Global Campus Europe

UNIVERSITY OF MONTPELLIER

European Master's Programme in Human Rights and Democratisation
A.Y. 2019/2020

Epidemic Violence
A new approach to the "Internal Protection Alternative"

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Abstract

The present study attempts to readdress some of the elements of analysis of the 'Internal Protection Alternative' (IPA) inquiries in contexts of generalized violence, by examining from an epidemiologic perspective the patterns of propagation of criminal violence. It is intended to define some of the qualitative features of 'epidemic violence', discuss some of the potentially applicable IPA standards defined by European case-law and subsidiary instruments of interpretation of the Geneva Convention, and demonstrate that the existence of violence occurrence at epidemic proportions should render IPA inquiries unsuccessful and, therefore, unable to be invoked as a ground for rejection.

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Introduction

According to the World Health Organization (WHO, 2017), 90% of deaths due to violence occur in low- and middle-income countries, and evidence often correlates the high mortality rates in these contexts with large population movements (Toole & Waldman, 1997; Albuja, 2014; Durand, 2020). Wars, political conflicts, criminality, civil insurrections and other forms of pervasive hostility are constantly presumed as the root cause of increasing refugee claims (MSF, 2013; Albuja, 2014; Gonzalez, 2015; Cantor, 2016; ICG, 2016; Schwikowski, 2016; Clemens, 2017; Cornejo, 2017; Mathema, 2018; MSF, 2019; Nelson & Habbach, 2019; MSF, 2020). However, in most jurisdictions around the world, the mere existence of generalized conditions of violence, in whichever form, is not often sufficient to grant international protection to individual fleeing from such contexts (Yan, 2018).

The "Internal Protection Alternative" (hereinafter IPA), also referred to as Internal "Flight" or "Relocation" Alternative, is one of the inquiries often used to reject applications concerning contexts of generalized violence, as it allows states to invoke the existence of at least one region in the country of origin where a claimant could sought protection and contend the existence of an actual 'widespread' risk of harm. According to the Internal Displacement Monitoring Center (IDMC), over 2,000 applications for asylum from Afghanistan were denied in Norway on the basis of IPA between 2010-2016 (Sidney, 2020; see also Brekke & Staver, 2018). And this practice extents to claims from countries as Nigeria, Iraq, Sri Lanka, Bangladesh, Pakistan, Somalia and Colombia in most of European jurisdictions, Japan, United States and Canada, where IPA examinations tend to point out capital cities as potential relocation areas (Siddiqui *et al*., 2008; Gladwell & Elwyn, 2012; UNHCR, 2012; Aldenhoff *et al*., 2014; ECRE, 2014; Ni Ghrahinne, 2015; Arakkaki, 2016; Bhuyan *et al*., 2016; Matevžič, 2016; NOAS, 2018).

The pattern, however, continues not only in jurisdictions with developed refugee qualification proceedings, recipients of larger amounts of applications, but in countries with significantly less developed international protection systems, such as Mexico, South Africa and Costa Rica (Schreier, 2008; Mirra, 2016; Rendon, 2017; Shultz, 2019).

Despite constant efforts from international organizations and civil society to strengthen and consolidate domestic protection systems during the past decades, so far there is no consistent approach to this concept and divergent practices still prevail both within and across jurisdictions.

Violence is a 'multidimensional' phenomenon with various forms and categories that impact internal and transnational displacements in different ways (Megargee, 1982; Reiss & Roth, 1993; WHO, 2002; Moser & Rodgers, 2005; Patel, 2012; Berg & Carranza, 2018; Durand, 2020). Several hypotheses have emerged concerning its origins (Bellinger, 2001; Van Dijk, 2008), and such assortment has led analysts towards a shift in the way it is analyzed.

Violence occurrence has been analogically studied as a contagious [or communicable] disease. Existing literature reveal numerous references to the transmission effect, bringing under the scope of various disciplines, notably criminology, public health, and psychology a different perspective on how violence occur (Berkowitz & Macaulay, 1971; Most, 1985; Braithwaite, 2006; Braithwaite, 2019). Several studies from these disciplines have attempted to demonstrate that aggressive conducts in human beings, acts of violence and its geographical conduct emulate features of contagious diseases: they can systematically be transmitted from one individual to another.

This approach led to further hypotheses and public policy developments on how to prevent and disrupt violence reproduction through social and medical intervention (Mercy *et al*., 1993). In 1996, the World Health Assembly declared violence a leading global public health problem (WHO, 1996) and ever since, several analysts and scholars refer to violence as a world public health issue (Moreno & Cendales, 2011). According to Reza *et al*. (2001: 104), this declaration acknowledged the necessity of implementing a global strategy to address violence as a health issue that can be prevented. The criminological and public health perspective, therefore, provided a theoretical foundation for policy interventions such as violence interruption and prevention programs (Loeffer & Flaxman, 2017: 1017) that have been implemented in some cities in Europe, U.S. and Latin America (Shakle, 2018). As result, the use of the term 'epidemic' has been increasingly used to describe large or dramatic increases of violence occurrence.

Many references to 'epidemic violence' in media and international organizations have been made (World Bank, 2010; PNUD, 2013; OHCHR, 2015; ICG, 2016). According to UNODC (2019: 20), this designation is often ascribed to the World Health Organization (WHO), but its exact origin remains unclear. Evidence on the theoretical and empirical development of the concept is quite poor (Fagan *et al.*, 2007), and for some analysts such as Cohen & Tita (1999: 452), certain structural features must be satisfied before an observed increase in social phenomena can be labeled as epidemic in the strict mathematical or biological sense.

The primary purpose of the present analysis is to examine some of the implications in refugee law of the concept of 'epidemic violence'. It will be intended to readdress the application parameters of IPA by analyzing the concept of criminal violence from an epidemiologic and public health perspective, and demonstrate that in countries experiencing a widespread (epidemic) form of violence an internal relocation alternative should not be invoked as a ground for rejection.

Despite the numerous correlations between generalized criminal violence and transnational displacement, it seems that some sort of preference is given to asylum seekers from war-torn countries (Saleem, 2016), and the trends of displacement that conflict-emergence raises lead immigration authorities to overlook some of the social and legal implications of criminal violence for refugee law.

Individuals fleeing contexts of generalized criminal violence are often targeted simply because of their money or for reasons of retribution by an organized criminal group (UNHCR, 2010). Therefore, in most jurisdictions, when an applicant's claimed motivation for departure from their country of origin relies purely on an economic nature, it is not possible to link the fear harmed to a convention ground of protection, and as result, their statements are rationalized to conclude that an option of IPA existed, sometimes without an in-depth, comprehensive analysis of the situation (UNHCR, 2012: 16; Benner & Dickerson ,2018).

Throughout the first section of this document it will be conducted a literature review on violence as a communicable disease, in order to delineate the most relevant properties of 'epidemic violence'. Existing studies have consistently relied on the analysis of violence associated to criminal activity, namely focusing on specific offenses, such as homicide, gun-related and gang-related violence. The perspective adopted in this section will, therefore, mainly focus on the epidemic properties of criminal violence, appealing to the descriptive features of homicide as indicator of widespread conditions of insecurity, and excluding analogic examinations on other politically-motivated forms of widespread violence

It will be argued that a context of epidemic violence entails such a significant propagation of criminal violence, as result of a wide transmission of aggressive conducts, that the risk of victimization remains virtually present for most of individuals in the concerned territory, disputing *prima facie* the existence of 'safe' regions within.

Throughout the second section it will be intended to provide a general perspective on the potential components of assessment of relocation alternatives in contexts of epidemic violence,

by discussing some of the international standards on the application of IPA inquiries provided, on the one hand, by two subsidiary instruments, the Michigan Guidelines and the United Nations High Committee for Refugees (UNHCR) Guidelines, and on the other hand, by the European Court of Human Rights' (ECtHR) jurisprudence and the European Union (EU) parameters of assessment.

In principle, the UNHCR and Michigan Guidelines provide a closer look to the way in which a broader conventional interpretation may find a progressive application of IPA inquiries. Despite they are merely indicative and very few jurisdictions have recognized their significance for judicial decisions, they portray in a sense a model behind the expected rationale in domestic jurisprudence to analyze the risks of epidemic violence. On the other hand, Europe, as one of the regions with better developed notion and standards of IPA inquiries, provides a closer analysis of its practical implementation and shows some of the potential shortcomings for the adoption of a broader interpretation of some elements, such as 'domestic protection' and risk of serious harm.

IPA inquiries are often applied with a certain level of state discretion, and its rigidness (or flexibility), despite guided by international law, is largely controlled by domestic regulations, creating a number of different positions and interpretations about security conditions in third countries. As consequence, the intention is to frame the analysis of IPA inquiries in contexts of epidemic violence within a general discussion, without focusing on the experiences of a specific jurisdiction but referring, at the same time, to some of the lessons that European jurisdictions have developed. The integration of an epidemiological perspective on the judicial analysis of criminal violence remains to this day entirely virtual, and as such the intention is merely to define potentially applicable elements of analysis.

Finally, in a third section, it will be provided an insight on the legal perspective of generalized violence as a basis for a judicial conception of epidemic violence and the existing standards that should be considered when applying IPA inquiries in such contexts. Following this examination, it will also be analyzed the main implications of epidemic violence on IPA applicability, in terms of potential risks of serious harm, degrading living conditions and lack of domestic protection.

It will be argued that epidemic criminal violence poses high risks of (re)victimization, aggravating the risk of serious harm and living conditions in countries of origin, by obstructing or depriving populations from lawful working opportunities, health security and education

(Moser & van Bronkhorst, 1999; Margolin *et al*., 2010; Meyer *et al*., 2014). Furthermore, it will be contended the classic notion of domestic protection, as it should not only be examined under IPA inquiries as a matter of public security but a public health problem, and as such, the state obligations for domestic protection not only rely on the actions to ensure individuals' access to justice and security, but on the mechanisms to guarantee mental and physical health to prevent and disrupt criminal activity. The idea is to start considering violence as a pathogen that can be transmitted, rather than simply inherent conduct of human nature that can exclusively be governed through law enforcement.

Chapter 1. Defining "Epidemic Violence"

The spectrum of occurrence of communicable diseases includes five categories: (1) sporadic, (2) endemic, (3) hyperendemic, (4) epidemic, and (5) Pandemic (Brachman, 1996; Patten & Arboleda-Florez, 2004; Green *et al.*, 2002; CDC, 2012). The distinction between these categories rely not only in the quantitative component, but also in a temporal and geographical element, and monitoring its evolution contribute to the definition of more adequate parameters for prevention and control measures (Brachman, 1996; Ben-Naim & Krapivsk, 2012; Hartfield & Alizon 2013; O'Dea, 2018)

Most of conceptualizations on 'epidemic' refer to an 'extraordinary increase' of reported cases of a disease in a population, and the term is often used as a synonym of 'outbreak' (Green *et al*., 2002; O'Neil & Naumova, 2007; Brady *et al.*, 2015). Both concepts tend to be used indistinctively in medical practice and epidemiologic studies. However, despite the absence of a substantial dissociation, some conceptual differences can be drawn.

In both, outbreak and epidemic, the amount of disease in a community rises above the 'expected level' of occurrence. However, the Centers for Disease Control and Prevention (CDC, 2012) noted that an outbreak is often used for a more limited geographic area. It can be associated to an early stage of emergence of cases where pathogens are merely spread among individuals in contact with the original source of contagion, and not in a wider geographical area (Fischer, 2020; O'Neil & Naumova, 2007). Such conception implies the existence of a direct relation among the infected individuals and as such, a transmissible disease at its earliest stage. The distinction, in this sense, relies essentially on the scale of transmission of a pathogen.

The 'expected level' of an emerging infection is defined by the standard of occurrence, baseline or endemic level (*i.e.* the anticipated, expected number of cases). However, such level varies from one disease to another. Some diseases are so rare in a given population that a single case warrants an epidemiologic investigation (e.g., rabies, plague, polio), and others are so frequent that only deviations from the norm will require monitoring (CDC, 2012). According to O'Dea (2018: 1), many infectious diseases occur with sufficient regularity that their anticipation is straightforward (for example, seasonal influenza has a pronounced winter seasonality), and as such, the baseline is placed upon a higher number of reported cases, maybe even thousands. In some other cases, nevertheless, like SARS or avian flu, one simple case may fall into the

outbreak category since that one case exceeds the zero-endemic level (O'Neil & Naumova, 2007: 442).

The level of infected individuals required to categorize an outbreak can be defined by the so-called 'outbreak threshold', a concept introduced by Hartfield & Alizon (2013: 3) referring to "the number of infected hosts above which there is very likely to be a major outbreak". The outbreak threshold defines the transition from a minor disease outbreak towards an epidemic pattern. It sets, in a sense, the very first critical boundary of transmission and provides a vector to understand the contagion or extinction potential of a pathogen. The existence of an outbreak merely indicates a small amount of infected population. However, such a small amount is sufficient to trigger a full-scale epidemic.

According to Hartfield & Alizon (2013), most of public health specialists set a discretional, arbitrary threshold based on whether they are monitoring disease outbreaks or modeling probabilities of emergence, and their mathematical model will intend to delimitate the threshold without any arbitrary cutoff. Disease outbreaks often develop rapidly, making it difficult or impossible to predict its evolution, and for analysts like Brady *et al.* (2015: 92), using a standardized threshold may be inadequate to optimize response strategies. However, due to the fact that pathogens and their characteristics often change over time, using a standardized threshold may be inadequate to optimize response strategies (Brady *et al*., 2015: 99).

In the end, it is important to consider that the distinction between epidemic an outbreak does not only have a medical implication but a political one. To Fischer (2020), the formal declaration of any infectious disease as outbreak, epidemic or even a pandemic provide governments, international and non-profit organizations worldwide with an indication on how to react, and the adequate use of those concepts will suggest whether it is necessary a shift in the actions and efforts required to contain or mitigate a disease. For Green *et al*. (2002: 4), the term 'epidemic' is typically used to communicate a serious risk. When the term 'outbreak' is used to indicate an increased incidence of disease, the public may perceive this as less serious. In the words of Fischer (2020), "this formal declaration needn't incite fear or cause you to stockpile surgical masks. It doesn't mean the virus has become more infectious or more deadly, nor that your personal risk of getting the disease is greater." It merely indicates the level of action expected to take.

In order to approach the concept of 'epidemic violence', this chapter is divided in two sections. Firstly, in order to understand transmission effect of violence from a broader perspective, we

distinguish four main properties of violence that highlight its epidemic-like behavior: (1) clustering, (2) diffusion, (3) exposition and susceptibility and (4) transmission. We distinguish diffusion and transmission as two different forms of spread of violence. In epidemiology, both terms are often used indistinctively. However, it will be argued that social transmission and spatial diffusion of violence are processes influenced by different behavioral and environmental factors. Secondly, it will be analyzed the epidemiological patterns of criminal violence, particularly homicide, in order to elucidate to what extend such category of violence may evolve into a chronic social pathology.

1.1 Epidemiologic properties of violence

Numerous hypotheses have addressed the analogic relation between violence and communicable diseases. According to Brachman (1996) and Hagget (2000), in epidemiology there are three major links in disease occurrence: the etiologic agent (disease-causing agent or source of infection), the method of transmission (which can be by contact, by a common vehicle, or via air or a vector), and the host (or infected individual). The etiologic agent in violence transmission has been typically associated to the original perpetrator of an act of violence, while the hosts are typically considered as the victims, susceptible to imitate, replicate or reproduce the behavior they have been subject to (Zeoli *et al*., 2012).

Analyses on violence transmission are numerous, most of which are substantially focused on the psychological effects of violence and social imitation patterns (Slutkin, 2013). Violence is naturally a social act and as such, the etiologic agent cannot be associated to any factor other than social contact.

In epidemiology there are two basic mathematical models that have been used to study transmissibility of violence: the susceptible–infected–recovered (SIR)[1] model [a.k.a. the Kermack–McKendrick theory] and the susceptible-infected-susceptible (SIS)[2] model. They

[1] Susceptible: who are vulnerable to contracting the disease. Infectives: who are infected and capable of transmitting the infection to the susceptible. Removed or recovered: who were previously infective but are no longer vulnerable to infection because of immunity, treatment or quarantine (Patten, 1999: 217). According to Wang *et al.* (2016: 2), susceptible node does not transmit the disease. Infected nodes contract the disease and spread it to their neighbors, and they can recover or die. A recovered node has returned to health and no longer spreads the disease. (see also Castellano & Pastor-Satorras, 2010).

[2] According to Boguña *et al.* (2013: 1), in the SIS model, individuals are either susceptible or infected. Susceptible individuals become infected by contact with infected individuals and infected individuals, on the other hand, become spontaneously healthy again. The model allows thus individuals to contract the infection again and again, in the infinite network size limit (Castellano & Pastor-Satorras, 2010: 1).

have been adapted to criminology studies and applied to examine some epidemic properties of violence (see for instance Berestycki & Nadal, 2010; Berestycki *et al*. (2013); Patten (1999). However, other non-mathematical perspectives on the transmission of violence have also been developed. Some studies use regression models to determine whether there exists a correlation between certain risk factors or individual features (*inter alia*, age, gender, race, education) and the possibilities to be subject of or perpetrate an act of violence. While others simply appeal to descriptive statistical analysis.

Colin Loftin (1986) was one of the firsts criminologists to conduct an empirical analysis on the spatial diffusion of violence in the United States. He examined the contagion patterns of homicides in Detroit between 1920 and 1980, associated to factors like accessibility to firearms and the inability of normal institutional means to provide protection. Most of studies conducted, just as Loftin's, have nevertheless theorized contagion at smaller scales, *i.e*. within short periods of time (often no longer than five years) and reduced spatial scales (neighborhoods or cities). Others, just as the specialist in global health Deepali Patel, have proposed a more qualitatively comprehensive approach to violence transmission, consisting in the interaction of two incidence levels: at a micro level, the social-cognitive and neurobiological processes of behavior that regulate individuals' responses to external environments; and at a macro level, the social norms and group dynamics normalize and influence the behavior of individuals (Patel, 2012 : 1101).

However, regardless of the perspective and methodology adopted to examine contagion patterns of violence, the four properties discussed in this section are commonly invoked in existing literature and provide a comprehensive notion on how violence should be examined from a public health perspective.

1.1.1 Clustering

Just as communicable diseases, empirical studies indicate robust evidence of systematical space-time clustering of violence and crimes (Loftin, 1986; Rosenfeld *et al*., 1999; Nasar & Fisher, 1993; Groff *et al*., 2010; Zeoli *et al*., 2012; FGVP, 2013; Bond & Bushman, 2017; Di Salvatore, 2018; UNODC, 2019b). According to the United States Department of Health and Human Services (CDC, 2012), it refers to an aggregation of cases grouped in place and time that are suspected to be greater than the number expected, even though the expected number

may not be known. Clustering is basically the spatial concentration of violence in a given area at a specific time, often referred to as 'hot spots' (Berestycki & Nadal, 2010; UNODC, 2019).

This is the first stage of violence propagation. When an outbreak of violence emerges, it cannot yet be considered an epidemic until a larger diffusion and transmission process is developed. The rationale behind clustering patterns is, according to Patel (2012: 1101), the fact that despite violence spread from setting to setting, and transform from one type to another, violent events tend to follow other violent events within the same spatial area, often perpetrated by individuals connected to the same social network, indicating a proximity occurrence, rather than a random one (see also Bushman, 2017). Studies on homicide (Zeoli *et al*., 2012), gun-related (Papachristos *et al*., 2015) and gang-related violence (Rosenfeld *et al*., 1999; Pizarro & McGloin, 2006), interpersonal violence, piracy (Di Salvatore, 2018) and even fear of crime (Nasar & Fisher, 1993) have demonstrated such configuration.

Geographical concentration of violence and crime is associated to a number of factors, such as socioeconomic disadvantage (Rosenfeld *et al.*, 1999; Papachristos *et al*., 2012; Zeoli *et al*, (2012), economic deprivation (Fergusson *et al*., 2004; Sosu & Schmidt, 2017; Newburn, 2016), location features attractive for perpetrators, also referred as flag and boost effects (Pease, 1998; Cohen & Tita, 1999; Di Salvatore, 2018), urban development (Loftin, 1986; UNODC, 2019), and lack of, or weak law enforcement. However, numerous analysts agree that it would be inaccurate to attribute a full association on specific factors as unique source of environments prone for perpetration of violence, as there is no clear pattern on how and how many factors may intervene (see also Moser, 2004; Muggah, 2012; Büscher, 2018; Konaev, 2018).

Just as communicable diseases, understanding concentration patterns of violence, especially at earlier stages of an outbreak, in necessary to design adequate measures of prevention and contention. According to Barnard *et al*. (2019), adequate intervention during clustering process may starve an epidemic and prevent it from spreading to other nodes or networks. Concentration of criminal violence opens up possibilities for its disruption, as law enforcement and social intervention can specifically be targeted to affected areas (UNODC, 2019: 29).

