

G I G A *Working Papers*

German  Institute of Global and Area Studies
Leibniz-Institut für Globale und Regionale Studien

GIGA Research Programme:
Violence, Power and Security

**Discourses on Violence in
Costa Rica, El Salvador, and Nicaragua:
Laws and the Construction of
Drug- and Gender-Related Violence**

Peter Peetz

N° 72

March 2008

GIGA Working Papers serve to disseminate the research results of work in progress prior to publication to encourage the exchange of ideas and academic debate. Inclusion of a paper in the Working Papers series does not constitute publication and should not limit publication in any other venue. Copyright remains with the authors.

GIGA Working Papers

Edited by the GIGA German Institute of Global and Area Studies / Leibniz-Institut für Globale und Regionale Studien.

The Working Paper Series serves to disseminate the research results of work in progress prior to publication in order to encourage the exchange of ideas and academic debate. An objective of the series is to get the findings out quickly, even if the presentations are less than fully polished. Inclusion of a paper in the Working Paper Series does not constitute publication and should not limit publication in any other venue. Copyright remains with the authors. When Working Papers are eventually accepted by or published in a journal or book, the correct citation reference and, if possible, the corresponding link will then be included in the Working Papers website at <www.giga-hamburg.de/workingpapers>.

GIGA research unit responsible for this issue:

Research Programme: "Violence, Power and Security"

Editor of the GIGA Working Paper Series: Anja Zorob <zorob@giga-hamburg.de>

Copyright for this issue: © Peter Peetz

English copy editor: Melissa Nelson

Editorial assistant and production: Vera Rathje

All GIGA Working Papers are available online and free of charge on the website: www.giga-hamburg.de/workingpapers. Working Papers can also be ordered in print. For production and mailing a cover fee of € 5 is charged. For orders or any requests please contact: E-mail: workingpapers@giga-hamburg.de
Phone: ++49 (0)40 - 428 25 548

The GIGA German Institute of Global and Area Studies cannot be held responsible for errors or any consequences arising from the use of information contained in this Working Paper; the views and opinions expressed are solely those of the author or authors and do not necessarily reflect those of the Institute.

GIGA German Institute of Global and Area Studies /
Leibniz-Institut für Globale und Regionale Studien
Neuer Jungfernstieg 21
20354 Hamburg
Germany
E-mail: info@giga-hamburg.de
Website: www.giga-hamburg.de

Discourses on Violence in Costa Rica, El Salvador, and Nicaragua: Laws and the Construction of Drug- and Gender-Related Violence

Abstract

In Central America, legislation aiming to reduce violence and crime has become an important topic in the security debate. Focusing on Costa Rica, El Salvador, and Nicaragua, this paper analyzes laws and other legal texts regarding the trade in and consumption of drugs on the one hand, and gender-related violence on the other. It shows how the content and the wording of legal texts contribute to the social construction of stereotyped offenders, such as youth gang members, drug users, or foreign nationals. The legal texts in Costa Rica, El Salvador, and Nicaragua reflect both the hegemonic and the counter-discursive influences on each country's legal discourse.

Keywords: Central America, violence, drugs, gender, legal discourse

Peter Peetz, M.A.,

is a political scientist and Research Fellow at the GIGA German Institute of Global and Area Studies. Together with Dr. Anika Oettler and Sebastian Huhn, he is currently working on the research project "Public Spaces and Violence in Central America."

Contact: peetz@giga-hamburg.de

Website: <http://staff.giga-hamburg.de/peetz>

Zusammenfassung

Gewaltdiskurse in Costa Rica, El Salvador und Nicaragua: Gesetze und die Konstruktion von Drogen- und Gender-Gewalt

In Zentralamerika sind Gesetze, die Gewalt und Kriminalität verringern sollen, ein wichtiges Thema innerhalb der Sicherheitsdebatte. In diesem Working Paper werden Gesetze und andere juristische Texte aus Costa Rica, El Salvador und Nicaragua analysiert, in denen es entweder um Drogenhandel und -konsum oder um geschlechtsbezogene Gewalt geht. Es wird gezeigt, wie Inhalt und Wortwahl solcher Texte zur sozialen Konstruktion stereotyper Tätergruppen beitragen, bei denen es sich z.B. um die Mitglieder von Jugendbanden, um Drogenkonsumenten oder Ausländer handeln kann. In costaricanischen, salvadorianischen und nicaraguanischen Gesetzestexten spiegeln sich die Einflüsse wider, die sowohl der hegemoniale Diskurs als auch Gegendiskurse über Gewalt und Kriminalität auf den rechtlichen Diskurs haben.

Resumen

Discursos de violencia en Costa Rica, El Salvador y Nicaragua: Leyes y la construcción de la violencia relacionada con drogas y género

En Centroamérica, la legislación para reducir la violencia y el crimen es un tema importante en el marco del debate sobre seguridad. En este trabajo se analizan leyes y otros textos jurídicos de Costa Rica, El Salvador y Nicaragua relacionados al comercio y al consumo de drogas por un lado y a la violencia de género por otro. Se muestra como el contenido y el lenguaje de los textos jurídicos contribuyen a la construcción social de victimarios estereotipados, como por ejemplo los miembros de pandillas juveniles, consumidores de drogas o extranjeros. Los textos jurídicos de Costa Rica, El Salvador y Nicaragua reflejan que tanto el discurso hegemónico como discursos alternativos influyen en el discurso jurídico.

Discourses on Violence in Costa Rica, El Salvador, and Nicaragua: Laws and the Construction of Drug- and Gender-Related Violence

Peter Peetz

Article Outline

- 1 Introduction
- 2 Legal Discourse and the Social Construction of Reality
- 3 Drug-Related Legal Texts in Central America
- 4 Legal Texts on Gender-Related Violence in Central America
- 5 Concluding Remarks: Legal Discourse and Security Policies in Central America

1 Introduction¹

In Central America, violence, crime, and insecurity as well as the legislation and policies that aim to reduce these problems have become important topics in the political arena, in society at large, and among social scientists. In most of the countries, public attention focuses at least as much on security policies as on development efforts and poverty reduction. This public and academic interest in violence and crime has arisen in the wake of a security situation perceived by large proportions of the respective societies as critical and/or deteriorating (Huhn/Oettler/Peetz 2006a; Huhn/Oettler/Peetz 2008a; Huhn 2008).

¹ This paper is part of a research project which analyzes the origins, development, and institutionalization of the "talk of crime" (Caldeira 2000) in Central America. The project focuses on violence-related discursive constellations at the local, national, and transnational level. Apart from the legal discourse, which is the subject of this paper, the project also analyzes how political actors, the media, "common people," and the scientific community talk about violence and security in Central America. Huhn/Oettler/Peetz (2006a: 23-25) outline the reasons for choosing this range of speakers and describe the discursive spaces they are situated in.

The academic debate on contemporary violence in Central America has focused mainly on four thematic clusters:

- 1) The historical and social origins of violence and crime: This thread of the discussion has particularly highlighted the post-war context of some of the affected countries (for example, Kurtenbach 2006 and 2007; Zinecker 2007; Popkin 2000).
- 2) The political, social, and economic consequences of violence: Here, the detrimental effects of violence and crime on democracy and on economic development in the globalization era have taken center stage (for example, Cruz 2004; Pérez 2003; UNODC 2007).
- 3) The analysis of specific phenomena of violence and crime: The most prominent example is the growing literature on youth gangs (for example, ERIC et al. 2001 and 2004a/b; Cruz 2006; DIRINPRO/NITLAPAN/IDESO 2004; Smutt/Miranda 1998; Nowalski 2006; Huhn/Oettler/Peetz 2008b; Peetz 2005); other phenomena such as intra-family violence or drug-related crime (see below) receive much less attention.
- 4) Studies on the states' security institutions and policies: The main focus is on the transformation of institutional arrangements, and particularly on demilitarization of the security forces (for example, Glebbeek 2001; Stanley 2007; Call 2007; Rocha 2005); works on penal legislation or the governments' security policies (like Aguilar Villamariona 2006) are rather an exception.

In general, the vast majority of research on violence and crime in Central America favors theoretical and methodological approaches appropriate to generating concrete results for political counseling addressed to governments, NGOs, or cooperation agencies (for example, Moser/Winton 2002). There is hardly any literature on Central American violence(s) which is based on, for instance, critical criminology or social constructivism. This paper aims to contribute to filling this void by adding analytical reflections on discourse to the debate. Focusing on Costa Rica, El Salvador, and Nicaragua, it analyzes laws and other legal texts regarding the trade in and consumption of drugs on the one hand, and gender-related violence on the other.

The paper is organized as follows: First, the theoretical and methodological bases of the analysis are laid out. The subsequent section analyzes legal texts related to legal and illegal drugs. In particular, it casts the spotlight on the concepts of prevention manifest in the texts and on the relation the texts postulate between drugs and violence/crime. The next section focuses on legal texts related to the subject of gender and violence. It details the texts' wording and content regarding definitions of (different phenomena of) gender-related violence, causes of that type of violence, constructions of "typical" victims and offenders, and—as for the drug-related legal texts—incidences of prevention concepts. The concluding section summarizes the findings and reflects briefly on the relation between the legal discourse and security policies in El Salvador, Nicaragua, and Costa Rica.

