

## REQUEST FOR AN ADVISORY OPINION

### INTRODUCTION

The United Mexican States ("Mexico", "Mexican State"), as a Member State of the Organization of American States ("the Organization", "OAS") and as a State Party to the American Convention on Human Rights ("the Convention", "ACHR"), hereby submit to this Inter-American Court of Human Rights ("the Court", "IACHR Court"), the present Request for an Advisory Opinion, pursuant to Article 64 of the ACHR, the first paragraph of which provides as follows:

“The member states of the Organization may consult the Court regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the American states.”

Additionally, the current request is formulated in accordance with the provisions of Article 70 of the Rules of Procedure of the Inter-American Court of Human Rights ("the Rules of Procedure"), paragraphs 1 and 2 of which provide:

- “1. Requests for an advisory opinion under Article 64(1) of the Convention shall state with precision the specific questions on which the opinion of the Court is being sought.
2. Requests for an advisory opinion submitted by a Member State or by the Commission shall, in addition, identify the provisions to be interpreted, the considerations giving rise to the request, and the names and addresses of the Agent or the Delegates.”

The request for this advisory opinion refers to the protection of the right to life, the right to humane treatment, and the right to a fair trial enshrined in the American Convention, as well as the right to life contained in the International Covenant on Civil and Political Rights (“ICCPR”). In addition, it is requested an interpretation of articles 2 and 6 of the ICCPR.

In this regard, the Mexican State submits to the Inter-American Court a request for an advisory opinion regarding the following specific questions arising from the State's obligations concerning the aforementioned rights.

1. The responsibility of private entities engaged in the manufacture, distribution, and sale of firearms, in relation to violations of the protection of the rights to life and humane treatment arising from their negligence when developing their commercial activities, which directly threatens the lives of persons under the jurisdiction of the Member States of the Organization of American States.

2. The efforts that States must undertake to ensure a fair trial for the victims of the above-mentioned commercial practices, which are carried out by private entities engaged in the manufacture, distribution, and sale of firearms.

According to the advisory opinions requested to the Court in accordance with inter-American law, the Mexican State argues that it is a request formulated in abstract terms and the questions raised therein on which the Court's legal opinion is seized are of general applicability. The concerns that motivate the Mexican State refer to the legal framework for the greater protection of human rights in the American region and, in this sense, are in line with the provisions of the ACHR and the Rules of Procedure.

In that respect, the opinion that the Court may issue regarding the present request will be of high value as it will provide guidance to all the American States on the protection of the rights to life and humane treatment, particularly in the regional context where armed violence and corporate activities related to the arms industry pose a major risk, given the possibility of repeated violations of the rights enshrined and protected by the Convention.

This request for an advisory opinion is structured as follows:

- I. Jurisdiction and admissibility
- II. Specific questions on which the opinion of this Honorable Court is sought.
- III. Considerations that give rise to the advisory opinion.
- IV. Provisions which interpretation is requested.
- V. Name and address of the State Agents.

## **I. JURISDICTION AND ADMISSIBILITY**

### **A. Jurisdiction of the Court to render the advisory opinion**

Pursuant to Article 64 of the American Convention on Human Rights, OAS member states have the power to “consult the Court regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the American states.”

The Inter-American Court has, therefore, full jurisdiction to deal with the present application and to answer the questions posed therein.

*Ratione personae* jurisdictional requirements over the present application may be established by the fact that Mexico is a Member State of the Organization and is therefore entitled by the above-mentioned article to consult the Court.

Jurisdiction *ratione loci* to rule on the questions formulated in the present request is based on the fact that it refers to the protection of the rights in any American State.

With respect to jurisdiction *ratione materiae*, the present request refers to the interpretation of the American Convention on Human Rights, in accordance with the provisions of Article 64 of the Convention.

Subsequent sections of this request indicate the specific provisions to which the opinion requested refers. However, since these are legal provisions enshrined in the Pact of San José, it is clear that the Court has material competence to pronounce on the specific questions submitted by the Mexican State.

The Inter-American Court is also asked to interpret the substantial rights and state obligations contained in the International Covenant on Civil and Political Rights. This request is based on Article 64 of the American Convention on Human Rights, which empowers the OAS membership to request the Court to interpret "treaties concerning the protection of human rights in the American States".

