4

Country Conditions

Why Women and Children Flee the Northern Triangle

4.1. INTRODUCTION

As we have seen in the previous two chapters, since 2014 the flood of women and unaccompanied children migrating to the United States has raised considerable concerns by government officials as well as immigrant rights advocates.[1] While the Department of Homeland Security's (DHS) response is couched in terms of an immigration enforcement challenge, the crisis represents urgent human rights, human development, refugee, and humanitarian challenges to human rights advocates.[2] Overwhelmingly, the women and unaccompanied minors are coming from El Salvador, Guatemala, and Honduras – a region in Central America known as the "Northern Triangle."[3] Researchers and journalists have documented how corrupt officials, gang members, traffickers, and even family members take advantage of the vulnerable population through abuse, violence, and exploitation.[4] Chapter 4 provides an overview of the conditions in the Northern Triangle in order to better understand the reasons why women and children are fleeing.

In 2016, out of 188 countries assessed, El Salvador, Guatemala, and Honduras were ranked 117, 125, and 130, respectively, on the global Human Development Index, which calculates and ranks countries on life expectancy, education, and national income per capita.[5] The "Medium Human Development" of all three

[1] Congressional Research Service, *Unaccompanied Alien Children: Demographics in Brief*. September 24, 2014.

[2] Karen Musalo, Lisa Frydman, and Pablo Ceriani Cernadas, *Childhood and Migration in Central and North America: Causes, Policies, Practices and Challenges*. February 2015.

[3] Ibid., at 35.

[4] See, e.g., I. Ahn (2014). Feminist justice and the case of undocumented migrant women and children: a critical dialog with Benhabib, Nussbaum, Young, and O'Neill. *Journal of Global Ethics*, 10(2), 199–215.

[5] United Nations Development Programme (UNDP). (2016). Human Development Index.

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countries fall between Botswana and São Tomé and Príncipe.[6] All three have a life expectancy of at least seventy-one years and have at least ten expected years of education or schooling. That data alone do not explain the influx of asylum seekers, primarily unaccompanied minors and women, migrating from these countries. After all, few individuals are fleeing from neighboring Nicaragua, a country with a high poverty and ranking of 124 on the global Human Development Index.

Violence, extreme poverty, and family reunification are the central factors that cause children and adolescents to leave Honduras, Guatemala, and El Salvador.[7] In particular, crime, gang threats,[8] and other forms of violence are among the strongest determining causes for flight (amounting to more than 60 percent). Extreme poverty also plays a fundamental role.[9] So, unaccompanied minors and women from the three countries clearly are fleeing gang and other criminal violence, domestic violence, as well as poverty.

4.2. GANG VIOLENCE AND OTHER CRIMINAL ACTIVITY COMBINED WITH THE LACK OF POLICE POWER AND *MANO DURA* POLICIES

Two reports commissioned by the United Nations High Commissioner for Refugees (UNHCR) – Children on the Run[10] and Women on the Run[11] – detail the motivations behind the decision to migrate from the Northern Triangle. While violence, persecution, poverty, family reunification, and the search for employment can be the principal motivators of migration by women and unaccompanied children, the reports present a complex tapestry of interrelated causes for migration.[12]

During the summer of 2013, UNHCR researchers interviewed more than 400 unaccompanied children between the ages of twelve and seventeen from El Salvador, Guatemala, Honduras, and Mexico to learn from the children why they

[6] Ibid.

[7] Musalo, *Childhood and Migration in Central and North America*, at 41.

[8] Youth gangs in this area has been around for decades, but during the civil wars and other conflicts of the 1980s they drew little attention from the authoritarian regimes. See Thomas Bruneau. Pandillas and Security in Central America. *Latin American Research Review*, 49(2), 2014 152–72.

[9] *See generally* E. Kennedy (2014, July). No Childhood Here: Why Central American Children are Fleeing their Homes. Retrieved from: www.immigrationpolicy.org/sites/default/files/docs/no_childhood_here_why_central_american_children_are_fleeing_their_homes_final.pdf. (last accessed May 2, 2016).

[10] UNHCR. (2014). Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection. Retrieved from www.unhcrwashington.org/children. (last accessed May 2, 2016).

[11] UNHCR. (2015). Women on the Run: First Hand Accounts of Refugees Fleeing El Salvador, Guatemala, Honduras, and Mexico. Retrieved from www.unhcrwashington.org/womenontherun. (last accessed May 2, 2016).

[12] *See generally* J. Bhabha (2014). *Child Migration & Human Rights in a Global Age*. Princeton: Princeton University Press.

decided to leave their country of origin.[13] The research was conducted to "ascertain whether the surge in unaccompanied and separated children from El Salvador, Guatemala, and Honduras to the United States reflects an increase in children from these countries with international protection needs."[14] In total, 313 boys and 91 girls who had entered the United States during or after October 2011, were asked six questions:

1. Why did you want to leave your country?
2. What was the most important reason?
3. Were there any other reasons? What were they?
4. Did anyone make you suffer at some point in your country or in your home?
5. Did anyone hurt you at some point in your country or in your home?
6. Were you in danger at some point in your country or in your home?[15]

UNHCR conducted similar interviews with women asylum seekers to provide an analysis of why women were fleeing El Salvador, Guatemala, Honduras, and Mexico.[16] The interviews were conducted between August and September 2015 with 160 women, ranging in age from eighteen to fifty-seven.[17] Of those interviewed, 93 percent of the women had passed their credible fear interviews – the first step in accessing asylum procedures in the United States.[18] The remaining 7 percent of women had been granted asylum, withholding of removal, or protection under the Convention against Torture in the United States.

Every woman indicated that she fled her home country in pursuit of protection that she could not receive in her home country.[19] Ninety-four percent of the women interviewed were being held in United States detention facilities at the time of the interview; 25 percent had been in detention for less than one month, 27 percent had

[13] "Nearly all of the children from Central America were interviewed while in the custody of the Office of Refugee Resettlement (ORR), the agency within the Department of Health and Human Services to which unaccompanied and separated children apprehended by US immigration authorities are referred for custody and care until the children can be released to the care of adults while such claims for status are pending or after lawful status to remain in the US is granted." UNHCR Children on the Run, at 18.

[14] Ibid., at 21.

[15] Ibid., at 20–1.

[16] "UNHCR sought to interview women aged 18 or older with El Salvadoran, Guatemala, Honduran, or Mexican nationality. All the women interviewed had most recently entered the United States on or after October 1, 2013. In order to understand women's reasons for flight, UNHCR chose to focus the interviews for this report on women who had passed either a credible or reasonable fear screening with a US asylum officer, or had been granted some form of protection in the United States (such as asylum)." UNHCR, Women on the Run, at 12.

[17] Ibid., at 13.

[18] Ibid.

[19] Ibid.

been in detention for one to three months, and 41 percent had been in detention for more than three months.[20]

In each section below, the answers provided during the interviews with women and children begin the discussion and help illuminate the causes and conditions for the dramatic exodus from these countries of origin.

4.2.1. *Gang Violence*

A common theme voiced by migrants from all three countries in the Northern Triangle is a rise in violence due to criminal activity and increased territorial control by organized, criminal, armed groups. According to statistics from the United Nations Office on Drugs and Crime, the region is among the most violent in the world,[21] and in the case of El Salvador, the violence is not only high, but is increasing.[22] *Mara Salvatrucha* (MS-13) and *Barrio Diesiocho* or the 18th Street Gang (M-18), the two most powerful gangs in Central America,[23] alongside other groups, engage in brutal killings, assaults, robberies, and widespread extortion.[24] Both the unaccompanied minors and the women interviewed by UNHCR provided graphic details of the gang violence that drove them to leave their homes.

