

# THE INTER-AMERICAN SYSTEM ON HUMAN RIGHTS SHOULD APPLY THE UN GUIDANCE ON LESS LETHAL WEAPONS IN LAW ENFORCEMENT

---

Ezequiel David Strajman\*

|   |     |
|---|-----|
| INTRODUCTION .....  | 212 |
| I. BACKGROUND .....   | 215 |
| A. <i>The Development of the Guidance on LLW</i> .....  | 216 |
| B. <i>The Release of the Guidance and its Basic Framework</i> ...   | 217 |
| II. LLWS ARE A MAJOR THREAT TO HUMAN RIGHTS IN LATIN AMERICA. THE REGION NEEDS STRICTER REGULATIONS ON LLW, AND THE UN GUIDANCE CAN PROVIDE THEM .....  | 222 |
| A. <i>Colombia</i> .....  | 222 |
| B. <i>Chile</i> .....   | 224 |
| C. <i>Other Cases of Human Rights Violations in Latin America Concerning the Use of LLW: The Situation in Brazil, Venezuela, and Argentina</i> .....  | 225 |
| III. THE INTER-AMERICAN COMMISSION HAS STATED ITS SUPPORT FOR THE PRINCIPLES ESTABLISHED IN THE GUIDANCE, AND IF THE INTER-AMERICAN SYSTEM BEGINS TO ENFORCE THEM, IT CAN PROVIDE THEM WITH NECESSARY EFFECTIVENESS ..... | 228 |
| CONCLUSION .....  | 232 |

---

\* Southwestern Law School's Fulbright-Jose Siderman Human Rights Fellow for Argentine Lawyers, 2021-2022.

## INTRODUCTION

Current use of Less Lethal Weapons (LLW) in law enforcement provokes gross violations of human rights. Empirical evidence sustains that these weapons can effectively kill and cause serious injuries. A group of human rights experts from the International Network of Civil Liberties Organizations (INCLO), Physicians for Human Rights, and the Omega Research Foundation reviewed medical literature from the 2016-2021 period and analyzed reports of 2,190 injured by rubber bullets<sup>1</sup> and 100,000 injured by chemical irritants, such as tear gas and pepper spray.<sup>2</sup> The outcomes of this research are shocking. Reports indicate that of those who received impacts from rubber bullets, twelve had died, 1,575 suffered ocular injuries (including blindness), and 945 were permanently disabled.<sup>3</sup> From those exposed to chemical irritants, the records show that at least fourteen of them died, all of them because of trauma inflicted by the canister.<sup>4</sup> Researchers found a wide range of short and long-term associated risks as well, including eye irritation, dermal pain, respiratory distress, disorientation, agitation, and permanent disability.<sup>5</sup> Besides, the study alerts that Electronic Conduction Devices (ECDs), like tasers, “have been identified as contributing factors in over 100 in custody deaths in the United States as well as thousands of injuries globally” and are responsible for cardiac arrhythmias, muscle damage, and electric burns, both on the skin and internally.<sup>6</sup>

Moreover, the use of LLW undermines fundamental rights to free speech and public assembly, because they are frequently deployed against peaceful, unarmed people, in the context of the arbitrary use of police force to repress social protest. Examples of this phenomenon can be found worldwide, like in the repression of the 2018 “Yellow Vests” protests in France, the 2019 demonstrations in Chile, the 2021 Colombian “National Strike,” or in the repression of the wave of protests that aroused after George Floyd’s 2020 murder by a policeman in the United States.<sup>7</sup> All in all, a proper regulatory framework for the use of LLW in law enforcement seems pivotal to ensure the most basic human rights.

The United Nations has begun to address the dangers posed by LLW

---

<sup>1</sup> INT’L NETWORK OF CIV. LIBERTIES ORGS. ET AL., LETHAL IN DISGUISE 2: HOW CROWD-CONTROL WEAPONS IMPACT HEALTH AND HUMAN RIGHTS 39-40 (n.d.), <https://lethalindisguise.org/wp-content/uploads/2022/12/LID2-Main-Report-Pages-Final-1.pdf>.

<sup>2</sup> *Id.* at 11.

<sup>3</sup> *Id.* at 10.

<sup>4</sup> *Id.* at 11-12.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 14.

<sup>7</sup> *Id.* at 8.

through the release of the UN Guidance on Less Lethal Weapons in Law Enforcement (2020),<sup>8</sup> however, none of the relevant UN human rights bodies have authority comparable to that enjoyed by regional human rights mechanisms like the Inter-American Human Rights System or the European Court of Human Rights.<sup>9</sup> Many countries in the Americas face serious problems involving LLW yet place far less weight on measures adopted by UN human rights bodies than decisions from the Inter-American Commission on Human Rights, which hears individual petitions from individuals in most of the countries of Latin America, and the Inter-American Court of Human Rights, which issues domestically enforceable judgments in cases sent to it by the Commission, and which also offers advisory opinions.<sup>10</sup> Thus, there is a mismatch between the human rights body that has been doing the important work of developing guidelines and the international organs that can make a difference in Latin America.

The United Nations has long established a framework on the use of force by law enforcement officials with a focus on lethal weapons, and more recently has turned its attention to LLW. This new interest in regulating the use of LLW led to the process that resulted in the UN Guidance on Less Lethal Weapons in Law Enforcement.

Historically, the two main UN instruments addressing the use of force by Law Enforcement Officials have been the Code of Conduct for Law Enforcement Officials (1979)<sup>11</sup> and the Basic Principles on the Use of Force and Firearms by Law Enforcement officials (1990).<sup>12</sup> These instruments established certain principles applicable to every use of force, including LLW: a) strict necessity and minimum extent (necessity and exceptionality);<sup>13</sup> b) legitimate purpose in the performance of duty and in

---

<sup>8</sup> Human Rights Council Res. HR/PUB/20/1, (June, 2020).

<sup>9</sup> The Inter-American Human Rights System (IHRs) was formally created in 1948, with the adoption of the Organization of the American States (OAS) Charter and the American Declaration on the Rights of Man and Citizen by the Ninth International Conference of American States. The two main organs of the IHRs are the Inter-American Commission on Human Rights, created in 1959 and headquartered in Washington D.C., and the Inter-American Court of Human Rights, established by the American Convention on Human Rights (1969), installed in 1979, and based in Costa Rica. The IAHRS is one of the world's three major regional human rights systems. The other two are the European Council System (based on the Convention for the Protection of Human Rights and Fundamental Freedoms) and the African system (based on the African Charter on Human and Peoples Rights). See generally Alexandra Huneeus, *Courts Resisting Courts: Lessons from the Inter-American Court's Struggle to Enforce Human Rights*, 44 CORNELL INT'L L.J. 493, 497-99 (2011) (for a brief introduction to the IAHRS).

