

# Background Paper on Urban Violence

## **Regional Mechanisms – The Inter-American Human Rights System**

Notably in the cities of Latin America, urban violence constitutes one of the biggest dangers to human security. In 2015, thirty-two Latin American States ranked among the world's most dangerous places on the basis of murder cases per capita.<sup>1</sup> Latin-American cities are facing numerous risks related to gang violence, arbitrary detention and drug trafficking. Those trying to counteract urban violence and political corruption must fear for their lives. In 2015, Gleydson Carvalho, a Brazilian journalist investigating political corruption in Brazil, was murdered in Rio de Janeiro.<sup>2</sup> In Colombia, more than 500 political activists were killed between 2011 and 2015.<sup>3</sup>

The following paper will examine the practice of the Inter-American Human Rights Bodies with regard to urban violence. Firstly, a brief introduction of the Inter-American System for the protection of human rights will be provided, followed by an analysis of the cases and reports of the Inter-American Court of Human Rights (IACtHR) and the Inter-American Commission on Human Rights (IACoHR) related to urban violence. Corresponding to the three PRUV-cities Bogotá, Jakarta and Nairobi, a special focus will lay on Colombia and its capital Bogotá.

### **A. The Inter-American System for the Protection of Human Rights**

The Inter-American System for the protection of human rights is responsible for monitoring and ensuring compliance with human rights in the thirty-five Member States of the Organization of American States (OAS).<sup>4</sup> Similar to the European Convention on Human Rights,

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<sup>1</sup> WorldAtlas, Most Dangerous Cities in the World, available at <http://www.worldatlas.com/articles/most-dangerous-cities-in-the-world.html>.

<sup>2</sup> New York Times (07.08.2015), Murder of Brazilian Journalist Furthers Alarming Trend, available at <http://www.nytimes.com/2015/08/08/world/americas/murder-of-brazilian-journalist-furthers-alarming-trend.html>.

<sup>3</sup> Gill, Stephen (13.04.2016), 534 political activists killed in Colombia in 5 years: report, available at <http://colombiareports.com/534-political-activists-killed-in-colombia-last-5-years/>.

<sup>4</sup> International Justice Resource Center, The Inter-American Human Rights System, available at <http://www.ijrcenter.org/regional/inter-american-system>; De Schutter, Olivier (2014), International Human Rights Law, 2<sup>nd</sup> edition, Cambridge: Cambridge University Press, p. 25.

it is composed of two principal organs, namely the IACtHR and the IACoHR.<sup>5</sup> However, considering that the IACoHR is only allowed to undertake measures “to reaching a friendly settlement of the matter” in accordance with Article 48 (1) (f) of the American Convention on Human Rights (ACHR)<sup>6</sup>, the IACtHR is the sole judicial organ within the Inter-American System of Human Rights.

## **B. Legal Framework**

The jurisprudence of the IACtHR is governed by the ACHR and its Additional Protocols, notably the Additional Protocol to the ACHR in the Area of Economic, Social and Cultural Rights.<sup>7</sup>

### **I. Procedural Framework**

In order to be declared admissible before the IACtHR, an application must meet several requirements. First of all, as enshrined in Article 61 (1) ACHR, only State Parties to the ACHR as well as the IACoHR have the right to submit a case to the Court, revealing that an individual complaint procedure before the IACtHR does not exist. Furthermore, according to Article 62 ACHR, the State in question must accept the Court’s jurisdiction. Thirdly, in accordance with Articles 61 (2), 48 and 49 ACHR, prior to being brought before the IACtHR, cases must be submitted to the IACoHR. Lastly, the application must be admissible *ratione materiae*, requiring that the violation must concern a right protected by the ACHR, Article 63 ACHR. According to Article 19 (6) ACHR Optional Protocol, the jurisdiction of the IACtHR further comprises matters related to paragraph a) of Article 8 and Article 13 of the ACHR Additional Protocol.

### **II. Substantive Framework**

People’s civil and political rights are proclaimed in the ACHR. Article 5 ACHR provides for the right to humane treatment, including the protection of the physical, mental, and moral integrity [Article 5 (1)] as well as the prohibition of torture or cruel, inhuman, or degrading

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<sup>5</sup> Von Arnould, Andreas (2014), *Völkerrecht*, 2<sup>nd</sup> edition, Heidelberg: C. F. Müller, para. 756.

<sup>6</sup> Organization of American States (OAS), American Convention on Human Rights (ACHR), 22 November 1969, OAS Treaty Series No. 36, 1144 UNTS 143.