[20] Ibid.

[21] The United Nations Office on Drug and Crime "2013 Global Study on Homicide: Trends, Contexts, and Data." Released on April 10, 2014. Available at: www.unodc.org/documents/gsh/pdfs/2014_GLOBAL_HOMICIDE_BOOK_web.pdf.

[22] "Five Facts About Migration from Central America's Northern Triangle," January 15, 2016. Available at: www.wola.org/commentary/five_facts_about_migration_from_central_america_s_northern_triangle.

[23] Many "Central American gangs originated as re-imports from the United States back to countries of immigrant origin. Lacking legal status and seeing no way forward in the United States, many undocumented youths found solace and support in gangs. The most infamous, *Mara Salvatrucha*, was founded by Salvadorans in the Pico-Union neighborhood of Los Angeles in the mid-1980s. When undocumented gang members were apprehended and deported, gang violence was then exported to El Salvador. Transnational gang networks took hold." D. Massey, Princeton University. "Children of Central American Turmoil and the US Reform Impasse." *Scholars Strategy Network*. Available at: www.scholarsstrategynetwork.org/children-central-american-turmoil-and-us-reform-impasse. In the 1990s, US deportation policy (the Illegal Immigration Reform and Immigrant Responsibility Act, IIRIRA, of 1996) increased the deportation target to any non-citizen, including legal permanent residents of the United States, who was convicted of a crime whose sentence might last longer than a year was subject to be removed from the United States after they had served a full jail sentence. *See* "Youth Gangs in Central America: Issues in Human Rights, Effective Policing, and Prevention," WOLA Special Report November 2006, at 4. *See also* Nancy Morawetz, *Understanding the Impact of the 1996 Deportation Laws and the Limited Scope of Proposed Reforms*. Boston: Harvard Law Review, 2000. vol. 113. In a three-year period (1994–7) this deportation strategy caused the forced migration of more than 150,000 back to their "home country." *See* Youth Gangs in Central America, at 4. *See also* Margaret Taylor and Alexander Aleinikoff. *Deportation of Criminal Aliens: A Geopolitical Perspective*. Washington, DC: Inter-American Dialogue, June 1998.

[24] UNHCR, Women on the Run, at 16. *See also* Clare R. Seelke, *Gangs in Central America*, Congressional Research Service, Publication No. RL34112, 7-5700 (February 20, 2014).

4.2.1.1. El Salvador

A seventeen-year-old student named Alfonso explained that the reason he left El Salvador was due to the gang violence and threats from the gangs, in particular the gang violence associated with the rivalry between the M-18 and MS-13 gangs. According to Alfonso,

> [W]here I studied there were lots of M-18 gang members, and where I lived was under control of the other gang, the MS-13. The M-18 gang thought I belonged to the MS-13. They had killed the two police officers who protected our school. They waited for me outside the school. It was a Friday, the week before Easter, and I was headed home. The gang told me that if I returned to school, I wouldn't make it home alive. The gang had killed two kids I went to school with, and I thought I might be the next one. After that, I couldn't even leave my neighborhood. They prohibited me. I know someone whom the gangs threatened this way. He didn't take their threats seriously. They killed him in the park. He was wearing his school uniform. If I hadn't had these problems, I wouldn't have come here.[25]

Mario was another seventeen-year-old student who left El Salvador due to threats made by gangs. Mario explicitly states, "I left because I had problems with the gangs."[26] With great detail, Mario described the coercive nature of the gangs and the join-or-die choice that teenagers face:

> They hung out by a field that I had to pass to get to school. They said if I didn't join them, they would kill me. I have many friends who were killed or disappeared because they refused to join the gang. I told the gang I didn't want to. Their life is only death and jail, and I didn't want that for myself. I want a future. I want to continue studying and to have a career. That isn't possible when you're in the gang. I didn't want that for my family either. I didn't want my mother to suffer the way mothers of gang members suffer. The more they saw me refusing to join, the more they started threatening me and telling me they would kill me if I didn't. They beat me up five times for refusing to help them. The pain from the beatings was so bad, I couldn't even stand up. They killed a friend of mine in March because he didn't want to join, and his body wasn't found until May. I went to the police twice to report the threats. They told me that they would do something; but when I saw that they weren't doing anything to help, I knew I had to leave. I even brought a copy of the police report I made; but US immigration took it from me and threw it away. They said that it wasn't going to help me in this country.[27]

[25] UNHCR, Children on the Run, at 27.
[26] Ibid., at 32.
[27] Ibid.

But gang violence and threats are not just targeted at teenage boys in El Salvador. Martiza underscores that teenage girls, some as young as fifteen like Martiza, are victims of abusive and fatal gang violence. She vividly explained:

> I am here because the gang threatened me. One of them "liked" me. Another gang member told my uncle that he should get me out of there because the guy who liked me was going to do me harm. In El Salvador they take young girls, rape them, and throw them in plastic bags. My uncle told me it wasn't safe for me to stay there. They told him that on April 3, and I left on April 7. They said if I was still there on April 8, they would grab me, and I didn't know what would happen. I also wanted to come because I was excited about seeing my mother. But I was also sad about leaving my grandmother. My mother's plan was always for the four of us – her, my two sisters and me – to be together. But I wasn't sure I wanted to come. I decided for sure only when the gang threatened me.[28]

Martiza also highlighted a consistent theme throughout the interviews that many unaccompanied children and adolescents left their country of origin for numerous reasons and they struggled with the conflict they felt in deciding to leave.

Of the women interviewed in 2015, many described worrying about children they had been forced to leave behind. One El Salvadoran woman, for instance, was not able to bring all her children with her when she fled. "My daughters are still in El Salvador and I worry for their safety," she said. "I worry that they will be killed by the gangs. I took my son and grandson to the United States so they wouldn't be recruited into the gangs, but I couldn't take my daughters as well. I am very worried for them."[29]

4.2.1.2. Guatemala and Honduras

Similar to the experiences of El Salvadorans, David, a sixteen-year-old Guatemalan, and his cousin escaped being tied up and pursued by a nearby neighborhood gang. He explained that:

> [The gang] wanted me to give them money, but what money was I supposed to give them? I didn't have any. They asked me a bunch of questions, like who was my father, and who was my family. I told them my father was dead. They told me to say goodbye because I was going to join my father. They asked me if I knew who they were, if I could identify them. I said "no," because I knew if I said "yes" they would kill me. They held my cousin and me for three hours, tied up. My cousin was able to untie the rope and he helped me untie mine. We heard gun shots and we ran. They kept looking for us, but we escaped.[30]

[28] Ibid., at 34.
[29] UNHCR, Women on the Run, at 22.
[30] UNHCR, Children on the Run, at 35.

And on the unavoidable violence associated with gangs, Kevin explained that his "grandmother wanted me to leave. She told me: 'If you don't join, the gang will shoot you. If you do join, the rival gang will shoot you – or the cops will shoot you. But if you leave, no one will shoot you.'"[31]

Finally, Nelly, a young Honduran woman, said: "The gangs treat women much worse than men. They want us to join as members, but then women are also threatened to be gang members' 'girlfriends,' and it's never just sex with the one; it's forced sex with all of them. Women are raped by them, tortured by them, abused by them."[32]

Thus, in all three countries, there is a constant fear of gang violence. The children and women described the fear of being killed, having loved ones killed, of being raped, getting recruited into the gangs themselves, and having no place of safety. They made the decision to leave their country because they feared for their lives.