### **B. Admissibility of the request**

Regarding the admissibility of a request for an advisory opinion, the Inter-American Court itself has developed a series of jurisprudential criteria that refer to the relevance of exercising its advisory jurisdiction. The Court has determined that compliance with the conventional and regulatory requirements for the formulation of a request for an advisory opinion does not imply that the Court is obliged to provide a response. Therefore, it is the Court's duty to analyze in each case the relevance of exercising its advisory power.

Nevertheless, the practice of the Court reveals that this margin of appreciation does not imply a discretionary power to exercise or not its function in relation to a request for an advisory opinion. On the other hand, the Court must find "decisive reasons, derived from the circumstance that the petition exceeds the limits that the Convention establishes for its competence in this area", as stated in the Advisory Opinion AO-25/18 on *the Institution of Asylum and its Recognition as a Human Right in the Inter-American System of Protection*. Moreover, any decision to the effect that the Court should not respond to a request for an advisory opinion must be properly reasoned, as follows from Article 66 of the Convention.

In its practice, the Court has outlined specific criteria that would justify a refusal to exercise its advisory jurisdiction. For example, it has been established that requests for an advisory opinion should not conceal a contentious case or seek to obtain prematurely a pronouncement on an issue or matter that could eventually be submitted to the Court through a contentious case; they should not be used as a mechanism to obtain a ruling on a matter disputed at the domestic level or as an instrument of political debate at the internal level; they should not exclusively address issues on which the Court has already ruled; and they should not seek to resolve questions of fact, but rather aim at clarifying the meaning, purpose, and rationale of international human rights norms.

The Mexican State argues that none of the abovementioned assumptions which would render inadmissible the merits of the petition are present. In addition, the Mexican State holds that the advisory opinion would be of high value in assisting the Member States and the organs of the OAS to comply fully and effectively with their international obligations, as mandated by the Court's jurisprudence on this matter.

As previously stated, the present request refers to specific issues related to the situation of vulnerability caused by gun violence and the responsibility of private companies for endangering and violating the right to life and humane treatment. In this regard, the legitimate interest of the Mexican State in submitting this application to the Court is fully justified.

## **II. SPECIFIC QUESTIONS ON WHICH THE OPINION OF THIS HONORABLE COURT IS SOUGHT**

Having established the competence of the Inter-American Court of Human Rights and the competence to rule on this specific issue, the Mexican State respectfully requests the Court to answer the following questions:

### **A. International Responsibility**

- 1) Can careless, negligent and/or intentional marketing activities by private companies related to the firearms industry, which facilitate their illicit trafficking, their indiscriminate disposal among society, and consequently increase the risk of violence perpetrated with firearms, undermine the rights to life and humane treatment? Is there international responsibility of firearms companies for such activities?
- 2) What are the obligations of States towards such careless, negligent and/or intentional marketing activities by private companies engaged in the firearms industry? What would be the responsibilities of the firearms companies?
- 3) Are the obligations of the States to prevent violations of the right to life and humane treatment include actions aimed at a narrower regulation of the commercialization of firearms, given the nature and purposes of these products?
- 4) In case that States fail to investigate, prevent and/or sanction such careless, negligent and/or intentional marketing activities by private companies engaged in the firearms industry, can they be held responsible for violations of the rights to life and humane treatment?

### **B. Access to justice**

Considering the obligations established in the ACHR and the International Covenant on Civil and Political Rights:

- 5) What would be the appropriate remedies to ensure access to justice for victims of violence perpetrated with weapons traded careless, negligently and/or intentionally to facilitate their illicit trafficking, their indiscriminate disposal, and the subsequent increased risk of violence?
- 6) Are laws that grant procedural immunity to companies engaged in the arms industry against claims by victims compatible with the State's obligations under Articles 8 and 25 of the ACHR, as well as those described in Article 2.3 of the International Covenant on Civil and Political Rights?
- 7) If these laws exist, which obligations do States have to guarantee access to justice?

In the following section, the Mexican State provides a set of considerations that allow for a better understanding of the scope and purpose of the questions that constitute the present request for an advisory opinion.

