

THE MERIDA INITIATIVE AND CENTRAL AMERICA: THE CHALLENGES OF CONTAINING PUBLIC INSECURITY AND CRIMINAL VIOLENCE

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INTRODUCTION

“Central America is under attack.”

—Ambassador Tomas Duenas, Costa Rican Ambassador to the United States (2007)

The rising level of violence in Central America, as well as Mexico, has created sensational headlines in the daily press and Hollywood style footage on the nightly news. The focus of this violence has been on the drug cartels and the fights among them for routes to market both in the United States and within the region. However, parallel to the drug related violence caused by the cartels are two distinct, but related issues: a pervasive sense of public insecurity and rising levels of criminal violence. Both are related, but not directly attributable, to the possession and trade in illegal drugs. Intentional homicide, assault, robbery, extortion and fraud have all risen in the last seven years leading us to ask how serious is the problem, what should national governments do to contain, if not prevent their occurrence, and what is the appropriate U.S. contribution.

This monograph will examine the reasons for the growth in public insecurity within El Salvador, Guatemala and Honduras, known as the Northern Triangle, and seek to determine the effectiveness of

government policies to restore public trust and security. In the pursuit of greater security, these governments, as well as Mexico, have called upon Washington to assist them.¹ The affected governments emphasize a “shared responsibility” to engage in reducing levels of violence, reduce consumption of illegal drugs, regulate the sale of firearms to the cartels and organized crime, as well as to confront corruption and impunity that pervade state institutions.² The problems are regional, if not global, and to be effective, the response should include both U.S. federal and state authorities.

In March 2007, the newly elected President of Mexico, Felipe Calderon, requested U.S. help to combat criminal violence and drug trafficking in the region. In July that same year, the Central American governments joined in Guatemala City to request that the U.S. government expand bilateral and regional anticrime and counter-drug cooperation.³ Following intense discussion on the nature of the request with the affected governments, particularly in Mexico, the

¹ At a summit meeting in March 2007 in the colonial town of Merida, Quintana Roo, Mexican President, Felipe Calderon sought U.S. support for a major offensive that he would undertake to curb the drug cartels and associated criminal activities. There ensued six months of negotiations between the State Department and the Mexican Attorney General’s office to determine the scope and size of that support. At the same time, the State Department discussed with the Central American governments the nature and size of support for ongoing judicial and police reform programs in those countries. These talks were kept secret for fear of provoking a backlash within Mexican political circles which historically are hostile to U.S. intervention in their internal affairs. The initial request for funds under the newly coined “Merida Initiative” was contained within the FY 2008 Supplemental Funding for the wars in Iraq and Afghanistan, and presented to Congress in October 2007. Due to the secrecy of the discussions over Merida, as well as its presentation within the Supplemental Funding for wars unrelated to Latin America, Congress delayed approval. At the urging of the Mexican government, serious discussions began in March 2008 and gained House and Senate approval in June 2008. These included additional funds for the Dominican Republic and Haiti. The President signed the bill for one year’s funding on June 30, 2008. The State Department’s Bureau of International Narcotics and Law Enforcement is charged with administering the majority of programs within the Merida Initiative, although conflict for control exists with the Department of Homeland Security (DHS).

² Clare Ribando Seelke, “Merida Initiative for Mexico and Central America: Funding and Policy Issues,” Congressional Research Service (CRS) No. R40135, Washington, D.C., January 13 2009.

³ Central American Integration System (SICA) meeting in Guatemala City, July 2007. The SICA members are Guatemala, Belize, El Salvador, Honduras, Nicaragua, Panama and Costa Rica, as well as the U.S. who was represented by Assistant Secretary for Western Hemisphere Affairs, Thomas Shannon.

State Department in October announced its request for \$1.4 billion to be spread over three years.⁴ On June 11, 2008, bi-partisan support in the House approved the Merida Initiative to Combat Illicit Narcotics and Reduce Organized Crime Authorization Act of 2008 and appropriated \$60 million for Central America, \$5 million for Haiti and the Dominican Republic and the bulk of funding, namely \$400 million, for Mexico.⁵ The Senate approved the bill on June 26 and President Bush signed the act into law on June 30, 2008.

With funding for the Merida Initiative approved for the current year and the disbursement of funds in December 2008 and January 2009,⁶ the question now presented is the level of assistance for the next two years. What should be in President Obama's foreign aid request for FY2010; how should we judge the success of the programs supported so far; how should we distribute the funding between drug interdiction/law enforcement and strengthening judicial and police institutions, as well as supporting anti-gang policies through socio-economic programs. Finally, how might the U.S. government demonstrate its "shared responsibility" by restraining the sale of lethal weapons and the transfer of bundled cash, as well as the current high level of deportations of illegal aliens which exacerbate the growth of gangs in Central America. Three year funding under the Merida Initiative should provide sufficient time to establish a comprehensive national and regional program, but this is insufficient time to contain the problem. In private meetings, members of Congress have recognized the pervasive nature of the problem and now discuss the need for a thirty year comprehensive program.⁷

Both the Bush and incoming Obama administrations as well as the pertinent committees in the 111th

Congress recognize that increased violence cannot be combated by tackling crime alone. An increased police and military presence may temporarily curtail violent crime—homicide, kidnapping, assault, rape, burglary, and car-napping. However, their presence does little to combat the underlying insecurity within society, namely the lack of trust in the police force and members of the judiciary, as well as pervasive levels of corruption among government bureaucrats. Therefore, a three pronged strategy is needed. It should be engaged simultaneously on all three fronts: police training and supervision to ensure effective community support and targeted focus on criminals; strengthened judicial and police institutions to restore public trust in the rule of law; and third, the distribution of fiscal revenues to strengthen social and economic wellbeing in local communities, including better schools, job training, and job placement. The comprehensive strategy seeks to impact citizen's trust in the democratic state and, over the longer term, enhance economic well being by reducing the societal cost of corruption and crime. Identification of relevant programs starts with the examination of causes that lead to criminal behavior and public insecurity.

This monograph examines six institutional factors that have contributed to the rise of public insecurity in Mexico and the Northern Triangle of Central America, namely Guatemala, El Salvador and Honduras. This study will focus on that triangle, recognizing that the issues in Mexico are sufficiently distinct to warrant a separate study. Costa Rica and Nicaragua must be considered also, but lower levels of violence combined with a strong democratic tradition in the former and stronger community policing programs in the latter result in less urgent need to combat criminal behavior in these southern states of Central America. This could change in the near future. The six institutional factors are:

⁴ Joint Statement on the Merida Initiative, U.S. Department of State and Government of Mexico, October 22, 2007.

⁵ FY2008 Supplemental Appropriations Act, H.R.2642 (P.O. 110-252).

⁶ In January 2009, \$105million was released for the seven countries of Central America. Of this amount, Guatemala received the greater proportion, followed by El Salvador and Honduras. The remainder was not divided equally. Funds for Haiti and the Dominican Republic were released separately.

⁷ Senator Robert Menendez (D-NJ), discussion with the author at Inter-American Dialogue dinner, Capitol Hill, Washington D.C., January 29, 2008. Comments made at the Woodrow Wilson Center for International Scholars, February 8, 2008. See www.wilsoncenter.org/index.cfm.topic_id=5949.

- Weak democratic institutions in the Northern Triangle, after protracted social conflicts during the Cold War, have failed to produce public trust in the judicial system. The courts are not considered to be independent, nor are the judges considered impartial. Trust in the judicial system remains low despite efforts to reform the system. Consequently, conflicts are not taken often to the courts for solution, but to extra-judicial procedures—often violent lynching.
- Unequal access to justice and the perceptions that unfairness pervades the judicial system. Charges of ‘telephone justice’ are common, with those in positions of power calling the judge for leniency, while the majority are condemned to lengthy pre-trial detention and court decisions that fail to take the defense, adequately, into account.
- Minimum trust in law enforcement officials, who are considered to work in complicity with the cartels, criminal networks and youth gangs either out of fear for their own safety, or for profit. As levels of violence increase and criminals become more powerful, victims report less to the police and official authorities.
- Growth of private security businesses. In response to a corrupt and ineffective law enforcement system, moderate to wealthy individuals and business enterprises hire private security agents to protect their business and their families. This has created an alternative security system with the danger of producing private militias that protect private, but not national interests.
- Growth of criminal youth gangs, known in Central America as *maras* (a vicious type of ant) which fight amongst themselves for turf and assets. Their members, *mareros*, also contract with the criminal networks (*banderos*) and drug cartels for specific criminal projects.⁸ A correlation exists between gang membership and levels of violent crime with the result that rising levels of fear and a greater sense of insecurity exist among citizens in urban areas. Consequently, during election campaigns, voters have demanded that their governments introduce draconian measures to repress youth gangs. In El Salvador and Honduras, mere affiliation with the *mara* is sufficient cause for criminal conviction.
- Finally, there exists a murder rate for 2007 in El Salvador of 61.2 for every 100,000 people. This approaches Colombia’s murder rate of 62.2 in its violent period from 1995 to 1999.⁹ The Pan American Health Organization states that violence is the leading cause of death among Latin Americans between the age of 15 and 44 and concludes that “levels of violence in Latin America—at least measured by the homicide rate—place the region as one of the world’s most violent.”¹⁰

Within the Northern Triangle of Central America, these institutional and political factors must be examined in conjunction with seven socio-economic factors.

- Pervasive poverty exists, as well as deepening levels of income disparity: 45% of El Salvador and Guatemala’s populations live below the official poverty line. However, of greater

⁸ Gangs refer to any durable, street oriented youth group whose involvement in illegal activity is part of its identity. See Malcolm Klein, “Voice from the Field Conference,” February 2005. This definition is useful for our purposes, but is not used consistently throughout Central America, where a wide range of organized groups and networks are referred to as gangs.

⁹ The generally accepted homicide rate for El Salvador in 2007 is 56 per 100,000. However, with the 2006 Salvadoran national census reducing the population by approximately 1 million people, there was a corresponding increase in the ratio of intentional homicides to 61.2 per 100,000. In comparison, the murder rate in the U.S. is 5.6 for every 100,000 persons and 1.7 per 100,000 in Canada.

¹⁰ “Iniciativa regional de datos basicos en salud; Sistema de informacion tecnica en salud,” Organización Panamericana de la Salud, Área de Análisis de Salud y Sistemas de Información Sanitaria, Washington, D.C. (2005).

relevance to the causes of criminal violence is the degree of income inequality. Within a society, this has shown to hold a direct correlation with crime levels.¹¹ Income inequality is best expressed through the Gini index, in which zero equals a state of perfect equality and 100 a state of perfect inequality. Based on these figures, Central America hosts some of the most unequal nations in the world.¹² The index for Guatemala is 55; Honduras is 54 and El Salvador 52. Less inequality is found in Nicaragua, with a Gini index of 43. However, Costa Rica has an index of 50, approaching that of the Northern Triangle thus lending weight to those who argue that multiple elements must be considered in determining the relationship between social factors and criminal activity. The consequence of greater disparity in income is increased feelings of resentment within society, often exacerbated when class divisions fall along ethnic lines, as they do with the Mayan communities in Guatemala, and between the European descended and *mestizo* communities of other Central American countries.

- The share of youth in the population contributes to social vulnerability and to crime. Universally, most street crime, and a good share of violent crime is committed by young men between the ages of 15 – 24.¹³ In 2008 in El Salvador, 38.9% of the homicides were carried out by young men 25 years old and younger.¹⁴ The victims of this violence are often other young men. Consequently, youth are considered especially vulnerable to being both victim and perpetrator of crime. The United Nations Office on Drugs and Crime (UNODC)

argues that “the greater the share of the population that falls into this high-risk demographic, the greater the vulnerability of the society.”¹⁵ Compared to Europe and the U.S., the population of Central America is very young. In its 2003 Human Development Report, the United Nations Development Program (UNDP) estimated that 36-47% of the population in Central America and Panama was 14 years old or younger.¹⁶ This demographic context does not present much hope for reducing levels of violence.

- Intra-family violence. As a consequence of war and pervasive poverty, rates of domestic violence are high. This takes the form of physical or sexual abuse against a partner, as well as children. Even when children are not direct victims, they often become indirect victims as they witness abuse between their parents, or between their parents and a close family member, including a sibling. Sexual abuse of children has been found to be a significant risk factor for gang membership, youth crime and prostitution in Central America.¹⁷
- Education: the wars in El Salvador (1980-1992), Guatemala (1960-1996) and Nicaragua (1972-1991) deprived many children of school age access to classrooms, teachers and books. This has resulted in a generation with minimal education, poor literacy and numeric skills. Furthermore, in Central America public expenditures on education as a percentage of GDP is among the lowest in the hemisphere despite the increases noted in Honduras and Nicaragua.¹⁸ Associated with these findings,

¹¹ Pablo Fajnzylber, Daniel Lederman & Norman Loayza, “Determinants of Crime Rates in Latin America and the World: an Empirical Assessment,” World Bank, Washington, D.C. (1998).

¹² Globally, there are only 18 countries for which available data shows a Gini index of 52 or greater. Eleven are found in sub-Saharan Africa, seven are found in Latin America. See, “Inequality in Latin America and the Caribbean: Breaking with History?” World Bank, Washington, D.C. (2006).

¹³ “Crime and Development in Central America: Caught in the Crossfire,” UNODC, New York (May 2007).

¹⁴ *Unidad de Estadísticas de la Policía Nacional Civil 2008*. 90.7% of the homicides were carried out by men.

¹⁵ UNODC May 2007, p. 25.

¹⁶ *Segundo informe sobre desarrollo humano en Centroamérica y Panamá*, UNDP, New York (2003) www.estadonacion.or.cr/Region2003.

¹⁷ Mauricio Rubio, “De la pandilla del barrio, a la Mara Salvatrucha, migración, pobreza, mujeres y violencia juvenil,” *Universidad Externado de Colombia—Inter-American Development Bank (IDB)*, (2007).

¹⁸ *Estado de la Región: 2008, Programa Estado de la Nación*, San Jose, Costa Rica p. 307. www.estadonacion.or.cr/estadoregion2008/index.

secondary school enrollment, as well as the average number of years of schooling for 15 year old boys, has demonstrated a direct correlation with levels of intentional homicide. A World Bank study found that higher levels of school attendance are weakly related to higher levels of criminal violence.¹⁹ This appears to contradict the findings that young men with less time to spare are less likely to commit crime, as well as the assumption that higher levels of education deliver greater awareness of cultural values that respect human life and deter bestial behavior. The authors of the World Bank study explain their finding by assuming that a greater willingness to report crime accompanies increased education.²⁰ We should also add that school enrollment does not equal school attendance, but may satisfy parents or guardians with the knowledge that the student should be in school. Truancy rates would provide a more accurate correlation to crime rates, but these are notoriously inaccurate in the Northern Triangle, if available at all.

- Unemployment: opportunities for legal and gainful employment are few. A demographic youth bulge has created a cohort of young men and women without decent education, or realistic expectations of employment. The nations of the Northern Triangle plus Nicaragua have a combined total population of nearly 30 million people, of which approximately 60 percent are under 25 years old.²¹ A U.S. Agency for International Development (USAID) report from 2006 noted that although many of these youth represent untapped economic potential for their countries, they face a much bleaker future than their parents did at the same age.²² Urban unemployment is

particularly conducive toward criminal behavior as residents may be required to pay for rent, transport and services, but do not have access to the subsistence alternatives found in the countryside. Despite the fact that official national figures for unemployment demonstrate a decline since 1990, *Latinobarómetro* survey for 2007 found that a significant number of respondents in El Salvador's cities had close association with an unemployed person. In response to the question, "in the last 12 months has any adult in your household been unemployed?" 86% of Salvadorans said yes, despite the fact that the official urban unemployment rate is only 6%.²³ Opportunities for gainful employment are few for a generation who matured alongside fathers who fought in civil wars, or who died leaving their sons and daughters to fend for themselves and protect their mothers.

- Possession and trade in illegal drugs leads to greater incentives to commit property crimes, as well as irrational behavior to carry out bestial acts of violence.²⁴ According to UNODC, the level of cocaine consumption has risen in Central America over the last ten years, although most drugs transit through the region en route to the U.S. and Europe.²⁵ The presence of police in areas where illegal drugs are traded has had a positive effect on crime levels, but the cities of the Northern Triangle tend to have a greater police presence in wealthier neighborhoods which pay higher taxes than in low income neighborhoods where drugs are more prevalent.
- Sensationalist media coverage of the gang phenomena has contributed a sense of fear and

¹⁹ Fajnzylber, Lederman & Loayza, 1998.

²⁰ Ibid.

²¹ Clare M. Ribando, "Central America and Mexico Gang Assessment," US Agency for International Development (USAID), Washington D.C. (April 2006).

²² Ibid.

²³ *Latinobarómetro Survey for 2007*, *Corporación Latinobarómetro*, Santiago de Chile (November 2007).

²⁴ Fajnzylber, Lederman & Loayza, 1998.

²⁵ UNODC Annual Report 2008, pp. 38-39. UN, New York.

insecurity in the region. Media coverage may have enhanced the reputation of those *maras* portrayed in print and on television. USAID in its 2006 report on gangs in Mexico and Central America found that rival gangs compete to see who can portray the most brutal and delinquent activities to order to acquire media attention.²⁶ Furthermore, this attention has also contributed to the popular perception that youth gangs are responsible for a majority of violent crimes in the Northern Triangle.²⁷

Current levels of violence cannot be limited to south of the U.S. border. Drug related violence has spread into Arizona, as well as other border states. In Arizona's Maricopa County, border related kidnappings rose from 48 in 2004 to 241 in 2008.²⁸ Furthermore, levels of gang violence among Latino youth are rising in U.S. cities, as well as in Mexico and Central America. We might date the beginning of this trend to the early 1980s among the jail population of Los Angeles. Young prisoners gathered together to form a defensive/offensive bond against other ethnic groups. Deported to their country of origin, the young men and women regrouped, identifying themselves by their tattoos and sign language. *Mareros* now migrate, despite impediments, across national borders. With the use of cellular phones and internet connections, they communicate globally and act regionally. Furthermore, the organized criminal networks and the drug cartels contract and subcontract with the *maras* for specific tasks, such as car-napping, kidnapping or murder. In addition to contract work, the most dependable source of income for the *maras* is extortion from local citizens and businesses, thus impacting a majority of citizens in the locality. Also, to the extent that the Immigration and Customs Enforcement (ICE) within the Department

of Homeland Security (DHS) deports young men and women to their country of origin, deportation enhances both recruitment and the transfer of knowledge among gang members.²⁹

The central thesis of this monograph is that neither police nor military action alone can contain, let alone suppress, criminal behavior and drug trafficking over the long term. A comprehensive and integrated set of institutional and social projects that takes account of the underlying causes for violent behavior and gang membership is needed. In pursuit of the institutional reforms, the state must be seen to be fairer and recreate courts, police and prison systems that are considered to be trustworthy institutions serving all citizens. The state should be seen to be effective in providing security through the exercise of police functions that sanction those convicted of crimes and respect the human rights of its citizens. It must develop policies that give its citizens access to quality education, healthcare, decent housing and the training in job skills that can provide productive employment and a legitimate source of income. The key to reducing criminal violence among a nation's youth is the creation of jobs. To the extent that the state is unable to deliver the services of a democratic society then space is given to criminal elements—drug cartels, international criminal networks and youth gangs—to take advantage and pursue their corporate and private interests. “Black Networks” arise to counter the monopoly of power granted to the state.³⁰ Over time, they can become more powerful than state institutions.

In response, the state should create a criminal justice system that is accessible, independent and capable of obtaining convictions within the rule of law. Also,

²⁶ Ribando, USAID report, April 2006.

²⁷ Lainie Reisman, Inter-American Coalition for the Prevention of Violence (IACPV), testimony before the House Committee on Foreign Affairs Subcommittee on the Western Hemisphere, June 26, 2007. Pan American Health Organization et al, “Local Initiatives and New Research on Central American Youth Gang Violence,” Conference Report, August 2005.

²⁸ The New York Times, “Wave of Drug Violence is Creeping into Arizona from Mexico, Officials Say,” (February 23, 2009).

²⁹ Section 101 (a) (43) of the Immigration and Nationality Act requires that a non-citizen be deported to his or her native land if he or she commits an aggravated felony or crime of moral turpitude. The list of crimes designated under the INA as aggravated felonies is expansive. Illegal re-entry into the USA falls within the category of crimes for which deportation is imposed. See also, Sarah J. Mahler and Dusan Ugrina, “Central America: Crossroads of the America” *Migration Information Source*, Migration Policy Institute (April 2006).

³⁰ Margaret Daly Hayes, “Challenges to Democratic Stability and Security in the Western Hemisphere,” National Strategy Information Center, Washington D.C. (2006).

the state must create a national police force that has the capacity to confront and contain criminals on the streets and to protect the innocent. In addition to its public performance, law enforcement needs to develop its investigatory capacity and build up the skills necessary to bring the arrest of alleged criminals to the conviction of those defendants before a court of law. Citizens seek access to those courts and the assurance that their case will be heard within a reasonable time by a judge that is deemed impartial from powerful interests. A court system that is perceived as independent and exercising impartial justice is an indispensable element in combating crime, as well as safeguarding democracy. Furthermore, effective public security requires economic development and, in turn, economic development can only occur if citizens feel safe to pursue productive lives.

We will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights. Unless all these causes are advanced, nothing will succeed.

—Kofi Annan, “In Larger Freedom” 2005

This paper will examine the six institutional factors in the light of efforts currently underway in the Northern Triangle to contain, if not suppress criminal behavior:

- Part I reviews the historical context within which the struggle to reform the courts and the police takes place, including a cursory review of Colombia’s transformation;

- Part II distinguishes between distinct categories of criminal groups and the problems of conflicting statistics upon which to base any evaluation of criminal behavior;
- Part III examines ongoing efforts to reform the judicial system in these countries and the obstacles that must still be overcome;
- Part IV analyzes attempts to reform the national police systems, with training in community patrolling, investigations and more sophisticated policing techniques;
- Part V evaluates indicators to determine the performance of various reform projects;
- Part VI considers the socio-economic dimensions of crime prevention and intervention, drawing upon examples from Guatemala, El Salvador and Honduras; and,
- Part VII recommends policies that the U.S. government might undertake both within and beyond the Merida Initiative.

It is essential to recognize that the principal protagonists in this effort must be the national governments and their citizens gathered in social movements, local communities, civil society, churches and through their press. The international community must play a supportive role, and should exploit new technologies to increase communication among the affected national governments, as well as to ensure that the measures taken strengthen democratic institutions.

I. HISTORICAL BACKGROUND AND THE COLOMBIAN TURN-AROUND

At the end of the Cold War, the nations of Latin America spurred on a process of reforming their respective penal codes and judicial institutions which had begun in the 1980s. The purpose was to increase access to justice and create public trust in the judiciary by establishing judicial independence, impartiality and transparency. The reforms included radical change of the penal code from the traditional, Spanish written, inquisitorial system to an oral and accusatorial legal system. Albert Binder and Andres Baytelman, prominent jurists from Argentina and Chile, respectively initiated the process in the 1980s, providing much of the analytical framework and juridical models from which the legislatures in the distinct states might select appropriate forms. A dozen prominent jurists from within the hemisphere joined in this effort. Unlike the movement to reform Latin American economies to a liberal, free market system, the criminal justice movement was indigenous and funded minimally.³¹

Both the movements to reform the criminal justice system and the economic system (known as the Washington Consensus for its strong support from the International Monetary Fund, the World Bank and the Inter-American Development Bank) were initiated contemporaneously.³² Both were based on somewhat simplistic notions that radical reform of

traditional policies—import substitution and protectionism of nascent industries, as well as replacing inquisitorial procedures with an oral, accusatorial process and restructuring of the judicial system—would result in greater economic growth and a more independent and fairer justice system, respectively. Both the economic and judicial reforms created a prevailing dogma and political force which were hard to challenge; contestation was viewed as uneducated, if not archaic. Furthermore, for approximately twenty years, both policies drove national and donor policies, including that of the United States. However, while the Washington Consensus fell into relative disrepute in the early 21st century, the World Bank considers that “the main elements of the criminal justice movement continue to enjoy widespread acceptance.”³³ The underlying magic was the conviction that the change to accusatorial proceedings would lead necessarily to a more transparent and effective management of criminal cases. It failed, however, to take into account the weakness of the institutions on which any successful reforms depended.³⁴

Efforts to reform criminal justice systems were accompanied by efforts to reform police institutions which governments had used during the Cold War to combat communism. Repressive force, the disappearance of suspects and widespread abuse of human

³¹ “[t]he criminal justice reform movement perhaps in total mobilized a billion dollars of foreign aid in the region (and only if police assistance was included),” Linn Hammergren, “Latin American Criminal Justice Reforms: Unanticipated Constraints and What We Have Learned About Overcoming Them,” World Bank Study, Washington, D.C. (2007) p. 4. Estimates of \$1 billion to reform the criminal justice system compare to sums of money and armies of economists mobilized to introduce and implement a liberal, free-market economic system.

³² The term, Washington Consensus was coined in John Williamson’s article “What Washington Means by Policy Reform,” *Latin American Adjustment: How Much Has Happened*, ed., The Institute for International Economics, Washington, D.C. (1990).

³³ *Ibid.*

³⁴ Hammergren, “Envisioning Reform: Obstacles to Overcoming Judicial Weaknesses in Latin America,” Penn State Press, College Park (2007).

rights characterized police action thus incurring deep public distrust and the identification of policemen as either hostile or corrupt. As part of the peace agreements that concluded civil wars in El Salvador and Guatemala, the parties agreed to create new police forces, to include women officers, and to train both officers and cadets in international codes of human rights. For close to a decade, successive governments maintained the political commitment to create democratic and secure law enforcement institutions. However, when confronted by increasing levels of criminal violence, old customs to dispose of suspected criminals resurfaced. In this regard, police units in Guatemala are reputed to carry out extra-judicial killings of suspects and *mareros*.³⁵

In the 1990s, technical assistance and funds flowed from USAID and the U.S. Departments of State and Justice to El Salvador, Honduras and Guatemala, as well as to Bolivia, Colombia and Paraguay.³⁶ Also, Spain and the European Union demonstrated a firm commitment to assist in the transformation of penal codes and the creation of new police institutions. However, with the diminution of USAID's assets for Latin America and the transfer of resources to nations facing threats from radical Islamic movements, governments in the western hemisphere had to proceed with less U.S. government funds for reforming both their justice and police systems. A notable exception was the \$4.6 billion transferred to Colombia to help its government confront the drug cartels, political insurgents and paramilitary forces.

Three issues have given a sense of urgency to promulgating new penal codes and reforming national police forces: the globalization of criminal networks, increased shipment of cocaine and methamphetamines from production in the Andean region to North Atlantic markets, and third, the growth of the

maras. All three elements have impacted public security in the hemisphere and the capacity of the state to contain criminal behavior. To date, with the exception of Colombia, neither the justice system, nor the security forces have demonstrated the ability to contain violence and protect citizens. Honduras is becoming a "narco-state" with judicial and police institutions open to purchase by cartel members and criminal networks.³⁷ El Salvador struggles to retain relative authority, although corruption pervades every corner of the state. Guatemala's police are wracked by corruption and the court system struggles to reform itself in the face of growing violence and public insecurity. In early 2007, recently elected President Calderon of Mexico declared war on the cartels and organized criminal networks, placing the army at the head of his assault. In fighting this war, Mexicans suffer from a steadily increasing homicide rate with attacks directed principally at the police, municipal officials and those journalists who contest the cartels.³⁸

To many observers, the growth of criminal behavior and the consistent transfer of drugs condemn these countries to the category of narco- or failed states. However, the example of Colombia provides a noteworthy exception and maybe a model for Mexico and the Northern Triangle of Central America. In the nineteenth century, Colombia was a nation wracked by protracted social conflicts between liberals and conservatives. In the 1990s, the state confronted the guerilla forces and the paramilitaries, both of whom financed their political goals through the purchase and shipment of cocaine to external markets. As a result, a wave of violence and human rights abuses was unleashed with a significant increase in homicides, massacre of *campesinos* (peasant farmers), kidnapping, extortion and sabotage of economic and energy infrastructure. Crime spiraled with police and judicial authorities both intimidated and corrupted. In the

³⁵ Demoscopia, "Maras y Pandillas, Comunidad y Policía en Centroamérica: hallazgos de un estudio integral," sponsored by the Banco Centro Americano de Integración Económica (BCIE), UN Development Program (UNDP) and Swedish International Development Cooperation Agency (SIDA), (2008) p. 29. See also, 2008 Human Rights Report: Guatemala, U.S. Department of State, Washington D.C. (February 25, 2009).

³⁶ James Michel et al., "USAID Rule of Law Achievements in Latin America," Management Systems International Inc., Washington D.C. (February 15, 2002).

³⁷ "Freedom in the World 2007," *Freedom House*, Washington D.C. (May 2008).

³⁸ Eric Olson and Diana Villiers Negroponte, "Six Key Issues in U.S.-Mexico Security Cooperation," Woodrow Wilson Center for International Scholars, Mexico Institute, Washington D.C. (2008). In January 2009, the Mexican attorney general reported 5,300 deaths related directly to confrontations with the drug cartels for the year 2008. According to Mexican press reports, this number has since risen to 5,700 that year.

period 1995-1999, under the government of Presidents Samper and Pastrana, the internal conflict resulted in an average homicide rate of 62.2 per 100,000 people, 1.8 million internally displaced persons and a 4.2% decline in GDP for 1999.³⁹ The following year, the deterioration of public confidence in the Colombian authorities reached the point that 70% of Colombians surveyed by Gallup considered that the guerrillas were capable of overthrowing the state.⁴⁰

President Pastrana approached President Clinton in 1998 seeking support in much the same way as President Calderon of Mexico approached President Bush in 2007. Pastrana found bi-partisan support within the U.S. Congress when it appropriated an initial \$1.3 billion to support Colombian plans to strengthen government institutions and extend state control over the country.⁴¹ Reforms of the police, the judiciary and tax collecting authorities have taken place, as well as socio-economic programs to create alternative livelihood projects for those formerly growing coca leaf and manufacturing coca paste. Between 2000 and 2005, the U.S. provided \$4 billion in assistance for anti-narcotics programs while Colombia spent nearly \$7 billion during that same period. In 2006, Colombia allocated \$4.48 billion for the military and police, an increase of more than 30% since 2001. This amount now accounts for 6.5% of the Colombian GDP.⁴² Furthermore, the recently enacted “wealth tax” is estimated to raise \$3.7 billion over four years to carry out President Uribe’s Democratic Security goals. The European Union has joined in this effort providing funds for alternative economic development, human rights training, humanitarian assistance and good governance.⁴³ The

Colombian government’s commitment, together with the support of the international community, to combine both serious security measures and socio-economic programs has created a comprehensive, integrated package of policies that is essential to regain state authority and move beyond the insecure or narco-state. It is the nature of this comprehensive and integrated approach to restoring public security and lowering levels of criminal violence that creates the discussion of a Colombian model for Central America and Mexico.

