-state actors such as terrorists and militias. They are characterized as being highly organized and formal organizations, however, they are not necessarily hierarchical with a single leader or military style chain of command. For most, crime is their ‘occupation.’ These

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in extortion, kidnapping, car theft, robbery, and murder’, see Immigration and Refugee Board of Canada (IRB), *El Salvador: The gang called the Mara Salvatrucha (MS-13); its activities and recruitment of members; protection offered to witnesses and victims of violent acts perpetrated by gang members (April 2006)*, 7 April 2006, SLV101080.FE, available online at: <http://www.unhcr.org/refworld/docid/45f147a311.html> (last accessed 28 May 2011). See also, C. Franco, *Congressional Research Service Report for Congress The MS-13 and 18th Street Gangs: Emerging Transnational Threats?*, Congressional Research Service, Washington, DC, 2008, t available online at: [http://assets.opencrs.com/rpts/RL34233\\_20100122.pdf](http://assets.opencrs.com/rpts/RL34233_20100122.pdf) (last accessed 28 May 2011), 6.

<sup>6</sup> J. M. Hazen, ‘Understanding gangs as armed groups’ (2010) 92 (878) *International Review of the Red Cross*, Humanitarian debate: Law, policy, action, Urban violence, available online at: <http://www.icrc.org/eng/assets/files/other/irrc-878-hazen.pdf> (last accessed 28 May 2011), 373.

<sup>7</sup> L. Wacquant, *Urban Outcasts: A Comparative Sociology of Advanced Marginality* (Malden: Polity Press, 2008) 204. Through a comparative analysis of cities in France and the U.S, Wacquant identifies delinquency as a distinct issue and one which is not always connected with the gang phenomenon, describing how in spite of high rates of petty theft, vandalism and petty drug dealing in La Courneuve, in any single year the city may go without a homicide.

<sup>8</sup> T. Delaney, *American Street Gangs*, (Upper Saddle River, NJ: Pearson Prentice Hall, 2006) 1.

<sup>9</sup> Hazen, note 6 above, 372, describes how gangs often come together merely to ‘hang out’ rather than to commit crime.

groups operate almost exclusively in the illegal marketplace where market transactions are totally or partially unregulated by the law.<sup>10</sup>

These definitions are not exhaustive and merely serve to assist the reader, from a conceptual stand point, in situating gangs appropriately. In reality, all criminally-involved groups vary enormously in terms of structure, purpose, activities and durability according to their specific context and a range of variables explored below. Naturally, in particular cases, there will be some significant overlapping.

This paper focuses on gangs and on OCGs displaying gang-like tendencies of territorial domination and which are drivers of forced displacement, both internally within a country and across international borders. Due to the nature of the gang phenomenon which pervades societies across the world it is not possible to look at every type of gang. This paper does not therefore attempt to offer an exhaustive analysis of gangs. Factors that explain which gangs are examined in this paper include: a) the level of influence and control the gangs have on the societies in which they operate; b) the types of harm, crime and violence that are carried out by the gang members; c) the level of available state protection in the country in which the gangs operate; and d) past and potential future asylum claims relating to these groups.

Gangs most prominently featured in gang-related asylum claims, such as the *maras* of Central America, the gangs of Jamaica and skinhead far-right gangs in Eastern Europe and the Russian Federation will be granted particular attention.<sup>11</sup> Some of the first asylum claims relating to persons fleeing organized crime were made in the 1980s and 1990s. Cases involving ‘street gangs,’ such as the *maras*, appeared from about 2003. Several sources suggest that the number of asylum cases emanating from the Central American region has increased significantly since around 2004–2005. This possibly coincides with the so-called ‘*Mano Dura*’ (tough, or firm, hand) policies adopted in certain countries during that time (which are examined further below).<sup>12</sup>

### **3. Historical and sociological context**

#### **3.1 Origins of gangs**

Although the criminal activities in which today’s gangs are typically involved are relatively consistent, their origins are not. Looking at the historical context of gangs is an important analytical tool in assessing the nature of the gang phenomenon.

Some gangs, such as the Italian Mafia and Chinese triads, have a history dating back hundreds and thousands of years, respectively. Other gangs are, in comparison, relatively new, even if possessing historical roots. The Mungiki in Kenya, which claim to have their roots in the Mau Mau Rebellion of the late 1950s, is an example of a more recent gang,

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<sup>10</sup> These gangs are also referred to as institutionalized gangs or ‘super gangs’. See further Hazen, note 6 above, 376–378; P. Hauck and S. Peterke, ‘Organized crime and gang violence in national and international law’, (2010) 92 (878) *International Review of the Red Cross*, Humanitarian debate: Law, policy, action, Urban violence, available online at: <http://www.icrc.org/eng/assets/files/other/irrc-878-hauck-peterke.pdf> (last accessed 26 May 2011), 408–411.

<sup>11</sup> For a detailed overview of asylum claims linked to gang violence, see UNHCR, ‘Guidance Note on Refugee Claims Relating to Victims of Organized Gangs’, 31 March 2010, available online at: <http://www.unhcr.org/refworld/docid/4bb21fa02.html> (last accessed 3 May 2011).

<sup>12</sup> See for example, M. J. Lister, ‘Gang-Related Asylum Claims: An Overview and Prescription’ (2007-2008) 38(4) *University of Memphis Law Review* 827.

sometimes also referred to as a 'sect' or 'movement'.<sup>13</sup> Meanwhile, other gangs, while having a long-standing existence, have become more socially visible in recent times. For instance, the Russian Mafia, elements of which existed in Tsarist Russia, became more visible within Russian society after the break-up of the Soviet Union. Anderson reveals that over seven hundred gangs or clans operating in the Soviet Union were identified by Soviet officials in 1991.<sup>14</sup> It was not that gangs did not exist under the Communist rule; they were simply more difficult to identify.

Gangs tend to emerge more quickly than they disappear. The creation of gangs may have a ripple effect on a community as other gangs naturally form in opposition. Groups may split off from original gangs in order to form new, independent gangs. This has, for instance, been seen in the US and Central American contexts. Some sources indicate that gangs have existed in El Salvador and Guatemala since the 1950s and in Nicaragua since the 1940s.<sup>15</sup> However, the gang phenomenon truly exploded in Central America following the end of a period of civil wars, which engulfed the region in the 1980s. The coincidence of certain factors made the region vulnerable to gangs. Many former combatants who had difficulty in re-integrating back into society and who had access to weapons used during the civil wars chose to form gangs.<sup>16</sup> Additionally, the deportation of many Central American gang members from the US in the 1990s<sup>17</sup> exacerbated the existing gang culture and led to the emergence of powerful gangs in Central America as newly deported gang members formed new gangs, merged with local gangs and recruited new members.<sup>18</sup>

### 3.1.1 Fertile grounds for gangs

Certain political, economic and social environments may provide a fertile breeding ground for the formation of gangs and/or influence the impact they may have on a particular country or community. A common feature of a number of gangs is that they seek out areas with limited state regulation in order to carry out illegal activities to gain profit or to obtain control over a population. Factors that can be conducive to a strong gang culture include limited

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<sup>13</sup> For a detailed overview of this gang, see IRB, *Kenya: The Mungiki sect; leadership, membership and recruitment, organizational structure, activities and state protection available to its victims (2006 – October 2007)*, 1 November 2007, available online at: <http://www.unhcr.org/refworld/docid/4784def81e.html> (last accessed 28 May 2011). See also, Landinfo, *Kenya: Mungiki - Abusers or abused?* Norwegian Country of Origin Information Centre, 29 January 2010, available online at: <http://www.unhcr.org/refworld/docid/4bd6b52f2.html> (last accessed 28 May 2011).

<sup>14</sup> A. Anderson, 'The Red Mafia: A Legacy of Communism,' in E. P. Lazear (ed.), *Economic Transition in Eastern Europe and Russia: Realities of Reform*, (Stanford, CA: The Hoover Institution Press, 1995).

<sup>15</sup> T. Wilkinson, 'Gangs Find Fresh Turf in El Salvador', *Los Angeles Times*, 16 June 1994, available online at: <http://www.latimes.com/news/nationworld/world/la-fg-gangsarchive16-1994jun16.0.1390270.story> (last accessed 28 May 2011); C. Strocka, 'Youth Gangs in Latin America' (2006) 26(2) *SAIS Review* 133–146.

<sup>16</sup> T. Boerman, 'Central American Gangs: An Overview of the Phenomenon in Latin America and the U.S.' (2007) 15(1) *Journal of Gang Research* 35.

<sup>17</sup> In 1996, the US passed sweeping changes to its immigration legislation that greatly expanded the grounds for deportation and drastically narrowed the possibilities for relief from deportation for non-citizens with criminal convictions. See US Pub. Law Nos. 104–132, 110 Stat 1214 (2006) (AEDPA); 104–208, 110 Stat 3009 (IIRIRA). As a consequence, thousands of Central Americans, including many gang members, were deported from the US back to their countries of origin.