<sup>10</sup> *Id.* at 499.

<sup>11</sup> G.A. Res. 34/169, (Dec. 17, 1979).

<sup>12</sup> G.A. Res. 45/166 (Dec. 14, 1990).

<sup>13</sup> United Nations General Assembly, *supra* note 11, art. 3.

accordance with the law (legality);<sup>14</sup> c) proportional with its objective (proportionality);<sup>15</sup> and d) planned to minimize the risk of death or injury (precaution).<sup>16</sup> Otherwise, the use of force is considered excessive and prohibited by international law, because these principles are binding on all states as general principles of law.<sup>17</sup>

However, while the UN introduced the notion of “non-lethal” weapons in the Basic Principles as an alternative to the use of firearms, it did not provide any specificity on the use of these weapons. The Principle 2 generically states that governments and law enforcement agencies should develop “non-lethal incapacitating weapons for use in appropriate situations, with the aim of increasingly restraining the application of means capable of causing death or injury to persons.”<sup>18</sup> Principle 3 adds that:

“The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.”<sup>19</sup>

The so-called non-lethal weapons, or more appropriately “less lethal weapons” (LLW),<sup>20</sup> are widespread for law enforcement purposes, particularly rubber bullets, tear gas, and tasers. However, misuse of LLW can cause death and injury, while constituting cruel, degrading, or inhuman treatment,<sup>21</sup> or violating other human rights such as the freedom of peaceful assembly and freedom of speech.<sup>22</sup>

The Guidance on LLW in Law Enforcement issued in 2020 by the UN

---

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, *supra* note 12, § 5(b).

<sup>17</sup> Stuart Casey-Maslen, *Use of Force in Law Enforcement and the Right to Life: The Role of the Human Rights Council*, in GENEVA ACADEMY OF INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS 1, 6 (Plain Sense ed., 2016).

<sup>18</sup> *Id.* at 10, 14-15 (stating Principle 2 also provides that for the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind).

<sup>19</sup> Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, *supra* note 12, art. 3.

<sup>20</sup> See generally Human Rights Council Res. HR/PUB/20/1, at 1, 3 (June, 2020) (explaining many human rights actors, including the UN, have eventually adopted the term “less-lethal weapon” (LLW) or Crowd Control Weapons (CCW) when it refers to the repression of social protest because these weapons can effectively kill).

<sup>21</sup> Organization of American States, *Inter-American Convention to Prevent and Punish Torture*, Dec. 9, 1985, O.A.S.T.S. No. 67; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 16, 1984, 1465 U.N.T.S. 85.

<sup>22</sup> Organization of American States, *American Convention on Human Rights "Pact of San José, Costa Rica,"* art. 13, 15, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123; Optional Protocol to the International Covenant on Civil and Political Rights, art. 19, 21, Dec. 16, 1966, 999 U.N.T.S. 171.

Office of the High Commissioner on Human Rights (OHCHR) represents an important advance in regulating LLW, as it brings specificity and bright-line rules regarding their compliance with international human rights standards on the use of force. Nevertheless, it does not provide victims with any practical enforcement mechanism. In this sense, the Inter-American Commission and the Inter-American Court of Human Rights could play a vital role in the fight against the arbitrary use of LLW at the Inter-American level by taking account of this Guidance to apply it in their future decisions. The Inter-American system can provide the enforcement mechanism that the Guidance lacks, owing to its historical activism in protecting human rights and to the ample remedy powers of the Inter-American Court, which has developed a tradition of ordering “extensive and detailed equitable remedies alongside compensations.”<sup>23</sup> Essentially, the Inter-American System on Human Rights provides a unique framework and should start applying this Guidance because:

- a) Latin America represents a region in which the use of LLW poses a major threat to human rights, particularly concerning the repression of social protest;
- b) the Inter-American Commission has stated its support for most of the principles established in the Guidance; and
- c) the Inter-American system has played an active role in the application of the Code of Conduct and the Basic Principles in the region, which the UN Guidance on LLW seek to supplement and complement,<sup>24</sup> and has ample powers to set obligations to the state parties.

## I. BACKGROUND

The UN has finally constructed principles to govern less-lethal weapons, but enforcement power is lacking. Nevertheless, the development of the Guidance itself is a fundamental achievement of the human rights

---

<sup>23</sup> The Inter-American Court's jurisprudence on reparations. The Inter-American Court has been celebrated for developing a uniquely “activist” remedial regime--in all its recent rulings, it orders extensive and detailed equitable remedies alongside compensation. While the [European Court of Human Rights] ECHR is generally content to find a violation of the Convention and allow the state to fashion a remedy emphasizing monetary compensation, the Inter-American Court regularly issues long lists of detailed actions the state must take to repair the violation. Huneeus, *supra* note 9, at 501.

<sup>24</sup> “The Guidance supplements and complements the standards laid down in the Code of Conduct for Law Enforcement Officials (Code of Conduct) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles).” Office of the United Nations High Commissioner for Human Rights, *supra* note 8, § 1.4 at 2.

movement, and its standards are appropriate to confront the ongoing emergency on Latin America in terms of repression of social protest.

The Guidance establishes essential standards but has limited operativity. On the one hand, the UN Guidance on LLW claims that its purpose is to provide States, law enforcement agencies, manufacturers, and human rights bodies and mechanisms,<sup>25</sup> with direction “on the lawful and responsible design, production, transfer, procurement, testing, training, deployment and use of LLW and related equipment.”<sup>26</sup> But on the other hand, these ample words lose their force when the Guidance also specifies that it “is not intended to serve as a set of standing operating procedures for individual officers but may assist States and their law enforcement agencies in fulfilling their duty to put such procedures in place.”<sup>27</sup> Notwithstanding this, an argument can be made on the fact that the Inter-American System on Human Rights is one of this “human right bodies and mechanisms”<sup>28</sup> that the guidance is addressing, and that this system is ready to apply it, as I will discuss in the next sections.

#### *A. The Development of the Guidance on LLW*

The Guidance establishes an international consensus on essential principles. It is the result of persistent efforts by Human Rights NGOs, such as Amnesty International and INCLO. These organizations have reported human rights violations arising from the use of LLW for years, as well as researched the health consequences and other human rights aspects of LLW. The Guidance incorporates the experience of these NGOs by quoting some of their foremost research and findings<sup>29</sup> to support, for example, standards on the accuracy of kinetic impact projectiles.<sup>30</sup>

These organizations insistently pointed out the need for clearer rules on LLW because the broad terms used by the Basic Principles referring to LLW “are not easily translatable into concrete, practical guidelines that can be

---

<sup>25</sup> *Id.* at 1, § 1.3 (This Guidance is also addressed to “private security companies, police oversight bodies and human rights defenders, and to individuals seeking to assert their right to a remedy for human rights violations”).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> INT’L NETWORK OF CIV. LIBERTIES ORG. & PHYSICIANS FOR HUMAN RIGHTS, LETHAL IN DISGUISE: THE HEALTH CONSEQUENCES OF CROWD-CONTROL WEAPONS (American Civil Liberties Union, 2016), <https://www.aclu.org/report/lethal-disguise-health-consequences-crowd-control-weapons>; AMNESTY INT’L & OMEGA RSCH. FOUND., THE HUMAN RIGHTS IMPACT OF LESS LETHAL WEAPONS AND OTHER LAW ENFORCEMENT EQUIPMENT (Amnesty International, Apr. 13, 2015), [https://www.amnestyusa.org/files/human\\_rights\\_impact\\_less\\_lethal\\_weapons\\_doha\\_paper.pdf](https://www.amnestyusa.org/files/human_rights_impact_less_lethal_weapons_doha_paper.pdf).