2 Legal Discourse and the Social Construction of Reality

In accordance with Berger and Luckmann's (1969) dictum that reality is socially constructed, the security-relevant decisions of actors in the different branches of the state cannot be understood as direct, logical, or natural consequences of the specific phenomena of violence and crime they address. Rather, these decisions are based on the actor's perception of the phenomenon, an image the actor has of a phenomenon, the "reality" an actor believes in regarding a phenomenon. This perception/image/"reality" is the result of an individual's or a collective's processing of the socially constructed "reality."² In turn, once adopted, the executive or legislative decisions can exert important influence on the perception the public, a specific group, or individuals have of a problem. The decisions can also change the public discourse about violence and crime; for example, if a government decides to carry out massive anti-gang raids, the media might cover these police actions and, thus, media coverage of violence and crime topics could increase. Security policies are influenced by and exert influence on the discourse on violence, crime, and security in a society.

In contrast to earlier decades, the (formal) existence of a democratic state under the rule of law is a typical context condition of today's security policies in Latin America. Thus, laws and other legal texts (constitutions, decrees, etc.) play an important role in the design of contemporary domestic security policies. This is particularly true for some Central American countries, where amendments to the preexisting legislation or the issuing of new laws and decrees has been one fundamental instrument in the governments' security policy design in the last few years. On the one hand, legal texts reflect the government discourse or the discourse of the legislative majority (that is, the discourse of one or a group of political actors), particularly when the general content and aim are examined. On the other hand, especially in terms of their wording, legal texts constitute an important part of the hegemonic legal discourse in a society (that is, the hegemonic discourse in a society in general—not bound to a specific actor).³ Legal texts are, thus, something like "a discourse made law" or a written manifestation of discourse. At the same time, their adoption (or publication in a law gazette) is an important discursive event in itself. Analyzing the discourse expressed in legal texts enables us to detect mutual influences and dependencies between the legal discourse in a country and the security policies of its government. It helps us understand the social construction of reality upon which security policies in Central America are based.

A discourse is generated in multiple discursive spaces, in which different actors compete regarding the definition and interpretation of specific violence and crime phenomena. Discourse is understood as a "regulated practice that accounts for a certain number of statements" (Foucault 2002: 90). By means of repetition and acceptance, a discourse is a condition

² For a more detailed discussion of the theoretical bases of this paper, see Huhn/Oettler/Peetz 2006a: 19-25.

³ Additional elements of the legal discourse are, for example, court verdicts, spoken or written statements in lawsuits, parliamentary debates in which a law is discussed (this latter example is, at the same time, part of the political discourse), etc.

and—at the same time—a consequence of collective practices: "Discourse is socially constitutive as well as shaped" (Fairclough/Wodak 1997: 258). It constructs, transforms, and structures the collective practices. Contrary to the assumption that individual actors, such as politicians or the mass media, "create" or control opinions, which are then accepted by society, Jäger (2004: 148) postulates that a discourse is hard to control:

[N]o individual determines the discourse. A discourse is, so to speak, the result of all the many efforts people make to act in a society. What comes out is something that nobody wanted to come out like that, but everybody has contributed to it in different ways.⁴

In spite of these self-generating dynamics, discourses are not produced in a chaotic way. Critical discourse analysis (CDA) has claimed that the historical and ideological context in which a text (or any other discursive event) is produced has to be taken into account as much as the text itself (see for example, Wodak 2001; van Dijk 1999). CDA refers particularly to the power relations that determine how "natural" a social construction seems to a given society and to what extent it is possible to defy the conventions.

Based on an analysis of the six most important newspapers in El Salvador, Nicaragua, and Costa Rica;⁵ approximately 90 qualitative interviews conducted with a wide array of people from all strata of society; and more than 220 short essays written by pupils from nine public, private, and rural schools, Oettler (2007: 27-28) summarizes some of the main hitherto established results of the above-mentioned research project (see footnote 1) as follows:

[P]ublic life in the three Central American countries [...] is shaped by the fear of crime, albeit with varying threat levels and different objects of fear. [...] [T]here are cross-national discursive leitmotifs. [...] The notion of organized youth violence has amounted to the most important feature of national and international debates on violent Central American "realities". [...] While gender-based violence has entered the agenda of international donor organizations, national NGOs and state institutions, it tends to be still treated in discursive niches. [...] While many less powerful speakers identify grand corruption as one of the most devastating criminal behaviors, powerful speakers tend to ignore the issue.

This paper aims to complement these findings through an analysis of the legislation regarding violence and crime in Central America. Drawing on Foucault, legal discourse is here conceived of as a core element of the social construction of (violent) reality. The hypothesis to be scrutinized in this paper is that the discourses on violence in El Salvador, Nicaragua,

⁴ Original quote in German; this and all further translations (Spanish to English): PP.

⁵ This sample was chosen in order to include a small number of cases which, in spite of their relative homogeneity as Central American nations, feature some differences generally assumed to be of high relevance in the violence and security context: The sample covers countries with a relatively low and a relatively high level of development (Nicaragua and El Salvador vs. Costa Rica), countries with and without a recent history of armed conflict (Nicaragua and El Salvador vs. Costa Rica), and countries with crime and violence problems perceived as high/increasing and low (El Salvador and Costa Rica vs. Nicaragua).

and Costa Rica—as described in the preceding quotation—are also evident in the legislation of those countries.

Because the project focuses on El Salvador, Nicaragua and Costa Rica, only legal texts from these countries are considered. This paper concentrates on legal texts related to legal and/or illegal drugs on the one hand, and to the field of violence and gender on the other. Why these two subject fields? Both in the academic debate on violence and security in Central America and in the national and international political discussions on the matter, it is the issue of youth violence, in particular youth gangs (*pandillas, maras*), which captures, by far, the most attention. Yet juvenile delinquency is not the most (or even the only) important topic in all public arenas in Central America. For example, youth violence is only one of seven violence and security issues treated prominently in the main newspapers in El Salvador, Nicaragua, and Costa Rica; among the other six are the thematic fields of drug-related crime and gender-related violence (Huhn/Oettler/Peetz 2006b: 19-22). Moreover, for many "common people" in the three countries, these two topics seem to be fundamental in their daily experiences (Huhn/Oettler/Peetz 2008a; Oettler 2007). The analysis thus concentrates on drug-related and gender-related legal texts, for the purpose of drawing attention to important phenomena of crime and violence other than youth violence and with the aim of taking the concerns and fears of nonelite members of society in Central America seriously.

As the chosen approach is based on discourse analysis, this paper focuses at least as much on the wording and the way content is expressed as on the content itself. Therefore, concepts, terms, and expressions used in the legal texts are the main subject of the analysis.

3 Drug-Related Legal Texts in Central America

The following statement made by McIlwain/Moser (2004: 49) with regard to Latin America seems to be especially true for Central America:

As everyday violence becomes ever more pervasive throughout urban Latin America, drug and alcohol abuse is identified increasingly as a significant source of insecurity. Yet, attention has focused primarily on the production or trans-shipment of drugs rather than the consumption of drugs and alcohol.

The sparseness of research on illegal drug consumption in Central America⁶ may be explained by the low use rates in the region. Even for cocaine, the number one commodity in illegal trafficking, the consumption is described as "remarkably low" (UNODC 2007: 48).⁷ What is indeed surprising is that researchers have largely neglected the use of alcohol and

⁶ One exception is PNUD 2004.

⁷ It appears that there has not been a major change in drug consumption in the past 10 years. In 1996, Aguilera/Ogaldes (1996: 105) stated that "a habit of drug consumption does not exist on a large scale."

its relation to violence and crime in the region.⁸ Also, in spite of the international importance of drug traffic through Central America (that is, from the producing sites in South America mainly towards the USA), the related legislation in the transit countries has not been systematically examined. This paper, therefore, intends to stimulate that debate. As described above, it uses a qualitative approach and focuses on some fundamental terms and concepts in drug-related legal texts in El Salvador, Nicaragua, and Costa Rica.

One of the terms frequently used in legal texts in all three countries is "prevention" (*prevención* and related expressions such as *prevenir* and *preventivo*). Especially, though not exclusively, in laws regarding the consumption and trade of illegal drugs, prevention is a crucial topic in the laws' content. Regarding these drug-related laws, there is an important difference between the Costa Rican and the Nicaraguan legislation on the one hand, and the Salvadoran on the other. In the former, the concept of prevention seems to be much more wide-ranging and includes more kinds of offenses and offenders than in the latter. In Costa Rica and Nicaragua, the analyzed legal texts not only refer to drug consumption as an offense that preventive measures should be implemented against, but also include the aim of preventing the drug trade. In Salvadoran laws, prevention is thought of as an antidote to narcotics consumption. When it comes to the drug trade, the laws only foresee "preventive measures" in the sense of early police action (preventive repression, so to speak) against traffickers but not in the sense of long-term crime prevention oriented towards structural social change. The following examples of how terms such as "prevention," "preventive," and "to prevent" are used in legal texts of the three countries will illustrate this.

The 2005 executive decree "32695-MP" on the establishment of the Costa Rican Institute on Drugs as coordinator of the National Plan on Drugs, in its first preamble, refers to

[...] la prevención del consumo indebido de estupefacientes y sustancias psicotrópicas, el tratamiento y la rehabilitación de los consumidores y la eliminación o disminución significativa del tráfico ilícito y delitos conexos.

[...] the prevention of the misuse of psychotropic substances, the treatment and rehabilitation of consumers, and the elimination or significant reduction of the illegal drug trade and related offenses.