<sup>18</sup> IRB, *El Salvador: Information on the activities and places of operation of the Mara Salvatrucha gang, and on measures taken by the Salvadorean government to control gangs*, 1 February 1998, available online at: <http://www.unhcr.org/refworld/docid/3ae6aaae5f.html> (last accessed 28 May 2011).

provision of security by the state, limited protection of citizens from violence, a weak political system, a weak justice system, and an inability to establish a legitimate monopoly of power.<sup>19</sup>

In combination with high commodity prices and the unavailability of certain products, such environments may allow for a thriving black market as with the case of the Soviet Union during the Communist era.<sup>20</sup> The failure of the state to protect the interests of market traders in the Aba region of Nigeria during the 1990s led to the emergence of a gang known as the Bakassi Boys, which offered protection and operated as a form of a vigilante gang in return for payment from market traders.<sup>21</sup> Clearly, the Bakassi Boys had identified a gap in the market, which could be filled by their services at a cost to the local population. In this sense, the gang can be seen to adopt a standard economic behaviour based on supply and demand. This example supports the view held by some theorists that gangs are not always intent on being socially disruptive and may actually form for a variety of legitimate reasons.<sup>22</sup>

Gangs will often be opportunistic in their attempts to assert control over valuable commodities which, in times of conflict or national crises such as famines or natural disasters, may extend to basic services. For example, the United Nations (UN) relief agencies, including the UN High Commissioner for Refugees (UNHCR), encountered significant problems in trying to provide clean water to the 400,000 besieged people of Sarajevo as a result of a local Mafia, who were quick to assert control over newly-constructed water pipes during the initial siege of the city in 1992 –1993.<sup>23</sup>

Countries recovering from protracted armed conflict or occupation, which are consequently also experiencing economic and social dysfunction, may be especially vulnerable to the emergence of gangs and gang violence. The Central American gang phenomenon can partly be seen as a by-product of generalized violence in post-conflict states in this region. Gangs gained prominence in an environment of a dysfunctional judicial system and a steep reduction in social services for young people. The *maras'* origins can be traced to a mix of socio-economic factors, including a means of survival for its members.<sup>24</sup> Severe disparities in access to opportunities, a society already desensitized to serious levels of violence, the prevalence of weapons and absence of the rule of law have all contributed to the evolution of

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<sup>19</sup> Hazen, note 6 above, 379, noting that 'Ungoverned spaces are, and have been, created and tolerated for a variety of purposes: for example, to reduce border disputes, to enable corrupt politicians to facilitate dubious financial transactions, and to facilitate the drug trade.'

<sup>20</sup> Anderson, note 14 above.

<sup>21</sup> R. Jones, *State failure and extra-legal justice: vigilante groups, civil militias and the rule of law in West Africa*, UNHCR Policy Development and Evaluation Service, New Issues in Refugee Research, Research Paper No. 166, available online at:

<http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=48f351722&query=State%20failure%20and%20extralegal%20justice:%20vigilante%20groups,%20civil%20militias%20and%20the%20rule%20of%20law%20in%20West%20Africa> (last accessed 28 May 2011).

<sup>22</sup> Hazen, note 6 above.

<sup>23</sup> W. Shawcross, *Deliver us From Evil: Warlords, Peacekeepers and A World of Endless Conflict* (New York: Simon & Schuster, 2001) 2.

<sup>24</sup> B. Manz, *Central America (Guatemala, El Salvador, Honduras, Nicaragua): Patterns of Human Rights Violations*, Writenet report commissioned by UNHCR, August 2008, available online at: <http://www.unhcr.org/refworld/docid/48ad1eb72.html> (last accessed 28 May 2011).

a significant gang culture in Central America. This has left the region with a serious problem involving complex dynamics of an economic, social and political nature.

Post-war Singapore in the mid to late-1940s is another case in point. The Japanese occupation of Singapore had seen an explosion of secret societies and triad gangs, including the '24' gangs. Gangs became a visible part of society, running protection, gambling and extortion rackets throughout the city. Singapore garnered a reputation for organized crime, until the government of Singapore commenced a thorough crackdown on gangs starting in the mid-1950s.<sup>25</sup> Following the election of Lee Kuan Yew in 1959, an amnesty of gang members was followed by a swift police crackdown,<sup>26</sup> ending the prominence and social visibility of gangs in Singapore.<sup>27</sup>

Post-war Iraq is a more recent example with a visible emergence of gang-like groups in both Sunni and Shi'ite communities. Iraq has seen the establishment of a Shi'ite-dominated police force and an environment where 'Iraqis are loyal not so much to the Iraqi state, but to sheikhs or clerics.'<sup>28</sup> Certain political parties also have a militant wing, such as the Badr Brigade of the Shi'ite Party Supreme Council for the Islamic Revolution in Iraq (SCIRI). While militias such as the Badr Brigade and Mahdi Army may be distinguished from gangs on grounds that they have more traditional political objectives and a paramilitary structure, there are also armed gangs within these militias. These gangs have been seen to victimize members of Iraqi society, often through violent blackmail and extortion rackets. They have been documented as singling out certain groups such as gay men,<sup>29</sup> women and human rights defenders.<sup>30</sup>

### 3.1.2 Changing objectives: from politics to crime

Gangs may also emerge from ideological movements, as they change direction towards a primary focus on financial gain through the commission of crime. Organizations such as the Irish Republican Army<sup>31</sup> and the Ulster Freedom Fighters in Northern Ireland<sup>32</sup> historically claimed to be political movements. They, however, also controlled much of Northern Ireland's prostitution and drug trade in order to finance acts of terrorism against the British

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<sup>25</sup> The Criminal Law (Temporary Provisions) Act was brought into force in 1955, and allowed, *inter alia*, the detention of suspected gang members for up to one year without trial. The purpose of the legislation was to enable State authorities to take action against suspected organized criminals where witness intimidation ruled out the possibility of a conventional crime. This Act has subsequently been amended and extended on a number of different occasions and remains in force under Singaporean law.

<sup>26</sup> 'Singapore: Triad in Trouble', *Time*, November 1969, available online at:

<http://www.time.com/time/magazine/article/0,9171,811441,00.html> (last accessed 28 May 2011).

<sup>27</sup> Though triad and other gang types still exist, modern Singapore has a low crime rate and a strict criminal code, which are amongst the reasons attributed for its success as an international centre for business and commerce, see L. M. Salinger, *The Encyclopedia of White-Collar & Corporate Crime*, (Rev. ed., Thousand Oaks, CA: Sage Publications Inc., 2005) 748.

<sup>28</sup> Frontline, 'Gangs of Iraq', *PBS, America at a Crossroads series*, 2007, available online at:

<http://www.pbs.org/wgbh/pages/frontline/gangsofiraq/view> (last accessed 28 May 2011).

<sup>29</sup> Human Rights Watch, *Anti-gay gangs terrorise Iraq*, 19 August 2009, available online at:

<http://www.unhcr.org/refworld/docid/4a8d54bc1e.html> (last accessed 28 May 2011).

<sup>30</sup> Amnesty International, *Iraq: Civilians under Fire*, 27 April 2010, MDE 14/002/2010, available online at: <http://www.unhcr.org/refworld/docid/4bd68e352.html> (last accessed 28 May 2011).

<sup>31</sup> Irish Republican Army (IRA) was a pro-republican organization traditionally comprising Catholics.

<sup>32</sup> Ulster Freedom Fighters (UFF), set up to protect Northern Irish Protestants from the IRA, was the paramilitary wing of the Ulster Defence Association.

mainland and within Northern Ireland respectively. Recently, in a time of relative peace, their members have continued to operate the drug and prostitution industries in Northern Ireland and can now be seen to have shifted their objectives from politics to financial gain. Although Unionist gangs appear to dominate the criminal landscape of Belfast, those with existing or former ties to the Irish Republic Army have reportedly made as much as £8 million per year from criminal enterprises in Catholic districts of the city, through activities such as counterfeiting and smuggling.<sup>33</sup>

In Central America, gangs and other criminal organizations seek to establish a climate favourable to their criminal enterprises by influencing the political process. During decades of civil conflict in the region, politically-motivated ‘disappearances’ were routinely committed in order to terrorize political opponents and members of the public. Drawing from that same strategy, gangs, OCGs and Drug Trafficking Organizations (DTOs) have blended criminality with tactics generally associated with terrorism and warfare. Analysts from the US military have characterized Central American gangs and organized crime groups as ‘non-state actors’ engaged in efforts to establish political domination through ‘asymmetrical warfare’, Crime groups’ motives differ from those of traditional insurgents but their objective is the same: to impose their power and undermine the operational capacity and authority of legitimate state actors.<sup>34</sup>

In parts of some Central American states, gangs are effectively in control of swaths of territory and the state’s capacity to fulfil basic functions of governance has been eroded to the point of making legitimate institutions largely irrelevant.<sup>35</sup> Within this ‘governmental void’, gangs and other criminal organizations operate with near impunity, and, as during the region’s era of civil conflict, anyone who interferes with or opposes their efforts to establish political control is subjected to acts of intimidation, terror and brutality. There is a risk of forced displacement in many instances, as those who engage in anti-gang community, religious, or political activities become the targets of gang violence.

### 3.1.3 Transformation of gangs

Over a period of time and as circumstances change, the role that a particular gang plays in a society may evolve or gravitate towards a new cultural identity.<sup>36</sup> This change of identity may lead to intra-gang warfare, as exemplified during the early part of this century in Belfast, Northern Ireland, when different Protestant paramilitary gangs fought for control of the city’s prostitution, drug and money laundering rings.<sup>37</sup> The same can be said of any number of gangs – regardless of the original reasons for the formation of the gangs, they do not

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<sup>33</sup> W. Underhill, ‘The Gangs of Belfast: Irish ‘Patriots’ Show Their True Colors – As Criminals’, *Newsweek*, 24 February 2003, available online at: <http://www.newsweek.com/id/63159> (last accessed 28 May 2011).

<sup>34</sup> M. G. Manwaring, *Street gangs: the New Urban Insurgency*, US Army War College, Strategic Studies Institute, March 2005, available online at: <http://www.strategicstudiesinstitute.army.mil/pdffiles/pub597.pdf> (last accessed 28 May 2011).

<sup>35</sup> H. Brands, *Crime, Violence, And The Crisis In Guatemala: A Case Study in the Erosion of the State*, US Army War College, Strategic Studies Institute, May 2010, available online at: <http://www.strategicstudiesinstitute.army.mil/pubs/display.cfm?pubID=986> (last accessed 28 May 2011).

<sup>36</sup> K. Chin., *Chinatown Gangs: Extortion, Enterprise and Ethnicity*, Studies in Crime and Public Policy (New York: OUP, 1996).

