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LADB Staff

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## El Salvador Government Anti-gang Laws

by LADB Staff

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El Salvador's anti-gang law is set to expire July 2, leaving authorities pondering what to do with a measure that got President Antonio Saca lots of votes in the March 21 elections, but which turned out to be a disaster as an approach to crime and violence. The drastic law, promoted by the rightist Alianza Republicana Nacional (ARENA) as a vote getter among voters longing for security (see NotiCen, 2003-08-28), drew criticism even from the international community.

The UN Children's Fund (UNICEF) said the law, in effect since April, violates the UN Convention on the Rights of Children. EL Salvador is a signatory to the convention. UNICEF representative in El Salvador Juan Carlos Espinola said the law, which allows minors from 12 to 18 years of age to be tried as adults, is incompatible not only with the UN convention but also with El Salvador's Ley del Minor Infractor (youth-offender law) as well. The anti-gang law makes it a crime even to belong to a gang, leaving all youth at risk, since "a group of minors can be arrested for being together on a corner or for having tattoos," said Espinola.

The expiring law followed a six-month law passed in October 2003 that was not renewed. The UN Committee on the Rights of Children recommended on June 4 that the government abandon the law as it is written and invest instead in health and education. The law, based on the zero tolerance concept promoted in the region and elsewhere by former New York City mayor Rudolph Giuliani, was strongly opposed (see NotiCen, 2004-02-05) by the Faribundo Marti para la Liberacion Nacional (FMLN), the leftist opposition that now has a legislative majority.

The early objection was based in part on the law's apparent violation of Article 7 of the Constitution, which guarantees "the right to free association and peaceful public assembly, and Article 12, which establishes the principle of innocence until proven guilty in a court of law. The law has put judges and police at odds since its inception. Judges have criticized police for due-process violations and have thrown most cases out of court for lack of evidence.

Juvenile Court Chief Justice Aida Santos said last year that judges would continue to dismiss cases brought under a law that "violates a number of constitutional precepts." Government orders review. Recently, a panel of two police chiefs, two judges, and a prosecutor met as a committee under government auspices to look into reform of the law, which has, to date, managed to convict only about 5% of the more than 15,000 youths arrested under its provisions.

A major problem is the ambiguity of the statute. For instance, it says in part, "When two or more persons meet or organize to perform acts that have as their objective or result the commission of crimes, they will be punished for this act only with prison from three to eight years. Those who direct or promote the meeting or organization will be punished with prison from six to twelve years." Judge Roberto Arevalo Ortuno pointed out the problem. The police get to decide if the

meeting is for criminal purposes. "They are not psychic to determine if the gang members are thinking of committing a crime," he said.

Elsewhere, the Fundacion de Estudios para la Aplicacion del Derecho (FESPAD) released a study showing the policy represented by the law is simple repression that in no way aids in eradicating the problems associated with gangs. The organization's investigations showed that from January to April there was a large increase in the juvenile population of jails, but the anti-gang law only seeks to create the popular perception that something is being done about the government's incapacity to confront criminality "in a clear and convincing manner."

FESPAD's research demonstrated that, while authorities maintain that gangs cause most of the murders in the country, only six of those arrested in the first three months of 2004 were charged with a "crime against life," and about 84% were arrested for the vague charge of "illicit association." The research pointed to an abuse of power on the part of the police, whose arrest procedures "overreached their security functions." The Saca government seems to have gotten the message from these and other sources, including the Catholic Church and many nongovernmental organizations (NGOs), that the law is ill conceived.

For Saca, the law and the issues surrounding it were a useful campaign tool and are no longer needed for that purpose. Minister of Government Rene Figueroa has let it be known that the administration will respect recommendations and not seek to extend the law. The government will not, however, abandon its anti-gang policy, called Plan Supermano Dura (super hard-hand), and will seek other legislation, like an anti-disturbance law. Figueroa said Supermano would have at its disposal "juridical, legal tools framed constitutionally with which the Policia Nacional Civil (PNC) can pursue the criminal and protect the citizen." The government will at the same time, as recommended, utilize prevention programs, rehabilitation, and reinsertion techniques to get at the causes of anti-social gang activity.

This way, Figueroa said, Supermano will have two components, the punitive and the "human face, the friendly hand." He acknowledged, "We have to construct the bridge that returns these young people to society. We have learned that there are a good many youths with the desire to leave the gangs. They want to abandon that world of drugs and violence and are looking for the bridge that will return them to society." The new plan requires revisions in the Ley del Menor Infractor, the penal and criminal justice codes, and in the Ley Penitenciaria. NGOs and churches will play an important part, he said, in the prevention, rehabilitation, and reinsertion dimensions of the plan.

The legal changes are a direct result of UN complaints and will, presumably, eliminate inconsistencies with the requirements of the convention to which the country is obligated. Figueroa said work would be accelerated on these projects and bills to avoid a lapse between the expiration of the anti-gang law and the new plan. Asked if the new arrangement would be more satisfactory to the judges, he said, "They always said they wanted to be consulted, and since they're the ones who are going to apply the law, they are the ones who can give recommendations at the moment of construction of that which they themselves are going to apply."

### *Still tough, but at least legal*

Despite adding rehabilitation and social-service agencies into the mix, Supermano Dura will retain the character its name implies. The government still regards the gangs as responsible for 70% of murders in the country, despite the FESPAD findings, and still has to answer to the electorate for a violent-death rate of seven per day, with approximately 1,040 violent deaths in the first five months of this year, an increase over the 977 recorded for the same period a year ago. There is awareness in the government that it cannot continue to incarcerate and not adjudicate.

The prisons are overflowing. The 21 penal institutions in the country house 11,732 prisoners. They were built with a capacity of 7,312. But the decision not to extend the anti-gang law is evidence that, with the press of electoral politics behind it, a somewhat more humane and effective policy could emerge. Even the police sound like they are on board. Said PNC director Ricardo Menesses, "The problem of the gangs is not a problem of the police, but a problem of all sectors of society. With the plan we have and the help that the [administration's] working groups are going to give us to benefit the population, I guarantee success."

-- End --