1.1.2 Diffusion

The term refers to spatio-temporal expansion patterns of violence and criminal activity. Haggett (2000) notes that spatial diffusion describes the movement of a phenomenon from its origin

across geographical areas. And most of analysts agree that violence, just as any other communicable disease, not only spreads through space but through time. It has necessarily a temporal feature, as movement takes time (Zeoli *et al*., 2012: 3).

Existing literature has extensively demonstrated spatial diffusion patterns of crime and violence associated to it (Cohen & Tita, 1999; Zeoli *et al.*, 2012; Loeffler & Flaxman, 2017; Di Salvatore, 2018). In epidemiological studies, diffusion and transmission are concepts used indistinctively, as the transmission of communicable diseases entail naturally a spatial displacement of contagion agents. According to Riley *et al*. (2015: 2), the movement of people to achieve their daily tasks is clearly an important feature of spatially explicit infectious disease models, as it will affect the diffusion process of a disease. The longer displacements a population reaches, the wider a disease may spread in space. However, such rationale might differ in terms of violence. Spatial diffusion or spread of violence are terms more associated to the geographical distribution of violence occurrence, while transmission refers to the behavioral reproduction patterns and psychological repercussions of acts of violence.

Diffusion is the consequence of transmission. However, not all forms of violence are transmissible in the same way. Different mechanisms of transmission result in different patterns and channels of diffusion. The study conducted by Loeffler & Flaxman (2017: 1001) on gun violence concluded, for instance, that diffusion on this category of violence is quite minimal, —limited in space to 126m and in time to 10 min. According to Bond & Bushman (2017: 288) and Patel (2012: 1102), violence does not spread at a uniform rate. It can be mediated by numerous circumstantial and context factors, which may exacerbate or reduce the spread effect. As result, some types of violence spread quickly (e.g., gang wars, riots) and others more slowly (e.g., victims of child abuse become perpetrators of family violence years later).

From an epidemiological perspective, Haggett (2000) distinguishes two forms of diffusion: 'expansion diffusion' implies that a phenomenon spreads from its point of origin to other areas, while remaining at its origin; and 'relocation diffusion' entails that the phenomenon may leave its point of origin as it spreads to other geographic areas, i.e. refers to a form of occurrence displacement (see also Cohen & Tita, 1999). From a criminological perspective, the latter is often referred to as 'crime displacement' (Telep *et al*., 2014). Such concept does not necessarily entail a spreading effect of violence. It is merely indicative of a spatial shift resulting from police crime-prevention efforts (UNODC, 2019).

Another approach to violence diffusion is associated to the existence of networks of criminal activity. Under this approach crime does not necessarily spread as result of transmission, but as result of the reproduction of behaviors through social networks. Violence do not spread merely due to the existence of a social network but requires a requires a vehicle or channel to spread such as drug trafficking or smuggling. In the case of gang-related violence, for instance, drugs or arm trafficking are typically consider the common practice that triggers spatial diffusion. When violence is associated to gangs or organized crime groups, there are some specific forms of violence perpetrated for criminal purposes, such as coercive and exploitative violence, that facilitate diffusion of violence throughout a territory (Berg & Carranza, 2018).

In the case of gender-based violence, for instance, patriarchy and misogynistic cultures are the channels of transmission. They are behaviors shared by individuals that in prone social environments may trigger perpetration. This could be similar to what Cohen & Tita (1999: 455) call 'hierarchical diffusion', which refers to the spread of events through broad cultural influences that affect the general population or a particular subgroup that may be widely dispersed geographically.

So far, most of studies on diffusion of violence have been able to depict such process at micro levels, and very few have done it at a national or even regional scale. Analyzing diffusion at macro levels would require consideration of different agents, behavioral and environmental factors that may intervene.

1.1.3 Exposition and Susceptibility

An infectious disease begins with exposure to the infection by a susceptible person (Slutkin, 2013: 101). Therefore, a susceptible individual is defined as a person who is at risk, or vulnerable, of becoming infected. According to the SIR and SIS models of epidemic spread, the entire population located within a given territory is considered susceptible to be infected with a communicable disease. When people are exposed to a contagious disease, it increases the likelihood that they will contract the disease (Bushman, 2017). Exposition, therefore, determines the susceptibility of an individual to be infected and constitutes the first stage of transmission, where violence is socialized.

Existing literature on transmission and diffusion of violence presume populations as a group of susceptible individuals at different risk levels, defined by personal (age, gender) and social circumstances (such as economic deprivation, social exclusion) that may aggravate the risk of an individual to be subject of or perpetrate an act of violence. Some studies, following this observation, have focused on the aggravating factors and circumstances that may facilitate individuals' exposition to violence and pose higher risks for victimization or violence perpetration, such as such as minority membership, low education, unemployment, poverty, economic deprivation, social networks and availability of firearms (Zeoli *et al*., 2012; see also Cook, 1983; Brachman, 1996; Pizarro & McGlobin, 2006; Van Dijk, 2008; Quillian & Pager, 2010; Malby, 2010; Pizarro, *et al.*, 2011; FGVP, 2013; Besemer, 2017; Bond & Bush, 2017). However, it would be difficult to fully establish a cause-effect relation, due to the lack of control on the influence that both personal characteristics and social environment variables have over an individual's exposition to violence (Bingenheimer *et al.*, 2005: 1323)

Exposition can be observed in two different forms: direct and indirect. The former associated to a physical exposure, namely when victims are subject to an aggression, while the latter associated to the observation of violent acts. According to Huessmann (2001: 64), although emotional reactions to physical victimization maybe more intense and immediate, observation alone also produces both intense emotional and cognitive reactions that may have long-term effects on a person's mental health and behavior problems. His study showed that exposure through observation increases the aggressive and violent behavior of children, who develop a predisposition to act in retaliation; in other words, exposition to violence increases susceptibility for perpetration of acts of violence.

A distinction of susceptibility to violence at two different levels must be, however, considered: susceptibility to victimization and susceptibility to perpetration. On the one hand, susceptibility to victimization is represented by the risks to be subject of an act of violence. A study conducted by Papachristos *et al.* (2012: 999) showed that susceptibility to victimization might be influenced by an individual's social network (see also Loftin, 1986; Green *et al*., 2017). They concluded that social distance is related to gun victimization: the closer one is to a gunshot victim, the greater the probability of one's own victimization. However, the correlation is not exclusive. There are three categories of risk factors that may expose an individual to gunshot victimization: (1) individual factors, such as age, gender, race, and socioeconomic status; (2) situational factors, such as the presence weapons, drugs, or alcohol; and (3) community factors, such as residential mobility, population density, and income inequality (Papachristos *et al*.,

2012: 993). This analysis is not limited to gun-related victimization, as many studies have concluded the influence of several elements on the probabilities to be subject to violence (Finkelhor & Asdigian, 1996; Quillian & Pager, 2010; Vandecar-Burdin & Payne, 2010; Vilalta, 2011). However, the more factors accumulated, the higher the risk of victimization.

On the other hand, susceptibility for perpetration is represented by the factors that may lead an individual to perpetrate an act of violence. At the individual level, numerous studies focus on behavior reproduction and patterns of victimization as cause of violence perpetration (see, for instance, Loftin, 1986; Loeffler and Flaxman, 2017). They are sustained on the widely endorsed hypothesis that victimized individuals are potentially susceptible to become perpetrators, *i.e.* individuals may develop behaviors or psychological disorders that represent a susceptibility to become perpetrators.

A study conducted by Bingenheimer *et al*. (2005: 1326), for instance, suggested that adolescents exposed to firearm violence have approximately twice the probability of perpetrating serious violence over the subsequent 2 years. Notwithstanding such rationale, evidence indicate that not all victimized individuals develop aggressive behaviors, just as not all perpetrators were victimized prior to perpetration of violent acts. People exposed to the etiologic agent (pathogen) can develop a wide spectrum of possible outcomes (Bushman, 2017). There are individuals that may develop a susceptibility to perpetrate acts of violence, while some others remain non-susceptible. Risk factors and continuing exposition to violence may be well-established as predictors (or at least contributors to the development) and reveal a higher susceptibility (Bushman, 2017). However, not by the fact of being exposed to violence, individuals will develop a predisposition for perpetration.

1.1.4 Transmission

From an epidemiologic perspective, a process of transmission implies the transfer of pathogens from an infectious agent to a host (or susceptible individual). In terms of violence, transmission refers to the reproduction of conducts an individual adopt as result of social influence, the contagious nature of conducts. Patten (1999: 217), using references from Levy & Nail (1993) on ‘behavioral contagion’, defined it as the spread of affect, attitude, or behavior from Person A (the initiator) to Person B (the recipient), where the recipient does not perceive an intentional influence attempt on the part of the initiator.

Right after an individual is exposed to violence, symptoms of violent behaviors are not immediately evident. Violent conducts will develop during the incubation period, which according to Brachman (1996), is the interval in the preclinical period between the time at which the causative agent first infects the host and the onset of clinical symptoms; during this time the agent is replicating. During the incubation period, damages caused to mental health and behavioral characteristics by such exposition are transforming the individual's social conduct, leading eventually to the development of aggressive behaviors [which can be referred to as 'symptoms'].

Existing literature refers to numerous postulates on behavioral transmission mechanisms, such as teaching and co-offending, attachment, retaliation, excitation transfer, social information processing, neurophysiological and genetic mechanisms, that provide evidence on how individuals develop a disposition prone for violent conducts (Patten & Arboleda-Florez, 2004; Huessmann, 2001; Bellinger, 2001; Fowler *et al.*, 2006; Pizarro & McGloin, 2006; Widow & Wilson, 2015; Besemer, 2017; Loeffler & Flaxman, 2017; Papachristos *et al*., 2015). However, a key mechanism of violence transmission is 'imitation', which explains how people learn aggressive and violent behaviors by reproducing the behaviors they observe others perform (Bushman, 2017: *n.p*; see also Woollet & Thomson, 2016; Safranoff & Tiravassi, 2018).

This postulate led to the development of two major approaches that explain how violence can be transmitted: the intergenerational transmission of violence (IGT) and transmission through social networks. The former has been increasingly applied in psychology and other medical disciplines to understand how aggressive conducts perpetrated between members of a family unit may be replicated by children at later stages of their lives.

Numerous studies from this perspective have demonstrated a relation between exposition (and victimization) of children to violence and later development of clinical syndromes, personality disorders and aggressive conducts (Clarke *et al*., 1999; Neugebauer, 2000 ; Brendgen *et al.*, 2001; Huessmann, 2001; Fergusson *et al.*, 2006; Widom *et al*., 2015; Fowler *et al*., 2016; Besemer, 2017; Pinna, 2016; Woollett & Thomson, 2016).

Several studies, for instance, indicate a significant correlation between child exposition to violence and perpetration of criminal offenses during adulthood (Simons *et al.*, 1998; Herrera & McCloskey, 2001; Weaver *et al.*, 2008; Safranoff & Tiravassi, 2018). And other examinations suggest a correlation between child exposition to interparental violence and later aggressive behaviors, especially in their own personal relationships (Kalmuss, 1984; Fergusson

et al., 2006; Black *et al.*, 2009). However, it is necessary to look carefully at the data, as individuals might have been influenced by other factors not associated to the original source of violence (Neugebauer, 2000; Fergusson *et al*., 2006; Black *et al.*, 2009).

The first key element to understand IGT theory is the role of the family, as both an incubator of violence and an opportunity to halt the spread. Family members become the primary agent of infection and according to Patel (2012: 1102), they can introduce violence to other family members not only through physical abuse but through neglect, hostility, coercive discipline, or instability (see also Neugebauer, 2000; Black *et al*., 2009).

A second key element is the fact that developmental effects of childhood experiences may be inapparent in adolescence but emerge unmistakably in adulthood (Neugebauer, 2000: 1117; see also Safranoff & Tiravassi, 2018). Violence caused by intergenerational transmission, therefore, can be considered one of the longest forms to be externalized. Therefore, during the incubation period, individuals might be exposed to other risk factors or sources of contagion that accelerate the manifestation of aggressive behaviors or enable the transformation of passive behaviors into other forms of violence.

On the other hand, the social networks approach has been applied in criminology and psychological studies to examine the influence of social relations on criminal or aggressive conducts. In essence, the network's approach conceives violence transmission as a process generated by the influence of individuals' friendship or kinship relations, to the extent that people change their behavior, attitudes, and opinions to be compatible with friends and associates (Papachristos *et al.*, 2015; Bushman, 2017).

Violence transmission is a process, which occurrence takes place within a network of social relations that qualitatively resemble an epidemic spread model. Individuals are considered nodes interlinked one to another by their social interactions (Miller & Kiss, 2014). Hence, a population susceptible to contagion in construed as a group of nodes with a specific feature: susceptible (S), infected (I), or recovered (R). The social network approach, therefore, examines populations under the same rationale. A population is not observed as a group of randomly distributed individuals, but as a system of nodes susceptible to violence that can be infected through social interaction. Each social contact with an infected node represents a risk of infection and, inertially, all neighboring nodes directly linked to the infected node develop a higher risk (or susceptibility) of contagion (Lagorio *et al*., 2008).

Analysts like Hussmann (2001), Lagorio *et al.* (2008), Patel (2012), Petering *et al.* (2014) , and Bond & Bushman (2017), for instance, note that violence perpetrated by peers increases the susceptibility to perpetrate violence of other individuals within the same network. And according to Papachristos, Braga, Piza & Grossman *(*2015: 141), violence is most likely to occur between people who know each other prior to the event, as result of imitation, competition, communication, *etc*. (see also Papachristos, Wildeman & Roberto, 2015)

By using the social network's approach, a study conducted by Bond & Bushman (2017) concluded that adolescents are more likely to commit acts of violence if their friends had previously done it as well. The results showed essentially that participants with friends who had been previously involved in serious offenses were more likely to have been involved themselves, and such influence (transmission pattern) extends up to 4 degrees of separation, i.e. friend of friend of friend of friend (Bond & Bushman, 2017: 191).

So far, evidence on violence transmission mechanisms does not fully indicate clear, solid correlations, as transmissibility patterns are stimulated by a set of different factors. However, this approach underlines the relevance of social links onto the development of violence cultures and identification of nodes that may potentially develop aggressive or criminal behaviors. As result, neglecting trends of expansion of infected social networks may raise concerns regarding the susceptibility of these networks to evolve into organized criminal groups.

1.2 Epidemiologic patterns of criminal violence

When we speak about epidemic violence, we refer to a massive diffusion of violence throughout an entire territory, resulting from continuous transmission patterns in a population, and a significant or relatively proportionate degree of dissemination in all areas or regions comprising such territory. Such dimension of violence represents a major public health issue, as it is placed within the main causes of death and indicates high susceptibility levels for the population residing within a given territory to be subject of violent acts.

From a global perspective, conflict-related violence has been frequently featured as one of the main causes of internal and transnational displacements. However, this particular category of violence has been poorly studied from an epidemiologic perspective. Most of analyses focus on the relation between conflicts and disease transmission (Gonzalez-Torres & Esposito, 2017;

Wells *et al*., 2019; Wannier *et al.,* 2019), and some examinations on spill-over effects of national and international conflicts have been made (Stepanova, 2010; Berckmoes *et al*., 2017). However, a number of different agents and factors that intervene and trigger the transmission of aggressive behaviors in this particular circumstances are more associated to environmental determinants at social and political levels, rather than behavioral (such as coercion or social pressure exercised by a group of individuals).

Criminal activity, in contrast, is considered more fatal than conflicts and terrorism combined, is far more widespread and has been equally associated to massive displacements (Stepanova, 2010). In 2017, the Peace Research Institute Oslo (PRIO, 2019) recorded approximately 69,000 fatalities in 52 active conflicts around the world (of which 26,000 people were killed in terrorist attacks), while in 2018 the Oslo-based organization recorded 53,000 casualties in 50 active conflicts. However, such numbers could hardly surpass the 464,000 victims of homicide recorded by UNODC (2019) in 2017, and 441,000 in 2018. Analysts like Cantor & Plewa (2017) and De Jesus & Hernandes (2019) have noted that despite countries like El Salvador or Honduras are not formally at war, rates of violent deaths in these two countries in certain years appear to be second only to Syria.

Homicide, in particular, is considered the most lethal, egregious consequence of criminal and any other form of violence. According to Malby (2010), it represents the most serious end of the spectrum of violence, and due to its seriousness it is frequently used as a proxy indicator of insecurity and criminality (Moser, 2004; Malby, 2010; UNODC, 2019b). Homicide rates are often interpreted as an indicator of risk of victimization in a country -the higher the rate, the higher risk of being murdered-, and used to measure variations in criminality (Riedel & Welsh, 2015). The present section, as consequence, will examine from a global perspective the epidemic behavior patterns of criminal violence, based on homicide occurrence, as it consistently reflects the general situation of insecurity in a territory caused by criminal activity, and all forms of violence associated to it.

1.2.1 Homicide: a global approach to epidemic criminal violence

Homicide is often referred to be one of the offenses more effectively recorded by police departments and health administrations in most jurisdictions around the world (Van Dijk, 2008; Malby, 2010). As opposed to other crimes such as robbery and domestic violence, homicide

rates are often used to monitor violence and overall levels of lethal violence in national and cross-sectional studies not only because of its lethal outcome but due to the relatively wide availability of information about its occurrence, as it is easily brought to the attention of the police and, as consequence, extensively quantifiable in terms of the number of victims (UNODC, 2019).[3]

From a global perspective, the UNOCD has noted that homicide occurrence around the world tend to concentrate in areas with socioeconomic disadvantage (UNODC, 2019). Evidence do not demonstrate a full correlation between inequality and high rates of homicide, but in the Latin American region, where most of the countries with the highest rates of homicide are concentrated (see fig. 3), high criminality occurrence is frequently associated with lack of legitimate work opportunities, marked socioeconomic gaps, slow-changing social and economic indicators (Papachristos *et al*., 2012; Zeoli et al., 2012; UNODC, 2019). An association between availability or ownership of firearms and increase on criminality rates has also been frequently made (Cook, 1983). However, such hypothesis hardly support evidence on epidemic patterns of homicide and rather describes a relation with proliferation of organized crime networks (Loeffler & Flaxman, 2017; Marion, 2018), which are not necessarily reflected on homicide occurrence.

Figure 1. Homicide incidents in the world (2008-2018), rate per 100,000 population

	COUNTRY	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
1	**El Salvador**	52	71.4	54.7	70.6	41.7	40.2	62.4	105	83.1	61.8	52
2	**Jamaica**	58	60	51.4	40	38.7	42.1	35.1	42.1	47	57	43.8
3	**Venezuela**	51.8	48.9	45.1	47.8	53.8		61.9	52	56.3	49.9	36.7
4	**Lesotho**	37.6	35.8	37.4	34.5	30.7	31.1		41.2	35	46.2	
5	**Honduras**	56.6	65.7	76.1	85.1	84.3	74.3	66.9	57.5	56.5	41.7	38.9

[3] Three problems in the way homicide is recorded in different countries have been identified. Firstly, a wide variety of 'murder' definitions. Generally speaking, homicide rates include both intentional and unintentional violent deaths (Moser, 2004: 7). However, in some countries 'attempted murder' is included since legally speaking this is deemed equivalent to the completed act (UNODC, 2007: 7). Secondly, the underreported or unrecorded data of homicide incidents, particularly in regions like Sub-Saharan Africa, North Africa, Middle East and Southeast Asia. UNODC (2019:69) refers to these unrevealed digits as the "dark figure" of homicide: undetected homicides that are never reported or otherwise detected by authorities or the public. Such situation, therefore, exposes the third identified problem associated to the lack of reliable sources. Data reported from national agencies are frequently incompatible with information estimated by international organizations. The fact that police or law enforcement agencies record crime, it does not mean that such agencies recorded "all crimes" (Heiskanen, 2010: 21).