4.2.2. Mano Dura *Policies, Lack of Police Power, and Corruption*

The women and minors described their personal encounters with gangs in their countries as reasons for seeking asylum in the United States. El Salvador, Guatemala, and Honduras all have relatively recently transitioned to democratic states and stress the importance of police reform and the rule of law.[33] And in recent years some of these policies and strategies have been implemented specifically to combat the gang violence.[34]

Unfortunately, some of these policies were inspired by the zero-tolerance policies implemented in several North American states and cities that focused more on penalizing wrongdoers rather than on preventing the wrongs from occurring. The indiscriminate policies enacted via special laws, executive acts, and the revisions of criminal codes have allowed the police and different law enforcement agencies to

[31] Ibid., at 36.

[32] UNHCR, Women on the Run, at 16.

[33] The armed conflicts that raged across the region during the Cold War officially ended two decades ago.

[34] Beginning in the 1990s, all three countries began the process of demilitarization and democratization. According to the Washington Office on Latin America, reform and professionalization of police was a central element of the transition to a more democratic state. Reform of the police and security forces was written into the 1992 Peace Accord in El Salvador, and the 1995 Peace agreements in Guatemala. With the end of the "contra war" in Nicaragua, and the peace agreement in El Salvador, the space for reform began to emerge in Honduras, as well, and a slow reform process began there in the early 1990s, in which police and security forces were separated, and a process of police reform and professionalization began. The police reform process in Central America were generally intended to: (1) Separate police and security forces, and delineate clearly the mandates and appropriate roles and sphere of each in a democratic society; (2) Subject police practice to a system of internal controls and rules, preventing arbitrary detentions, the abuse of detainees or suspects, the excessive use of force, and extra-judicial actions by the police; (3) Strengthen the investigation capacity of the police, particularly of detective unites, thus reducing the likelihood that police would resort to coercive practices or forced confession in order to solve crime; and (4) Reduce and control police corruption. *See* Youth Gangs in Central America, at 8.

round up, incarcerate, and prosecute gang members and any youth suspected of criminal activity.[35]

As a result, these *mano dura* (iron fist or strong hand) polices have blurred the line between the military and police forces. These repressive strategies include mass detentions of youth for the crime of gang membership, relaxed evidentiary standards, and harsh prison sentences.[36] The following sections will explain how, in effect, *mano dura* has undermined the progress these countries had made in the rule of law and police reform, and has transformed the gangs from neighborhood youth gangs into international, highly organized gangs.

4.2.2.1. *Mano Dura* Laws

In July 2003, El Savadoran President Francisco Flores enacted a *mano dura* law known as *Ley Antimaras*. This law aimed to facilitate the detention and prosecution of suspected gang members based on the newly defined felony of "illicit association" and gang membership.[37] Through this new law, the police could use the presence of tattoos, hand signals, some dress codes, and physical appearance as evidence of gang membership.[38]

Also in 2003, the Honduran President, Ricardo Maduro, revised Article 332 of the Penal Code to make gang members subject to prosecution for membership in a criminal organization, regardless of whether they or their group had been convicted of any crime.[39] Honduran police acted in similar fashion to their El Salvadoran counterparts, jailing children who happened to be dressed like gang members.[40]

Although formal legal measures were not enacted in Guatemala, the police implemented suppression plans based on arbitrary interpretations of the existing laws. The police jailed youth they suspected of gang membership, detained them with little legal basis, and indicted them for drug possession.[41]

4.2.2.2. The Effect of the *Mano Dura* Laws

After the initial implementation of these strict, no-tolerance laws, homicide rates began to decrease. However, within two years the homicide rates reached and then exceeded the pre-*mano dura* rates. The unintended consequence of jailing thousands of young gang members is that the state created an incubator for new gangs, and gang membership flourished.

[35] Bruneau Pandillas and Security in Central America., 161.
[36] Youth Gangs in Central America, at 3.
[37] Bruneau, Pandillas and Security in Central America., 161.
[38] Ibid.
[39] Ibid.
[40] Ibid.
[41] Ibid.

> It was within the prisons that dozens of members from widespread regional *clicas* of the same gang were first able to establish contact with each other, recognize that their gangs consisted of a myriad of uncoordinated groups, and work together to develop more structured organizations. Incarceration enabled gang members to function as a sort of permanent assembly in which they could debate, make pacts, and decide on structures, strategies, and ways to operate that had to be observed by the members of all the *clicas*. This was made even easier, in part, by the decision of the authorities to separate prisoners according to their gang affiliation to cut down on intergang violence within the prisons. The broad-brush laws, by sweeping up gang members from several countries, also facilitated communications and connections at the international level among gang members.[42]

The increase in gang organization and violence, due in part to the *mano dura* policies, has affected the security of individuals at every level of society in the three countries. These are the societies from which the unaccompanied minors and women migrated. Thomas Bruneau, Professor Emeritus of National Security Affairs at the Naval Postgraduate School, has analyzed the effects of gangs on security in the following way:

> At the citizen security level the pandillas [street gangs] are a serious threat in that they rob, extort, kill and generally threaten large sectors of the population, especially those in poorer sections of larger cities. At the public security level they are also a security threat in that they halt public transportation routinely, to demonstrate their power, by killing the drivers, as they have periodically in Guatemala City and San Salvador. In one notorious case in the Barrio of Mejicanos in El Salvador on June 21, 2010, members of the 18th Street gang doused a bus with gasoline, burning alive the passengers. Through their extortion of businesses in the bigger cities, they also challenge public security. As there is an identified tendency for the pandillas to resemble organized crime, at the level of national security they also should be considered a threat in El Salvador, Guatemala, and Honduras, which remain fragile democracies with relatively poorly articulated political institutions and very tentative popular support.[43]

4.3. VIOLENCE AGAINST WOMEN AND CHILDREN

A second type of violence has plagued the citizens of the Northern Triangle: gender-motivated violence against women. This type of violence includes domestic (or intra-familial) violence and sexual violence. The interviews of the unaccompanied minors reveal that young men also have been victims of domestic violence.

[42] Ibid. *See also* Jose Miguel Cruz. Government Responses and the Dark Side of Gang Suppression in Central America. In *Maras: Gang Violence and Security in Central America*, edited by Thomas C. Bruneau, Lucia Dammert, and Elizabeth Skinner, 137–58. Austin: University of Texas Press; 2011.

[43] Bruneau, Pandillas and Security in Central America, p. 165.

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However, violence against women for gender-motivated reasons is a dire reality in the three northern triangle countries and is a considerable factor in the decision to migrate and seek asylum in the United States. While some studies have collected and disseminated data on violence, problems persist in fully understanding the true nature and extent of these deadly acts.[44]

Available accounts and data reveal that the escalation of lethal violence targeting women in El Salvador, Guatemala, and Honduras is the result of a confluence of factors. These factors range from the increased militarization of the state and society in response to drug wars, which directly affect or even target women, to the persistent *machismo* culture.[45] The fact that men act with impunity is a substantial obstacle to the prevention, prosecution, and punishment of these crimes of violence. The absence of judicial redress contributes to the perpetuation of the cycle of violence.[46] Inefficiency and bias in the justice system, confusion by judicial actors over the applicability of laws, and lack of access to counsel, shelters, and other support contribute mightily to the problem.[47] The women interviewed by the UNHCR in 2015 described "prolonged instances of physical, sexual, and psychological domestic violence, for which authorities provided no meaningful help. Unable to secure state protection, many women cited domestic violence as a reason for flight, fearing severe harm or death if they stayed."[48]

4.3.1. *Guatemala*

A rape survivor from Guatemala described constant and debilitating abuse. "My husband abused me verbally and physically on a regular basis. He kept me locked in the house. I wore my hair pulled back, and sometimes he would grab my hair,

[44] "Limited availability and accessibility of sex-disaggregated data stems largely from poor reporting practices, an absence of standardized definitions and coding, underreporting, and insufficient resources for training and data collection in relevant state and non-state agencies." Geneva Declaration on Armed Violence and Development: Global Burden of Armed Violence 2015: Every Body Counts, p. 88.