<sup>37</sup> Tom Hundley, ‘Loyalist gangs of Belfast wage bloody turf war’ *Chicago Tribune*, 16 January 2003, available online at: [http://articles.chicagotribune.com/2003-01-16/news/0301160430\\_1\\_uda-johnny-mad-dog-adair-paramilitary](http://articles.chicagotribune.com/2003-01-16/news/0301160430_1_uda-johnny-mad-dog-adair-paramilitary) (last accessed 28 May 2011).

relinquish power easily and when threatened will frequently seek out alliances with other gangs. This pattern of behaviour explains in part how the Bloods of Los Angeles, came into conflict with their parent gang, the Crips, and how two gang nations were subsequently created as each sought to establish affiliations in almost every large city in the US.<sup>38</sup> The maxim that ‘my enemy’s enemy is my friend’ is certainly true in gang culture, with inter-gang alliances forming in opposition to common enemies.<sup>39</sup>

In certain parts of the world, gangs have made efforts to retain or expand their respective power base through corrupting state institutions, including the police force and judiciary. This has essentially seen the *de facto* replacement of legitimate state institutions with those loyal to the gangs. In Central America, efforts by gang members to corrupt law enforcement personnel and members of the judiciary has resulted in an erosion of the rule of law and a reluctance by the judicial system to prosecute gang members.<sup>40</sup> Low salaries, together with a lack of investment in programmes designed to combat the gang phenomenon has, historically, allowed gang members to create a socio-political space favourable to their existence and operation.

Gangs that prevail over time are often more akin to an OCG.<sup>41</sup> They typically seek to dominate illegal cash industries such as gambling, drugs, money laundering and prostitution. Such gangs will usually have a more sophisticated, centralized structure as one of its defining characteristics.<sup>42</sup> The structure of the *maras* may be more horizontally organized when compared with more established organized crime groups, such as the Russian Mafia or Chinese triads.<sup>43</sup> They consist of many subgroups, but have merged with powerful drug cartels in certain areas including Central America, thus blurring the line between ‘street gang’ and ‘organized criminal group’ on occasion.

### **3.2 Motivation for gang membership**

Studies have shown empirical evidence supporting a matrix of factors behind gang membership. Gang members are generally children<sup>44</sup> when they make the decision to join a gang and usually do so after spending a period of time with the gang, without being a member. As Miller notes:

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<sup>38</sup> Delaney, note 8 above, 64.

<sup>39</sup> M. Roth, ‘Posse Paraphernalia,’ *George Magazine*, March 1998, noted that allied gangs often share common attire, such as the Bloods and the Gangster Disciples, which both chose to wear blue as a gang colour. Delaney, note 8 above, 188, describes how the Latin Kings and the Vice Lords came into allegiance in confrontation to a common enemy.

<sup>40</sup> Boerman, note 16 above. See Section 7 below for information on State policies concerning the gang phenomenon in the Central American context.

<sup>41</sup> G. W. Knox, *An Introduction to Gangs* (Peotone, IL: Wyndham Hall Press, 1994).

<sup>42</sup> Weisel, note 4 above, 20–31.

<sup>43</sup> C. R. Seelke, *Congressional Research Service Report for Congress Gangs in Central America*, US Washington, Congressional Research Service, 17 October 2008, at CRS–2.

<sup>44</sup> Art. 1 of the UN Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, defines a child as ‘every human being below the age of 18 unless under the law applicable to the child, majority is attained earlier.’

Gang membership doesn't happen overnight. Research shows that youths typically hang out with gang members for some time – often as much as a year – before making a commitment to join.<sup>45</sup>

This supports the general consensus in the literature regarding gangs that there is a strong link between youth delinquency and gang membership. A consistent finding of leading experts has been that there is in reality rarely a single reason behind gang membership and it is difficult to produce a singular explanation as to why some individuals decide to join gangs. However, it does seem possible to accurately identify a number of factors, which will place an individual more 'at risk' of becoming a gang member. This is true for both male and female gang members, although there are significant differences in the impact of these factors across the genders. These at-risk factors and the issue of 'cumulative risk' are summarised below and reveal that becoming a gang member is rarely the primary motive behind membership.

There are cases, however, where membership of a gang appears to be a more intentional, deliberate action on behalf of the individual. The ideology of particular gangs has been a pull factor in some cases and is discussed briefly below, as is the issue of forced recruitment. This latter scenario only appears to affect significant numbers of children in Central America and the analysis is accordingly confined to this context.

### 3.2.1 Overview of major risk factors

Risk factors have been defined as 'individual or environmental hazards that increase an individual's vulnerability to negative developmental outcomes.'<sup>46</sup> In the context of gang membership they include area characteristics such as living in a socially disorganized area. This may go beyond poverty and extend to issues of high crime rates and include inter-ethnic tensions within a community. Research has shown that boys living in areas with high crime rates and which already have gang problems are more likely to become involved in delinquent behaviour and to join gangs.

Marginalization within society may exacerbate the negative impact of these area characteristics. Ethnic minorities living in foreign communities, particularly where there is a low level of integration or a high level of discrimination against the minority group, are particularly susceptible to gang culture compared with persons belonging to majority groups. The Yakuza in Japan are one such example with up to 75 per cent of the gang comprised of ethnic Koreans and of the Burakumin, the largest minority group in Japan whose ancestors performed 'untouchable' occupations (e.g. as undertakers and leather workers).<sup>47</sup> The same is true of many Chinese immigrant communities, which have historically had a high presence of gangs throughout the world.<sup>48</sup>

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<sup>45</sup> J. Miller, *One of the Guys: Girls, Gangs and Gender* (Oxford: OUP, 2000) 35.

<sup>46</sup> S. Small and T. Luster, 'Adolescent sexual activity: An ecological risk-factor approach,' (1994) 56 *Journal of Marriage and the Family* 181–192.

<sup>47</sup> N. D. Kristof, 'Japan's Invisible Minority: Better off Than in Past, but Still Outcasts', *New York Times*, 30 November 1995.

<sup>48</sup> On the issue of language barriers exacerbating the problems faced by Chinese immigrants with gangs, see Chin, note 36 above, 82.

Other significant risk factors which have been documented include parent-child relations as well as school factors and peer relationships.<sup>49</sup> The family dynamic of gang members reveals patterns of abuse, neglect and a breakdown in normal parent-child relations at home, which leads to individuals seeking fulfilment of emotional and social needs elsewhere. This is true for both male and female gang members. Studies reveal that gang members are statistically more likely than non-gang members to have witnessed violent behaviour, alcohol and drug use in their home environment and are also more likely to have a family member in prison.<sup>50</sup>

The breakdown of family life appears to be an especially significant risk factor for female gang members. In a study of gang girls and non-gang girls in two cities in the US, 26% of non-gang girls reported having a serious family problem to deal with at home, compared with 71% of female gang members, with 60% reporting three or more of the following: being witness to physical violence between adults, being abused by a family member, witnessing regular alcohol use at home, witnessing regular drug use at home, having a family member in prison. Not wanting to spend time at home and not having a family capable of providing for key emotional and social needs leads girls as young as 10 and 11 years old to seek becoming members of gangs in order to meet these needs. At this age, the expectations of the gang on female members are low and of those interviewed by Miller, most reported wanting to join for reasons associated with the non-criminal elements of gang life, including hanging out with friends and going to parties.<sup>51</sup>

The search for a surrogate family unit is not a risk factor which solely affects girls. Gangs do offer networks of friends and a support system capable of meeting certain psychosocial needs. The *maras* of Central America, which have their modern-day roots firmly embedded in the 1980s gang culture of Los Angeles, US, operated to a large extent as an alternative form of family unit to hundreds of young Salvadoran males who were without family and in need of protection from rival Los Angeles gangs.<sup>52</sup> Originally, young men voluntarily joined in search of a surrogate family, which served as a large fraternity of members who spoke the same language and simultaneously offered protection from other gangs.<sup>53</sup>

While school performance and the absence of a positive role model in the form of a teacher have been shown to be risk factors regarding gang membership, one of the most important risk factors is *peer relationships*. Gangs, at least to some extent, are exclusive entities. They do not, as a general rule, welcome unknown individuals as members. Individuals who interact with gang members in their daily lives are accordingly more likely to join a gang than those who do not. Both male and female gang members have acknowledged wanting to join gangs because friends, neighbours, classmates, siblings and other relatives were already members. Joining a gang represents a way to garner respect from peers and enables networks of friends to stay intact. This again supports the position that most gang members had another primary motive – such as wanting to spend time with a brother or sister or best friend – behind their

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<sup>49</sup> T. Thornberry, M. Krohn and others, *Gangs and Delinquency in Developmental Perspective* (Cambridge: CUP) 56–76. Reproduced in Egley Jr., note 3 above, 30–42. The authors provide a comprehensive overview of common risk factors relating to gang membership.

<sup>50</sup> *Ibid.*

<sup>51</sup> Miller, note 3 above. The study conducted was in St. Louis and Columbus (US).

<sup>52</sup> S. C. Boraz and T. C. Bruneau, 'Are the Maras Overwhelming Governments in Central America?' *Military Review*, November/December 2006, 36.

<sup>53</sup> Many of the young boys who fled the violent civil wars of Central America of the 1980s spoke only Spanish or a dialect of the Mayan language when they arrived in Los Angeles.

decision to join, rather than making a fully conscious and considered decision to join a gang and engage in criminal activities.

Children and adolescent youths have been shown to be highly resilient towards coping with the above risk factors on an individual basis and when only one factor is at play, the increased risk of becoming a gang member is very slight. When several at-risk factors converge in the life of a young person, however, the notion of ‘cumulative risk’<sup>54</sup> applies. The resulting impact of several risk factors coinciding is much greater than the sum of individual risk factors and will have a highly negative consequence on gang membership. This appears to be borne out in practice and studies reveal that a high proportion of gang members were affected by multiple risk factors at the time of becoming a member.<sup>55</sup>

The evidence strongly suggests that persons do not join gangs for singular reasons, but do so in the main because of the impact of multiple risk factors. The gang is often, therefore, a destination arrived at out of necessity of fulfilling other basic social and emotional needs for many young persons, rather than being an end point in itself.

### 3.2.2 Ideology

While there is general consensus among leading gang scholars on the issue of risk factors being highly significant regarding gang membership, it would be wrong to portray every gang member as a victim of circumstance, with the risk factors which accompany their socio-economic background leading them towards gang membership. Certainly, there are those for whom the ideology behind gangs and gang culture is very appealing.<sup>56</sup> There are also those who strongly believe in the *raison d’être* of the gang and who decide to join in order to actively engage in a particular movement.