<sup>30</sup> Office of the United Nations High Commissioner for Human Rights, *supra* note 8, § 7.5.7, at 36.

readily applied at the domestic level.”<sup>31</sup> Further, they noted that the Basic Principles seem outdated because of the rapid technological developments in the market of LLW. For instance, “neuromuscular incapacitating projectile electric-shock weapons,” such as the tasers, did not yet exist in 1990 when the UN established the Basic Principles, and by 2015 they were used by more than 17,000 law enforcement and military agencies.<sup>32</sup>

Christof Heyns, the UN Special Rapporteur on Extrajudicial, Summary, or Arbitrary executions between 2010 and 2016, also played a key role in the development of the Guidance. It was Heyns who recommended in 2014 that the Human Rights Council should appoint an expert body to develop standards and guidelines on LLW “that would allow for a differentiated use of force consistent with international rules and standards.”<sup>33</sup> Heyns stressed that there was a need for independent guidelines on LLW “over and above standards that may be set by individual police forces,”<sup>34</sup> and that “the growing, largely self-regulated market of ‘less-lethal weapons’ cannot solely determine policing weapons technology, especially when it could involve unacceptable human cost.”<sup>35</sup>

Heyns conceded that, under certain circumstances, LLW could restrain the use of firearms and allow a graduated use of force but insisted that under the umbrella of the category of LLW, there is a wide range of weapons with their own characteristics, mechanism of injury and associated risk. He concluded that “in some cases ‘less-lethal weapons’ are indeed lethal and can lead to serious injuries. The risks will be dependent on the type of weapon, the context of its use, and the vulnerabilities of the victim or victims” and “innocent bystanders may also be affected where weapons cannot be directed at one individual.”<sup>36</sup>

### ***B. The Release of the Guidance and its Basic Framework***

The Office of the UN High Commissioner for Human Rights (OHCHR) released in 2020, the UN Human Rights Guidance on LLW in Law Enforcement, after a two-year- project with a group of experts from the

---

<sup>31</sup> INT’L NETWORK OF CIV. LIBERTIES ORG. & PHYSICIANS FOR HUMAN RIGHTS, *supra* note 29, at 18.

<sup>32</sup> AMNESTY INT’L & OMEGA RSCH. FOUND., *supra* note 29, at 4.

<sup>33</sup> GAOR, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, U.N. Doc. A/HRC/26/36 para. 119 (2014).

<sup>34</sup> *Id.* para. 106.

<sup>35</sup> *Id.* para. 105.

<sup>36</sup> *Id.* para. 104.

University of Pretoria<sup>37</sup> and the Geneva Academy. According to the OHCHR, it fills “a significant gap in the interpretation of fundamental human rights” and provides “guidance on when and how to use less-lethal weapons in accordance with international law.”<sup>38</sup> The result is a comprehensive instrument that addresses the utility, design, risks, and potentially lawful and unlawful uses of specific LLWs: police batons, hand-held chemical irritants (like pepper spray), chemical irritants launched at a distance (tear gas), conducted electrical weapons (“tasers”), kinetic impact projectiles, dazzling weapons, water cannons, and acoustic weapons and equipment. In addition, it assesses the use of these LLW in specific situations (like during arrest, in custodial settings, and during assemblies).

The Guidance bases its standards on “international law, in particular human rights law and law enforcement rules, and good law enforcement practice.”<sup>39</sup> It invokes, *inter alia*, jurisprudence, reports, and publications of the Inter-American Commission, the Inter-American Court of Human Rights, the European Court of Human Rights, and the United States. Likewise, it also includes references to different UN instruments, reports of Human Rights NGOs, and specialized clinical research on LLW.

Remarkably, the UN Guidance on LLW adopts many of the standards already expressed by the Inter-American Commission on Human Rights regarding LLW, such as the applicability of the same principles on the use of force that apply to lethal weapons, or the standards on the use of rubber bullets and tear gas. Furthermore, the Guidance expressly provides that it “supplements and complements the standards laid down in the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,” both UN instruments that the Inter-American System has consistently used to interpret and give content to the international obligations of the American states on the use of force.<sup>40</sup>

As its basic framework, the Guidance offers a broad definition of less lethal weapons and calls to reduce its negative impacts, especially among the most vulnerable. It defines LLW as “weapons designed or intended for use on individuals or groups of individuals and which, in the course of

---

<sup>37</sup> *Forward* to Office of the United Nations High Commissioner for Human Rights, *supra* note 8, at iv (noting former Special Rapporteur Christof Heyns, who was Professor of Human Rights at the University of Pretoria led the work).

<sup>38</sup> *Background* to Office of the United Nations High Commissioner for Human Rights, *supra* note 8, at v.

<sup>39</sup> *Id.* §1.4.

<sup>40</sup> *Id.*; Not only the Inter-American Commission and the Inter-American Court, but also the European Court of Human Rights have been citing the Code of Conduct and the Basic Principles “as authoritative statements of international rules governing use of force in law enforcement.” Casey-Maslen, *supra* note 17 at 5-6; Cruz Sánchez et al v Peru, Preliminary Objections Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 292 para. 264 (Apr. 17, 2015).



expected or reasonably foreseen use, have a lower risk of causing death or serious injury than firearms.”<sup>41</sup> It includes “conventional firearms when they are used to discharge less-lethal ammunition.”<sup>42</sup> Moreover, it sets the same principles on the use of force that apply to lethal weapons (legality, necessity, proportionality, and precaution) and the principle of non-discrimination, which, like the principle of precaution, requires that “a heightened level of care and precaution shall be exercised with respect to individuals who are known or are likely to be especially vulnerable to the effects of a particular weapon.”<sup>43</sup>

Importantly, the Guidance assesses that children, pregnant women, the elderly, persons with disabilities, persons with mental health problems, and persons under the influence of drugs or alcohol are especially vulnerable to LLW.<sup>44</sup>