[45] Ibid. See also NWI (Nobel Women's Initiative). 2012. *From Survivors to Defenders: Women Confronting Violence in Mexico, Honduras and Guatemala*. Available at: http://nobelwomensinitiative.org/wp-content/uploads/2012/06/Report_AmericasDelgation-2012.pdf?ref=18. (last accessed May 12, 2016). See also HBS (Heinrich-Böll-Stiftung). 2013. *Feminicide: A Global Phenomenon: From Madrid to Santiago*. Brussels: HBS. Available at: www.boell.eu/sites/default/files/feminicide_3_.pdf. (last accessed May 13, 2016).

[46] Geneva Declaration on Armed Violence and Development, p. 93. See also HBS (Heinrich-Böll-Stiftung). 2013. *Feminicide: A Global Phenomenon: From Madrid to Santiago*. Brussels: HBS. Available at: www.boell.eu/sites/default/files/feminicide_3.pdf>. (last accessed May 13, 2016).

[47] Karen Musalo and Blaine Bookey. Crimes without Punishment: An Update on Violence Against Women and Impunity in Guatemala. *Hastings Race and Poverty Law Journal*, 10. Summer 2013, 265–292.

[48] UNHCR, Women on the Run, at 25.

shove my face near the fire, and ask 'Are you fine here?' Or he would hold a knife to my neck and ask the same thing. I had to respond 'yes.' To me, this is not a life."[49]

A Guatemalan woman, whose partner was abusive, emphasized intrinsic links between the domestic violence she experienced and the violence in her neighborhood: "Twice, I saw the gang kill two young men who approached the block. My ex required me to watch … it was a way of making me more afraid, weaker. How they screamed and begged for their life, I can't forget it."[50]

A sixteen-year-old, Lucia, described another example of grave domestic violence:

> I had problems with my grandmother. She always beat me from the time I was little. That's why I went to live with my boyfriend – and because I was lonely and sad. But after we had been living together for about a month, my boyfriend also beat me. He beat me almost every day. I stayed with him for four months. I left because he tried to kill me by strangling me. I left that same day.[51]

Guatemala explicitly outlaws violence against women and has sought to prevent such violence before it occurs. However, despite these efforts, Guatemala continues to experience high levels of violent deaths of women.

According to a Guatemalan attorney and leading expert on gender discrimination in Guatemala, "it is widely accepted [in Guatemala] that a man has the right to abuse his partner. Women are expected to endure such violence, because it is viewed as 'normal.' The abuse stems from a culture that places a man at the top of a hierarchy granting him control over all aspects of a woman's life, from her economic situation, to her politics, to her sexuality. Women are commonly viewed as the 'daughters' of their husbands, and as such, women must obey their partners. This idea furthers women's dependence on their violent partners."[52]

Guatemalan women are not only controlled by their husbands or partners, but they also often lack support from their families and communities in the process. In Guatemala's "community-oriented society, family members, the church, and other community members exert significant influence over a woman's decision to participate in the legal process, and they often pressure women not to file complaints against intimate partners."[53]

In the rare situations when women contact the criminal justice system, there are important considerations that affect whether a woman would press charges against her abuser and try to break the cycle of violence before death occurs. The first factor

[49] Ibid., at 25–6.
[50] Ibid., at 25.
[51] UNHCR, Children on the Run, at 35.
[52] *Declaration of Guatemalan attorney Elisa Portillo Nájera, leading expert on gender discrimination in Guatemala and the resulting violence that stems from this discrimination*. February 3, 2012, available at: http://cgrs.uchastings.edu/sites/default/files/Elisa_Portillo_Najera_Affidavit.pdf (last accessed September 11, 2015), at 4.
[53] Ibid.

is the economic dependency of the woman to her abuser. When women do not feel safe on their own or have economic independence, they are not likely to pursue cases. When women do take the courageous step of making a criminal complaint, prosecutors often fail to diligently undertake "the necessary investigation because either they do not see violence against women as a serious problem that warrants their attention, or they express disbelief of women's stories and subject them to 'veracity tests.'"[54] These are some of the barriers that women face when they consider seeking judicial redress and protection from their abuser. Given the options, little wonder that the interviews reveal that many women have made the decision to flee their country to escape being further victimized at home.

4.3.2. *El Salvador and Honduras*

The interlocking fates of gang violence, domestic violence, and the lack of safety or protection from the police were revealed in the interviews of women interviewed in 2015. Many of their abusive partners were members or associates of criminal armed groups. The women stated that "because these groups were often the highest powers in their neighborhoods, they did not believe the government could protect them. 'My husband was connected with the *maras*. When he abused me, I knew there was nowhere I could go,' said Claudia from El Salvador. 'There is no way to escape them.'"[55]

Another woman from El Salvador endured escalating levels of physical and sexual violence for years. "He'd demand that I have sex with him, and sometimes I did not want to. And he'd then take me by force. He said I was his," she explained. "He'd throw the table, the utensils … Sometimes he put the iron to me, hit me with a belt, cut me. I have scars. But I always took it. He'll hit the wall with his fists until his fists bleed. He has so much anger and so much hurt. This scares me. I really think he'll kill me now. He's so violent."[56]

One Honduran woman fled to the United States after years of abuse escalated to the point that her husband nearly killed her. "He severely beat her many times, often in front of her young children. Yet one incident stood out in her mind. On this evening, the woman's husband came home drunk and she did not want to be near him, so she slept on the sofa. 'In the middle of the night, I felt like water was falling on me. I woke up and he was urinating on my face and body.'"[57] The machismo behavior by men in these countries is a horrifying display of the systemic lack of respect for women.

[54] Musalo and Bookey, Crimes without Punishment.
[55] UNHCR, Women on the Run, at 25.
[56] Ibid., at 26.
[57] Ibid.

Reminiscent of similar reports from Guatemala, when women finally chose to go to the police and seek protection from the legal authorities, one El Salvadoran woman recalled that she was "standing in front of the police, bleeding, and the police said, 'Well, he's your husband.'" Another El Salvadoran woman stated: "One time the police came to our home, but they said that because this was a case of domestic violence, we could resolve it between ourselves. I do not have confidence in the police."[58]

Severe domestic violence on children is also common. Angelo revealed that his "father would get mad at me and beat me all the time. Sometimes he would beat me with a belt every day. My mother couldn't really defend me because he would beat her, too."[59]

Finally, the combination of being subjected to domestic violence and a longing to reunite with his mother, compelled twelve-year-old Oscar to flee:

> I left because I wanted to be with my mother. I miss her a lot. My grandmother mistreated me. She was mean to me. She told me to leave the house, but where was I supposed to go? The only place I could go was here. She forced me and my siblings to work. I couldn't stand to be there anymore.[60]

According to the Geneva Declaration on Armed Violence and Development, violence against women in El Salvador and Honduras has been increasing over the past several years, and the two nations are now ranked number 1 and 2 in average female homicide rates. They each experience more than ten female homicides per 100,000 women.[61] The rate for El Salvador (14.4 per 100,000 women) is more than double the base rate (or average across all other counties) for the category (6.0 per 100,000).[62] Honduras is second with a rate of 10.9 homicides per 100,000 women.[63] The staggering data of homicides against women are consistent with the fact that both countries also rank highest in terms of overall homicide rates, with seventy-three persons killed per 100,000 population in Honduras and fifty-nine in El Salvador – particularly high mortality rates due to intentional violence.[64] The level of lethal violence affecting women in El Salvador surpasses the overall rate of male and female homicides in some of the forty countries with the highest rates worldwide, such as Ecuador, Nicaragua, and Tanzania.[65]

Since 2011, when the Geneva Declaration group made its last report, Honduras has had the largest increase in the rate of female homicide, followed by El Salvador.