The Mungiki of Kenya, for example, have attracted members, notably from the Kikuyu (Kenya’s largest ethnic group), who wish to reject Western influences and adopt the ultra-traditionalist ideology of the gang.<sup>57</sup> Many Eastern European countries, such as the Czech Republic, Slovakia, Croatia and Poland, as well as the Ukraine and the Russian Federation have skinhead gangs who associate themselves with the political far right. They are often engaged in crimes against foreigners as well as minority groups like the Roma or sexual minorities.<sup>58</sup> In Jamaica, criminal gangs have strong ties to political parties, such as the

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<sup>54</sup> Thornberry, note 49 above, reprinted in Egley Jr., note 3 above, 37, explains cumulative risk as ‘while experiencing risk in one domain increases the odds of adverse outcomes, experiencing risk in multiple domains should have an even larger impact on behaviour.’

<sup>55</sup> Thornberry, note 49 above, reprinted in Egley Jr., note 3 above, 30–42, highlights this point as a key finding. Of the gang members in the study, over 43% appear to have been exposed to 21 or more risk factors.

<sup>56</sup> J. M. Hagedorn, *A World of Gangs: Armed Young Men and Gangsta Culture* (Minneapolis: University of Minnesota Press, 2008) 93–111. The impact of gang culture on children should not be understated. So-called ‘gangster rap’, which is renowned for its use of lyrics condoning violence and which portrays women in an extremely negative light, is one of the fastest growing markets within the music industry. In addition, gang colours, clothing and hand signs are frequently used by non-gang children in schools the world over as a means of obtaining respect from peers.

<sup>57</sup> Landinfo, note 13 above, 5–6.

<sup>58</sup> See, for example, IRB, *Croatia: Treatment of Muslims and Muslims of mixed descent by skinheads, nationalist and racist groups; availability and accessibility of state protection for Muslims (1995-2004)*, 18 May 2004, HRV42584.E, available online at: <http://www.unhcr.org/refworld/docid/41501c160.html> (last accessed 28

Peoples National Party (PNP) and the Jamaican Labour Party (JLP),<sup>59</sup> with PNP-affiliated gangs wearing orange and JLP-affiliated gangs wearing green, thereby making their respective political affiliation clearly known.<sup>60</sup> Indeed, certain Jamaican gang members have been welcomed more like rock stars than as gangsters. In 1975, 25,000 people turned out for the funeral of Kingston gunman ‘Burrey Boy’.<sup>61</sup>

### 3.2.3 Recruitment

The above analysis has explored some of the key issues behind gang membership in a general way. Implicit in the foregoing paragraphs is the notion that while there may be other factors which underlie the decision to join a gang, that decision is ultimately made freely. This is not always the case. When viewing the gang phenomenon globally, gangs do not appear on the whole to force individuals to join. However, there are widespread instances of recruitment being coerced. The spectrum of coercion seems to cover mild peer pressure through to threats of serious physical harm or even death and everything in between and there appears to be significant variance from country to country.

The most extreme forms of recruitment may, perhaps, be seen in the Central American context. In El Salvador, Honduras and Guatemala, the *maras* have been widely reported to forcibly recruit members. Strategies employed by the gangs to achieve this include targeting young and adolescent children and threatening them with physical violence or death unless they join the gang. It is common for *mara* gangs to make broad threats which also include the victim’s family and threats of rape to female members of the resistor’s family have been reported.<sup>62</sup> A refusal to join the gang or ‘clika’ will result in actual violence directed towards the gang resistor and his/her family as the norm. As expressed by many asylum-seekers who have escaped recruitment and fled abroad, a persistent refusal to join a gang often triggers increasingly violent conduct by the gangs.

Members of American street gangs, particularly male members, report having been approached regularly by gang members prior to joining. Usually belonging to the same neighbourhood or school, gang members are known to portray gang life in a positive light

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May 2011). The problem these countries face with skinheads is widely documented and has featured in a number of the Universal Periodic Reviews of the aforementioned countries.

<sup>59</sup> US Bureau of Citizenship and Immigration Services, *Jamaica: Jamaican Poses*, 22 September 1999, JAM99001.ASM, available online at: <http://www.unhcr.org/refworld/docid/3ae6a6a10.html> (last accessed 30 April 2010).

<sup>60</sup> M. Henry, ‘Political Politics and Crime’, *Jamaica Gleaner*, 13 July 2008, regarding the shooting of a Jamaican MP for wearing green, the colour of her party (JLP), available online at: <http://www.jamaica-gleaner.com/gleaner/20080713/cleisure/cleisure4.html> (last accessed 25 October 2010).

<sup>61</sup> Hagedorn, note 56 above, 43.

<sup>62</sup> There is an absence of reliable research on the issue of forced recruitment, perhaps explained in part by the reluctance of persons who have been targeted by gangs to come forward and describe their experiences. This is especially so in Central America, where association with gangs places individuals at risk of victimisation under traditionally repressive anti-gang legislation in addition to threats from the gangs themselves. Once individuals have fled across international borders and have instigated the formal asylum process, however, they are often more forthcoming in respect of their encounters with gangs. US Immigration jurisprudence is particularly rich in details of *maras* attempting to forcibly recruit persons through systemic patterns of violence and abuse. See, for instance, *Matter of S-E-G-, et al.*, 24 I&N Dec. 579, US Board of Immigration Appeals, 30 July 2008, available online at: <http://www.unhcr.org/refworld/docid/4891da5b2.html>, which involved threats of rape targeted at the gang resisters’ sister, as well as beatings and harassment aimed at the gang resisters themselves.

and to call on the recruit to join out of honour and neighbourhood solidarity, sometimes using intimidation as a means to elicit membership.<sup>63</sup> The same is true of females joining female gangs, especially fighting gangs. Studies show that females joining male gangs usually do so as a means of spending time with existing peers such as friends and siblings and not out of the same level of peer pressure or coercion.<sup>64</sup> It is, however, common for girls to be sold on false promises, including a life of expensive clothes, cars and parties.<sup>65</sup>

#### **4. Code of conduct and gang rituals**

The following section provides a snapshot of what gang life is actually like for most gang members and the risks involved with becoming a member. The following analysis is specific to the types of gangs discussed in the paper with a focus on so-called 'gang nations' or 'supergangs' in certain parts of the world, notably Central America, the US, Kenya and Jamaica.

One of the distinguishing factors between gangs and other types of groups engaged in criminal activities is the degree of entrenchment in a unique culture. While gangs vary enormously the world over, there are common features which pervade the different gang cultures. Names, territories, dress codes, initiation rituals and hand signals are all examples of ways in which gang members self-identify with being part of their gang. The notion of 'respect' and 'reputation' are central elements of most gang cultures.

There is a common perception among gang members and associated non-members<sup>66</sup> that the gang is an exclusive entity and that becoming a member is an achievement to be proud of. Understanding this concept is key to understanding how gang violence and resulting displacement are triggered. Once membership in a gang is established, it is expected that members should take pride in being part of the gang and must preserve the gang's reputation by violently confronting anyone who challenges them or engages in activities construed as an 'insult' or an act of 'disrespect'<sup>67</sup>, including challenges from fellow members. Failure to do so is ruinous to their status within their own gang, among gang rivals, and the public. Actions that thwart gangs' objectives such as leaving the gang, rebuffing recruitment efforts, refusing to pay extortion or provide material support, espousing anti-gang political sentiments, participating in community-based gang prevention or intervention activities, cooperating with law enforcement, or fleeing to avoid future persecution are perceived as insubordination and challenges to the authority of the gang. These actions are normally met with a violent and punitive response.

Beyond their inherently violent nature, there are two other essential points to understand about acts of gang retaliation and the likelihood of future harm by gangs. First, once an individual has been targeted, the gravity of the threat does not diminish over time. Second,

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<sup>63</sup> Delaney, note 8 above, 148. See also, R. G. Sheldon, S. K. Tracy and W. B. Brown, *Youth Gangs in American Society*(Belmont, CA: Wadsworth/Thomson Learning, 2001) 71.

<sup>64</sup> Delaney, note 8 above, 209.

<sup>65</sup> Miller, note 3 above, reports a minority number of girls in her study joining because of promises made by male gang members relating to protection and the provision of food and clothing and a place to live.

<sup>66</sup> These are individuals, usually younger than the gang members, who are permitted to spend time with the gang despite not having been initiated into the gang. They often include younger siblings and friends as well as those seeking to interact with the gang in order to purchase drugs or other commodities.

<sup>67</sup> Delaney, note 8 above, 150 describes respect as 'without question, the subcultural value that carries the highest value for all gang members'.

threats to an individual typically extend to members of that individual's family and the family as a whole, or any subset of it, who may be targeted for retribution.

#### 4.1 Treatment of male members

Within the confines of a particular gang, rituals signifying membership and promotion are common. Gang rituals often vary according to gender and to the intrinsic values and core beliefs of a particular gang.

The Mungiki in Kenya, which claim an ultra-traditionalist ideological base, expect male members to take an oath of secrecy and engage in 'bathing in a concoction of goat blood, urine and tripe.'<sup>68</sup> This initiation ritual is expected to be followed by an endorsement of the gang's beliefs and, therein, a rejection of all Western influences, including clothing, language and everyday household items.