The work of restoring citizens’ safety is not finished, but the improvement in Colombian public security is significant and continues. The latest Gallup poll of August 2008 finds that 63% believe that President Uribe is succeeding in his campaign against corruption. (This represents a decline of 10% over the previous year.)⁴⁴ However, public support for Uribe’s campaign against the insurgency remains above 80%. Of greater relevance to this study of the Northern Triangle, favorable opinion of the Colombian police rose from 63% to 74% and opinion of the judicial system rose from 49% to 58% in the period February 2000 to March 2008.⁴⁵ This eight year effort was accompanied by the increased use of trained military forces, police training and the supply of helicopters, aircraft, and sophisticated technical equipment to improve intelligence gathering, as well as the development of alternative livelihood projects. Furthermore, Colombians grew mentally and physically exhausted from a decade of intense conflict and were prepared to reform their security and judicial structures, as well as pay a wealth tax in order to support necessary socio-economic reforms.⁴⁶

³⁹ Peter DeShazo, Tanya Primiani, Phillip McLean, “Back from the Brink: Evaluating Progress in Colombia, 1999-2007,” The Americas Program, Center for Strategic and International Studies, Washington, D.C. (November 2007).

⁴⁰ Gallup Poll No. 63, Santafé de Bogota, Colombia (2008) p.16.

⁴¹ President Andres Pastrana was head of government and tested the FARC’s good faith by granting it autonomy over a province the size of Switzerland within Colombia. This failed. In 2002, President Uribe was elected on a platform to crush both the FARC and the paramilitaries (AUC) through a program of their willingness to admit guilt, decommission weapons and receive personal amnesty for most members.

⁴² Adam Isacson, Center for International Policy, speech to the Inter-American Dialogue, Washington D.C. July 31, 2008. The combined number of Colombian police and military now amounts to 500,000 persons.

⁴³ Anne W. Patterson, Assistant Secretary for the Bureau of International Narcotics and Law Enforcement Affairs, testimony before the House Foreign Affairs Subcommittee on Western Hemisphere, Washington, D.C. (April 24 2007). www.state.gov/p/inl/rls/rm/83654.

⁴⁴ 23. Gallup Opinion Briefing, February 18, 2009. www.gallup.com/poll/115210. In August 2002, only 22% approved of the government’s efforts to counter the opponents and the drug traffickers. Pastrana consistently showed negative poll numbers (on average 30%) in support of his efforts to contain the violence through dialogue with the FARC.

⁴⁵ Gallup Colombia, Poll No. 63. Opinion towards the police p. 82 and opinion towards the judiciary p. 97 (March 2, 2008).

⁴⁶ Author’s discussions with municipal and business officials in Medellin, May 31 and June 1, 2008.

II. CRIME ANALYSIS

1. DISTINCTIVE FORMS OF CRIMINAL BEHAVIOR IN CENTRAL AMERICA

Intentional homicide forms the principal indicator of criminal acts because the presence of a corpse provides irrefutable evidence of a killing, as well as the probable method. Robbery, defined as the taking of property accompanied by violence is used to measure property crimes, although it is susceptible to widespread under reporting. Otherwise, within the Northern Triangle, reports of rape, kidnapping, extortion, theft, and car theft are notoriously inaccurate due to the victims' unwillingness to report these crimes to the police. These crimes go unreported by a population that has learned to live with daily violence and shrug off reporting to the police as a waste of time, or as an insult because the police probably knew about the incident as it occurred, or beforehand due to their complicity. This suggests that the problem of public insecurity and lack of trust in state institutions is directly related, if not entwined with levels of criminal violence.

However, generalizing about criminal behavior does not help to identify sectors, methods and financial sources. Therefore, this paper distinguishes between three broad categories of criminal perpetrators. It is important, however, to note that no typology is applicable to every criminal gang, network or cartel; objectives differ, as do activities and levels of violence. This study does not seek to examine the full

range of criminal activities ranging from property crimes to corporate fraud and tax evasion, but will focus on homicide, kidnapping, assault and extortion that have created rising levels of fear within society. At the street level, the threat to daily life is demonstrated through common criminality carried out, for the most part, by youth gangs, known as *maras*. The relationship between *maras* and organized criminal gangs remains uncertain with gang members denying relationships and police asserting certain forms of contacts. We might presume that an upward progression exists with young men graduating from the *mara* into more sophisticated and complex criminal organizations. However, not all have the necessary skills to be accepted into these organizations, many of which have international links and significant access to money. The potential loot offered by drug traffickers together with "violence techniques" promotes incentives for other forms of crime.⁴⁷ Thus, the revenue from the sale of drugs into the U.S. and Europe greases organized crime. In its annual report for 2008, the UNODC estimated annual drug sales at \$60 billion, a sum far in excess of the combined annual GDP of the countries of the Northern Triangle.⁴⁸

A. Maras

Maras, or youth gangs, currently estimated at 70,000, operate in four Central American nations.⁴⁹ Conservative estimates also consider that 19,000 gang

⁴⁷ Fajnzylber, Lederman & Loayza (1998).

⁴⁸ UNODC Annual Report 2008, p. 37.

⁴⁹ Clare Ribando Seelke, CRS report to Congress "Gangs in Central America", updated October 17, 2008 p. 3 citing U.S. Southern Command.

members, known as *pandillas*, operate along the border lands of southern and northern Mexico.⁵⁰ (The U.S. Department of Justice estimates that approximately 30,000 youth gangs with about 800,000 members operate in the USA.⁵¹) Accurate information on *maras* and gang violence is unavailable. Anecdotal information is plentiful, but it is not backed by solid research on gang numbers in Central America. Therefore statistics relating to the gangs must be considered unreliable and sometimes inconsistent.⁵² Multiple *maras* exist throughout the region, but two principal gangs operating in Central America have ties to gangs in the U.S., namely the *Mara Salvatrucha-18*, (18th Street or *Barrio 18*) and its rival, the *Mara Salvatrucha* (MS-13). The 18th Street was formed by Mexican youth in the Rampart section of Los Angeles in the 1960s. It was the first Hispanic gang to accept members from all races. MS-13 was created in Los Angeles during the 1980s by Salvadorans who sought refuge from the civil war. Both the 18th Street and MS-13 increased their presence in Central America in the 1990s after the U.S. government began deporting large numbers of undocumented immigrants, many with criminal convictions, back to their countries of birth.⁵³

The relatively low number of U.S. deportations to the five countries of Central America from 2000 to 2004 has expanded significantly.⁵⁴ Between 2000 and 2004, an estimated 20,000 criminals were sent back to Central America, many of whom had spent time in the U.S. penitentiary system for gang-related and drug offenses.⁵⁵ This number grew exponentially in 2006 and again in 2007. That year Immigration and Customs Enforcement (ICE) deported

a total of 74,446 persons to El Salvador, Guatemala and Honduras. Of this number, 14,100, approximately 20%, had criminal conviction records.⁵⁶ Figures for the first nine months of 2008 reflect an ever increasing number of deportations to the countries of the Northern Triangle. As of September 28, 2008, a total of 72,017 persons had been deported, of whom 15,226, or 21%, had criminal conviction records. The majority of those deported were caught up in ICE sweeps and deported on ground of their inability to prove citizenship, or permanent residency.⁵⁷ This has resulted in a virtual and continual cycle by which members of a *mara* commit a crime in the U.S., are deported, find their way back to the U.S. to avoid jail time in their country of origin, are charged with the felony of illegal re-entry and are subsequently deported again.⁵⁸

CENTRAL AMERICAN GANG MEMBERSHIP ESTIMATES

COUNTRY	NUMBER OF GANGS	TOTAL MEMBERSHIP	AVERAGE NUMBER OF MEMBERS PER GANG
Panama	94	1,385	15
Nicaragua	268	4,500	17
Guatemala	434	14,000	32
Belize	2	100	50
Honduras	112	36,000*	321
Costa Rica	6	2,660	443
El Salvador	4	10,500	2,625
TOTAL		69,145	

Source: UNODC, Hernandez (2005)

⁵⁰ Ribando, CRS report to Congress, "Gangs in Central America," August 2007.

⁵¹ House of Representatives, Committee on International Relations, Subcommittee on the Western Hemisphere Hearing, "Gangs and Crime in Latin America," April 20, 2005. These figures suggest multiple, relatively small, gangs with continually fracturing leadership and membership.

⁵² The range in the number of gang members provided by national, UN, U.S. government and private studies prevent us reaching a conclusion on the exact number of *maras* in any of the Central American countries.

⁵³ Deportation increased significantly after passage of the Illegal Immigrant Reform and Responsibility Act of 1996. See Ribando, "Anti-Gang Efforts in Central America: Moving Beyond *Mano Dura?*" paper delivered April 10, 2007, Center for Hemispheric Policy, University of Miami.

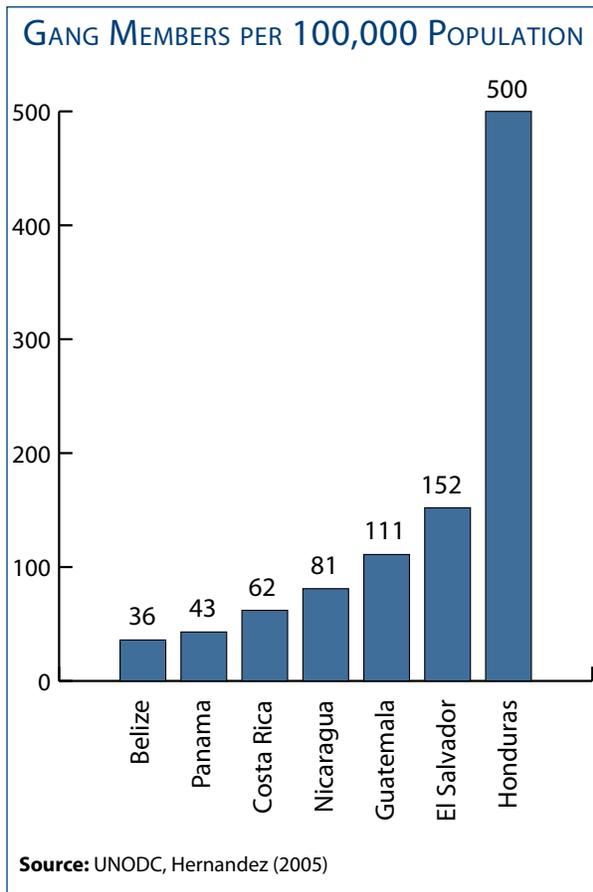
⁵⁴ Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica. Note that Belize and Panama are not included in the report.

⁵⁵ Ribando Seelke, CRS Report for Congress, "Gangs in Central America", updated October 17, 2008 p. 7.

⁵⁶ Ibid, p. 7 based on information provided by ICE, Office of Detention and Removal, September 28, 2008).

⁵⁷ "Migration Information Source," December 2008, Migration Policy Institute, Washington D.C.

⁵⁸ USAID report (2006) p. 16.



among females in being affiliated with a youth gang, even if the values and rules are traditionally masculine. My observation in Guatemala was that a girl friend formed a close allegiance to the gang, often because of a drug habit, but her boyfriend did not consider her to be a full member with the duties required of this status. A recent report commissioned by the Swedish International Development Cooperation Agency (SIDA) and the *Banco Centro Americano de Integración Económica* (BCIE) confirms this impression. It found that young women aspire to association with the gang, but are not treated as equals. Instead, they are assigned to subordinate roles.⁶¹ Despite the failure to achieve full membership, female pride in gang affiliation is characteristic of a strong cohesive bond among those affiliated with a particular *marra*.⁶² Four years ago in Guatemala, initiation into the 18th Street gang required the rape, disfigurement and murder of a young woman. This practice has stopped and, for the most part, a *marero* does not murder non-gang members.⁶³ Terminating this brutal form of initiation may account for the increased desire of women to be associated with a particular *marra*.

Local *maras* have distinct names and indicators of social identity, such as hand signs, tattooing, graffiti and clothing that are unique to a particular gang. They are horizontally organized with numerous subgroups and no central leadership to set strategy and enforce discipline.⁵⁹ Membership consists mainly of young men and women between 12 - 24 years of age, but graduation from the gang appears to be difficult so that we now find adults “well over the age of 24.”⁶⁰

Although 90% of gang members are male, 40% of those interviewed, and claiming to be members of a *marra*, were women. This reflects a sense of pride

Based upon discussions with former *mareros* in Guatemala, I was told that drug consumption is prohibited and addiction leads to expulsion from the *marra* with the threat of assassination.⁶⁴ However, the BCIE report outlines growing local consumption of cocaine and methamphetamine. The discrepancy between the spoken word and the statistics on increased local drug consumption suggest double speak among gang members in their conversations with external researchers.⁶⁵ It also suggests that consumption continues despite official *marra* policy. The sanction of expulsion may not necessarily be carried out, particularly if an expelled gang member is free to join

⁵⁹ Ribando, “Anti-gang efforts,” (April 2007) p. 2.

⁶⁰ Ibid, p. 1.

⁶¹ “*Maras y pandillas, comunidad y policía en Centroamérica*,” BCIE (October 2007) p. xvi.

⁶² Malcolm Klein, University of Southern California, “Local Initiatives and New Research on Central American Youth Gang Violence,” Washington Office on Latin America (February 5, 2005). Klein defines “youth gangs” as “any durable, street-oriented youth group whose involvement in illegal activity is part of its identity.”

⁶³ Vice President of Guatemala, Dr. Eduardo Stein’s presentation at the IDB (October 2007). See also, Federico Breve, “The MARAS: A Menace to the Americas,” *Military Review*, Vol. 87: 4 (July/August 2008).

⁶⁴ Author’s conversations with two former *mareros*, Villa Nueva, Guatemala City (June 5, 2008).

⁶⁵ “*Maras y pandillas, comunidad y policía en Centroamérica*,” BCIE (October 2007) pp. 10-11.

another *mará*, or surreptitiously squeal to government authorities. However, increased consumption has to be paid for and the proclivity of gang members to engage in criminal behavior, necessarily, will increase.

Both the 18th Street and MS-13 conduct business internationally, engaging in kidnapping, robbery, extortion, assassination and the trafficking of people and contraband across borders. Both have strong links to gangs in Fairfax County, Virginia, as well as the ongoing relationship with gangs in Los Angeles.⁶⁶ In recent years, gang homicides have accounted for more than half of the murders committed in Los Angeles.⁶⁷ In 2006, the city of Los Angeles reported that its police efforts “lacked targeting and co-ordination,” and its prevention programs were “mostly small, isolated and under-funded.”⁶⁸ In response to this criticism, Los Angeles Mayor, Antonio Villaraigosa announced a new gang reduction strategy that targeted prevention, re-entry and suppression programs for specific high-crime neighborhoods. In November 2008, he allocated \$5.1 million of the city’s budget for the Gang Reduction Plan bringing expenditures for crime reduction to a total of \$168 million. Also, Villaraigosa’s Gang Prevention Plan was modeled after a federal government pilot project in Boyle Heights, another high crime neighborhood in Los Angeles that had succeeded in reducing gang violence by 25% from 2006 to 2007.⁶⁹ The Boston police also report successful strategies to counter gang violence. It has focused particularly on intervention strategies to address the needs of those seeking to leave the *mará*. Intervention programs are carried out most successfully by former gang members who understand the inherent dangers of leaving the gang, as well as the stresses of trying to adapt into mainstream life. Boston and Los Angeles have also made funds available for psychological assistance and help in finding jobs.

Despite the press coverage of youthful gang members, decorated with body tattoos, gracing the front pages of daily newspapers in the region after arrest, the UNODC attribute rising crime rates in Central America more to organized criminals and drug traffickers than to youth gangs.⁷⁰ To date, insufficient research has been done to distinguish between criminal acts carried out separately and independently by criminal networks and the *mará*, from acts carried out by *mareros* under contract to the criminal networks. Furthermore, the degree to which *mareros* subcontract with the cartels to carry out specific tasks, such as revenge killing or stealing cars is assumed and publicly reported, but has yet to be proven. No firm data has been published yet to establish contractual relationships with the *mará*.

B. Organized Criminal Networks

For the most part, organized criminal networks, or *banderos*, have a hierarchical leadership structure, with capital and manpower to run sophisticated criminal enterprises. They usually have a corporate and hierarchical structure dedicated to financial profit for the corporation and the destruction or co-optation of state institutions. Intentional homicides attributed to criminal networks in Central America reached 27.8 per 100,000 as compared to 8.6 per 100,000 worldwide.⁷¹ The illegal firearms trade, human trafficking, trafficking in human organs, and the shipment of illicit goods and materials are attributed to transnational organized crime.⁷²

These criminal organizations are also reputed to reach informal agreements with state officials through which the criminal group or syndicate makes regular monthly payments thus binding state officials to carry

⁶⁶ At a meeting of the Washington Office on Latin America (WOLA) in January 2008, the Fairfax police were willing to describe their recognition of returning *mareros* and their acquaintance with these young men who sought to make a life in the U.S.

⁶⁷ Ribando, “Anti-gang efforts,” (April 2007) p. 4.

⁶⁸ Ibid.

⁶⁹ City of Los Angeles, Gang Prevention RFP 2007 (April 18, 2007) and Gang Reduction Plan (November 6, 2008) www.lacity.org/mayor/villaraigosaplan/publicsafety/index.htm.

⁷⁰ UNODC, “Crime and Development in Central America: Caught in the Crossfire,” May 2007. The former Honduran Security Minister blamed the *maras* for the bulk of the crime, but the Honduran police have not released statistics to back up this claim. Research indicates that less than 5% of all crime in Honduras is committed by people under 18 years of age and underage youth generally comprise a large share of *mará* membership. In Guatemala, a recent police study of the 427 murders that occurred in January 2006 attributed only 14% to youth gangs.

⁷¹ USAID report (2006) p. 2.

⁷² UNODC Annual Report 2007, p. 74.

out the organization's purposes.⁷³ The syndicate also supervises those in its pay, as well as its own members to ensure discipline. Furthermore, the criminal organization also demands a "tax" from local businesses and citizens in exchange for its preservation of safety. A precarious balance is created in which the criminal organization becomes the provider and arbiter of local security. So long as no external party disturbs this equilibrium, relative calm appears to exist. The intervention of activist law enforcement authorities that seek to break up the equilibrium creates short term violent spasms, noted by increased homicide levels, until the criminal network is sufficiently weakened that it breaks up or withdraws from the community. Until that intervention occurs, a symbiotic relationship frequently develops between the police and the criminal elements in which mutual benefits serve to maintain local security.

In maintaining this local security equilibrium, the roles of organized criminal networks and the *mara* often become indistinguishable. This is noted in a 2002 survey of Honduran citizens in which respondents were asked to rate—from irrelevant to very high—the influence of both *maras* and organized crime. Within the northern Sula valley, respondents demonstrated that they barely distinguished between the two groups. Crimes are attributed to both the *mara* and organized criminal groups with the citizen confusing, if not remaining ignorant, of the type of organization that carried out local crimes.⁷⁴

The public's close association of the two groups may reflect the reality that *mareros* aim to graduate from the *mara* into the criminal organization or network. Clare Ribando noted this desire in her conversation with Bernardo Bonilla, a *marero* who sought to graduate into the network, but was apprehended before this could be accomplished.

The profile of Bernardo Bonilla, aged 24 and also known as *loco* (crazy), demonstrates the

desire to graduate from the *mara* to the international criminal networks. Bonilla was an ambitious gang member who had evolved from local neighborhood operations to more complex international criminal activities. He had built strong networks with *mareros* in prisons in other countries. He understood the potential of gang organizations and sought to become a member of a lucrative organized crime syndicate. He therefore groomed himself to assume the tasks necessary for a sophisticated, international criminal enterprise. He was arrested, however, before being accepted into the crime syndicate.⁷⁵

What remains unclear is the reason for seeking to transfer from the *mara* to the criminal organization. Is the pull toward the organization driven by money, reputation or age? Does it become necessary for a former *marero* to graduate into a criminal network to maintain an equivalent lifestyle, and what alternatives exist for him or her?

Analysts differ on the extent of inter-relationship between the criminal networks and the *maras*. A 2007 Congressional Research Service (CRS) Report for Congress found the *mareros* are "generally considered to be distinct from organized criminal organizations because they typically lack the hierarchical leadership structure, capital and manpower required to run a sophisticated criminal enterprise."⁷⁶ However, USAID's 2006 report found that,

...while there is no direct ascension from street or neighborhood gangs to organized crime, yet it is believed that some narco-bosses work closely with the leadership of the most sophisticated transnational gangs. In general, the bosses do not have relationships with members below the national or regional level, but lower levels maintain close

⁷³ Organized crime in Villa Nueva, Guatemala is reputed to pay between 4 – 5,000 *quetzals* to policemen per month. (1 *quetzal* = 0.9 U.S.dollar.) This is four to five times a policeman's official salary.

⁷⁴ Mauricio Rubio, 'La Violencia en Honduras y la Región del Valle del Sula,' *Serie de Estudios Económicos y Sectoriales*, IDB (2002).

⁷⁵ Ribando, USAID report (2006).

⁷⁶ Ribando, CRS report (August 2007) p. 1.

relations to ensure drug distribution in specific regions or neighborhoods.⁷⁷

This suggests horizontal relationships between the leadership of the cartels and the organized criminal networks. Horizontal relationships also exist between the leadership of international *maras* and organized criminal networks. However, we know little about communication among *mara* leaders. In this respect, we must distinguish between large and powerful international gangs, such as the MS-13 and the 18th Street, and local gangs. Also, leadership of local *mara* shifts frequently. The desire of elder *mareros* to enter the criminal networks has been reported, but most individuals fail to be accepted because they lack the skills necessary to operate in a sophisticated international business environment.

Vanda Felbab-Brown of The Brookings Institution believes that a collaborative relationship has developed over time between the criminal networks and the *maras* by which leaders of the networks subcontract out specific tasks to the *maras*.⁷⁸ At times this relationship is highly competitive, if not antagonistic, but this can fluctuate with the recognition of mutual benefits and the willingness to cooperate. Both criminal networks and the *maras* use each other for particular purposes, but neither depends upon the other for survival. Her view is consistent with oral comments that I gathered from Guatemala City's 15th precinct, where it was unspoken but implicitly recognized that the police and the leadership of the criminal networks, as well as the *mara*, create a business-like relationship that is both civil and aggressive.⁷⁹ The police agree informally upon geographical areas to patrol and areas in which they will not enter,

except in the case of homicides to collect the body and conduct minimal questioning.

Oscar Bonilla, President of El Salvador's Council on Public Security, considers that the Salvadoran *maras* are linked to both the criminal networks and the drug cartels for three purposes: local drug sales, disposal of a hostile person, and the agreement to facilitate passage of drugs through a designated area.⁸⁰ In his opinion, the *maras* maintain loose relationships with the cartels, which gives them deniability, but permits contracting, or sub-contracting, on an ad-hoc basis.

The state co-optation of criminal networks to guard certain urban spaces reflects the reality that the state no longer holds a monopoly of power, but must adjust its behavior and take into consideration the activities of criminal networks, which have the capacity to harm to those who break their rules. In short, the state's effective authority is limited by the actions of the criminal networks, *maras* and the cartels.⁸¹ Not only do criminal enterprises control specific localities, but also allegiance to the cartel or criminal network is bought through bribery and corruption. In effect, "the state is paralyzed and becomes somewhat impotent."⁸² In the face of this impotence, ordinary citizens have demanded that the government impose its authority through the use of the armed forces. In El Salvador, citizens' demand for security accepted the presence of the military to patrol areas and operate under the directions of the civilian police.⁸³ In Guatemala, with a homicide rate of 47 deaths for every 100,000, government authorities, including local police, have responded by resorting to extra-judicial killing.⁸⁴ In response to citizen calls for greater security, President Calderon of Mexico called up the

⁷⁷ Ribando, USAID report (2006) p. 14.

⁷⁸ Vanda Felbab-Brown, "The Coca Connection: Conflict and Drugs in Colombia and Peru" *Journal of Conflict Studies*, winter 2005, pp. 105-106. Also, Gabriel Aguilera Peralta, Lawyer for USAC, Guatemala presentation within "Security Sector Reforms in Latin America: Impact of Irregular Threats," National Defense University, Center for Hemispheric Defense Studies (NDU), Washington D.C. (September 10, 2007.)

⁷⁹ Author's discussion with members of the police force, Villa Nueva, Guatemala City, June 2008, and Felbab-Brown at The Brookings Institution (May 2007).

⁸⁰ Oscar Edmundo Bonilla, President of El Salvador's National Council on Public Security and special advisor to President Saca. Paper presented to the NDU conference (September 10, 2007).

⁸¹ Gabriel Aguilera Peralta, former Vice Foreign Minister of Guatemala, Deputy Secretary of Strategic Analysis, President of the Friends of the Peace Accords and now Co-coordinator of the Project, "Formación de organizaciones sociales en temas de seguridad" of the International Alliance for the Consolidation of the Peace Agreements. Paper presented to the NDU conference (September, 2007).

⁸² Ibid.

⁸³ Bonilla paper presented to NDU conference, (September 2007).

⁸⁴ Aguilera. See also, The U.S. Department of State's Country Report on Human Rights Practices - Guatemala 2007.

Mexican armed forces to patrol urban neighborhoods, eradicate marijuana crops and seek to control the drug cartels, as well as youth gangs and criminal networks.⁸⁵

C. Drug Cartels

In Latin America, drug cartels are dedicated to the production and distribution of cocaine, marijuana, methamphetamines and some heroin. According to recent estimates 88% of the cocaine destined for the U.S. transits the Central America/Mexico corridor.⁸⁶ Sparsely populated areas in Central America, including the Laguna del Tigre Park in Guatemala, Mosquitia in Honduras and the Atlantic coast of Nicaragua provide ideal way-stations for refueling, repackaging and stockpiling.⁸⁷ They are remote with no high-way access to the center of their respective countries. Entrance is dependent upon boats and single engine aircraft. Having lived in the refugee camp of Mocoron in La Mosquitia in 1982 and 1983, I experienced the dis-connection from the capital city during the rainy season. Historically, local drug consumption was not a problem, but that is changing as the cartels seek to develop local markets along their trans-shipment routes. Of the 150 tons of cocaine estimated to pass through Guatemala each year, it is estimated that 10% remains within the country for local consumption.⁸⁸

Additional to its use as a transit corridor to the U.S., there is also trafficking of drugs between Central American countries for domestic use. Seizures, dating back to 2006, indicate that cocaine may be transported from El Salvador to Honduras. Also, transnational trafficking of crack has grown across national borders, despite its bulkier and more easily identifiable form. This suggests that borders present minimum, if any, obstacle to the movement of illicit drugs in Central America.

Although drug trafficking is not the focus of this paper, the income derived from the cartels provides the financial incentives, for both organized criminal organizations and, to a growing extent, the *maras*. At an individual level, the consumption of drugs leads also to irrational behavior and the loss of restraint that the predominant Catholic culture might require. At a macro-level, the consequence of drug trafficking is to infuse sums of money far in excess of the resources available to local governments. No matter, the salary raise for local policemen, the cartels can always offer more. Distributing large sums of money has enabled the cartels to co-opt local authorities and ensure their helpful behavior, or at least their silence. It has contributed significantly to increased corruption among the judiciary and the police, with the potential to infiltrate the armed forces drawn into the “drug war”. In the Northern Triangle and many of the Mexican states, corruption has destroyed the relationship of trust between the people and the state, posing a significant threat to the functioning of democratic institutions.

Recognition of the three broad categories, as well as the relationship that exists among them gives rise to the question of what impact have the criminal networks had on society? What do the statistics for homicide, robbery and assault demonstrate? Since the implementation of judicial reforms in the mid-1990s, what does the data show us in the rate of criminal enterprise? Can we demonstrate a leveling off, or decline in criminal behavior?

2. CHALLENGE OF CREATING SYSTEMATIC INFORMATION

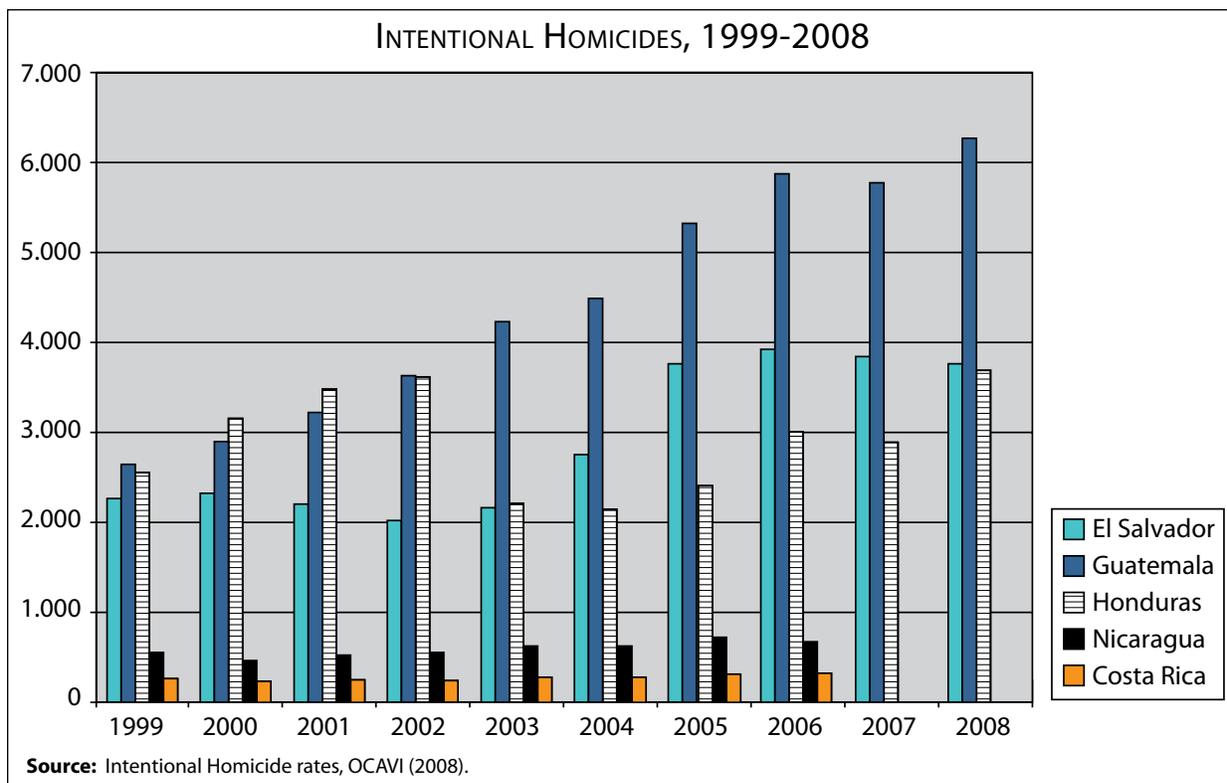
Latin America has gained the reputation of being one of the most violent regions in the world. The authors of a recent study commissioned by the IDB conclude

⁸⁵ Raul Benitez discussion at Woodrow Wilson Institute for International Scholars, March 12-13, 2009. See also, discussion at NDU conference, September 1, 2007.