6	**Belize**	33.6	30.9	40.1	37.7	43.1	28.8	35	33.1	37.6	37.9	
7	**Trin. & Tob.**	41.6	38.4	35.6	26.4	28.3	30.2	29.9	30.9	42.2	36.2	
8	**South Africa**	35.9	32.9	30.8	29.8	30.6	31.7	32.6	33.8	34	35.9	36.4
9	**Bahamas**	20.9	24.5	26.1	34.6	29.8	31.5	32.4	37.7	28.4	30.9	
10	**Brazil**	23.8	22.8	22	24.2	26.5	26.8	28.6	28.4	29.7	30.5	27.4
11	**St. Lucia**	23	22.8	25.5	26.5	22.3	18.8	19.3	15.8	16.9	29.6	
12	**Guatemala**	44.9	45.4	40.7	38	33.8	33.7	31.4	29.4	27.3	26.1	22.5
13	**Dominica**	9.8	18.3	21	8.4			12.4	12.3	21.8	25.7	
14	**Colombia**	35.9	34.8	33.7	34.8	35.1	32.6	27.9	26.5	25.5	24.9	25.3
15	**Mexico**	12.3	17.1	22	22.9	21.5	18.8	16.1	16.5	19.3	24.8	29.1
16	**C. Afri. Rep.**			13.9					13.7	13.8	22.9	
17	**Puerto Rico**	21.8	24.2	27.4	31.4	27.2	24.5	19.2	16.7	19.2	18.5	21.1
18	**Namibia**	16.8	18.2	14.4	13.9	17.1			18.6	18.3	18.4	
19	**Botswana**	14.4	14.6	15					11.7	11.4	17.3	
20	**So. Sudan**			5.2		13.9			5	5.1	15.9	
21	**Iraq**	15.8	8.5	8.7	8.3	8.2	9.9		15.7	15.5	15.8	
22	**Guyana**	21.2	15.7	18.8	17.4	18.5	20.4	19.5	19.4	18.4	14.8	14.2
23	**Seychelles**	6.6	15.4	9.8	17.4	4.3	19.4	17.2	7.5	12.7	13.8	
24	**Uganda**	8.8	9.9	9.3	10.7	11.2	10.3	11.5	12.6	12.6	13.2	10.5
25	**D. R. Congo**			13.8					13.4	13.3	13	
26	**Zimbabwe**			5		6.7			14.9	15.1	12.9	
27	**Costa Rica**	11.6	11.7	11.6	10.3	8.7	8.7	10	11.6	11.9	12.3	11.3
28	**Cote d'Ivoire**			13.1					12.2	12.2	11.8	
29	**Eritrea**			8.3					7.9	7.8	11.5	
30	**Domin. Rep.**	24.8	24.3	25	25.1	22.3	19.2	17.4	17	15.2	11.3	10

Source: *World Health Organization* & *United Nations Office for Drugs and Crime*

The thirty listed countries in figure 3 reported the highest rates of homicide in 2018, according to data from the WHO and UNODC. Except for South Africa and Lesotho, the first ten positions are occupied by countries located in the Americas. Overall, twelve countries are located in Africa, seventeen in the Americas and one in the Middle East (Iraq). During the period 2015-2017, most of these countries remained within the top thirty.

Propagation of homicide in these countries (notably in the Americas) have been associated by UNODC to the existence of organized crime. Despite some examinations have correlated organized crime as the means of transmission of violence (notably Zeoli *et al.*, 2012), it is merely the spreading channel that triggers redistribution of violence concentration.

As violence tend to cluster in marginalized communities, susceptibility of nodes to perpetrate criminal offenses increases. However, such susceptibility is not only influenced by an exposition to violence, but by the lack of strong social ties within communities, social disorganization and institutional anomie (patterns notably observable in countries in Latin America and the Caribbean). The nodes of a community are, in this sense, more susceptible to pursuit illegal means of economic satisfaction and reproduce illegal behaviors when are

affected by the lack of legitimate work opportunities and distrust of agents of formal social control.

When crimes are associated to organized crime, it implies that the offense was committed by an organization member acting with a collective purpose that can be either economic (control and expansion of illegal markets) or political (like territorial control). When the network satisfies its goal, it tends to spread, especially if no judicial or social intervention is enforced. It starts to diffuse territorially and recruit individuals, susceptible nodes, connected to a member already engaged in the network, that might have been previously exposed to violence and therefore prone to commit an offense. Social ties and interactions as consequence become the main transmission means, potentially with peer individuals facing similar socioeconomic setbacks.

In other words, conducts prone to potentially perpetrate homicide are a result of a damaged social network. According to UNODC (2019: 28) when social ties are too weak to positively influence how local people behave, criminality -particularly juvenile crime-, is more likely to happen. Expansion of organized crime is, therefore, merely the result of a wide transmission of aggressive behaviors through social networks. Fostering healthy social networks, as result, become key to prevent and mitigate susceptibility and potential risks of violence transmission. Evidence suggests that the existence of weak networks, damaged by inequalities, unemployment, and economic deprivation lead communities to higher possibilities of experience crime.

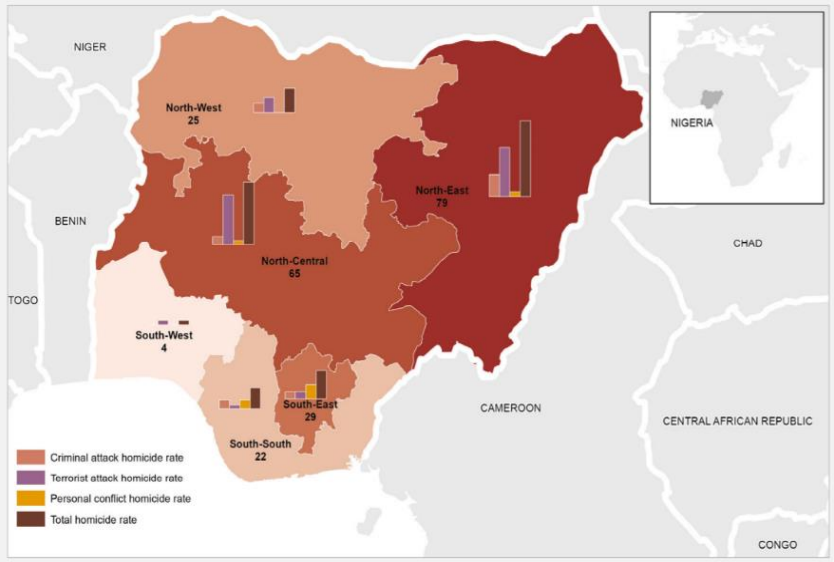
As organized crime is the diffusion channel of homicide (and all related activities such as drug trafficking, robbery, property and territorial disputes), it tends to aggravate by the presence of susceptible networks (Cohen & Tita, 1999) as many other forms of criminal operation are continuously adopted and transformed. When multilayered operations of crime networks do not only concentrate on the perpetration of a single offense but a wide variety of interlinked offenses instrumented with economic purposes (sometimes referred to as ‘complex crimes’), exposition and susceptibility of nodes may increase (Alvazzi del Frate, 2010). Not all nodes neighboring crime perpetrators are prone to commit the same offense. However, the wider variety of criminal acts an individual is exposed to, the more possibilities to perpetrate any of those acts the person has.

For the UNODC the relationship between organized crime and violence is complex. High levels of criminality do not necessarily reflect the existence of organized crime, as there are

some parts of the world with a high prevalence of organized crime but low rates of homicide and sudden spikes in homicide rates are often associated with changes in the power relationships between competing organized crime groups (UNODC, 2019:12). In other words, the presence of crime networks is not correlative to a concentration of lethal violence.

The homicide rate of a country does not mean that a same context of violence is present throughout the entire territory. In the maps shown below, it is possible to observe the estimated homicide rates from 2013 to 2019 in six different regions of Nigeria (map 1) and a comparative figure with the estimated rates of homicide in years 2012 and 2017 at regional level in South America (map 2).

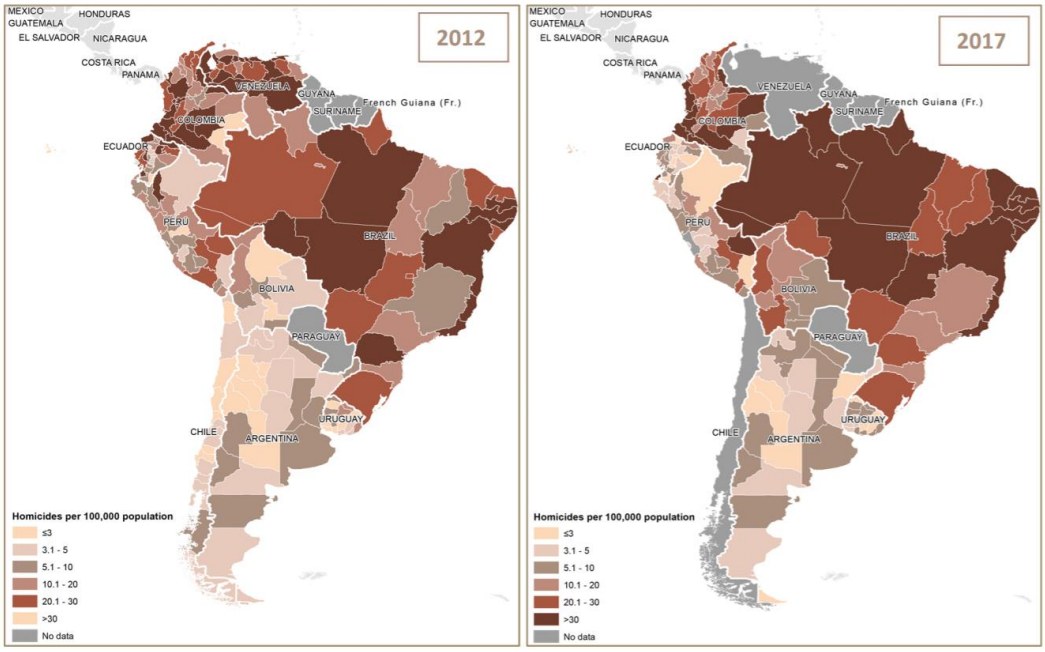
Figure 1. Estimated homicide rate in Nigeria, by zone and type, 2013–2016 (average)



Source: UNODC (2019: 24)

Several hypotheses concerning the concentration trends of violence have been reviewed in the previous section and are reflected in these figures. One of these hypotheses is that criminal activity tends to concentrate in urban areas. According to UNODC (2019: 51) in countries with comparatively higher national homicide rates also contain cities with higher homicide rates, often due to the fact that big cities account for a large share of the population and what happens in them therefore has a big impact on the situation at the national level. The case of Nigeria, however, demonstrate that most of the homicides perpetrated during the period recorded (2013-2016) are concentrated in the North-East region, a poorly urbanized region where most of the criminal activity has been attributed to the operations of large criminal organizations such as Boko Haram.

Figure 2. Homicide rates at the subnational level in South America 2012 and 2017



Source: UNODC (2019: 45)

On the other hand, the case of Brazil shows that most of homicides where concentrated by 2017 in the Northern provinces, particularly the North-West provinces, where a large part of the population resides in rural areas and the economy is highly associated to exploitation of natural resources in the Amazonas and large agroindustries. Despite the same context of violence is not equally present throughout the entire territory, violence at epidemic proportions leads to a notion that a significant part of the country has reached or follows a tendency towards epidemic

conducts. Therefore, territories that seem to be unaffected might actually be at risk of contagion and portray symptoms of widespread violence.

An assumption of geographical concentration in large spatial demarcations, additionally, might be impregnated with a certain level of relativity. Despite a closer look to county or municipal data in a specific period of time can demonstrate a (rural or urban) concentration of crime, such clusters do not necessarily reflect spatial widespread patterns, and rather might be categorized as circumstantial forms of widespread violence. For this reason, epidemic monitoring of violence requires a larger observation of occurrence in time and space.

Analyzing national homicide rates as an indicator of lethal violence merely portrays a relative situation of violence in a country and might disguise important differences in patterns and trends at the subnational and local levels (UNODC, 2019: 45). In some cases, for instance, as cities are very populated areas, the national rate will have a larger impact that do not necessarily reflect variations in non-urban areas. While in some countries rural rates are higher than city rates (as Nigeria), in other countries (like Latin American countries) homicide rates in some cities might show a higher level than national average. A disproportionality like this might only be neutralized in cases where regional rates tend to approximate the national average. However, there is no evidence of a country with high rates of violence facing a situation like this. Consistent, proportional regional and national rates are more common in countries with low criminal activity, and even in such cases concentration patterns might still be drawn.

In addition, analysis of homicide rates must also consider a temporal evolution. Perpetuation of violence in societies has often been construed as an indicator of emergence of social and institutional tolerance towards specific forms of violence. It may, in a sense, depict a state of 'endemic violence', where state intervention for violence control and mitigation is deployed sufficiently effective to prevent disruptive increase but inefficiently enough to not reduce adequately the number of violence incidents. In fig. 3 it is possible to observe that cases such as Brazil, South Africa, Costa Rica and Puerto Rico have constantly maintained high levels of homicide during the ten-years period. The use of the term 'endemic violence' is often referred to in countries where conflict-related or interpersonal violence rooted in national differences have prevailed to an extent that violence has been "culturally adopted" as part of a societies methods of conflict resolution (Simpson, 1993; Preston, 1993; Roberts, 2012; Esser, 2014; Gilbert, 2020).

As opposed to a context of endemic violence, where crime rates are relatively constant and tend to follow non-disruptive variations, a context of epidemic violence is characterized by disruptive variations or at least proportional increases. In figure 3 it is possible to observe that increasing and decreasing patters between 0 and 3 homicides per 100,000 are frequent. However, a higher variation might be indicative of a serious disruption in public security. from 2016 to 2017 South Sudan and Lesotho experienced the highest rate increase, respectively by 10.8 and 11.2 homicides per 100,000 population. However, in previous years other countries experienced greater disruptions. El Salvador reported an increase of 19.4 homicides per 100,000 from 2008 to 2009, 22.2 from 2013 to 2014 and 42.6 from 2014 to 2015, while Honduras reported from 2008 to 2011 sustained increase of around 10 homicides per year. However, during recent years both countries also reported solid reductions, an indicator of change of conditions in policy, economic or social fields, such as effective state intervention or recovery of social networks. According to UNODC (2007: 28), countries that experience high crime rates in one period are very likely to have high crime rates in the following period, as some sort of inertial effect. Some of the reasons the UN agency associate to such persistence are the existence and propagation of criminal network which, as result, leads to increased social interactions of susceptible individuals and a legal system that fails to respond to spikes in the incidence of criminal behavior.

An empirical observation on the rate variations in figure 3 suggest that an increase of $R>3$ homicides per 100,000 is followed by either a significant decrease or a second lower increase. On the other hand, an increase of $R<3$ homicides per 100,000 is also commonly followed by at least a second increase. This observation may suggest that unless a disruptive change in perception of insecurity raises within a population, states will not prioritize law enforcement interventions and criminal activity may keep propagating. On the other hand, when a significant increase ($R>3$) is followed by a second degree of intensification, state intervention might be either neglected or ineffective, allowing in both cases a continuous propagation. Such scenario might be, as consequence, interpreted as an indicator of epidemic potential and as such, eventual increase at exponential proportions. However, such rationale may only apply to territories where the endemic level or baseline rate of homicides is a variation of $3>R<0$ per year, and determining the significant increase ($R>X$) in each territory can certainly require more than just empirical assumptions.

An analysis on the temporal evolution of crime at regional levels is also important, in order to address false or relative perceptions on insecurity and risk of victimization. The case of

Figure 4. Rate of violent deaths in Venezuela, per province

	Province	2017	2018	2019
1	Amazonas	146	71	58
2	Anzoategui	55	65	52
3	Apure	56	53	37
4	Aragua	155	168	82
5	Barinas	64	74	53
6	Bolivar	113	107	84
7	Caracas	109	100	76
8	Carabobo	91	85	54
9	Cojedes	75	74	50
10	Delta Amaruco	69	74	60
11	Falcon	47	37	44
12	Guarico	78	85	70
13	Lara	52	51	34
14	Merida	26	24	31
15	Miranda	153	124	87
16	Monagas	71	86	55
17	Nueva Esparta	26	30	32
18	Portuguesa	54	70	42
19	Sucre	81	97	61
20	Tachira	46	39	46
21	Trujillo	79	73	60
22	Vargas	59	54	58
23	Yaracuy	58	70	42
24	Zulia	73	63	60

Source: Venezuelan Violence Observatory (OVV) Annual Reports (2017, 2018 and 2019)

Venezuela, for instance (see figure 4), represents a case with highly disruptive variations of homicide rates in most of states. Information available from the Venezuelan Violence Observatory (OVV, 2019) shows that variations of over 30 homicides per 100,00 are very frequent. Although the information for the period 2017-2019 indicates a tendency of crime decrease, data on earlier years shows important disruptions on states like Amazonas, Bolivar Caracas and Miranda, where the highest rates were concentrated.

The categorization of epidemic proportions of violence indicate, in a sense, that crime occurrence is above the baseline level in all or a significant part of the territories of a country, and such excess indicates prima facie the emergence of a significant risk of victimization.

An endemic form of violence is characterized by a stable, prevalent baseline frequency (Patten & Arboleda-Florez, 2004: 853), while epidemic forms involve more frequent variations, characterized first by a sudden shift to a period of rapidly accelerating growth, followed by a period of slower declines (Cohen & Tita, 1999: 452). Hence, speak about 'endemic violence' would imply that violence has been constantly present in a given region throughout a period of time, without unexpected shifts or variations. It would, therefore, entail that a level of tolerance towards such violence has been develop by the population and an escalation of such violence, on the other hand, would indicate a wider transmission and diffusion effect and a potential development of massive displacements and normalization of illegal behaviors if state intervention is neglected (Hirondell Foundation, 2019).

Despite the fact that violence can be highly rooted within a population social networks or community's culture, the number of homicides should also be considered in perspective to other causes of death. From a global perspective, homicide is not one of the leading causes of mortality. In 2017, according to the Institute for Health Metrics and Evaluation (IHME), it ranked in the 17th position, behind suicide and other diseases as HIV, diabetes, cancer and cardiovascular diseases.

Figure 5. Position of homicide as cause of death in national context, 2017

	Country	%	Position of homicide
1	Venezuela	8.54	3rd
2	Honduras	9.34	4th
3	El Salvador	8.31	
4	Guatemala	6.95	5th
5	Colombia	6.42	
6	Belize	5.66	
7	Jamaica	4.38	
8	Bahamas	4.27	
9	Mexico	6.07	6th
10	Brazil	4.73	7th
11	Trin. & Tob.	2.78	
12	South Africa	3.30	8th
13	Domin. Rep.	3.50	9th
14	Panama	3.37	
15	Saint Lucia	2.47	
16	Paraguay	2.58	10th
17	Philippines	2.38	
18	Lesotho	3.15	11th
19	Swaziland	2.60	
20	Haiti	2.47	

Source: IHME (2017)

In most of the countries, homicide does not rank within the 10 main causes of death in the population. However, in some other countries, particularly in Latin America, it does rank as one of the leading causes of death (see figure 5). In 2017, homicide was the third largest cause of death in Venezuela with 8.54%, followed by Honduras (9.34%) and El Salvador (8.31%) were it ranked fourth position. In other countries, however, such as Lesotho or Guatemala, despite ranked within the top 15 countries with the highest levels of homicide, the share of casualties within the national context is less significant. In countries where homicide is within the first ten causes of death, we may consider such as another indicator of violence as a major public health issue.

Despite it has been possible to identify some of the mayor features of epidemic violence, it is not possible to characterize epidemic proportions merely based on statistics and indicators. It would be necessary to address how can we distinguish a potentially critical context of violence from a merely endemic form of it? In epidemiology, it has been adopted the concept of 'epidemic threshold', which is used to characterize the critical condition above which an epidemic occurs (Wang *et al*., 2016), anticipate a potential escalation and timely design immunization strategies to contain disease outbreaks (Cator & Van Mieghem, 2012).

1.2.2 Epidemic threshold [of violence]

The epidemic threshold quantitatively defines the critical level above which the later stage of an outbreak will evolve into an 'epidemic' (Patten, 1999; Peng *et al*., 2010; Ben-Naim & Krapivsky, 2012; Boguñá *et al*., 2013; Yang *et al*., 2015; O'Dea *et al*., 2018; : Barnard *et al*., 2019; Rakocevic *et al*., 2019). The concept has been adopted in a large number of national monitoring programs, as it is substantially important for public policy and public health authorities in facilitating the design and implementation of immunization strategies and control

measures (such as vaccination, interception of etiologic agents and confinement, typically applied to prevent a disease to spread).

In 1996, for instance, the UK Department of Health adopted an administrative directive that would oblige public health authorities to declare an epidemic if the rate of consultations for flu-like symptoms exceeds 400 per 100,000 population in one week (Green *et al*., 2002: 4). The threshold was thus set in 400 cases. Other agencies, such as the UNHCR have also set thresholds to monitor communicable disease outbreaks in refugee camps and other designated spaces for asylum seekers and people of concern. For the UN agency, epidemic thresholds indicate the level of incidence above which a disease requires an urgent response as they become particularly dangerous to the population's health. However, each disease has a specific threshold that depends on its infectiousness, other determinants of transmission, and the degree to which it is locally endemic (UNHCR, 2020). Under national epidemiologic surveillance programs, some thresholds are set based on the historical baseline of occurrence. According to Green *et al*. (2002: 5), in case of new-born diseases or in any event where a historical baseline is lacking, a clear temporal increase in the incidence of the disease could be sufficient to declare an 'epidemic' in order to recruit the resources necessary for controlling the event.

For Wang *et al*. (2016: 1), quantifying an epidemic threshold allows epidemiologists to determine the effectiveness of a given immunization strategy, which in case is successfully implemented, will drive the epidemic curve towards minimum levels of contagion. Below the threshold, the infection cannot maintain itself, and in some cases it might reach an endemic stage; above the threshold, the infection can exponentially take off and the immunization strategy will require further reinforcement (Ben-Naim & Krapivsky, 2012: 1). In essence, the whole idea behind the threshold is to attempt identifying whether a pathogen might evolve into a major outbreak.

