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El Salvador Pursues "Pandillas" with Tough Anti-Gang Law

by Benjamin Witte-Lebhar

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Desperate to rein in the rampant violence that has made tiny El Salvador one of the world’s most dangerous nonconflict zones, President Mauricio Funes has implemented a series of tough law-and-order tactics targeting primarily the country’s notorious "maras" (street gangs).

After deciding early in his presidency to involve the military in crime-fighting activities (NotiCen, Oct. 29, 2009), Funes has since promised more police, armed them with more powerful firearms, and backed an eavesdropping law that gives authorities the right to intercept phone calls and other forms of electronic communication (NotiCen, March 11, 2010). Last month the Funes administration added yet another tool to its crime-fighting arsenal: an "anti-gang" law that outlaws the very existence of the violent maras, also known as pandillas.

Known officially as the Ley de Proscripción de Maras, Pandillas, Agrupaciones, Asociaciones y Organizaciones de Naturaleza Criminal, the law went into effect Sept. 19, prompting alerts in neighboring Honduras, Guatemala, and Nicaragua, where authorities say they are prepared for a potential migration of Salvadoran gang members.

The statute criminalizes gang involvement outright, giving police the right to arrest anyone suspected of membership in groups such as Mara Salvatrucha and Mara 18, even if the person has committed no other crime. Convictions for gang membership carry prison sentences of between seven and 10 years depending on the person’s rank within the mara hierarchy. To neutralize funding to the gangs, the law also penalizes any financial "collaborators."

"Gangs such as those calling themselves Mara Salvatrucha, MS-13, Pandilla 18, Mara Máquina, Mara Mao Mao, and criminal groups, associations, and organizations such as the one calling itself Sombra Negra are illegal and considered prohibited," the anti-gang law reads.

The maras, which take their name from an aggressive species of tropical ant, are thought to have formed in the 1980s in Los Angeles, California, among Salvadoran immigrants, many of them displaced by the country’s 1980-1992 civil war. After the war, the gangs spread south to El Salvador and other Central American countries when members returned home either voluntarily or through deportation.

The Sombra Negra (black shadow) is what Salvadoran authorities call a "social extermination" group, that is, a death squad, and is thought to be responsible for several high-profile massacres carried out against suspected gang members.

Negotiation not an option

President Funes first proposed the anti-gang law in July, shortly after suspected Mara 18 members killed 17 people in attacks on two passenger buses in San Salvador. The assailants fired bullets into one bus and burned the other. Funes called the incident an act of "terror." His administration began drafting the law almost immediately and soon presented it before the unicameral Asamblea Legislativa (AL), which approved it Sept. 1 with 78 of the 84 lawmakers voting in favor.
A former television journalist, Funes represented the left-wing Farabundo Martí para la Liberación Nacional (FMLN) in last year’s presidential election (NotiCen, March 19, 2009). He is El Salvador’s first leftist president. Moderate by his party’s standards, Funes has since distanced himself somewhat from the FMLN (NotiCen, June 10, 2010), which formed originally as a coalition of guerilla organizations involved in the war.

Working in rare unison, the rival Mara 18 and Salvatrucha gangs tried to dissuade Funes from ratifying the bill by scaring public-transportation operators into carrying out a three-day strike on Sept. 6-8. An estimated 80% of San Salvador busses stopped operating, evidence of just how much clout the violent pandillas wield in El Salvador.

"We express our sincere apologies for the inconvenience caused," a hooded Mara Salvatrucha spokesperson explained in a televised address. "We want to clarify that this measure was taken with the sole objective of being heard."

During the three-day bus strike, disguised representatives of Mara 18 also made public statements, calling on the Funes administration to veto the new law. The gangs also demanded that government officials meet them to negotiate the matter.

The president rebuffed the overtures. Refusing the requests for dialogue, Funes signed the anti-gang law on Sept. 9. "We won’t let them blackmail us. We won’t allow ourselves to be pressured," he said. "We will continue to apply the crime-fighting plan we unveiled several months ago with a heavy hand."