⁸⁶ In the 1980s and early 1990s the majority of drugs were transferred through the Caribbean. With increased preventive measures, transfers have shifted to Central America and Mexico. Now, 50% of the cocaine is shipped along the Eastern Pacific in fishing boats and 38% along the Western Caribbean coast in go-fast boats. UNODC, “Crime and Development in Central America: Caught in the Crossfire,” May 2007, p.46. Citing Michael Braun, DEA testimony before the House International Relations Committee, Subcommittee on the Western Hemisphere, 9 November 2005. See also, National Drug Threat Assessment 2007, Department of Justice, Washington D.C.

⁸⁷ UNODC (2007) p. 45.

⁸⁸ Ibid, p. 48, citing L Seijo, “Tres jefes antinarcoicos son apresados en EE.UU.” *Prensa Libre*, (November 17, 2005).



that “levels of violence in Latin America—at least measured by the homicide rate—place the region as one of the world’s most violent.”⁸⁹ This study, using World Health Organization (WHO) data estimates that homicides committed with firearms within the hemisphere in 2006 were 73,000-90,000, equivalent to three times the world average.⁹⁰ The statistical range and the absence of comparative data fail to make the numbers useful.

Using the statistics gathered by the *Observatorio Centroamericano Sobre Violencia* (OCAVI) for intentional homicide in Central America between 1999 and 2007, we note the steady annual increase in the number of homicides. We also note the wide gap between the high level of homicides in the Northern Triangle and the significantly lower levels in Nicaragua and Costa Rica. Relying on statistics provided by the respective national police, consistency in their respective

institutional gathering of data will be assumed, but not assured. Also, as between nations, different methods may be used to measure intentional homicide.

Using the national police statistics to reflect trends, we note a steady annual increase of homicides throughout the region, except for Nicaragua which had a lower homicide rate in 2006 from the previous year and Costa Rica which retained the same level.⁹¹

Both UNODC and OCAVI rely upon national police statistics to develop their annual reports. The WHO relies upon reports from the respective Ministries of Health. However, a recent study commissioned by the World Bank disputes the WHO data. Using alternative statistics, the Bank’s consultants concluded that WHO numbers are significantly higher because they failed to distinguish between intentional homicide and negligent homicide.⁹² It is therefore preferable

⁸⁹ Mark A. Cohen and Mauricio Rubio, “Violence and Crime in Latin America,” Solutions Paper, p. 5. *Consulta de San Jose*, Survey for the IDB (June 2007).

⁹⁰ *Ibid.*, 5.

⁹¹ OCAVI was unable to gather complete annual statistics for 2007. El Salvador and Costa Rica provided data until June 30. Figures for Nicaragua and Costa Rica were not available for 2007 and 2008.

⁹² Andrew Morrison, “Alternative View Paper: Violence and Crime in Latin America,” World Bank, Washington D.C. (August 2007).

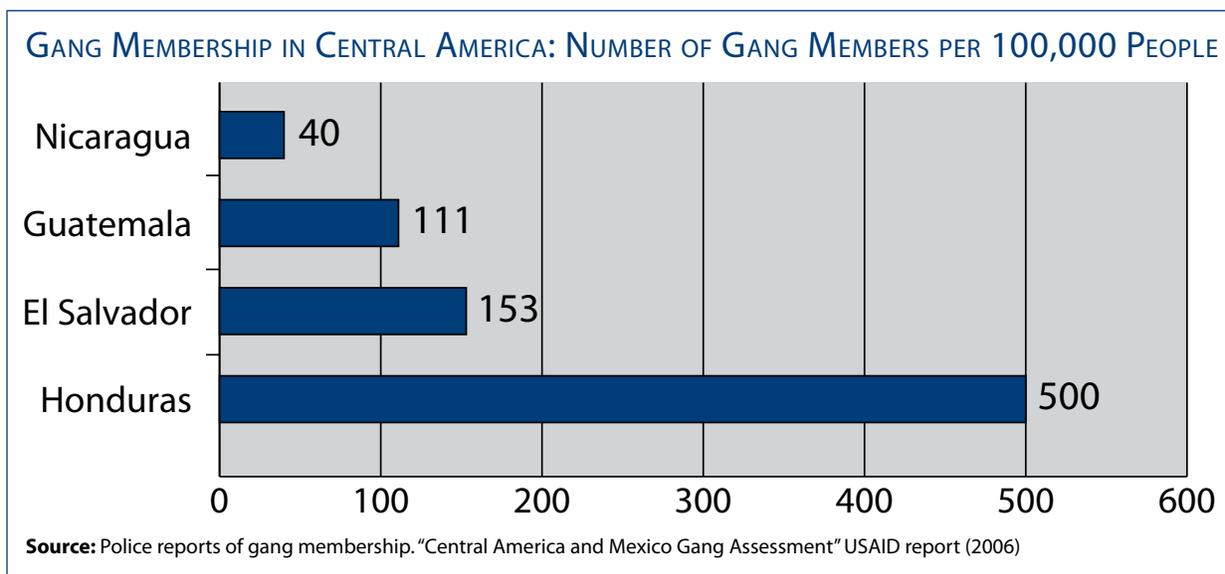
to rely upon national police reports that assess more than a corpse in the morgue. The contention over the data reflects the absence of reliable statistics on levels and rates of violence throughout Latin America and the Caribbean. OCAVI reports of intentional homicides are also lower than the data on homicide provided by the Salvadoran think tank, *Fundación Salvadoreña para el Desarrollo Económico y Social* (FUSADES) which estimated for 2007 a homicide rate of 61.2 for every 100,000.⁹³ For the outside analysis, a consequence of contradictory statistics is the inability to depend upon any one set of statistics. Instead, the preferred method is to examine trends over several years and examine comparative figures.

Depending upon the perspective of the surveyor and the source, distinctive numbers are selected and interpreted. For instance, Mark Cohen and Mauricio Rubio's study in 2007 for the IDB, found that self-report surveys collected among students in Honduras and Nicaragua produced different results from those collected through police records. The self-report study found that most gang members were no longer students, but had dropped out of school. Also, that a strong correlation existed between membership in a *mará* and the self-reporting of at least one criminal

offence, but not homicide. When self-report surveys ask for participation in "at least one homicide" the percentage admitting this fact falls significantly.⁹⁴

Police records formed the statistical basis for USAID's 2006 study of the *mará* in Central America which concluded that gang membership in Honduras is ten times higher than in Nicaragua.⁹⁵ However, the IDB study using self-report survey among students within cities in Honduras and in Nicaragua found that gang membership in Nicaragua was higher than in the two major cities of Honduras, namely Tegucigalpa and San Pedro Sula.⁹⁶ This reflects, principally, the distinction between the groups surveyed, but it also reflects the difficulty of obtaining accurate statistics on criminal behavior in the region.

In general, WHO statistics, upon which health budgets are planned and justified, provide statistics that are higher and more alarming than those provided by national police forces. In its gathering of criminal statistics the UN's Interregional Crime Research Institute (UNICRI) relies upon national police statistics and the *fiscalía* (Attorney General's) office. The UN World Crime Survey depends upon figures supplied by the Ministry of Justice. However, each of these national institutions maintains distinct records, as



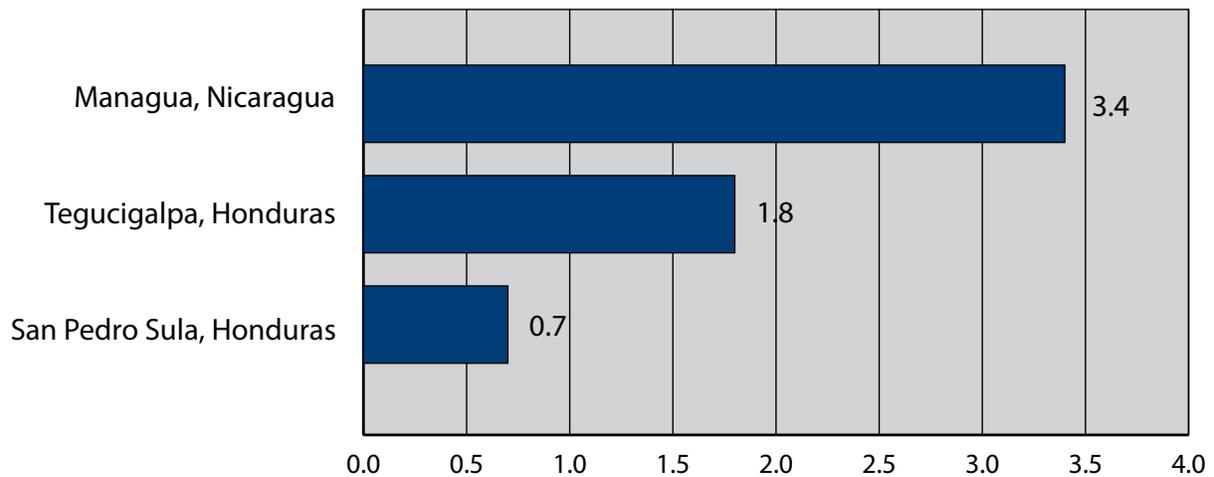
⁹³ The higher rate of 61.2 deaths per 100,000 is the result of a correction in the census report that showed El Salvador's population at 5.8 million instead of the approximate 7 million previously reported. Meeting with FUSADES, San Salvador (June 2008).

⁹⁴ Cohen & Rubio, Figure 21, Self-Report of Homicide among Gang Members and Students, p. 14.

⁹⁵ USAID report (April 2006).

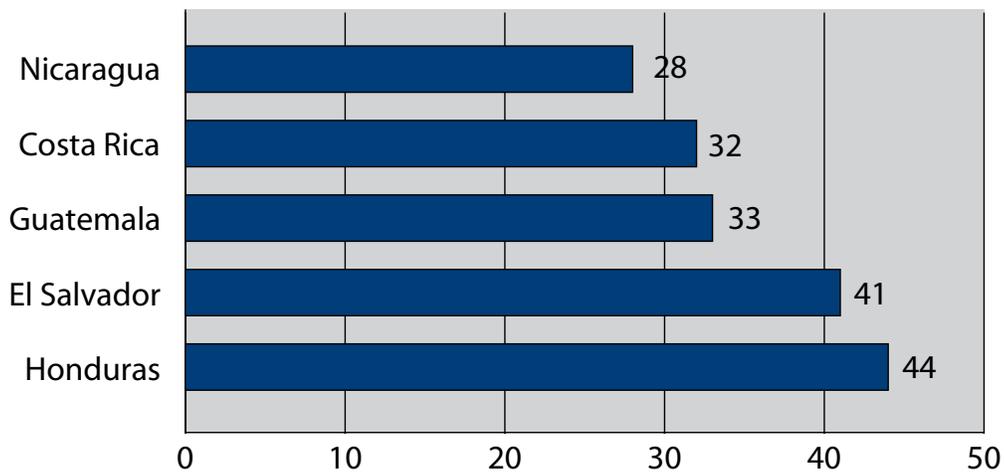
⁹⁶ Cohen & Rubio, "Violence and Crime in Latin America," p.10.

GANG MEMBERSHIP AMONG STUDENTS: PROPORTION OF STUDENTS THAT REPORT BELONGING TO A GANG



Source: Rubio & Cohen, citing IDB survey (2007)

PERCENTAGE OF RESPONDENTS THAT HAVE BEEN VICTIMS OF A CRIME



Source: Latinobarómetro Survey (2007)

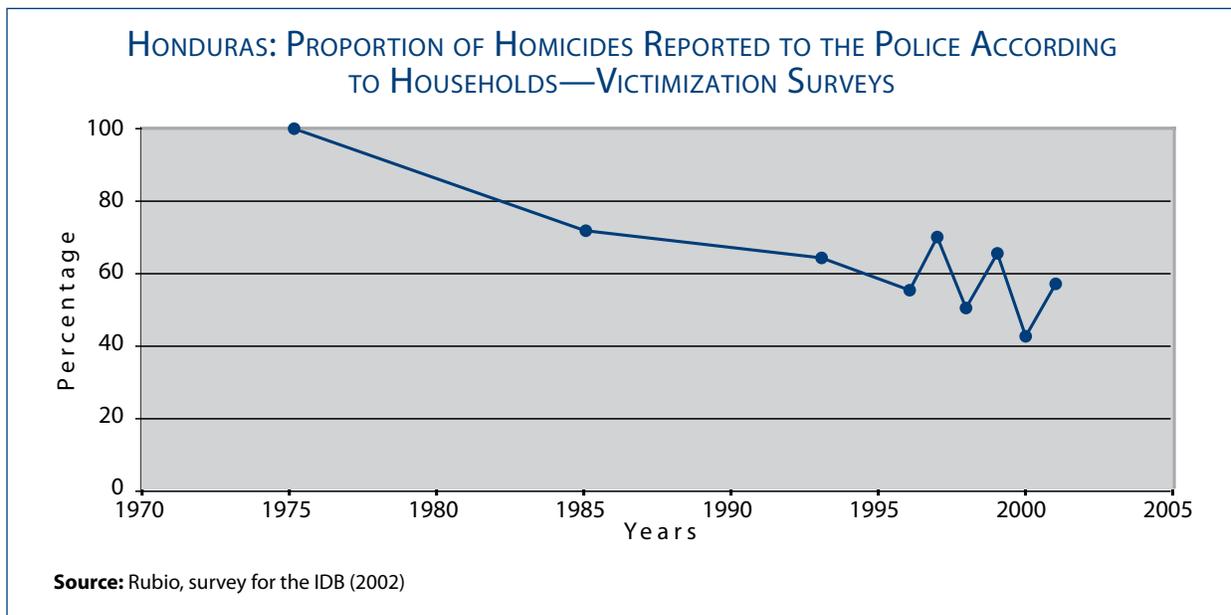
do the national Departments of Health. There is no single set of figures which can be relied upon as the sole repository of national crime statistics.

A distinction must be made between police records and victimization surveys, including data collected by the International Crime Victim Survey (ICVS). The IDB notes that increases in levels of violence—robbery, assault, extortion—are accompanied by decreased levels of victimization. This inverse relationship is explained

by the hypothesis that “as criminals get more power, victims report less to official authorities.⁹⁷ In the face of stronger illegal groups, victims rely less on the official police and justice system. This is explained not just by lack of trust, but also by the fear that those same officials work with criminal elements, thus making them part of the threat to societal security.⁹⁸ High levels of victimization produce lower levels of reporting, which makes the police investigation more difficult to pursue and provides the prosecutor within

⁹⁷ Cohen & Rubio, citing M. M. Cuellar de Martinez, “Valores y capital social en Colombia,” University of Colombia, Bogota (1997).

⁹⁸ Porfirio Munoz, a professional driver explained to me in June 2008 why he had not denounced assaults and thefts on the public bus – an event that occurred frequently on his way to or from work. He explained that not only would the police do nothing to solve the problem, but that they would then possess his name and address for future inquiries and potential threats to himself and his family.



the court system with less evidence to sustain the government’s case in court. As a result, charges are often dismissed and conviction rates are low. This issue will be discussed in greater detail in the chapter on key challenges to the judicial system.

In the case of Honduras, while the number of homicide victims increased over the last twenty five years, reporting to official authorities declined. In the post Cold War period, when relative peace existed within the country, but neither the reforms of the judicial system, nor the removal of the national police from the Armed Forces had begun, statistics on the reporting of homicides fluctuated wildly. It is difficult to account for the wide fluctuation during that period. However, the general trend of reduced reporting despite the increased number of homicides in the period of the 1980s is reflective of the unwillingness to trust official authorities.

The Washington Office on Latin America (WOLA) questions whether violent crime has increased in Latin America.⁹⁹ WOLA’s conclusion is based upon the con-

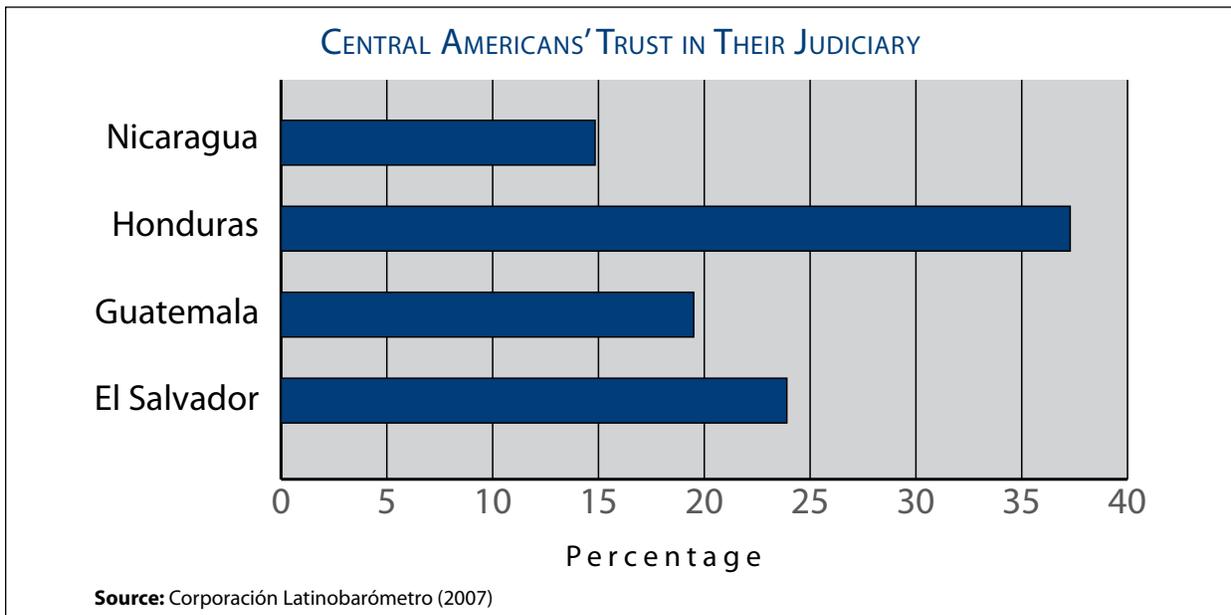
flicting reports of homicides, assaults, rape and kidnapping. Geoffrey Thale, Vice President of WOLA, considers that the assumption that violent crime has increased in Central America is a generalization accepted by many, but not supported adequately by the data. Without further reliable data on violent crime, he believes that we should be careful before we state that crime in Central America is among the highest in the hemisphere. This generalization is based on the perception that insecurity has increased in the Northern Triangle and particularly in certain urban areas where the concentration of young, unemployed men leads to recruitment into criminal organizations.

WOLA’s hypothesis that the statistics for violent crime do not support the very high levels claimed by UNODC, WHO and other multilateral organizations is supported by Latinobarómetro survey of 18 Latin American and Caribbean countries in October 2008.¹⁰⁰ This report finds that significant discrepancy exists between the perception of insecurity and actual victimization to a crime (victimization rate).¹⁰¹ The gap between perception and reality is considered to

⁹⁹ Geoffrey Thale, testimony before the House of Representatives Foreign Affairs Subcommittee on the Western Hemisphere, Hearing on Violence in Central America (June 26, 2007).

¹⁰⁰ Latinobarómetro’s work is considered reliable due to the comprehensive nature of its surveys with approximately 1,000 people interviewed within urban areas in each of 18 nations in the hemisphere. For over a decade, it has used the same criteria to measure ‘Crime and Confidence in the Police & Judiciary,’ thus providing comparative and reliable data by which to determine progress, or lack thereof. Latinobarómetro calculates a margin of error of approximately 3%.

¹⁰¹ Corporación Latinobarómetro, 2008 Report (November 2008).



be wider during periods of relative prosperity when there are less victims, but a sense of insecurity persists or grows. The gap closed during the Asian economic crisis of 2001-2002 when unemployment in Latin America grew and victimization rates rose. We should therefore expect to see lower victimization rates and higher levels of perceived insecurity during the five years of relative prosperity in Central America (2002–2007). Future statistics will determine whether the lower victimization rate but higher perception of insecurity continues after June 2008 when higher food and fuel prices impacted urban communities, as well as early 2009 when the recession in the U.S. affected employment in manufacturing and export sectors throughout Central America. The figures for 2009 will enable us to test the hypothesis that the gap between victimization rates and perceived insecurity narrows during bad economic times.

In 2006, the UN Center for Economic studies in Latin America (CEPAL) joined with Latinobarómetro, bringing with it significant expertise and greater capacity to contextualize data on perceptions based

on the reality of economic and social statistics. Using Latinobarómetro, as well as data from other polling international organizations, the IDB established its own data base, known as DATAGOV to survey, among other issues, perceptions of insecurity and trust in the institutions of a democratic state.¹⁰²

According to Latinobarómetro, perceptions of public trust in the judicial system rose in 2007 to 41.25% in Colombia as compared to 23.9% in El Salvador and 19.5% in Guatemala. In Nicaragua, only 14.84% expressed trust in their judiciary, and another surprising statistic was the unexpected high level of trust in the Honduran judiciary at 37.29%. This suggests that court scandals, or other media covered events, can affect the numbers in any one year. More important than one annual set of statistics is the trend over a number of years to determine improvement or deterioration in the trust given to the judiciary. It is important to note that in Latin America, overall trust toward the judiciary has remained low, despite close to 15 years of reform and public discussion over attempts to strengthen the institutions.¹⁰³ Reforms to

¹⁰² Drawing upon thirty sources, including academic and non-governmental organizations, private business and multilateral organizations, the IDB surveys which are presented in DATAGOV present the result of polls in four main areas: democracy, market institutions, public administration and the rule of law. For our purposes, data has been collated on key factors, i.e. trust in the judicial system, perception of corruption, the impartiality of courts and the independence of judges, the rule of law and the state of justice in society. Furthermore surveys include political stability, the absence of violence and satisfaction with democracy.

¹⁰³ The statistics in DATAGOV show that for Central America as a region, the average trust in the judiciary is 30%. This compares to an average of 64% who trust the courts and attorney general's office in Colombia. See, Gallup Poll, Colombia (2008).

the penal code and to the justice system have met relatively low levels of acceptance with the general public. As a result, polling data continues to reflect the public's opinion that high levels of corruption and low levels of trust in the impartiality of the courts and the independence of judges persist.

An important task of national governments is to establish reliable statistics for specific crimes, arrests, prosecutions, convictions and rates of incarceration so as to be able to measure progress. The head of El Salvador's National Council of Public Security, Oscar Bonilla, began this task in 2007, collating data collected by police officials, the courts and victims to

reach a more detailed and reliable baseline for El Salvador. He also distinguished between municipalities and time of day when crimes were carried out. This material was communicated to the Central American Integration System (SICA) with the intent of establishing a model for targeted police response.¹⁰⁴ With better intelligence, the police should be able to plan targeted operations and zero in on those municipalities with the highest crime rate, as well as the likely time of criminal actions. Furthermore, Bonilla has developed indicators with which to measure progress. His contribution forms part of a hemispheric wide effort to develop benchmarks and indices to measure progress.

¹⁰⁴ *Sistema de Integración Centro Americana* (SICA) created in 1991 to serve as a forum for economic integration.

III. KEY CHALLENGES TO THE CRIMINAL JUSTICE SYSTEM

Much of Latin American society believes that a wide gap exists between the citizen and justice system. By justice system, I mean not only the judges, but prosecutors, public defenders, court administrators and their staff. A related and key contributor to the exercise of justice is the role of investigators, who must develop the evidence to present at trial. (This is customarily played by law enforcement authorities; although in Central America, both the prosecutors (*fiscales*), and sometimes the judges, carry out their own investigations.¹⁰⁵) The reasons for this gap between the citizen and the justice system are several, including a culture of secrecy and isolation that judges have historically cultivated to protect themselves from scrutiny. Furthermore, a majority of citizens have displayed little interest, understanding or knowledge with regard to the administration of justice.¹⁰⁶ It is considered too complicated and is structured in such a manner to work against the majority, rather than to support them. This distance has created a crisis of credibility between the citizenry and the justice systems in the hemisphere with serious implications for the consolidation of democracy, the rule of law and the protection of their individual rights.

In general, citizens, although they profess to know little about the judiciary, nevertheless perceive it as corrupt and dependent upon political or wealthy patrons. In the minds of citizens, the lack of impartiality links the judge to the interests of one of the

parties or to the subject of the litigation. Similarly, the lack of judicial independence creates the context in which corruption of judges and their staff finds fertile ground.¹⁰⁷ Judges are appointed by political patrons—sometimes for fixed terms and often for life terms. Unlike the U.S. where Federal judges are also appointed, an expectation exists throughout Latin America that judges will not aggravate their patrons. Instead, cultural norms require that judges remain loyal to their sponsor.

The remedy lies in the professionalization of judges, their nomination by peers in the legal profession and the creation of judicial audit committees—with various nomenclatures—to review and, if necessary, reprimand or remove judges who base decisions on favoritism or other improper grounds. These committees have been established in law, but a general unwillingness to hold judges accountable exists throughout the hemisphere. Therefore the committees rarely carry out this audit function, except where blatant corruption has caused public uproar. Where presidential control over the legislature is strong, there is less likelihood that judges will vote against the president and his friends, because the concentration of power enables the president to select and remove Supreme Court judges, who in turn select justices of the lower courts.

The peace agreements that ended the civil wars in both El Salvador and Guatemala in 1992 and 1996,

¹⁰⁵ “*Las Instituciones Democráticas en El Salvador: Valoración de Rendimientos y Plan de Fortalecimiento*,” FUSADES, pp. 43–44, San Salvador (August 2007).

¹⁰⁶ “Civil Society Initiatives for Transparency in the Justice Sector,” Due Process of Law Foundation (DPLF), Washington D.C. (2003).

¹⁰⁷ “*Controles y descontroles de la corrupción judicial: Evaluación de la corrupción judicial y de los mecanismos para combatirla en Centro America y Panamá*,” DPLF (2007).

respectively, sought to address this concentration of power by establishing National Judicial Councils that both nominate new justices for the legislatures' consideration and review the performance of judges. Nomination of judges allows for peer review of judicial competence, experience and professional integrity. In theory, this has created a degree of judicial independence, but in practice the actual selection, or choice of judges remains with the legislatures, which continue to exercise significant influence.¹⁰⁸

Beyond the issue of judicial independence, there exists the problem of judicial proceedings. The traditional Spanish inquisitorial model required the prosecutor (often the same person as the judge) to prepare the case and evidence. The opportunity for the accused to be heard and to be defended by competent counsel was glaringly absent. Instead, a judicial process was carried out several months after the arrest in which the justification for arrest and defense of the accused was not brought before the judge. A decade ago, national legislatures throughout the hemisphere—including Central America—committed to change the old inquisitorial model and adopt an oral, adversarial system with the presumption of innocence. The latest to change is the Mexican Congress which approved major reforms of its criminal justice system in March 2008.

In theory, the transformation to an adversarial model has taken place: reformed penal codes establish the presumption of innocence, the prosecutor's presentation of the government's case takes place in the presence of counsel for the defense with an oral and public hearing before an "impartial" arbiter before a verdict is handed down. However, implementation of the new criminal code is uneven with older judges and prosecutors resorting to the traditional system.

Linn Hambergren argues that the problem does not lie with transformation of the penal code, but the failure of institutions to adapt to the underlying values that form the basis for that radical reform.¹⁰⁹ It is possible that, unintentionally, the jurists who sought to reform the criminal justice system in the late 1980s and 1990s simplified the problem. They convinced many that changes in criminal procedures would, by themselves, strengthen the judiciary. They failed to recognize that such profound procedural changes would threaten established powerful groups, including judges and prosecutors.

Christian Riego, the Executive Director of the *Centro de Estudios de Justicia de las Americas*, (CEJA) has questioned whether the changes in the criminal models of justice are sufficient to attain the goal of a more effective and fair justice system.¹¹⁰ He recognizes that the legislative changes carried out so far have left the reforms to the criminal justice system incomplete. Now, greater focus must be placed on implementing reforms that have been passed into law, but remain to be carried out both at the national and at the provincial level. These reforms are highly political with the prospect of removing influence from politicians who, traditionally, used the courts for their own purposes. Particularly in patrimonial societies where the exercise of patronage extends to the support and defense of socio-economically dependent followers, the removal of political leverage over the court system represents a significant diminution of power.

In the case of Honduras, the National Congress passed the first reform to the criminal procedural code in 1984.¹¹¹ However, those initial changes demonstrated the need for further reforms in order to give greater authority to the prosecutors and terminate the investigative and administrative roles of judges.

¹⁰⁸ In Nicaragua, the President proposes and appoints the candidates for judges. In Panama, the President nominates the Judges, but this is subject to ratification by the legislature. In all other countries of Central America, the legislature retains the right to vote on the nominations, proposed by the Judicial Councils. See, "Evaluation of Judicial Corruption in Central America and Panama and the Mechanism to Combat it." DPLF (2007).

¹⁰⁹ Linn Hambergren, "Latin American Criminal Justice Reforms: Unanticipated Constraints and What We Have Learned About Overcoming Them," World Bank Study, Washington, D.C. (2007).

¹¹⁰ Juan Enrique Vargas, "Reformas Procesales Penales en America Latina: Resultados de Proyecto de Seguimiento, IV Etapa," *Centro de Estudios de Justicia de las Americas* (CEJA), Santiago, Chile (2007).