[58] Ibid.
[59] UNHCR, Children on the Run, at 28.
[60] Ibid., at 26.
[61] Geneva Declaration on Armed Violence and Development, p. 94.
[62] Ibid., at p. 93.
[63] Ibid.
[64] Ibid., at p. 93–4.
[65] Ibid., at p. 93.

One correlation is clear: Countries that experience a high volume of narco-trafficking – such as El Salvador, Honduras, and Mexico – are also plagued by rising female homicide rates. That has prompted human rights activists to redub the "war on drugs" the new "war on women."[66] As noted above, the *mano dura* interventions, designed to improve security and combat drug-related violence, can have the opposite effect, inadvertently increasing insecurity among the civilian population, and particularly among women.[67] Women are targeted as "drug mules," executed as an evil public message to the authorities to desist from combating drug trafficking, or killed to settle accounts with rival gangs.[68]

4.4. POVERTY

On the surface, poverty certainly contributes to migration from El Salvador, Guatemala, and Honduras. However, the strong interplay between poverty and gang membership and the violence that stems from that membership is more relevant. Experts note that "[m]ost *mareros* [gang members] suffer from poverty, unstable family backgrounds, a lack of educational, social, or professional outlets, or some combination of these factors … For marginalized youths, gang membership offers a steady cash flow, a sense of status and belonging, and, for men, access to women."[69] Therefore, poverty may be a root cause for many gang problems and related violence.

One unaccompanied minor interviewed, seventeen-year-old Mauricio, spoke about extreme poverty and rationalized that, "if they really do want to know how hard life is down there, they should go see it. There are kids who don't make it past five [years old] because they die of hunger. Their parents can't work because there are no jobs.

[66] Ibid, at p. 94. See also Fox, Edward (2012). 'Honduras' New Human Trafficking Law Faces Enormous Challenges.' InSightCrime. 13 June. Available at: www.insightcrime.org/news-analysis/honduras-new-human-trafficking-law-faces-enormous-challenges

[67] Geneva Declaration on Armed Violence and Development, p. 94. See also Carlsen, Laura (2012). 'Mexico: The War on Drugs Is Becoming a War on Women.' Open Democracy. 16 April. Available at: www.opendemocracy.net/5050/laura-carlsen/mexico-war-on-drugs-is-becoming-war-on-women

[68] Geneva Declaration on Armed Violence and Development, p. 96. See also Fox, Edward (2012). "How the Drug Trade Fuels Femicide in Central America." InSightCrime. 12 July. Available at: www.insightcrime.org/news-analysis/how-the-drug-trade-fuels-femicide-in-central-america. See also Giacomello, Corina (2013). *Women, Drug Offenses and Penitentiary Systems in Latin America*. IDPC Briefing Paper. October. Available at: http://dl.dropboxusercontent.com/u/64663568/library/IDPC-Briefing-Paper_Women-in-Latin-America_ENGLISH.pdf. See also IRIN. 2014. Women Paying Price of Latin America Drug Wars. 15 April. Available at: www.irinnews.org/report/99944/women-paying-price-of-latin-america-drug-wars

[69] Hal Brands, *Crime, Violence, and the Crisis in Guatemala: A Case Study in the Erosion of the State*, May 2010, Strategic Studies Institute, available at: www.uscrirefugees.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/Hal_Brands_Crime_ViolenceandtheCrisisinGuatemala.pdf (last accessed September 12, 2015).

Just give us a chance. Let us better ourselves so we can be something better than what we are today."[70]

In El Salvador, the majority of the population is young, with 63.7 percent under the age of 30.[71] The percentage of underweight children and adolescents is 5.5 percent, and the percentage of those with chronic malnutrition is 19 percent. Among children and adolescents whose mothers lack an education, the percentage of those underweight is 15.7 percent and of those with chronic malnutrition is 36.6 percent.[72]

Guatemala, one of the most marginalized countries in the world, has a population of approximately 15.4 million, almost half of whom are children and adolescents, with more than 17 percent under five years of age. According to the National Survey on Living Conditions in 2011, 53.7 percent of the population lives in conditions of poverty, while 13.3 percent lives in conditions of extreme poverty. The statistics for 2012 reveal that 19 percent of children aged between seven to fourteen years work in the labor market, with the highest rate of child labor in rural areas.[73] According to the United Nations Development Program, while children under the age of five suffer from chronic malnutrition, the average educational level of children and adolescents is a mere four years.[74] The data on malnutrition among children from the indigenous population are significantly higher, reaching 65.9 percent.[75]

Honduras is one of the lowest-income countries in Latin America and the Caribbean, with a poverty rate of 60 percent of households in 2011. Suffering from poverty in rural areas is worse, given severe limitations in the coverage and quality of social services. The rural population, which represents approximately 53 percent of the country's total population, has a level of poverty of 65.4 percent as of 2010.[76] Acute malnutrition affects more than half of the children aged between one and five

[70] UNHCR, Children on the Run, at 24.

[71] PNUD. *El Salvador en Breve*. Retrieved from: www.sv.undp.org/content/el_salvador/es/home/countryinfo/.

[72] Informe sobre Desarrollo Humano El Salvador 2013, Imaginar un nuevo país. Hacerlo posible, Diagnóstico y propuesta, p. 130. Retrieved from: www.sv.undp.org/content/dam/el_salvador/docs/povred/UNDP_SV_IDHES-2013.pdf.

[73] Instituto Centroamericano de Estudios Fiscales (ICEFI), Suecia, & UNICEF. (2012, diciembre). Análisis del Presupuesto General del Estado de Guatemala aprobado para 2013, Enfocado en la niñez y adolescencia y en seguridad alimentaria y nutricional. *Serie de documentos de análisis ¡CONTAMOS! 12*. Available at: www.unicef.org.gt/1_recursos_unicefgua/publicaciones/2012/Contamos12%20Presupuesto2013.pdf.

[74] Programa de las Naciones Unidas para el Desarrollo en El Salvador (PNUD). *El Salvador en Breve*. Retrieved from: www.sv.undp.org/content/el_salvador/es/home/countryinfo/.

[75] Instituto Centroamericano de Estudios Fiscales (ICEFI) & UNICEF. (2011, septiembre). Protegiendo la nueva cosecha, Un análisis del costo de erradicar el hambre en Guatemala, 2012–21. *Serie de documentos de análisis ¡CONTAMOS! 4*. Retrieved from: www.unicef.org.gt/1_recursos_unicefgua/publicaciones/contamos_4.pdf.

[76] PNUD. *Reducción de la Pobreza*. Retrieved from: www.hn.undp.org/content/honduras/es/home/library/poverty/.

years, and average schooling for the population of Honduras is a mere 4.3 years in rural regions and seven years in urban areas.[77]

4.5. GUATEMALA'S GOVERNANCE CRISIS

This section reviews a broader scope of human rights abuses and other factors that are causing women and children to flee Guatemala. Special consideration is given to non-state actors as well as the State's role in permitting, being complicit in, and perpetuating human rights abuses within its borders. The information speaks not only to specific acts, but also to the broad understanding that pervasive and enduring violence and corruption as general matters create an unlivable, intolerable environment, forcing citizens to flee and seek refuge.