<sup>7</sup> OAS, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“Protocol of San Salvador”), 16 November 1999, OAS Treaty Series No. 69, 28 ILM 156 (ACHR Additional Protocol).

punishment or treatment [Article 5 (2)]. The parents' right to education is enshrined in Article 12 (4) ACHR. Obligations regarding a variety of economic, social and cultural rights are established by the ACHR Additional Protocol. The right to health is guaranteed by its Article 10. Article 12 and 13 of the ACHR proclaim the rights to food and education. A right to an adequate standard of living or specific rights to land, water, governance, and energy are not established within the Inter-American System of Human Rights.

### **C. The jurisprudence of the Inter-American Court of Human Rights regarding Urban Violence**

In 2015, thirty-two Latin American States ranked among the world's most dangerous places on the basis of murder cases per capita.<sup>8</sup> Accordingly, the Inter-American Human Rights Bodies had to deal with an important number of cases concerning urban violence. In this regard, the broad term of "urban violence" comprises four different, but interrelated forms of violence: Institutional violence, economic violence, social violence (domestic and sexual violence as well as occasional conflicts) and economic/social (gang-related crimes or ethnic disputes) violence.<sup>9</sup> Examples of criminal activities constituting urban violence include murder, armed robbery, kidnapping as well as drug trafficking.<sup>10</sup> As the IACtHR only deals with cases involving States, the following cases all concern examples of institutional violence.

#### **I. Case of the "White Van" (Paniagua-Morales et al. v. Guatemala)**

##### *1. Background*

The famous case of the "White Van"<sup>11</sup> concerns a series of kidnappings and forcible detentions of persons that took place in Guatemala City between June 1987 and February 1988.<sup>12</sup> In all eleven alleged cases, the perpetrators, all members of the Treasury Police of Guatemala, followed the same pattern: Heavily armed agents forcibly detained persons and

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<sup>8</sup> WorldAtlas, Most Dangerous Cities in the World, available at <http://www.worldatlas.com/articles/most-dangerous-cities-in-the-world.html>.

<sup>9</sup> Moser, Caroline O.N. & McIlwaine, Cathy (2004), Encounters with violence in Latin America: Urban Poor Perceptions from Colombia and Guatemala, New York: Routledge, p. 5; See also Fuentes, Carlos Ivàn (2008), The Applicability of International Humanitarian Law to Situations of Urban Violence: Are cities turning into war zones?, available at [http://www.redcross.ca/cmslib/general/oteoc\\_applicabilityof\\_ihl\\_tourbanviolence.pdf](http://www.redcross.ca/cmslib/general/oteoc_applicabilityof_ihl_tourbanviolence.pdf), p. 4.

<sup>10</sup> Moser & McIlwaine, *supra* note 6, p. 5.

<sup>11</sup> IACtHR, Case of the "White Van" (Paniagua-Morales et al.) v. Guatemala, Judgment, Merits, 8 March 1998.

<sup>12</sup> *Ibid.*, para. 89 a.

deported them in a white van, without any prior judicial order. The victims were tortured and some of them were killed afterwards, whereat their bodies were left in the streets of Guatemala City.<sup>13</sup> A petition against Guatemala was lodged to the IACoHR on 10 February 1988. On 18 January 1995, the Commission referred the case to the IACtHR<sup>14</sup> for a decision as to whether Guatemala was responsible for these acts of kidnapping, arbitrary detention, inhumane treatment, torture, and murder committed by agents of the Treasury Police of Guatemala.<sup>15</sup>

## 2. *Admissibility*

As Guatemala is a State Party to the ACHR and accepted the jurisdiction of the IACtHR, the Court has jurisdiction to hear the case. Prior to the referral to the Court, the application was submitted to the IACoHR. Furthermore, as the alleged violations concern Articles 4, 5, 7, 8 and 25 ACHR, the application is admissible *ratione materiae*. Therefore, the complaint is admissible.

## 3. *Merits*

As the facts outlined above are undoubtedly proven, the requirements of Articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) ACHR are fulfilled. In this case, the main question is whether the actions of the Treasury Police may be attributed to the State of Guatemala. Guatemalan authorities could be held accountable for the arbitrary detentions and kidnappings if they supported or tolerated these violations of the rights guaranteed in the ACHR.<sup>16</sup> Furthermore, the failure to take the necessary steps under domestic law to identify and punish the perpetrators of such horrendous crimes also invokes a State's international responsibility.<sup>17</sup> The Court determined that all reported crimes were committed following a similar pattern: the victims were kidnapped by armed people wearing military or police uniforms or ordinary civilian clothes, and then forced into a white van. The arrests took all place in broad daylight. Furthermore, in several cases, the perpetrators could be identified as Treasury Policy Agents.<sup>18</sup>

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<sup>13</sup> IACtHR, Case of the "White Van" (Paniagua-Morales et al.) v. Guatemala, Judgment, Preliminary Objections, 25 January 1996, para. 14.