The initiation rituals of male members of gangs with a strong criminal focus, such as Jamaican 'Yardies' (named after the government yards of Trenchtown, a housing project in West Kingston, Jamaica), Yakuza and Triads of the Orient, the *maras* of Central America and Russian Mafia, are of a physical nature and involve fighting other members or potential recruits. This is consistent with many of the large street gangs in the US, which frequently use a violent initiation ritual known as 'walking the line' or the 'V-in'.<sup>69</sup> These rituals are designed to test the toughness of new recruits, but have been known to kill new members in the process.<sup>70</sup>

The period which follows a new membership can often involve new male members having to prove themselves to their fellow gang members. Drive-by shootings are a common *modus operandi* used to achieve this, but some gangs impose their own specific way of announcing the arrival of a new member.<sup>71</sup>

Recruits often receive burn marks<sup>72</sup> or tattoos on their bodies to signify membership.<sup>73</sup> The members of the *maras* often have membership tattoos linked to the numbers 13 and 18,

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<sup>68</sup> IRB, *Kenya: The Mungiki sect; leadership, membership and recruitment, organizational structure, activities and state protection available to its victims (2006 - October 2007)*, 1 November 2007, KEN102637.E, available online at: <http://www.unhcr.org/refworld/docid/4784def81e.html> [accessed 19 March 2011]

<sup>69</sup> Delaney, note 8 above, 149. These expressions refer to common initiation rituals involving timed beatings of new recruits. 'Walking the line' is where new recruits must walk between two lines of gang members while they beat them for a specified amount of time.

<sup>70</sup> In September 2004, Tarus DeShawn Williams, a 14 year-old high school student in Memphis was believed to have been killed during a gang initiation ritual when he had his head slammed into a wall. See, 'Six teens charged with killing student during initiation', *USA Today*, 16 September 2004, available online at: [http://www.usatoday.com/news/nation/2004-09-16-gang\\_x.htm](http://www.usatoday.com/news/nation/2004-09-16-gang_x.htm) (last accessed 26 May 2011).

<sup>71</sup> K. Flynn, '26 are Arrested in Gang Slashings of Subway Commuters,' *New York Times*, 22 June 1999, available online at: <http://www.nytimes.com/1999/06/22/nyregion/26-are-arrested-in-gang-slashings-of-subway-commuters.html>. The Bloods have been reported to require a new member to slash the face of a police officer or member of the public using a box-cutter or razor blade as part of becoming a new member.

<sup>72</sup> Delaney, note 8 above, 171, describes the American gang practice of burning certain initials into the upper arms of new members.

<sup>73</sup> B. Valentine, *Gangs and Their Tattoos: Identifying Gangbangers on the Street and in Prison*, (Boulder, CO: Paladin Press, 2000).

although this practice has diminished greatly since some of the Central American governments decided to crack down on gangs.<sup>74</sup> As described further below:

Gangs have shifted tactics, seeking to avoid visibility and gang identification...gangs no longer encourage new members to mark themselves with tattoos, and ... may even forbid the practice.<sup>75</sup>

## 4.2 Treatment of women and girls

Historically, most mixed sex gangs have been highly patriarchal in their structures.<sup>76</sup> Gangs in Central America endorse the same male-dominated culture towards women as seen in society at large in countries such as El Salvador, Honduras and Guatemala.<sup>77</sup> Although female gang members are often allowed to participate in criminal activities along with male members, the primary role of female members has typically been to satisfy the male members sexually. This characteristic of female gang membership is frequently reflected in initiation practices, with female members often being subjected to acts of sexual violence and exploitation, including gang rape. Researchers working for the Washington Office on Latin America, a human rights organization, have noted that:

Gangs, when under more extreme threat, become more violent with female members. In some extreme cases, female gang members have been killed by their fellow gang members because of the perception that they are less trustworthy.<sup>78</sup>

Female gang members have at the same time been given an increasingly criminal role in gangs. In addition to companionship and sex, female gang members are also used to carry drugs and weapons because police and customs officials pay less attention to them, a practice known as 'using a mule.' They are also used to set-up male victims for robberies and kidnappings and to more effectively recruit other females.

The severity of the initiation rituals varies according to the gang in question. The Jamaican gangs or 'posses' have been known to demand that female members have sex with male members. While it is not uncommon for young women to be integrated into Central American gangs with no risky initiation rituals, in other cases the risks may be extreme. For example, the MS-13 and M-18 gangs allegedly offer girls as part of their initiation the option of either having sex with a gang member who is known to be HIV positive or be subjected to

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<sup>74</sup> IRB, *Honduras: Incidence of tattooing among criminal gangs; description, meaning and images of tattoos commonly used by such gangs; significance ascribed by state security forces to the different types of gang tattoos*, 20 October 2004, HND43076.E, available online at: <http://www.unhcr.org/refworld/docid/42df60f95.html> (last accessed 28 May 2011).

<sup>75</sup> J. Cavallaro and S. Miller, *No Place to Hide: Gang, State, and Clandestine Violence in El Salvador*, The International Human Rights Clinic Human Rights Program, Harvard Law School, February 2007, 27.

<sup>76</sup> All-women gangs are controlled and run by women, often in association with a male 'set,' and will require female members to carry out all activities, including fighting, on behalf of the gang.

<sup>77</sup> UN Commission on Human Rights, *Report of the Special Rapporteur on violence against women, its causes and consequences, Mission to El Salvador*, 20 December 2004. E/CN.4/2005/72/Add.2, available online at: <http://www.unhcr.org/refworld/docid/42d66e500.html> (last accessed 28 May 2011).

<sup>78</sup> Washington Office on Latin America (WOLA), *Resource Guide on Central American Gangs*, Section on Gangs in Honduras, May 2008, 2, available online at: [http://www.uscrifugees.org/2010Website/5\\_Resources/5\\_4\\_For\\_Lawyers/5\\_4\\_1%20Asylum%20Research/5\\_4\\_1\\_2\\_Gang\\_Related\\_Asylum\\_Resources/5\\_4\\_1\\_2\\_4\\_Reports/Washington\\_Office\\_on\\_Latin\\_Americas\\_WOLA\\_CentralAmericanGang.pdf](http://www.uscrifugees.org/2010Website/5_Resources/5_4_For_Lawyers/5_4_1%20Asylum%20Research/5_4_1_2_Gang_Related_Asylum_Resources/5_4_1_2_4_Reports/Washington_Office_on_Latin_Americas_WOLA_CentralAmericanGang.pdf) (last accessed 26 May 2011).

the ‘notorious practice of the “train” (*tren*), in which female recruits are forced to have sex successively with several gang members as a means of initiation.’<sup>79</sup> This can involve tens of men and cause female recruits to sustain permanent physical and emotional trauma.

In the US, street gangs are known to offer females the standard choice of being ‘jumped-in’, whereby new recruits have to take a beating from other members for a sustained period of time, or being ‘trained-in’, as described above. Girls choosing the latter have an especially difficult time in gaining the respect of other members, both male and female, and will usually be subjected to derogatory treatment as a result. In Central America, the initiation practice of using ‘*el tren*’ in regard to female members is particularly common and UN human rights-related special mandate holders have reported that ‘initiation practices within the *maras* create high likelihoods of sexual and other forms of violence.’<sup>80</sup> There are infrequent cases of a third type of initiation whereby recruits are ‘born-in,’ but this usually only applies to second and third generation gang members who have a demonstrably strong connection with the gang, perhaps because older siblings or relatives are already members.<sup>81</sup>

Female members of the Mungiki are expected to undergo female genital mutilation as part of the initiation rite. However, this practice has been known to extend to females who are not members but who live in a Mungiki-controlled area or who are related to Mungiki members.<sup>82</sup>

### 4.3 Leaving a gang

Once in a gang, the process of leaving varies from gang to gang and from person to person. As opposed to a pre-established set of conditions under which any given individual may remove him or herself from the gang, the process is ill-defined and depends on situational variables. These factors include the gang’s orientation, the individual’s status in the gang, the threat they would pose to the gang if interrogated by the police, whether their departure may encourage others to also leave the gang, and the effect their departure would have on leaders’ abilities to maintain control.

Within this complex set of variables, some are able to extricate themselves from the gangs without significant consequences and may be able to merely walk away. This is especially the case when the individual is on the fringe of membership and where close ties of friendship between the individual and his ‘set’ exists.<sup>83</sup> The older the gang member is, the greater his or her chances are of being able to leave the gang. This is consistent across a number of different gangs, including the Russian Mafia gangs, the *maras*, American street gangs and the

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<sup>79</sup> Cavallaro and Miller, note 75 above, 32.

<sup>80</sup> UN Commission on Human Rights, *Report of the Special Rapporteur on violence against women, its causes and consequences, Mission to El Salvador*, 20 December 2004, E/CN.4/2005/72/Add.2, para. 15, available online at: <http://www.unhcr.org/refworld/docid/42d66e500.html> (last accessed 23 April 2011)..

<sup>81</sup> Delaney, note 8 above, 209. The author also reports the frequency with which rape is administered as a punishment towards female members.

<sup>82</sup> D. Kanja, ‘Get Circumcised, Mungiki Sect Tells Women’, *East African Standard*, 23 April 2002, reported that ‘Members of the Mungiki sect in some parts of Kiambu district have issued a three-month ultimatum to all women between 13 and 65 years who have not undergone circumcision to do so.’

<sup>83</sup> C. R. Huff (ed.), *Gangs in America III* (Thousand Oaks, CA: Sage Publications, 2002), 51–67. S. H. Decker and J. Lauritsen, ‘Leaving the Gang’, *ibid.*, 51, provide an analysis of the factors behind an individual’s decision to leave and the way he achieves that. Most gang members appear able to step down or walk away from gang life. Many close friends will join a set of a wider gang together and when a member leaves, may offer a degree of protection against the wider gang.