It thus explicitly subsumes the "illegal drug trade and connected offenses" under the activities the decree should help to prevent—by increasing the scope of action of the Costa Rican Institute on Drugs, not by preemptive repressive police action. The Nicaraguan 1999 *Ley de reforma y adiciones a la ley de estupefacientes, sicotrópicos y sustancias controladas* (Amendment of the Law of Narcotics, Psychotropics and Controlled Substances, Art. 6) is even clearer regarding its aim of preventing the drug trade:

⁸ Kleiman (2004) is an exception. He refers to illicit drugs *and* alcohol and focuses heavily on policy options to reduce consumption and the related violence.

Son funciones del Consejo Nacional de Lucha Contra las Drogas las siguientes: a) Formular [...] las políticas [...] en la lucha contra la producción, comercio y uso ilícito de drogas; la prevención del delito de narcotráfico, [...].

The National Anti-Drug Council has the following functions: a) Drafting [...] policies [...] in the fight against the production, commerce, and illicit use of drugs; prevention of the offense of drug trafficking [...].

By contrast, the Salvadoran *Ley reguladora de las actividades relativas a las drogas* (Law on the Regulation of Drug-Related Activities, Art. 1) from 2003 stipulates,

El objeto de la presente Ley, es normar las actividades relativas a las drogas, que se relacionan con los aspectos siguientes: [...], b) El establecimiento y organización de entidades que implementen medidas encaminadas a prevenir, tratar y rehabilitar a aquellas personas que se han vuelto adictas [...].

The object of this law is to regulate drug-related activities, which are connected to the following aspects: [...], b) The establishment and organization of units which implement measures directed to prevent, treat, and rehabilitate persons who have become addicted [...].

Further down (in Art. 6) it says,

El Ministerio de Gobernación [...] tendrá las atribuciones siguientes: [...] g) [...] embargar o cerrar preventivamente bienes muebles o establecimientos que de cualquier manera sean utilizados para actividades relacionadas con drogas [...].

The Ministry of the Interior [...] will have the following responsibilities: [...] g) to inhibit or close preventively immovable property or establishments which are used in any way for activities related to drugs [...].

Similar use of the terms "preventive" (*preventivo*), "preventively" (*preventivamente*), "to prevent" (*prevenir*), etc. is made in Art. 21, 26, 28, 58, 65, and 69 of the law. In a way, the authors of legal texts in El Salvador misapply the term "prevention" when they use it to refer to measures that are preventive only in the sense of being preemptive, but not in the sense of being an alternative to repression. Generally, the term "prevention" (in English and Spanish alike) carries connotations of a nonrepressive, more sustainable way of dealing with crime. In contrast, the Salvadoran legal texts turn prevention into just another form of the *mano dura* ("iron fist") policies, sanctioning not only offenses already carried out, but also potential or future offenses. Thus, the concept of prevention reflected in the drug-related legal texts varies significantly from country to country. In Nicaragua and Costa Rica prevention is thought as a nonrepressive alternative to "iron fist" policies, while in El Salvador it often refers to preemptive repressive measures.

The above-mentioned Salvadoran law (*Ley reguladora de las actividades relativas a las drogas*) explicitly states that drugs have crime-producing effects:⁹

⁹ In this regard, the text has remained unchanged from the earlier version of the law, which dates from 1991.

Considerando: [...] V. Que la drogadicción es un fenómeno que deteriora la salud física y mental de los habitantes de la República y es además, factor criminógeno que atenta contra las bases económicas, sociales, culturales y políticas de la sociedad.

Preamble [...] V.: Drug addiction is a phenomenon that deteriorates the physical and mental health of the inhabitants of the Republic and is also a crime-producing factor, which harms the economic, social, cultural, and political bases of the society.

Nevertheless, in the next sentence, it does not call for the prevention of drug addiction to reduce crime but, inversely, calls for the combat of drug-related crime to "prevent" drug addiction:

VI: Que el combate y el control de las actividades ilícitas a las drogas es una forma de prevenir el problema de la drogadicción [...].

VI: The fight against and the control of illicit drug activity is a form of preventing the problem of drug addiction [...].

The vast majority of legal texts referring to illegal drugs in the three countries do not explicitly address the connection between illegal drugs and crime or violence. Many texts contain provisions to prevent or combat the two main illegal(ized) drug-related activities—drug use on the one hand and drug trafficking on the other—but, generally, do not establish any causal relation between the two phenomena. The Salvadoran law that describes drugs as "crime-producing" (*criminógeno*) is an exception. Only with regard to alcoholic drinks are there similar text passages, again in El Salvador, such as this preamble from a 2002 San Salvador municipal law (*Ordenanza reguladora de la actividad de comercialización y consumo de las bebidas alcohólicas*, Regulation of Commercialization and Consumption Activities of Alcoholic Beverages):

Considerando: [...] V. Que debido a la ausencia de una normativa actualizada sobre la comercialización y el consumo de bebidas alcohólicas, se hace necesaria una ordenanza para controlar y regular el crecimiento desordenado de este tipo de establecimientos [de venta de bebidas alcohólicas], a fin de prevenir que se conviertan en antros de corrupción de menores o de promoción de inmoralidad e intranquilidad ciudadana [...].

Preamble [...] V: Due to the lack of an updated legislation on the sale and the consumption of alcoholic drinks, an edict to control and regulate the inordinate proliferation of this kind of establishment [that sells alcoholic drinks] is necessary to prevent them from becoming places of corruption of minors or of the promotion of immorality and disquiet among the citizenry [...].

The underlying logic here is that places where alcoholic drinks are available are more prone to become sites of criminal activity than others. Apparently, the lawmakers have assumed that the consumption of alcohol increases the probability that a person will commit a crime. In some non-drug-related legal texts in the three countries there are clauses revealing the authors' belief in a causal connection between drugs and crime/violence. For example, the Costa Rican *Ley para la penalización de la violencia contra las mujeres* (Law to Penalize Violence

against Women, Art. 16a), approved by the country's parliament in early 2007, gives the authorities the right to

[s]ometer a la persona a un programa de tratamiento de adicciones [...] alcohol, sustancias estupefacientes, psicotrópicas o drogas enervantes, cuando dicha adicción esté relacionada con la conducta sancionada [...].

[o]blige the person to participate in a program to treat addictions [...] of alcohol, intoxicating substances, psychotropic, or neuroactive drugs, if that addiction is related to the penalized behavior [...].

When treating a person's drug or alcohol addiction is seen as a means to prevent (further) violent behavior by that person, then, in the eyes of the lawmakers, the consumption of drugs or alcohol must be an important cause, or at least a causal factor, of the violent behavior.

The Nicaraguan presidential decree that issues the *Reglamento de la ley del régimen penitenciario y ejecución de la pena* (Regulation of the Law of the Penitentiary System and Enforcement of Sentences) goes even further. While the quoted Costa Rican law aims only to treat the addictions of offenders whose offenses were related to that addiction ("if that addiction is related to the penalized behavior"), the Nicaraguan regulation (Art. 116) bans *all* prisoners that have been granted a certain type of conditional liberty from frequenting places where alcoholic drinks are sold:

El interno a quién se le concede el beneficio de la Convivencia Familiar, debe cumplir con las siguientes obligaciones: [...] 4. No concurrir a lugares de expendios de bebidas alcohólicas [...].

The inmate to whom the privilege of home confinement is granted has to fulfill the following obligations: [...] 4. Not to frequent places where alcoholic drinks are sold [...].

Alcohol is seen as such a strong crime-producing factor that even partially rehabilitated offenders whose crimes were not related in any way to alcohol consumption are subject to this stipulation.

In some legal texts, particularly in the controversial *Ley anti maras* (Anti-Mara Law)¹⁰ of 2003 in El Salvador, the mention of legal and illegal drugs clearly contributes to the negative image of a given social group, in this case gang members (*mareros*). The law is one of the most striking examples of the construction of the delinquent "other" by means of penal legislation.¹¹ The sheer fact that this law contains several articles referring to alcohol and illicit narcotics (Art. 20, 21, and 42) can be interpreted as a legal codification of the "common knowledge" (that is, the social construction) that drug use is a fundamental element of the *mara* lifestyle and, indirectly, that *maras* are connected to the drug trade. The moral condemnation of alcohol and drug use—and thus of the alcohol and drug-using social group—is also re-

¹⁰ The Salvadoran Supreme Court declared the law unconstitutional on April 1, 2004. Nevertheless, it has been included in the analysis because it constitutes a discursive event of paramount importance for El Salvador and Central America as a whole.

¹¹ See the concepts of "criminology of the other" in Garland 2001 and of "*Feindstrafrecht*" in Jakobs 1985 (on *Feindstrafrecht* see also Wrocklage 2008).

flected in the immediate context the respective articles are placed in. Articles 20 and 21 refer to alcohol and drug use respectively; Article 22 refers to another "horrifying" habit of gang members: *permanencia ilícita en cementerios* (literally: "illicit stay at cemeteries"). Also in the list of the behavior patterns attributed to *mareros* by means of this law, in Articles 13 and 14, are *exhibiciones deshonestas en grupo* (literally: "indecent exposure as a group") and *tocamiento en grupo* (literally: "touching [of a third person] by a group"). The wording and content of these latter stipulations, which obviously aim to depict gang members as sexually perverted monsters, lead to another important category of legal texts: those related to the subject field of violence and gender.