<sup>14</sup> *Ibid.*, para. 1.

<sup>15</sup> *Ibid.*, para. 2.

<sup>16</sup> IACtHR, Case of the "White Van", *supra* note 13, para. 91.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*, para. 93.

There is also significant evidence that the Guatemalan Judiciary failed to effectively punish the perpetrators.<sup>19</sup> Therefore, the court was convinced that the acts outlined above were committed by individuals acting as State agents.<sup>20</sup> Most importantly, the IACtHR stated that Guatemalan authorities are responsible for those acts although the violations were not part of State policy and the senior authorities' knowledge of the actions could not be proven.<sup>21</sup> According to the Court, Guatemala has failed to ensure the free and full exercise of the rights of the victims under the ACHR.<sup>22</sup>

## II. Case of the "Mapiripán Massacre" v. Colombia

### 1. Background

The Case of the "Mapiripán Massacre" v. Colombia<sup>23</sup> concerns a massacre in July 1997 in the city of Mapiripán with approximately 49 people being killed,<sup>24</sup> carried out by a paramilitary group called "Autodefensas Unidas of Colombia" (hereinafter "the AUC").<sup>25</sup> As members of the Colombian Army refrained from undertaking any sort of control measures and also provided transport for the AUC to Mapiripán, the State could be held accountable for the massacre.<sup>26</sup> Therefore, on 6 October 1999, a complaint against Colombia was submitted to the IACoHR<sup>27</sup> and on 5 September 2003, the case was referred to the IACtHR.<sup>28</sup>

### 2. Admissibility

As Colombia is a State Party to the ACHR and acknowledged the jurisdiction of the IACtHR, the Court has jurisdiction to hear the case. Prior to the referral to the Court, the application was submitted to the IACoHR. Furthermore, as the alleged violations concern Articles 4(1), 5(1),

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<sup>19</sup> Ibid., para. 94.

<sup>20</sup> Ibid., para. 95.

<sup>21</sup> Ibid. Compare also Fuentes, Carlos Iván (2013), *Silent Wars in Our Cities: Alternatives to the Inadequacy of International Humanitarian Law to Protect Civilians during Endemic Urban Violence*, in: Perrin, Benjamin, *Modern Warfare: Armed Groups, Private Militaries, Humanitarian Organizations, and the Law*, Toronto: University of British Columbia Press, p. 303.

<sup>22</sup> Ibid.

<sup>23</sup> IACtHR, Case of the "Mapiripán Massacre" v. Colombia, Judgment; Merits, Reparations, and Costs, 15 September 2005.

<sup>24</sup> IACtHR, Case of the "Mapiripán Massacre" v. Colombia, Judgment, Preliminary Objections, 5 March 2005.

<sup>25</sup> IACtHR, Case of the "Mapiripán Massacre" v. Colombia, *supra* note 23, para. 96.30.

<sup>26</sup> Ibid., para. 96.31 – 96.34.

<sup>27</sup> IACtHR, Case of the "Mapiripán Massacre" v. Colombia, *supra* note 24, para. 3.

<sup>28</sup> Ibid., para. 10.

5(2), 7(1) and 7(2) ACHR, the application is admissible *ratione materiae*. Therefore, the complaint is admissible.<sup>29</sup>

### 3. *Merits*

Similar to the aforementioned case of the “White Van”, the factual circumstances are proven. Therefore, the question is whether the actions of the paramilitary may be attributed to the State of Colombia. According to the IACtHR, the attribution of specific acts to a State only requires the public authorities’ tolerance of infringements of the rights enshrined in the IACHR.<sup>30</sup> It is beyond any doubt that the Colombian Army supported the AUC by refraining from control measures<sup>31</sup> and providing transportation to Mapiripán.<sup>32</sup> Furthermore, the AUC operated in areas under the control of the State.<sup>33</sup> Therefore, the IACtHR stated that Colombia had violated the rights to personal liberty, to humane treatment, and to life, embodied in Articles 4(1), 5(1), 5(2), 7(1) and 7(2) ACHR.<sup>34</sup>

### III. Conclusion

The two cases presented above reveal that the IACtHR is aware of the threats posed by urban violence and undertakes strict measures to ensure compliance with the provisions of the IACHR. It did not establish strict criteria for attributing acts of urban violence to a particular State; the only requirement is the public authorities’ support or tolerance of infringements of the rights enshrined in the IACHR.<sup>35</sup> However, the IACtHR does not begin investigations against a State until a State or the IACoHR has referred a case to the court. Therefore the individual complaint mechanism under the IACoHR as well as the commission’s annual and thematic reports also play an important role in monitoring and punishing human rights violations in the Americas.