Thresholds are calculated based on the mathematical-statistical models of disease analysis. Specialists as Ball (1983), Hincapie *et al*. (2008), Kaufman *et al*. (2008), Ben-Naim & Krapivsky (2012), Wang *et al.* (2016), Vette *et al*. (2018), O'Dea *et al.* (2018), and Barnard *et al*. (2019) have published studies that attempt to calculate thresholds of diseases such as flu and measles. However, Wang *et al.* (2016: 1) note that they tend to produce differing results and their relative levels of accuracy are still unknown (see also Hartfield & Alizon, 2013). According to Yang *et al.* (2015) the threshold depends on many factors, including the structure

of the underlying network of contacts, the heterogeneity in the host population, and behavioral responses to the disease.

The epidemic threshold of violence, in this sense, may refer to the level of violence within a territory above which susceptibility and risk of victimization might exponentially increase, in a way that the capacity of the state to control might be insufficient to contain and mitigate its transmission and diffusion in the short or medium term. Just as in epidemiology, it indicates the level above which it is required an urgent response. However, such threshold may vary in each country as variables such as baseline of crime occurrence, occurrence increase rate, probability of transmission from infected to susceptible nodes, probabilities of victimization and size of population, also vary (Wang et al., 2016; UNODC, 2019).

When we speak about contagion of violence we cannot assume that levels of violence under the threshold will not propagate, although control measures (defined in terms of violence prevention mechanisms, law enforcement capacity and preservation of 'healthy' community relations) will be more likely to succeed on preventing a larger escalation. On the contrary, lack of intervention may lead to situations such as impunity and inefficiency of justice procurement, which may marginally prompt higher levels of violence.

Numerous documents and media haver referred the World Health Organization established that 10 homicides per 100,000 population can be declared as epidemic violence (World Bank, 2010; PNUD, 2013). This threshold would entail that by 2017 at least 38 countries around the world would be qualified under such situation. However, such reference lack of methodological support. There is no single reference made by the WHO that may neither empirically nor statistically support the reason why such threshold was defined (Scelza, 2019; UNODC, 2019). Establishing a global threshold would require readapting epidemiological surveillance methods to analyze variables and conditions over which a country's violence control mechanisms are no longer effective.

Furthermore, defining an epidemic threshold may facilitate distinguishing quantitively a collective risk of victimization and how exposed an individual can be to violence and, marginally, identify the main the implications of epidemic violence for development and law fields. The idea of defining the threshold for violence denotes the fact that its epidemic features might be traced during earlier stages, by conducting a prospective, mathematical analysis on the potential of scalation. However, what remains to be addressed is whether the use of numerical data to predict possible future scenarios might be used in law? Judicial practice

seems to be reluctant to adopt these rationales in decision-making, although open to consider so.[4]

In a context of epidemic violence, where contagion patters remain unattended by the state, the likelihood of violence and criminality to propagate indicate increasing patterns and the idea to define an epidemic threshold is to understand the potential moment in which urgent action might be required. Therefore, it is worth it to explore whether state negligence to address such form of violence might be subject to any form of liability. Under international refugee law, it is widely recognized that risk of serious harm caused by state negligence is typically not linked to convention grounds, if the state is unable to adopt measures to fight, in this case, epidemic violence. However, the question that remains unaddressed is whether the state actions may lead to disproportionate levels of violence, when deliberately neglecting legal responsibilities to protect due to corruption and infiltration of organized crime networks? Some consideration will be highlighted throughout the following sections.

[4] See, for instance, the partly dissenting opinion of judge Zupančič in the first decision of the ECtHR on the case *J.K. and Others v. Sweden* (2015, application No. 59166), where he discusses whether statistical data can be used to predict or speculate the materialization of a risk of harm upon refoulment, in support of judicial decisions.

Chapter 2. Internal Protection Alternative: conceptual remarks

During the 1980's and towards the end of the Cold War, Western 'developed' states, notably in Europe, began to face serious challenges on the governance of migrations; an increasing number of people displaced from Eastern Europe and other former socialist countries, lead states to the implementation of policies attempting to restrict the application scope of the 1951 Geneva Convention (UNHCR, 2000; Hathaway & Foster, 2003; Chetail & Bauloz 2013; NOAS, 2018). By the end of the 1980's, it became increasingly common to invoke IPA as a mechanism to question the legitimacy of asylum claims and adopt it as a ground for decide on the applications as manifestly unfounded (UNHCR, 1995: 51). It became, in a way to speak, a legal resource fashioned by states as a discrimination test to "vindicate an increasingly restrictive global refugee policy" (Aldenhoff *et al*., 2014: 17; see also Ní Ghráinne, 2020).

Despite the concept of internal protection alternative is not explicitly referred to in the qualification criteria formulated within the Convention (Marx, 2002), it is rooted in particular interpretations of its provisions and the relevance of its application rises, naturally, as part of refugee status determination.

Traditionally, in state practice, the application of an IPA inquiry intended to reveal the security and safety conditions in a given region or territory within the claimant's country of origin, in order to assert whether under such conditions an individual may no longer face a risk (typically defined by the act of persecution). However, this approach has been accused of insufficient, as it excludes other considerations provided by the Convention. Other approaches have raised, from a 'national protection' and a broader human rights perspective, to determine whether a relocation alternative is not only feasible but appropriate, challenging states' narrowed interpretations seemingly adapted to particular interests of hosting countries.

IPA inquiries typically rise in situations where the risk of persecution or serious harm is perceived to be localized, and tends to be controversial in cases associated to warfare, internal or international armed conflicts, where such risk might potentially spread away from the original area of conflict (Shultz, 2019b: 1). Therefore, the mere idea of existence of an IPA drives inherently to the assumption of absence of violence and insecurity in at least one part of the country of origin (UNHCR, 2003; Ní Ghráinne, 2020). Such condition, nevertheless, is conceived and construed differently in every jurisdiction, and the standards associated to the

absence of risks vary in a wide-ranging spectrum between 'minimum safety conditions' and 'minimum living conditions.'[5]

In order to prevent ambiguities and generalizations of country conditions, and serious shortcomings on case decisions, IPA inquiries should ideally identify a geographical space considered, per each country's legal standards, as 'safe'. It is, theoretically, a precondition to initiate the inquiry (UNHCR, 2012: 19). However, the mere identification of a potential relocation alternative is not sufficient. An analysis of the personal circumstances and specific needs of the claimant, as well as the reasons that led the individual to opt for a second or alternate displacement (if relevant) should be integrated. The considerations and standards applied for such examination, however, are frequently unclear and vary from one state to another. The use of IPA, as consequence, has been accused of creating a false assumption of national safe conditions and a rhetoric of "relative security" upon countries of origin as a strategy to neglect international protection obligations.

For the purpose of the present section, it will be, firstly, discussed the standards, tests and elements of analysis proposed by two subsidiary instruments of interpretation: the UNHCR's Guidelines and the 'Michigan Guidelines'. Secondly, it will be reviewed some of the standards set by the European Court of Human Rights (ECtHR), and the European Union through the Qualification Directive. It will be intended to highlight the most significant components of IPA assessment, in order to understand key elements potentially applicable to a context of 'epidemic violence'.

Several analyses on the historic evolution of IPA, procedural standards, legal foundation and legitimacy of IPA as an element for international protection qualification have been made, nurtured by the practice on different jurisdictions (see Storey, 1998; Sanders, 2009; UNHCR, 2012; Mathew, 2013; Aldenhoff *et al*., 2014; Honkala, 2015; CMPDDH, 2017; Shultz, 2019). A number of discussions on these issues have been conducted, and despite the interpretative divergence and lack of common ground on several issues, analysts generally agree and deem clear on the fact the Geneva Convention is a general, basic standard that grants states a margin of appreciation to design, set and apply specific criterion.

[5] For instance, Aldenhoff *et al.* (2014: 67-68) report evidence that in European jurisdictions, before the adoption of the Recast Qualification Directive, a general lack of specific standards and criteria used to assess these conditions was evident, varying from the non-existence of "general hardship" (Austria), such as starvation, epidemics, environmental or similar natural disasters, to psychological considerations on the impact of moving and living in a new location (Belgium and Germany).

As such, this chapter does not intend to discuss whether an individual should be deemed admissible for international protection when an internal flight alternative is possible, nor to analyze whether an IPA test should or should not be used as a ground for refusal within admissibility or assessment criteria. Rather, the idea is to [briefly] highlight the standards set by some international instruments and European institutions in the applicability of IPA at national level, and discuss some of the notions that states adopt when applying an IPA inquiry.

2.1 The UNHCR and "The Michigan" Guidelines: a general overview

As result of the interpretative diversity inertially created by the Geneva Convention's inaccuracy, and the heterogenous application of standards based on domestic, discretional parameters, a few efforts to draft a set of qualitative criteria were put into place to provide some sort of legal transparency: two subsidiary, non-binding instruments of interpretation were drafted (Ni Ghrahinne, 2015: 17). The first one, created in 1999 by a group of scholars from the University of Michigan led by the American jurist James Hathaway, commonly known and "The Michigan Guidelines", intended to draft a set of relevant substantive and procedural standards that recognize the legal plausibility of internal protection alternatives (Hathaway & Foster, 2003: 358).

A second instrument, drafted by the UNHCR in 2003, originally conceived as a supplementary instrument to the "Handbook on Procedures and Criteria for Determining Refugee Status" edited in 1979 by the same agency, intended to provide an interpretative guidance for IPA application, becoming eventually one of the core, essential documents for party members to frame and construe the Convention's provisions within common legal and moral expectations.

Both instruments agree that a relocation alternative can be assessed from two different approaches set by substantive components of the 'refugee' definition enshrined in the Geneva Convention: as an element related to a 'well-founded fear of persecution', or as an element related to 'domestic protection' (see also Aldenhoff *et al*., 2014; Shultz, 2019).

Up until the 1990's, relocation alternatives and the assessment of state protection were defined by the absence of a risk of persecution was established and, according to Hathaway (1999: 135), both the risk of persecution and availability of countervailing protection were traditionally assessed simply in relation to an asylum seeker's place of origin, i.e. evidence of

a “sufficiently serious risk” in that part of the country tended to be construed as the existence of a well-founded fear of persecution in the entire territory. On the other hand, the absence of a reasonable risk of persecution in the place of origin did not lead to further examinations on the existence of risks in other regions of the country. The absence or existence of the risk was construed in a country-wide basis, and a differentiated spatial parameter was not assimilated.

The notion of risk of persecution has evolved in contemporary practice to incorporate regionalized variations of it. Under recent practices the relocation alternative, as well as the well-founded fear of persecution, began to be defined by the existence of a region where the risk of persecution could not be extended. However, such notion of IPA evolved into the integration of a “national protection” inquiry, which attempted to reveal, in principle, the availability of state protection in the country of origin.

On a case brought to a New Zealand’s Court (Refugee Appeal, No. 71684/99) in 1999, it was recognized for the first time that the analysis of the refugee definition was too often focused on the issues of persecution and the Convention reason, notwithstanding the fact that the fundamental concept on which the Refugee Convention is based is the notion of “protection”. Throughout recent decades, states have switched perceptions and opted to recognize the existence of a nexus between IPA with both requirements (Ni Ghrahinne, 2015: 4).

An IPA inquiry from the ‘well-founded fear’ approach attempts to conclude whether the presumed acts of persecution or risk of serious harm may prevail over a reasonable territorial extent that prevent the individual from relocating into other regions (see Storey, 1998: 518). It implies, essentially, the existence of a territorial space where the persecution ceases and the claimant, therefore, is no longer at risk (Sanders, 2008). Hathaway & Foster (2003: 369-70), however, elucidate two negative consequences of anchoring IPA analysis within the well-founded fear umbrella: firstly, it has led some States and courts to assert a requirement that the applicant establish a ‘country-wide persecution’. Such requirement imposes an extremely onerous burden on refugee applicants, a burden that is exacerbated by the many practical restrictions applicants often suffer in being able to obtain access to sufficiently precise and comprehensive country information. Secondly, conceiving IPA as part of the initial inquiry of existence of a well-founded fear of being persecuted encourages decision makers to pre-empt the analysis of well-founded fear in the first region by moving directly to the question on the relocation alternative, disregarding the analysis on the persecutorial act, the ground for protection and the subjective-objective fears. As consequence, it has been widely suggested

that “IPA should only be examined after it has been established that the applicant has a well-founded fear of persecution or faces a real risk of serious harm and that the authorities or other relevant actors of protection are unable or unwilling to protect him or her in his or her home area” (EASO, 2019)

On the other hand, IPA inquiries conducted from a ‘domestic protection’ approach attempt to conclude whether a claimant was able to access state protection in the territory identified and that such protection can be extended upon removal. The reasons why an individual decides to not avail of state protection, or is unable to do so, are an essential component the Convention requires (Fortin, 2001). The case *Minister for Immigration & Multicultural Affairs v. Savvin* (Australia, 2000) makes an important distinction: claimant “must be either unable or unwilling to avail himself of the protection of that country […] If, although able to avail himself of that protection, he is unwilling to do so, his unwillingness to do so must also be owing to that fear.” It is, in this sense, considered necessary to evaluate the effect of the acts of persecution and the ‘fear’ an individual associates to it, over the decision to avail themselves under state protection, if any. The notion and elements of what is consider ‘domestic protection’ for Courts, therefore, play a defining role to determine the legitimacy of the decision made by the claimant (and prevent it is interpreted simply as an unwillingness rather than a legitimate inability). Such discussion will be addressed in section 3.1.3.

However, what it is important to understand for an IPA inquiry is that the unwillingness or inability to avail of domestic protection should also be assessed in a prospective manner. An IPA inquiry is, in this sense, intrinsically related to the principle of *non-refoulement*, which in judicial practice has been traditionally associated to the assessment and determination of a potential risk to be subject to serious harm (notably in forms of torture or ill-treatment) that an individual may suffer upon removal to the country of origin. Such evaluation implies that the analysis of risks must be conducted prospectively, i.e. considering variables of a future event (Le Fort, 2018). IPA assessment, therefore, ideally requires an accumulative evaluation of the availability of protection and risks experienced in the country of origin at the time of displacement and upon removal (Storey, 1998; Hathaway, 1999; UNHCR, 2003; EASO, 2019). In other words, it requires a double spatial and temporal assessment parameter

Under some jurisdictions (such as Canada), however, Storey (1998: 508-509) has observed that in cases where individuals have experienced persecution, it is often seen as probative of a future risk, which means that an IPA analysis at this level may no longer be required. In other

jurisdictions (Europe), on the contrary, it has been suggested that and IPA inquiry should be more associated to the assessment of the future risks of, based on an already established well-founded fear of persecution and in accordance with the principle of *non-refoulment* (EASO, 2019).

What is certain is that states have adopted different conceptions on how 'protection' should be understood under the Convention's framework. On a broader sense, it is associated to legal responsibilities. It is possible to observe that authorities may analyze whether an internal relocation is feasible and reasonable based on specific normative and institutional frameworks, such as the existence of law-enforcement institutions and judicial bodies. However, laws and mechanisms for domestic protection do not entirely reflect the State's willingness to protect unless they are given effect in practice (UNHCR, 2003).

Additionally, from this perspective, it is also possible to observe how certain country conditions, such as socioeconomic elements, security and human rights protection mechanisms are analyzed, in junction with the claimant's personal circumstances. A number of factors intersect, and the two instruments reviewed provide closer approaches on how to do it.

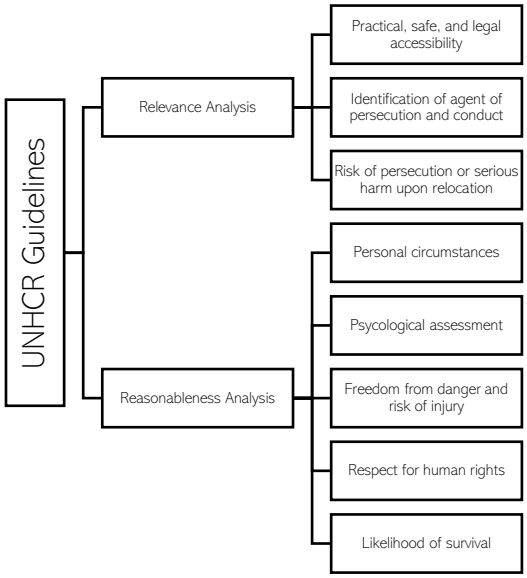
2.1.1 The UNHCR's Guidelines, 2003

The UNHCR (2003) considers necessary to conduct two main sets of assessments a: "relevance analysis" and a "reasonableness analysis" (figure 6). While the former focuses mainly on the evaluation of risks associated to the act of persecution and the accessibility to a "safe" space, the latter provides some considerations on personal and environmental risk factors, particularly those related to social and economic conditions, that may aggravate the risk of persecution or represent additional obstacles for the claimant to relocate.

Concerning the 'relevance analysis', the guidelines evoke a set of three assessment factors: (1) whether the area of relocation is practically, safely, and legally accessible to the individual; (2) whether the agent of persecution is the State or a non-State agent; and (3) whether the claimant could be exposed to a risk of being persecuted or other serious harm upon relocation.

A number of subcomponents and scenarios are proposed on each cluster, that essentially attempt to assess whether the 'agent of persecution' and the risks derived from the [potentially continuing] actions perpetrated by the agent, in a region initially considered 'safe', will persist.

Figure 6. UNHCR Guidelines



Source: Personal collection, based on UNHCR (2003)

Firstly, regarding the accessibility component of the area of relocation, the evaluation must consider any legal and physical obstacles an individual may encounter while reaching the so-considered "safe" regions. The claimant must bear a lawful right to "travel, enter and remain" in the proposed area, and such area should not be associated to a context that may physically impede the relocation presently and prospectively, such as armed conflicts, mine fields, blocked roads, or any potential danger to be subject of an offense, such as banditry, harassment, sexual violence, by the presence of criminal gangs or militias. This is rather a logistic concern and if the claimant must travel through an area facing such risks, the relocation should be excluded.

Secondly, for the UNHCR (2003), the identified 'safe' territory is defined in terms of the acts committed by the persecution agent, and the analysis proposed is based on the fact that the claimed fear of harm caused by the agent cannot materialize in such territory. The guidelines deem essential to determine that the "reach of the agent of persecution is likely to remain localized and outside the designated place of internal relocations" (UNHCR, 2003: 4). Acts of persecution committed by state agents may lead to the assumption of its presence throughout the entire territory. Therefore, if the agent of persecution is the state, or the "feared harm" emanates from a condonation, tolerance or acquiescence of state agents, a relocation alternative is not available, as it might be presumed they exercise authority in all parts of the country (see also Storey, 1998: 508-509; Luopajärvi, 2003). This is considered, however, a more traditional interpretation by some scholars such as Chetail & Bauloz (2013: 169) and has been accused of being relatively insufficient, even simplistic, as it does not consider regionalized or decentralized state power structures and the capacity of persecution of different levels of government (Hathaway & Foster, 2003).

This approach had been adopted by some judicial bodies within European jurisdictions (Aldenhoff *et al*., 2014: 66). However, it could be hard to say this perspective is a general rule.

In the case *Januzi v Secretary of State for the Home Department* (United Kingdom, 2006), for instance, the court found that it is not possible to conclude the inexistence of a relocation alternation based on the presumption that the state can act throughout its entire territory and recognized that a wide variety of factors must be assessed before excluding an IPA.

If the agent of persecution is a non-state agent, it would be required to identify whether the acts were committed while the state was aware of such situation, determine that its presence is clearly circumscribed into a specific area and assess whether there exists a risk for its operations and actions to extend into the proposed relocation area (UNHCR, 1995b). In this sense, Luopajärvi (2003: 67), notes that "in situations where serious harm is inflicted by private persons on the instigation of the state, or where such acts are condoned or tolerated by the state, the state is considered to be unwilling to offer protection." However, it will be necessary to assert that the act committed against the claimant is severe enough to amount for persecution.

Under the third component, the Guidelines propose to consider "new elements" of risk that an individual may face in the proposed area, such as risks to life, safety, liberty, health or to suffer discrimination. This entails an evaluation of potential acts committed by other agents, or potential risks of serious harm non-related to the original act of persecution. It also requires an evaluation of social or political conditions that may potentially suppress or deprive the claimant from political or civil rights, as a lack of protection or access to such rights will pose additional barriers that may raise doubts on the plausibility on the relocation. A relocation alternative should not compel the claimant to go into hiding, abandon their beliefs, or hide to avoid persecution; it is not about finding out if there is any way the applicant can prevent being harmed (CMPDDH, 2017: 36).

Risks in the form of lack or obstruction of rights may not be related to the concerning act of persecution. However, the evaluation of the social and politic circumstances in the proposed relocation area may highlight the degree of access and integration the claimant may perform. This perspective is nowadays associated to a human rights dimension on the evaluation of relocation alternatives that will be discussed in the following sections.