4 Legal Texts on Gender-Related Violence in Central America

Compared to the issue of drug-related violence, the academic discussion on gender-related violence in Central America is relatively broad. It ranges from the policy-oriented publications of government agencies, intergovernmental bodies, and NGOs (for example, Carcedo/Sagot 2002; Carcedo 2006; Amnesty International 2005; Las Dignas 2003; Ellsberg 1997) to scholarly publications in a stricter sense (for example, Pantelides/Manzelli 2005; Claramunt 2003; Sanabria León 2004; Huffs Schmid 2006), some of which analyze, like this paper, the discursive dimensions of the problem (for example, Hume 2004). The specific topic of legislation on gender-related violence in the region is often treated as one among many other issues (for example, WOLA 2007: 8), but rarely as the only or main subject (as in Juárez Membreño 2005 and Arroyo Vargas 2002). This section aims to contribute to the discussion on that specific matter by focusing on the legal discourse observable in the relevant legislation in El Salvador, Nicaragua, and Costa Rica.

With "legislation on gender-related violence," this paper refers to laws, decrees, regulations, and the like which address violence against women, intra-family violence, and sexual(ized) violence; it also refers to those elements of legislation which address violence against children because this phenomenon is often closely related to issues of intra-family and sexual(ized) violence.¹²

How do legal texts in Costa Rica, Nicaragua, and El Salvador define the gender-related violence phenomena they address? Particularly in Costa Rica, the historical evolution of concepts—and the terms in which they are expressed—within a period of only one decade is striking. The same phenomenon was called *violencia doméstica* ("domestic violence") in 1996; then, only two years later, *violencia intrafamiliar* ("intra-family violence"); nowadays, the lawmakers refer to it using the unspecific term of *violencia contra las mujeres* ("violence against women"). In 1996, the *Ley contra violencia doméstica* (Law against Domestic Violence, Art. 2f) limited its scope to violence between individuals related to each other by "*consanguinidad, af-*

¹² See Oettler 2007: 23-24 for a more detailed discussion of the mentioned terms.

inidad o adopción" ("consanguinity, marriage, or adoption") and explicitly included nonformalized kinds of (family-like) relationships ("*unión de hecho*," stable union/partnership).¹³ In a 1998 executive decree,¹⁴ directly linked to the Law against Domestic Violence through the establishment of an institution whose creation was foreseen in that law, the term *violencia doméstica* was replaced by *violencia intrafamiliar*. Despite the new wording, the decree did not provide a definition of what exactly was meant by *violencia intrafamiliar*, and thus it remains unclear why the executive authorities who issued the decree decided to choose this expression.¹⁵ Even more surprisingly, another nine years later, in the *Ley de penalización de la violencia contra las mujeres* (Law to Penalize Violence against Women), the wording underwent an even more significant change. The title of the law now avoided limiting itself to violence in families or relationships but referred to violence against women in general. Still, the text of the law does contain this limitation of scope, as Art. 2 states:

Esta Ley se aplicará cuando las conductas tipificadas en ella como delitos penales se dirijan contra una mujer mayor de edad, en el contexto de una relación de matrimonio, en unión de hecho declarada o no.

This law applies when the behavior it classifies as an offense is directed against a woman of age and has occurred in the context of a marriage or a declared or nondeclared partnership.

What differentiates this law from the laws of 1996 and 1998 is, above all, that it only refers to violence against women and not to violence against other members of a formal or informal family. It does not apply, for example, when the victim is the husband or a male or female child. Regarding adult women, though, the law has the same intra-familiar scope as the laws mentioned before. Presumably, the evolution of feminist theory in Latin America has made both the term *violencia doméstica* and the term *violencia intrafamiliar* obsolete in the eyes of the lawmakers, and thus, the 2007 law avoids them systematically, even at the expense of semantic accuracy.

¹³ Legislation in Nicaragua and El Salvador includes this nonformalized kind of relationship too. See, for example, Art. 3 of the Nicaraguan 1992 *Ley de reformas al código penal* (Law to Reform the Penal Code), which issues harsher punishments for violations in cases in which "*el autor y la víctima hubiesen estado unidos en matrimonio o en unión de hecho estable*" ("the offender and the victim have been living together as a married couple or as a stable partnership"). Or see Art. 1d of the Salvadoran 1996 *Ley contra la violencia intrafamiliar* (Law against Intra-Family Violence), which states, "[S]e entienden por familiares las relaciones entre conyugues, ex conyugues, convivientes, ex convivientes [...] así como cualquier otra relación interpersonal que pueda generar este tipo de violencia." ("[F]amilies are defined as relationships between spouses, ex-spouses, partners who live together and ex-partners who have been living together [...] as well as every other interpersonal relationship in which this kind of relationship may exist.")

¹⁴ *Decreto para la creación del sistema nacional para la atención y la prevención de la violencia intrafamiliar* (Decree on the Creation of the National System for the Treatment and Prevention of Intra-Family Violence).

¹⁵ The reason for the new wording may have been that, in terms of connotations, there is a slight difference between *violencia doméstica* and *violencia intrafamiliar*. The etymological origins of the former (derived from the Latin word "domus": house, home), in a way, relate it to the topographic space of the house (or apartment, etc.). This implicitly supposes that the individuals involved in the violent act live together. *Intrafamiliar*, in contrast, lacks this connotation and thus allows for a larger variety of definitions of "family." It may also refer to a relationship in which the partners do not share a home.

The same applies regarding one very important and to some extent innovative stipulation of the same law: the penalization of *femicidio* ("femicide," killing of a woman). In Latin America, the terms *femicidio* and *feminicidio*¹⁶ emerged in the context of the large number of killings of young women on the Mexican side of the Mexico-USA border region (Huffschmid 2006; Washington Valdez 2005). Neither regarding that original context nor in the more general sense of "femicide" is the word *femicidio* restricted to the family-related meaning the 2007 law links to it.¹⁷ The general meaning of *femicidio* as the killing of a woman, that is, of *any* woman by *any* offender, was lost when Costa Rican legislators turned it into a technical term with juridical relevance (and defined it only as the killing of a woman by her spouse or partner). It could be argued that the lawmakers use the term *femicidio*—even at the expense, again, of semantic accuracy—for the sake of the symbolic effect of using this "new" expression and because it is strongly related to the international human and women's rights debate as well as to the social movements promoting these rights. The use of the word *femicidio* in the Costa Rican law demonstrates the influence a transnational debate (in this case, the debate surrounding the killings of women in Mexico and Central America) can exert on the legal discourse of a given country. It also illustrates the semantic transformation a term can go through when taken from a transnational debate to be used in national law.

When it comes to the different types of intra-family violence, in addition to sexual, physical, and psychological violence, the Costa Rican and Salvadoran legislation also penalizes *violencia patrimonial* (property-related/economic violence).¹⁸ This means that the legal norms in these two countries seem to be based on a much wider definition of violence than in Nicaragua, where *violencia patrimonial* is not mentioned as a form of intra-family violence.¹⁹ The

¹⁶ The difference between the two forms is that *femicidio* is more similar to *homicidio* (homicide) and *feminicidio* is more similar to the word *genocidio* (genocide). The latter thus points to the structural characteristics of the killing of women (Lagarde y de los Ríos 2005).

¹⁷ Strictly speaking, a more accurate expression for the phenomenon the law aims to address would have been *uxoricidio* (killing of a wife perpetrated by her husband), but that term is even more uncommon in everyday language and, probably, would be difficult to understand for the vast majority of Costa Ricans.

¹⁸ For Costa Rica see the *Ley contra la violencia doméstica* (Law against Domestic Violence, Art. 2) and the *Ley de penalización de la violencia contra las mujeres* (Law to Penalize Violence against Women), Art. 21 to 39). In El Salvador, the 1996 *Ley contra la violencia intrafamiliar* (Law against Intra-Family Violence, Art. 3) originally did not include *violencia patrimonial*, but an amendment in 2002 (*Decreto no. 892: Reformas a la Ley Contra la Violencia Intrafamiliar*, Decree No. 892: Reforms to the Law against Intra-Family Violence, Art. 2d) added this feature.

¹⁹ In the 2000 *Decreto ejecutivo para la creación de la comisión nacional contra la violencia hacia la mujer, niñez y adolescencia* (Executive Decree on the Establishment of the National Commission against Violence against Women, Children and Adolescents) violence is defined as "*cualquier acción, omisión o conducta que cause muerte, daño o sufrimiento físico, sexual o psicológico*" ("every action, default, or behavior that causes death, physical, sexual, or psychological harm or pain"). In the 1996 *Ley de la Policía Nacional* (National Police Law), which introduces the establishment of *Comisarías de la Mujer y la Niñez* (Women's and Children's Commissariats, Art. 21), *violencia patrimonial* is also not mentioned: "*Se creará [...] la Comisaría de la Mujer y la Niñez a fin de dar atención especializada en casos de violencia física, psicológica o sexual en contra de la mujer o la niñez.*" ("There will be [...] a Women's and Children's Commissariat established to give specialized attention in cases of physical, psychological, or sexual violence against women or children.") Not even the 1996 *Ley de reformas y adiciones al Código Penal* (Amendment of the Penal Code), which women's organizations refer to as "*ley contra la violencia intrafamiliar*" ("law against intra-family violence"; for example Herrera 2001: 4), penalizes *violencia patrimonial* (see the definition of violence in Art. 2 of the amendment and Art. 102 of the reformed Penal Code).