### III. CONSIDERATIONS GIVING RISE TO THE REQUEST

#### a) Background

In the jurisprudence regarding its advisory power, the Inter-American Court has pointed out that the opinions it issues must have a practical development in inter-American law and that it constitutes "an alternative legal method' for the protection of internationally recognized human rights," as it stated in OC-9/87 on *Judicial Guarantees in States of Emergency*. Furthermore, on the same occasion, it pointed out that advisory jurisdiction should not be exercised "through purely academic speculation, without a foreseeable application to concrete situations justifying the need for an advisory opinion".

In the present case, the Mexican State maintains that the request not only has practical application in the American context but that it is also a matter of utmost urgency for the protection of the fundamental rights of persons under the jurisdiction of the American States.

As with the other rights enshrined in the ACHR and other inter-American and universal instruments relating to the protection of human rights, the rights to life and humane treatment contained respectively in Articles 4 and 5 of the Convention, require various actions by the States for their effective protection and guarantee, which can only be achieved if the States Parties to the Convention take the necessary measures not only to avoid direct violations, but also to ensure that there is no interference in their exercise, both by State actors and private entities.

In different levels and in response to complex phenomena, the States of the Hemisphere have been confronted with the consequences of domestic and transnational crime, aggravated by the trafficking and diversion of firearms. This situation is amplified by the negligence of key actors in the industry, particularly firearms manufacturers, distributors and sellers, who fail to establish controls and mechanisms to foresee the negative damage caused by their products and to reduce illicit trafficking.

#### b) Mexico's situation

In the specific case of Mexico, it is important to clarify that weapons are available through a single distributor and store, located in Mexico City, owned, managed, and guarded by the Army. The store sells an average of only 38 weapons per day to civilians. In 2013 only 3,140 private citizens in Mexico had a valid gun permit, and in the five-year period between 2013 and 2018, the government only issued 218 additional gun licenses.

In the case of the United States, between 1999 and 2004, when the sale of assault weapons was banned in the U.S., gun production in the U.S. declined sharply. When the ban ended, arms companies greatly increased their production and sales of

assault weapons. For example, in 1990, before the ban, 74,000 assault rifles were produced or imported annually for sale in the United States. In 2006, two years after the ban expired, the number of such rifles sold annually in that country soared to 398,000; and in 2016, more than 2.3 million new AR-15-style weapons were sold annually in the U.S. civilian market.

Of these production figures, more than 500,000 guns are illegally trafficked into Mexico each year from the U.S. Of the guns recovered at crime scenes in Mexico, between 70% - 90% were trafficked from the United States.

By the very nature of the weapons, the damage caused is unfortunately measured in the number of deaths. From 1999 to 2004, years in which the sale of assault rifles was restricted in the United States, homicides in Mexico were declining; fewer than 2,500 gun homicides were committed in 2003. After the ban expired, from 2004 to 2008, Mexico's homicide rate increased by 45%. In 2019, firearms were responsible for more than 17,000 homicides in Mexico, making it the third country in the world with the most gun-related deaths.

In the case of law enforcement, from 2006 to 2021, trafficked firearms were used to kill at least 415 members of Mexico's Federal Police and National Guard and injure at least 840 more.

Mexico contends that the flow of weapons into our country, and their subsequent illicit use, is the foreseeable result of deliberate and informed decisions to design, advertise, distribute and sell weapons in ways that they know, with utmost certainty, will attract and supply criminals in Mexican territory.

U.S. gun companies are aware of the massive illicit trafficking of their weapons into Mexico. It has been extensively documented in the news, academic studies, government reports, United Nations reviews and consultations, and through trace requests made to these companies by law enforcement agencies that find the weapons at crime scenes. Despite this wealth of information, they have not implemented any public policy measures to monitor or discipline their distribution systems.

Their policy is to sell to any distributor or dealer who has a U.S. license to buy and sell the product, regardless of whether the dealer has a record of evading justice or whether there are alerts that they are involved in straw sales or other illegal practices to traffic their weapons into Mexico.

c) Region's situation.

Unfortunately, the American region has witnessed firsthand the damages caused by gun violence. One of the recent tragic events was the massacre at Robb Elementary School in Uvalde, Texas, USA.