The "reasonableness analysis" examines the appropriateness and feasibility of an IPA by addressing the question of whether an individual "could reasonably be expected to move to the proposed area to overcome his or her well-founded fear of being persecuted" (UNHCR, 2003: 5). The notion of IPA under this perspective relies in two elements: the realistic and rational

possibilities of individual to relocate, and the conception of IPA as a territorial space where it is possible to surmount and repair past harms.

The UNHCR, in this sense, suggests five elements to determine whether an IPA is "reasonable" or not, based on a required absence of "undue hardship" and presence of "meaningful protection":

(1) The personal circumstances of the claimant, such as gender identity, ethnicity, political affiliation, religious practices, disabilities, or any other feature that may result in isolation or discrimination, may facilitate or hinder the relocation depending on the general conditions in the proposed area. A cumulative analysis of these circumstances may facilitate the identification of specific needs and determine whether the state of origin may offer or make available adequate measures of protection.

(2) The psychological assessments on the effects of past persecution can attest the likelihood of further psychological trauma upon return. In this sense, the traditional physical conception of harm is no longer exclusive.

(3) The existence of durable safety and security, referred by the UNHCR as "free from danger" and non-existence of "risk of injury". The expected safety conditions in the relocation alternative should be sustainable and the claimant should not be subject to any unpredictable risks, such as outbreaks of violence or escalations of political conflicts.

(4) Conditions of respect for human rights standards, particularly considering that a possible deprivation or failure to protect some rights, especially non-derogable, would be sufficiently harmful to render the area an unreasonable alternative; the Guidelines, however, lack of precision on the degree of tolerance allowed towards lower protection standards in countries of origin, and endorse domestic discretion to set a threshold. In the case *Januzi* (UK, 2006, par. 15), for instance, the court decided that an IPA assessment should not be conducted by comparing the conditions in the proposed area of internal relocation to international human rights law standards or the conditions in the country of refuge, since the Geneva Convention does not explicitly speak about the rights in the country of their nationality of claimants who may be able to relocate.

The human rights dimension on the evaluation of relocation alternatives was firstly introduced by James Hathaway on the "Michigan Guidelines". However, the UNHCR has traditionally advocated for the protection of civil, politic and even socio-economic rights as a core

component to invoke a relocation alternative (Ni Ghrahinne, 2015: 3; see also Mathew, 2013). Despite unpopular, some jurisdictions have raised this discussion and recognized the importance of incorporating a human rights perspective on IPA inquiries as it has been underpinned by the High Commissioner (e.g. *Januzi v. Secretary of State for the Home Department,* 2006, UK). There are open discussions and a wide variety of criteria applied to define the appropriateness of such perspective, some even referring to hierarchical differentiations on the importance of certain rights. However, it is a fact that, despite at different levels, an evaluation of living conditions in terms of accessibility to human rights, is often considered as a relevant component for IPA inquires (EC, 2019).

(5) As part of the last component, the High Commissioner suggests assessing the likelihood of economic survival. Here, an analysis of potential social and economic integration is quite relevant, particularly in terms of accessibility to basic goods and public services. Some elements should be considered such as access to accommodation and adequate medical care (defined in terms of the individual's specific needs and circumstances). However, the UNHCR (2003: 7) notes that "a simple lowering of living standards or worsening of economic status may not be sufficient to reject a proposed area as unreasonable. Conditions in the area must be such that a relatively normal life can be led in the context of the country concerned." This perspective follows the same rationale from the *Januzi* case (2006), since standards of protection of human rights and "adequate" living conditions are significantly different in each and every country; it would be, therefore, legally and logistically unascertainable to set a universal threshold to define a territory as "livable" (see also Ni Ghrahinn, 2015: 9).

It is important to consider that an assessment on the country of origin conditions must be conducted from the best possible standards. Ideally, even though human rights protection mechanisms, accessibility to public basic services and potential integration of the claimant are lower in the country of origin, the standards applied to assess the relocation alternative should under any circumstances contradict the standards applied in the hosting state.

The 'reasonableness analysis' has been accused by some scholars like Penelope Mathew (2013) and Jessica Shultz (2019: 103) of weakening its potential to perform as an inclusive framework for IPA application due to the lack of clarity in the legal bases, a wide scope for the individual decision-maker's discretion and the consequent lack of coherent application in state practice. However, is has serve to many jurisdictions to clarify minimum requirements to establish the existence of an IPA.

2.1.2 The Michigan Guidelines, 1999

The Michigan Guidelines were designed based on the presumption of "existence of a well-founded fear of persecution for a Convention reason in at least one region of the asylum seeker's state of origin, and hence on a presumptive entitlement to Convention refugee status" (Hathaway, 1999: 137). According to Hathaway, the applicability of an IPA inquiry would ideally depend on the verification of a well-founded fear of persecution, i.e. refraining from using IPA inquiries to conclude whether exist or not a well-founded fear. However, this condition has not yet become a common rule in several jurisdictions.[6]

The Guidelines are conceived as a tool for governments to establish the existence of a relocation alternative. Their main purpose is to provide a perspective on the assessment and applicability of internal relocation alternatives, placing the notion of 'domestic' or 'national protection' at its very core.

Existing literature often acknowledge the Geneva Convention is silent on the definition of such concept (Steinbock, 1999; Shultz, 2015; Ni Ghrahinne, 2015). This feature has constantly raised questions on what 'national protection' means, and who can provide it. In contemporary refugee law, assessing the absence or presence of protection in the country of origin becomes one of the most relevant elements of analysis for qualification; as such, the Guidelines readapted the notion of relocation alternatives not only as geographical spaces absent of persecution, but as territories where the availability and access to state protection will define its adequacy for hosting individuals claiming a fear to be harmed.

The Guidelines adopted an approach raised previously by James Hathaway and Michele Foster in "The Law of Refugee Status", published in 1991, concerning two inquiries: Can the refugee claimant genuinely access 'meaningful' domestic protection? And, is it reasonable, in all the circumstances, to expect the refugee claimant to relocate elsewhere in the country of nationality?

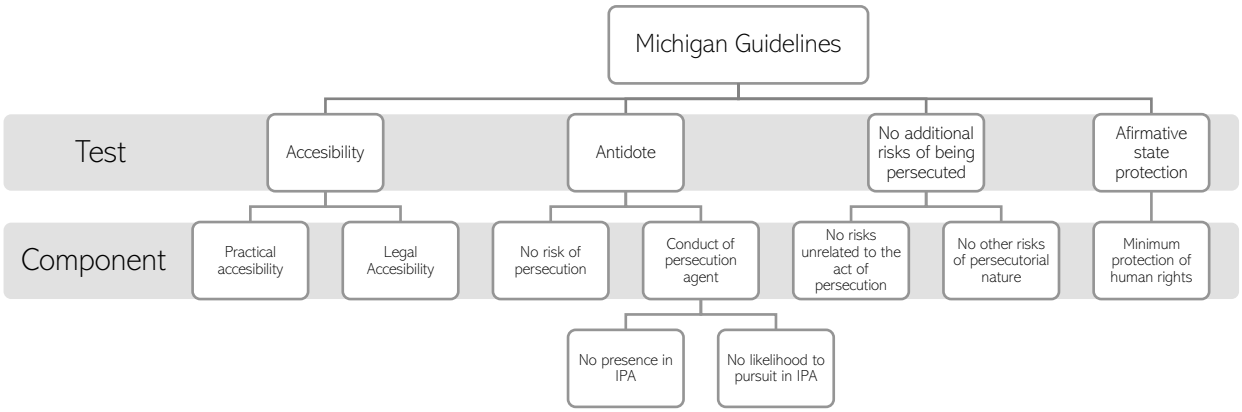
The analysis on the 'meaningful' dimension of protection, according to Hathaway (1999: 135), should not only be based on whether the risk of persecution can be avoided upon relocation,

[6] The Michigan Guidelines became one of the first documents to explicitly reject the use of IPA as an argument to deny refugee status. According to Hathaway, the rejection of an asylum claim should be made primarily in consideration of the merits, regarding the claimed risk and fear of persecution, and not on the basis of an internal relocation alternative.

but also on whether the territory identified for potential relocation can be considered "safe" enough for the claimant to have avoided departure from their country of origin (condition that semantically indicates rather an internal "flight" alternative). The safety component, in this sense, can be read as the result of a functioning normative and judicial structure that, from a legal perspective, is defined by the adoption of national and international obligations. The link between the operative expectation of protection and the safety requirement of the relocation alternative was found by Hathaway on a human rights component.

The first version of the Guidelines presented in 1999 at the "First Colloquium on Challenges in International Refugee Law" proposed three interrelated tests (or limbs). In a second version published in 2003 by Professor Hathaway and her colleague Michelle Foster, a fourth element was added. They are cumulative and defined as steps forming part of a whole process (fig. 7).

Figure 7. Michigan Guidelines standards



Source: Personal collection, based on Hathaway & Foster (2003)

The first (accessibility) and second (antidote) elements, resemble in a sense the components referred by the UNHCR Guidelines. Accessibility to the relocation alternative must be practical and through lawful means, in consideration of the physical risks entailed in the process of travel to or entry into the proposed area. And it should be considered an "antidote against the primary risk of persecution", i.e. the relocation alternative should play a role as a palliative to prevent the risk of persecution to persist. According to Mathew (2013), it not only requires a break of continuum of persecution, but a repair. An absence of risk of persecution is required. However, small possibility of persecution is not enough to refute the relocation alternative (Hathaway and Foster, 2003: 392).

An assessment of the agent of persecution's activities and capacities is considered the main component at this level, and the determination of a "significant risk" can be determined based

on (a) the ability of the agent of persecution to be present in the IPA, which requires to identify that the agent of persecution has not yet established presence in the proposed site of internal protection; and (b) the likelihood of persecution in the IPA, i.e. the agent must be likely to remain localized outside the designated place of internal protection two elements (Hathaway & Foster, 2003: 393).

The analysis resembles a 'well-founded fear' test and it becomes quite relevant in claims where the act persecution does not provide a nexus with one of the Convention grounds. If a claim, at this level, provides enough subjective and objective indications to demonstrate a well-founded fear, even if non-compliant with a convention reason, an assessment on the degree of risk and the proportional "safety" expectations in the area of potential relocation should also be applied in order to determine whether an IPA can lawfully be invoked to reject the claim or consider other forms of subsidiary protection.

The third element is the existence of no additional risks, notably those unrelated to the original act of persecution, in the proposed area of relocation. Such requirement entails that the fear of persecution should not be replaced by other kind of risk at individual or collective levels, such as risks of "generalized serious harm".

As opposed to the UNHCR Guidelines, Hathaway & Foster did raise a question regarding relocation alternatives where claimants might be exposed to risks of serious harm associated to generalized forms violence or even extreme economic deprivation (for example, lack of food, shelter, or basic health care), which are typically non-compliant with a Convention nexus (Hathaway and Foster, 2003: 401). The Guidelines suggest that regardless of whether the original act of persecution is related to a Convention ground, an IPA test may still fail if it is to conclude that the additional risks to encounter in the area of relocation may fall within the "realm of persecution" or presume a high degree of intensity. The key element under these circumstances is the fact that, ideally, a well-founded fear has already been satisfied [regardless whether it can be associated to a Convention reason or not]; therefore, should the competent authorities conclude the existence of serious additional risks, the inquiry to be conducted as consequence will lie on other possible grounds for exclusion from refugee status.

In cases where the additional risks of harm falling short to persecutory conduct, an issue that can be, nevertheless, subject to controversies is the applicable criteria to determine whether such risks are egregious enough to exclude a possible relocation. Hathaway & Foster (2003: 403), in this sense, suggest to rely on a "reasonableness" inquiry: would [the claimant] in fact

be exposed to the risk of return to the place of origin if required to accept an IPA instead of his presumptive entitlement to asylum abroad? They suggest that under the 'reasonableness' analysis, "an adjudicator might question why a person will ever return to a home region if they truly have a well-founded fear of being persecuted in that region?". The feared harm, which can be present at personal, collective, security, legal, economic or even environmental dimensions, may meet or even surpass the original fear's intensity, tempting thus to satisfy the test.

2.1.3 Human Rights and 'internal protection'

A number of references and debates about the relation between human rights and the notion of 'domestic protection' have been raised by the international organizations, scholars and judicial bodies (see for instance Fortin, 2001; ECRE, 2005; Mathew, 2013; Aldenhoff *et al.*, 2014). Most of the discussions are associated to the protection of absolute rights, such as prohibition of torture and ill-treatment, as "the minimum" human rights standards. However, a comprehensive approach to the human rights perspective seems absent, or at the very least fragmentated and hierarchized.

Reports about the rejection of asylum claims on the grounds of internal protection alternatives and observation of removal proceedings that might have result in exposure to human rights violations have strongly raised questions about the significance of this perspective as part of the qualification process (see Siddiqui *et al.*, 2008; Amnesty International, 2017; Stillman, 2018; AHRDO, 2019; Acevedo & Kaplan, 2020; BCO, 2020). Some scholars, such as Ni Ghrahinne (2015: 4), have asserted that protection of human rights constitute an "ingredient of effective protection" from the persecution feared and a preventive measure to exclude additional harms when considering the possibility of refoulement.

The UNHCR Guidelines attempted as well to incorporate a human rights component, focused especially on the protection of civil rights within the 'undue hardship' test. However, in 1998, Hugo Storey suggested it was necessary a more systematic application of a human rights approach rather than preserving the unsatisfactory 'undue hardship' test, as he considered that it does not have a sufficient linkage to human rights criteria. The reason for him was the fact that "only a human rights approach offers the definite prospect of a test that can be objectively justified in terms of universally recognized international standards" (Storey, 1998: 530).

The Michigan Guidelines certainly attempted to define a standard for human rights considerations under the substantive components of the Geneva Convention. The fourth element on the Guidelines is related to the existence of a 'commitment for affirmative action' to provide protection in the country of origin. Such notion *prima facie* indicates two requirements: (1) the existence of a state commitment to act; and (2) such commitment ought to aim the implementation of measures and mechanisms to provide protection against the persecutorial act. According to Hathaway (1999: 139) such commitment to act should be assessed in terms of the sufficiency or insufficiency of "internal protection", as required by the standards and scope of the protection that refugee law guarantees.

There exists consensus among scholars and judicial bodies that protection in the proposed area must offer at the very least safety from persecution or serious harm (Aldenhoff *et al*., 2014). However, Hathaway & Foster (2003: 405) consider that "… 'protection' is not simply the absence of the risk of being persecuted […] it clearly implies the existence of some affirmative defense or safeguard", yet they do not provide enough clarity to understand 'national protection' under the umbrella of international refugee law.

In the 1999 Guidelines version, Hathaway (1999: 139) suggests that "internal protection ought to satisfy the affirmative, yet relative, standards set" in the 1951 Convention's preamble, related to the standards provided by other international human rights instruments and the acknowledgment that individuals shall enjoy fundamental rights and freedoms without discrimination (see also Storey, 1998). The case *Januzi* (UK, 2006, par. 16), however, challenged Hathaway's perspective:

> *"... the preamble to the Convention invokes the Charter of the United Nations and the Universal Declaration of Human Rights, and seeks to assure refugees the widest possible exercise of the fundamental rights and freedoms affirmed in those documents. But the thrust of the Convention is to ensure the fair and equal treatment of refugees in countries of asylum, so as to provide effective protection against persecution for Convention reasons. It was not directed (persecution apart) to the level of rights prevailing in the country of nationality."*

The Court found that the 1951 Convention referred in essence to the notion of expected protection in hosting countries, instead of a standard of national protection in countries of origin. Hathaway's approach, nevertheless, did provide a suggestion to scrutinize equal access to rights as protection standard based on an interpretation of the Convention's preamble, as opposed to the UNHCR, whose proposal to scrutinize equal treatment relied merely on the reasonableness test and, therefore, on state discretion.

In the 2003 Michigan version, Hathaway & Foster (2003: 409) added that the concept of 'national protection' must satisfy the notion of rights enshrined in the articles 2-33, from which decision makers should only take inspiration to define "an endogenous notion of affirmative protection in the refugee context." Such position had been already endorsed by the European Council on Refugees and Exiles (ECRE, 2005) and some commentators argue that "since the Convention describes a set of substantive rights that constitute international refugee protection, the protection provided by an IPA must enable access to a similar set of rights" (Aldenhoff *et al*., 2014: 28). Such position appeals once again to state discretion and provides a moral, rather than a legally-based suggestion. This would entail, therefore, the application of a higher standard that putative states are reluctant to adopt.

Hathaway's entire perspective attempted to refer to a 'minimum acceptable level of legal rights inherent in the notion of protection', a notion that implies merely scrutinizing a minimum virtual commitment for respect human rights instead of state actions. However, reigning refugee law would require rather a 'minimum acceptable level of human rights protection', a more comprehensive approach to understand and scrutinize the functionality of a state apparatus in terms of the operativity and results of a system of protection of individuals, instead of statutory standards and virtual mechanisms or policies.

Some jurisdictions have moved towards the conception of 'effective protection', which according to ECRE (2005: 6) it requires respect for and enjoyment of civil, political, economic and social rights. Mere absence of a threat to life, torture or inhuman and degrading treatment is, nevertheless, insufficient (Aldenhoff *et al.*, 2014: 31). Antonio Fortin (2001: 552), despite not attempting to provide an overview about the effectiveness component, does approach to it by considering that:

> *"[protection] is provided through measures and mechanisms designed to establish the rights of the person and at setting up mechanisms to ensure that these can effectively be claimed and exercised, prevent the violation of the person's rights, and provide remedies where such violation occur. Protection within the territory may, thus, be promotional, preventive or remedial in nature, and implies the existence and effective functioning of administrative and judicial structures, as well as the existence and effective functioning of mechanisms and procedures for the investigation, prosecution and punishment of violations of the person's rights."*

As opposed to Hathaway, Fortin moves towards a more operational, rather than virtual conception of state actions that merely rely on its commitments, and adds to the notion of protection a requirement of existence of operative mechanisms to claim and exercise human rights, and repair violations.

Fortin's approach leads to a conception of 'protection' in terms of state obligations and evokes four responsibilities different in nature: respect, guarantee, prevent and repair. A similar approach was made by the Mexican Commission for Defense and Promotion of Human Rights (CMPDDH, 2017: 33-34), which nurtured by jurisprudence from the Interamerican System of Human Rights, suggests that an effective national protection is subsumed by two dimensions of state's obligations: to respect and to guarantee. The former entails preventing any state action or omission from interfering or restraining human rights enjoyment for individuals under its jurisdiction; the latter entails preventing, inquiring, punishing and repairing any human rights violations through any statutory measures or otherwise. However, the question that raises from this perspective is associated to the obligations that, in terms of human rights protection and state compliance, should be examined in order to determine the existence of an IPA (for instance, accessibility to justice, courts, police departments, or any law enforcement or judicial body; potential of state agents to prosecute actors responsible of persecutorial acts or human rights violations; effectiveness of judiciary, etc.). However, the Mexican Commission perspective on national protection is solely associated to 'protection' as a remedy from persecution and the state potential to neutralize or palliate the risk of serious harm, disregarding other obligations of protection of social and economic rights.

According to Aldenhoff *et al.* (2014: 30), the notion of protection also requires temporal considerations. They argue that it is required to integrate an assessment of the protection's length: how long it will remain available and what assurance the decision maker must have that it will be provided. Scrutinizing a functional protection system would therefore lead to concluding whether a serious harm or human rights violation can potentially be committed. A certain level of predictability is according to this approach required.

Effective protection through affirmative action entails assessing not only state obligations, but its potential accountability in case of non-compliance or failure to protect. If we think about Hathaway's notion of protection as the 'existence of affirmative defense or safeguard', then the state's failure to respect and guarantee, under this logic, would imply the lack or absence of effective protection. The lynch pinch is, therefore, accountability.

In Germany, a similar rationale has been applied within the 'well-founded fear of persecution' test to decide whether an act amounts to persecution if conducted by non-state agents or quasi-state organs. A study conducted by Luopajärvi, (2003) elucidates that in accordance with the German 'accountability doctrine', in order for persecution to be attributable to the state, the failure of state protection must be deliberate. In situations of violence perpetrated by a private actors, for instance, the state cannot be held accountable if it has no means or resources to protect victims; the state must be unwilling to provide protection and such unwillingness must reflect a systematic governmental policy of inaction (Luopajärvi, 2003: 70). As consequence, it can be presumed that in case of unwillingness to provide protection in one part of the country, the sate is not able or willing to extend such protection to the entire country.

The notion of protection within this doctrine, however, is conceived exclusively as safeguard from the act of persecution and does not comprise a human rights extent. Ni Ghrahinne (2015: 18), in this sense, referring to the case *E. and another v. Secretary of State for the Home Department* (United Kingdom, 2003) highlighted the fact that failure to protect (as opposed to discriminatory denial of) basic human rights does not constitute persecution under the Refugee Convention. However, it may amount for unwillingness to protect if the act was performed deliberately.