¹¹¹ These included numerous due process guarantees of particular importance for criminal justice, including a 3% budgetary earmark for the judiciary, as well as the creation of a judicial career and judicial council to oversee it. It also established a judicial statistics system with a baseline upon which to measure subsequent developments.

Under the accusatory system, the judge becomes the impartial arbiter and can no longer fulfill the role of both prosecutor and judge. Therefore it was necessary to remove the investigatory function from judges. Also, it was necessary to create a Clerk of the Court with responsibility for overseeing the administrative functions instead of the justices themselves. However, in seeking to preserve historical privileges, several Supreme Court justices objected to further changes and found support among legislators. Consequently, the National Congress became a battleground over judicial reform and other domestic issues with Chief Justice, Vilma Cecilia Morales pitted against members from both the Nationalist and Liberal party. In early 2008, at Justice Morales' request, Honduran President Zelaya removed nine out of fifteen Supreme Court judges on grounds of corruption. Morales had also indicated a willingness to hold accountable corrupt and under-performing judges by means of drafting an annual report of the judiciary. This report would become a public document thus exposing underperforming judges to public shame, if nothing more. In these proposed reforms, Justice Morales encountered opposition from members of the National Congress, threats to her personal safety and the murder of her sister. Tensions between the Supreme Court and the Congress reached a crisis in February 2009 upon the resignation of Chief Justice Morales and regarding the appointment of new Supreme Court justices.¹¹²

Political tension between the legislature and the judiciary reflects the challenge of moving beyond a patrimonial society to one based on individual rights and the rule of law. This transition occurs slowly with greater progress in some countries than in others. In addition to this key issue, four other factors must be examined in order to comprehend the nature of the struggle facing those who seek to advance judicial reform in Central America, namely access to justice, the efficiency of the court system, political independence and accountability. These

four elements are necessary to ensure that the justice system supports democratic governance, fosters economic development and builds popular faith in the rule of law.

A. Access to Justice

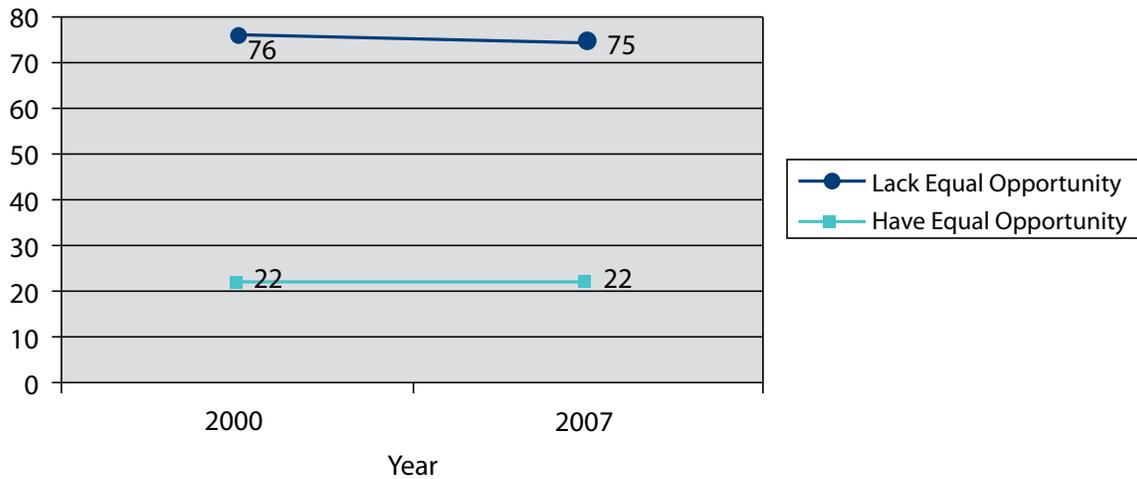
The ability to gain access to the courts affects a citizen's capacity to defend him or herself against lawful or unlawful charges, as well as the capacity to bring suit against another for injury. Members of society with political or economic influence call up judges to seek favorable decisions, while the majority of citizens without the economic means to relate to the political or judicial class cannot participate in "telephone justice" by which an appropriately placed telephone call achieves the desired results. The old patrimonial system constructed an avenue of access to a powerful patron, who in turn approached the appropriate member of the judiciary. However, patriarchal structures are breaking down in Central America and state recognition of the rights of the individual has not yet replaced them. In this transitional stage, the majority of citizens are left bereft of access to the judicial system. This inequitable treatment before the courts represents glaring social and political inequality, as well as reason for persistent levels of cynicism toward a democratic system.

This observation of the lack of access to justice is derived from Latinobarómetro 2007 survey of approximately 20,000 people within urban areas. It found that only 22% considered that they had access to justice; a constant proportion over the seven year period. This means that despite significant efforts to reform the judiciary, two-thirds of those surveyed concluded that they lacked access to the courts.¹¹³ Furthermore, in this same period, although a growing middle class in Latin America acquired greater freedom over their economic livelihood, the increase in socio-economic power augmented popular perceptions of access to justice by only 1%.

¹¹² "Judges Association Criticizes Process to Select Supreme Court Justices," *La Tribuna*, Tegucigalpa, Honduras (January 8, 2009). Translated into English by Foreign Broadcasting Service (FBIS).

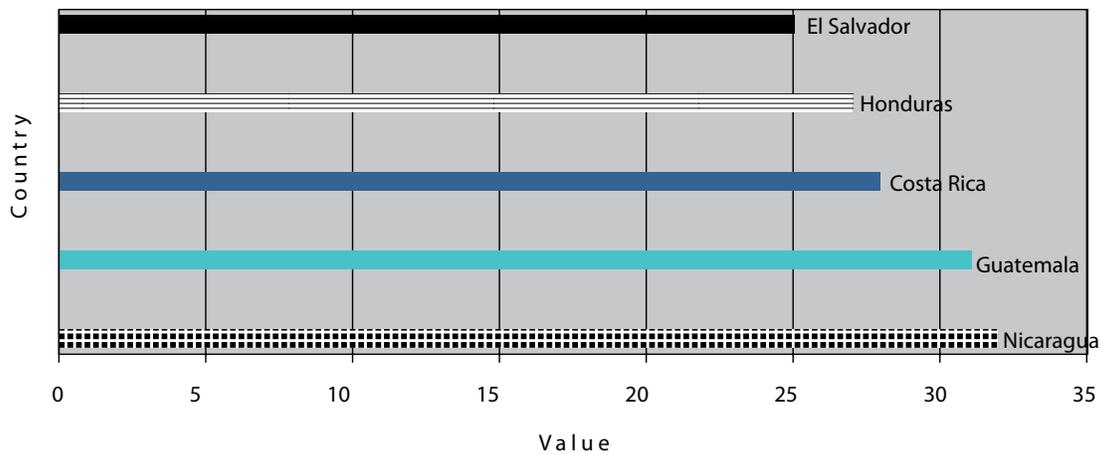
¹¹³ The Office of the Ombudsman for Human Rights in El Salvador reported in June 2008 that the government had prevented access to justice in 32 cases and did not effectively enforce the law in 22 cases. See *Aportes*, DPLF (September, 2008).

EQUAL OPPORTUNITY TO ACCESS JUSTICE: TOTAL ACCESS FOR ALL LATIN AMERICAN STATES 2000-2007



Source: Latinobarómetro survey (2007)

EQUAL OPPORTUNITY TO ACCESS JUSTICE—WITHIN INDIVIDUAL COUNTRIES IN 2007



Source: Latinobarómetro survey (2007)

Historical assumptions may have attributed access to justice to income levels, with the wealthier having the means to retain an attorney and pay the mandatory filing fees necessary to present motions before the court. However, Latinobarómetro surveys on access to justice in Central America challenges this assumption. Nicaragua, with a per capita income of \$2,967, is the poorest of the five states identified in the chart above.¹¹⁴ Costa Rica, with a per capita

income of \$9,904, has the highest standard of living.¹¹⁵ Despite these economic underpinnings, more people surveyed in Nicaragua believed that they had better access to justice than those surveyed in Costa Rica. Taking the Central American region as a whole, less than one-third of those surveyed considered that they could avail themselves of the judicial system to defend their interests.

¹¹⁴ International financial statistics, IMF actual figure for 2007 using Purchasing Power Parity (PPP).

¹¹⁵ International financial statistics, IMF actual figure for 2007 using PPP.

The discrepancy between per capita income and relative access to justice suggests that income is not the critical variable and that we must examine alternative factors. Persistence of the old patrimonial system, such as the political power of the Sandinista party in Nicaragua provides patronage and protection. Although the citizen may not achieve access on his own, his relationship to a political patron can assist in his approach to the court, or to an individual judge. So long as the traditional political patronage system endures, citizens can rely upon access to the courts, even though it is indirect.

B. Judicial Inefficiency and Corruption

An important factor is the comportment of the justices themselves and the perceived effectiveness of the court system. Are judges perceived as incorruptible? Is the judicial system considered to be inefficient? Is it considered to be ineffective to the point of destroying trust in the rule of law? Whether due to negligence, or to the deliberate misuse of the court system for personal gain or out of fear, the lack of efficiency in the judicial system gives rise to considerable public mistrust.

Efficiency is defined as the competence of the court to carry out its function as neutral arbiter between contesting parties.¹¹⁶ The World Economic Forum's survey of judicial efficiency places greater focus on property rights and the ability of the court to manage relative complex civil and tax cases. However, factors, such as case loads, management of court files, timeliness and knowledge of the law apply equally to criminal cases. Inefficiency results in delays in court hearings, random case distribution, careless management of the court office and calendar, as well as the

delegation of duties to legal support staff. In Honduras, caseloads pile high in judges' chambers with staff writing decisions in a manner considered incomprehensible to the accused.¹¹⁷ In El Salvador, many cases remain open, but unresolved while the accused lingers in jail, despite a Constitutional limit on pre-trial detention.¹¹⁸ In Guatemala, despite the judicial reforms approved in 1996, judges are still required to investigate all crimes; an impossible task that results in the selection of cases in arbitrary fashion.¹¹⁹ Related to this issue is the protracted nature of judicial proceedings, the lack of respect toward both the victim's family, as well as the defendant.¹²⁰ Consequently, citizens continue to hold low esteem of their ability to gain a fair hearing.

The incompetence of attorneys, who often lack the knowledge of the subject before the court and fail to meet the necessary skills for prosecuting and defending the case, is commonplace. This reflects the low quality of legal education offered at many of the universities in Central America and the tendency to award degrees without the requisite level of judicial knowledge and analytical competence.¹²¹

In 2005, DPLF carried out an extensive examination into judicial corruption in Central America, including Honduras. Symptomatic of judicial inefficiencies in that country, going well beyond negligence to indications of systemic corruption, DPLF researchers found irregular seizures of property as well as irregular releases of seized property and bank accounts, reception of false testimony, interference in trials and malicious misinterpretation of the law. They also found irregular assignment of cases, despite the use of an automated system that "guarantees" random assignments. Appeals were used to delay proceedings and

¹¹⁶ World Economic Forum, *Global Competitiveness Report*, Palgrave MacMillan, Geneva (2006).

¹¹⁷ "Controles y desconroles de la corrupción judicial: Evaluación de la corrupción judicial y de los mecanismos para combatirla en Centroamérica y Panamá" DPLF (2007).

¹¹⁸ Ibid.

¹¹⁹ Luis R. Ramírez García, "La reforma de la justicia penal en Guatemala: aportes para una evaluación," Institute of Comparative Studies in Penal Sciences, Guatemala City, Guatemala (2006).

¹²⁰ "El Proyecto de Código Procesal Penal: ¿Se necesita una nueva legislación procesal penal?" *Boletín de Estudios Legales*, Parte 1, No.85 (January 2008) FUSADES, Departamento de Estudios Legales, San Salvador, legal@fusades.org.sv.

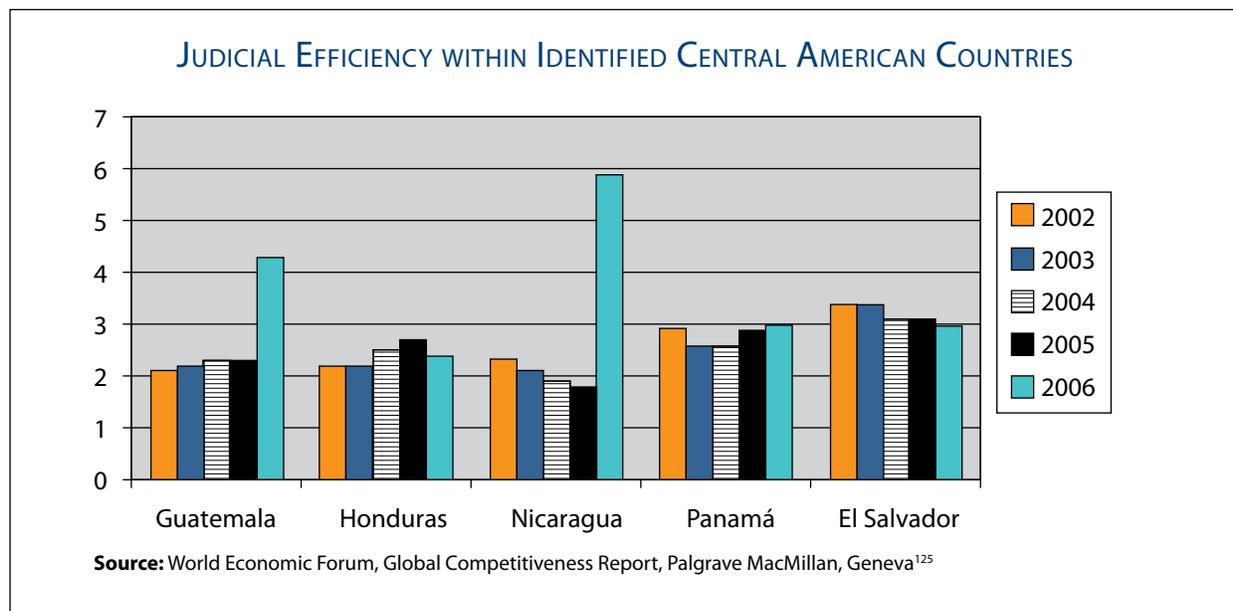
¹²¹ *El Proyecto de Código Procesal Penal: ¿Se necesita una nueva legislación procesal penal?" "Las Instituciones Democráticas en El Salvador: Valoración de rendimientos y plan de fortalecimiento."* p. 45, FUSADES, (August 2007). Broadly recognized is the practice of awarding law degrees to lawyers and judges who lack proper educational preparation.

judges admitted to dilatory practices.¹²² Such tactics are used to drag out the case until such time as the statute of limitation bars further litigation and the defendant is released from liability. Furthermore, acts such as presentation of improper financial charges for issuing a release order, changing the definition of the criminal offence, improper charges in exchange for expediting procedures, misplacement of the file and document tampering cannot be justified by mere carelessness or negligence. Acts of this kind suggest deliberate behavior rising to the level of corruption that is intended to misuse the justice system for personal profit.

The World Economic Forum's review of judicial efficiency supports this conclusion. On a scale of 1 to 7, with 7 representing maximum efficiency, the Forum's survey found that Honduras and El Salvador had failed to improve the efficiency of their courts. Nicaragua and Guatemala were considered to have made the greatest improvements, particularly the former which made remarkable progress during the period 2005-2006.

In the case of Honduras, Justice Morales stressed the need to strengthen the institutions and capacities of the justice system. Courts without computers lack the means to transfer files, organize case loads, administer dockets and monitor progress. Courts without administrative staff lack both the competence to move cases forward and provide assurance that police investigations are complete. Also, Clerks of the Court should seek to assure that prosecutors and defense attorneys are assigned and defendants incarcerated no longer than permitted by law. Weak institutions have traditionally resulted in abuse of the defendant and very low conviction rates.¹²³

A World Bank report of the Honduran judicial system found ongoing lack of coordination between prosecutors and investigative police, the delegation of judicial functions to staff and the failure to recognize due process guarantees.¹²⁴ These problems compounded the persistent failure to address the accumulated backlog of cases and long delays in processing cases. Honduran jurists identify five factors to



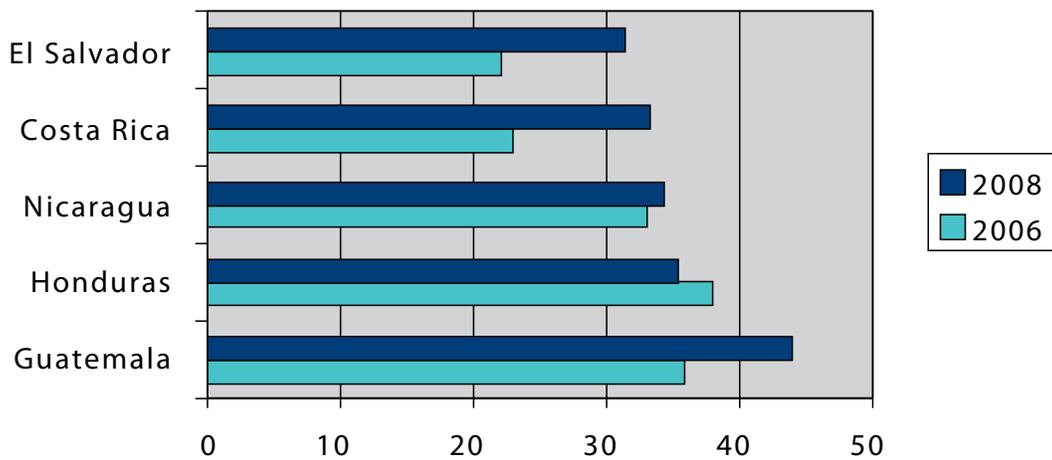
¹²² "Controles y descontroles de la corrupción judicial," DPLF, pp. 271 – 337.

¹²³ Based upon a private breakfast meeting in Tegucigalpa on June 5, 2008, as well as her reputation among U.S. legal scholars, I found Chief Justice Morales' commitment to the independence and competence of the judiciary to be unwavering. However, I sensed a degree of isolation from her colleagues on the bench and the need to obtain U.S. government support for her work. She has since resigned.

¹²⁴ "Gobernabilidad y anticorrupción en Honduras: Un aporte para la planificación de acciones," World Bank Institute, World Bank, Washington D.C. (2002).

¹²⁵ The Global Competitiveness Report surveys approximately 84 CEOs and senior managers in each of the countries identified.

PERCENTAGE OF RESPONDENTS WILLING TO BRIBE A JUDGE TO OBTAIN A LESSER SENTENCE



Source: Latinobarómetro Surveys 2006 and 2008¹²⁶

justify the absence of continued reform: ambiguities in the legislation; failure to enact certain key laws that proved necessary after the initial reforms; inadequate legal training; judge's retention of "an inquisitorial mentality"; and, inadequate resources.¹²⁷

The tipping point at which judicial inefficiency assumes the deliberate intent to pervert justice differs among national court systems. However, in broad terms it is evident that inefficiencies in the judicial system allow space for those with purposeful intent to divert justice to advance their own personal interests. This was demonstrated in a 2004 UNDP report on democracy in Latin America, in which 47.5 % either strongly agreed or agreed that "it is possible to pay the price of a certain degree of corruption in the government as long as the country's problems are solved."¹²⁸ Using comparative figures for the years 2006 and 2008, Latinobarómetro surveys demonstrate distinct levels of citizen's willingness to bribe a judge, or member of the justice system.

Noticeable is the readiness of those surveyed to admit a willingness to bribe a judge and the significant increase in this probability for all countries, except

Honduras. The reduction in Hondurans willingness to bribe a judge contradicts the results of a recent Latinobarómetro survey of corruptibility among public servants. More Hondurans than any other citizens in the hemisphere believe that public servants are dishonest. 80.8 out of 100 Honduran public employees are believed to be corrupt. If we accept the Latinobarómetro figures as reflective of current perceptions, it would appear that judges are an exception to the widespread opinion that public servants can be bought.

In Central America, judicial inefficiency is considered the norm. The perception that the justice system is both slow and ineffective has led citizens both to take matters into their own hands both by resorting to lynching, and demanding more stringent measures to ensure public security. Acceptance of judicial inefficiency to the point of corruption no longer exists and society, therefore, looks for alternative ways to control the violence. This has led to the introduction of the military to protect the police as they carry out counter-*mara* and counter-drug related activities, as well as the use of vigilante groups to dispose of persons believed to present threats to the community.¹²⁹ In

¹²⁶ The latest survey was undertaken in late September and published in November 2008.

¹²⁷ Ibid.

¹²⁸ UNDP, "Democracia en America Latina," p. 101, Buenos Aires, Argentina (2004).

¹²⁹ U.S. Department of State, 2008 Country Report on Human Rights Practices - Guatemala, Section 1(e) www.state.gov/g/drl/rls/hrrpt/2008/119161.htm and Country Report on Human Rights Practices—2007, Guatemala.

Guatemala, off duty policemen are reported to have murdered alleged criminals,¹³⁰ and citizens, believing that a certain individual has carried out serious criminal activity, have lynched the accused often in a public space without fear of retribution by the state.¹³¹

In Guatemala, prosecutors remain susceptible to intimidation and corruption; they are considered to be often ineffective. Meantime, judges, prosecutors, plaintiffs and witnesses continue to report threats of intimidation and surveillance. A special prosecutor for crimes against judicial workers continues to receive multiple complaints of threats and aggression against judicial employees.¹³² However, it remains unclear how many complaints resulted in investigations and criminal charges.

The problem of inefficiency, either negligent or deliberate, cannot be separated from the issue of independence. If judicial institutions are inefficient in their capacity to deliver justice due to lack of resources and human capital, the inefficacy also reflects political desire to keep the courts relatively weak. Disorganized institutions provide opportunity for individuals to use the courts for their own political purpose. Therefore, the inefficiency of the courts is closely related to the issue of judicial independence.

C. Judicial Independence

Traditionally, the judiciary in Central America was not independent of the executive. Instead, the courts were intended to carry out government policies. Following the civil wars in El Salvador and Guatemala, UN mediators insisted upon reforming the respective justice systems by means of constitutional amendments. The intent was to create an independent judiciary for the following reasons: create an effective

check on executive and legislative power; provide space to challenge government policy; regulate the conduct of legislators, electors and legislators; and control corruption.¹³³ However, the drafting of constitutional amendments that affected the judiciary proved to be relatively easier than implementing them. To date, El Salvador and Guatemala have achieved a higher degree of independence than those countries which did not amend the judicial procedures as part of an internationally supervised peace process. However, except for Costa Rica, no country in Central America has achieved the half-way mark in determining the independence of their respective courts and judges.

Despite significant improvements in developing the elements of independence, much work still remains to be done. In most Central American countries, appointments of Supreme Court Justices are based on political criteria rather than the professional and technical skills of the candidates. Political favoritism thus penetrates the highest courts of the region. In El Salvador and Honduras, the Supreme Court has overall responsibility and control over the lower courts. This concentration is combined with a close relationship between the Supreme Court and the Executive branch of government. Political authorities also impinge on the independence of judges, threatening their impartiality and probity through several means, such as accusations of corruption against judges who take decisions unacceptable to powerful people, and accusations of incompetence against judges considered weak in the application of draconian punitive laws.¹³⁴

The 2008 U.S State Department Report on Human Rights in El Salvador found that the courts remain relatively weak in their capacity to act independently of the Presidency and the Executive branch.¹³⁶ In

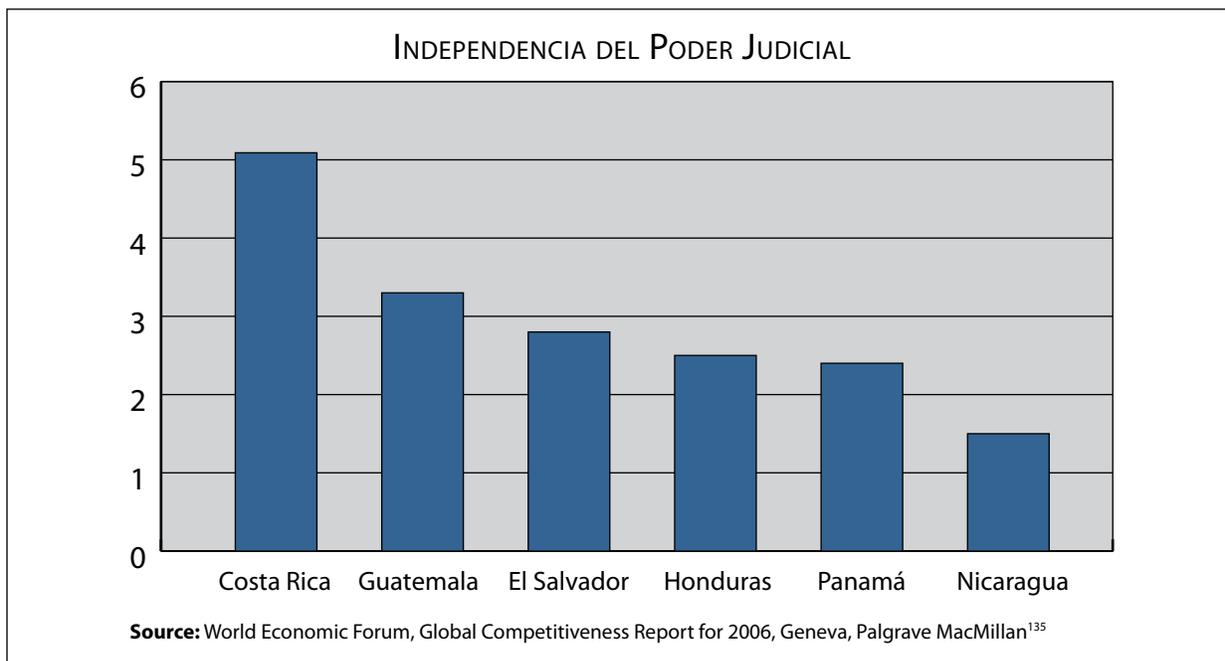
¹³⁰ 2008 Report on Human Rights Practices - Guatemala.

¹³¹ *El Universal*, Mexico City, (August 22, 2008).

¹³² In Guatemala, the Special Prosecutor for Crimes against Judicial Workers began its work in 2004. Each year this prosecutor has heard more cases, suggesting both rising harassment against workers in the judicial branch as well as a degree of trust in the institution. 125 cases were reported of threats or aggression against judicial workers in 2007 rising to 129 cases in 2008. See, 2008 Country Report on Human Rights Practices – Guatemala.

¹³³ “*Las Instituciones Democráticas en El Salvador*,” FUSADES (August 2007) p. 38.

¹³⁴ “*La justicia vista por los jueces: diagnóstico del funcionamiento de los sistemas judiciales centroamericanos*” University of Salamanca, Spain (2004). In July 2008, assailants killed an attorney in front of witnesses. He was the 17th legal professional killed to that date. U.S. Department of State, 2008 Country Report on Human Rights Practices—Honduras, Section 1(e) www.state.gov/g/drl/rls/hrrpt/2008/119164.htm.



Guatemala, the Supreme Court exercises a degree of independence on civil matters, and succeeds in supervising, with relative effectiveness, the performances of judges in lower courts.¹³⁷ Although Honduras did not suffer the same degree of protracted social conflict, it was subject to U.S. political and military presence throughout the Central American wars of the 1980s and received, in turn, USAID funds and advice to reform the judicial sector. The ending of a heavy U.S. government hand and the reduction of U.S. funding has left the Honduran government to implement and continue the reforms with significantly less international support. Hondurans therefore struggle to implement a modern justice system with inadequate financial resources. They demonstrate greater success in implementing reforms within civil litigation, as well as the use of alternative resolution methods. However, this independence is circumscribed by poor funding, staffing and inadequate equipment to carry out its functions effectively.¹³⁸

The Honduran Supreme Court justices are subject to both legislative and presidential interference with their decisions. The nomination process is made by the National Congress and thus ensures that politically loyal judges—at all levels of the judiciary—are appointed.¹³⁹ In its 2007 report on the Honduran courts, the DPLF found continuing politicization of Supreme Court nominees, as well as the nominations of judges for lower courts and staff appointments.¹⁴⁰ Despite the 2002 constitutional amendment that required approval by a two-thirds vote in the National Congress, the two major parties continue to negotiate for the appointment of their own candidates.¹⁴¹ In 2004, the *fiscalía* (Attorney General’s office) was the target of serious public criticism of its credibility when both the chief and deputy prosecutor were removed from office on grounds of misconduct. Both were replaced by individuals with equally transparent political connections.¹⁴²

¹³⁵ The range of assessment in this World Economic Forum survey extends from 1 which equals heavy external influence to 7 which equals total independence.

¹³⁶ U.S. Department of State, 2008 Country Report on Human Rights Practices – El Salvador. www.state.gov/g/drl/rls/hrrpt/2008/wha/119159.htm

¹³⁷ 2008 Country Report on Human Rights Practices – Guatemala, Section 1(e).

¹³⁸ 2008 Country Report on Human Rights Practices – Honduras, Section 1(e).

¹³⁹ “Resumen del informe presentado por la Asociación de Jueces por la Democracia de Honduras en audiencia concedida por la Comisión Interamericana de Derechos Humanos el 20 de julio del 2007.” See *Aportes DPLF*: 4.1 (November 2007).

¹⁴⁰ *Ibid.*

¹⁴¹ All 45 candidates for lower court judge had known political ties to one, or other major party.

In each of countries of the Northern Triangle, as well as Nicaragua, insufficient progress has been made in constitutional and legal reforms to strengthen judicial independence, introduce merit-based selection criteria and create a transparent selection process. The legacy of fragility and submissiveness in the judiciary recalls the authoritarian period. In nearly every nation of Latin America, there exists a culture of political patronage that scoffs at the principle of independence and legality in which everyone is held equal before the law. This attitude of impunity erodes public confidence in the courts and diminishes the full force and effect of both democratic and constitutional rule.

D. Accountability

Who should hold the courts accountable for independence, impartiality and efficiency? Legislative bodies often have an interest in judicial outcomes that favor a particular party or person. The office of the president has an interest in the outcome, particularly of constitutional issues.