The UN Guidance brings specificity and some bright-line rules regarding the foremost current concern of the Inter-American system in terms of LLW, which is their use in the repression of social protest. It specifically provides a general framework for their use against assemblies and for the deployment of the weapons more frequently used against demonstrations. The Guidance expresses that law enforcement officials should respect and protect the right of peaceful assembly, and that “the fundamental human rights of participants shall be respected and protected, even if an assembly is considered unlawful by the authorities.”<sup>45</sup> It provides that “in an assembly in which certain individuals are behaving violently, law enforcement officials have a duty to distinguish between those individuals and other assembly participants, whose individual right to peaceful assembly should be unaffected.”<sup>46</sup> It also states that before approving dispersal, law enforcement agencies should seek to identify any violent individuals and isolate them from the other participants, to enable the assembly to continue.<sup>47</sup> Furthermore, it establishes that which using firearms to disperse an assembly is always unlawful, and that in a situation where the use of force is necessary, only LLW can be used.<sup>48</sup> Moreover, when LLW are needed, the weapons that can be individually aimed (like rubber bullets, pepper spray, or police batons) should only be targeted against the persons involved in acts of

---

<sup>41</sup> Human Rights Council Res. HR/PUB/20/1, at 45 (June, 2020).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* § 2.11, at 7.

<sup>44</sup> *Id.* at 6.

<sup>45</sup> *Id.* § 6.3.2, at 23.

<sup>46</sup> *Id.* § 6.3.3, at 23.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* § 6.3.4, at 24.

violence. In contrast, tear gas should be targeted only “at groups of violent individuals unless it is lawful to disperse the entire assembly.”<sup>49</sup> In addition, it notes that heavy displays of LLW may escalate tensions during assemblies and that when they are used in a crowd, it is fundamental to pay attention to the risk of a stampede.<sup>50</sup>

The Guidance provides directions concerning kinetic impact projectiles (also known as rubber bullets, plastic bullets, impact rounds, baton rounds, or bean bags), which are the most used LLW against assemblies. It expressly says that kinetic impact projectiles should not be fired at close range,<sup>51</sup> targeted at the head, face, or neck (because they can provoke skull fracture, brain injury, damage to the eyes, including permanent blindness, or even death), be fired in automatic mode, nor use rubber-coated metal bullets and metal pellets.<sup>52</sup> Moreover, all the kinetic impact projectiles should be tested to ensure they are sufficiently accurate.<sup>53</sup> According to these rules, these projectiles should be used only to address an imminent threat of injury to a law enforcement officer or a member of the public and “only in direct fire with the aim of striking the lower abdomen or legs of a violent individual.”<sup>54</sup>

Regarding chemical irritants, it is interesting that the Chemical Weapon Convention (CWC) prohibits their use in warfare, but they remain legal for law enforcement purposes. The Guidance distinguishes between the hand-held chemical irritants, like pepper spray, and the chemical irritants launched at a distance, popularly known as tear gas. The former are designed to be sprayed in the face of a person when there is reason to believe there is an imminent threat of injury, and it is needed to dissuade a violent aggressor or perform a lawful arrest of someone who is resisting violently.<sup>55</sup> Their use is only lawful if the delivery against the target is accurate. The latter are typically launched from projectiles or grenades to disperse members of a violent group or to stop them from violence. If there is a lawful necessity to use them, these irritant projectiles should be fired at a high angle and not at an individual because of the risk of death or serious injury from impact trauma.<sup>56</sup> In any case, law enforcement officers should not use chemical irritants in confined spaces, like in prison cells, and should bear in mind the

---

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> INTERNATIONAL NETWORK OF CIVIL LIBERTIES ORGANIZATION (INCLO) AND PHYSICIANS FOR HUMAN RIGHTS (PHR), *supra* note 2, at 10 (stating that because there is risk of penetration of the body and that INCLO and Physicians for Human Rights have found that from close range, some types of kinetic impact projectiles “have a similar ability to penetrate the skin as conventional live ammunition and can be just as lethal”).

<sup>52</sup> Human Rights Council Res. HR/PUB/20/1 §§ 7.5.3, .5, .8, at 36 (June, 2020).

<sup>53</sup> *Id.* § 7.5.7, at 36.

<sup>54</sup> *Id.* § 7.5.2, at 35.

<sup>55</sup> *Id.* § 7.2.3, at 27.

<sup>56</sup> *Id.* §§ 7.3.2, .6, at 29, 30.

possibility of a stampede when targeted at a crowd.<sup>57</sup> Further, the Guidance stresses that chemical irritants require sufficient toxicological information to dispel the possibility of any unwarranted health problem. And as the rest of the LLW, they can never be used against purely passive resistance.

The Guidance also sets standards for police batons and water cannons. The former are deemed useful if they are aimed against individuals inflicting or threatening to inflict injury on a law enforcement officer or a member of the public. They should be targeted to the arms or legs of the offender and not to other areas.<sup>58</sup> The latter can only be used “in situations of serious public disorder where there is a significant likelihood of loss of life, serious injury, or the widespread destruction of property.”<sup>59</sup> They should be rigorously controlled and not be targeted in a way that can cause a secondary injury, such as targeting someone in an elevated position or at a short range.

Finally, the Guidance on LLW addresses the use of “conducted electrical weapons” (popularly known as “tasers”) in ways that the Inter-American system has not even started to touch on. According to the Guidance, tasers may lawfully be used only “to incapacitate individuals at a distance posing an imminent threat of injury (to others or themselves)” and, in some cases, as an alternative to other LLW that may be more dangerous.<sup>60</sup> There is also greater risk when used against the elderly or people with heart disease or against those under the influence of certain drugs and alcohol. Several reports from the United Nations Committee Against Torture describe the negative impact it can have on the health and physical integrity of these individuals.<sup>61</sup> Nevertheless, the Inter-American Commission has not referred to tasers in its latest interventions on using LLW in Latin America. This is likely because this LLW is not as widespread in the region as it is in the United States, where they are one of the most used, and because the Commission’s current focus on LLW is the repression of social protest. Some researchers considered them more like a weapon to detain an individual rather than an instrument to control crowds and demonstrations,<sup>62</sup> and, in fact, none of the recent repressions in Latin America involved the use of tasers.

In conclusion, the UN Guidance offers a basic framework to govern

---

<sup>57</sup> *Id.* §§ 7.3.3, .7, at 29-31.

<sup>58</sup> *Id.* §§ 7.1.1-2, at 25.

<sup>59</sup> *Id.* at 38.

<sup>60</sup> *Id.* § 7.4.3, at 32.

<sup>61</sup> See U.N Committee against Torture, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, CAT/C/USA/CO/3-5 para. 27, at 14 (Dec. 19, 2014).

<sup>62</sup> INT’L NETWORK OF CIV. LIBERTIES ORG. (INCLO) AND PHYSICIANS FOR HUM. RTS., *supra* note 29, at 8.