The problem with the accountability approach, is that socioeconomic rights would be hard to integrate, as they are not traditionally justiciable. Scrutinizing socioeconomic rights protection can hardly find a standard on state's accountability for failure to protect. Rather, it might entail assessing the degree of state's capacity to provide socioeconomic rights and protect them collectively, by virtue of the commitments and obligations bound to, and not just assess protection policies and mechanisms virtually applicable in an equal basis.

In refugee law, a hidden distinction has been traditionally made between civil and political rights and socio-economic rights. While protection to first generation rights (notably non-derogable) is commonly used as a standard for risk assessment, notably when applying inquiries based on the principle of non-refoulment, protection to second generation rights have only been applied to assess marginal conditions (Mathew, 2013). Maria O'Sullivan, (2013: 219) highlights that in judicial practice socio-economic rights are typically integrated within the 'reasonableness' tests, as suggested by the UNHCR Guidelines; however, there is divergence regarding the relevance of socioeconomic factors to the reasonableness criterion. A

case brought to a Court of Appeal in England and Wales (*AE and FE v. Secretary of State for the Home Department*, United Kingdom) in 2003 illustrates this situation:

> "*When considering whether it is reasonable for an asylum seeker to relocate in a 'safe haven',[…] we cannot see how the fact that he will not there enjoy the basic norms of civil, political and socio-economic rights will normally be relevant. If that is the position in the safe haven, it is likely to be the position throughout the country*" (par. 38)

A 'nation-wide rule' was applied to assess the human rights context in a country, based on the specific situation of a given region. However, the absence of second-generation rights protection was deemed insufficient for the Court to exclude a relocation alternative.

On the other hand, the *Januzi* case (United Kingdom, 2006) showed that the court seemed to accept that an individual facing economic destitution may render an IPA as unreasonable, although it would require to demonstrate the existence of a risk to suffering a serious non-physical harm by virtue of encountering economic deprivation. According to O'Sullivan, (2013: 219-220), "it appears that although the quality of socio-economic rights generally is not part of the IPA test in the UK, under the *Januzi* approach a lack of basic subsistence or other serious risk to economic livelihood may be seen as a factor going to 'undue hardship'. Such possibility would thus require conducting a reasonableness analysis, which essentially is an intuitive assessment that has no obvious grounding in the terms of the Refugee Convention and has an inherent weakness: what looks reasonable to some may appear unreasonable to others (Mathew, 2013: *n.d.*)

The assessment on protection of economic, social and cultural rights in judicial practice has only been applied as an element to determine whether the proposed IPA provides sufficient conditions, in terms of quality of life, for relocation. However, they are not usually conceived as part of a minimum standard. The 'minimum' human rights conditions required for a relocation alternative traditionally rely, instead, on whether the risk of persecution still prevails and whether there exist additional risks to an individual's security or integrity. Under this rationale, it seems that social and economic rights play a supplementary role on the assessment of domestic protection under an IPA inquiry, and at this second level of analysis a second minimum threshold must be met. However, only a serious violation, falling near the persecutorial realm, might be sufficient to exclude a relocation alternative.

So far, it has not been possible to presume that judicial bodies have positively adopted a human rights approach to IPA inquiries, as inherent difficulties are yet to be encounter (Hathaway and

Foster, 2003; Ni Ghrahinne, 2015). From a conventional law perspective, the adoption of human rights obligations is inherently conditioned by each nation's conception of fundamental rights. Therefore, divergence and lack of consistency regarding what rights should be protected and the standards required for it has been naturally developed. Such predicament has led inertially to difficulties while attempting to define standards to follow at scrutinizing a state's [non] compliance with legal obligations and the effects created by its actions or omissions (that potentially evolved into a form of human rights violations) on general and individual safety and security conditions.

The presumed influence of human rights on refugee law interpretation and standard-setting is far from certain (Ni Ghrahinne, 2015: 5). Some of the critics raised against this perspective rely on the fact that moving further to economic and social rights standards is far beyond the intentions and conception of protection set forth by the drafters of the Refugee Convention. In the *Januzi* case (United Kingdom, 2006, par. 4), even the Court noted that "*as a general rule, the parties to an international Convention are not to be treated as having agreed something they did not agree, unless it is clear by necessary implication from the text or from uniform acceptance by states that they would have agreed or have subsequently done so*." This is the reason why some analysts have attempted to frame the human rights approach within the Convention's substantive and moral provisions.

Despite it is possible to observe practices that acknowledge the importance of human rights protection and some alternatives to exclude a relocation alternative have raised, Shultz (2019: 103) noted that so far "not *any* violation of *any* human right is sufficient to disqualify a potential IPA". The key question for her is, as consequence, whether the country is able to protect human rights that are fundamental to the individual concerned.

2.2 IPA applicability in Europe

The 1951 Geneva Convention is the main source of European refugee law. Regional and domestic judicial practice, however, have been strongly shaped and influenced by regional human rights jurisprudence, EU conventional law and other subsidiary instruments of interpretation. However, two bodies have played major roles in defining IPA applicability

standards: the European Court of Human Rights, and the European Union through the Recast Qualification Directive adopted in 2011.

On the one hand, the European Court of Human Rights (ECtHR) plays an important complementary role in protecting non-Convention refugees from expulsion (Röhl, 2005: 1). In particular, Article 3 of the European Convention on Human Rights (ECHR), which prohibits in absolute terms "torture or inhuman or degrading treatment or punishment", contains extensive *non-refoulement* obligations. The Court has ruled in a number of cases concerning the relationship between the IPA and this provision, delivering a set of minimum criteria binding for all member states.

On the other hand, the Directive 2011/95/EU, commonly known as the Recast Qualification Directive (hereinafter "the Directive" or "Recast QD") sets out common requirements for EU members states on refugee qualification. The QD acknowledges the 1951 Geneva Convention as the primary source of law for qualification proceedings, by virtue of article 78(1) of the Treaty on the Functioning of the European Union (TFUE) which provides that a common policy on asylum, subsidiary protection and temporary protection must be in accordance with the Convention. Compliance with the Convention's provisions is, therefore, a condition for validity of European legislation and enacted directives.

The Recast QD attempted to strengthen the European asylum protection system and provide further coherence and conceptual clarity in comparison with the previous version. It adopted consistently the three main standards set by the European Court of Human Rights and adapted to other general and *ad hoc* recommendations provided by the UNHCR and subsidiary instruments (NOAS, 2018).

The introduction of the Qualification Directive, nevertheless, did not address all concerns regarding the application of IPA and, according to ECRE (2013), it did not mitigate the high degree of divergence within EU states practices. Its provisions, despite mandatory in nature, are implemented through discretionary criteria, leading to an asymmetrical and heterogenous process of adaptation into domestic procedural and substantive regulations (Shultz, 2019). Such disparities have been sought to be amended, according to the European Commission's latest proposal of reforms of Common European Asylum System (CEAS), which intend to push towards further harmonization of the common criteria on the use of IPA and other qualification inquiries (Matevžič, 2016; EC, 2016). Nevertheless, asymmetries persist, and two studies conducted by the European Refugee Fund of the European Commission (ERFEC) earlier in

2014 and the European Commission (EC) in 2019 illustrated a large heterogeneity concerning practices on IPA application.

2.2.1 The European Court of Human Rights and the Recast Qualification Directive

The firsts cases where the Court raised concerns to the appropriateness of a relocation alternative were *Vilvarajah and others v. United Kingdom* (ECtHR, 1991), *Chahal v. United Kingdom* (ECtHR, 1996) and *Hilal v. United Kingdom* (ECtHR, 2001). A first association between IPA and protection from serious harm under Art. 3 was made. However, it was not until the case *Salah Sheekh v. the Netherlands* (ECtHR, 2007) that the relevant principles of IPA applicability were articulated. The Court noted that:

> "… *as a precondition for relying on an internal flight alternative, certain guarantees have to be in place: the person to be expelled must be able to travel to the area concerned, to gain admittance and be able to settle there, failing which an issue under Article 3 may arise*…" (par. 141)

Three requirements where in this sense defined: (1) the person to be removed must be able to travel safely to the area concerned; (2) they must be able to gain admittance to such area; and (3) they must be able to settle in the area concerned. In the *Salah Sheekh* case, the court rejected the possibility of an internal flight alternative as in case of removal the claimant could encounter potential problems of safety, admittance, and integration in Somalia, serious enough to amount as risks of ill-treatment.

The core of IPA inquiries under the Recast QD relies on Art. 8, where these requirements were integrated to the 2011 modifications. Under the Directive, an IPA exists when the applicant in a specific area of the country has no well-founded fear of being persecuted or is not at real risk of suffering serious harm, or has access to protection against persecution or serious harm as defined in Article 7 (EC, 2019:71). This provision was revised and adjusted to the ECtHR's jurisprudence, including the outcome from *Salah Sheekh* (Brekke & Staver, 2018; EC, 2019). Four requirements for IPA applicability were hence integrated, which largely reflect some of the components exposed previously by Hathaway's and the UNHCR's Guidelines: a claimant must be able to (1) safely and (2) legally travel to and (3) gain admittance to that part of the country and (4) can reasonably be expected to settle there.

According to the European Asylum Support Office (EASO, 2019), the safety component on the first requirement is satisfied where two aspects are established: (1) absence of the initial persecution or serious harm and (2) no potential new forms of persecution or serious harm, as defined in section 15 QD Recast. The second and third elements are satisfied when no legal obstacles prevent the applicant from travelling to the safe area and the applicant is allowed to access the safe area by the actor(s) who control it. However, the fourth component, as provided by the Directive has been accused by the EC (2019: 71) to not fully reflect the Salah judgement as the wording "reasonably be expected to settle there" could be used to set a lower standard than the one established by the ECtHR.

The Court's requisites for IPA were confirmed in the case *Sufi and Elmi v. the United Kingdom* (ECtHR, 2011), where it was provided a more detailed analysis about the peculiar situation in Somalia and the available relocation alternatives. The Court found that given the reigning humanitarian crisis in the country at the time, and the predominance of a social structure based on clan filiation, an individual subject to removal proceedings would not be able to find protection within the regions considered as "safe", especially where family relations could be absent (Le Fort, 2018). For EASO (2019: *n.d.*) the QD does not offer relevant criteria that may be relied upon when establishing whether it is reasonable for the person to settle in the IPA location. However, the agency considers the assessment on reasonableness to resettle should take into account *Sufi and Elmi*'s indicators: "*the applicant's ability to cater for his most basic needs, such as food, hygiene and shelter, his vulnerability to ill-treatment and the prospect of his situation improving within a reasonable time-frame*" (p. 283).

In the case *Izevbekhai and others v. Ireland* (ECtHR, 2011) the Court examined IPA applicability in Nigeria in the context of risks for the claimant to be subject to female genital mutilation upon removal. The decision included an examination of both general and personal circumstances to determine whether a relocation alternative was reasonable. On the assessment of the general conditions in the country, elements such as victimization rates in different regions of the country and material risks of persecution were considered. The personal circumstances of the claimant were in this case particularly relevant, as reports from UN an domestic NGO's suggested that: "[a] *successful re-location, including taking the fullest advantage of the support and protection mechanisms available in Nigeria, depended to a large extent on favorable personal circumstances including levels of education, family support and financial resources.*" (par. 75). This position was also reflected in other cases, such as *A.A.M v. Sweden* (ECtHR, 2014), where the decision made by the court was based on the personal

circumstances of the claimant, considering elements that could aggravate the risks within the general circumstances in the Iraqi Kurdistan. The Art. 8§2 Recast QD integrated such perspective, as it provides that the existence of IPA shall be examined in consideration of both levels of analysis.

According to the Court, socioeconomic or humanitarian considerations do not generally suffice to exclude a relocation alternative. Two cases against Sweden (*Husseini v. Sweden, 2011* and *A.A.M v. Sweden, 2014*) from Afghan and Iraqi citizens portrayed the Court's position associated to the fact that internal relocation inevitably involves "certain hardship". In the Husseini case, it was considered that the claimant could seek protection in the Kabul, city that had been deem repeatedly as an acceptable relocation alternative. In *A.A.M*, the Court considered the claimant could seek protection in the Kurdistan region, and found that:

> *"Various sources have attested that people who relocate to the Kurdistan Region may face difficulties, for instance, in finding proper jobs and housing there, not the least if they do not speak Kurdish. Nevertheless, the evidence before the Court suggests that there are jobs available and that settlers have access to health care as well as financial and other support from the UNHCR and local authorities. In any event, there is no indication that the general living conditions in the KRI for an Arab Sunni Muslim settler would be unreasonable or in any way amount to treatment prohibited by Article 3." (par. 73)*

Eight cases against Sweden decided in 2013, concerning individuals from Iraq (*D.N.M; A.G.A.M; M.K.N; M.Y.H. and others; N.A.N.; N.M.B; N.M.Y; S.A. v. Sweden*, 2013) found a similar result: relocation alternatives in the Kurdistan regions or Bagdad were deemed reasonable by the court. The judges reaffirmed that internal relocation inevitably entails 'certain hardship' and considered there was not enough evidence to judge the general living conditions in the country as unreasonable, despite the lack of job opportunities, financial sources and family links (ECtHR, 2013).

At a practical level, according to the EC (2019: 72) report, when examining relocation alternatives, member states concur that the living conditions in the relocation region need to reach a certain 'minimum standard'. Generally speaking, living standards are acceptable if they do not violate Art. 3 ECRH and in most cases conditions on the proposed area must be comparable to the rest of the country. However, this standard is not clearly defined by any domestic statute or bylaw. The report found that in practice, for instance, Greece assessed the

extent and frequency of violence occurrence, and in France, language, age and the presence of family members in the IPA were also key aspects (EC, 2019: 75).

Following the Court's jurisprudence and the Directive provisions, there exist a consensus in judicial practice that at a 'minimum protection' must be associated to standards provided by international humanitarian and human rights law (Aldenhoff *et al*., 2014: 28). Protection is conceived as both, a remedy against the fear caused by the act of persecution and absence of risks of suffering serious harm. Such perspective remains as the common minimum standard and seems reluctant to evolved towards a broader, comprehensive notion of protection of human rights.

Under article 7 QD it is defined the (state and non-state) 'actors' acknowledged as providers of protection and prescribe the requirements for such protection. Particularly, section 7§2 QD provides that:

> "P*rotection against persecution or serious harm must be effective and of a non-temporary nature. Such protection is generally provided when the actors mentioned […] take reasonable steps to prevent the persecution or suffering of serious harm, inter alia, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and when the applicant has access to such protection*."

Two main components were, hence, set out: an effectiveness requisite and a durability parameter (see also EASO, 2018). The definition of protection under this provision implies an element of affirmative sense of action to prevent serious harm, through the compliance of an obligation to guarantee access to justice. The Commission's report found that all member states applying IPA inquiries assess the effectiveness of protection, although the criteria applied for such assessments differed significantly.

Regarding the durability parameter, the provision could be construed in the sense that protection must not be temporally limited and available beyond short-term, in order to prevent potential risks that may raise not only immediately after relocation (EASO, 2018). The existence and operation of a legal system for the detection, prosecution and protection from acts of persecution or serious harm remains the most common criterion (EC, 2019: 73). The report also noted divergence regarding the interpretation of 'effective legal system'. In the Netherlands, for instance, decisions were based on the assumption that "no system could completely or permanently guarantee protection"; while in Sweden, protection does not have

to be ‘absolute’, since it is considered that no legal system can actually guarantee absolute protection, but should generally protect “through detection and prosecution of crimes” (EC, 2019: 74).

The QD Recast also included in section 8§2 that, in order to examine relocation alternatives, “states shall ensure that precise and up-to-date information is obtained from relevant sources, such as the UNHCR and the EASO.” On the one hand, the UNHCR has played an important role to guide states towards the definition of standards compliant with the Convention’s requirements. A research conducted by the UN agency in 2012 on the IPA application practices in seven central European countries showed that UNHCR materials were since then often invoked as guiding documents by domestic asylum offices, when national guidelines, established practice, and/or existing jurisprudence are available (UNCHR, 2012: 14). On the other hand, the Commission’s report noted that while harmonization of country reports used by national authorities could limit the risk of divergence, the lack of it seems at the same time to contribute to different outcomes of asylum decisions and, as consequence, broader discussions (EC, 2019: 326).

As final consideration, it could be important to note that QD makes no mention to additional risks considerations, and according to ECRE’s report, up until 2013 no Member State was consistent in taking account these issues (Aldenhoff *et al*., 2014: 97). Under the directive’s provisions, the assessment of risks in the proposed area of relocation are exclusively associated to the existence of persecution or risk of suffering serious harm and despite some considerations on living conditions are widely accepted, it is not clear whether these are made based on the original act of persecution or risk of serious harm, or other non-associated risks.

Additionally, and notwithstanding the Court has played an important role to set regional standards on internal protection alternatives and domestic protection, Jessica Shultz (2019b: 30) argue that “reliance on ECtHR jurisprudence reinforces poor reasoning in cases where the Court has failed to apply its own standards for protection under Article 3.” She refers particularly to two situations: (1) the fact that *Salah Sheekh* set a requirement to examine the possibilities for an individual to settle in the area of relocation, the durability of protection that such analysis would require is rarely considered (see for instance *S.H.H. v. United Kingdom*, ECtHR, 2013); and (2) concerning the level of ‘hardship’ that settling in the internal relocation inevitably involve, particularly in cases where the general context of the country of origin may

insinuate the existence of a risk of ill-treatment (see M.M.R. v. the Netherlands; J.N. v. the Netherlands).

As long as the ECtHR is not willing to move towards a broader interpretation of Art. 3 and push for the incorporation of other causative elements of protection, judicial bodies in EU members will remain reluctant to apply higher standards.

Chapter 3. Readdressing the «Internal Protection Alternative»: implications of 'epidemic violence' for refugee law

Following the rationale on IPA applicability, it can be inferred that the main implication of 'epidemic violence' for refugee law will rely in the examinations on domestic protection, risk of serious harm and other additional risks. However, it will be argued that such examinations should not only rely on a security perspective, but also on a public health perspective.

It is important to understand that 'epidemic violence' affects large segments of society, in particular where the rule of law is weak, as the inadequate or lack of law enforcement mechanisms enabled spatial diffusion (UNHCR, 2010: 4; see also Türk, 2011). However, it is not only the geographic spread of violence that would render it as epidemic, but rather its density and intensity (UNHCR, 2013)

In epidemiology each population within a territory is susceptible to be infected with communicable disease. Therefore, when we speak about 'epidemic violence', we must consider the fact that violence is, in essence, a threat to the health of populations within a country (Slutkin *et al*., 2018) and all individuals part of it are susceptible of violence victimization. In other words, violence at epidemic proportions entails that the risk of victimization is higher not only due to the geographical diffusion of occurrence but due to the continuous temporal transmission of violent and aggressive behaviors. In a sense, it could be argued that in a context of 'epidemic violence', the entire territory remains under conditions where a virtual risk of victimization exists. However, it is the personal circumstances of each individual where the elements that can materialize such risk remain, in a way that the existence of relocation alternatives is precluded.

In the light of these initial considerations, it will be argued that the analysis of exclusion of IPA must rely upon three elements: (1) the existence of foreseeable threats and risks upon removal in the potential area of relocation (2) the existence of additional risks of serious harm in the area of relocation, non-associated to the original persecutorial act, and in the form of degrading living conditions, and (3) the unavailability of domestic protection due to corruption and state tolerance on criminal activity.

In this sense, three aspects will be discussed. First, in order to understand the legal implications of epidemic violence for refugee law, it will be discussed the relation between generalized

violence on the application of IPA inquiries under the standards applied in European law. Both concepts, epidemic and generalized violence, remain analogous at its very core. Generalized violence refers to a form of widespread and large-scale violence that affects civilian population at large (Türk, 2011; De Jesus & Hernandes, 2019). It is the result of intensified civil or political conflicts, warfare, violations to international humanitarian law (IHL), gender-based or criminal violence and, as consequence, can be indiscriminate in nature or targeted against specific groups or individuals (UNHCR, 2008; UNHCR, 2016).[7] However, two main distinctions can be drawn. Firstly, epidemic violence can be considered a form, subcategory of generalized violence, but with a temporal prevalence component. A situation of violence at epidemic proportions requires a persistent evolution and intensification in the occurrence and diffusion of acts. And secondly, the fact that escalation patterns are not merely circumstantial or incidental but as a result of persistent negligence, failure to intervene and degradation of social networks.

In the second section, it will be discussed some considerations on national protection in terms of public health responsibilities and the implications that a possible demarcation of state obligations in this field may potentially influence the notion of protection in refugee law.

Finally, it will be conducted a general analysis of the social implications of epidemic violence and discuss whether such implications may amount as risk of serious harms when applying IPA inquiries. The analysis will be particularly focused on the shortcomings of domestic protection in epidemic violence and some risks of serious harm in terms of susceptibility of victimization and degrading living conditions that may raise under this context.