Throughout the Northern Triangle of Central America, the creation of *Consejos Nacional de Judicatura* (National Judicial Councils) was intended to institutionalize the independent nomination of judges, both at the Supreme Court and lower levels.¹⁴³ The Councils are formed by members of the judiciary, scholars and legislators. Their role in creating a degree of independence from the legislature and executive branch is debatable. A majority in El Salvador are satisfied that the Judicial Council has succeeded in creating a counter-weight to the Supreme Court, but others claim that this Council has done nothing to reduce the highly politicized nature of the Supreme Court.¹⁴⁴ Furthermore, Supreme Court

justices in El Salvador and Guatemala act as the disciplinary body for lower court judges. In this role, the Supreme Court justices act as both prosecutor and judge. To avoid the conflict of interest in El Salvador, a *Departamento de Investigación Judicial* (Judicial Investigative Section) has been created to investigate, review and recommend sanctions against appellate and lower court judges. However, the Supreme Court retains the right to intervene upon a finding of no robust moral proof (*robustez moral de prueba*), a standard similar to probable cause, and allowing significant room for Supreme Court intervention. This paper concludes that, to date, the creation of Judicial Councils and other supervisory bodies has not succeeded in creating the necessary audit function that can ensure judicial independence, impartiality and competence.

E. Currently Applied Solutions

Recognizing the endemic problems set out above, the governments of the El Salvador, Honduras and Guatemala have engaged and succeeded in certain reforms. A degree of political will exists to improve the system and, with the support of the international community, reform projects are underway. Observers can recognize the current efforts and achievements. The overwhelming majority of jurists and citizens seek sustainable, long term commitments to improve judicial institutions and thereby the culture of law.

i. Transparency and Accountability

The commitment to replace the traditional inquisitorial method with an adversarial system, based on the presumption of innocence and public trials was designed and has succeeded, for the most part, in

¹⁴² Honduras: Country Report on Human Rights Practices - 2007.

¹⁴³ In Salvador, the *Consejos Nacional de la Judicatura* (National Judicial Council) selects the candidates for judge and the *Departamento de Investigación Judicial* (Judicial Investigative Department) receives complaints about irregular behavior of judges and court staff. The latter has no power to impose sanctions. In Honduras, a *Junta Nominadora* (Nominating Committee) selects candidates. The *Tribunal Superior de Cuentas* (Superior Accounting Tribunal) within the *Ministerio Público* holds responsibility to determine the independence, impartiality and legality of decisions taken by judges throughout the court system. Neither institution has the right to sanction judges. The *Consejo de la Judicatura* has not received the necessary regulatory authority to enable it to function. In Guatemala, the National Congress nominates judges. The *Consejo Nacional de la Judicatura* (National Judicial Council) has an oversight role.

¹⁴⁴ "Las Instituciones Democráticas en El Salvador": FUSADES (August 2007) p. 40.

opening up justice to review by national and international observers. Oral debate in a public courtroom is the principal assurance of an impartial hearing that may be recorded by the public and the media. However, publication of the charges and the indictment varies according to local norms and customs. Also, judicial officials struggle with local journalists and national media which are not steeped in the complexities of legal procedures. With legal training and experience, the press should become more knowledgeable in the law, including the procedural aspects, and able to monitor more accurately the procedures of court cases. Journalistic accuracy can ensure that the public is informed of occurrence within the courtroom. Only informed and accurate reporting can help readers determine whether justice is delivered and progress is made in reducing corruption within the court.

Greater transparency does not, of itself, ensure accountability. Public observers rely on four proven methods: (1) the appeals process; (2) audit committees, such as Salvador's Judicial Investigative Department and Honduras' Superior Accounting Tribunal; (3) civil society; and (4) the media. In the United States, knowledge that the legal process and application of the law are subject to appeal before a higher court provides a restraint on judicial behavior, including the arguments of prosecutors, defense attorneys and the judge. The appeals process is not as vibrant in Central America, and is available principally to those with the capacity to pay.

Beyond the appeals process, the International Foundation for Electoral Systems' (IFES), Reform of Justice program recommends that the Supreme Court in each nation report annually on the 'state of the judiciary.'¹⁴⁵ To implement the annual report, IFES has designed the questionnaire and argues that participation in answering the process would require national judicial communities to collaborate in the project.

Working together would be a new and constructive factor, but the time required has constrained justices from agreeing to initiate the proposed report.

Civil society, represented by NGOs with expertise in the law, such as CEJA, IFES and the DPLF are best placed to comment and critique on the court's procedures and decision making. In Salvador, the Legal Studies Department of the *Fundacion Salvadorenna para el Desarrollo Economico y Social* (FUSADES) produces quarterly bulletins that examine and report on Salvador's legal system. In addition, non-governmental organizations, such as FESPAD, the Institute for Human Rights (IDHUCA), the Catholic Church's *Tutela Legal, Las Dignas* and CENTA continue to expose corruption, judicial delays, inefficiency and the problem of unqualified judges. In Guatemala, *Sobreviviente* is noted for its role in presenting cases that protect the rights of women and through this means contributes to the strengthening of legal prosecutorial methods. The voices of civil society remain an indispensable element in the reform process.¹⁴⁶ Their relative independence provides them with a degree of credibility before international and multilateral funders.

Use of the media as a check on abuse of judicial power has not succeeded. Sensational photographs have the effect of condemning a defendant or witness without space to present countervailing arguments. It is common practice to haul somebody before the judge, whether or not that individual was involved in that particular crime. The police, supported by an uncritical public, may prefer to find someone guilty rather than await thorough investigation, preparation of probative evidence and a court hearing to determine the facts, as well as the application of law to the accused. The press must be held responsible, in part, for the preference in Honduras and El Salvador to condemn a young man merely for being associated with the *mará*, based upon his tattoos and language, rather than the

¹⁴⁵ In 2003, IFES extended its role beyond the monitoring of elections to include the rule of law. In 2008, it co-hosted the 11th Annual International Judicial Conference. Since that time, Keith Henderson has led scholars to research on judicial practices throughout the world and to make recommendations on independence and the impartiality of the courts.

¹⁴⁶ "El proyecto de código procesal penal: ¿Se necesita una nueva legislación procesal penal?" *Boletín de Estudios Legales* 87, Partes II (March 2008) ellegal@fusades.org.sv.

development of a criminal case which seeks to prove culpability based on the evidence of a crime. The press has succeeded in simplifying threats to public security. It is partly to blame for persuading legislatures that either a conviction based on mere association with the *maras*, or the enactment of longer jail sentences, can solve complex legal and social problems.

In the case of notorious judges, such as Chief Justice Mauricio Gutierrez Castro of El Salvador, publication of his name in UN documents notified colleagues, as well as a broader public, that he had belittled the Salvadoran Peace Accords as mere political agreements with no bearing on the rule of law. A check on his power could not be carried out within El Salvador. Instead, the UN Truth Commission for El Salvador, headed by three distinguished international lawyers, reviewed his judicial comportment.¹⁴⁷ Justice Gutierrez was never brought before a Salvadoran court of law for his intransigence and abuse of power. Instead, he was sanctioned by means of public shaming and, under international pressure, removed from office at a date earlier than he might have wished.¹⁴⁸ The presence of international bodies with the legal capacity to make public recommendations can act as an effective restraint on powerful judges. However, prior to any recourse to national audits or international commissions, it is essential that lawyers and judges be trained in both the substantive areas of law and the ethics of a judicial career.

ii. Training of judges and court personnel:

The need for adequate initial training and continuing legal education for judges has become a crucial condition for strengthening judicial independence. Although there is no consensus on the form of training, certain judges have identified training on specific areas of substantive law and procedure. This training is being extended to prosecutors and public defenders.

In response to significant problems within the judicial system, the World Bank, the European Union, the Spanish Agency for Cooperation (AECI), the American Bar Association (ABA) and the IDB have all participated in training programs that contribute to the reform of the criminal justice system, in particular its criminal procedures. The underlying problem is not so much a financial issue, but lack of technology and inadequate human capacity.¹⁴⁹ The politicization of staff positions and the absence of a permanent civil service, dedicated to serve the courts, have contributed to constant turn over and the use of judicial jobs to reward supporters without regard to competence. The IDB has provided training programs for justices, prosecutors, defense attorneys and administrative staff in order to implement Guatemala's new Penal Code with its adversarial and oral model.¹⁵⁰ In so doing, the Bank has challenged judges to abandon the *expediente* (thick file of written motions) within which he, or she, had a level of protection based on the experience that few others would examine the heavy dossier. The oral and public nature of the reformed proceedings can move relatively speedily with consequences for the defendant, but it also requires greater mental agility on the part of the judge and counsel.

In El Salvador, and in recognition of the need to reinforce the rule of law, the think tank, FUSADES, has called for greater emphasis to be placed on the training of judges, prosecutors, attorney generals and Clerks of the Court, who now administer the cases and the court docket.¹⁵¹ This follows a recommendation by CEJA, which stressed the importance of improving the quality of lawyers practicing before Salvador's criminal bar.¹⁵² Also, dedication of 6% of the national budget to the justice system has allowed for significant increases in judicial salaries and the development of a judicial career.

¹⁴⁷ Former President of Colombia, Belisario Betancur, former Venezuelan Foreign Minister, Reinaldo Figueredo and U.S. law professor Thomas Buergenthal led the UN Truth Commission for El Salvador which began its work six months after the peace treaty was signed at Chapultepec Castle, Mexico City on January 16, 1992.

¹⁴⁸ Margaret Popkin, "The Salvadoran Truth Commission and the Search for Justice," *Criminal Law Forum* 15, pp. 105-124 (2004).

¹⁴⁹ The 1996 UN mediated Peace Agreement in Guatemala guaranteed that no less than 2% of the national budget should be dedicated to the judiciary. This represents a considerably lower percentage than the 6% of national budget guaranteed within the Salvadoran peace treaty.

¹⁵⁰ *Programa de apoyo a la reforma del sector justicia - Guatemala* (GU-0092) IDB, Washington D.C. (2007).

¹⁵¹ "Las Instituciones Democráticas," FUSADES (August 2007). "El Proyecto de Código Procesal Penal: Parte I FUSADES (January 2008).

¹⁵² "Proyecto de seguimiento de los procesos de reforma judicial de América Latina: informe de El Salvador," CEJA, www.cejamericas.org/estudios.

Throughout Central America, training is offered on a voluntary basis and extends to all judicial officers. It is provided through judicial training institutes which are linked to the Ministry of Justice or the National Judicial Councils. While the design of the curriculum will vary, CEJA considers that it is critical that training include both ethics and property management.¹⁵³ The latter reflects the need to create Clerks of the Court, who should direct all administrative matters in the management of the court house, technology, budget, as well as the equitable distribution of case loads and timely hearings for those charged, but not convicted.

iii. Terminate pre-trial delays:

Pre-trial detention remains a problem despite the legal requirement that the defendant be arraigned speedily. The 1996 Penal Code establishes a maximum limit of 24 hours for holding a suspect before the police bring their case before a magistrate or judge. It is also common for detainees to be held without proper information of the charges against them.¹⁵⁴ According to members of civil society, the police routinely ignore writs of habeas corpus in cases of illegal detention, particularly during neighborhood anti-gang operations.¹⁵⁵ The police and the judicial system join in a hypocritical process in which both the arresting police officer and the person charged know that the case will eventually be dismissed. In Guatemala, only 2% of those arrested are convicted.¹⁵⁶ Based on pre-trial imprisonment in excess of the time permitted by law, as well as detention in overcrowded facilities lacking adequate conditions for human support, judges are required to dismiss the case.

In 2006, the Guatemalan government established its first “24 Hour Court House,” an integrated police and judicial center, in a residential building in Villa Nueva, a *barrio* of Guatemala City. In adjacent offices, the investigative police, the prosecutor, public defender, judicial administrative staff and the judge

are gathered in a single building and operate throughout the day and night. This court has permitted the public hearing of cases within the time set by law. It has reduced the case load on other tribunals, avoided unnecessary pre-trial detention for cases that can be resolved through findings of innocence, payment of a fine, community service, or the finding of guilt and sentencing to jail. The creation of administrative staff to manage the case loads, the Court House and its budget has allowed the judges to focus exclusively on the juridical cases before them.

Villa Nueva was known for its high rate of crime and low rate of convictions, leaving the residents deeply suspicious of the new judicial reforms. Considerable skepticism existed as to the capacity of the state to sustain a continued police and judicial presence in this neighborhood. Since its initiation two years ago, sustained international funding from the European Union and USAID has helped to prove that a “24 Hour Court House” can meet community needs and reduce violent crime. Ongoing management of this institution has been transferred to the Ministry of Justice, thereby freeing up external funds to establish a similar court in Mixco a provincial town also known for its high rate of criminal violence. The “24 Hour Court House” has demonstrated the need for the investigative police, the prosecutor and the judge to interrelate before and at trial, but not do each others work regarding the collection and preservation of evidence. Under the reformed Penal Code, the judge’s historical role as collector of evidence is ended.

iv. Training for prosecutors in gathering of evidence, investigations and protecting witnesses:

Under the traditional inquisitorial system, the lower court judge had the authority to request evidence and to order investigations. In theory, this authority ended with the introduction of the accusatorial system and the endorsement of the judge as arbiter. Consequently, those elements of law enforcement

¹⁵³“Reformas Procesales Penales en America Latina: Resultados del Proyecto de Seguimiento, IV Etapa,” CEJA (2007).

¹⁵⁴ Once a suspect has been arraigned, the prosecutor has three months to complete the investigation and file the case in court or seek a formal extension of the detention period.

¹⁵⁵ 2008 Country Report on Human Rights Practices—Guatemala, Section 1(d).

¹⁵⁶ Francisco Diaz & Sidney Blanco, “Functioning of the Penal System: Handling of Homicides” UNDP, New York (2007).

responsible for carrying out investigations must work exclusively with the prosecutor, while also informing the defense. However, not all judges have accepted the removal of their right to seek investigations and frequently ask police units to carry out investigations on their behalf. With the introduction of new evidentiary rules, the investigative police found that they had a new master, the prosecutor, while still responding to their traditional master, the judge. Answering to both, the conflict over the production of evidence had direct implications for the case before the justices and for the accused behind bars. Frequently, the consequence became the production of false statements, misuse of evidence and the coercion of witnesses. With better training, the responsibility of the prosecutor to seek the evidence in coordination with the investigative police is becoming the norm.

Prosecutors have now received training in the presentation of forensic evidence in court, protection of the witnesses' identity, legal prosecutorial methods and ethical conduct. USAID currently funds a project to draft the procedural manual for prosecutors, who still need training in the investigation and prosecution of police officers charged with committing human rights violations. Also, a witness protection program recently began and greater technical and financial resources must be awarded to make such a program effective.

v. International Law Enforcement Academy (ILEA):

In June 2005, Secretary of State Rice announced the establishment of an International Law Enforcement Academy (ILEA) in El Salvador to train prosecutors, defense attorneys, judges and court administrators,

as well as managers of law enforcement institutions and law enforcement officers.¹⁵⁷ With initial U.S. funding of \$3.6 million, the intent is that judicial personnel and police officers from the region participate in specific courses with experts gathered from the hemisphere.¹⁵⁸ The Salvadoran Ministry of Government and the U.S. State Department run the program jointly, but virtually all of its instructors come from the U.S. and most of the school's expenses are paid out of International Narcotics and Law Enforcement's (INLE) budget. Under the Merida Initiative an additional \$2 million has been appropriated to enhance a schedule of activities at ILEA for the current academic year. To date, two courses in the Culture of Lawfulness have been given to 60 prosecutors and judges. Also, four courses lasting six weeks each have been given to mid-level justice managers to train 160 Clerks of the Court.¹⁵⁹

Regional training at ILEA holds considerable potential for both court personnel and the police. However, the material taught is considered to be too analytical and abstract for many of the students. Both the attorney general of Honduras and a police officer in Guatemala City expressed skepticism about ILEA based upon the pragmatic needs of prosecutors and defense attorneys representing criminal cases. Both individuals complained that "ILEA is above my head. The courses are not directed to people like me. My work is ordinary and I need training from people that understand the problems I face on a daily basis. I don't need fancy ideas."¹⁶⁰ So long as ILEA faculty understand this skepticism and adapt the courses to accommodate a more pragmatic approach to court practice and law enforcement, this problem can be overcome.¹⁶¹

¹⁵⁷ ILEA programs were established in Budapest, Hungary in 1995, Bangkok, Thailand in 1999, Gaborone, Botswana in 2001 and a post-graduate academy in Roswell, New Mexico also in 2001. A Bilateral Agreement establishing an ILEA between the U.S. and the Salvadoran government was signed on September 21, 2005.

¹⁵⁸ The program funding does not include \$4 million appropriated for the construction of the ILEA buildings on the outskirts of San Salvador.

¹⁵⁹ Central American Security Assistance Budget Justification Reference Document, submitted to Congress by the U.S. Department of State (March 2008).

¹⁶⁰ When I asked the Attorney General why the Honduran judiciary and police were not taking advantage of the courses offered by ILEA, he replied that he did not believe that they could assist the Honduran authorities, given the particular context of their work. The reason for this reluctance remained unclear. Author's conversation with the Attorney General Rosa Batista, Tegucigalpa, Honduras (June 5, 2008).

¹⁶¹ Another challenge is the recollection of the syllabus at the School of the Americas SOA, and its inclusion of investigative techniques which verged on torture. The secrecy with which ILEA (El Salvador) was planned and the failure to share the texts that will be used in the classroom, as well as class lists, has raised concerns that it might, once again, train a generation of government officials who will abuse legal practices in pursuit of efficient gathering of intelligence. Wes Enzinna, "Another SOA? A U.S. Police Academy in El Salvador Worries Critics," *NACLA Report on the Americas*, New York, 41:2 (March/April 2008).

vi. Rolling out judicial reforms to rural areas and staged roll-out of criminal reforms:

The overall statistics for homicide and violent crimes are accumulated into national data, which are useful in comparing national levels of violence, but are not useful in determining where a greater presence of the state is needed. Until recently, large urban centers were more likely to see higher levels of crime than provincial towns and rural areas, but this is changing as organized criminal networks are pushed out of urban areas into small towns and the surrounding countryside where the presence of the state is barely known or felt. Therefore in developing national strategies to strengthen democratic institutions and bring government services to areas previously not served, Ministries of Justice seek funds to establish a judicial presence in rural areas and provincial towns.

In Nicaragua, Penal Code reforms were rolled out in two stages. The first focused on the most serious crimes, such as homicide and the second stage focused on less serious crimes. A National Co-ordination Commission was created to oversee the process with both regional and municipal offices.¹⁶² Although Nicaragua has not been subject to the same violence from the *maras*, the strong presence of organized crime creates the necessity to reform the judicial system to maintain public security, as well as provide predictable rules for investors. Linn Hamnergren at the World Bank has criticized the piece meal approach in rolling out reforms, arguing that it deflected from the overall package of amendments that had to be grasped as a whole.¹⁶³ Others have argued that the nature of the reforms was so profound that it was impossible to introduce and implement them at one time. Instead, specific proposals were introduced in a geographic area with the intent of demonstrating the capacity of the new criminal justice to meet local society's need for security. The effectiveness of judicial reforms in limited areas provides citizens with greater confidence that they can improve the quality of justice in urban areas where the problems of criminal violence are greater.

vii. International Commission against Impunity in Guatemala:

In Guatemala, persistent high levels of intentional homicide, miserable rates of criminal conviction and endemic corruption both in the police force and in the Attorney General's office resulted in a call to the United Nations to establish an International Commission against Impunity in Guatemala, known by its Spanish acronym, CICIG.¹⁶⁴ The Guatemalan legislature debated at length the desirability of accepting another UN body to examine issues that were both internal and sensitive—namely society's capacity to respect the rule of law. Despite the persuasive arguments of former Vice President, Eduardo Stein it appeared unlikely that the Congress would accept the establishment of this UN body until five bus drivers were murdered on February 5, 2008. All were driving passenger-filled buses on different main roads in Guatemala City. The following day, seven more bus drivers were murdered. In response, the city's bus drivers went on strike for several days, shutting down the city for a week. The Guatemalan government appeared incapable of completing the investigation and prominent journalists revived the memory of the thirty-six year old civil war, as well as the specter of state power shared between army officers and drug-traffickers. Incoming President, Alvaro Colom, recognized that the government could not contain the heightened level of violence and with Congressional approval, asked the CICIG to take up, as its first case, the murder of the five bus drivers. A respected Public Prosecutor before Spain's Supreme Court, Carlos Castresana leads this UN effort to investigate organized crime and its links to the state. With sixty investigators and thirty lawyers, this body has a two year lifespan to investigate those cases that are considered necessary to "change attitudes."

The powers of the CICIG are limited. It has neither the right to subpoena witnesses, nor the authority to indict. However, the Commission has been given broad investigatory authority, because it is not possible to know the extent of collaboration between

¹⁶² Cristian Riego R. Nuevas, "Tendencias de la Reformas procesales penales en America Latina," CEJA (2007) 19.

¹⁶³ Hamnergren (2007).

¹⁶⁴ *Comisión internacional contra la impunidad en Guatemala* (CICIG) approved by the Guatemalan Congress in September 2007.

criminal elements and official authorities. However, once the investigation is complete, the prosecution of suspects passes to the Guatemalan courts. The CICIG's principal leverage is the international nature of the investigations and the mandate to publish results, but its two year mandate—which ends in January 2010—will need to be expanded if it is to make an impact on public perceptions of trust in the judiciary.¹⁶⁵ If the CICIG can be shown to bring a degree of objectivity to the criminal legal process, in the same way that the UN Truth Commissions for El Salvador and Guatemala respectively undertook, some hope exists that the authority for this UN body might be extended in time and scope to other nations suffering the impunity of their public officials.

viii. Funding:

Despite constitutional guarantees that a proportion of the national budget will be devoted to judicial reform, the governments of the Northern Triangle tend to rely on external advice and funding to carry out the reform projects. This indicates a fundamental reluctance to finance the reforms and a preference to treat them as projects imposed by the international community. Honduran Chief Justice Morales argued that criminal activity had become an international phenomenon and that only a concerted international effort could contain growing criminality.¹⁶⁶ Her solution to the problem of poor institutional structures and performance was to request co-operation from the international community. The inference of her argument was that national reform could proceed only if adequate external funding was available. If the international community sought judicial reform, then they should provide the funding. This argument undermines the essence of judicial reform which stresses

the indigenous nature of these changes. Those who advocate judicial reforms argue that domestic political will to reform must exist to sustain the changes and that only internal demand for a better justice will enable the institutions and cultural attitudes to strengthen their respective domestic institutions. Reforms that are perceived to be imposed from outside will not take hold, but will fail for lack of ownership by key domestic constituencies.

ix. Conclusion:

In Central America, a patrimonial society that provides access to justice through the mediation of a powerful sponsor is slowly breaking down. However, a society based on individual rights and responsibilities has not yet emerged to take its place. Leadership, grounded in democratic institutions remains the essential component, but those same democratic rules allow only four years to enact changes before the next political leader assumes power. Until March 2009, one party has dominated the presidency in El Salvador providing sustainable leadership, but elsewhere in Central America, political parties alternate and a perverse desire to do things differently accompanies that change in government.¹⁶⁷ Therefore sustained reform is very hard to achieve.

Only the political will to implement judicial reforms will succeed in bringing about the changes in cultural norms and strengthen the institutions to make those attitudinal changes a reality. The challenge is to create a more independent judiciary at a time when criminal violence has increased exponentially and national societies are frightened. Judicial reform takes time and citizens are unwilling to wait. Voters, seeking security now prefer repressive measures that take

¹⁶⁵ The CICIG received authority for a renewable two years from the date of its inception on January 11, 2008.

¹⁶⁶ *Las actividades del crimen que atraviesan las fronteras solo pueden enfrentarse a través de un sistema de justicia internacional que permita compartir informaciones de inteligencia, que establezca una verduria del sector financiero y fomente todos los mecanismos de colaboración judicial entre los países... la ausencia de cooperación multilateral hará inútiles los esfuerzos para combatir las redes internacionales del crimen organizado.* (Criminal activities which cross borders can only be confronted by an international system of justice that allows for the sharing of information on intelligence, which establishes trustworthiness in the financial sector and foments a collaborative mechanism on matters of justice among all the countries... The absence of multilateral cooperation will make the efforts to combat international and organized criminal networks ineffective). "Fortalecimiento del Estado de Derecho," paper presented by Chief Justice Morales, Tegucigalpa (June 5, 2008).

¹⁶⁷ The conservative ARENA party won the presidency in 1989 and has retained that position ever since. For the first time, a credible challenge exists from the FMLN (leftist party) in the March 2009 election. However, at the municipal level, FMLN candidates have been elected mayors and alternation has existed at the local level.

young, uneducated men off the street. A preference for authoritarian practices, experienced only one generation ago, is rising again.

F. Recommendations:

In recognition of these significant problems, and after consulting with the DPLF and other legal scholars, I propose the following ten recommendations while noting serious problems with each:

1. Appoint professional judiciary bodies, composed of other lawyers, deemed honest and without open political allegiance, to select judges, review performance and recommend for appeals and the Supreme Court appointments. *Problem:* How to keep these new professional bodies from resorting to clientelistic behavior.
2. Establish Judicial Councils as disciplinary bodies to review judge's performance, as well as recommend appointment and removal for cause. *Problem:* The Judicial Councils are usually composed of senior judges, or senior political figures with close connections to individual judges. They are often stacked with legislative allies who do not take their work seriously, and seek to avoid external interference. Consequently, their ability to provide objective performance assessment has proved negligible.
3. Open trials to the public, make judicial documents accessible to interested parties, give defendants the right to confront and challenge evidence and witness testimony in open court. *Problem:* Judicial resistance to interference by the litigants, public and media.
4. Increase communication between the judicial system and the people through enhanced communication and publication of judicial decisions which should contribute to greater transparency. *Problem:* Both judges and their staff resent interference from the media and civil society which seeks the legal basis for decisions

reached. Instead of increasing trust, the effort to introduce the media into the court room has created greater hostility.

5. Consistently seek to implement the transition to oral, adversarial and public procedures with the support not only of Supreme Court justices, but also national political leaders. *Problem:* Adoption of the new criminal procedures has been slow and requires several and continuous amendments to create procedures that can be absorbed within national norms and values.
6. Train judges and lawyers in the search for practical solutions, including alternative remedies. *Problem:* Members of the judiciary, trained in legal theory, find lack of intellectual rigor in the acceptance of alternative pragmatic solutions.
7. Train specialized staff in preservation of evidence and practice of evidentiary hearings. *Problem:* This occurs, but there exists high turnover among court appointed staff.
8. Seek experienced lawyers to act as public defenders and not rely upon law students. *Problem:* Adequate funding and training programs.
9. Create a *Ministerio Publico* (Public Ministry) with the task of identifying and eliminating judicial corruption. *Problem:* The staff for this new institution has been taken from the Attorney General's (*fiscal's*) office and allegiance to the new Public Ministry has been slow or non-existent.
10. Develop effective witness protection programs. *Problem:* Adequate funding and procedures for protection.

Discussion of judicial reforms faces greater difficulties in Central America due to the fact that the reforms have coincided recently with increased criminal case loads emanating from increased criminal violence attributed to the *maras*, organized criminal networks and drug cartels. The court system has been

overwhelmed and the general public blames the new criminal justice system for failing to suppress these criminal gangs. Instead, in presidential and legislative elections the voters have demanded more immediate and repressive measures. Widespread skepticism of the court's ability to prosecute and convict the *maras* has resulted in demands for "iron fist" police measures intended to take criminals off the street. El Salvador and Honduras' adoption of *super manodura* legislation has coincided with the most contentious dialogue over judicial reform. This debate on justice is somewhat esoteric and those who participate come from among the more educated members of society. Similar to northern, industrialized societies, the majority of the Central American population remains excluded from the process. They may rely on public radio and the sensationalized version in the daily press, but the ordinary reader has difficulty understanding the fine print of judicial and criminal procedures. Yet the general public who rely on popular newsprint and the radio for their information are the very people who confront criminal elements, on a daily basis, on their bus ride to work and opening their shops for business. In a manner similar to the discussion on the Washington Consensus, the debate on criminal justice is not carried out on the street corner or in the local café, but in air conditioned offices and the halls of legislative palaces. Meantime, the street demands security through more repressive laws and accepts that off-duty police take justice into their own hands and dispose of suspected criminals.

Scholars who follow closely the issues of criminal justice in the Western Hemisphere recognize that the early optimism on the ability to transform the

criminal justice system in order to strengthen the public's trust in the democratic state has dissipated. They are now cautious of the time and funds required to pursue the task of implementing reforms.¹⁶⁸ Also, within the region, a growing number of skeptics question the government's ability to implement the reforms. For example, in 2002, the Honduran legislature enacted into law the National Judicial Council to audit the functions of the courts, but to date the necessary enabling law (*ley organica*) to create such a council has not been passed.

Consequently, in the Northern Triangle public distrust of politicians, political parties, law enforcement, judges and the judicial system remain high. They are believed to be corrupt and more concerned with private interests than the national good. This has created in a high degree of public insecurity and severely weakened institutions with which to confront criminal behavior. Strengthening the court system is a necessary pre-condition for tackling crime, but at the same time, high levels of crime diminish citizens' trust in those officials dedicated to reform the judiciary. To resolve this dilemma both reform of the judiciary and improving the effectiveness of law enforcement should be carried out simultaneously. If confidence in democratic institutions and the rule of law is to grow, citizens will need to experience a palpable reduction of criminal violence and growing confidence in public security. The current situation of high crime rates and low trust in the judicial system and the police has to be confronted as a critical social problem requiring broad public commitment, a sustained effort and the dedication of revenues, if necessary new taxes, to address the underlying causes of the violence.

¹⁶⁸ "Proyecto de seguimiento de los procesos de reforma judicial de America Latina: Informe de El Salvador," CEJA (2008) www.cejamerica.org/estudios.