Jamaican gangs. The process of leaving the gang in this way is known as being ‘aged out’ or ‘matured out’<sup>84</sup>

For others, the attempt to leave is tantamount to a death sentence. In Central America, there is a common misperception that factors such as a religious conversion or becoming a parent allow members an opportunity to exit the gang without consequence. However, in reality, the viability of leaving without risk of egregious harm or death to the member and/or his family depends entirely on the variables described above.<sup>85</sup>

There tend not to be exit ‘rituals’ per se within gangs, although there are documented cases involving individuals being ‘beaten out,’ a more violent replication of the initiation ceremony.<sup>86</sup> While a degree of ceremony usually surrounds new membership, those seeking to leave a gang will often do so in a clandestine manner. There are some fairly consistent and common practices, which operate in order to deter existing gang members from leaving the gang. The Mungiki threaten to kill anyone who leaves the sect or breaks their oath of secrecy.<sup>87</sup> The *maras* also threaten death to members trying to leave the *clikas* and can extend this threat to the members’ families.<sup>88</sup>

In addition to the risks posed by members of one’s own gang, members attempting to leave a gang often confront a number of challenges and dangers from others. For instance, in Central America members often possess a prominent tattoo as a result of their membership and find it difficult to reintegrate into local communities or mainstream society due to societal stigmas.<sup>89</sup> Second, they may be at risk of violence and death at the hands of rival gangs, who care little about the fact that the individual has left the gang.<sup>90</sup> Third, police routinely detain, interrogate, and frequently abuse former members in order to extract information from them about the gang’s activities, leadership and structure.<sup>91</sup> Finally, former members remain at risk from clandestine ‘social cleansing’ groups engaged in the extrajudicial execution of known and suspected gang members (covered in greater detail in Section 7 below).<sup>92</sup>

## 5. Gang activities

Depending on their objective and country circumstances, gangs may be involved in a wide range of activities, from provision of social services and assistance to activities aimed at gaining political and territorial control. In some cases, gangs can present ‘an alternative to government where the government is weak and ineffective’, providing a form of governance,

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<sup>84</sup> Hagedorn, note 56 above, 10.

<sup>85</sup> Boerman, note 16 above.

<sup>86</sup> Huff, note 83 above.

<sup>87</sup> IRB, note 68 above.

<sup>88</sup> Cavallaro and Miller, note 75 above.

<sup>89</sup> Seelke, note 43 above.

<sup>90</sup> J. D. Corsetti, ‘Marked for Death: The Maras of Central America and Those Who Flee Their Wrath’ (2006) 20 *Georgetown Immigration Law Journal* 407.

<sup>91</sup> Manz, note 24 above.

<sup>92</sup> *Ibid.* The operation of clandestine ‘Death Squads’ in Honduras, El Salvador and Guatemala appears to be especially high. See also UN Human Rights Council, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston: addendum: mission to Brazil*, 23 March 2009, A/HRC/11/2/Add.2, available online at: <http://www.unhcr.org/refworld/docid/49f6c5602.html> (last accessed 28 May 2011).

dispute resolution, and security.<sup>93</sup> This can further erode the capacity of the government to act in these areas and to disempower a gang.

As previously discussed, however, the pre-dominant focus of most gangs is financial gain through criminal enterprises. The nature and scope of gangs' criminal activity varies greatly but in every case they inflict serious harm on the communities in which they operate and contribute to an environment within which non-members are exploited and often at high risk of physical injury and death. Much of the violence is attributed to illegal activities such as extortion, kidnappings, robberies, burglary, prostitution, and trafficking in arms, drugs, stolen vehicles and human beings.

Central American gangs have over the years become more consolidated in their organization with greater levels of violence and focus on criminal activities in order to increase their economic and political clout.<sup>94</sup> Gangs create an extremely dangerous daily environment, where much of the violence is directly attributed to the running of their illegal business enterprises and the commission of related crime. Witnesses are routinely threatened and police officials are bribed in order to allow for the operation of their enterprises.

Brazil has experienced its own share of the gang phenomenon in recent years. Some Brazilian street gangs not only make money from drugs but also control the supply of basic services to residents of slum-like dwellings surrounding many of the large cities, known as '*favelas*'.<sup>95</sup> Cities, such as Rio de Janeiro, have seen turf battles between gang members and the police, leading to a high rate of homicide with nearly 50,000 related deaths per year.<sup>96</sup>

The extent to which a gang is involved in criminal activity may depend on the ideological basis of the gang in conjunction with other factors. Gangs claiming a political motivation, such as the Mungiki, for example, may only be involved in low-level theft and extortion as a means of financing the 'cause.' This has included the provision of illegal water and electricity connections to hundreds of people living in the Mathare slums in the east of Nairobi.<sup>97</sup>

Gangs may also engage in actions intended as political statements through the killing of state officials.<sup>98</sup> Such acts may be believed to make the gang more socially visible and/or undermine an existing regime. The Mungiki have been known to commit murder, often

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<sup>93</sup> Hazen, note 6 above, 381; Corsetti, note 90 above, also notes that the stranglehold of the *maras* is such that in parts of Central America they actually operate as a *de facto* government.

<sup>94</sup> Manwaring, note 34 above, 3, notes how the *maras* are gaining increasing political importance; 'we think of gangs as a simple law enforcement problem. Yet, insurgents and third generation gangs are engaged in a highly complex political act-political war.'

<sup>95</sup> IRB, *Brazil: Update to BRA33317.E of 6 December 1999 on state protection against drug gangs in Brazil, particularly in and around Rio de Janeiro (2000 to April 2003)*, BRA41404.FE, 5 May 2003, available online at: <http://www.unhcr.org/refworld/docid/3f7d4d622a.html> (last accessed 28 May 2011).

<sup>96</sup> UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Brazil*, 22 May 2008, UN Doc. A/HRC/8/27; A/HRC/WG.6/1/BRA/4, available online at: <http://www.unhcr.org/refworld/docid/4857d8a32.html> (last accessed 28 May 2011).

<sup>97</sup> BBC Profile: 'Kenya's Secretive Mungiki Sect', 24 May 2007, available online at: <http://news.bbc.co.uk/2/hi/africa/6685393.stm> (last accessed 28 May 2011).

<sup>98</sup> Reuters reported revenge attacks from Kenyan police following the gunning down of two police officers by alleged Mungiki members: W. Kanina, 'Violence flares after Kenya's Mungiki gang kill police', *Reuters*, 5 June 2007, available online at: <http://www.reuters.com/article/latestCrisis/idUSL05687537> (last accessed 26 May 2011).

choosing to sever the victim's head or genitals as part of their *modus operandi*, and to target local members of the police and government in retaliation against oppression from local police forces.<sup>99</sup> Central American gangs have responded to *Mano Dura* policies (explained further below) by abducting and murdering citizens, then leaving their dismembered body parts in public places with notes attached, warning governments to suspend their repressive anti-gang strategies.

Gangs with more of an economic focus, such as the Russian Mafia and some Central American gangs, typically concentrate their activity on the most profitable industries, such as drug, arms and human trafficking, money laundering and gambling. The crimes committed are often of a more sophisticated nature, reflecting the established structure of the organization. The Russian Mafia, for example, tends to conduct military-style executions of a professional and high-profile nature.<sup>100</sup>

Reliable homicide statistics involving Central American gang members, both as perpetrators and as victims, are extremely scarce. The region has the highest homicide rate in the world and governments have been quick in attributing responsibility to the gangs, despite the fact that El Salvador and Guatemala have a clearance rate of less than 50 percent on homicides and police rarely have information on motives of perpetrators.<sup>101</sup> The lack of reliable statistics notwithstanding, there is little doubt that gangs contribute significantly to the region's high rates of homicide.<sup>102</sup>

In Central America, extortion is a particular problem as it represents a parallel system of illegal taxation that governments are unable and/or unwilling to control. Victims are threatened with physical violence unless payment is made to gang members. The sector most affected is the public transport industry as the operators of public transport companies or their drivers are routinely targeted and charged '*renta*,' per vehicle and day.<sup>103</sup> The demands upon drivers are made in public view and with the full knowledge of the police. In recent years, hundreds of bus drivers have been murdered as a result of their continual refusal to pay *renta*.

The *maras*' involvement in the drug trade is significant, and involves the manufacture, transportation and distribution of narcotics from Latin America into North America and Europe. The *maras* coexist with other criminal gangs such as the American and Mexican Mafia and regional drug cartels. Due to the young, unsophisticated dynamic of the *maras*

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<sup>99</sup> C. B. Hull, 'Kenya live in silent fear of Mungiki gang', *Reuters*, 1 July 2007, available online at: <http://uk.reuters.com/article/2007/07/01/lifestyle-kenya-gang-dc-idUKHUL13001020070701?pageNumber=1> (last accessed 26 May 2011).

<sup>100</sup> For example, the execution of American businessman Paul Tatum in November 1996, who was shot 11 times in the head and neck in front of his own bodyguards, was allegedly due to his opposition to former business partners with links to the Russian Mafia. See E. Arvedlund and M. Atanasov, 'Murder in Moscow', *Fortune Magazine*, 3 March 1997 available online at: [http://money.cnn.com/magazines/fortune/fortune\\_archive/1997/03/03/222753/index.htm](http://money.cnn.com/magazines/fortune/fortune_archive/1997/03/03/222753/index.htm) (last accessed 28 May 2011).

<sup>101</sup> UN Office on Drugs and Crime (UNODC), *Crime and Development in Central America, Caught in the Crossfire*, May 2007, available online at: <http://www.unodc.org/documents/data-and-analysis/Central-america-study-en.pdf> (last accessed 26 October 2010), 30–31.

<sup>102</sup> See Boerman note 16 above; UNODC, note 101 above, 16–17.

<sup>103</sup> See, for instance, J. Beaubien, 'Extortion, Gang Violence Terrorize El Salvador', National Public Radio (NPR), 12 March 2009, available online at: <http://www.npr.org/templates/story/story.php?storyId=101426190> (last accessed 28 May 2011).

(most of whom are between the ages of 13 and 25), they are not considered a threat to the criminal operations of more established gangs.<sup>104</sup> There are, as noted previously, adult-driven *clikas*, with direct connections to OCGs, DTOs and corrupt officials. The lack of reliable information on these groups makes analysis difficult, but they are thought to direct the involvement of the *maras* within the drug industry at the macro level. This includes the trafficking of drugs through Central America and Mexico, as well as the distribution of drugs within the US.