LLW, even though enforcement power seems lacking. The Inter-American System on Human Rights should take note of the Guidance, since, as discussed in the next section, Latin America needs more tools to deal with ongoing human rights violations related to the use of LLW.

## II. LLWS ARE A MAJOR THREAT TO HUMAN RIGHTS IN LATIN AMERICA. THE REGION NEEDS STRICTER REGULATIONS ON LLW, AND THE UN GUIDANCE CAN PROVIDE THEM.

The use of LLW has gone beyond any limit in Latin America. Thus, the Inter-American Commission on Human Rights has been trying to develop standards to struggle with human rights violations committed with these weapons by the state parties. The UN Guidance on LLW can provide the Inter-American System on Human Rights with the principles and standards it is looking for.

The Commission has been expressing its concern about LLWs across Latin America in the field of repression of social protest. The Colombian and Chilean cases constitute probably the paramount of the most recent human rights violations by LLW in the region, which showed law enforcement officers illegally aiming rubber bullets at the upper part of the body of the demonstrators, blinding dozens of protesters, as well as launching gas grenades against individuals, causing unnecessary injuries.

### A. Colombia

The Inter-American Commission on Human Rights visited Colombia in June 2021 to monitor the situation on Human Rights in the country after reports of brutal repression of the peaceful assemblies that initiated on April 28. On that day, a “National Strike” started in Colombia as a series of demonstrations against a controversial tax reform proposed by President Ivan Duque. The strike soon turned to encompass other structural and historical demands of Colombian society, such as solutions to extreme poverty, and the right to education, work, and healthcare.<sup>63</sup> Nevertheless, the national government answered by deploying the military and the anti-riot squad (ESMAD, by its Spanish acronym) to repress the protests during the several weeks that they endured. Basically, the ESMAD confronted the protesters with a very modern and aggressive arsenal of LLW, including not only rubber bullets but also the ‘Venom’ high-capacity launching grenades,

---

<sup>63</sup> Inter-Am. Comm’n H.R., *Observations and recommendations of the working visit of the IACHR to Colombia on June 8-10, 2021* para. 2, at 1 (2021), [https://www.oas.org/en/iachr/reports/pdfs/ObservacionesVisita\\_CIDH\\_Colombia\\_ENG.pdf](https://www.oas.org/en/iachr/reports/pdfs/ObservacionesVisita_CIDH_Colombia_ENG.pdf).

which caused great injury and deaths among the protesters because the officers aimed knowingly against their bodies.<sup>64</sup> NGOs, like Amnesty International, responded with a call to “immediately cease the direct or indirect supply” of LLW and related equipment to Colombia.<sup>65</sup>

The Inter-American Commission documented 21 deaths during the protests in Colombia.<sup>66</sup> It also gathered information regarding 1,113 civilians injured and between 18 and 84 cases of eye injuries among the protesters.<sup>67</sup> Above all, the Commission strongly condemned the Colombian government's use of LLW and its lack of respect for international standards on the use of force. It confirmed that “the use of nonlethal devices has caused serious injuries, mutilations, and the death of at least one person,” and that it has received reports on the excessive use of force with less lethal weapons and the indiscriminate use of expired irritant gases, and on “the use of Venom grenade launchers, which was prohibited by an administrative judge.”<sup>68</sup>

The Commission noted that under certain circumstances, the lethality of a weapon depends on its use and control and reminded Colombia of its duty to guarantee the practical and effective application of use-of-force protocols.<sup>69</sup> It also stressed that “the Inter-American system has reiterated that the use of force by the State must follow the principles of exceptionality, legality, necessity, and proportionality”<sup>70</sup> and that this restriction on the use of force does not apply solely to lethal weapons. “Measures considered ‘nonlethal’ or ‘less lethal’ must also be among the measures whose use is controlled.”<sup>71</sup>

The Commission issued a recommendation to “ensure that the use of nonlethal means of controlling public order is subjected to strict protocols

---

<sup>64</sup> Chloé Lauvergnier, *Protests in Colombia: Videos show 'dangerous' use of grenade launchers by police*, FRANCE 24 (May, 24, 2021), <https://observers.france24.com/en/americas/20210526-colombia-police-protests-venom-grenade-launchers>.

<sup>65</sup> *The United States must stop providing weapons used to repress Colombia's protests*, AMNESTY INTERNATIONAL (May 20, 2021), <https://www.amnesty.org/en/latest/news/2021/05/estados-unidos-armas-usadas-para-reprimir-protestas-colombia/>.

<sup>66</sup> Inter-Am. Comm'n H.R., *supra* note 63 para. 31.

<sup>67</sup> See Inter-Am. Comm'n H.R., *supra* note 63, at para. 31, 37 (explaining the disparity in the eye injured protesters relies on the sources consulted and that while the Office of the Ombudsperson documented 18 cases, the civil organization “Campaña Defender la Libertad” documented 84, as well as 1,790 persons injured in general).

<sup>68</sup> Inter-Am. Comm'n H.R., *Observations and recommendations of the working visit of the IACHR to Colombia on June 8-10, 2021* para. 47, (2021), [https://www.oas.org/en/iachr/reports/pdfs/ObservacionesVisita\\_CIDH\\_Colombia\\_ENG.pdf](https://www.oas.org/en/iachr/reports/pdfs/ObservacionesVisita_CIDH_Colombia_ENG.pdf).

<sup>69</sup> *Id.* para. 58, at 13.

<sup>70</sup> *Id.* para. 59, at 13.

<sup>71</sup> *Id.* para. 56, at 12-13.

that prevent and punish their use in ways that gravely affect the health and safety of demonstrators.”<sup>72</sup> On this aspect, the Commission took note that the State of Colombia promised to submit a bill to establish a legal framework for the use and sale of less lethal weapons and to issue a decree regulating guns that shoot rubber bullets.<sup>73</sup> The Commission also stated that security forces may only repress a demonstration under exceptional circumstances “based on imminent and serious risk peoples’ fundamental rights, lives, or physical safety and when no other measures are available for protecting these rights that would be less damaging.”<sup>74</sup>

### **B. Chile**

Before the events in Colombia, the Inter-American Commission had already documented in Chile cases of extraordinary deployment and abuse of LLW to suppress social protest. In January 2020, a delegation of the Inter-American Commission visited Chile to monitor the human rights situation after the repression of the demonstrations that began on October 18, 2019. The protests, which had stemmed from complaints among students over the rise of the price of the metro ticket in Santiago, the capital city, rapidly spread throughout the lower and middle classes under the expression, “it is not 30 pesos, it is 30 years,” showing frustration with the economic and social inequality in the country that persists after the democratic transition in 1990. According to the Inter-American Commission, Chile’s response to protests focused on repression, with a disproportionate use of force against demonstrators and a large number of victims of serious human rights violations.<sup>75</sup> After its visit, the Commission reported that 29 people were killed in the protests and that evidence supported the conclusion that pellets and gas cylinders had been purposely shot at demonstrators’ bodies, necks, and faces.<sup>76</sup> Quoting the findings of the National Institute for Human Rights (INDH, by its Spanish acronym), the Inter-American Commission informed that by January 15, 2020, 3,649 people had been injured in demonstration contexts, and 1,624 of them had suffered pellet wounds.<sup>77</sup>

Moreover, 405 people presented eye injuries, including 33 with globe

---

<sup>72</sup> *Id.* para. 10, at 40.