IV. REFORM OF THE NATIONAL POLICE FORCES

Reform of the criminal justice system is intended to strengthen the public's trust in democratic institutions, but it is debatable whether it has a direct impact on curbing criminal violence. National police forces, necessarily, have direct relationship with local communities and the potential to impact criminal behavior. Extensive efforts to reform the national police have taken place throughout Central America, including Nicaragua. They are not as complex as the reform of the Penal Code and judicial procedures, but they remain critically important. The purpose of reforming national law enforcement authorities is four-fold:

- Improve the status of the police by requiring the completion of secondary school education, plus graduation from a law enforcement academy to improve both professional and ethical standards, as well as higher salaries sufficient to make bribes unnecessary in order to support a family;
- Develop intelligence sharing techniques and effective law enforcement operations through scientific, sociological and the necessary legal training in order to carry out focused investigations, targeted arrests and avoid generalized round-ups;
- Place community police on the street, engaging with the local population on public projects

with the intent to slowly build up trust and encourage the reporting of crimes and the collection of evidence; and

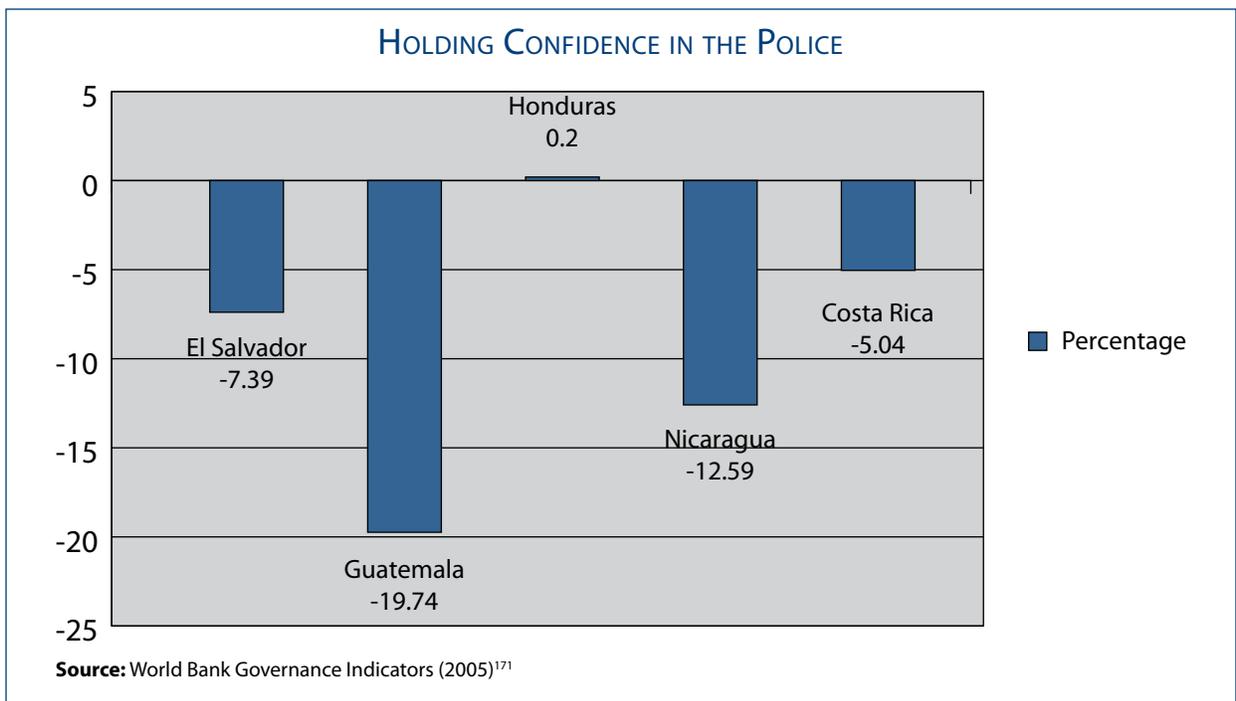
- Sanction those who take public order into their own hands and act outside the law.

In the short term, the capacity of the police to achieve these results has proved elusive and pervasive distrust of law enforcement officials, as well as low confidence in the police persists. According to the World Bank survey, only Honduras achieved a positive rating in confidence toward the police, and only at a minimum level. The positive rating may be explained by the recent creation of a civilian police force that is independent of the armed forces.

The choice of joining the police force is not usually based on family tradition, nor a vocation to serve the community. Instead, service in the police force represents a government paid job with the license to carry a weapon. Those who join the police do not make it their first choice, but agree to join this force after rejection, or ejection from the armed forces, or another government job.¹⁶⁹ There is little status attached to police work and even less trust from the general public. The IDB's survey of trust in the police force for Honduras, El Salvador and Guatemala found that only 12% relied upon the police to solve problems. That number has remained steady over several years with no sign of improvement.¹⁷⁰

¹⁶⁹ Diana Davies, "Corruption within the Police of Newly Industrialized States," Massachusetts Institute of Technology (2007) and paper presented to the Council on Foreign Relations, Washington D.C., June 24, 2008.

¹⁷⁰ DATAGOV – Governance Indicators Database, IDDB (2009). Source: World Economic Forum, the Global Competitiveness Report, Palgrave MacMillan, Geneva (2008).



According to Latinobarómetro survey for 2007, 32% of those polled had no trust in the police, 30% held little trust, 25% had some trust and only 12% held much trust.¹⁷² Police forces are believed to work with criminal elements due to the need to supplement their salaries. A precarious security balance has developed by which organized crime provides security to certain communities and geographic areas so long as the police do not interfere. Citizens recognize which institution provides security in specific areas, as well as the cost and effectiveness of such protection, with the result that an accommodation is reached between the police and criminal elements.¹⁷³ Citizens accept the accommodation, because they have little alternative, and a precarious social peace is maintained. The challenge is to make law enforcement units more effective and, if possible, more powerful than criminal elements so that confidence and a willingness to confront the *maras* and criminal networks becomes an integral part of police work. The danger is that this confidence leads to excess and a proclivity to abuse community members; a historical tendency that

was suppressed deliberately in the Central American peace accords and through ratification of international conventions. At present the capacity to make law enforcement authorities more powerful than criminal networks, let alone the drug cartels, is an uphill struggle, if not impossible.

A. Impact of Police Force in Guatemala

The underlying public lack of trust lies in the belief that the police force is deeply infiltrated by organized crime. The representative for the Human Rights Council in Guatemala reports that with trans-shipment of 300 metric tons of cocaine to the U.S. each year, “[Guatemala] has become a paradise for organized crime. The state apparatus is weak. The impunity rate is very high. This has shown that organized crime has penetrated at a much higher level than we ever thought.”¹⁷⁴ Guatemala’s Chief of Police, Erwin Sperisen believes that 40% of the force of 91,500 officers is corrupt and 10% should be fired immediately. Since 2005, 1,000 police have been fired in

¹⁷¹ www.worldbank.org/wbi/governance.

¹⁷² Crime and Confidence Survey, Latinobarometro (2007).

¹⁷³ John Rapley, Caribbean Policy Research Institute, conference paper at Woodrow Wilson International Center for Scholars, Washington, D.C. (October 30, 2007).

¹⁷⁴ Manuel Roig-Franzia, “Linked Killings Undercut Trust in Guatemala: Culture of Corruption, Impunity Exposed,” *The Washington Post* (March 23, 2007).

Guatemala and 250 are in jail, but Sperisen admits that “it’s almost impossible to clean up the force.”¹⁷⁵

The Economist ranks Guatemala City as one of the most dangerous cities in Latin America, but violent crime is not confined to cities.¹⁷⁶ The national homicide rate in 2006 was 47 per 100,000 up from 32 per 100,000 in 2003.¹⁷⁷ In 2007 the homicide rate continued to rise with 5,781 intentional homicides, including 559 women, rising in 2008 to 6,292 intentional homicides including 722 women.¹⁷⁸ The public blames this rising level of violence on poorly trained and under-resourced police force, as well as a weak justice system. Frequently, the government has deployed the armed forces to support the police, but this has done little to lower crime levels and law-breaking continues to rise. Local *maras*, rather than organized criminal gangs are blamed for much of the violence.

President Berger, who took office in 2004, proposed repressive anti-*mara* legislation in keeping with his neighbors in Honduras and El Salvador. However, on recognizing that the repressive policies did little to reduce the violence in those countries, he welcomed foreign experts to advise him on an integrated and comprehensive law enforcement strategy. Despite his campaign promises, Berger did not seek enactment of *Super Manodura* legislation, but instead focused on institutional strengthening of the courts and the police. This was combined with police outreach into the communities and the establishment of Youth Centers in some of the most violent areas to prevent younger boys and girls joining the *mara*, as well as to intervene and offer an alternative to those seeking to leave the gangs.

The challenge is to create a police force that can gain community trust. In my recent visit to the 15th precinct in Nueva Villa, a community considered to be among the most violent of Guatemala City,¹⁷⁹ the

police demonstrated how they have undertaken three measures:

- Creation of a rape assistance unit attended by females police officers with privacy for reporting and a doctor on call for physical examinations to provide the *prima facie* case for rape and assault.
- Appointment of civilians and the use of an electronic data base to facilitate the issuance of the official police permits which are necessary prior to gaining employment. This criminal background check used to drag out for several days and required several returns to the police station. Now, application for the permit can be sought, reviewed electronically through the Central Investigate Unit and issued the same day thus avoiding delays in starting work, as well as travel costs.
- Placement of police patrols throughout the community on foot with radios. This enables them to report back suspicious behavior, or call for an ambulance to take the sick to hospital. According to police officers, this form of outreach has improved relations with local citizens in Villa Nueva.

As part of the building of public trust, the Guatemalan government has created a public hot-line, named “*Cuentaselo a Waldemar*” (Tell your story to Waldemar).¹⁸⁰ These telephone lines enable victims to call in anonymously with complaints of extortion, assault, kidnapping, burglary and theft. The anonymous telephone lines allow people to call in without entering the police precinct or making a report, actions that could provoke retaliation. Once a call is received and logged into the Waldemar center, the police are required to investigate further and, if probable cause exists, to obtain an arrest warrant.¹⁸¹ This

¹⁷⁵ Ibid.

¹⁷⁶ Economist Intelligence Unit (June 2008) www.eiu.com/index.asp.

¹⁷⁷ Assistant Secretary of State, Thomas A. Shannon, statement Before the House Committee on Foreign Affairs, Subcommittee on the Western Hemisphere (May 8, 2008).

¹⁷⁸ 2008 Country Report on Human Rights Practices – Guatemala, www.state.gov/g/drl/rls/hrrprt/2008/wha/119161.

¹⁷⁹ Author’s visit to Villa Nueva, Guatemala, (June 5, 2008).

¹⁸⁰ Waldemar is a children’s cartoon figure, well known in the U.S. and a popular figure in Guatemala.

¹⁸¹ “*Guatemala Segura: Unidos Prevenimos la Violencia*” *Memorias del II Foro Centroamérica Segura: Políticas y practicas exitosas de prevención de la violencia*, San Salvador (December 2007). www.guatemalasegura.gob.gt.

is facilitated by the local judges' availability 24 hours a day through the nearby 24 Hour Court House. However, an ongoing concern is the ability and willingness of the investigating officer to collect evidence without distortion of facts, false accusations and bribery from criminal elements. Police training in ethics, as well as investigatory techniques, presently is inadequate and remains a problem.

The U.S. State Department has hired an officer from the Puerto Rican Police Department to instill good community outreach practices, as well as to initiate effective investigative practices. Officer Sammy Rivera has undertaken a pilot project to train the local police forces in the 15th police precinct in Villa Nueva, a neighborhood famed for its high crime rates. In seeking to change the culture, Officer Rivera offered the officers a financial bonus if they would agree to participate in training programs, take a lie detection polygraph test every six months and commit to reaching out to the community. Fifty percent of the officers at the precinct agreed. The remainder rejected the offer.¹⁸² With the narco-traffickers paying more than \$4,000 a month to ensure their shipments get through the neighborhood, it is problematical for a police officer to bank with the government and the rule of law.¹⁸³

Among those who agreed to U.S. training programs were policemen recently trained in the numbering and identification of money bills. When those officers succeeded in identifying the culprits to an extortion racket in which the employees of a local Korean textile *maquiladora* were required to pay 10% of their salaries to a gang called "North Hollywood", the Korean owners offered a reward. The police deliberated among themselves and decided to ask for linens and clothes for the recently established Shelter for Battered Women. When I met with the Korean owners, they were astonished that they had been asked to contribute to a local social service and not to the cash fund of the local police union. Their comment was that "maybe things are changing here."¹⁸⁴

Women police officers are now hired and a room is assigned for them to listen to the complaints from abused wives and daughters. They will also call in a local doctor, who assists victims in establishing the legal evidence of physical injury and rape that can stand up in court without the need for witnesses. Until the reforms went into place, women rarely approached the 15th precinct; certainly not to complain about intra-family violence. The women police officers have remained at this precinct for close to two years and have encountered a degree of respect both from their male colleagues, as well as the community. One confessed to me that "neighbors no longer laugh at me for joining the police." Slowly, her confidence in upholding the law and protecting citizens was growing. Both incidents of successful training in identification of money bills, as well as the new female officers to assist in cases of rape and sexual assault are encouraging. However, the experience of one precinct does not yet reflect a national trend in strengthening the lawfulness of the police force. More training in community outreach and investigative procedures is needed if the police are to become a trustworthy and effective force.

Current events suggest continuing impunity by law enforcement officers and the less than effective capacity of the state to impose the rule of law. In 2008, investigations into 185 members of the National Civilian Police found that officers were responsible for 18 deaths, as well as 14 cases which remain unresolved.¹⁸⁵ Furthermore, the head of Guatemala's anti-kidnapping unit, who was investigating a number of high-profile cases, was murdered in April 2008, but no arrests have been made and the public investigation remains pending. A long running and complex case is the kidnapping and murder in Guatemala City of three Central American parliamentarians from El Salvador and their driver on February 19, 2007. In this case, four members of the National Police' Criminal Investigative Division were arrested as suspects and incarcerated in Guatemala's maximum

¹⁸² Author's meeting with Officer Sammy Rivera, 15th Precinct, Villa Nueva, Guatemala (June 5, 2008).

¹⁸³ Author's meeting with Officer Rivera.

¹⁸⁴ Author's meeting with Korean employees of the *maquiladora*, Guatemala City (June 5, 2008).

¹⁸⁵ 2008 Country Report on Human Rights Practices – Guatemala.

security prison. Six days later, the four police officers were found stabbed and fatally shot inside their cells. A prison riot followed the murders. In October that year, a judge in Santa Rosa dismissed the case against 16 prison guards accused of facilitating the February killings for lack of evidence. To date, several police officers with alleged ties to narco-trafficking, as well as the assistant to a political figure have been arrested and charged in connection with the parliamentarians' death, but no trial date has yet been set.¹⁸⁶

This inability to pursue complex criminal investigations is reflective of the Guatemalan government's failure to investigate and punish unlawful killings committed by members of the security forces. Meantime, widespread societal violence continues. Given the weakness of state institutions and indications of rampant impunity, we must ask what is the preferred means by which the current CICIG or the U.S. government through the Merida Initiative might assist Guatemala strengthen its police and judiciary.

B. Impact of the police force in El Salvador

The peace agreements which marked the end of civil wars in both El Salvador and Guatemala created new national police forces. In El Salvador, the much feared Treasury Police and Investigative Police were abolished and a new Salvadoran Police Academy (ANSEP) was formed to train a new generation of cadets.¹⁸⁷ Under the terms of the peace agreement, one third of cadets would be drawn from government forces, one third from the guerilla forces gathered within the *Frente Faribundo Marti de Liberacion Nacional* (FMLN) and one third from the general public. The FMLN moved fast to contribute cadets in this last category.¹⁸⁸ However, while the government asserts that the new police force has acquired legitimacy and a degree of trust among the population,

turn-over rates are high, the number of recruits remains low and equipment such as vehicles and radios is inadequate.¹⁸⁹ Certain areas of the country, such as La Union and Morazán, provide no cadets for ANSEP, the young men and women preferring to emigrate rather than enter the police force. Volunteers are more likely to be found in areas surrounding San Salvador, but until the financial crisis of September 2008, a relatively strong economy and the opportunity to emigrate provided alternatives to a career in law enforcement.

Furthermore, the intent to increase the number of women in the police force has proved to be a failure. Since the creation of the new force in 1994, the number of women has increased only from 3% to 8% of the force.¹⁹⁰ This may reflect a cultural reluctance to enter a profession previously held exclusively by men. However, women played key roles as combatants in the FMLN insurgency and their absence among the new police units, as well as their reluctance to attend ANSEP raises questions regarding the roles and respect given to them in the new force. Their absence may reflect a continuing unease over the role of the police in Salvadoran society and enduring lack of trust in the institution. According to The Global Competitiveness Report for 2007, more people trust the police in El Salvador than they do in Guatemala, but based on a range of 1-10, levels of trust are much lower in the Northern Triangle than in Costa Rica or Nicaragua.

These low levels of trust were noted in Colombia in the 1990s, but the leadership of that country has succeeded in turning around the effectiveness of the Colombian police with the result that rising levels of trust in the Colombian police force are now noted.¹⁹¹ This suggests that a committed national effort to reform the police can produce positive results.

¹⁸⁶ A Guatemala Congressman, Manuel Castillo, has been implicated in the killing of the Salvadoran parliamentarians. Despite formal charges against him, he was elected Mayor of his home town thus giving him immunity from prosecution. Although the Tenth Court has stripped Mayor Castillo of his immunity and issued an arrest warrant, Castillo remains at large. See Country Report on Human Rights Practices - 2007.

¹⁸⁷ *Academia nacional Salvadoreña para la educación policial* (1992).

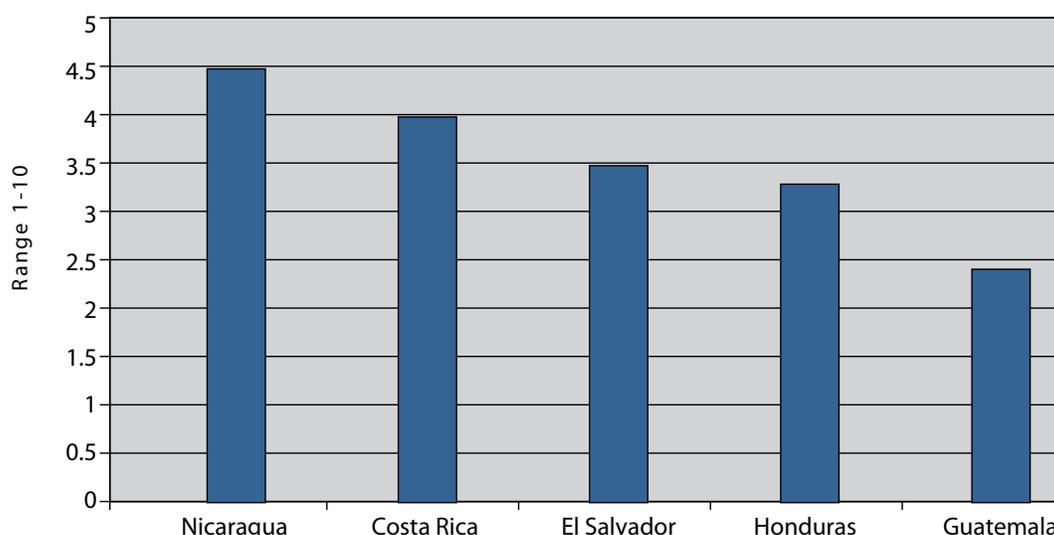
¹⁸⁸ Diana Villiers Negroponte, "Conflict Resolution at the End of the Cold War: El Salvador's Efforts to Make Peace," Doctoral Dissertation, Georgetown University, Washington, D.C., May 2006 (unpublished).

¹⁸⁹ Author's meeting with Police Commissioner, Gonzalez R. National Police Academy, El Salvador (March 5 2008).

¹⁹⁰ Ibid.

¹⁹¹ "Confianza en la policía y carabineros" *Latinobarometro* (2007).

RELIABILITY OF POLICE SERVICES, 2007



Source: World Economic Forum. The Global Competitiveness Report (2007)

Since its inception in 1992, ANSEP has trained 90,000 policemen and women, in a series of 11 month training programs. They no longer carry the reputation for abusive behavior, but they are not considered to be effective in controlling crime. Furthermore, despite the training, human rights abuse of those held in police custody remains high. In the twelve month period June 2006-2007, the office of the Ombudsman for Human Rights found the police responsible for 295 violations of integrity, which included unlawful killings, attempted unlawful killings, and assaults causing bodily harm.¹⁹² The Ombudsman reported that security forces killed 26 persons in 2007, an increase of 4 persons over 2006.

Distinct treatment of law enforcement officers from political suspects is evidence of unequal application of the law and the protection afforded to law enforcement officials. In July 2007, the former police chief of the Criminal Investigation Unit was charged with the murder-for-hire killing of an alleged *mara*. He was arrested in November that year and released while the criminal investigation remains open. A year

earlier, a politician with the FMLN opposition party killed two police officers during a demonstration outside the University of El Salvador; the incident sparked fears of a return to the violence experienced in the civil war. The FMLN politician was arrested, convicted and sentenced to 35 years imprisonment. The Salvadoran judge chose to give greater weight to the testimony of the policeman than to the testimony of the opposition politician.¹⁹³

Antonio Saca was elected president for a five year term in March 2004 largely on the basis of his promises to crack down on gangs and crime. The year before, El Salvador's Congress enacted legislation similar to that in Honduras, making it a crime to be a member of the *mara*. In 2005, the National Congress passed more repressive anti-*mara* measures, enhanced police power to search and arrest suspected gang members and stiffened penalties for convicted gang members.

Changes in the legislation were accompanied by increasing use of joint military and police patrols, despite the fact that Salvadoran law restricts joint

¹⁹² Ombudsman for Human Rights in El Salvador (2007). www.unhcr.ch/html/menu2/5/salvador.htm.

¹⁹³ In July 2008, the wife of a prominent City Council member of the FMLN was shot riding a public bus. To date the case remains under investigation. See 2008, Human Rights Report: El Salvador. www.stte.gov/g/drl/rls/hrrpt/2008/2ho/119159.

patrols for specific activities, such as anti-narcotics patrols and drug busts. According to the U.S. State Department's Human Right report for 2007, 784 military personnel were deployed that year to protect the police in areas where the gangs and criminal violence were most active.¹⁹⁴ Under the justification of anti-narcotics patrols, the army increasingly accompany the police on joint activities.

The massive round up of *mareros* has resulted in overcrowded jails and riots with the death of inmates, including one 15 year old boy. According to the 2007 U.S. Human Rights report, 34% of the prison population is estimated to belong to one or other *maras*. In theory, they are held separately from the regular prison population, but the degree of overcrowding has forced a blending of adult criminals and youthful *mareros*. In 2008, 19,814 prisoners were held in facilities built to hold 8,227.¹⁹⁵ This represented an increase over the previous year when 16,786 prisoners were held in the same 22 prisons. Of this number 5,765 are current or former gang members. An equivalent number are held in pre-trial detention together with 11,257 felons.¹⁹⁶ Overcrowding has led to intense mingling of *mareros* with convicted felons, as well as the death of 57 inmates in several prisons in 2008. The mixing of both pre-trial suspects and convicted felons creates fertile ground for recruitment and training. It also facilitates the smuggling of weapons, drugs, cell phones and cell phone chips into the jails.¹⁹⁷ This has enabled the 18th Street and MS-13 to exercise influence from within the prisons and conduct criminal activities from their cells, at times in complicity with the prison guards.¹⁹⁸ The government allows human rights observers, non-for-government organizations and the press to visit

the penitentiaries. It is yet to be determined how the newly elected president, Mauricio Funes from the FMLN will engage with these serious social problems when he takes office in June 2009.¹⁹⁹

C. Impact of the Police Forces in Honduras:

The size of the *maras* in Honduras is estimated at 36,000, three times the number of *maras* in El Salvador and nine times the number in Nicaragua.²⁰⁰ In an effort to control violence, the Honduran National Assembly in 2003 enacted legislation that made it an offense to be a member of the *maras*. Under the *super manodura* law, membership, alone, was cause for conviction, and felonies carried out by *mareros* resulted in stiffer sentences than those carried out by non-gang members.²⁰¹ In the single month of September 2006, 1,200 *mareros* were arrested.²⁰² As a result there is significant overcrowding in the penitentiaries. The U.S. Human Right's report for 2007 quotes NACLA estimates of 2,000 *maras* killed since the introduction of the 2003 law, whether inside or beyond the prison gates.

Despite the government's repressive measures, the level of violence has not declined in Honduras. Most youth arrested under the *super manodura* legislation have been released subsequently for lack of evidence. Some youth, who were wrongly arrested for gang involvement, have come into contact with gang leaders while imprisoned and have been recruited into the *maras*. Credible reports of extra-judicial killings of the *maras* by vigilante groups continue, including assassinations of *maras* suspects and gang members deported from the U.S.²⁰⁴

¹⁹⁴ El Salvador: Country Report on Human Rights Practices - 2007.

¹⁹⁵ 2008 Human Rights Report: El Salvador.

¹⁹⁶ Human Rights report for El Salvador - 2007.

¹⁹⁷ 2008, Human Rights Report: El Salvador.

¹⁹⁸ Ibid. In 2008, only one prison guard was dismissed and five others are under investigation, two of them for more than one year.

¹⁹⁹ On March 15, Mauricio Funes was elected as the FMLN's presidential candidate after 20 years of conservative leadership under ARENA. Many of the FMLN party members still pursue a Marxist/Leninist philosophy which would seek to redistribute wealth and increase funding for social programs. However, job creation will depend upon the level of foreign direct investment which Funes has stated he will seek to increase.

²⁰⁰ Jose Miguel Cruz, presentation to WOLA conference, Carnegie Institute, January 29, 2008. "Street Gangs in Central America," *Universidad Centro Americana*, San Salvador (2007). The study relies upon surveys carried out by the much respected, *Instituto Universitario de Opinion Publico*, (IUDOP).

²⁰¹ Federico Breve, Honduran Minister of Defense 2002 – 2006 and now Director of FUNDEMOS, a consulting service focused on democracy, social welfare and development, speech to the Center for Hemispheric Policy, Miami (September 2007). See also, Breve, "The Maras; a Menace to the Americas," *Military Review*, Fort Leavenworth, 87:4, (July/Aug 2007).

²⁰² Cruz, "Street Gangs in Central America."

²⁰³ Ribando, *CRS Report* (August 2007).

The government has proved incapable of containing the growth of criminal violence and presidential efforts to suppress the *maras* range from negotiation to repressive police action. Manuel (Mel) Zelaya ran for the presidency in 2005 on a Liberal party platform which emphasized dialogue with the *maras* in order to convince them to abandon violence and reintegrate into society. In his presidential campaign, Zelaya committed to engage in a comprehensive strategy that would address the root causes of gang membership, but he has not delivered on his campaign promise and has lost support, much of which is attributed to the failure of his anti-crime policies.

Meantime, crime levels in Honduras remain extremely high. According to the Oversight Office for Violence in Honduras, recorded homicides increased by 25% in 2008 with a total of 7,286 violent deaths, an increase of 1,448 over 2007.²⁰⁴ Kidnappings were up—although many go unreported for lack of trust in the capacity of the police to obtain a release—from 2 in the period January-May 2006 to 14 in the same period in 2007. Despite Zelaya's talk of a comprehensive strategy to address the criminality posed by the *maras*, he has found himself overwhelmed by the level of insecurity. In response to questions on security policy, Honduran Ambassador to the U.S., Roberto Flores Bermudez focused principally on increasing the size of the national police force.²⁰⁵ This legitimate pre-occupation will go some way to addressing the problem, but fails to appreciate the balance between the strengthening of institutions and socio-economic programs to address underlying causes of violence.

Honduras has undergone major reforms of its police. The *Fuerzas Unidas de Seguridad y Prevención* (FUSEP) was formerly a part of the Honduran armed forces, and was transformed into an independent, civilian force. In response to growing criminality and violence, the government has increased the number

of police from 7,500 in 2005 to 12,301 at the end of 2007.²⁰⁶ The intent is to reach a force size of 13,800 by early 2009.²⁰⁷ The national budget has increased to allow for an additional 2,000 police in each of 2008 and 2009. However, the training program for cadets is inadequate. Although 181 training courses were held in 2007 (a significant increase over 2006) the quality of the training does not prepare a young policeman or woman to patrol effectively in communities, use technology to increase knowledge-based information and consequently gather investigative material in preparation for trial.²⁰⁸ There is a glaring need for training in the use of communication technology, community outreach, and respect for individual human rights. Critics are also concerned that without the appropriate training, the police force could return to the militarized culture that prevailed when FUSEP was an integral part of the Honduran armed forces.

D. Growing Use of Private Security Forces in the Northern Triangle

In response to these ongoing threats, the business sector in San Pedro Sula, the commercial center of Honduras, has hired its own private security firms, whose origins reach back into membership of one side or another in the Central American civil war (1980-1992). The growth of private security guards presents a potential threat to state institutions. Renegade police or ex-members of the armed forces find employment in private service with the license to carry a gun. The growth of private security firms recalls the growth of para-military forces in the 1980s. The justification at that time was the defense against communist insurgents who kidnapped and murdered prominent members of the business community. Today, the justification may be different, but the growth of personal security forces raises the specter of serious internal conflict, as well as the existence of a force

²⁰⁴ "Murders increased 25% in 2008," *El Tiempo*, San Pedro Sula (February 21, 2009). Of the total 439 were classified as caused by indeterminate causes.

²⁰⁵ Ambassador Flores meeting at CSIS on Honduran Security Threats, Washington, D.C. (July 2008).

²⁰⁶ "Estrategia General de Seguridad" *Memorias del II Foro Centroamérica Segura* (December, 2007).

²⁰⁷ Ambassador Flores Bermudez, CSIS (July 2008). See also, "Defense Minister Asserts Authorities Continue to Fight Crime, Drug Traffickers, La Tribuna, Tegucigalpa (February 24, 2009) www.latribuna.hn/.

²⁰⁸ "Estrategia General de Seguridad."

that competes with the national police. In other societies and at other times, private security guards have formed the basis of militias that grew to threaten the state. Without a national effort to regulate private security firms, license their weapons and limit their role, an incipient militia force is in gestation.

In El Salvador, monthly pay for a private security guard is approximately U.S. \$200. This is comparable with the salary of entering police officer, and compares with \$250 a month that U.S. Embassy families pay to their household help. On these incomes, a private guard does not bring home much sustenance for his family, and he remains vulnerable to bribery. Stories are told of private security guards encouraging members of the police force in San Salvador to rob the houses they guard during their off-duty hours so as to justify more use of private security guards.²⁰⁹ Examples of collusion between private security guards and criminal elements indicate an alternate security structure in which the family is safer when protected by the criminal network and its agents, the private security guards!²¹⁰

E. Impact of Police Efforts in Nicaragua

Nicaragua has avoided the same level of criminal violence suffered by its northern neighbors. The question is why and how? Editorials in the local newspaper, *Noticias Rojas*, state that a public sense of insecurity is pervasive, but the opinion is not supported by polling data. A 2006 survey for Vanderbilt University found that a majority of Nicaraguans claimed to feel insecure, but only 18% of those surveyed responded that they, or a family member, had been a victim of crime in the last year.²¹¹ According to Latinobarómetro survey for 2008, this rose to 28%, but remained much lower than victimization rates in the countries

of the Northern Triangle.²¹² Widespread belief exists that high levels of criminality pervades Nicaragua, but official statistics do not support this perception. The question that puzzles people both inside and outside the country is why.