## 6. Gangs and displacement

There is a clear relationship between gang activities and displacement. The violent activities of gangs have been documented already as a direct cause of flight for particular individuals but also for larger groups of people.<sup>105</sup> The violence has led to both internal displacement within the country and across international borders. For example, the escalating gang phenomenon in the Central American region has increasingly drawn the attention of the international community, including protection agencies such as UNHCR. Many victims of gang violence have fled to seek safety abroad and to claim asylum in countries such as Mexico and the US. Given the geographical size of many of the Central American countries affected by the *maras*, there is often no internal flight alternative for those wishing to flee. It is virtually 'inconceivable that an individual or an entire family could escape the *maras* through simple relocation and begin a new life without fear of retribution.'<sup>106</sup> The impact of gangs on displacement is even greater. Displaced persons often share a common characteristic in being marginalized within society, which makes them particularly vulnerable to victimization by gangs. Gangs have targeted displaced persons for recruitment, extortion, violence, and withholding livelihoods.

Gangs can also play a role in armed conflict and orchestrate the flight of people and/or prevent their return for political or conflict-related reasons. Countries such as Timor-Leste, for instance, have seen high levels of gang activity. Returnees to the area have suffered generalized as well as orchestrated attacks at the hands of gangs. Some attacks have targeted camps for internally displaced persons (IDPs).<sup>107</sup> This has made returning to the region difficult for thousands of persons. Columbia's IDP population has also experienced similar treatment. As a UNHCR report on the situation of IDPs in Colombia notes:

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<sup>104</sup> See US Department of Justice, *Attorney General's Report to Congress on the Growth of Violent Street Gangs in Suburban Areas*, National Drug Intelligence Service, April 2008 available online at: <http://www.usdoj.gov/ndic/pubs27/27612/appendc.htm#Top> (last accessed 28 May 2011), which details the linkage between street gangs, such as the MS-13 and M-18, and gangs operating on a higher level, i.e. the DTOs.

<sup>105</sup> See UNHCR, 'Cameroon, a silent crisis', a short documentary explaining how up to 60,000 refugees have fled from the Central African Republic to Cameroon due to attacks by armed gangs. The film is available online at: <http://unhcr.org/v-4a3a09026> (last accessed 28 May 2011).

<sup>106</sup> Corsetti, note 90 above, 410.

<sup>107</sup> J. Scambray, 'Groups, gangs and armed violence in Timor-Leste', Timor-Leste Armed Violence Assessment (TLVAVA), Issue Brief, April 2009, available online at: <http://www.timor-leste-violence.org/pdfs/Timor-Leste-Violence-IB2-ENGLISH.pdf> (last accessed 28 May 2011). See further, for example, 'East Timorese refugee saga comes to an end,' 30 December 2002; 'Dili tense amid a fresh outbreak of looting, shooting and arson,' 28 June 2006; 'Timor-Leste: When this nun speaks, even rival gangs listen', 3 October 2006, available online at: <http://www.unhcr.org/452264f5a.html> (last accessed 27 May 2011).

Along the banks of the nearby Atrato, San Juan and Baudó rivers, hundreds of thousands of mainly Afro-Colombians and indigenous civilians are trapped in the web of war. The armed gangs who control the waterways do not allow them to fish, hunt or gather wood. Food, medicines, fuel and other essential supplies are intercepted and hijacked by the gunmen.<sup>108</sup>

New arrivals to urban settings, no matter the reason behind their movement, will usually find limited access to the local labour market, compelling them to work in the informal/illegal economy. This problem is severe in countries such as Timor-Leste, which has an unemployment rate of 50 per cent for males between the ages of 20 and 24. Immigrants who are undocumented are also often less likely to report crimes to the police, which makes them a preferred target for forced recruitment and extortion by criminal groups. The gangs of Central America have reportedly targeted migrants and displaced persons living on an irregular basis in developed countries such as the US.<sup>109</sup> A popular tactic is the threat of physical violence to the victim's family, which may still be living in Central America and therefore within easy reach of the *maras*.

But the lack of state protection offered to displaced persons is only part of the problem. Society itself may offer some protection from gangs, but this is not always extended to foreigners or non-residents who may be perceived as outsiders and/or as part of the problem. Communities which demonstrate less opposition to violence directed at immigrants, refugees and internally displaced persons may be seen as tacitly condoning attacks of this nature. Together with a lack of effective state protection, this can render migrants and displaced persons without confidence in the rule of law, especially when their status in a country is irregular and they are without documentation.<sup>110</sup>

The presence of gangs also has an impact on the operations of protection agencies such as UNHCR. Access to camps and settlements has been made more difficult in countries where gangs have made the state of security more volatile. Gangs affect the delivery of protection and restrict the movement of staff members. There have been reports of gang-like groups attacking and even killing UN staff.<sup>111</sup> Attacks of this nature can severely diminish the humanitarian space needed to carry out an operation, preventing or obstructing the delivery of aid and assistance to affected persons.

## 7. State policies and responses

State protection from gang-related violence may be lacking because the state is *unable* to protect its citizens from gangs. As will be shown in this section, the gang problem has grown rather than declined in certain areas, in spite of the adoption by states of various measures to end gang-related violence. Some of the states' measures themselves are also highly

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<sup>108</sup> UNHCR, 'We are here today and tomorrow we may disappear: Colombia's indigenous and poor people bear the brunt of conflict' (2003) 132(3) *Refugees* 24–25, available online at: <http://www.unhcr.org/3f68317d4.pdf> (last accessed 28 May 2011).

<sup>109</sup> See Boerman, note 16 above, on the issue of Latino immigrant communities being targeted by the *maras*.

<sup>110</sup> Amnesty International, *Invisible Victims: Migrants on the Move in Mexico*, 28 April 2010, AMR 41/014/2010, available online at: <http://www.unhcr.org/refworld/docid/4bd7e8de2.html> (last accessed 4 May 2010).

<sup>111</sup> BBC News Online, 'UN reacts to Timor killings', 6 September 2000, available online at: <http://news.bbc.co.uk/1/hi/world/asia-pacific/912464.stm> (last accessed 28 May 2011).

problematic from a human rights perspective.<sup>112</sup> In addition, states may be *unwilling* to provide protection in certain situations, for instance, because of the corruption of certain members of the police and judiciary or for political reasons.

The failure of states to protect their citizens from gangs, combined with increased levels of daily violence, has become an increasing cause of forced displacement across international borders. Although the majority of asylum cases involve claimants fearing violence at the hands of gang members, some have been based on a fear of harm resulting from governments' anti-gang policies.<sup>113</sup>

## 7.1 Central America

One of the most apparent examples of the failure of states to provide protection from gang violence may be seen in Central America, where governments have adopted the *Mano Dura* approach that emphasizes repressive police and military responses to the virtual exclusion of gang prevention, rehabilitation and social reinsertion. El Salvador and Honduras have formally enacted *Mano Dura* legislation, criminalizing gang membership, while Guatemala mirrored this approach in its policy towards gangs but without adopting formal legislation. In Honduras, although legislation in December 2004 had already increased the maximum prison sentence for the crime of gang membership from 12 years to 30 years, President Zelaya toughened the *Mano Dura* policy with the introduction of '*Operacion Trueno*' (Operation Thunder) in August 2006. This allowed for up to 60,000 members of private security forces to be given temporary power to use any means necessary to deter criminals or suspected criminals.<sup>114</sup>

*Mano Dura* allows for known and suspected gang members to be routinely rounded up by police and held without trial. Many suspected gang members have been arrested on the grounds of 'illicit association,' because they do not possess identity papers or merely for having tattoos.<sup>115</sup> In addition, under *Mano Dura*, extrajudicial killings of known and suspected gang members have increased and have included documented police and military involvement.<sup>116</sup>

These policies are particularly harmful to children. In addition to rounding up children, sometimes as young as 12 or 13 years of age, without proof of their gang association and denying them fundamental due process guarantees including the right to a fair trial, some detention facilities even allow children to be held with adult inmates leading to reports of rape and sexual abuse. In El Salvador, the *Mano Dura* legislation was declared

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<sup>112</sup> Manz, note 24 above.

<sup>113</sup> UNHCR Guidance Note, note 11 above, 2. In *N98/22948*, RRTA 1055, Australia, Refugee Review Tribunal, 20 November 2000, available online at: <http://www.unhcr.org/refworld/docid/4b7a97fd2.html>, the Tribunal accepted that 'urban death squads and vigilante groups target sections of society who they consider to be disposable' and upheld the claim for refugee status of an HIV positive gay Colombian man.

<sup>114</sup> Manz, note 24 above, 25–26.

<sup>115</sup> Cavallaro and Miller, note 75 above, 46.

<sup>116</sup> See Amnesty International, *Honduras: Zero tolerance ... for impunity: Extrajudicial executions of children and youths since 1998*, 25 February 2003, AMR 37/001/2003, available online at: <http://www.unhcr.org/refworld/docid/3f143fc24.html> (last accessed 28 May 2011).

unconstitutional by the Salvadoran Supreme Court for being in direct contravention with the UN Convention on the Rights of the Child.<sup>117</sup>

While *Mano Dura* has generated international concern,<sup>118</sup> due to the repressive and sometimes covert nature of these policies, it is often difficult for human rights organizations and other agencies to gather accurate information on them. Governments have been unwilling to investigate fully the deaths of gang members or those suspected of being associated with the gangs.<sup>119</sup> The reasons for this are not well documented, but among them may be a reluctance to publicise information on the deaths of innocent victims as a result of government policies.

The ‘tough hand’ policies has contributed to the creation of a veritable battleground within which states do not ‘offer protection to citizens other than in the form of draconian, violently repressive laws geared at exterminating the *maras*.’<sup>120</sup> Thus far, none of the measures taken, such as the development of shared law enforcement databases, regional cooperative police agreements, training of gang investigators, and specialised task forces, have translated into increased security for those most at risk of being harmed by gangs.<sup>121</sup>

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<sup>117</sup> Organisations such as the UN expressed serious concern over gang legislation in countries such as El Salvador, which would enable children as young as 12 to be charged as adults. See, e.g. UN Committee on the Rights of the Child, Thirty-sixth Session, Consideration of Reports by States Parties under Article 44 of the Convention, Concluding Observations: El Salvador, CRC/C/15/Add.232, 30 June 2004, available online at: <http://www.universalhumanrightsindex.org/documents/829/342/document/en/text.html>, (last accessed 2 May 2011), para. 67. The Committee went so far as to include the repeal of the legislation in its Concluding Comments, a clear indication of how seriously it felt the policy could harmfully impact on children. See also, O. Jütersonke, R. Muggah and D. Rodgers, ‘Gangs and Violence Reduction in Central America,’ Graduate Institute of International and Development Studies, Geneva, 16 July 2009, available online at: [http://www.oas.org/dsp/documentos/pandillas/2sesion\\_especial/SMALL%20ARMS%20SURVEY/gangs%20and%20urban%20violence.pdf](http://www.oas.org/dsp/documentos/pandillas/2sesion_especial/SMALL%20ARMS%20SURVEY/gangs%20and%20urban%20violence.pdf), 10.