<sup>73</sup> *Id.* at 14 n.49.

<sup>74</sup> *Id.* para. 57, at 13.

<sup>75</sup> Press release, Inter-Am. Comm’n H.R., IACHR Condemns the Excessive Use of Force during Social Protests in Chile, Expresses Its Grave Concern at the High Number of Reported Human Rights Violations, and Rejects All Forms of Violence (Dec. 6, 2019), [https://www.oas.org/en/iachr/media\\_center/PReleases/2019/317.asp](https://www.oas.org/en/iachr/media_center/PReleases/2019/317.asp).

<sup>76</sup> Press release, Inter-Am. Comm’n H.R., IACHR Issues Preliminary Observations and Recommendations Following On-Site Visit to Chile (January 31, 2020), [https://www.oas.org/en/iachr/media\\_center/PReleases/2020/018.asp](https://www.oas.org/en/iachr/media_center/PReleases/2020/018.asp).

<sup>77</sup> *Id.*

rupture<sup>78</sup> and, in some cases, total loss of vision in both eyes.<sup>79</sup> The Commission also expressed concern about the differentiated consequences of the repression on children, adolescents, LGBTI people, and indigenous people, who suffered torture, sexual abuse, and judicial harassment due to the criminalization of social protest. Finally, the Inter-American Commission called for Chile to immediately end the disproportionate use of force by the Carabineros and to comply with international standards on the use of force.<sup>80</sup>

***C. Other Cases of Human Rights Violations in Latin America Concerning the Use of LLW: The Situation in Brazil, Venezuela, and Argentina.***

The Inter-American human rights system has lately been focused on the danger posed by LLW in Colombia and Chile. However, LLW remains a serious threat to human rights in the rest of Latin America as well, as demonstrated by the cases of Brazil, Venezuela, and Argentina.

The Inter-American Commission on Human Rights examined Brazil in its 2021 country report<sup>81</sup> and demanded improvements in terms of compliance with human rights standards on the use of force and, specifically, the use of LLW. The Commission recalled the country's past experiences of misuse of rubber bullets in the context of demonstrations, resulting in death and injury. It also noted that it had received complaints of excessive force and cruelty against people in custody, which included indiscriminate use of rubber bullets, pepper gas, and tear gas.<sup>82</sup> Therefore, the Commission recommended Brazil amend its protocols and guidelines for law enforcement agencies to ensure that they meet international standards with regard to "tactics for reducing tension and the use of less lethal weapons"<sup>83</sup>

---

<sup>78</sup> *Id.*

<sup>79</sup> See also "Chile: conmoción por el suicidio de Patricio Pardo...", available in Spanish at <https://www.pagina12.com.ar/388788-chile-conmocion-por-el-suicidio-de-patricio-pardo-un-joven-d>; for a discussion of how Patricio Pardo, one of the victims of eye injury in Chile, had committed suicide in December 2021, after going through a depression caused by the mutilation he suffered, he had lost his vision on November 2019, when a tear gas grenade impacted his right eye; and how his death was mourned by, among others, Gabriel Boric, the current president of Chile, who was one of the foremost opponents to the repression of social protests during these events.

<sup>80</sup> *Carabineros*, MERRIAM-WEBSTER (2023), <https://www.merriam-webster.com/dictionary/carabinero>.

<sup>81</sup> Inter-Am. Comm'n H.R., *Situation of Human Rights in Brazil* (2021), at 192, <https://www.oas.org/en/iachr/reports/pdfs/Brasil2021-en.pdf>.

<sup>82</sup> *Id.* para. 189, at 73.

<sup>83</sup> *Id.* para. 7(c), at 192.

and also urged the country to train its police on the use of lethal force in accordance with the UN Basic Principles on the Use of Force.<sup>84</sup>

Meanwhile, in its 2018 country report on Venezuela, the Inter-American Commission criticized the use of LLW against political dissidents during demonstrations arising from the decision to ban Henrique Capriles from running for the presidency. Among other considerations, the Commission stated that:

[L]aunching tear gas at demonstrators from close range and from helicopters, as well as using it directly in health care facilities, homes, and residential buildings, are not only not absolutely necessary (given the existence of other less harmful means) but would have a disproportionate impact on the public owing to their possible indiscriminate effects.<sup>85</sup>

The Commission also received reports of the use of expired gas canisters that was lethal to at least one victim. Finally, it urged Venezuela to “adopt and rigorously implement specific protocols on the gradual and proportional use of less lethal weapons and punish their indiscriminate use.”<sup>86</sup>

The use of rubber bullets and tear gas remains widely spread in Argentina as well. However, the country has made efforts at the federal level to ensure institutional reforms to prevent repression of social protest. In 2013, the Police of the City of Buenos Aires deployed rubber bullets, pepper spray, and police batons in the Borda Psychiatric Hospital against patients and doctors who were demonstrating against the demolition of part of the hospital’s premises. Several people were injured, and the media showed the police firing rubber bullets from a dangerously short distance and aiming at the upper part of the body of the demonstrators.<sup>87</sup> Likewise, in 2014, National Gendarmerie shot rubber bullets against dismissed workers of LEAR, a bankrupted company, while they were pacifically demonstrating, and similar events occurred in 2015 and 2016.

The use of these kinetic projectiles was also common to disperse crowds during football matches in Argentina until the police of the Province of Buenos Aires killed a spectator in 2013 by shooting a rubber bullet to his chest. This led the province’s government to ban the use of rubber bullets at sports events, and the national government to ban the away supporters at

---

<sup>84</sup> *Id.* para. 282, at 104.

<sup>85</sup> Inter-Am. Comm’n H.R., *Situation of Human Rights in Venezuela*, para. 225, at 124, OEA/Ser.L/V/II. Doc. 209

(Dec. 31, 2017), <https://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>.

<sup>86</sup> *Id.* para. 230, at 126.