Nicaraguan women's movement must have had the same interest in pressing for the inclusion of this form of injustice in the legislation as women's movements in El Salvador and Costa Rica. Yet, it seems that even Nicaragua's women's movement, "the most significant feminist movement in Central America and one of the most significant in Latin America as a whole" (Kampwirth 2003: 146), does not have enough discursive power to effectively influence the law-making process dominated by the *pacto* (the power-sharing pact between President Ortega, former president Alemán, and the Catholic Church, see Oettler 2007: 10).²⁰ This is not to say that feminist ideas have had no influence at all on the formulation of legal texts related to gender violence in Nicaragua. Presumably through rather indirect channels, and particularly through the influence of international development agencies, feminist thinking does leave its mark in legal texts. In 2006, the executive branch issued a decree to enact the National Program for Gender Equality, which, among other topics, aims to address gender violence. The program, and thus the decree (*Decreto del programa nacional de equidad de género*, Decree of the National Program of Gender Equality, Cap. XII, Art. 1), explicitly draws on the concept of "*violencia basada en género*" ("gender-based violence") and does not differentiate specific forms of violence (physical, psychological, etc.). The designers of the program do not define gender-related violence by the violent act itself but rather by the motivation of the perpetrator: Gender-based violence is defined as any kind of violence exerted with the aim of "*sometimiento de la mujer*" ("subordination of women").²¹ The influence of feminist theory becomes manifest in many passages of the text, for example, in the statement (also in Cap. XII, Art. 1) that gender-based violence "*es un delito sustentado en el poder y el control*" ("is an offense based on power and control"). Another legal text in which there is a similarly unequivocal trace of feminist theory is the Costa Rican 2007 *Ley de penalización de violencia contra la mujer* (Law to Penalize Violence against Women, Art. 1). It defines violence against women as a "*práctica discriminatoria por razón de género*" ("discriminatory practice because of gender"). Especially in Costa Rica, definitions of gender-related forms of violence often contain aspects of honor and shame. To ridicule and humiliate a woman and also to force her to "*ver actos de exhibicionismo, a ver o escuchar material pornográfico*" ("see acts of exhibitionism, see or hear pornographic material") is explicitly defined as (psychological) violence (*Ley de penalización de violencia contra la mujer*, Law to Penalize Violence against Women, Art. 30). This concern for women's honor is not a new phenomenon in Costa Rica. As early as 1965, the *Ley de protección de la propaganda degradante* (Law for the Protection against Degrading Advertisement, Art. 1) penalized

²⁰ Another example of how uninfluential the Nicaraguan women's movement was and is in terms of significant legislation is the fact that Nicaragua was the last country in Latin America to abolish the penalization of consensual homosexuality (Art. 204 of the recently replaced Penal Code, in force until January 2008) and that the country harshly penalizes abortion—since late 2006 even medically indicated abortion.

²¹ Certainly, in this kind of executive decree, contrary to a (penal) law, there is no need for a definition applicable in practice, for example, by a judge in a lawsuit. Making the offender's motivation the main (or only) criterion for an act to be defined as gender-based violence may be legitimate and suitable for a government program like this, but not for a penal law. This has to be kept in mind when comparing the above-mentioned definition with the definitions used in penal laws.

propaganda comercial que ofenda la dignidad, el pudor de la familia y en la que se utilice la imagen de la mujer impúdicamente.

commercial propaganda that violates the dignity [and] the honor of the family and which uses the image of women immorally.

It is interesting to see how the designers of the different laws deal with the dilemma of the need to name sexual offenses on the one hand, and the need or will to use "decent" wording—appropriate for legal texts in countries with a centuries-long Catholic tradition—on the other.²² The Costa Rican *Ley de penalización de violencia contra la mujer* (Law to Penalize Violence against Women) is an example of a rather direct and explicit way of talking about the penalized behavior. The law contains expressions such as "*introduzca el pene*" ("to introduce the penis," Art. 29) or "*uso de animales*" ("the use of animals," Art. 8i). It evokes connotations of the possibility that a woman may be infected with HIV/AIDS through violation (Art. 32b) and thus links the violent act to what may be seen as the ultimate morality-related calamity of our times. The use of such explicit language seems to be a rather new development in Costa Rica and does not occur in Nicaragua or El Salvador. The Costa Rican 1996 *Ley contra violencia doméstica* (Law against Domestic Violence, Art. 2d) refers to "*contacto sexualizado, físico o verbal*" ("sexualized contact, physical or verbal") and avoids mentioning the specific forms this "contact" may take. The Nicaraguan 1996 *Ley de reformas y adiciones al Código Penal* (Amendment of the Penal Code, Art. 3 referring to Art. 195 of the Penal Code), defines a number of specific acts as "*delito de violación*" ("offense of violation"). Yet, in contrast to the recent Costa Rican law, the wording of this Nicaraguan law is much less explicit: Among the things that are forbidden to be introduced into the victim's body are "*instrumento[s]*" ("instruments") and "*objeto[s]*" ("objects"), but not animals; instead of "*pene*" ("penis") this law refers to "*cualquier órgano*" ("whatever organ"). The Salvadoran *Ley contra la violencia intrafamiliar* (Law against Intra-Family Violence, Art. 3c), just like the 1996 Costa Rican law, completely avoids such specifications; the banned activities are referred to as "*contactos sexualizados físicos o verbales*" ("sexualized physical and verbal contacts").

Most of the relevant legal texts, in particular penal laws, do not contain explicit statements regarding the causes of gender-related violence.²³ The following three quotations, hence, are taken from executive decrees. In Nicaragua, the *Decreto de política de protección especial a los niños, niñas y adolescentes* (Decree on Special Politics to Protect Children and Adolescents, Art. 1, Cap. 2.1) identifies a number of social conditions responsible for children and adolescents becoming both victims and perpetrators of violence and crime. Among those conditions, armed conflict is mentioned first:

²² Both theoretically and for specific historic and geographic contexts (other than Central America), there is a vast body of literature on the issue of "naming," defining, and describing acts of sexual violence in laws, court hearings, etc. (for example, Hommen 1999, Bohmer 1998, Matoesian 2001, and also Fairman 2006).

²³ This is not surprising, because penal laws, by their very nature, aim at penalizing undesired behavior and not at analyzing the origins, motivations, etc. of that behavior. In fact, the interesting point is that there *are* some legal texts in which some statements regarding the causes of violence can be identified.

En Nicaragua existen más de 600 mil niños, niñas y adolescentes que viven [...] en situación de: trabajo infantil, abandono, maltrato, violencia, abuso y explotación sexual comercial, adicción a drogas e infracción de la ley penal. Estas circunstancias tienen su origen en fenómenos bélicos, naturales, socioeconómicos, geopolíticos y de orden económico mundial [...].

In Nicaragua, there exist over 600,000 children and adolescents who live [...] in a situation of: child labor, abandonment, mistreatment, violence, abuse and sexual exploitation, drug addiction, and infringement of the penal law. These circumstances have their origins in war, natural, socioeconomic, and geopolitical phenomena as well as in the world economy [...].

Also in Nicaragua, the *Decreto del programa nacional de equidad de género* (Decree of the National Program for Gender Equality, Art. 1, Cap. XII), not surprisingly, finds the origin of violence against women in gender inequality and in the present "gender system":

La violencia contra las mujeres es uno de los síntomas más graves de la desigualdad, las causas se hallan, [...] en el sistema de género prevaleciente en nuestras sociedades [...].

The violence against women is one of the worst symptoms of inequality; the causes lie [...] in the gender system prevalent in our societies [...].

In Costa Rica, the 1998 *Decreto para crear el sistema nacional para la atención y la prevención de la violencia intrafamiliar* (Decree on the Creation of the National System for the Treatment and Prevention of Intra-Family Violence, Art. 5, clause 8) implicitly expresses its authors' view that "sociocultural patterns" are a cause of intra-family violence; the decree aims to

[m]odificar los patrones socioculturales de hombres y mujeres [...] para contrarrestar prejuicios y costumbres [...] que se basen en la premisa de la inferioridad o superioridad de cualquiera de los géneros o en los papeles estereotipados [...] que legitimizan o exacerban la violencia contra la mujer.

[c]hange the sociocultural patterns of men and women [...] to counteract prejudices and customs [...], which are based on the premise of the inferiority or superiority of any of the genders, or on stereotyped roles [...] that legitimize or exacerbate violence against women.

Art. 16 (clauses a, b, and d) of the 2007 *Ley de penalización de la violencia contra la mujer* (Law to Penalize Violence against Women) indicates that the lawmakers saw alcohol and drug abuse, the mental/psychological disorders of the offender, and the availability of weapons as possible origins of violence against women. The law enables judges to impose therapy or a prohibition against carrying arms on the aggressor.

In El Salvador, Preamble IV of the 1996 *Ley contra la violencia intrafamiliar* (Law against Intra-Family Violence) points to what the lawmakers saw as a cause of violence:

Que la violencia intrafamiliar es un fenómeno social complejo que ha permanecido oculto lo que ha posibilitado la impunidad del infractor y la desprotección de la víctima.

Intra-family violence is a complex social phenomenon that has remained hidden. This has made the impunity of the perpetrator and the unprotectedness of the victim possible.

The preamble does not make a statement on the concrete origins or causes of violence, but it describes it as a "complex social phenomenon." The lawmakers at least seem to have assumed that the causes are to be found in society rather than in the individual offender. That this phenomenon "has remained hidden" is presented as a reason for the fact that intra-family violence has not yet been eradicated.