According to the 2015 US Department of State Country Report on Guatemala[78]:

> Principal human rights abuses included widespread institutional corruption, particularly in the police and judicial sectors; police and military involvement in serious crimes, such as kidnapping, drug trafficking, trafficking in persons, and extortion; and societal violence, including lethal violence against women.
>
> Other human rights problems included arbitrary or unlawful killings, abuse and mistreatment by National Civil Police (PNC) members; harsh and sometimes life threatening prison conditions; arbitrary arrest and detention; prolonged pretrial detention; failure of the judicial system to conduct full and timely investigations and fair trials; government failure to fully protect judicial officials, witnesses, and civil society representatives from intimidation and threats; and internal displacement of persons because of criminal activities. In addition there was sexual harassment and discrimination against women; child abuse, including commercial sexual exploitation of children; discrimination and abuse of persons with disabilities; and trafficking in persons and human smuggling, including of unaccompanied children. Other problems included marginalization of indigenous communities and ineffective mechanisms to address land conflicts; discrimination on the basis of sexual orientation and gender identity; and ineffective enforcement of labor and child labor laws.
>
> The government cooperated with the UN-backed International Commission against Impunity in Guatemala (CICIG) and took significant steps to prosecute officials who committed abuses. Nonetheless, impunity continued to be widespread. Gangs, organized crime, and narcotics trafficking organizations committed considerable violence; corruption and inadequate investigation made prosecution of such crimes difficult.[79]

[77] UNICEF Honduras. *Contexto de pais*. Retrieved from: www.UNICEF.org/honduras/14241_16946.htm.

[78] U.S. Dept. of State, *Guatemala 2015 Human Rights Report*, 2016 (hereinafter "State Department Guatemala Report"), available at: www.state.gov/documents/organization/253229.pdf.

[79] Ibid.

4.5.1. *Government Corruption and Its Effect on Human Rights and Violence Against Women and Children*

Where do victims of crime and violence turn to if not the authorities? For people living in Guatemala – and for that matter, Honduras and El Salvador as well – it is often useless to call upon law enforcement or their government leaders to ensure that the streets in their communities are safe. This lack of safety and protection is rooted in deep-seeded corruption involving top ranking officials and trickling down to local police agencies. While many government officials operate under the control of cartels and gangs, many also participate in criminal activity of their own. "As of early November [2015], the [Guatemalan] Public Ministry reported that at least 602 public officials were arrested during the year for corruption and/or abuse of authority."[80] These included charges such as tax evasion, money laundering, and illicit association, and also included the resignations and arrests of former President Otto Perez Molina and former Vice President Roxana Baldetti.[81] There were also reports that "the government or its agents committed arbitrary or unlawful killings of journalists, human rights activists, political candidates, and trade unionists."[82] Rather than leading the country in a direction of positive reform, they are contributing to the problem.

Brutal physical attacks, death threats, and murder of civil rights activists are some of the more devastating aspects of the criminal activity supported by officials. The number of people who fall victim to the government's efforts to prevent a social uprising is shocking, while little is being done to stop the injustice. A number of nongovernmental organizations (NGOs), human rights workers, and trade unionists reported threats, violence, and intimidation. NGOs assert that the government does little to investigate reports of the violence or to prevent further incidents. NGOs also report that the government uses threats of legal action as a form of intimidation. Local human rights NGO Unit for the Protection of Human Rights Defenders reported nine killings of human rights defenders through August 2015, following seven killings in 2014. The NGO also reported 455 attacks against human rights defenders through November of 2015, compared with 813 attacks in 2014. According to various human rights NGOs, many of the attacks related to land disputes and exploitation of natural resources.[83]

Part of maintaining the status quo means covering up the criminal activity operating from within the government. All too often, journalists pay the price of government cover up by being murdered for exposing the truth. Investigative journalism in Guatemala became increasingly dangerous for journalists and their families in 2015, resulting in harassment, self-censorship, frivolous defamation lawsuits, violence,

[80] Ibid.
[81] Ibid., at 12.
[82] Ibid.
[83] Ibid., at 13.

and death.[84] Members of the press reported numerous threats by public officials, and actions by criminal organizations increased journalists' vulnerability. On March 13, 2015, unidentified attackers killed reporter Guido Villatoro as he entered his office; apparently his employer refused to make an extortion payment to a Mara 18 street gang. On March 10, assailants killed reporters Danilo Lopez and Efrain Salazar in the downtown plaza of Mazatenango for their investigative work on corruption and organized crime in several municipalities in the area. The Public Ministry arrested two police officers and several other associates who participated in the killing.

One organization that is responsible for allowing criminal activity to percolate throughout the country's police forces is the PNC National Civil Police (Policía Nacional Civil). The presence of expansive criminal enterprises coupled with an unusually young, indigent, and illiterate general population in Guatemala means that the police force is asked to respond to persistent civilian unrest. However, the lack of resources to property fund and train members of the PNC has resulted in a multitude of mishandling confrontations between civilians and police officers furthering the divide between these groups. In 2015, civilian authorities did not always have effective control over the security forces, and the government did not effectively investigate and punish abuse and corruption within the understaffed, inadequately trained, and insufficiently funded PNC. Police have been accused of "indiscriminate and illegal detentions when conducting anti-gang operations in some high-crime neighborhoods."[85] There is an implied risk that boys and young men who are of gang-recruitment age are therefore being terrorized not only by the local gangs, but also by police who may be illegally profiling them as gang members. Further, "Security officials allegedly arrested and imprisoned suspected gang members without warrants or on fabricated drug charges. There were press reports of police involvement in kidnappings for ransom … There were no reliable data on the number of arbitrary detentions, although most accounts indicated that police continued to ignore writs of habeas corpus in cases of illegal detention, particularly during neighborhood anti-gang operations."[86]

A disturbing truth is that the organizations enlisted to keep communities safe are themselves engaged in warfare, but it is even more unsettling that very little can or will be done to condemn these wrongdoers for their crimes. There is no lack of complaints filed against members of PNC who commit crimes of humanity against the public, in fact the sheer volume of complaints filed in 2015 is alarming. The Office of Professional Responsibility (ORP) reported receiving 1,215 complaints of police misconduct over nine months in 2015,[87] however, the level of impunity for security forces accused of committing crimes remained high. During the year there were thirty-one complaints of police extortion and 856 for abuse of authority. The PNC

[84] Ibid.
[85] Ibid.
[86] Ibid.
[87] Ibid.

routinely transferred officers suspected of wrongdoing rather than investigating and punishing them. Through November 2015, approximately 210 police officials were arrested. While many claims are brought against members of the PNC, most are ignored or tied up so long in the court system that the complainants never see a sentence served. One reason that organized crime in Guatemala goes unpunished and endures is that members of the judiciary may be either threatened or corrupted into not punishing guilty persons.