<sup>87</sup> INTERNATIONAL NETWORK OF CIVIL LIBERTIES ORGANIZATION (INCLO) AND PHYSICIANS FOR HUMAN RIGHTS, *supra* note 29, at 19-27.



matches, a prohibition that remains.<sup>88</sup>

Furthermore, on June 2020 and December 13, 2021, the Federal Chamber of Cassation of Argentina upheld the conviction of the former National Secretary of Security, Enrique Mathov, and the former Chief of the Federal Police, Ruben Santos, for the wrongful death of three individuals during the massive demonstrations that occurred in December of 2001 in the city of Buenos Aires, during the final days of the presidency of Fernando De la Rúa.<sup>89</sup> This repression involved an astonishing use of LLW, such as water cannons, rubber bullets, police batons, and tear gas, as well as the deployment of the mounted police and their whips, which were used against members of the Madres of Plaza de Mayo. Basically, the trial focused on the use of lethal weapons, and not on the many injured by LLW. Nevertheless, it is important to note that three of the dead victims were shot with metal pellets fired from shotguns that can alternatively be loaded with lead, rubber, or flash-bang ammunition cartridges, a type of weapon that is discouraged by the current standards of the Inter-American Commission on Human Rights because they are “particularly elusive to current control mechanisms during operations and for the administrative or judicial reconstruction on their use.”<sup>90</sup> The case of the 2001 deaths is a leading case on standards on the use of force by law enforcement officials because, for the first time in Argentinean history, a political officer and a chief of police were convicted for their negligence in ordering and coordinating the repression of social protest under democracy.<sup>91</sup> The three-judge panel tribunal that convicted

---

<sup>88</sup> Claudio Gómez, *Argentine football marks 10 years without away supporters at matches*, BUENOS AIRES TIMES (June 11, 2023), <https://www.batimes.com.ar/news/sports/argentine-football-marks-10-years-without-away-fans-at-matches.phtml>.

<sup>89</sup> Cámara Federal de Casacion Penal [Federal Chamber of Criminal Cassation I], decisions held on June 1, 2020 and December 13, 2021, in re “Mathov, Enrique José” (Arg.). Mathov was convicted to 4 years and 3 months of effective imprisonment and Santos to 3 years and 6 months, although defenses will try an extraordinary appeal to get the review of the National Supreme Court, but only on regard of the length of the conviction. Other lower-ranking police officers were convicted as well.

<sup>90</sup> Edison Lanza (Special Rapporteur of the Freedom of Expression) of the Inter-Am. Comm’n H.R., *Protest and Human Rights: Standards on the rights involved in social protest and the obligations to guide the response of the State* para. 123, at 47, OEA/Ser.L/V/II CIDH/RELE/INF.22/19 (Sept. 2019), <https://www.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf>.

<sup>91</sup> “For the first time, the Judiciary considered that political officials are criminally responsible for the consequences of an order to repress a social protest. The conviction of one of the political leaders and three in charge of the leadership of the PFA expresses that the court considered that the security forces are not autonomous: they have a political leadership that must respond for the effects of their actions and for the use of the force that is carried out in the operations. At the same

Mathov and Santos in 2016<sup>92</sup> quoted the Code of Conduct and the Basic Principles as part of the internationally recognized standards on the use of force and established that the defendants ignored the many alarms they received during the police operations concerning the misconduct of the police officers and the possibility that they could end in a deadly result, as they did. This lack of consideration of the possible harmful consequences of police operations is directly related to the principle of precaution on the use of force, which mandates that security forces must plan their operations to minimize the risk of death and injury. The judges also noted that the government failed to provide part of their police officers with defensive equipment and rubber bullets that would have prevented them from using lethal force.

The above experiences of Colombia, Chile, Brazil, Venezuela, and Argentina bolster the idea that LLW is a major threat to human rights in Latin America and that there is a need to enforce stricter regulations on them, such as the ones that the UN Guidance provides.

### III. THE INTER-AMERICAN COMMISSION HAS STATED ITS SUPPORT FOR THE PRINCIPLES ESTABLISHED IN THE GUIDANCE, AND IF THE INTER-AMERICAN SYSTEM BEGINS TO ENFORCE THEM, IT CAN PROVIDE THEM WITH NECESSARY EFFECTIVENESS.

The Inter-American System should start applying the UN Guidance on LLW in their future interventions, as the Inter-American Commission has already endorsed the establishment of the Guidance on LLW and shares most of their standards. Furthermore, the Inter-American Court can use the Guidance to set a line of jurisprudence on the use of LLW, as well as to order the state parties to adapt their domestic legislation on LLW to these standards, as it has already done with the Code of Conduct and the Basic Principles on the field of lethal weapons.

The Inter-American Commission of Human Rights endorsed rapporteur Heyns in his call to form a group of experts to develop the UN Guidance on LLW. The Commission did so in its 2015 annual report on the use of force,<sup>93</sup>

---

time, the verdict confirms that the declaration of a state of siege cannot be considered a blank check for repression . . . ." (19 y 20 de diciembre de 2001: condenas a la represión de la protesta social, CENTER FOR LEGAL AND SOCIAL STUDIES (May 23, 2016), <https://www.cels.org.ar/web/2016/05/19-y-20-de-diciembre-de-2001-condenas-a-la-represion-de-la-protesta-social/>.

<sup>92</sup> Tribunal Oral en lo Criminal Federal Nro. 6 de la Ciudad de Buenos Aires [Federal District Court No. 6 for the City of Buenos Aires], decision held on August 4, 2016, in re "MATHOV, Enrique José y otros s/abuso de autoridad y violación de deberes de funcionario público" (Arg.).

<sup>93</sup> INTER-AM. COMM'N H.R., CHAPTER IV.A, THE USE OF FORCE, ANNUAL REPORT (2015), <http://www.oas.org/en/iachr/docs/annual/2015/doc-en/informeannual2015-cap4a-fuerza-en.pdf>.

when, quoting Heyn's 2014 report to the UN Human Rights Council,<sup>94</sup> the Commission expressed that "it was essential to have clear and appropriate international rules" on LLW to avoid death and injury, given the expansion of its industry and its use.<sup>95</sup> The Commission also emphasized "the need to develop normative provisions, protocols, and manuals that consider absolute prohibitions of their use in contexts or with persons that may imply greater risk."<sup>96</sup>

The Inter-American Commission not only shares with the UN the concern on the human rights impact of LLW, but it also shares the foremost standards set by the UN Guidance on LLW in Law Enforcement. To support the necessity of stricter regulation on LLW, in its 2015 annual report on the use of force the Inter-American Commission gave some examples of misuse of LLW, all of which were finally adopted by the UN Guidance. For instance, the Inter-American Commission mentioned the case of rubber munitions shot from a short distance at the upper part of the body, tear gas fired at persons' bodies, irritating gases used against children and the elderly, and pistols that fire an electric charge used against persons with heart conditions. It also mentioned in its report that tear gas should not be used in closed spaces,<sup>97</sup> and that before using it crowds should be given a prior opportunity to evacuate the zone to prevent situations of panic or stampedes.<sup>98</sup>

Besides, the Inter-American Court's ample remedy powers represent a unique framework to start applying the UN Guidance on LLW. The Inter-American Court could order state parties to adapt their domestic legislation on using force to comply with the standards set by the UN Guidance on LLW. The Court could do it in the same fashion it has ordered before state parties to adapt their domestic legislation to comply with the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement officials,<sup>99</sup> both UN instruments that the Inter-American Commission and the Court have been invoking in the case law to interpret and to give content to the international obligations

---

<sup>94</sup> Christof Heyns (Special Rapporteur on extrajudicial summary or arbitrary executions), *supra* note 37 para. 119, at 19.