In addition to these few text passages regarding the causes of gender-related violence, there are some—also very few—stipulations that may be interpreted in terms of the construction of perpetrators and victims. For example, the Nicaraguan *Decreto ejecutivo para la creación de la comisión nacional contra la violencia hacia la mujer, niñez y adolescencia* (Executive Decree on the Establishment of the National Commission against Violence against Women, Children, and Adolescents) states in Preamble IV that "*mujeres, niñas, niños y adolescentes [...] son las principales víctimas de violencia intrafamiliar y sexual*" ("women, children and adolescents [...] are the main victims of intra-family and sexual violence"). Similarly to the Costa Rican *Ley para la penalización de la violencia contra las mujeres* (Law to Penalize Violence against Women), which refers solely to women as victims of intra-family violence, the Nicaraguan decree contributes to the image of men as perpetrators and women (and children) as victims. The designers of the Costa Rican law, furthermore, seem to have had in mind a more specific image of the "typical" offender: Art. 16 (enabling judges, as explained above, to impose therapy on a perpetrator) may be interpreted as a contribution to the construction of mentally ill and drug/alcohol-addicted men as the most common offenders. In Art. 41 and 42, the law severely punishes state officials who permit impunity for acts of violence against women, thus constructing an image of policemen and other officials as (likely) accomplices of rapists. Most interestingly, it features special stipulations for offenders of foreign nationality (Art. 19), suggesting, implicitly, that foreign nationals are more likely to infringe this law than Costa Ricans. The depiction of violence/crime as an evil coming from "outside" is characteristic also to other discursive spaces, for example, in the media (Huhn/Peetz/Oettler 2006b: 21; Oettler 2007: 18). In Costa Rica, Nicaraguan and Colombian immigrants are socially constructed as criminals *per se*, and some years ago, the concern about sexual exploitation of children by (foreign) sex-tourists had some characteristics of what Cohen (1980) calls a "moral panic."²⁴

As in the case of drug-related legal texts, it is also insightful to analyze the concepts of prevention in the gender-related context. Again, there is a difference in the use of the term "prevention" between Nicaragua and Costa Rica on the one hand, and El Salvador on the other. In Nicaragua, in the *Decreto ejecutivo para la creación de la comisión nacional contra la violencia hacia la mujer, niñez y adolescencia* (Executive Decree to Create the National Commission on Violence against Women, Children and Adolescents, Art. 3), proposing and implementing preventive policies against gender-related violence is the first of four kinds of measures the established commission is to adopt (the others are detection, treatment, and sanctioning).

²⁴ Valladares Mendoza (2005: 168-171) gives examples of how the issue of sexual exploitation by sex-tourists was treated in the Costa Rican press.

And—just like the Costa Rican 1998 *Decreto para crear el sistema nacional para la atención y la prevención de la violencia intrafamiliar* (Decree on the Creation of the National System for the Treatment and Prevention of Intra-Family Violence, Art. 5)—the decree (Art. 3c) aims to undertake prevention by means of changing cultural patterns:

[Nicaragua:]

Promover transformaciones en el ámbito socio cultural que inciden en comportamientos individuales y/o colectivos, que generen Violencia hacia la mujer, niñez y adolescencia.

To promote sociocultural transformations acting upon the behavior of individuals and/or collectives who generate violence against women, children, and adolescents.

[Costa Rica:]

Modificar los patrones socioculturales de hombres y mujeres [...] para contrarrestar prejuicios y costumbres.

To change the sociocultural patterns of men and women [...] to counteract prejudices and customs.

El Salvador issued an executive decree in 2005 to create a commission against human trafficking (*Decreto para la creación del Comité Nacional contra la Trata de Personas*, Decree to Create the National Commission against Human Trafficking).²⁵ In one of its preambles the decree explicitly refers to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons.²⁶ Nevertheless, the Salvadoran decree does not use the same word order as the UN Protocol (or, for example, as the Nicaraguan decree mentioned above); in its Preamble VI and in Art. 4a and 4b "*reprimir*" ("repress") comes before "*prevenir*" ("prevent"). In Art. 4d, regarding the dissemination of the commission's tasks among the population, prevention is not mentioned at all (strictly speaking, that means that the population should only be informed about the repressive competencies of the commission). Somewhat contradictorily, in the 2002 *Reformas a la ley contra la violencia intrafamiliar* (Amendment to the Law against Intra-Family Violence, Art. 4), the importance of the prevention idea is enhanced: The amendment introduces the state's responsibility to promote research on the prevention of intra-family violence (until then, the respective article of the 1996 law, Art. 6c, only mentioned research on "*las causas y consecuencias de la violencia intrafamiliar, sus indicadores y su dinámica*" ["the causes and consequences of intra-family violence, its characteristics and dynamics"]). Thus, Salvadoran lawmakers seem to find prevention increasingly necessary to combat intra-family violence, but much less appropriate for combating human trafficking. One can only speculate that they see human trafficking as a "real" problem, which can only be solved by "really" effective measures (that is, by repression), while, for them, intra-family violence seems to be a soft issue which can be left to such "uncertain strategies" as prevention.

²⁵ This decree is included in the section on gender-related violence because human trafficking is closely linked, particularly in the Central American context, with forced prostitution of children and women.

²⁶ Available on the Internet at: www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf (20/11/2007).

5 Concluding Remarks: Legal Discourse and Security Policies in Central America

This paper has presented an analysis of the legal manifestation of the discourse on violence in El Salvador, Nicaragua, and Costa Rica. It has focused on laws and other legal texts concerning either the topic of drugs or of gender-related violence. The analysis has shown that, in the three countries, legal texts—meant to be the basis of a universal jurisprudence without regard for the personal, social, or group-specific characteristics of the offender or the victim—contribute to the social construction of "typical" offenders and victims of crimes. The legal texts, for example, depict consumers of alcohol and other drugs, men, members of youth gangs, and foreigners as more prone to violence and crime than others. In the three countries, legal texts more or less explicitly establish a causal relation between alcohol and drug use and violent or criminal behavior. Also in all three countries, legal texts contain stipulations suggesting that sociocultural patterns cause gender-related violence.

The analysis has also detected the influence of discursive threads which, at least when they first attracted public attention, reflected an alternative, counter-hegemonic representation of reality ("counter-discourses"). For example, the use of the term *femicidio* in a Costa Rican law shows how a concept originally brought up by human and women's rights advocacy groups, and later amplified by the international cooperation community, has become manifest in legislation. Not only the transformation into legal technical terms but also the reality of the judicial systems in Central America²⁷ limits the effects of these transnational and counter-discourses on the security of citizens there. This is *not* to say that—because of the inefficiencies and the accessibility deficits of Central American judicial systems—an analysis of the legislation is irrelevant. On the contrary, analyzing the wording and content of legal norms highlights some crucial aspects of the discourse on violence and crime in the three societies under comparison, for example, the deeply repressive understanding of "prevention" in El Salvador.

When the legislation of the three countries is placed into the context of the security policies implemented there, some important analogies become apparent. The construction of the "typical" offender in the legal texts (as in other discursive spaces) coincides with policies systematically directed against individuals who feature the respective characteristics. This is particularly true for El Salvador, where members of *maras* and, to a certain degree, juveniles from the lower strata of society in general, are the main targets of "iron fist" policies (Huhn/Oettler/Peetz 2008c: 7-9). Also, the dominant concept of prevention reflected in the analyzed legal texts corresponds with the security policies in the three countries: El Salvador presents a rather repressive understanding of the term prevention and is implementing deeply repressive security policies. The Nicaraguan legislation reflects a nonrepressive conception of the

²⁷ "[T]he gap between the law and its implementation is still disturbingly wide, creating numerous barriers to justice for women victims of violence. Authorities fail to adequately and promptly investigate cases and punish and prosecute those responsible. They tend to blame the victims and fail to see gender-based violence as a serious crime." (Beltrán/Freeman 2007: 7). This observation, here referring to Guatemala and Mexico, is probably valid for all Central American and most other Latin American countries.

term, and the security policies of that country, generally speaking, are probably the least repressive in Central America.²⁸ In Costa Rica, there seems to be a certain contradiction between the high importance given to (nonrepressive) prevention in the legal texts and a rather (but not extremely) repressive approach to citizen security in recent years (Huhn/Oettler/Peetz 2008c: 11-12). This discrepancy may be caused, again, by the "political game": Legislation is the output of a political process, in which many actors with different interests intervene and negotiate; and in the case of Costa Rica, the tendency towards repressive policies has seemingly taken hold in the executive, but not so much among the majority of legislators. Moreover, the number of recent laws and decrees on drug- and gender-related violence in the different countries has demonstrated the divergent weight these issues have in the current societal debates. Costa Rica enacted its latest law on gender-related violence in 2007, while the respective Salvadoran legislation has not seen any major change since 2002—one year before then president Francisco Flores declared his war on youth gangs. This is by no means surprising if previously published findings on the media discourse (Huhn/Oettler/Peetz 2006b) and on the discursive spaces of politics and "everyday life" (or: the "life world of common people," see Oettler 2007: 23-27 and Huhn 2008) are taken into account: The hegemonic discourse in El Salvador was and is almost exclusively centered around the *maras* issue, and gender-related violence is relegated to the fringes of public attention (see also Hume 2004: 70-71). Regarding Nicaragua, the new penal code (in force only since mid-January 2008) reaffirming the 2006 penalization of every form of abortion, including those performed for medically indicated reasons, draws attention to an important topic that could not be treated in this paper: (gender-related) legislation *as* violence.