Nicaragua is the poorest country in Central America and the second poorest in Latin America after Haiti. Approximately 70% of Nicaraguans live in extreme poverty (less than \$2 per day) and unemployment hovers around 60 - 65%.²¹³ Fifty percent of those unemployed are under the age of 24. Thirty five percent are 13-29 years old. Of these youth, 35% are in secondary school, 13% never had any schooling and 45% of children drop out of school before grade 5.²¹⁴ This suggests that a majority of secondary school age people are neither in school, nor at work. Historically, we might have expected this age group to help their parents farming and with household work, but an increasingly urban population does not need the same work force in the fields.²¹⁵ With time on their hands, this group of young men is highly susceptible to recruitment into youth gangs, called *pandillas* in Nicaragua.

Many people leave Nicaragua in search of better opportunities. Most of the migrants are young: 42% are 15-24 and close to 40% are 25 - 44 years old. It is estimated that 850,000 to 1 million Nicaraguans have left for Costa Rica and the U.S., sending over \$800 million annually in remittances. High poverty levels, exclusion, poor secondary school attendance and inadequate job opportunities account for high levels of participation in *pandillas*, but criminal behavior among this group remains relatively low. Reviewing the characteristics of those who commit violent crime, Nicaraguan police statistics show that 0.57% of violent crimes were committed by *pandillas*.²¹⁶ The

²⁰⁹ Diane E. Davis, presentation at the Council on Foreign Relations, Washington D.C. June 24, 2008. See also, Davis, "Undermining the Rule of Law: Democratization and the Dark Side of Police Reform in Mexico," *Latin American Politics and Society*, 48.1:55 (Spring 2006).

²¹⁰ Ibid.

²¹¹ Mitchell A. Seligson, "The Political Culture of Democracy in Nicaragua. *A Study of the Latin American Public Opinion Project*, Vanderbilt University (2007).

²¹² Victimization rates for the Northern Triangle: El Salvador & Honduras =36%, Guatemala = 31%. See Latinobarómetro 2008, p.27.

²¹³ Economist Intelligence Unit (July 2008) Average monthly per capita income is \$60.

²¹⁴ "Education in Nicaragua," UNESCO Institute for Statistics (2007).

²¹⁵ Fajnzylber, Lederman & Loayza (1998).

²¹⁶ Acuna, "Informe des Estudios de Pandillas en Nicaragua," Managua, Nicaragua (November 2005).

majority are committed by adults focused on accumulating wealth or carrying out revenge. The police statistics appear to be remarkably low.

Four reasons are given for the relatively low participation by *pandillas* in violent crimes:

1. Passage of the Nicaraguan Code for Children and Adolescents in 1998, in conformity with the UN Convention on the Rights of the Child, created a special category for law enforcement agents.²¹⁷ Under the terms of the convention, children between the ages of 13 and 18 had to be protected, although insufficient funds exist for adequate housing in Juvenile Detention Centers. Faced with the prospect of incarceration with adults or going free, the police spontaneously punished the young person on the scene.²¹⁸ They may also have chosen not to arrest them. This has prevented arrested youths from spending time in jails where recruitment commonly occurs. The creation of Committees for the Defense of the Sandinista Revolution instilled a certain moral order and allegiance to the community and to the revolution. These committees performed the task of neighborhood watchdogs who report on suspicious behavior. The committees ended in 1994, but the neighborhood watch and crime prevention role of the police lingered on.
2. Since the revolution, the police have played an active role in crime prevention and intervention programs for young people. These programs are community focused and the police play a key role in identifying risk factors. Also the community has designed appropriate programs and interventions for at-risk youth.²¹⁹ In comparison with its neighbors in the Northern Triangle, Nicaragua has the highest level of trust and reliability in police services.²²⁰ Intervention programs also work through the prison system with vocational and artistic activities to prepare prisoners for life in the community. The outcome has reduced costs, such as health, lost productivity, law enforcement and the justice system.²²¹
3. Illegal drug consumption among Nicaraguan *pandillas* is lower than consumption rates among the *mara* of the Northern Triangle. According to SIDA's study of youth gangs in Central America, in Nicaragua 29% of *pandillas* claim to 'always or sometimes' consume illegal drugs compared to 46% among the *mara* of Guatemala, 65% among Hondurans and 37% among Salvadorans.²²² Given the World Bank's finding that a direct relationship exists between illegal drug consumption and intentional homicide, we may infer that the *pandilla* are less likely to commit homicide.²²³
4. The government's determination to increase foreign direct investment and tourism results in the reporting of good news, low crime figures and the image of constructive youth. According to Jose Luis Rocha, a researcher with Nitlapan-*Universidad Centro Americana* (UCA) in El Salvador, "[T]he police could be interested in presenting a more peaceful situation than actually exists, perhaps because it would suggest good police performance and dovetail nicely with the government decision to present Nicaragua as the safest country in Central America."²²⁴

²¹⁷ Francisco Janier Bautista Lara, "Reforma de la justicia Penal, Avances, Retos y Nuevas Leyes e Instituciones," Managua, Nicaragua (September 2, 2006).

²¹⁸ Jose Luis Rocha, "Why No Maras in Nicaragua," *Revista Envio*, www.envio.org.ni/utills/imprimir.

²¹⁹ USAID (April 2006).

²²⁰ Global Competitvity Report, "Reliability of Police Services" (2007).

²²¹ Bautista, "Reforma de la Justicia Penal."

²²² Related to these figures, 67% of the Nicaraguan *pandillas* claim 'never or almost never' to consume illegal drugs compared to 51% among the *mara* of Guatemala, 35% among Hondurans and 61% among Salvadorans. See SIDA, "Maras and youth gangs" p.18 (2008).

²²³ Fajnzylber, Lederman & Loayza (1998).

²²⁴ Rocha, "Why no Mara in Nicaragua," p. 7.

On its own this conclusion is not sufficient to explain sustained lower homicide rates and higher responses to trust in the national police. The three other factors provide credible explanations leading to the conclusion that greater social cohesion still exists in Nicaragua.

F. New Policing Techniques

International policing policies have undergone a veritable revolution in recent years. No longer are police patrols considered sufficient. Hot-spot policing, community policing, problem-oriented policing and crime prevention through environmental design (CPTED) are now being used both in OECD countries and in Latin America.

• Hot-Spot Policing

Hot-spot policing that uses electronic and human intelligence to identify criminals enables the police to target specific individuals for arrest with minimum impact upon the rest of the community. Law enforcement which relies more upon knowledge than upon the exercise of force presents the opportunity to resolve community criminal problems more effectively. The U.S. and Europe are not the only regions to have employed knowledge based solutions. In a pilot program, they also have been used most effectively in a *favela* of Belo Horizonte, Brazil where crime fell by 2.7% compared to the city as a whole. Hot-spot policing is currently being used in Guatemala City and San Salvador, but it is still too early to determine the impact on criminal behavior.

Community policing is more widely used in Central America and requires that the police reach out to the community to demonstrate their commitment to the quality of economic and social life. The officers at the 15th precinct in Guatemala City cleaned up the *maras* graffiti along street walls, together with school age children and the boy scouts. The newspaper photographs of shared tasks

and shared refreshments were heartening, but no one believed that the *maras* could not repaint their messages whenever they wanted. The evidence from Guatemala and Costa Rica suggests that these programs are more effective at improving police-civil society relations than reducing crime victimization.

• Crime Prevention Through Environmental Design (CPTED)

CPTED has been used most effectively in Colombia. It uses a cross-sector approach that relies upon the physical modification of the local environment to reduce crime. This is usually done by improving natural surveillance and control over the access to the particular area. Management of the identified space becomes important, giving power to those who control the area and clearly demarking frontiers. On its face, CPTED sounds like control over gated-communities that are found in the wealthier neighborhoods of Central American cities. However, extension of the model to low income neighborhoods has gained support from municipal authorities. It is also intended to give the local police confidence that they can maintain control over a certain physical space as crime-free. A study commissioned by the U.S. Department of Justice found that use of CPTED within a designed space decreased robberies by over 30%.²²⁵

In Colombia, where CPTED has been used for a number of years, evaluation of the *TransMilenio* public transit program in Bogota and Medellin found that along the route where the tramway was constructed, police control resulted in a significant decrease in commercial robberies, robberies of individuals and homicides.²²⁶ Based on my visit to the Santo Domingo *barrio* in May 2008, I witnessed the method by which municipal authorities and law enforcement officials control entrance to and exit from the *barrio* to ensure public safety. Access to Santo Domingo is by the *TransMilenio* cable car; at a cost that is equivalent to the use of the local city bus.

²²⁵ Judith Feins, Joel Epstein and Rebecca Widom, "Solving Crime Problems in Residential Neighborhoods: Comprehensive Changes in Design, Management and Use," Justice Programs, National Institute of Justice (1997).

²²⁶ Applicability of Bogota's TransMilenio BRT System to the U.S. Final Report, PTA Office of Mobility and Innovation, Washington, D.C. (May 2006) p. 17. See also the police impact of TransMilenio in Medellin and cable car route, Calle 30 (Sector 1) and Route 45 (Sector 11) www.transmilenio.gov.co/trans-noticias/comment.

One can avoid this by walking or driving up to Santo Domingo, but the incline is steep and the roads very narrow. Therefore, most people, including merchants, use the city cable car to transport goods thus traveling through a controlled space where the authorities monitor movements. Also, the cable car is in use throughout the night enabling people to move from Santo Domingo to centers of employment in the city of Medellin. Historically, the *barrio* of Santo Domingo was crime ridden, but it now displays a magnificent Youth Center open from 8:00 in the morning to 8:30 at night, a job skills training center and an employment agency. The Medellin police patrolled the streets in uniform, without body armor and with merely a service pistol at their side. They looked more like a London bobby than security guards in a high crime district.

Entrance to markets and shopping malls provides the space for CPTED in Guatemala City, Tegucigalpa and San Salvador. These do not include residential areas, but cover commercial areas frequented continuously by the general public. CPTED and other policing techniques that zero-in on criminal elements, while leaving the majority of the population undisturbed, is an essential element of any successful and long term counter-criminal strategy.

As the U.S. government determines the preferred method to support law enforcement authorities in

Central America through the Merida Initiative, it should recall that sustainable police reforms must occur from within society and cannot be imposed from without. If local police are to reach their own decision on a transformation to lawfulness, they have to develop their own reasons to reform. It is therefore necessary to examine the conditions that contribute to success or failure. What programs make the biggest qualitative difference in the character of policing? How should the external trainer or funder engage with local Interior Ministry or Justice Ministry to produce effective cooperation as the national government reforms?

Lessons learned from the 1990s when the United Nations both deployed international police as peacekeepers and trained local police to become democratic law enforcement officers have demonstrated that national police forces must reach their own decision regarding the respect for human rights, effective internal accountability and partnership with local communities so as to achieve public safety. International assistance can stimulate internal controls by donating funds to the national Ombudsman or Human Rights organization to monitor law enforcement practices. However, mindful of national sovereignty, the U.S. government should not go beyond this degree of intervention in order not to interfere with national determination to respect human rights, establish transparency and national accountability.

IV. INDICATORS TO DETERMINE PERFORMANCE IN THE JUSTICE SYSTEM AND POLICE

Over the last twelve years, scholars and practitioners have sought to develop metrics to measure the progress in carrying out the reforms to the criminal justice system. There is general agreement on the key factors, which this paper outlined earlier. The IDB has developed its own indicators to judge its judicial reform projects in Guatemala, Argentina and Peru. However, while these identify the multiple factors to be judged as effective/ineffective, there is no graded scale on the relative effectiveness of the outcome. The absence of grading presents two problems. First, how do you judge relative progress, or lack thereof, from year to year? Second, given the close relationship that IDB officials must create with local officials to assure ongoing cooperation, a tendency to give a passing grade will necessarily exist. The capacity of institutions with responsibility for ensuring continuity of the project, face a challenge when required to make impartial assessments.

The solution lies in the use of NGOs, who have no ownership of a particular reform program. Over the last five years, the independent think-tank, *El Centro de Estudio Para El Futuro* (“the Center”) in San Jose, Costa Rica has created the most sophisticated methodology to determine the Rule of Law and Democracy in Central America.²²⁷ The Center coordinated with nine Central American institutions and 122 researchers with the goal of developing precise metrics that could determine where, how, and why democratic institutions and the law were failing to

be effective in meeting goals established by the law and national governments. The time period for this study was 1986-2000. Using 85 variables (factors) and 455 indicators (benchmarks), each weighted for significance, the authors studied the identifiable norms and realities in the construction of democratic institutions, the courts, local government, budgetary procedures and electoral systems. The underlying method was to analyze the failure of government, the dysfunctions of the systems and the absence of strategic planning. The challenge is how to make the Center’s comprehensive and sophisticated methodology usable to national governments. In short, how can it be made user-friendly? The problem with an overly complex system is its applicability.

An alternative is the Judicial Reform project within IFES, which has developed indicators that focus on the central factors undergoing reform by identifying “strategic tools for promoting, monitoring and reporting on judicial reforms.”²²⁸ IFES has drafted a model report that uses simple charts and seeks answers to straightforward questions. IFES proposes that the Supreme Court of each nation prepare an annual report on the ‘state of the judiciary’. This report would provide a means for judges and judicial staff to assess their own performance. To help in this task, IFES has identified Judicial Integrity Principles, outlined earlier. They cover a wide range of issues related to the independence and accountability of the judiciary.

²²⁷ “*Observatorio de la Democracia en Centro America*,” *Centro de Estudio para el Futuro*, San Jose, Costa Rica (2007).

²²⁸ “Global Best Practices: A Model State of the Judiciary Report,” Keith Henderson, Violaine Autheman, *Rule of Law White Paper Series*, IFES, Washington, D.C. (April 2004).

The central questions asked in the sought-for annual report are:

- Are the necessary laws and regulations in place?
- Are they implemented and enforced in practice?
- Are they fairly and effectively implemented and enforced?
- Have there been legal (or constitutional) interference with court decisions, judicial independence or judicial integrity?

Regarding judicial institutions, IFES raises the following questions:

- Which are the relevant institutions?
- Are they adequately staffed, trained and funded?
- What initiatives have they taken in support of their stated purpose?
- Have they played a positive or negative role?
- How is the requirement of competent, impartial decision making implemented?

Lacking quantitative analysis, the answers do lend themselves to subjective assessments. However, they oblige the respondent to reflect upon key issues concerning reforms of the institutional, legal and procedural systems.

The surveys carried out by Latinobarómetro continue to provide critical indicators of performance as perceived by victims and general society. The issues raised by Latinobarómetro are included neither in the metrics drafted by the IDB, the Center for Study of the Future, nor by IFES. However, they remain essential to understanding the public perception of security, trust in the honesty and efficacy of the police and access to justice. Latinobarómetro surveys are one of the principal means available to judge to determine

how society views the reforms. For example, in seeking to determine whether access to justice has improved since 2000, the survey of 1,000 respondents in 18 countries of Latin America found no change (76% to 75% in the number of those who did *not* believe that equal access to the courts existed, while those who believed that equal opportunities existed remained constant at 22%).²²⁹ After a decade of judicial reforms throughout most of the hemisphere, the survey provides a sad reflection that judicial reforms have not made an impact on the public perception of access to justice. This reflects the fact that if we wish to contain, if not suppress, criminal violence, we cannot address the issue through institutional changes alone. We must also engage in socio-economic programs that address the underlying causes of the violence.

Regarding police reform, Caroline Moser, formerly of the Brookings Institution, examines a series of factors causing criminal behavior.²³⁰ They might be classified into three groups:

- Individual factors: age, biological and physiological characteristics and family environment can increase an individual's predisposition to violence;
- Domestic/household factors: a history of family violence, ineffective parenting skills, school drop-out, unemployment and poor socio-economic background create the conditions for domestic/household violence; and
- Societal factors: multiple community and societal factors that may trigger crime and violent behavior. These include easy access to firearms, the media's fascination with violence, weak police and legal systems, plus widespread impunity that affect levels of crime.²³¹

²²⁹ Latinobarómetro 2007, www.latinobarometro.org.

²³⁰ Caroline O.N. Moser, "Reducing Urban Violence in Developing Countries," The Brookings Institution, Washington, D.C. (November 2006).

²³¹ Mayra Buvinic, Andrew Morisson and Michael Shifter, "Violence in Latin America and the Caribbean: A Framework for Action," Technical Sustainable Development Department, IDB, Washington D.C. (1999).

As a consequence of these three factors, there exists a growing level of fear within communities, contempt for the promises made in electoral campaigns and distrust for the police and judicial system. For example, Latinobarómetro found in 2005 that over 62% of respondents claimed that they held “little trust” in the police and close to 31% held “no trust” in the police.²³² In addition to strengthening the police by increasing both their number and their training, societal and economic aspects of crime and criminal justice require serious consideration in any attempt to address the problem.

It is clear that on their own, the judicial and police reforms undertaken to date have neither affected the levels of criminal violence, nor the public’s perception of insecurity. We could argue that more time is needed, and that greater effort has to be made to pursue those reforms. The evidence from Colombia, as well as from counter-gang strategies in the U.S., is that a more comprehensive strategy must be created.

Such a comprehensive strategy requires a six-pronged approach:

1. Improve the effectiveness of the police in the communities with smart tactics and greater use of communication technology. Societies will only deter the police from their involvement with the criminal networks and the *maras*, if the latter are seen to be retreating, somewhat. The state has to start winning some battles against criminal elements by identifying targets, meeting points and leaders. The police must be trained to be professionally more knowledgeable, better equipped and professionally more effective, while at the same time respecting human rights.
2. Governments and respective legislatures should introduce judicial reforms that are closely integrated with the police reforms. Prosecutors have to maintain professional, but closer ties with investigative police so as to work as allies in producing the necessary evidence to incriminate the

guilty. To the extent that the investigative police can produce forensic evidence, money bill numbers, medical reports on physical harm to individuals and credible digital photographs, which note the date and time of their entry onto the crime scene, the prosecutor’s task becomes more straightforward. Prima facie cases are more likely to move toward a court hearing, than those relying on witnesses and deductive inference.

3. Judges must be held accountable from the time of arraignments through the appellate process. Judges should be accountable to audit committees appointed by the judicial Bar, the legislature, and civil society. They need to be professional, respected by colleagues, and their families protected from harm. Means are available to reward incorruptible judges with public awards and the praise of the judicial bar.
4. Socio-economic programs need to be strengthened in order to improve education, skills training, recreational opportunities and public safe spaces. These programs should address not only a nation’s youth, but also their parents, particularly their mothers.
5. Intervention programs need to be based on best practices which have proved that gang members can leave and enter main-stream society thanks to programs that provide psychological and economic support.
6. Finally, for those who are committed to criminal behavior, incarceration should be a safe and decent environment in which electronic communication is blocked and regular searches remove weapons. Jails must be divided to separate pre-trial detainees from convicted felons and guards should be subjected to lie detector tests and receive appropriate training, including human rights.

Central America is not the only geographic region that has succumbed to criminal violence and that

²³² Crime and Confidence Survey in the Police and Carbineros, Latinobarometro 2005 (unpublished)

prominent men believe “is under attack.” In the early 1990s criminologists and politicians bemoaned the soaring homicide rates in U.S. cities.²³³ The combination of a youth bulge and a crack craze resulted not only in unacceptable homicide rates, but also broader criminal attacks on individuals and to property. However, by 2001, homicide rates in New York City had fallen by 73.6% from its peak in 1990, in Los Angeles, the homicide rate fell by 48.9% and even Baltimore saw a 19.7% fall from its peak in 1993. With a concerted and co-ordinated focus, major U.S. cities have succeeded in reducing significantly homicide, rape, assault and property crimes, suppressing urban gangs, and gained a knowledge advantage over

the narco-traffickers. This is not to suggest that the challenges are easy, but that there is good experience of what works and what fails. This knowledge needs to be shared with Central American governments. With knowledge gathered from multiple scientific fields, it is up to the leaders in the respective nations to develop and communicate the political will to combat criminality within their own region. Given that the organized criminal networks, the cartels and the MS-13 and 18th Street do not respect national frontiers, ministries of Justice, Interior, Education, Health and Public Safety must communicate frequently with each other. Shared information and shared tactics can best confront international criminal behavior.

²³³ In 1990, New York City experienced a homicide rate of 30.7 per 100,000. In 1993, Los Angeles endured a similar figure. That same year, Baltimore experienced a homicide rate of 48.2 per 100,000. The criminologist James Alan Fox wrote in a 1996 *Scientific American* article, “The next crime wave will get so bad that it will make 1995 look like the good old days.” President Clinton stated, “We’ve got about six years to turn this juvenile crime thing around, or our country is going to be living with chaos.” (All Politics, 1997) cited in Steven D. Levitt, “Understanding Why Crime Fell in the 1990s: Four Factors that Explain the Decline and Six that Do Not.” *The Journal of Economic Perspectives*: 18.1(2004) pp. 169-170.

VII. SOCIO-ECONOMIC DIMENSION OF PREVENTION AND INTERVENTION

An influential body of scholars and practitioners in conflict resolution believe that reliance on law enforcement and the courts is too heavy handed and will not succeed in curtailing violence beyond the immediate short term. In Central America, this conclusion is based on the short-term impact of anti-*mara* legislation, enacted between 2003 and 2005. The deterrent effect and reduced levels of homicides and violent crimes lasted for approximately 19 months, but thereafter, the level of violence picked up as gang members removed their tattoos and found alternative means to participate in criminal behavior. Also, recruits expanded through contacts in penitentiaries and perpetrators of violent crime became younger to take advantage of lesser sentences given to children.²³⁴ If judicial and police reforms have failed to contain the growth in criminal violence, we need to examine the underlying causes for criminal behavior and determine how we might address the socio-economic causes for anti-social behavior in Central America. In the Introduction, I identified root causes of criminal activity which are similar throughout the isthmus: marginalized urban areas with minimal access to basic services, high levels of youth unemployment compounded by insufficient access to educational opportunities, an ineffective justice system, high levels of intra-family violence, easy access to weapons and illicit drugs. The demographic youth bulge has created a cohort of youth without jobs, decent education and the realistic expectation of employment. Throughout the Northern Triangle measures

are being taken to engage with underlying causes. Before considering future projects, we need to examine current socio-economic programs.

A. Guatemala

Guatemala currently suffers more from the impunity of its government officials than from the criminal violence associated with the *maras* and organized crime. Therefore, it is important to distinguish between public insecurity carried out by the state and violence carried out by criminal groups. Under the auspices of the UNDP and the UNODC, United Nations programs in Guatemala focus principally on public insecurity and the need to instill both transparency and accountability to state functions. The glaring lack of public security is attributable to the police, politicians and the judiciary who are either in the pay of criminal elements or live in fear that both individual and official acts undertaken with the intent to protect society may result in retribution to themselves and their families.

The 2007 UNDP report on the economic costs of violence in Guatemala recommended institutional reforms that would contribute to greater social cohesion and reaffirm respect for human rights.²³⁵ Instead of focusing on the eradication of poverty and extreme social inequality, UNDP's representative in Guatemala recommended that the state seek to recover public trust and gradually guarantee citizen security, as well as regain its monopoly over security

²³⁴ The UN guidelines on the protection of detained youth and the UN Convention on the Rights of Youth require that the penalty for children committing crimes not be as severe as those for adults.

²³⁵ "El costo economico de la violencia en Guatemala," *Programa de Seguridad Ciudadana y Prevencion de la Violencia*, UNDP, Guatemala (2006).

matters.²³⁶ The report sought to strengthen the government's public communication about violence and establish indicators by which citizens could measure progress. UNDP also called for the strengthening of civil authority through increased opportunities for social participation.²³⁷ The report recommended the drafting of laws to meet the types of criminal violence that currently most affect citizens, as well as consider appropriate and alternate penalties.²³⁸ Instead, the report highlighted the lack of political will to confront rampant impunity among government officials and proposed the UN International Commission against Impunity in Guatemala (CICIG). It is still too early to determine the CICIG's capacity to bring about change.²³⁹

Two noteworthy socio-economic programs are currently being pursued to contain violence: confronting intra-family violent behavior as well as the protection of women from abuse, and the development of social relationships based on mutual respect among at-risk youth. The government holds the principal responsibility for the first and the second is pursued by an NGO, *Asociación Grupo Ceiba*. The government has worked with criminologists and sociologists to identify both intra-family violence and abusive treatment of women as underlying causes of violence. Experts from the World Bank have examined the direct link between violence in the home and ongoing proclivity to injure, impose power relationships and consequently tolerate harm as the norm in subsequent social relationships.²⁴⁰ Also, a culture of abuse to women may have resulted in the willingness of the Salvatrucha gangs to sexually disfigure and murder a woman in their initiation rites. Despite, proclaimed termination of this form of gang initiation, the NGO *Grupo Guatemalteco de Mujeres* reports that femicide

rates remain high with 722 women killed in 2008, an increase over 2007.²⁴¹

Despite the existence of the government's Special Unit for Crimes Against Women, a new office of attention to victims and a special prosecutor for Crimes against Women, Children and Trafficking in Persons, prosecutions average 6%. Of those prosecuted only 1.5% are convicted.²⁴² Of the 2,575 cases of sexual crimes presented to the special prosecutor between January and September 2007, the government achieved 155 convictions with sentences of up to 20 years imprisonment.²⁴³ Reluctance of witnesses to come forward, social objections to getting medical observation of the vagina, as well as the difficulty of finding witnesses explain the low conviction rate.

Three other programs dedicated to the prevention of intra-family violence and sexual abuse are noteworthy for their objectives, despite the paucity of funding to implement goals:

1. The Institute of Public Criminal Defense launched a pilot project in November 2007 to provide free legal, medical and psychological assistance to victims of domestic violence. To date, the Institute has provided assistance to close to 2,300 cases, but increased resources must be found if the goals of the program are to be met.
2. The Office of the Ombudsman for Indigenous Women provides social services for victims of domestic or social violence, as well as mediation and legal services for indigenous women. This office also seeks to coordinate action with other government institutions and works with NGOs

²³⁶ Ibid, p. 82.

²³⁷ Ibid, p. 84.

²³⁸ Beyond intra-family violence and violence against women, the UNDP report did not identify other types of criminal violence.

²³⁹ The CICIG began its work in August 2007. See Part III, vii, pp. 41-42 above.

²⁴⁰ Cohen and Rubio, "Violence and Crime in Latin America."

²⁴¹ This number is higher than police statistics. The national police reported 687 killing of women in 2008 up from 559 killing of women in 2007. See 2008 Human Rights Report: Guatemala.

²⁴² The percentages are drawn from the statistics presented in the U.S. Embassy Country Reports on Human Rights Practices for Guatemala – 2007. The report notes the approximate doubling of femicides from 303 in 2001 to 603 in 2006. The U.S. Embassy notes that the Special Unit for Crimes against Women stated that reported rapes had increased by 30% over the previous four years due to the passage of laws criminalizing rape, including spousal rape.

²⁴³ Ibid.

to prevent violence and discrimination against indigenous women. Inter-agency coordination has expanded and the number of women seeking its services has doubled, but the lack of adequate resources and the poor logistical capacity to perform its functions on a national level produce relatively ineffective services to clients.

3. The Prevention and Eradication of Intra-family Violence under the First Lady's Secretariat of Social Work. In 2007, it received 1,618 calls over its emergency telephone line from battered women and children. Public prosecutors reported receiving more than 6,228 complaints of family violence against women and children, but as of July 2007 convictions had been obtained in only 96 cases.²⁴⁴ The intent to protect women and children is positive, but the actual capacity to protect these individuals is insufficient.

The development of these three programs provides an opportunity for increased support by international funders, including the U.S. government under the Merida Initiative.

The NGO, *Asociación Grupo Ceiba* seeks to create positive social relationships within the family, schools, community and prisons by “teaching young people how to create both close and peaceful interactions with others and respectful alliances or resistance with those who hold power.”²⁴⁵ Through the creation of social relationships based on mutual respect and the absence of segregation, *Grupo Ceiba* seeks to prepare young men and women for productive lives. This socio-psychological work is combined with training in computer skills to provide both alternative

employment opportunities that might prevent a young man or woman joining the *mara*, as well as reinsertion skills to those leaving jail. *Grupo Ceiba* has trained the trainers in both psychology and technical skills at five different penitentiaries that cater to youth gangs, two of which hold members of the *mara Salvatrucha*. In 2008, the NGO trained 500 young men in typing and computer skills. Private businesses have demonstrated a readiness to work with *Grupo Ceiba*, both in providing trainers, as well as offering positions to those with the required skills.²⁴⁶

These social programs with women, families and at-risk youth are evidence of Guatemalan awareness and willingness to address the underlying causes of criminal violence. However, without greater private sector focus and funding, these efforts will prove insufficient to meet the needs of Guatemala's youth.

B. El Salvador

According to recent surveys carried out in El Salvador by IUDOP-UCA, support for two pieces of legislation, *Ley anti-mara* (2003) and *Super Mano-dura* (2004), has waned.²⁴⁷ Despite the police and military's repressive behavior, homicide rates and criminal violence have not seen long lasting improvement. President Saca has therefore created a National Council for Public Security (CNSP), headed by Oscar Bonilla with a budget of \$1 million to focus on prevention and intervention.²⁴⁸ The Council seeks to develop a new integrated and comprehensive approach toward the *mara*. Among its projects in the municipalities of San Salvador, CNSP has established a youth center in Barrio Corazon de Maria #2, one of the slums of San Salvador, and a rehabilitation program for young addicts outside the capital city.²⁴⁹

²⁴⁴ Ibid.

²⁴⁵ www.grupoceiba.org. Marco Antonio Castillo has led this Guatemalan NGO since 1999 with a focus on juvenile violence, drugs and innovative educational practices.

²⁴⁶ “*Políticas y Prácticas Exitosas de Prevención de la Violencia*,” Presentation to the *II Foro Centroamérica Sugura*, San Salvador (December 2007).

²⁴⁷ Regional survey of the *maras* (2007). *Instituto Universitario de Opinión Pública, Universidad Centro Americana*. In 2005, President Antonio Saca sought and obtained legislation that increased the penalties for crimes carried out by *maras*. By 2007, the courts and the actions of *maras*, themselves demonstrated the ineffectiveness of the repressive legislation.