3.1 IPA in the context of generalized violence

As the concept of epidemic violence has not been deeply developed, in international law the closest adopted approach relies on the notion of ‘generalized violence’. It is the main concept used in international refugee law when referring to situations of widespread violence, regardless of whether the source is criminal or political activity (McAdam, 2011; Türk, 2011). In some cases, scholars and international agencies ascribe the notion of ‘indiscriminate violence’ when referring exclusively to politically motivated violence (UNHCR, 2008; Lyall,

[7] The Cartagena Declaration and the 1969 OAU Convention on governing the specific aspects of refugee problems in Africa are also two international instruments that have provided a closer approach to the notion of generalized violence, in the light of the definition of protection obligations for people fleeing such contexts.

2009; Lambert, 2013). Although, in the light of refugee law, both concepts do not seem to exclude each other (Tsourdi, 2014). As result, an observation must be drawn: people displaced by conflict-related violence might find a nexus on convention grounds for protection due to the inherent motivation of a conflict, while people fleeing generalized (or widespread) criminal violence frequently do not claim a reason of displacement other than threats to life on grounds non-associated to a Convention reason for persecution, or socioeconomic disruption.

Under most of domestic jurisdictions around the world, generalized violence is typically not considered as a legitimate form of persecution that may grant access to international protection (Tsourdi, 2014). However, some African and Latin American jurisdictions have taken steps to expand the conception of "refugee" and found different approaches to grant protection to individuals fleeing from such form of violence (UNHCR, 2013). Some of the normative gaps created by the Convention's lack of precision — notably for persons fleeing situations of generalized violence—were filled through the adoption of regionally-focused instruments, such as the 1969 OAU Refugee Convention in Africa and the 1984 Cartagena Declaration in Latin America, which intended to broaden the conventional definition in order to address specific, regional concerns and interests raised upon mass conflicts (Turk & Dowd, 2014: 6; see also JRS, 2011).

An eligibility distinction is, notwithstanding the aforementioned circumstances, important to consider: if an individual flees from a country with a widespread or generalized context of violence, it does not intrinsically entail the displacement was caused by such situation (although it likely was). The displacement could have been caused directly as consequence of widespread violence, or by any other unrelated situation that may fall or not under grounds of protection the Geneva Convention grants (Benner & Dickerson, 2018). Some scholars, such as Helen Lambert (2013), argue that individuals fleeing from indiscriminate or widespread violence may qualify as 1951 Convention refugees; while others, such as Holzer (2012: 2) hold that the mere fact of having fled from conflict and violence does not *per se* suffice; other elements associated to subjective and objective fears, accessibility and availability of domestic protection, personal circumstances as well as non-refoulment considerations should be made.

Notwithstanding this debate, the concept and rationale of generalized violence can semantically be associated to the notion of epidemic violence, as both indicate an extensive geographical, spatial diffusion of violence occurrence. However, the question that remains to be clarified is whether a situation of generalized violence suffice to exclude a relocation alternative?

First of all, it is important to consider that the interrelation between 'internal protection' and 'fear of persecution' for IPA assessment is necessary, and its applicability depend on a full consideration of personal and country-based circumstances (UNHCR, 2003). Under jurisdictions where generalized violence is not recognized as a legitimate reason of persecution, it does not mean the fear of persecution is inherently unfounded, *i.e.* the fact that a reason of persecution does not fall under the Convention grounds for protection does not entail that an individual's fear of harm is illegitimate. Such reasoning is quite relevant to consider other forms of international protection (either subsidiary or humanitarian) and, in order to prevent an unlawful refusal, scholars and judicial practice widely suggest to conduct an IPA inquiry once a well-founded risk of persecution or serious harm has been identified. However, regardless of whether the conditions of generalized violence might amount for international protection, the applicability of IPA inquiries in countries facing such conditions tend to be yet controversial.

Through an analysis on the protection of people fleeing situations of violence, Vanessa Holzer (2012: 2) highlights that contexts of violence in countries of origins often prompt national decision-makers to apply a more restrictive interpretation of the 1951 refugee definition. The notion of [in]security is subjective, and states tend to play with its malleability as a mechanism to meet their national interests. As result, the application of IPA standards follows the same path. However, some aspects must be considered.

Initially, concerning the requirements related to the safety conditions to travel to and gain admittance in the area concerned, in most of cases brought to domestic courts, it is typically the situations of generalized violence raised by political or civil armed conflicts, namely indiscriminate violence, that are assessed. A case brought to the Metropolitan Court of Budapest in 2011 (*KF v. Office of Immigration and Nationality*) portrays a common notion that countries facing armed conflicts generally do not provide safe relocation alternatives, "as the movement of front lines can put areas at risk that were previously considered safe". However, the availability of IPA in the context of generalized violence resulted from criminal activity has not been far challenged. Under such scenarios, freedom of movement within a country's territory is typically not restricted neither by political nor judicial decisions and theoretically citizens remain rightful to decide whether relocate or not. Nevertheless, individuals may face practical safety challenges to move by virtue of the propagation of criminal networks and the perpetration of random or indiscriminate acts of violence against transiting population with a lucrative intention.

Secondly, concerning the requirement of IPA as an area where the risk of persecution or serious harm does not exist, very few cases under the jurisdiction of the ECtHR have raised such concerns in situations of generalized criminal violence, and rather, the Court has focused on generalized violence as result of armed conflicts or terrorism.

In *H.L.R. v. France* (1994), related to an applicant of Colombian origin, the Court referred to the "endemic" situation of violence in Colombia caused by criminal and drug cartels activities. To conclude whether the threat of reprisals by drug traffickers the applicant claimed were serious enough to comply with Art. 3, the Court referred to a decision previously issued by the European Commission of Human Rights which concluded that the applicant ran a real and personal risk, and if removed, Colombian authorities were unable to offer adequate protection against such risk, considering impunity rates, effectiveness of judiciary, corruption and difficulties for authorities to contain violence at the moment.

However, the Court contended the Commission's view on the case, concluding that the general situation of violence existing in Colombia would not in itself entail, in the event of deportation, a violation of Art. 3. First of all, because the standard of domestic protection from Colombian authorities could not require "total safety" for the claimant, and despite some shortcomings on the ability of authorities to provide protection could be identified, "*...there was nothing to show that the Colombian authorities would be unable to provide protection appropriate to the applicant's situation*." (par. 32). Secondly, because *H.L.R.* had not shown that the risk was real and serious. According to the Court, the applicant's claimed risk of harm was related specifically to his personal situation; however, such circumstances were based solely on claims and were not substantiated by any *prima facie* evidence. This rationale has been often found problematic, since in situations of widespread criminal violence, it can be hard to prove that risk of serious harm does not only stem from the actions of a non-state actor, but from the deliberate inactions of state, often local, agents to provide protection (in the case of Colombia, for instance, due to collaboration between criminal networks and government or corruption).

The Court referred that the French Government, in response to the complaint previously submitted before the Commission, maintained that the claim was incompatible with Art. 3 as the risk of serious harm did not stem from the conduct of the Colombian authorities. However, the Court concluded that: "… *Art. 3 of the Convention may also apply where the danger emanates from persons or groups of persons who are not public officials. However, it must be*

shown that the risk is real and that the authorities of the receiving State are not able to obviate the risk by providing appropriate protection..." (par. 40)

Additionally, the Court considered that even if the risk of serious harm would seemingly stem from state agents, the nature of the political system could be considered to stablish whether exists a risk. However, it does not necessarily entail that the risk can be fully attributed to the actions of the state. In the light of the Commission's decision, the Court noted that:

> *"... Only the existence of an objective danger could be taken into account, such as the nature of the political regime in the State to which the applicant was likely to be sent, or a specific situation existing in that State. Making such a finding did not necessarily require that the receiving State be in any way responsible..."* (par. 31)

In 2008 (*NA v United Kingdom*, par. 114) the Court reaffirmed the principles of *H.L.R* and noted that "*a general situation of violence will not normally in itself entail a violation of Article 3 in the event of an expulsion*". In adopting such position, the Court referred to *Vilvarajah v. United Kingdom* (1991), where the Court had suggested that common hardship in a population caused by a general situation of instability could not give raise to a breach of art. 3 ECHR, unless the particular circumstances of the claimant would prove to be worse than the generality of other members of their group.

However, the Court considered that *Vilvarajah* should not be interpreted in a way to strictly require the claimant to demonstrate the existence of special circumstances, as it could render illusory the protection offered by Article 3:

> *"From the foregoing survey of its case-law, it follows that the Court has never excluded the possibility that a general situation of violence in a country of destination will be of a sufficient level of intensity as to entail that any removal to it would necessarily breach Article 3 of the Convention. Nevertheless, the Court would adopt such an approach only in the most extreme cases of general violence, where there was a real risk of ill-treatment simply by virtue of an individual being exposed to such violence on return" (par. 115).*

If the general situation of violence is of a sufficient level of intensity that a removal to that country would presume a real risk of serious harm, a breach to Art. 3 might be considered. However, "… *In determining whether it should or should not insist on further special distinguishing features, it follows that the Court may take account of the general situation of violence in a country*." (par. 117).

Such position was further clarified in *Sufi and Elmi v. United Kingdom* (2011). The Court noted that risk of serious harm cannot be strictly be associated to the personal circumstances of an individual: *"If the existence of such a risk [raised by general situation of violence] is established, the applicant's removal would necessarily breach Article 3, regardless of whether the risk emanates from a general situation of violence, a personal characteristic of the applicant, or a combination of the two." (par. 218).* However, the Court highlighted that "*not every situation of general violence will give rise to such a risk*" and reiterated *NA v UK*'s finding that only "the most extreme cases" of generalized violence could be of sufficient intensity to create such a risk.

Additionally, in *Sufi and Elmi* the Court analyzed the relation in level of protection conferred by Art. 15 of the Recast QD, in cases where the risk of serious harm stem from indiscriminate violence would not be sufficient to constitute a violation of Article 3 of the Convention. The Court, in the light of the case *Elgafaji v. The Netherlands* (2009) decided by the European Court of Justice (ECJ), in which a lower standard of risk of serious harm under art. 15 of the Qualification Directive was set, noted that:

> *"In Elgafaji the ECJ held that article 15(c) would be violated where substantial grounds were shown for believing that a civilian, returned to the relevant country, would, solely on account of his presence on the territory of that country or region, face a real risk of being subjected to a threat of serious harm. In order to demonstrate such a risk he was not required to adduce evidence that he would be specifically targeted by reason of factors particular to his personal circumstances" (par. 225)*

However, the Court recognized it would not be appropriate to express an opinion in the ambit of Art. 15 QD. Although recognized that *NA vs. UK* provides comparable protection to that provided by the ECJ in *Elgafaji*:

> *"In particular, it notes that the threshold set by both provisions may, in exceptional circumstances, be attained in consequence of a situation of general violence of such intensity that any person being returned to the region in question would be at risk simply on account of their presence there." (par. 226)*

Nevertheless, in neither cases reference was made to understand what an extreme case of general violence could be considered. Although, it can be presumed that a direct (non-virtual) exposition to those circumstances is required. In *Elgafaji v. The Netherlands* (2009), alternatively, the Court of Justice did clarify the fact that: "*the more the applicant is able to*

show that he is specifically affected by reason of factors particular to his personal circumstances, the lower the level of indiscriminate violence required for him to be eligible for subsidiary protection." (par. 39), and added that a general scope of the situation of violence in the country and the existence of previous risks of serious harm should be considered in the examination of personal circumstances (see also McAdam, 2011; Tsourdi, 2014).

Further clarifications have been made, however, in the light of generalized violence caused by armed conflicts. In L.*M. and Others v. Russia* (ECtHR, 2015), concerning non-refoulment obligations for individuals fleeing from Syria, the Court appealed to *NA v UK's* findings on generalized situation of violence, as well to *Sufi and Elmi*'s considerations on risk of serious harm when stem from "*generalized violence, dire humanitarian conditions and absence of the possibility of relocating internally without the danger of being exposed to a risk of ill-treatment*" (par. 120). However, the decision of the case was not merely based on the general situation of the country, but in the light of the applicants' personal circumstances (particularly their origin, as they were residents in Aleppo and Damascus).

On the other hand, the case *S.K. v. Russia* (ECtHR, 2017), concerning similarly a claim of non-refoulment obligations in the context of the continuing hostilities in Syria in the period 2013-2015, the Court placed a significant importance on the general circumstances in the country, as judges considered the extent of hostilities against civilians, and the dramatic deterioration on the security and humanitarian situation in the country, in assessing the risk under Art. 3 mistreatments. Furthermore, the Court reiterated that Art. 3 ECHR allows authorities to examine the existence of a relocation alternative for asylum claims. However, in the view of the Court, Russian authorities could not provide any material that would confirm that the situation in Damascus is sufficiently safe for the applicant, finding a violation to Art. 3.

For IPA purposes, it is important to consider that an individual's perception of "risks" in relocation alternative is strongly related to the "fear" of being potentially subject of a physical harmful act. In this sense, it could be necessary to delimitate, such as the well-founded fear of persecution test does, the difference between the subjective and objective fears, particularly those created by contexts of generalized violence. Under most jurisdictions it is commonly practiced, typically as part of the well-founded fear test, to require individuals to provide evidence to distinguish both an objective fear, as result of a proved act committed against the individual, and a subjective fear, as result of the potential acts that they consider may be subject to upon deportation or relocation (e.g. Canadian regulations, IRBC, 2009). However, it is also

possible to observe that proof of commission of a harmful criminal act against an individual (potentially punishable under common criminal law) in a context of generalized violence is typically considered in itself insufficient to establish a prospective risk of victimization.

From a back-side perspective, this also means that the inexistence of past acts of violence should not neglect the existence of future risks. Such reasoning could be important for claims related to individuals unable to proof direct physical harm (indirect victims) but may have enough elements to determine an objective fear based on potentially continuous risks to be subject of an act of criminal violence due to a widespread susceptibility of victimization. Such discussion raises additional issues regarding the role of the perpetrator. The fact that a non-state agent had committed a persecutorial act in complicity or acquiescence with state agents is not an indication itself that the state has become *ipso facto* an agent of persecution or perpetrator of the concerning act. However, ideally, the state's negligence to prevent and sanction such acts, from a human rights perspective, may amount to determine whether there exist sufficient reasons to believe that domestic protection can be adequately delivered. In other words, state protection should be considered when assessing any foreseeable risk as it is 'the state' the main agent that has a legitimate control over the existence of such risks. The question then raised is what should be considered as an 'adequate' or 'reasonable' domestic protection? Is it possible to construe domestic protection not only in terms of securitization, rule of law and law enforcement but in terms of public health responsibilities and a broader human rights approach?

3.2 Violence, national protection and public health responsibilities

One of the limitations in the notion of domestic protection in contexts of widespread criminal violence is the fact that the persecutorial agent is often attributed to entities acting in a private capacity (non-state actors). As such, it is often presumed that the State, as primary entity responsible of protection, is at the very least willing to provide it (EASO, 2018). Even if an individual may satisfy a well-founded fear of persecution or serious harm in these circumstances, in some jurisdictions it is still consider that the possibility to avail under the protection of the country of origin is available, as judicial bodies and law enforcements systems tend to be qualified as functional or at the very least operational (even if they may present some limitations to operate country-wide).

In many jurisdictions, the mere willingness would be sufficient to conclude availability of protection, unless it is instead proven an inability due to the lack of necessary power or resources to provide it (EASO, 2018). Protection, therefore, is merely defined by the virtual existence of a criminal justice system, law enforcement agencies and public security responsibilities with no or minimum considerations of efficiency and capability. However, as the adoption of more comprehensive notions of protection, such as 'effective protection', its conception has been gradually deemed insufficient.

According to the UNHCR (2010: 9), "a state is not expected to guarantee the highest possible standard of protection to all its citizens all the time, but protection needs to be real and effective" (see also Mathew *et al*., 2003: 451). If protection from criminal violence is assessed merely based on strategies, policies and regulations concerning public security, three considerations must be pondered. Firstly, it is important to identify whether the increase of criminal activity is associated to the existence of criminal networks or organized crime groups and evaluate to what extent such networks have temporarily and geographically disseminated. Identifying the level of diffusion of such networks will help to assess not only their capacity to evade law enforcement and whether a risk of persecution persist, but to scrutinize to a limited extent the effectiveness of state mechanisms to prevent or mitigate criminal activities, and marginally understand whether there exists aggravating risk factors for the claimant in view of the protection delivered (UNHCR, 2010).

A successful inquiry on effective protection, in this sense, might ideally require indications that the State design and adapt strategies based on the degree of dissemination and expansion patterns of the network. The more a criminal network grows, the more adaptations a mitigation strategy will require to be operated effectively. If the strategy has not progressively changed and violence occurrence keeps increasing, then such situation might as well be interpreted as an indicator of unwillingness of incapacity to deal with the problem. On the other hand, if the strategy implemented has neither revert not increase the violence levels in a population, it might indicate a lack of effectiveness, and instead could be interpreted as an indicator of inability to cope with the situation.

Secondly, it is important to consider objective and subjective levels of impunity and corruption. As epidemic violence emanates considerably from non-state actors, patterns of epidemic propagation of violence suggest to a limited extent that authorities have been unable or unwilling to effectively control them (UNCHR, 2013). The reasons for such inaction may,

nevertheless, not satisfy a domestic protection inquiry. Examining levels of impunity are key to mark traces on the effectiveness of law enforcement operations and the criminal justice system, particularly if relying on indicators as detention and incarceration rates on major criminal offenses, crime reporting, human rights violations in criminal justice system, arbitrary detentions, disproportionate sentences or retribution without reinsertion. Prevalence of impunity might serve as an indicator of inability to sanction criminal activities and even a marginal contribution to their expansion (Durand, 2020).

On the other hand, examining corruption can be used as an indicator of systematic problems in law enforcement mechanisms and effectiveness of security policies. As IPA inquiries examine possible participation of decentralized state agents, it is important to consider some of the shortcomings in the articulation between different government levels. Evidence from corruption studies suggest that 'informal agreements' between criminal networks and one specific level of government inhibit law enforcement operations conducted by another level of government; as result, propensity of criminal groups to perpetrate violent criminal acts increases (Rios, 2012). The existence of alleged linkages between criminal networks and state agents may raise concerns regarding the profitability of state negligence for such networks to keep operating and propagating, not only geographically, but in terms of the variety of activities perpetrated. If the acts of violence and criminality are condoned or tolerated by state agents, it can be presumed a generalized (or focalized) lack of state protection, as it is indicative of a non-existent proactive intention to dismantle criminal networks (UNHCR, 2010). This situation resembles the circumstances referred in *H.L.R. v. France*, where the European Commission of Human Rights concluded initially that the Colombian authorities were unable to offer the claimant 'adequate protection' against the risk of persecution, since the degree to which organizations connected with drug trafficking had infiltrated the whole machinery of government was such that Colombia was sometimes referred to as a "narco-democracy".

Furthermore, in cases where the lack of protection is intentional or deliberate, this could amount to persecution or serious harm (EASO, 2018). Under the scope of the aforementioned scenarios, however, a deliberate obstruction in law enforcement or criminal justice system as result of corruption or collaboration between criminal networks and state agents, might not amount as a risk of serious harm within the persecutorial realm. Governments often portray a virtual interest in mitigating criminal activity and the nexus between state agents and criminal networks are asymmetrical in different regions and levels of government. However, depending on the extent that such practices are conducted by the government and the amount of

individuals affected, it might be invoked as a consideration on the situation of human rights and additional risks to life and safety, by virtue of the aggravating effects that such corrupted relation may have over the risk of victimization.

Thirdly, it is important to determine whether an effective access of civilians to the criminal justice system is available. Law enforcement cannot possibly be effective without access and availability of means for victims to report offenses and seek justice, and other marginals to guarantee protection against retaliation and display of personal information. Despite some jurisdictions seem reluctant to impose on other states a standard of protection based on 'due diligence', which might merely seem as an aspiration in operative and resourcefulness terms, it provides a clearer representation of the level of effectiveness ideally required (Mathew *et al*., 2003).

Beyond these considerations, what remains to be examined is whether domestic protection can be examined not only in terms of countervail risk of persecution, but the public health responsibilities of states in view of the morbidity effects of epidemic violence. The question, therefore, is whether we can speak about a broader notion of effective protection that integrates responsibilities of protection against violence from a public health perspective?

As violence may remain one of the leading causes of deaths in some countries, it can be considered a major public health issue, amounting to some extent to a social crisis (Freire-Vargas, 2018). It is, therefore, necessary to understand from a legal perspective that violence represents a direct threat to a population's health (De Jesus & Hernandez, 2019: 5), and as such, the state should assume public health responsibilities to mitigate its sanitary effects. A liaison of domestic protection with public health law could, therefore, provide a closer approach (see also Toebes, 2015; Taylor, 2017).