> Judges, prosecutors, plaintiffs, and witnesses continued to report threats, intimidation, and surveillance, most often from drug-trafficking organizations. By the end of September [from January the same year], the special prosecutor for crimes against judicial workers received 202 complaints of threats or aggression against workers in the judicial branch, compared with 171 for the same period in 2014 ... The Supreme Court continued to seek the suspension of judges and to conduct criminal investigations of improprieties or irregularities in cases under its jurisdiction. The Judicial Disciplinary Unit investigated 1,047 complaints of wrongdoing through October, held hearings on 445 complaints, and applied sanctions in 161 cases, ranging from written warnings (114 cases) to recommending dismissal (nine cases).[88]

Authorities arrested four PNC agents, accusing them of torturing four detained suspects.[89] As of September 30, 2015, the PNC and ORP accused nine PNC officers of homicide.[90] According to the Public Ministry, there were 133 complaints filed for attacks or threats against journalists and three reported killings through the end of September, compared with seventy-seven complaints and no killings for all of 2014. Some analysts attributed this significant increase to heightened tension and violence directed at the media during election years. The Public Ministry employed a unit dedicated to the investigation of threats and attacks against journalists.[91]

Vigilantism also occurs in Guatemala. Vigilante mobs have attacked and killed those suspected of crimes – often individuals suspected of rape, kidnapping, theft, or extortion. The NGO Mutual Support Group reported that in a nine-month period, twelve were injured and forty-four killed in public lynchings. Many observers attributed the acts to public frustration with the failure of police and judicial authorities to provide justice and security. This vacuum led to the emergence of local citizen security groups. In many instances, PNC agents feared for their own safety and refused to intervene. In one high-profile case, the mayor of the town of Concepcion died after being beaten and set on fire by an alleged vigilante mob that suspected him of ordering a prior attack on his political opponent and relatives.[92]

[88] Ibid.
[89] Ibid.
[90] Ibid.
[91] Ibid.
[92] Ibid., at 23.

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4.5.2. *Violence Against Women*

Guatemala's justice system also fails to protect two of its most vulnerable classes of individuals: women and children. A 2012 Small Arms Survey reported gender-based violence at epidemic levels in Guatemala and ranked the country third in the killings of women worldwide. The same year, the UN reported that two women are killed there every day.[93] One of the biggest challenges facing women in Guatemala is the country's deeply rooted patriarchal society. There is "a prevailing culture of machismo and an institutionalized acceptance of brutality against women [that] leads to high rates of violence."[94] Tragically, machismo not only condones violence but places the blame on the victim. For this reason, many crimes against women go unreported and unpunished.

The government's failure to enforce the laws and punish violence against women can be attributed to several factors. It begins with the prevailing machismo mentality that sees women as not having any rights; they are subordinate to their government and to their husbands. "Politicians don't think women are important," says former Secretary General of the Presidential Secretariat for Women Elizabeth Quiroa. "Political parties use women for elections. They give them a bag of food and [women] sell their dignity for this because they are poor."[95]

Guatemalan police also have little training or capacity to investigate sexual crimes against women.[96] Of course, rape is a crime in Guatemala.[97] And in 2008, Guatemala became the first country to officially recognize femicide – the murder of a woman because of her gender – as a crime.[98] However, the government does not effectively enforce these laws. As a result, lack of confidence in the justice system, social stigma, and fear of reprisal often cause victims to not report rape.[99] Nonetheless, and in spite of under reporting, "according to the Public Ministry, there were 11,449 reports of sexual or physical assault through October [2015]. During the same period, there were 527 convictions for sexual or physical assault on women."[100]

Domestic violence is also a serious problem in Guatemala, despite laws prohibiting domestic abuse.[101] Guatemala's law, "allows for the issuance of restraining orders against alleged aggressors and police protection for victims, and requires the PNC to intervene in violent situations in the home."[102] The State Department reports,

[93] "Nearly 20 years after peace pact, Guatemala's women relive violence," released by CNN.com, April 7, 2015, available at: www.cnn.com/2015/04/02/world/iyw-guatemala-gender-violence/
[94] Ibid.
[95] Ibid.
[96] Ibid.
[97] U.S. Dept. of State, '*Guatemala 2015 Human Rights Report*', , at 14.
[98] Where women are killed by their own families, released by BBC News, December 5, 2015, available at: www.bbc.com/news/magazine-34978330.
[99] U.S. Dept. of State, *Guatemala 2015 Human Rights Report*, at 14.
[100] Ibid
[101] Ibid., at 15.
[102] Ibid.

however, that, "The PNC often failed to respond to requests for assistance related to domestic violence … and women's rights advocates reported that few officers received training to deal with domestic violence or assist survivors."[103] Further,

> The government's Program for the Prevention and Eradication of Intrafamily Violence, under the Secretariat of Social Work, reported receiving an average of five calls daily from battered women and children … The Public Ministry reported 29,128 complaints of intrafamily violence against women and children as of July 31. The government reported 141 convictions in cases of intrafamily violence against women and children as of the end of September.[104]

And although the law stipulates that shelter be provided to victims of domestic violence, there were insufficient facilities for this purpose.[105] Given, the difficulty in finding a safe haven near home, Guatemalan women seek refuge outside the country.

Femicide in Guatemala remains a major problem. According to the State Department:

> Sexual assault, torture, and mutilation were evident in most killings. The government's national forensics agency reported 501 violent deaths of women through the end of August, compared with 507 deaths reported in all of 2014. In 2013 (the latest year for which data was available), authorities convicted 41 individuals for femicide, compared with 18 the year before. NGOs noted the severity of sentences was not always appropriate to the crime.[106]

One federal court has recognized the problem of femicide and domestic violence in Guatemala. The Ninth Circuit Court of Appeals reviewed the asylum claim of a Guatemalan woman who had testified about her fear based on the high incidence of murder of women in Guatemala, and her own status as a Guatemalan woman. She provided the immigration judge with several reports by the Guatemala Human Rights Commission, documenting the torture and killing of women, the brutality of the killings, the non-responsiveness of the Guatemalan government to such atrocities, the countrywide prevalence of the killings, and the lack of explanations for the killings. The immigration court was not impressed with the claim, but the Ninth Circuit disagreed. Given the circumstances, the appellate court said that the agency should not automatically foreclose asylum, because women, in a particular country under these circumstances, could form a particular social group for purposes of asylum.[107]

[103] Ibid.
[104] Ibid.
[105] Ibid.
[106] Ibid.
[107] *Perdomo* v. *Holder*, 611 F.3d 662 (9th Cir. 2010).

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4.5.3. *Violence Against Children*

Children have become major victims of physical abuse and sexual violence in Guatemala, in addition to being victimized by gangs. Children, some as young as seven years old, are making the dangerous journey from their homelands to the United States to escape the cycles of poverty and violence. The combination of intra-family violence, sexual exploitation by gangs and other groups, and human trafficking are all significant push factors for unaccompanied child migrants from Guatemala.

The commercial sexual exploitation of children, including sex tourism, remains a problem in the populated areas in Guatemala including, Antigua, Guatemala City, and Solola. The Office of the Human Rights Ombudsman received 477 complaints of commercial sexual exploitation of children between 2009 and October 2015: 413 complaints of child prostitution, 60 for child pornography, and 4 for child sex tourism. Of these cases, only fifteen ended in convictions. Two individuals were arrested for allegedly running a network of bars and restaurants in Peten and Jutiapa that recruited minors to work as waiters and cooks, but instead subjected them to commercial sexual exploitation.[108]

Of course, gangs are the enterprise that takes advantage of the youth. Young asylum seekers testify time and time again that a choice to remain at home was contingent on either joining or dying; little wonder that gang recruitment numbers are staggering. The US State Department reports:

> Criminals and gangs often recruited street children, many of them victims of domestic abuse, for purposes of stealing, transporting contraband, prostitution, and conducting illegal drug activities. According to the Public Ministry and the PNC, approximately 3,000 youths were involved in street gangs. The NGO Mutual Support Group reported 61 minors suffered violent deaths nationwide between January and September [2015]. NGOs dealing with gangs and other youth reported that street youth detained by police were subject to abusive treatment, including physical assaults. A significant number of unaccompanied children attempted to leave the country. Polling indicated a lack of economic and educational opportunity in the country, fear of violence, and family reunification were the primary motivations for migration.[109]