The negligent practices of the companies in charge of the production, distribution and, sale of firearms have facilitated their acquisition by private individuals. Together with components such as violent extremism and white supremacism, create an arena/environment for the commission of crimes that threaten life and integrity, as evidenced by the shooting in El Paso, Texas in 2019.

The Inter-American Commission on Human Rights (IACHR) has previously hosted discussions regarding the negative effects that gun violence has on the protection of the rights enshrined in the American Declaration and the Convention. For instance, during its 167th session in 2018, the IACHR convened a hearing regarding the "Regulation of Gun Sales and Social Violence in the United States," addressing the negative impact that poor regulation around gun control has on the high rates of gun violence. In addition, at its 174th session in 2019, the IACHR Commission held a second hearing on the "Impact of gun violence in the United States," convened by Civil Society Organizations, which highlighted the growing number of people killed and injured by acts of gun violence.

Recently, at the request of Mexico, on October 25, the IACHR held a thematic hearing entitled "Respecting and enforcing human rights in the face of activities of arms manufacturing and trading firms in the Americas," as part of its 185th Period of Sessions. In this session, Mexico followed up on the discussions held previously in the IACHR Commission and stressed that the lack of regulation of the arms trade in the United States, and the violence generated by them "is cancer that unfortunately has spread and is expanding throughout the region".

During the hearing, several states from Central America, the Caribbean, and South America spoke about the impact of arms in their territories. In different magnitudes and in response to complex phenomena, the States of the region face the consequences of domestic and transnational crime, aggravated by the trafficking and diversion of firearms. This situation is exacerbated by the negligence of key actors in the industry, particularly firearms manufacturers, who fail to establish controls and mechanisms to reduce the illicit trafficking of their products.

The United Nations Office on Drugs and Crime (UNODC), in its Global Study on Firearms Trafficking 2020, noted that in 2017, out a total of 173,000 homicides committed in the Americas, 130,000 were committed by firearms. The UNODC also indicated that links between trafficking patterns and organized crime violence are identified in Latin America.

Additionally, during an operation coordinated by INTERPOL from March 8 to 28, 2021 (Trigger VI), almost 4,000 suspects were arrested across 13 South American countries involved in illegal arms trafficking, and around 200,000 illegal firearms, parts, components, ammunition, and explosives were recovered.

These figures give a clear example of the level of violence and the high availability of weapons in the region derived in large part from the carelessness, lack of due

diligence, or bad faith of firearms companies in the production and marketing of their products.

d) Business and human rights.

The discussions that have already taken place in this inter-American fora can serve as a basis for addressing issues related to gun violence in the region. However, although the issue has been addressed by the inter-American bodies from a perspective of regulation and state responsibility, there is a very important component that has not been sufficiently addressed, referring to the relationship between the lack of due diligence of private companies engaged in the manufacture, distribution and sale of firearms and their responsibility for the negative consequences of their activities on the protection of human rights.

The question concerning the relationship between business and human rights has been an important topic of public international law in recent times. Since 2011, the United Nations has adopted the Guiding Principles on Business and Human Rights, which establish the obligation of businesses to have appropriate policies and procedures to identify, prevent, mitigate and account for how they address their impacts on human rights.

The principles are based on three main pillars: the first one establishes the duty of States to protect citizens against abuses by companies operating in their territory, through public policies, but especially the establishment of judicial instances that allow third parties to activate State mechanisms to prevent such abuses.

The second pillar addresses an obligation of due diligence that all companies must fulfill to "identify, prevent, mitigate and account for adverse human rights impacts of their activities". This obligation includes responsibility for the company's own activities, or those "directly related to its operations, products or services provided by its business relationships".

The third and last pillar refers to the relevance of having access to remedies that allow for comprehensive reparation. Thus, States have accepted that companies, and not only States, can be called to account for human rights violations resulting from their activities.

Furthermore, the Office of the United Nations High Commissioner for Human Rights, for example, has a "Working Group on Business and Human Rights", dedicated to providing knowledge and experience on the subject. Two documents recently issued by the Working Group stand out, and are worth mentioning in the context of this request:

1) Information Note on "Corporate responsibility in the arms sector", which recommends that companies implement due diligence processes in all aspects of their operations, in order to identify risks and negative impacts of the use of their products and recommends that States guarantee legal standing to victims of human

rights violations originated by arms companies, to sue and join civil and criminal proceedings against these companies.