<sup>118</sup> See e.g. UN Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum: Study on police oversight mechanisms*, 28 May 2010, A/HRC/14/24/Add.8, available online at: <http://www.unhcr.org/refworld/docid/4c0769252.html> (last accessed 2 May 2011); *UN Human Rights Council: Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*, 29 January 2007, A/HRC/4/20, available online at: <http://www.unhcr.org/refworld/docid/461e40f82.html> (last accessed 2 May 2011). See also, Clare Ribando, ‘Gangs in Central America,’ CRS Report for Congress, 10 May 2005, available online at: <http://www.fas.org/sgp/crs/row/RS22141.pdf>.

<sup>119</sup> International Commission of Jurists, *Attacks on Justice – Honduras*, 2005, available online at: <http://www.icj.org/IMG/HONDURAS.pdf> (last accessed 28 May 2011), 3, regarding the connection between the ‘cleansing’ of gang members and unresolved killings of youths in Honduras, which has been a major cause for concern for human rights activists.

<sup>120</sup> Manz, note 24 above.

<sup>121</sup> Jütersonke, note 117 above, provides an overview of these policies and how they have had limited results in ensuring greater security for citizens. Indeed, research suggests that they have actually exacerbated the problem, hardening the resolve of gang members to fight law enforcement and visualise their contempt for government anti-gang policy by committing crimes on citizens of a very public nature. In August 2003 in Honduras, following the bringing into force of the new *Mano Dura* legislation, gang members attacked a bus in broad daylight killing 14 and wounding 18, with a note to President Ricardo Maduro to withdraw the law. The Central American Coalition for the Prevention of Youth Violence (CCPVJ) has shown that *Mano dura* policies can be linked to a dramatic surge in youth violence of up to 40% in the first three years of implementation of the policy.

Some academics have argued that the *Mano Dura* approach worsened the problem it intended to resolve.<sup>122</sup> Gangs have responded to *Mano Dura* by becoming more clandestine and organizationally sophisticated and since its implementation each of the affected countries have experienced significant increases in gang crime and violence, deterioration of public confidence in government, and significant disruption of the political discourse and process.<sup>123</sup>

Actual implementation of the strategy has also been disjointed and inconsistent. On the one hand, round-ups are frequent but due to resource scarcity, indifference, ineptitude, and corruption within investigative and judicial systems, successful prosecutions rarely occur. For example, the Country Report on Human Rights Practices for Guatemala (2004), issued by the Bureau of Democracy, Human Rights, and Labor of the US Department of State, notes that only approximately 3% of 250,000 complaints filed annually with the Public Ministry have ever been prosecuted.<sup>124</sup> On the other hand, because police are in collusion with gangs and/or terrified of them, they routinely avoid even entering gang-affected areas. Citizens and representatives from civil society report that for all practical purposes there is no meaningful police presence in many gang-affected neighbourhoods and that when contacted, police either do not respond or they fail to take action or engage in any investigative activities. Not surprisingly, gangs essentially 'own' these neighbourhoods.

The failure of state anti-gang policies in Central America is thus due to a convergence of a number of factors. These include resource shortages, low salaries, lack of training, intimidation, and corruption among the police force, prosecutors and judges. This failure has resulted in a prevailing sense of impunity, allowing gang members a large socio-political space in which to manoeuvre.

## 7.2 Other states

Brazil has opted to implement an approach to its own gang problem which is very similar to that used by the Central American states, in that it is based on a zero-tolerance, highly violent strategy, which endorses confrontation rather than rehabilitation. This has prompted significant criticism from the UN:

The people of Brazil did not struggle valiantly for 20 years of dictatorship or adopt a federal Constitution dedicated to restoring human rights to make Brazil free for police officers to kill with impunity in the name of security.<sup>125</sup>

The Russian Federation offers another example of the inadequacy of state protection from gang violence. Since the collapse of communism, the Russian Federation has seen a high degree of criminal gang activity, much of which has been socially visible. Appropriate measures to combat gangs through the legal and criminal justice systems do not appear to

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<sup>122</sup> Boerman, note 16 above, explains how the gangs responded to the policies by becoming increasingly violent. This includes leaving decapitated bodies in streets as a warning to Governments to cease persecution of gang members.

<sup>123</sup> *Mano Dura* has also contributed to crowded prison conditions and greater levels of violence within the institutions. For example, the number of prison massacres in Honduras increased from one incident in 2002 with 14 victims to 11 in 2004 which resulted in 175 deaths, including 104 youth members of the *maras* at San Pedro Sula Detention Center, WOLA, note 78 above, 3.

<sup>124</sup> Corsetti, note 90 above, 413.

<sup>125</sup> UN Human Rights Council, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston: addendum: mission to Brazil*, 23 March 2009, A/HRC/11/2/Add.2, available online at: <http://www.unhcr.org/refworld/docid/49f6c5602.html> (last accessed 28 May 2011).

have been taken. The murder of human rights lawyer Stanislav Markelov in January 2009 is a case in point. He was known to have been targeted by gang members following his outspoken criticism of far-right gangs in the Russian Federation. He was also representing the family of Elza Kungaeva, a young Chechen woman raped and murdered by Colonel Yuri Budanov.<sup>126</sup> He and Anastasia Baburova were gunned down in broad daylight by two ultranationalists in central Moscow.<sup>127</sup>

Some countries have, however, been more successful in curbing gang-related violence. By contrast to the policies endorsed by Honduras, El Salvador and Guatemala, Nicaragua has experienced a much less pronounced gang problem. They have not opted for a *Mano Dura* style approach but have centred their anti-gang policy on rehabilitation and reintegration.<sup>128</sup> Nicaragua's approach mirrors that taken by several Northern Hemisphere countries, such as Canada and Sweden, both of which have notably low crime rates and are without pronounced gang problems.

### 7.3 State complicity

Other states have also been accused of explicitly acquiescing in the commission of violent human rights abuses, including homicide, by certain gangs. Some of Jamaica's most notorious gangs, including the 'One Order Gang' and the 'Klansmen' have explicit links to Jamaican political parties. These links often go back decades.<sup>129</sup> When police inspector Lascelles Walsh was gunned down by gang members in May 2005, the absence from her funeral of any senior ministers from the ruling People's National Party was widely criticized.<sup>130</sup>

The Czech Republic has also been criticized for tolerating or consenting to gang violence directed, in particular, at groups of Roma. 'In July 2006, Roma living in Svitaný reportedly evacuated the town when 90 skinheads marched through the streets.'<sup>131</sup> There have been several reports of police officers turning a blind eye to crimes, including acts of extreme physical violence, directed at Roma by skinhead gangs.<sup>132</sup>

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<sup>126</sup> The case on which Mr. Markelov was working at the time of his death involved the appeal of the decision to release Mr. Budanov 15 months early for apparently 'repenting' his crimes.

<sup>127</sup> M. Schwartz, 'Man Admits to Murder of Lawyer in Moscow', *New York Times*, 6 November 2009, available online at: <http://www.nytimes.com/2009/11/07/world/europe/07russia.html> (last accessed 28 May 2011).

<sup>128</sup> Manz, note 24 above.

<sup>129</sup> CBS Broadcasting Inc., News: World, 'Jamaica Struggles to cut Government-Gang Ties', 3 June 2010, available online at: <http://www.cbsnews.com/stories/2010/06/03/world/main6544449.shtml> (last accessed 28 May 2011).

<sup>130</sup> Many of the top politicians from the ruling PNP party had attended the huge public funeral of the notorious drug don, William 'Willie Haggart' Moore in 2001, causing widespread public revulsion at the close linkage between politicians and gang members.

<sup>131</sup> IRB, *Czech Republic: Situation of Roma, including treatment by the authorities as well as in the education, employment, health and housing sectors; state protection and assistance from Romani organizations; prevalence of Roma among judges, legislators, physicians, police and teachers (January 2006 - November 2007)*, 12 December 2007, CZE102667.EX, available online at: <http://www.unhcr.org/refworld/docid/47d6544a23.html> (last accessed 28 May 2011).

<sup>132</sup> *Refugee Appeal Nos. 76259, 76260 & 76261*, New Zealand: Refugee Status Appeals Authority, 16 December 2008, available online at: <http://www.unhcr.org/refworld/docid/4a1a8c002.html> (last accessed 28 May 2011).

## 8. Conclusion

This paper sought to provide an overview of the gang phenomenon in various countries of the world, including El Salvador, Guatemala, Honduras, Jamaica, Kenya, Brazil and the Russian Federation. Though gangs in these countries vary widely in visibility, structure, activities and historical and sociological origins, they share many common characteristics. One such characteristic has been the inability of governments to respond effectively to combat their respective gang problems. Some governments, notably in Central America, have elected to pursue a heavy-handed strategy, prompting violent backlashes with considerable damage to society including serious breaches of human rights. Other governments, including those of the Czech Republic, Russian Federation and Jamaica, appear to be reluctant to acknowledge the domestic extent of the gang phenomenon at all.

Gang violence has become a feature of everyday life in some countries. Many gangs have a serious impact on their local communities, and in particular, upon young people as with the case of the *maras* of Central America. For persons fearing violence and persecution by gang members or members of the state law enforcement agencies, seeking protection elsewhere may be their only viable option and will, perhaps, remain so until effective, balanced anti-gang strategies are designed and implemented.