The National Hospital in Guatemala City reports that on average three children a day are treated for injuries related to gang violence, and National Police records show that in the first eight months of 2015, 237 children died as a result of the violence.[110]

Beyond the general exposure to gang violence, children are also targeted for recruitment into the gangs. While the exact reason for why very young children are

[108] U.S. Dept. of State, *Guatemala 2015 Human Rights Report*, at 18–19.
[109] Ibid., at 19.
[110] Gangs of Guatemala produce children of violence, released by CCTV America, October 25, 2015, available at: www.cctv-america.com/2015/10/25/gangs-of-guatemala-produce-children-of-violence.

increasingly becoming the primary focus for gang recruitment is difficult to pinpoint, Guatemala's Justice of Ministry points out: "[First], children are innocent [and] gangs take advantage of that. [Second], a child does not always have the ability to consider the consequences of his actions [and] is easily intimidated. In many cases, [the child] is told his family will be hurt unless he joins the gang. In addition, legally, a child cannot be tried as an adult."[111] Gangs throughout the region use these tactics to build and maintain their criminal enterprises.

Felipe's story is a prime example of the tactics used by gangs to recruit children, "I was volunteering at a community clinic when a gang member showed up and tried to force me to join the gang. He became real agitated when I said 'no.' He threatened to kill everyone in my family and I know he could. Gangs recruit like a company searching for more employees in order to distribute more product."[112]

In a country where there are limited opportunities and a lack of parental presence,[113] children easily fall victim to the gangs. Miguel's life as a gang member began when he was just eight years old: "A buddy of mine gave me a gun and told me I had to defend the neighborhood and I told him I would do it." As a gang member Miguel distributed drugs and extorted money from shop owners. He recalls the first time he shot a gun, "I don't know what came over me I just grabbed [the gun] with both hands and felt the impact as I fired it." From that moment on he began carrying around a 9 mm gun everywhere he went, "I felt like I was the king of the neighborhood … I wasn't afraid of anything."[114]

The stories like Felipe's and Miguel's illustrate how strong the influence of gangs is within these communities and how easily young children can fall into a life of crime and violence. To avoid that fate, many parents send their children away to family members in the United States. Often, they can only afford to send one or two children, leaving the rest of the family behind. The parents who risk their children's life to the perilous journey know that if their children stay, their chances of survival as gang members are slim.

Young women and children face yet another threat by staying in Guatemala: the prevalence of human trafficking. In its 2015 *Trafficking in Persons Report*,[115] the US State Department reported:

> The [Guatemalan] government identified 673 trafficking victims in 2015 … however, reported data did not specify the types of trafficking experienced. Of the 673 victims identified, at least 456 were women and girls … and 217 victims of trafficking

[111] Ibid.

[112] Americans for Immigrant Justice. (2014) Children Fleeing Central America: Stories from the Front Lines in Florida, at 14.

[113] Recruitment, Redemption in the MS-13, released by Samuallogan.com, February 14, 2006, available at: www.samuellogan.com/articles/recruitment-redemption-in-the-ms13.html.

[114] Gangs of Guatemala produce children of violence, released by CCTV America, October 25, 2015, available at: www.cctv-america.com/2015/10/25/gangs-of-guatemala-produce-children-of-violence.

[115] U.S. Dept. of State, *Trafficking in Persons Report*, 2016, available at: www.state.gov/documents/organization/258876.pdf.

> were men and boys, including at least 174 men in forced labor ... Officials, however, had difficulty recognizing domestic servitude or other types of forced labor not involving criminal networks as human trafficking; victims of these forms of trafficking were unlikely to be identified or referred to protective services.[116]

The report goes on to place Guatemala's record on human trafficking within the framework of the Trafficking Victims Protection Act (TVPA):

> Guatemala is a source, transit, and destination country for men, women, and children subjected to sex trafficking and forced labor. Guatemalan women, girls, and boys are exploited in sex trafficking within the country and in Mexico, the United States, Belize, and other foreign countries. Foreign child sex tourists – predominantly from Canada, the United States, and Western Europe – and Guatemalan men exploit child sex trafficking victims. Women and children from other Latin American countries and the United States are exploited in sex trafficking in Guatemala. Guatemalan men, women, and children are subjected to forced labor within the country, often in agriculture or domestic service, and in the garment industry, small businesses, and similar sectors in Mexico, the United States, and other countries. Domestic servitude in Guatemala sometimes occurs through forced marriages. Indigenous Guatemalans are particularly vulnerable to labor trafficking. Guatemalan children are exploited in forced labor in begging and street vending, particularly within Guatemala City and along the border with Mexico. Child victims' family members often facilitate their exploitation. Criminal organizations, including gangs, exploit girls in sex trafficking and coerce young males in urban areas to sell or transport drugs or commit extortion. Some Latin American migrants transiting Guatemala en route to Mexico and the United States are subjected to sex trafficking or forced labor in Mexico, the United States, or Guatemala.
>
> The Government of Guatemala does not fully meet the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. The government increased trafficking-related investigations, prosecutions, and convictions ...
>
> The government increased actions to address official complicity in trafficking crimes, but it did not convict any complicit officials. The government stripped of official immunity two judges accused of wrongfully absolving a government official of sex trafficking. Two officials were arrested for sharing law enforcement-sensitive information with organized criminal groups, including those allegedly linked to human trafficking.[117]

Trafficking victims are a highly vulnerable group. Without proper social and legal reintegration guidelines and services, they are at risk of further victimization.

[116] Ibid., at 185.

[117] Ibid., at 184–5. The State Department places countries onto one of four tiers, as mandated by the TVPA. The placement is based on the level of action a government has taken to combat trafficking. Tier 1 indicates that a government acknowledges the existence of human trafficking, has made efforts to address the problem, and meets the TVPA's minimum standards. Guatemala is a Tier 2 country.

> The quality of services in remaining government-run shelters remained poor; NGO shelters provided higher quality care and had the capacity to shelter victims as long as necessary to address psycho-social, re-integration, and security needs. Nonetheless, NGO shelter operators expressed concern for victims' safety upon being discharged from shelters. They cited insufficient ongoing case management and reintegration services in government shelters, leaving some victims vulnerable to re-trafficking or retaliation from traffickers – particularly those whose cases involved organized crime groups or public officials ...
>
> Victims residing in government facilities did not receive adequate legal support or witness protection. Prosecutors cited the lack of appropriate protection options for adult victims as a significant impediment to pursuing prosecutions in cases involving adults ... The government ... did not recognize children forced to engage in criminal activity as trafficking victims; officials acknowledged some of these victims may have been prosecuted or otherwise treated as criminals.[118]

In its 2015 trafficking prevention efforts, the Guatemalan government hoped to "reduce the demand for commercial sex, investigating suspects who purchased commercial sex with children," but "made no discernible efforts to reduce the demand for forced labor."[119]

4.6. CONCLUSION

The high levels of violence throughout the Northern Triangle countries of Guatemala, Honduras, and El Salvador continue unabated. That violence has forced thousands and thousands of refugees to flee to the United States to seek protection. The violence has created an ongoing humanitarian crisis.

The violence preys most heavily on women and children. The governments of the Northern Triangle are unable or unwilling to control the gangs that control neighborhoods and lives of the youth. Domestic violence also is uncontrolled, causing palpable fear in the lives of countless women.

[118] Ibid., at 185–6
[119] Ibid., at 186.