Many examples given in the empirical sections of this paper illustrate that legislation in El Salvador, Nicaragua, and Costa Rica reflects social and ideological change on the one hand, and the "political game," that is, power relations between social and political actors, on the other. In particular, the analysis of drug- and alcohol-related legal texts has shown that laws are also manifestations of hegemonic constructions of desired and undesired behavior. Looking at gender- and drug-related legislation has unearthed important discursive patterns not only regarding the violence, crime, and security discussions in the three countries, but also regarding other relevant societal issues, namely, gender relations and the condition of body and mind a society wants to impose on its members.

²⁸ See Rocha (2005), who mainly attributes this to the institutional history of the Nicaraguan police.

Bibliography

- Aguilar Villamariona, Jeannette (2006): Los efectos contraproducentes de los planes mano dura, in: Quórum, No. 16, pp. 81-94, www.revistaquorum.es/quorum-16/Quorum_16/08_JeannetteAguilar_Q16.pdf (18/6/2007).
- Aguilera, Gabriel/Ogaldes, Claudinne (1996): La narcoactividad como amenaza a la seguridad, in: Aguilera, Gabriel (coord.): Buscando la seguridad: Seguridad ciudadana y consolidación de la democracia en Guatemala, Ciudad de Guatemala: FLACSO, pp. 91-120.
- Amnesty International (2005): Guatemala: No protection, no justice—killings of women in Guatemala, in: Amnesty International Reports, No. 34/017/2005, www.amnesty.org/en/report/info/AMR34/017/2005 (22/1/2008).
- Arroyo Vargas, Roxana (2002): Aplicabilidad de la normativa sobre violencia contra la mujer en Centroamérica, Heredia: Universidad Nacional, http://justiciaygenero.org/Nov07/Publicaciones/ROXANA_LIBRO/LIBRO_DIAGRAMADO_2.pdf (23/1/2008).
- Beltrán, Adriana/Freeman, Laurie (2007): Hidden in plain sight: Violence against women in Mexico and Guatemala (WOLA special report), Washington: WOLA, www.wola.org/media/ViolenceAWomen.pdf (18/1/2008).
- Bohmer, Carol (1998): Rape and the law, in: Odem, Mary E./Clay-Warner, Jody (eds.): Confronting rape and sexual assault, Wilmington: Scholarly Resources, pp. 247-262.
- Caldeira, Teresa P. R. (2000): City of walls: Crime, segregation, and citizenship in São Paulo, Berkeley/Los Angeles/London: University of California Press.
- Call, Charles T. (2007): The mugging of a success story: Justice and security reform in El Salvador, in: Call, Charles T. (ed.): Constructing justice and security after war, Washington: US Institute of Peace Press, pp. 29-67.
- Carcedo, Ana (2006): Seguridad ciudadana de las mujeres y desarrollo humano (Cuadernos de Desarrollo Humano, No. 2), San José: PNUD, www.nu.or.cr/indh/pdf/cuaderno02.pdf (22/1/2008).
- Carcedo, Ana / Sagot, Montserrat (2002): Femicidio en Costa Rica 1990-1999, San José: INAMU-OPS.
- Claramunt, María Cecilia (2003): Casitas quebradas: El problema de la violencia doméstica en Costa Rica, San José: EUNED.
- Cohen, Stanley (1980): Folk devils and moral panic: The creation of the Mods and Rockers, New York: St. Martin's Press.
- Cruz, José Miguel (2004): Violencia y democratización en Centroamérica: El impacto del crimen en la legitimidad de los regímenes de posguerra, in: América Latina Hoy, No. 35, pp. 19-59, <http://redalyc.uaemex.mx/redalyc/pdf/308/30803502.pdf> (23/1/2008).
- Cruz, José Miguel (ed.) (2006): Maras y pandillas en Centroamérica (Vol. IV): Las respuestas de la sociedad civil organizada, San Salvador: UCA Editores.

- DIRINPRO/NITLAPAN/IDESO (2004): *Muerte arriba: Las pandillas en Nicaragua 1999-2004*, Managua: UCA Publicaciones.
- Ellsberg, Mary Carroll (1997): *Candies in hell: Women's experiences of violence in Nicaragua*, Umea: Department of Epidemiology and Public Health, Umea University.
- ERIC/IDESO/IDIES/IUDOP (eds.) (2001): *Maras y pandillas en Centroamérica (Vol. I)*, Managua: UCA Publicaciones.
- ERIC/IDESO/IDIES/IUDOP (eds.) (2004a): *Maras y pandillas en Centroamérica (Vol. II): Pandillas y capital social*, San Salvador: UCA Editores.
- ERIC/IDIES/IUDOP/NITLAPAN/DIRINPRO (eds.) (2004b): *Maras y pandillas en Centroamérica (Vol. III): Políticas juveniles y rehabilitación*, Managua: UCA Publicaciones.
- Fairclough, Norman/Wodak, Ruth (1997): *Critical Discourse Analysis*, in: van Dijk, Teun A. (ed.): *Discourse as social interaction: Discourse studies: A Multidisciplinary Introduction (Vol. II)*, London: Sage Publications, pp. 258-284.
- Fairman, Christopher M. (2006): *Fuck* (Bepress Legal Series, No. 1087), Berkeley: Bepress, <http://law.bepress.com/expreso/eps/1087> (28/2/2008).
- Foucault, Michel (2002): *The archeology of knowledge*, London: Routledge.
- Garland, David (2001): *The culture of control: Crime and social order in contemporary society*, Oxford: Oxford University Press.
- Glebbeek, Marie-Louise (2001): *Police reform and the peace process in Guatemala: The fifth promotion of the National Civilian Police*, in: *Bulletin of Latin American Research*, Vol. 20, No. 4, pp. 431–453.
- Herrera, Martina (2001): *Estudio de caso: Red de mujeres contra la violencia, Nicaragua*, www.paho.org/spanish/hdp/hdw/nicaraguasp.pdf (19/11/2007).
- Hommen, Tanja (1999): *Sittlichkeitsverbrechen: Sexuelle Gewalt im Kaiserreich*, Frankfurt a. M./New York: Campus.
- Huffs Schmid, Anne (2006): *Femicidio: Das Öffentliche ist politisch: Zu den Frauenmorden in Mexiko und Mittelamerika*, in: Gabber, Karin / Gabbert, Wolfgang / Goedeking, Ulrich (eds.): *Mit Sicherheit in Gefahr (Jahrbuch Lateinamerika: Analysen und Berichte, Vol. 30)*, Münster: Westfälisches Dampfboot, pp. 69-88.
- Huhn, Sebastian/Oettler, Anika/Peetz, Peter (2006a): *Construyendo Inseguridades: Aproximaciones a la violencia en Centroamérica desde el análisis del discurso (GIGA Working Paper No. 34)*, Hamburg: GIGA, www.giga-hamburg.de/dl/download.php?d=/content/publikationen/pdf/wp34_huhn-oettler-peetz.pdf (11/1/2008).
- Huhn, Sebastian/Oettler, Anika/Peetz, Peter (2006b): *Exploding crime? Topic management in Central American newspapers (GIGA Working Paper No. 33)*, Hamburg: GIGA, www.giga-hamburg.de/dl/download.php?d=/content/publikationen/pdf/wp33_huhn-oettler-peetz.pdf (11/1/2008).

- Huhn, Sebastian / Oettler, Anika / Peetz, Peter (2008a): *Imaginaciones y percepciones: Si estudiantes de Costa Rica, El Salvador y Nicaragua fueran presidentes...*(Cuadernos de Investigación, Colección Humanidades), Managua: UCA (forthcoming).
- Huhn, Sebastian/Oettler, Anika/Peetz, Peter (2008b): *Anders, bedroht und bedrohlich – Jugendbanden in Zentralamerika*, in: Klimke, Daniela (ed.): *Exklusion in der Marktgesellschaft*, Wiesbaden: VS Verlag für Sozialwissenschaften, pp. 159-171.
- Huhn, Sebastian/Oettler, Anika/Peetz, Peter (2008c): *Discursos de violencia y políticas anti-delincuenciales en Centroamérica*, paper presented at: V. Reunión Anual, Red Euro-Latinoamericana de Gobernabilidad para el Desarrollo (ReDGob), Poitiers, December 6-7, 2007.
- Huhn, Sebastian (2008): *Discourses on violence in Costa Rica, El Salvador, and Nicaragua: Perceived problems and envisioned solutions in everyday life (GIGA Working Papers)*, Hamburg: GIGA, www.giga-hamburg.de/workingpapers (forthcoming).
- Hume, Mo (2004): "It's as if you don't know, because you don't do anything about it": Gender and violence in El Salvador, in: *Environment and Urbanization*, Vol. 16, No. 2, pp. 63-72.
- Jäger, Siegfried (2004): *Kritische Diskursanalyse: Eine Einführung*, Münster: Unrast.
- Jakobs, Günther (1985): *Kriminalisierung im Vorfeld einer Rechtsgutverletzung*, in: *Zeitschrift für die gesamte Strafrechtswissenschaft*, No. 97, pp. 751-785.
- Kampwirth, Karen (2003): *Arnoldo Alemán takes on the NGOs: Antifeminism and the new populism in Nicaragua*, in: *Latin American Politics and Society*, Vol. 45, No. 2, pp. 132-158.
- Kleiman, Mark (2004): *La influencia de las drogas en la violencia: Propuestas para reducir el impacto de las drogas en la violencia en El Salvador*, in: PNUD (ed.): *Aportes para la convivencia y la seguridad ciudadana*, San Salvador: PNUD, pp. 163-173.
- Kurtenbach, Sabine (2006): *Guatemala – das Überleben von Gewaltordnungen im Frieden*, in: Bakonyi, Jutta/Hensell, Stephan/Siegelberg, Jens (eds.): *Gewaltordnungen bewaffneter Gruppen: Ökonomie und Herrschaft nichtstaatlicher Akteure in den Kriegen der Gegenwart*, Baden-Baden: Nomos, pp. 71-82.
- Kurtenbach, Sabine (2007): *Why is liberal peace-building so difficult? Some lessons from Central America (GIGA Working Paper No. 59)*. Hamburg: GIGA, www.giga-hamburg.de/dl/download.php?d=/content/publikationen/pdf/wp59_kurtenbach.pdf (23/1/2008).
- Juárez Membreño, Claudia Patricia (2005): *Los consensos y disensos en el proyecto de ley de penalización de la violencia contra las mujeres en Costa Rica*, in: *Revista Centroamericana de Ciencias Sociales*, Vol. 2, No. 2, pp. 197-211, www.flacso.or.cr/fileadmin/documentos/FLACSO/revista4.pdf (22/1/2008).
- Lagarde y de los Ríos, Marcela (2005): *Was ist feminicidio?*, in: *Info-Blatt 66 des Ökumenischen Büros*, www.oeku-buero.de/veroeff/inf66/06mxfeminicidio.html (22/10/2007).
- Las Dignas (2003): *Sistematización sobre violencia sexual e intrafamiliar: Años 1998 a 2000*, San Salvador: Las Dignas, www.lasdignas.org/uploaded/content/article/1991705901.pdf (22/1/2008).