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<sup>29</sup> *Ibid.*, para. 24.

<sup>30</sup> IACtHR, Case of the “Mapiripán Massacre” v. Colombia, *supra* note 23, para. 110.

<sup>31</sup> *Ibid.*, para. 96.30.

<sup>32</sup> *Ibid.*, para. 96.32.

<sup>33</sup> *Ibid.*, para. 120.

<sup>34</sup> *Ibid.*, para. 138.

<sup>35</sup> IACtHR, Case of the “Mapiripán Massacre” v. Colombia, *supra* note 23, para. 110.

## **D. The role of the Inter-American Commission on Human Rights**

Since its creation in 1959, the IACoHR has issued an important number of reports related to violence and the human rights situation in the Americas.

### **I. Report on Human Rights Situation in Colombia**

In December 2013, the IACoHR published its fourth report on the human rights situation in Colombia.<sup>36</sup> Among other concerns, the commission determined the growing threat of intra-urban displacement, a sort of displacement in which illegal armed groups seeking to establish control over a given area force the inhabitants of the respective area to move to another city.<sup>37</sup> According to the commission, intra-urban forced displacement also reveals the shift of armed conflict into urban areas in order to facilitate arms trafficking, extortion, and drug trafficking.<sup>38</sup> Corresponding to this phenomenon, the year of 2012 saw an increasing number of indigenous peoples forcibly displaced to urban areas in which they are exposed to labor exploitation, sexual violence, human trafficking and common crime.<sup>39</sup> Another major concern is the forced recruitment of children and adolescents by illegal armed groups in Colombia.<sup>40</sup> According to the commission, a total number of at least 18,000 children and adolescents have been recruited by paramilitary groups in Colombia.<sup>41</sup> The number of people recruited in urban areas had increased by 17%, whereat the capital Bogotá was listed as one of the most affected capital cities with an increase of 304%.<sup>42</sup>

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<sup>36</sup> IACoHR (31.12.2013), Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia, OEA/Ser.L/V/II, Doc. 49/13, available at <http://www.oas.org/en/iachr/reports/pdfs/Colombia-Truth-Justice-Reparation.pdf>.

<sup>37</sup> Ibid., para. 560.

<sup>38</sup> Ibid., para. 562.

<sup>39</sup> Ibid., para. 798-800. See also Amnesty International (2010), The Struggle for Survival and Dignity – Human Rights Abuses against Indigenous Peoples in Colombia, available at [https://www.crin.org/en/docs/AI\\_Indigenous\\_colombia\\_10.pdf](https://www.crin.org/en/docs/AI_Indigenous_colombia_10.pdf).

<sup>40</sup> IACoHR, Truth, Justice and Reparation, *supra* note 36, para. 676.

<sup>41</sup> Ibid., para. 686. See also Centro de memoria histórica (2012), Como corderos entre lobos [Like Lambs among Wolves], available at

[http://www.centrodememoriahistorica.gov.co/descargas/informe\\_comoCorderosEntreLobos.pdf](http://www.centrodememoriahistorica.gov.co/descargas/informe_comoCorderosEntreLobos.pdf).

<sup>42</sup> Centro de memoria histórica (2012), *supra* note 41, para. 196.

## **II. Report on “Violence, Children and Organized Crime”**

Most recently, in November 2015, the IACoHR published a report on “Violence, Children and Organized Crime”.<sup>43</sup> According to the report, the highest crime rates can be observed in large urban areas where armed criminal groups are operating.<sup>44</sup> Once again, the IACoHR warned of the threats for children and adolescents to be recruited by paramilitary groups or to join groups engaged in criminal activities.<sup>45</sup>

## **III. Conclusion**

The two chosen reports show the Commission’s awareness of the far-reaching threats posed by urban violence. Despite some difficulties, it is actively engaged in monitoring the current situation, dangers and human rights violations committed by States.

## **E. Conclusion**

All in all, the Inter-American Human Rights Bodies already dealt with urban violence on several occasions. However, as the Court’s jurisdiction is limited to punishing violations of civil and political rights as well as of Articles 8 (Trade Union Rights) and 13 (Right to Education) ACHR Additional Protocol, there exist legal gaps in the area of economic, social and cultural rights. Notably the rights to health (Article 10 ACHR Additional Protocol) and food (Article 12 ACHR Additional Protocol) might also be threatened by the far-reaching dangers of urban violence.

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<sup>43</sup> IACoHR (11.11.2015), Violence, Children and Organized Crime, OEA/Ser.L/V/II, Doc. 40/15, available at <http://www.oas.org/en/iachr/reports/pdfs/ViolenceChildren2016.pdf>.

<sup>44</sup> Ibid., para. 4.

<sup>45</sup> Ibid., para. 141.