**Fighting fire with fire**

El Salvador’s Policía Nacional Civil (PNC) reports that murders are down slightly so far this year: 2,921 as of Sept. 16 compared with 2,938 during the same time period in 2009. While the decrease is certainly welcome, the numbers—staggering for a country with just 6 million inhabitants—are hardly comforting.

Last year, 4,365 Salvadorans were murdered, an average of 12 per day. Even if the current trend holds and the numbers finish down slightly in 2010, there are still likely to be more killings than in 2008, when the UN Development Programme (UNDP) said El Salvador’s murder ratio—52 per 100,000 residents—was already nearly six times the world average (nine per 100,000) and more than double the overall rate in Latin America (25 per 100,000).

Funes has distinguished himself from his right-wing predecessors by demonstrating a more subtle understanding of the complexity of the violent-crime issue, admitting that the prevalence of street gangs—more than just a police matter—is linked to specific economic and sociological conditions that are very much in need of attention. Earlier this year, he vetoed a bill to stiffen punishments for juvenile offenders. He has also promised to couple the new anti-gang law with legislation aimed at rehabilitating gang members.

But given the immediacy of the bloodshed, particularly when it comes to high-profile cases such as June’s "minibus massacre," Funes must also answer to a frightened public and a hungry political opposition, both of which demand immediate reassurances.

"We know that, in the long term, policies of social inclusion and [violence] prevention will show results, but in the short term, we must combat this violence with repression," the president explained in a national address shortly after the deadly bus attack.
Wary of false expectations

While enjoying widespread support in the AL, as well as backing by the church, the anti-gang law nevertheless has its fair share of skeptics, who say the new measure is all too reminiscent of the largely ineffective "mano dura" (heavy hand) approach (NotiCen, June 14, 2007) followed by past Presidents Francisco Flores (1999-2004) and Antonio Saca (2004-2009), both members of the hard-right Alianza Republicana Nacionalista (ARENA).

Human rights groups worry that the law will give police a green light to carry out widespread dragnets that would likely sweep up innocents along with legitimate gang members. They also argue that incarceration alone will not solve the problem, especially since El Salvador’s jails are already filled well beyond capacity. The prison system has an estimated 24,000 inmates, three times the number it was designed for.

"[The new law] will be ineffective because it doesn’t go to the root of the problem. Instead it’s just responding to citizen demands that there be greater efforts to confront crime. But that doesn’t solve the problem," Jeannette Aguilar of the Coalición Centroamericana para la Prevención de la Violencia Juvenil (CCPVJ) told the Inter Press Service.

"On top of that, this law lumps everyone together, whether you’re a 40-year-old gangbanger or a nine or 10-year-old [recruit]," Aguilar added. "It’s not the same thing dealing with an experienced man as it is with a boy who’s just begun on this route and has a greater possibility to be reinserted back into society."

Some judges have expressed concern as well. Judge Roberto Arévalo Ortuño says the anti-gang measure should stand up to the kind of constitutional scrutiny that has hobbled past mano dura laws. However, unless police carry out thorough investigations that carefully establish a suspect’s gang affiliation, thus giving judges the evidence base they need to hand down convictions, the law won’t be any more effective than any of the penal statutes already on the books, Arévalo told Diario Mundo.

Óscar Luna, El Salvador’s human rights ombud, agrees, saying that before charging people under the new law, police must carry out careful and responsible investigations—not only to ensure convictions of guilty parties but also to avoid violating citizen’s rights.

"People shouldn’t have false expectations that this law is going to solve the problem of the gangs," he told reporters last month. "First off, the law doesn’t spell out clearly how exactly we’re supposed to identify someone as a gang member, since things like tattoos and clothing style aren’t reliable indicators. That’s something that could hinder the effectiveness of the law."

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