- Matoesian, Gregory M. (2001): *Law and the language of identity: Discourse in the William Kennedy Smith rape trial*, Oxford/New York: Oxford University Press.
- Moser, Caroline/Winton, Alisa (2002): *Violence in the Central American region: Towards an integrated Framework for violence reduction* (Overseas Development Institute Working Paper, No. 171), London: ODI, www.odi.org.uk/publications/working_papers/wp171_a.pdf (23/1/2008).
- Nowalski, Jorge (2006): *Human security and sustainable livelihoods: The "maras" in Central America*, in: Pattnaya, Satya/Gustafson, Lowell S. (eds.): *National and human security issues in Latin America: Democracies at risk*, Lewiston: Edwin Mellen Press, pp. 205-232.
- Oettler, Anika (2007): *Discourses on violence in Costa Rica, El Salvador and Nicaragua: National patterns of attention and cross-border discursive nodes* (GIGA Working Paper, No. 65), Hamburg: GIGA, www.giga-hamburg.de/dl/download.php?d=/content/publikationen/pdf/wp65_oettler.pdf, (18/12/2007).
- Pantelides, Edith Alejandra /Manzelli, Hernán (2005): *Violencia en la pareja: Evidencias a partir de encuestas a hombres centroamericanos* (Papeles de Población, No. 45) Toluca: Universidad Autónoma del Estado de México, <http://redalyc.uaemex.mx/redalyc/pdf/112/11204510.pdf> (23/1/2008).
- Peetz, Peter (2005): *Las "maras": El pandillismo juvenil en Honduras, El Salvador y Guatemala*, in: Potthast, Barbara/Carreras, Sandra (ed.): *Entre familia, sociedad y Estado: Niños y jóvenes en América Latina*, Madrid: Iberoamericana / Frankfurt a. M.: Vervuert, pp. 333-372.
- Pérez, Orlando J. (2003): *Democratic legitimacy and public insecurity: Crime and democracy in El Salvador and Guatemala*, in: *Political Science Quarterly*, Vol. 118, No. 4, pp. 627-644.
- PNUD (2004): *El impacto de las drogas en la violencia: Buscando soluciones*, San Salvador: PNUD, 2004, www.pnud.org/sv/2007/component?option=com_docman/task/doc_download/gid,199/Itemid,56/ (23/1/2008).
- Popkin, Margaret (2000): *Peace without justice: Obstacles to building the rule of law in El Salvador*, University Park: The Pennsylvania State University Press.
- Rocha, José Luis (2005): *The political economy of Nicaragua's institutional and organizational framework for dealing with youth violence* (Crisis States Programme Working Paper, No. 65), London: Crisis States Programme, www.crisisstates.com/download/wp/wp65.pdf (7/8/2007).
- Sanabria León, Jorge R. (2004): *Autonomía y prospección en adolescentes víctimas de explotación sexual* (Cuadernos de Ciencias Sociales, No. 133), San José: FLACSO.
- Smutt, Marcella /Miranda, Jenny (1998): *El fenómeno de las pandillas en El Salvador*, San Salvador: UNICEF/FLACSO.
- Stanley, William D. (2007): *Business as usual? Justice and policing reform in postwar Guatemala*, in: Call, Charles T. (ed.): *Constructing justice and security after war*, Washington: US Institute of Peace Press, pp. 113-154.

- UNODC (2007): *Crime and development in Central America: Caught in the crossfire*, Mexico-City: UNODC, www.unodc.org/pdf/research/central_america_study.pdf (10/8/2007).
- Valladares Mendoza, Blanca (2005): *El trato noticioso del abuso sexual infanto-juvenil en la prensa escrita costarricense*, in: Rodríguez Sáenz, Eugenia (comp.): *Abuso sexual y prostitución infantil y juvenil en Costa Rica durante los siglos XIX y XX*, San José: Plumsock, pp. 164-196.
- van Dijk, Teun A. (1999): *El análisis crítico del discurso*, in: *Anthropos*, No. 186, pp. 23-36, www.discursos.org/Art/El%20an%20E1lisis%20cr%EDtico%20del%20discurso.pdf (27/10/2006).
- Washington Valdez, Diana (2005): *Cosecha de mujeres: Safari en el desierto mexicano*, Mexico-City: Océano.
- Wodak, Ruth (2001): *What is CDA about: A summary of its history, important concepts and its developments*, in: Wodak, Ruth/Meyer, Michael (eds.): *Methods of Critical Discourse Analysis*, London/Thousand Oaks/New Delhi, pp. 1-13.
- Wrocklage, Hartmuth H. (2008): *Wider das Feindstrafrecht – ein Plädoyer für den Rechtsstaat*, in: Klimke, Daniela (ed.): *Exklusion in der Marktgesellschaft*, Wiesbaden: VS Verlag für Sozialwissenschaften, pp. 59-68.
- Zinecker, Heidrun (2007): *Vom Exodus zum Exitus: Zu den Ursachen der Nachkriegsgewalt in El Salvador* (HSFK-Report, No. 3/2007), Frankfurt a. M.: HSFK, www.hsfk.de/fileadmin/downloads/report0307.pdf (23/1/2008).

Recent issues:

- No 71 Ellinor Zeino-Mahmalat: Gain Seeking in a “Double Security Dilemma”: The Case of OPEC; March 2008
- No 70 Matthias Basedau and Alexander De Juan: The ‘Ambivalence of the Sacred’ in Africa: The Impact of Religion on Peace and Conflict in Sub-Saharan Africa; March 2008
- No 69 Matthias Basedau and Alexander Stroh: Measuring Party Institutionalization in Developing Countries: A New Research Instrument Applied to 28 African Political Parties; February 2008
- No 68 Sebastian Elischer: Ethnic Coalitions of Convenience and Commitment: Political Parties and Party Systems in Kenya; February 2008
- No 67 Dirk Nabers: China, Japan and the Quest for Leadership in East Asia; February 2008
- No 66 Anika Becher and Matthias Basedau: Promoting Peace and Democracy through Party Regulation? Ethnic Party Bans in Africa; January 2008
- No 65 Anika Oettler: Discourses on Violence in Costa Rica, El Salvador and Nicaragua: National Patterns of Attention and Cross-border Discursive Nodes; December 2007
- No 64 Ingrid Fromm: Upgrading in Agricultural Value Chains: The Case of Small Producers in Honduras; December 2007
- No 63 Gero Erdmann: The Cleavage Model, Ethnicity and Voter Alignment in Africa: Conceptual and Methodological Problems Revisited; December 2007
- No 62 Daniel Lambach: Oligopolies of Violence in Post-Conflict Societies; November 2007
- No 61 Thomas Richter and Christian Steiner: Sectoral Transformations in Neo-Patrimonial Rentier States: Tourism Development and State Policy in Egypt; November 2007
- No 60 Carlos Torres Fuchslocher: The Role and Development of Technology-Intensive Suppliers in Resource-Based Economies: A Literature Review; November 2007
- No 59 Sabine Kurtenbach: Why is Liberal Peace-building so Difficult? Some Lessons from Central America; September 2007
- No 58 Lena Giesbert: Seeking Opportunities: Migration as an Income Diversification Strategy of Households in Kakamega District in Kenya; September 2007
- No 57 Daniel Flemes: Emerging Middle Powers’ Soft Balancing Strategy: State and Perspectives of the IBSA Dialogue Forum; August 2007
- No 56 Bert Hoffmann: Transitions from Charismatic Rule: Theories of Leadership Change and Cuba’s Post-Fidel Succession; August 2007

All GIGA Working Papers are available free of charge at www.giga-hamburg.de/workingpapers.
For any requests please contact: workingpapers@giga-hamburg.de.
Editor of the Working Paper Series: Anja Zorob