²⁴⁸ The European Union has provided \$10 million assistance to the *Comisión nacional de seguridad pública* (CNSP) for prevention activities launched in 10 municipalities of San Salvador.

²⁴⁹ In June 2008, while I met with young men and women in Barrio Corazon de Maria #2, member of the local *mara* observed me derisively. When I asked them if they would protect the computers and printers that I would send them, they stopped laughing, entered the community center and pledged to protect them. They showed me the Social Center's 36" TV as evidence that they can safeguard valuable property.

Instead of condemning the *maras*, Oscar Bonilla's intent is to provide alternative life styles that can make membership less attractive both to potential and actual members.

It will take time before results can be seen in the community intervention process of Corazon de Maria #2 and a reduction is noted in the public's fear. To date, the CNSP has sponsored prevention projects in twenty seven of the most violent Salvadoran municipalities. Some have praised these projects as models for other countries to follow, while others have dismissed them as more show than substance. Critics say that some projects have been placed in communities for political reasons to shore up support for President Saca's government. It is not enough merely to start the projects, sufficient funding must be forthcoming to sustain, if not expand, them. Otherwise, they will falter and close up. In the face of violent gangs, the project is only effective if it continues to offer a safe space, recreation, and education. Otherwise, the *maras* will take over the space, or oblige the Salvadoran police to patrol the youth centers thus provoking confrontation and contradicting the very purpose for which the center was established.

C. Honduras

Under former President Maduro, government resources were directed toward the arrest and incarceration of gang members. In July 2003, the National Congress amended the Penal Code to make association with the *maras* a crime, punishable by up to twelve years in prison. Youth with tattoos on their bodies can be detained and processed. The necessary intent to commit the crime is found on the basis of personal appearance, as well as congregating in certain neighborhoods. Consequently, many change their appearance and their mode of operation.

The Honduran press chooses to blame the preponderance of crime on the *maras*, but the reality is debatable. The Honduran police claim that the *maras* "have no ties to Colombian narco-trafficking" but

the Ministry of Public Security claims otherwise.²⁵⁰ The latter claim that the criminal networks and drug cartels contract with the *maras* for services, often paying with illegal drugs. Furthermore, with the growth of a domestic market for cocaine and marijuana, *mareros* raise money through the extortion of bus drivers, taxi drivers and small business owners. Extortion is believed to have increased significantly, although no reliable statistics exist with which to confirm the assumption. According to the testimony of *mareros* in jail, many have been hired by the cartels as mercenaries and are used for executions and drug distribution. Also, the increase in deportees from the U.S. has introduced more recruits, knowledgeable in cellular phone technology and more deadly weapons. Consequently, a sophisticated network of criminals has developed within Honduras.

Given that the Honduran government devotes only 2.5% of GNP to education, and that few Hondurans stay in school beyond Fourth grade, minimum education and low job skills result in few opportunities for employment. In early 2006, Henry Fransen, Jr., the Executive Director of the Association of *Maquiladoras* (assembly plants) in San Pedro Sula estimated that 80 to 120,000 new jobs are needed each year, but that the Honduran *maquiladoras* only create 15,000 each year. The current financial and economic problems in the U.S. have already begun to take a toll in Honduras with a reduction in manufacturing output, increased unemployment, decreased international tourism and significant reduction in remittances. This will result in even lower job creation and the inability to meet annual demand for youth employment. With little opportunity for legal employment, young men join criminal networks to extort war taxes on behalf of criminal gangs.²⁵¹

Two internationally funded projects, focusing on the socio-economic needs of prevention and reintegration, were recently initiated to both prevent young people joining gangs, as well as to intervene in order to help them reintegrate into society. The IDB has loaned \$32 million to the Honduran government

²⁵⁰ USAID report (2006) p. 93.

²⁵¹ Ibid, p. 94.

for a violence reduction program in the commercial city of San Pedro Sula. Within the program, *Paz y Convivencia*, approximately \$8 million is devoted to training members of the *mara* in micro-entrepreneurship and helping them reintegrate into society. In pursuit of this project, the NGO, *Fundacion por la Vida* is currently training 400 youths. The reintegration program began in 2006 and devotes \$15 million per annum for diagnosis, psychological testing, social work, therapy, skills training, and employment opportunities. The success of these projects is being watched closely for its effectiveness and capacity to replicate in other Central American countries, as well as Mexico.

Currently, USAID has three projects in Honduras:

1. Development of “alternative dispute resolution” techniques among youth at the community level. This project is found within the Strengthened Rule of Law Program and aims to improve the effectiveness and transparency of the justice system.
2. Creation of the Advisory Center for Human Resources Development (CADERH) which addresses socio-economic issues that form the root causes of gang membership and violence. To implement this program, CADERH has enrolled 5,000 low-income young people considered high risk youth with the potential to be recruited into gangs.
3. Formation of *EDUCATODOS* (Education for All) which uses long distance learning with the intent to reach 100,000 out-of-school youth and young adults.²⁵² At-risk youth, who have dropped out of the formal education system, receive the opportunity to acquire basic education skills needed to gain employment and increase income.²⁵³

A major problem lies in the government’s failure to construct the electronic highway to enable young men and women in marginal areas to access computers at government run, or private learning centers. Consequently, expectations are raised by the prospect of internet connections and computer literacy, but dashed in the knowledge that the government has not accessed funding to install the electronic highway.

D. Regional Programs

The World Bank has developed a manual for municipalities used for training programs on preventing community violence and crime in the region.²⁵⁴ The manual was developed by the government of South Africa to assist in crime prevention, but was later adapted to the Latin American context.²⁵⁵ The manual includes specific recommendations for municipalities to undertake crime prevention, violence prevention and reduction strategies. The focus of the guide is on the socio-economic conditions that foster crime and victimization. It also seeks to shift the primary responsibility for controlling crime from the police to communities, and recommends that governments work in partnership with the private sector. The basic message is that municipal leaders must raise awareness in their communities that social interventions—such as improved education, youth training, recreational facilities, and support for mothers—must be addressed in order to reduce crime, violence and other social problems. The analysis is laudable and the recommendations are pragmatic, but the funds for municipal action are seriously lacking.

The focus on socio-economic roots of violence has been taken up by the Pan American Health Organization (PAHO) which created the Central American Forum on Citizen Security and Violence Prevention. Similar to the World Bank focus, this coalition seeks to coordinate efforts between governments, the private sector and civil society to prevent juvenile

²⁵² Ibid, p. 30—the number 100,000 seems excessive. Nowhere else can I find such a high statistic.

²⁵³ Ibid, p. 99.

²⁵⁴ “A Resource Guide for Municipalities: Community Based Crime and Violence Prevention in Urban Latin America,” World Bank Department of Finance, Private Sector and Infrastructure, Latin American Region, November 2003.

²⁵⁵ Making South Africa Safe—A Manual for Community Based Crime Prevention,” www.csir.co.za/shs.

violence and promote respect for human life. PAHO's regional advisor on violence prevention, Alberto Concha-Eastman criticizes those governments that call for strong-arm measures, such as extradition, incarceration and other repressive measures to contain violence. Instead, he calls on governments to recognize that the main challenge lies in intra-family violence, poverty and lack of equity, access to firearms, alcohol abuse, the impact of violence in the media and complacency toward acts of violence in the home and on the streets.²⁵⁶ Concha-Eastman calls for national policies that define and support prevention projects and he calls for the resources to address these problems. Once again, the challenge is to find the funding.

Finally, UNDP has developed an integrated model for analyzing local causes of violence, developing human capital at the community level, reducing risk factors, generating social programs to create safe

cities, strengthening the police and the judiciary, and finally dismantling organized crime.²⁵⁷ UNDP has carried out a number of workshops in which it shares the model with local and national government authorities, as well as civil society. From its original focus on Colombia, the programs have been extended to Mexico and Honduras.

The existence of strong regional programs developed by the multilateral institutions demonstrates the broad commitment to develop multi-faceted and comprehensive programs to combat crime, whether perpetrated by youth gangs or criminal networks. The focus on socio-economic factors that work at the municipal level requires that UN agencies with distinct, but related developmental purposes, work together. Whether that UN call for cooperation will amount to the more effective use of limited financial resources is yet to be seen.

²⁵⁶ "Preventive Policies Can Help Curb Violence," Interview with Alberto Concha-Eastman. Newsletter of the Pan American Health Organization (November 2005) www.paho.org.

²⁵⁷ "Fortalecimiento de la convivencia y seguridad ciudadana en América latina," UNDP, New York (2008).

VII. RECOMMENDED ROLE FOR THE U.S. GOVERNMENT

Since the early 1980s, USAID has devoted resources to strengthen the judiciary in Central America. At the end of the Cold War, reduced funds were still directed to rule of law programs, particularly training public defenders in El Salvador and judges in Guatemala, in coordination with the American Bar Association. Sustained, but low levels of funding enabled USAID to persist in seeking anti-corruption measures and rule of law programs through its relationships with the Justice ministries and attorney generals' offices throughout the Northern Triangle. Furthermore, Economic Support Funds promoted economic and social development, but at levels far below those given during the 1980s. Trade and market reform became the preferred tools of U.S. government policies during the 1990s and early 2000, but little benefit was noted in rural and marginalized urban communities. They were left out of growing national prosperity and the governments of the Northern Triangle made insufficient efforts to distribute national resources to these groups.

Beginning in 2003, rising criminal violence demonstrated the inadequacy of U.S. government funding and serious thought was given to the best method for U.S. project and financial support. Counter narcotic and counter terrorism programs became the preferred goals. U.S. funds were invested for border and mobile inspection stations, port facility security,

fingerprint technology and the tracking of illegal firearms. When these programs failed to stop the flow of drugs into the United States, as well as to prevent the emergence of organized crime and *maras*, a number of studies were commissioned to research the nature of the violence, its causes and impact on national governments. By 2007, the level of homicides and violent crimes had increased four-fold causing considerable domestic pressure on the Central American and Mexican governments to take more drastic action. The newly elected Mexican President, Felipe Calderon requested support from the Bush Administration. He sought specialized equipment, training and financial support in his campaign to defeat the drug cartels and to eradicate organized crime and corruption in Mexico. This request became known as the 'Merida Initiative' based on the location of the presidential meeting in the colonial town of Merida in March 2007. Four months later, at the U.S.- SICA Dialogue on Security in Guatemala City,²⁵⁸ the Central American presidents sought U.S. support for a Central American Regional Security Plan and thus extended the Merida Initiative to the seven countries of Central America.²⁵⁹ Washington's purpose was to support the implementation of a new U.S. Strategy for Combating Criminal Gangs by means of reinforcing the capacity of Central American governments to confront the transnational criminal organizations and the gangs associated with the drug cartels.²⁶⁰ Merida has four strategic goals:

²⁵⁸ Central American Integration System (SICA) was created in 1991 as an intergovernmental organization. It participates as an observer to the working of the UN General Assembly.

²⁵⁹ In June 2008, Congress approved \$65 million for Central America, the Dominican Republic and Haiti with the FY 2008 Supplemental Appropriations Act, H.R. 2642. The Administration requested a further \$100 million for the Central American countries in its FY 2009 budget request and received \$105 million.

²⁶⁰ "U.S. Strategy to Combat the Threat of Criminal Gangs from Central America and Mexico," U.S. Department of State, Bureau of Western Hemisphere Affairs (July 18, 2007).

1. Break the power and impunity of criminal organizations;
2. Assist the governments of Central America in strengthening border, air and maritime control;
3. Improve the capacity of the justice systems in the region; and
4. Curtail gang activity and diminish the demand for drugs in the region.

Within these strategic goals, the actual allocation of funds suggests that the principal focus of Merida remains counter narcotics and counter terrorism. The 2008 Supplemental Appropriation appropriates \$16.6 million to bolster the capacity of Central American governments to inspect and interdict unauthorized drugs, goods, arms and people. A further \$40 million is requested in FY 2009 funding for the same purpose.²⁶¹ The purpose of Merida's "Peace & Security pillar" is to improve the border and mobile inspection stations at highway border crossings in all seven countries and to provide two mobile inspection points per country. Automated finger print technology will be extended to Honduras and Guatemala to enable regional and U.S. shared information. The electronic tracing of weapons will be translated into Spanish and enable U.S. and previously vetted, regional law enforcement officials to trace suspects to firearms and identify patterns in international arms trafficking.²⁶² These programs continue existing projects to strengthen anti narcotics and counter terrorism policies.

The focus on counternarcotics justifies the commitment of \$4 million to refurbish three patrol boats and four go-fast interceptor boats, as well as the command, control and communications package to the Costa Rican Coast Guard. El Salvador will receive funds to establish a command and control package of

equipment as the U.S. military transfers its base from Manta, Ecuador to the airport outside San Salvador. Throughout the region, new law enforcement units will also be created, vetted and trained to fight drug trafficking organizations.²⁶³

Counter narcotics and counter terrorism represent threats that were prevalent in the post Cold War period, but today terrorism has become a lesser threat than organized crime. Criminal organizations use the funds generated by the drug cartels to develop their own regional, and by extension, global markets. How, and to what extent, does the Merida Initiative address the more contemporary threat, namely that of organized criminal networks and the cartels?

The equipment identified above, as well as much of the identified software is designed for counter narcotics purposes, but it can also be used to counter criminal organizations and international *maras* operations. I argue that there is a spill over from traditional counter narcotics and counter terrorism programs into combating the other two forms of crime. This overlap is demonstrated most clearly in the strengthening of law enforcement institutions to fight crime, money-laundering and the trafficking in arms, as well as drugs. Most of this training will be carried out at the International Law Enforcement Academy (ILEA) where students will be drawn from the region and will be able to form collaborative bonds in the course of their training.²⁶⁴ Furthermore, the FBI will strengthen a Central American fingerprint exchange system (CAFE) to promote the consistent use of fingerprints for criminal identification purposes, as well as provide funds for protective, communication and transportation equipment for national police.²⁶⁵

In FY 2009, and with the intent of training law enforcement officials in counter narcotics as well as

²⁶¹ Colleen W. Cook and Clare Ribando Seelke, "Merida Initiative: Proposed U.S. Anticrime and Counterdrug Assistance for Mexico and Central America," *CRS Report for Congress* (July 7, 2008).

²⁶² FY 2008 Supplemental Appropriations Spending Plan (September 4, 2008). The U.S. government's intent to translate 'eTracing' software into Spanish goes back several years, but is only now being implemented.

²⁶³ *Ibid.*, p.11.

²⁶⁴ For this purpose, \$19.8 million is sought in the Supplemental Appropriations for FY 2009.

²⁶⁵ To implement CAFE, a total of \$1.5 billion is requested, divided as follows: Guatemala \$400,000, Honduras \$200,000, Belize 150,000, Costa Rica \$200,000, Nicaragua \$250,000, Panama \$300,000. *Merida Initiative, Activity Descriptions—Central America, Dominican Republic and Haiti Security Cooperation Plan* (September 2008).

crime control, ILEA will train 30 students in each of several courses: small arms trafficking, chemical precursors, economic fraud, and advanced forensics. Of greater interest to those concerned with criminal organizations and the *maras* will be four anti-gang programs covering forensics, witness and judicial security, prevention and rehabilitation.²⁶⁶ Four courses, each lasting six weeks will also be offered for mid-level criminal justice management officials with the intent of training 160 officials. We may conclude from the courses offered at ILEA that the Academy is adapting to the ongoing vulnerabilities presented by untrained police officers, weak judicial personnel and new court administrators. The length of these courses and the fact that more students will be invited to participate gives hope that these subjects will become basic subjects for professionals in law enforcement and the judiciary. As ILEA trains the trainers, the intent is for the course material to reach the majority of personnel in law enforcement and the court system. To be effective, the courses must be comprehensible and useful to this audience in their daily work.

Under the Merida Initiative, a Resident Legal Advisor will be stationed in the region to establish the regional training of prosecutors so as to improve their investigatory and prosecutorial skills. National programs will be established to train judges, prosecutors, public defenders and police in specific countries. The drafters of Merida recognize the need to improve the use of forensic evidence in court, provide security to witnesses, improve information between police and prosecutors, as well as “improving techniques to investigate and prosecute members of the national police who have been credibly alleged to have committed violations of human rights, and those credibly alleged to have committed crimes that violate public integrity.”²⁶⁷ This important development could not have been implemented without external support

and funding. Local NGOs will need to evaluate the capacity of prosecutors to carry out this responsibility. Furthermore, in pursuit of greater transparency and accountability, we should also seek the publication of regular reports and the accessibility of senior government officials to respond to public questions.

Through the practice of ‘training the trainers,’ police will be taught methods on how to strengthen collaboration with the local community through joint activities and outreach. They will also learn smart policing techniques and gang prevention/intervention activities. Police will be given simple equipment to carry out these tasks, such as handheld radios and bicycles.²⁶⁸ Sammy Rivera’s project in Villa Nueva, Guatemala is due to receive funds in order to be able to roll out the community policing and anonymous tip lines to other police precincts.²⁶⁹

The U.S. government will not build jails, but it will train prison officials in how to regain control of their respective institutions, especially those housing violent gangs. This has already started in El Salvador and will be expanded to cover the costs of minor renovations at critical sites and the delivery of equipment to block cellular telephone calls.²⁷⁰ More training may be needed in human rights protection within prisons, as well as the introduction of job skill programs so that prisoners have the means to find work upon release.

Finally, \$10 million will be devoted in FY 2009 to address the root causes of *maras* and organized criminal violence through the creation of a Community Action Fund.²⁷¹ The funds will be distributed through governments, civil society and the private sector to improve basic and secondary education, provide scholarships for at-risk youth to stay in school, as well as to provide after school and community

²⁶⁶ It is estimated that 120 students will receive this course in 2009. It includes a course in Advance Techniques in anti-gang procedures, which vagueness will have to be clarified to ensure that it does not include internationally illegal forms of investigation.

²⁶⁷ *Merida Initiative—Activity Description*, p. 38. \$1 million will be appropriated for the purpose of building up the capacity of prosecutors.

²⁶⁸ *Ibid*, p. 40. \$3 million is appropriated for this project with \$2 million directed to Guatemala and the remainder to be allocated regionally.

²⁶⁹ *Ibid*, p. 20. \$7,148,000 is requested to provide police in remote rural areas with both longer distance radio systems and repeaters. In the Northern Triangle broad band connectivity will be installed in selected areas to enable quick consultation of criminal records and fingerprints.

²⁷⁰ *Ibid*, p. 31. \$3 million is appropriated for this purpose with the majority of funds, \$850,000 going each to El Salvador and Honduras and \$500,000 allocated to Guatemala.

²⁷¹ *Ibid*, pp 42-43. There is no breakdown among states and we may assume that NGOs will bid to carry out some of these projects on a regional basis.

outreach programs. Vocational training programs will be set up in key urban hot spots and a mobile training unit, “Smart Bus,” will offer instruction in rural areas that are especially vulnerable to drug trafficking and related violence. Guidance in micro-credit and micro-enterprise business, as well as partnerships with the private sector are intended to create the opportunity for remunerated work, as well as to place at-risk youth in apprenticeships and jobs. Funds will go to local communities to create recreational areas and to place street lights in high risk zones. The success of these programs depends upon local, community participation. It is essential that the grantee of U.S. funds work closely with municipal authorities, NGOs and church groups to ensure that programs meet local needs. They should also be adapted to local cultural norms thus encouraging buy-in from grass-roots communities. A top down approach risks alienating the community. A grass-roots endeavor is more likely to be owned and appreciated by the residents who previously lived in fear of gangs.

The issue of deportees, removed forcibly from the United States because citizenship or residency could not be proved, has contributed to the problem of unemployed and alienated young men and women. The number of deportees to Central America has

increased significantly in the last three years with the principal destination being El Salvador, Guatemala and Honduras. Up until September 30, 2007, Immigration and Customs Enforcement (ICE) had deported 52,274 men and women to the three countries of the Northern Triangle. Of that number, 12,491 – approximately 25% - were criminals who had completed their sentence in U.S. jails. Two-thirds had no criminal record beyond being in the United States without proof of citizenship or residency. Figures for 2008 have recently become available. They emphasize the fact that only 20-25% of those deported to Central America have criminal records while the majority is deported for lack of citizenship or proof of residency.

Merida proposes to appropriate \$1 million for a Repatriation Notification System by which ICE will notify the host government of the arrival time, criminal history and gang affiliation of the deportee.²⁷² These monies are also intended to assure U.S. citizens that if the deportee re-enters the U.S., he or she will be located with relative ease.²⁷³

Merida fails, however, to take into account that the deportees need a safe place to go to upon arrival in the country of their birth. National governments

U.S. DEPORTATIONS TO CENTRAL AMERICA, FY 2006-FY 2008

Country	2006			2007			2008		
	Total	Criminal	Non-criminal	Total	Criminal	Non-criminal	Total	Criminal	Non-criminal
El Salvador	10,312	3,679	6,633	19,804	4,948	14,856	18,930	5,242	13,688
Guatemala	18,386	3,589	14,797	25,173	3,914	21,259	25,642	4,804	20,838
Honduras	26,526	5,559	20,967	29,469	5,238	24,231	27,445	5,180	22,265
Nicaragua	2,241	585	1,656	2,205	510	1,695	2,064	492	1,572

Source: CRS Report for Congress, “Gangs in Central America,” updated October 17, 2008 based on information provided by DHS, Immigration and Customs Enforcement, Office of Detention and Removal.

²⁷² Ibid, p. 30. At the April 2008 Hearing before the House Foreign Affairs, Subcommittee on Western Hemisphere, Honduran Ambassador Roberto Flores Bermudez complained that deportees were being “repatriated” without the knowledge of the Honduran authorities thus making it impossible to detain those still serving prison time.

²⁷³ This notification is facilitated by the grant of \$300,000 to extend the Electronic Travel Document (ETD) to Honduras and Guatemala.

may have a police van to pick up those with an outstanding jail sentence, but the majority land at airports with minimum, if any knowledge, of the city, the whereabouts of family members or the means to feed themselves. *Hogares* (safe homes) are needed to provide a refuge and assistance to the deportees upon landing at national airports. One young woman, whom I knew, landed at the airport with only the clothes on her back. She had no knowledge of the country and no money. She sold herself to a taxi driver to take her into town. He took her to a woman who placed her in a brothel so that she could eat while she sought out family members. It took her two years and one child to set herself up independently and start a life of dignity.

The increased numbers of deportees and the lack of support upon arrival in their native land create the necessity to seek funds through the Merida Initiative to support church groups and NGOs willing to provide a refuge for these young men and women. The high number of deportation undermines the capacity of the states in Central America to care for their youth. To the extent that we add a further burden on these states, we should find a way to ease the transition of deportees into their countries. It may not be realistic to appropriate U.S. monies to support those who have lived illegally in the U.S., but there are public health and educational reasons for seeking the successful integration of these young men and women into the country of their birth. Therefore, an argument can be made to use part of the \$7 million gang prevention funds to support NGOs that work with at-risk youth, whether they are citizens of Central America or those recently deported from the U.S.²⁷⁴

A further significant area that is not addressed sufficiently in Merida is the flow of illegal arms from across the U.S. border into Mexico and thence into Central America. This has created a serious problem for law enforcement authorities. Handguns are no longer the

weapon of choice and increasingly more sophisticated weapons are being sold to criminal networks and cartels for use in illicit activities.²⁷⁵ Congressional attention currently seeks to understand fully the means by which firearms move from the legal trade into criminal trafficking. We need to track the transfer of weapons sold through private sales and through straw purchases into illicit trades and criminal activities. Furthermore, it is necessary to better regulate civilian marketing of specific types of firearms that are especially attractive to criminals and likely to be used in violent crimes in Mexico and Central America. To date, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has concentrated on a combined law enforcement strategy of investigation and prosecution. The agency seeks to disrupt sales “downstream” by attacking criminal organizations. It is now necessary to disrupt “upstream” sales through stricter rules and the regulation of gun shows, bad dealers, private sales and the imports of many more lethal (AK-type assault) weapons into the U.S. The 1994 assault weapon ban ended in 2004 and with it, ATF regulation of more lethal weapons. In its place an effective assault weapon ban needs to be introduced which will seek first to ban the import of lethal weapons, including assault weapons, and second to end the grandfathering of weapons in excess of .50 caliber. (Under the 1994 ban, it was legal to retain prior ownership of a weapon having greater fire-power than of .50 caliber.) After 2004, regulation under the National Firearms Act has failed to regulate a vigorous trade in the banned weapons, many of which end up south of our border.

Merida Initiative funds cannot be used within the U.S. Therefore, in co-ordination with this initiative, project “Gun Runner” has increased the number of ATF special full time agents along the border, as well as “Industry Operations Investigators” (IOIs) who are responsible for conducting inspections of illegal straw purchases of firearms, known in the trade as

²⁷⁴ Merida Activity Descriptions, p. 36. The funds are distributed equally with \$200,000 going to each of the countries of the Northern Triangle and a further \$100,000 available regionally.

²⁷⁵ The U.S. civilian small arms market includes handguns, shotguns and rifles that are not fully automatic and do not exceed a bore of 50 caliber (.50 inch) in diameter. However, the cartels are using more powerful weapons such as fully automatic firearms, firearms of greater than 50 caliber, hand grenades, and rocket launchers. See Tom Diaz, “Disrupting Arms Trafficking,” *Violence Policy Center*, Paper delivered to the Woodrow Wilson Center for International Studies, Washington D.C. (October 17, 2008).

“FFLs.”²⁷⁶ Strengthening U.S. oversight is essential to stem the trade of illegal weapons which contribute directly to the deadliness of drug trafficking, as well as the criminal organizations associated, indirectly, with the cartels. We need to ensure that U.S. supervision of the trade in guns is sufficient to stem the flow of guns into the region, as well as into the Caribbean. Within the Merida Initiative \$1 million will be appropriated for use in Mexico and Central America to place a regional Firearms Advisor to work alongside pre-vetted local law enforcement officers.²⁷⁷ Also, we must hope that the Spanish version of E trace software will be used more expansively throughout the region.²⁷⁸

Merida intends to support a program of the Organization of American States (OAS) to collect and destroy small arms. Currently a multi-year stockpile destruction program is underway in Central America, but it is underfunded and law enforcement personnel are not trained in arms trafficking prevention.²⁷⁹ U.S. criminologists have examined the impact on violent crime within U.S. cities of a weapon destruction program and concluded that it is ineffective, because people only handover old weapons and retain the newer and more effective arms.²⁸⁰ Steven Levitt has analyzed the results of gun buy-back programs within U.S. cities as a means to reduce crime. In his view, these programs are largely ineffective as the guns surrendered are least likely to be used in criminal activities. Owners turn in those guns which have little value, and criminal organizations are unlikely to participate in such programs. Also, replacement guns are obtained relatively easily. A distinction between gun buy-back programs in U.S. cities and buy-back programs in countries with far lower annual per capita incomes may provide greater incentive to turn in guns for cash. However, the quantity of arms in

circulation within Central America makes it unlikely that the value of one or several guns can provide a cost-benefit greater than the vulnerability of living with no gun within a lawless community. Therefore, U.S. participation in the OAS program becomes largely symbolic, and should not be considered a significant element of any crime prevention program.

The Merida Initiative demonstrates a firm commitment from the U.S. government to support the Central American governments as they seek to contain crime, counter drug trafficking, strengthen their government institutions and develop economic opportunity. We must applaud the comprehensive nature of this initiative and recognize that we have embarked on a multi-year program that should envisage at least seven years of funding. However, the Merida Initiative must be viewed as providing the leverage for national action, not the sole driving force.

The initiative justifies U.S. intervention into national judicial and police programs within the Central American states that receive significant funds. The Merida Initiative also establishes objectives and metrics by which to measure performance and these will require quantitative analysis, as well as expert reviews. U.S. taxpayers will ask if their money is being well used within an environment known for corruption and impunity. Therefore, a delicate balance must be created in which U.S. investments and supervision does not recreate the hegemonic relationship that contributed to the protracted social conflicts of the 1980s. The potential for U.S. supervisors to find negligence, inefficiency, fraud and corruption is high. When that is discovered, the response must be quiet, but firm. If we choose to publicly shame the culprits, old resentments will arise to blame the U.S. security presence as the new colonialism. The nature

²⁷⁶ Statement of William Hoover, Assistant Director for Field Operations, Bureau of Alcohol, Tobacco, Firearms and Explosives before the U.S. House of Representatives, Committee on Foreign Affairs, Subcommittee on the Western Hemisphere (February 7, 2008).

²⁷⁷ *Merida Initiative, Activity Report*, pp. 13-15.

²⁷⁸ *Ibid.*, p. 19.

²⁷⁹ The Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (CIFTA) exists. However, no Central American government is in full compliance with the convention. Nor has the U.S. Congress ratified it.

²⁸⁰ Steven D. Levitt, “Understanding Why Crime Fell in the 1990s: Four Factors that Explain the Decline and Six That Do Not,” *The Journal of Economic Perspectives*, 18: 1(2004) p. 174.

of our ongoing collaboration needs to be carefully examined, balanced and treated respectfully so that we continue to be viewed as guests or supporters, not as guards of a secure, democratic order.

The Merida Initiative is important, but not sufficient to bring about secure and democratic societies. Four key elements can only be carried out by national governments:

- Hiring more policemen. The U.S. government cannot hire foreign policemen and a key element in controlling crime is the number of well trained policemen in the community;
- Re-distribution of national wealth. Improved Gini indexes should reflect greater equality among its citizens;
- Reduction in the demand for drugs in Central America. National governments, in coordination with civil society, must engage in reducing domestic consumption; finally,

- Reduction of demand for drugs within the U.S. Merida does not seek to reduce the demand within the U.S.—an essential element of any effective regional crime prevention program.

National governments must give the lead and demonstrate their commitment to democratic security. This is challenging in Central American countries, where presidential turn-over every four years is accompanied by new personnel from the cabinet minister to the janitor, as well as a presidential determination to do things differently. The commitment to democratic security programs should not change. If the projects supported by the Merida Initiative last no longer than four years, they will fail. The experience of Colombia has shown us that consistent and determined pursuit of common national goals is essential.²⁸¹ This is not to suggest that programs cannot be amended to meet evolving needs, but the fundamentals must remain in place no matter the color of the political party in power. A consistent, sustained and comprehensive approach is essential if state is to regain control and bring security to its citizens.

²⁸¹ Alberto Concha-Eastman, “Ten Years of Successful Violence Reduction Program in Bogota, Colombia” (2005).

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