According to the American analyst Michael Ulrich (2019), contagion theory of violence has helped to elucidate the ability of the State to address potential harm to the public, based on probabilities and magnitude of risk. Ulrich argues that public health (or epidemic contention) measures are inherently based in prospective risks. Even when an outbreak has not been confirmed, state intervention is often justified by the potential risk of harm a population may suffer. In principle, a general or collective threat to the public is presumed and, therefore, a measure is implemented based on a probability, or predicted scenario. Following this rationale, Ulrich (2019: 113) contends that there exist several key similarities between two of the most restrictive state measures to protecting the public from infection and violence: involuntary

confinement and restriction of firearms in public. In essence, they are both implemented to limit the risk of harm and based on a collective restriction to fundamental rights.

A public health law approach on violence inherently appeals to a human rights perspective, as the implementation of preventive and mitigation measures of outbreaks, or violence, would inertially inquire about the circumstances and limitations applicable to such restrictions, in the name of either public health or security. Such inquiry, however, would remain marginal for IPA purposes, unless targeted and disproportionate measures are carried out.

A public health law approach to domestic protection, instead, may suggest that the responsibilities examined under IPA inquiries should be defined by the statutory regulations, policies and strategies for state prevention and disruption of violence. However, the idea is to conceive prevention and intervention not only from a security or law enforcement approach (i.e. number of police officers, strategies for security surveillance, regulations on firearms or detention of offenders), but from a social health perspective. On the one hand, prevention through psychosocial intervention (at individual and family levels) and protection of at-risk populations reproductive rights, and mitigation through access to mental health care and enforcement of psychological measures to disrupt aggressive conducts. As consequence, the existence of epidemic surveillance mechanisms of violence will be highly relevant to determine the ability of a State to materialize such responsibilities. Adequate monitoring and reporting allow to identify the sources of infection, define whether intervention is necessary and delineate the most appropriate measures to prevent and mitigate social transmission of violence and aggressive conducts.

According to Moore (1993: 34) "public health approaches [to violence] have been extremely successful in engaging new actors—community groups, private enterprise, medical establishments, and social service agencies—in the effort to reduce violence" and have brought a preventive approach to violence that has complemented, and even replaced, the traditional reactive approach of the criminal justice system. But is it yet possible to speak about 'preventive protection' in international refugee law? Only in that sense, availability of state protection can be construed and assessed in terms of domestic public health responsibilities, and marginally, it might readdress the inability or unwillingness inquiry to mitigate transmission of violence, when positive measures or mechanisms to prevent violence transmission and propagation have not been established by authorities in countries of origin.

The idea of preventive protection presumes that it is not about the responsibility to provide protection specifically for an individual, but to a group of at-risk individuals at a collective level. And theoretically, as the notion of state protection relies on the inability of states to provide adequate preventive and mitigation measures, the lack of these may presume a risk of harm to an individual. However, this rationale raises consequently a question: can IPA inquiries consider that a lack of general access to adequate mental health and psychosocial services may lead to a wider and protracted propagation of acts of violence, aggravating the risk of serious harm or degrading the living conditions in the proposed relocation area? Only in that sense, national protection can be conceived in terms of responsibilities of states to prevent and cure violence as a health condition and the risk of serious harm by virtue of the lack of accessibility to adequate treatment or public health system to treat psychological pathologies

3.3 Considerations on 'additional risks' in the context of epidemic violence.

In cases where an individual has been subject to persecution in the past, such fact can be used as indicative of a prospective risk and, potentially, exclusion of relocation alternatives. However, in absence of past persecution or risk of harm, an issue that can, nevertheless, be subject to controversies is the application of criteria to determine whether any other or additional risks are egregious enough to exclude a possible relocation.

Following Hathaway's Guidelines, an IPA test may still fail if it is to conclude that the existence of additional risks (to life, safety, liberty, health or to suffer discrimination) in the area of relocation is serious enough that may fall within the "realm of persecution" or presume a high degree of intensity. These risks, according to UNHCR Guidelines and European judicial practice, might also be assessed in terms of the existence of living conditions with a degree of hardship serious enough to fall within the realm of serious harm (defined by art. 15 Recast QD standards). Hathaway & Foster (2003: 403), in this sense, suggest to rely on a "reasonableness" inquiry: would [the claimant] be exposed to the risk of return to the place of origin if required to accept an IPA instead of his presumptive entitlement to asylum abroad?

Firstly, concerning acts falling within the persecutorial realm, it is important to understand that one of the inherent risks of epidemic violence is a high and widely extended risk of victimization. A persecutorial risk in epidemic violence would require a high association to the

susceptibility of individuals for (re)victimization (that can manifest in different forms, such as extortion, assault, degrading treatments, kidnappings, torture, summary executions, or disappearances of persons, perpetrated by state or non-state actors). It can be considered either virtual or objective, depending on the aggravating circumstances and risk factors of each individual.

However, the core idea of such notion of risk relies on the fact that violence at epidemic proportions entails serious levels of criminality in the entire territory, or at the very least in a significant part of it. Therefore, the risk of victimization is determined by the susceptibility of an individual. We depart from the notion that in a context of epidemic violence, the entire population is susceptible to victimization, although at different levels and depending on risk factors. However, a person previously exposed to violence continue to be exposed and susceptible even in case of relocation to another region, *i.e.* susceptibility for victimization persists despite relocation, as the risk of victimization likely prevails in the territory.

Continuous exposition to violence, nevertheless, may not be considered itself sufficient to exclude an IPA. In European jurisdictions, for instance, after *NA v United Kingdom* (2008), it would require that the levels of violence reach an 'extreme situation', where the mere exposition to violence entails a risk of ill-treatment. Epidemic proportions of violence, theoretically, might imply the existence of such adversity for populations, that only individuals exposed to intense forms of violence or faced factual threats to life, experienced economic deprivation, fear retaliatory acts and who excluded the possibility of internal displacement due to lack of social networks and integration potential, opted for fleeing. However, the epidemic threshold in each country and, as result, the general conditions will define variations on the degree of hardship an individual might be exposed to.

One key element to note in contexts of widespread criminal violence is a strong presence of criminal networks. When the context of violence is highly attributed to the existence of organized crime groups, it can be often observed that particular groups, namely children and young individuals socioeconomically disadvantaged, are targeted for forced recruitment -for criminal membership/filiation (UNODC, 2011). This process often entails the use of coercive methods. Targeted individuals can be subject to external pressure in the form of threatens to life or extorsions to join gangs or organized crime, leading possibly to a gradual escalation of threats through harm against the individual (retaliation violence) if they refuse to join or get involved in unlawful activities (UNHCR, 2010; OHCHR, 2015; Loeffler & Flaxman, 2017;

Nelson & Habbach, 2019). This exposition implies not only a risk of victimization but a higher susceptibility to perpetration if the individual is continuously exposed to an 'infected' network (Papachristos *et al*. 2015: 140).

In these situations, it might be important to consider, therefore, the social networks of the claimant. If friends or relatives can be associated with criminal networks or victimization, the risk of victimization might be higher, as well as the susceptibility for perpetration, since there exists a potential risk of forced recruitment. Furthermore, the risk aggravates if it is possible to identify certain tolerance by law enforcement authorities.

It is important as well to look at the temporal evolution of violence occurrence. Prolonged exposition to violence, entails that an individual may develop a higher susceptibility for perpetration, as the conduct can be transmitted by generation or social contacts. The longer individuals and their relatives have been exposed, and the higher the number of individuals within the social network that have been victimized or become perpetrators, the risk of serious harm increases.

Secondly, in terms of living conditions, it is essential to note that in contexts of epidemic violence the level and extent of violence is such that the normal functioning of society is seriously impaired at individual and collective levels (UNHCR, 2013). At the individual level, two aspects must be considered:

1. Effects on individual's health, namely negative psychological outcomes, such as post-traumatic stress disorder, depression, increased psychological morbidity, persistent fear, chronic anxiety, and other mental issues (UNODC, *n.d*; De Jesus & Hernandez, 2019; Nelson & Habbach, 2019), but also physical, such as injuries and reproductive health problems (Mayor, 2002; Friborg, 2015). According to Rivara *et al.* (2019: 1622), the health consequences of violence may vary with the age and sex of the victim as well as the form of violence. In victims of multiple forms of violence, the health effects can be cumulative, and the greater the lethality of the act, the effects might trigger more severe conditions (Langton & Truman, 2014).
2. Disruption on economic life, such as loss of livelihood, property damage (Shapland & Hall, 2007), economic deprivation (Newburn, 2016), loss of work opportunities and incitation to forcibly commit unlawful economic activities (UNODC, 2011), especially if acts of extortion or intimidation were committed.

At a collective level, a population's social activities are disrupted by changes in the victims' lifestyle, normally to avoid the situation or context in which the offence occurred (Shapland & Hall, 2007), loss of community cohesion, loss of trust in community (Shapland & Hall, 2007), low confidence in policy and criminal justice system (Vilalta, 2013), increasing tolerance to criminal activity even from public institutions (Hummelsheim *et al*., 2011) and, after continuous exposition, normalization of violence (Ng-Mak, 2002).

These effects of violence, specially when accumulated, may create difficult life conditions for an individual's healthy integration into a society of different origin. Epidemic violence, particularly, damages social community networks, hindering the possibility of an individual to integrate in lawful labor markets. Inadequate integration produces marginally certain deprivation and marginalization, which may drive individuals to unlawful activities and perpetration of criminal acts (Bellinger, 2001). Individuals in marginalized situations are more vulnerable and, according to UNHCR (2010), might be potentially targeted by criminal networks. However, this situation is specially aggravated by a context of poor law enforcement, weak criminal justice, lack of opportunities and family care.

As the Court concluded in *Husseini v. Sweden, 2011*, relocation alternatives may inevitably involve certain level of hardship. However, just as UNHCR has suggested, if is to conclude that conditions in the area of relocation are 'unduly hard', a relocation alternative might be excluded. As European jurisprudence has suggested, these circumstances and risk factors must be construed in the light of the personal circumstances of each individual, as the potential intensity of harm can be aggravated by characteristics such as age and gender. If epidemic violence affects disproportionately a particular group of population in a country, like young people or women, a higher risk of victimization or degrading living conditions can be concluded. For instance, UNODC (2019: 62) reported that young men aged 15–29 years face a higher risk of homicide victimization (16.6 per 100,000) than men aged 30–44 years (14.7 per 100,000).The effects of violence are different in each population, and whether it is children (Moffit, 2013; Richter *et al*., 2018), adolescents (Heinze *et al*., 2017), young people (UNHCR, 2010) or elderly (Jaclson & Mallory, 2007), just as if the claimant is a girl or women (Pinchevsky *et al*., 2013), risks may aggravate and the security or integrity of the claimant might suffer a significantly higher degree of hardship as result of that particularly characteristic (Van Dijk, 2008). According to Türk (2011: 5), a deeper examination of sociopolitical context may also reveal whether a particular situation involves many incidents of specific targeting of particular individuals or groups. Young male individuals are often considered to be at risk in

contexts of widespread criminal violence, as criminal networks target this population. Therefore, *prima facie*, a reasonable degree of risk can be presumed.

However, the analysis must also consider a relativization of risks. One of the key elements for the consideration of additional risks is the existence of any other risk associated to epidemic violence the claimant might not be previously aware of. As such, it is necessary to distinguish between perceived risk of victimization and actual risk of victimization. One of the effects of epidemic violence is that individuals may start perceiving an increased vulnerability to crime (Shapland & Hall, 2007: 178; see also Valera & Guardia, 2014). However, there might exist a false or relative correlation between perceived fear and crime levels (Christmann *et al.*, 2003; Moser & Rodgers, 2005; Quillian & Pager, 2010; Hummelsheim *et al.*, 2011; Valera & Guardia, 2014).

Risk of victimization does not entail that individuals will develop a fear of victimization. According to Christmann *et al*. (2003: 2), "those living in high crime areas can be less fearful than people living in safer neighborhoods; hence repeated exposure to fear evoking stimulation can lead to sensitization or at other times and in other circumstances to desensitization." (see also Nasar & Fisher, 1993; Warr, 1994; Vilalta, 2013). Therefore, individuals might not develop a fear for a specific risk they were not previously aware of (which is for instance, the rationale basis for refugees *sur place*).

However, the relativization of risk may also vary as result of the type of crime committed. It has been well established that not all crimes have the same impact on fear; some crimes may trigger a greater sense within a community, such as kidnapping, robbery and homicide, as they disrupt common peace and stability (Valera & Guardia, 2014: 195). As result, the persistence of perceived risk, when actual crime rates and risk of victimization are not proportional to the fear, will suggest that an objective risk, despite probable, remain exclusively virtual.

It is certain that predicting the possibilities of an individual to be victimized is nearly impossible (UNODC, 2007). As consequence, judicial practice often relies on the examination of personal circumstances to foresee potential risks of victimization and serious harm. Considering elements of socioeconomic conditions, education, gender identity and sexual orientation, age, nationality or minority considerations, population of origin (urban or rural) and particular forms of violence (gender-based, gang-related, hate crimes) present in the proposed area of relocation are highly relevant (UNODC, 2007). However, the existence of these circumstances does not necessarily entail that all individuals within a territory will be

subject of violence (UNODC, 2007), although the categorization of a context of widespread criminal violence as 'epidemic' could depict a collective risk and critical security conditions that require an emphasized analysis on domestic protection.

Other considerations on the assessment of domestic protection and risks of serious harm for IPA inquiries have been associated to the conditions of internal displaced people (IDP's) and the weaknesses of state protection in this regard. In some jurisdictions (such as Norway), IDP's situations tended to be referred as a factor favoring relocation alternatives. However, some critics have raised to suggest the exclusion of such parameters. The UNHCR (2003: 7), for instance, considers that "the presence of internally displaced persons who are receiving international assistance in one part of the country is not in itself conclusive evidence that it is reasonable for the claimant to relocate there", as the quality of life and restrictions in access to basic rights are often insufficient to reasonably conclude the existence of relocation alternatives (see for instance IDMC, 2018). Under this same rationale, Ni Ghrahinne (2015: 16) has also noted that despite IDP's should enjoy rights and freedoms under international and domestic law as do other persons in their country, "the fact that these rights are granted relative to the situation in the asylum state makes it difficult to accept that such a specific standard can be used as general guidelines to assess the situation in a country of origin." In European jurisdictions, after the ECtHR ruled in *Sufi and Elmi*, relocation alternatives are excluded if returnees might find themselves in IDP camps (particularly in Somalia). However no further considerations have been made concerning the situation of non-secluded IDP's, relatively integrated in other regions of the country. Shultz (2019: 100-101), however, notes in this sense that IPA application would only "be acceptable if the claimant would join the ranks of privileged IDP's even if access to basic rights remained precarious."

Final Remarks

The evolution of IPA inquiries has certainly been asymmetrical. Despite they have evolved from mere state practice, underpinned by international law for qualification control, towards its adoption at domestic statutory levels, a number of criteria for its application still remain discretionary. In some jurisdictions significant developments have been made to reduce the gaps existing between traditional practices and conventional requirements. While common law jurisdictions, such as Australia, Canada and New Zealand have proven to be open to adopt some of the standards suggested by subsidiary instruments of interpretation, European jurisdictions the existence of regional courts of human rights have played a major role in shaping better qualification practices, in accordance with human rights obligations.

The epidemiologic perspective of violence provides new considerations not only on how violence should be regarded, but on the policy alternatives and responsibilities that states should adopt to prevent large scalations of criminal activity, and preserve public security and collective health conditions.

The epidemic approach of violence not only acknowledges that low-scale violence evolves and is interconnected to other more severe, extreme categories of use of force, but also provides a prospective way of understanding such evolution: it is transmitted and propagated through social interactions. Rethinking violence as an epidemic may allow civil society, stakeholders, and decision makers to define a social and institutional tolerance limit of violence occurrence and realize when urgent palliative measures should be implemented.

The epidemiologic perspective of violence recognizes the propagation of violence as a public health risk for individuals, as the mortality and morbidity rates enlarge, and provides a new approach on the health risk factors that may drive individuals to flee their countries of origin, trigger a rooted sense of fear and insecurity, and raise specific health needs for those who opt to flee. However, practical and theoretical developments on refugee law are still necessary to move towards human rights and public health considerations on the application of IPA inquiries.

One of the main issues that epidemic violence poses for refugee law is the fact that a significant portion of the territory in the country of origin faces such a degree of violence occurrence that it renders, at least at a virtual level, a high risk of victimization for individuals. Following European jurisprudence, it seems that a context of generalized criminal violence would not

suffice to find a breach of Art. 3 unless the degree of intensity is serious enough or individuals are affected by critical humanitarian conditions, similar to conflict-torn or natural disaster conditions.

However, an examination on the degradation of living conditions in contexts of epidemic violence might as well compensate the 'absence' of a risk of serious harm stem exclusively from generalized conditions. In principle, it might be presumed that, as result of the widespread criminality conditions in all or a significant portion of the country, the relocation potential of an individual is jeopardized by issues such as the risk of victimization by criminal networks, lack of lawful job opportunities, mental health services to overcome psychological impact, housing options and family networks. However, as a 'common hardship' is often interpreted by judicial bodies insufficient to conclude a risk of serious harm, appealing to personal risk factors and circumstances, especially if accumulated, will be relevant to conclude whether the risk may potentially materialize.

The ECtHR case law shows, however, that it is not necessary to demonstrate that the risk of serious harm should be strictly associated to the personal circumstances of an individual. If a particular group is disproportionately targeted by agents of persecution, or if the general situation of violence is of sufficient intensity, a risk of serious harm in relocation alternatives could be presumed. However, in order to exclude the existence of a relocation alternative, it would be necessary to demonstrate that the levels of violence in the different regions of a country not only exceed the occurrence baseline, but that a significant portion of the territory presents levels of violence above the epidemic threshold, indicating potential risks of future escalation of violence and, therefore, victimization (even potentially emulating war-torn conditions).

The present analysis relies on the assumption that under a context of epidemic proportions, violence is so widespread that it is in itself an indication of poor state intervention and, for IPA purposes, a preliminary indication of the existence of deficiencies on the protection expected to prevent internal or transnational displacements. However, in order to conclude whether that such protection is available for the concerned population, it would be required to conduct an analysis of the existence of criminal social networks, corruption, impunity and accessibility to the criminal justice system

Additionally, a broader notion of risks of serious harm in the context of epidemic violence leads inherently towards a shift on the way domestic protection is conceived, evolving from a

perspective of state intervention limited to law enforcement reactions to violence towards a focus on preventing and changing the social, behavioral, and environmental factors that cause violence.

For IPA purposes, such enlarged perspective of domestic protection must attempt to examine the ability and willingness of states to address issues like the psychological effects of violence as transmissible pathogen, the risk of victimization as a major effect of uncontrolled transmission of violent and aggressive behaviors, and exposition to violence of the most vulnerable groups. The lynch-pinch, however, relies on switching from a reactive notion of protection towards a preventive one, driven by an obligation to guarantee freedom from danger and freedom from displacement. Although adopting such perspective seems a long way, especially if reluctance to integrate human rights concerns on IPA inquiries keeps invading judicial rationalizing.

As the use of force entails physical and psychological harm, the prevention of violence raises concerns on whether violence victimization and perpetration can be examined under a perspective of right to health. The adoption of the Covenant on Economic, Social and Cultural Rights in 1966 recognized the prevention, treatment and control of epidemics as a human right, and the recognition of epidemic proportions of violence might push towards the definition of state responsibilities for violence prevention and preservation of public health. However, as preliminarily concluded in section two, the adoption of a notion of domestic protection in judicial practice has not yet considered appealing to human rights considerations when examining protection standards, and the inclusion of aspects on access to health services are merely marginal in the analysis of IPA inquiries. Therefore, only a broader notion of domestic protection in refugee law might see the light to adopt considerations of public health responsibilities in the context of epidemic violence.

At a procedural level, one of the main instruments that could stimulate a shift on how domestic protection and risks of serious harm are perceived in judicial bodies are the country of origin reports. Information provided through these documents should integrate a public health perspective on contexts of widespread violence, allowing to elevate discussions on state responsibilities at a judicial level.

Country of origin information should also reflect potential inconsistencies on the information of violence occurrence provided by domestic authorities against that provided by international organizations or civil society. Reports may reflect a false or relative security in some regions

or cities that will marginally impact the result of judicial decisions, and in order to elucidate the appropriateness of a relocation alternative in the context of epidemic violence, it is necessary to readdress the relativity of insecurity perception at local and regional levels.

Furthermore, the existence of epidemic proportion of criminal violence leads in a sense to understand widespread criminal activity as humanitarian problem as well. Despite under the classical notion of humanitarian crisis, where a territory face classical political violence or natural disasters, the existence of such context and its conception as a matter of public health leads to elucidate whether collective health problems should be integrated on a judicial analysis.

The epidemiologic approach to violence has been described by analysts some analysist as imperfect, as it requires further theoretical developments. However, it certainly provides a new perspective on how violence propagates and sheds a light to new alternatives on how it can be disrupted.

For immigration and refugee studies, however, it might be worth it to examine whether other forms and categories of violence may approach to epidemic properties, in order to elucidate whether further implications for refugee law may be applicable.

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