<sup>95</sup> Inter-Am. Comm'n H.R., *supra* note 93 para. 18, at 509-10.

<sup>96</sup> *Id.* para. 16, at 509.

<sup>97</sup> *Id.* para. 16-18, at 509-10.

<sup>98</sup> *Id.* para. 16, at 509 (foregoing the considerations that the Inter-American Commission had in its interventions in Colombia, Chile, Brazil and Venezuela, regarding the use of LLW in the context of assemblies, as already explained in section III, all of which are in line with the standards currently set by the UN Guidance on LLW in Law Enforcement).

<sup>99</sup> *Id.* para 7, at 506.

of state parties on the use of force.<sup>100</sup>

Essentially, the Inter-American System on Human Rights has proven to be very activist in setting state party's obligations and fostering remedies to protect human rights. Since its earliest case, the Inter-American Court has established, for instance, that state parties have a legal duty to take reasonable steps to prevent human rights violations and to carry out serious investigations of those violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment, and to ensure the victim adequate compensation.<sup>101</sup> It has also established that states may not invoke any domestic legal provision against the effective application of their international legal obligations on human rights. For example, in the Bulacio case, the Court ordered Argentina to set aside provisions on statutes of limitations to continue investigating a death under the custody of a juvenile.<sup>102</sup>

In setting obligations to the state parties, the Inter-American Court has interpreted that Article 2 of the American Convention on Human Rights<sup>103</sup> allows the Court to issue decisions ordering the states to adapt their domestic legal framework to the Inter-American standards. This power is also deemed as part of the concept of "conventionality control" or "conventionality review" coined by the Inter-American Court.<sup>104</sup> Basically, according to the jurisprudence of the Inter-American Court, the obligation of the states to comply with the Inter-American instruments and standards requires both suppressing any rules or practices that violate them and developing standards and practices leading to the effective observance of the Inter-American standards.<sup>105</sup> This conventionality review can be performed by the state on its initiative, or by the Inter-American system while monitoring the state or issuing a decision.

The Inter-American Court has required states on at least two occasions

---

<sup>100</sup> U.N. Human Rights Office of the High Commission, *supra* note 8, para. 1.4, at 2 ("The Guidance supplements and complements the standards laid down in the Code of Conduct for Law Enforcement Officials (Code of Conduct) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles).")

<sup>101</sup> Velasquez-Rodríguez v. Honduras, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 174, at 31 (Jul. 29, 1988).

<sup>102</sup> Bulacio v. Argentina, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 100, ¶ 116-118, at 48-49 (Sep. 18, 2003).

<sup>103</sup> Inter-Am. Comm'n H.R., *Obligation of States to Adapt Their Domestic Legislation to the Inter-American Standards of Human Rights* para. 25, at 18, OEA/SER.L/V/II. Doc. 11 (Jan. 25, 2021), <https://www.oas.org/en/iachr/reports/pdfs/CompedioobligacionesEstados-en.pdf> ("Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms").

<sup>104</sup> *Id.* para. 19, at 16.

<sup>105</sup> *Id.* para. 28, at 19.

to adapt their domestic law to comply with the standards set by the Code of Conduct and the Basic Principles, and nothing stops the Court from doing the same with the UN Guidance on LLW. The Court has required the Dominican Republic and Venezuela to adapt their domestic law to the Code of Conduct and the Basic Principles in the *Nadege Dorzema* and the *Montero-Aranguren* cases.<sup>106</sup> The Dorzema case involved the excessive use of force by Dominican soldiers, that resulted in the killing of seven Haitians, while the Montero-Aranguren case related to the alleged extrajudicial execution of 37 detainees in Venezuela.<sup>107</sup>

These cases show how far the Inter-American system is willing to go to hold state parties accountable to their international obligations on the use of force, and the importance that the system gives to these UN instruments.

As the use of LLW poses a major threat to human rights in Latin America, especially regarding the repression of social protest, the UN Guidance on LLW in Law Enforcement should be used by the Inter-American System to interpret the extent of the international obligations of the state parties regarding the use of force when it comes to LLW. The Inter-American Court should order the states to adopt protocols on the use of LLW following the principles settled in the Guidance.

As human rights violations by LLW continue, it is expected that petitions related to the arbitrary use of LLW will arrive soon in the Inter-American system (maybe petitions concerning the Chilean and Colombian repressions of 2019 and 2021) and the principles set in the Guidance would be fundamental to adjudicate the cases and to handle the problems arising from LLW.

While the Inter-American Commission has been actively involved in the discussion on LLW, the Inter-American Court case law on the use of force is still focused on the use of lethal weapons. By applying the Guidance's principle on LLW to new case law, the Inter-American Court on Human Rights would have a unique opportunity to establish a line of jurisprudence on the use of LLW. The Guidance could be also applied through an advisory opinion of the Inter-American Court, in the case that any state party requests an opinion regarding the compatibility of its domestic law with international legal standards on the use of force or

---

<sup>106</sup> *Nadege Dorzema v Dominican Republic*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 251 (Oct. 24, 2012); *Montero Aranguren v. Venezuela*, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 150 (Jul. 5, 2006).

<sup>107</sup> *Id.*

requests the interpretation of the American convention or a treaty.<sup>108</sup> The Guidance could also be applied within the framework of the Inter-American Commission in any of its interventions, including in the negotiation of friendly settlements between petitioners and state parties.

#### CONCLUSION

The Inter-American Commission and the Inter-American Court on Human Rights should apply in their future decisions and interventions the principles settled in the UN Guidance on LLW in Law Enforcement. This instrument brings bright line rules and a clear framework for using LLW.

Improper use of LLW is provoking gross violations of human rights in Latin America, especially in the field of repression of social protest. The Inter-American System of Human Rights is ready to enforce the Guidance, as it shares its core standards and has a long tradition of applying the Basic Principles and the Code of Conduct on the use of force, which the Guidance complements. Moreover, the Inter-American system has ample powers to set obligations to the state parties through the decisions of the Inter-American Court, which provides a unique opportunity for the enforcement of the Guidance.

---

<sup>108</sup> Organization of American States, American Convention on Human Rights, art. 64, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123.