2) Document on "Corporate influence in the political and regulatory sphere", which states, among other things, that the responsibility of companies to provide redress when necessary, also includes the responsibility to refrain from pressuring for the cessation of state judicial or extrajudicial proceedings aimed at determining whether companies are responsible for human rights abuses related to their activities.

Finally, the Commission in its report on inter-American standards in business and human rights, has pointed out that States can exert important levels of influence on the behavior of private actors, generating extraterritorial effects on the enjoyment of human rights, through regulation, supervision or accountability. In some specific cases, the level of state influence can even be significant, as it can have a greater impact on the behavior of such actors and even involve their general obligations to respect.

In this understanding, the States of the region, through the laws and institutions of law enforcement and administration of justice, must seek to provide the victims of violence generated by the lack of due diligence of arms companies with the judicial protection established by both the American Declaration and the Convention, in such a way as to strengthen the guarantees of non-repetition in our societies.

In accordance with the American Declaration and the American Convention, the States of the OAS are obliged to provide effective judicial remedies to the victims of human rights violations, which must be substantiated in accordance with the rules of due process of law, all within the general obligation of all the States of the Organization to guarantee the free and full exercise of the rights recognized in the inter-American sphere to all persons under their jurisdiction.

#### e) Conclusion.

The questions posed by the Mexican State request the Inter-American Court to offer the States Parties to the OAS guidance regarding the responsibility of corporations for negligent practices and lack of due diligence which they incur, and which result in situations of risk to the life and integrity of persons under the jurisdiction and protection of the American States.

The request is in line with other recent developments in international law regarding the role of private entities, particularly business enterprises, with respect to the protection and potential violation of human rights.

Thus, the Mexican State emphasizes that the present request is aimed at exploring the legal implications of negligent practices on the part of private actors, and does

not focus on the sovereign right that some States confer on their citizens to acquire and possess firearms for personal protection. The Mexican State intends that the governments in charge of protecting and guaranteeing the rights enshrined in the ACHR have more legal elements to confront the negligence of private actors.

The second question relates to the protection of the rights of victims of armed violence before the courts. According to Inter-American law, the obligations of States with respect to human rights are not limited to the omission of violating acts, instead, positive actions must be taken to guarantee the protection of these rights in the face of any possible violation and, in the event that this occurs, there must be effective means for reparation. The establishment of responsibilities through legal remedies is of utmost importance for the administration of justice in favor of the victims of the context of armed violence which, unfortunately, is transversal to the entire American region.

In light of the foregoing considerations, the Mexican State seeks guidance from the Inter-American Court regarding the way in which the American Convention protects individuals from armed violence, with emphasis on protection from the practices of the arms industry, which on many occasions remain unpunished due to the lack of effective remedies to seek redress for damages.

#### **IV. PROVISIONS ON WHICH INTERPRETATION IS REQUESTED**

Considering the abovementioned arguments and the questions posed in the previous section of this request, the Mexican State presents the specific provisions of the American Convention on Human Rights of which it respectfully requests the interpretation of the Inter-American Court in light of the questions that are the subject of this request

The Court is requested to interpret:

From the American Convention on Human Rights:

The four unnumbered paragraphs of the preamble to the American Convention on Human Rights.

- **Article 1** of the American Convention on Human Rights, regarding the "Obligation to Respect Rights".
- **Article 2** of the American Convention on Human Rights, regarding the "Domestic Legal Effects".
- **Article 4** of the American Convention on Human Rights, regarding the "Right to Life".
- **Article 5** of the American Convention on Human Rights, regarding the "Right to Humane Treatment".
- Article 8 of the American Convention on Human Rights, regarding "Right of a Fair Trial".
- **Article 25** of the American Convention on Human Rights, regarding "Right to Judicial Protection".

From the International Covenant on Civil and Political Rights:

- The five unnumbered paragraphs of the preamble to the International Covenant on Civil and Political Rights.
- **Article 2**, untitled, of the International Covenant on Civil and Political Rights.
- **Article 6**, untitled, of the International Covenant on Civil and Political Rights.