



Urban Resilience and Legal Frameworks: Research Design

***Preparedness and Resilience to Address Urban Vulnerability (PRUV)
Work Package 3***

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1. Abstract

Legal scholarship has only in recent years turned its focus to the emerging challenge of progressive urbanisation. In the international legal context, progressive urbanisation can refer to two challenges: one challenge relates to the increasing shift of hostilities during an armed conflict to urban areas. The other challenge concerns civilian urbanisation as a cause for vulnerabilities, violence and hostility. The latter challenge affects legal frameworks in an array of ways. Urban vulnerabilities pose a continuous challenge to securing and ensuring the implementation of public international law. Urban violence and hostilities can be regarded particularly in the international human rights law framework as well as in the field of international humanitarian law. In situations of protracted armed violence that trigger the application of the laws of armed conflict, the urban theatre of armed conflict presents a great risk to the fundamental principles of international humanitarian law. In particular, taking into consideration the large number of people living in densely populated areas surrounded by civilian infrastructure. It is easy to see how the three principles, ensuring distinction between military and civilian persons and objectives, proportionality, and precaution in attacks, come under immense pressure.

Yet, it is important to note that situations of violence, regardless of the question if they fall under human rights law or international humanitarian law, can result in detrimental repercussions for the civilian population. Urban violence often stems from (criminalised) incentives in situations, where the state fails to provide security and other services. In these cases of urban violence and organized crime, the city is not characterised by any form of ‘traditional’ armed conflict that has ‘simply’ moved to the cities, but by the failing of the city’s governance, the shift of power and a resulting increase of violence. Similarly, situations of urban violence can often cause internal and intra-urban displacement.

Urban vulnerabilities do, however, not always manifest in violence and/or armed conflict. Equally severe circumstances for the population can be shortcomings in essential public services, such as water and sanitation, health care, housing, property and land rights, and education. Urban vulnerabilities in existing megacities can, however, also be exacerbated by natural hazards. Along the same lines, urban vulnerabilities tend to affect certain groups in the city disproportionately. Among those are women, who are often at risk of being subjected to sexual violence, children, disabled persons, the elderly and minorities.

Despite this rapid urbanisation, displaced populations increasingly settle in urban areas. Urban areas have become tolerated protection spaces and even moved to the forefront of UNHCR's policy on refugee settlement. Similarly, urban vulnerabilities also emanate from informal urban settlements, resulting from inequalities and extreme poverty. States struggling to deliver basic services to urban populations appear not well equipped to implement and provide essential public services.

Analogous to the three identified vulnerabilities stemming from rapid urbanisation, i.e. urban violence, extreme poverty and natural hazards, the chief focus of work package III lies on urban resilience and legal frameworks. Work package III distinguished between the application of the laws of peace, placing a particular focus on the state's international human rights law obligations, the laws of armed conflict, and the humanitarian action framework, including international disaster response law. In so far as the implementation of international obligations must be considered, the work package will furthermore analyse the pertinent domestic legislation in the three test-bed sites.

2. Key Concepts

Urban vulnerability & Urban violence

International law is traditionally state-centric, addressing the state as central actor and therewith the state's territory as a whole. Consequently, international law does not draw an explicit distinction between urban and rural areas. Urban areas can be understood as featuring high population density, diverse livelihoods and means of production and are often sites of government-provided facilities and/or infrastructure.

International law also does not provide comprehensive, formal definitions of 'vulnerability' or 'violence'. Vulnerability can be said to refer to the characteristics and circumstances of a community, system or asset that make it susceptible to the damaging effects of a hazard. Urban vulnerability, then, refers to these characteristics and circumstances of a community intrinsic to urban areas. An exacerbation of urban vulnerabilities can thus interfere with the enjoyment of human rights.

The notion of violence plays a role in different fields of the law, the most pertinent one for the research at hand being international humanitarian law and international human rights

law.¹ ‘Violence’ is made reference to in Common Art. 3 of the 1949 Geneva Conventions and refers to acts of violence that can be directed against life and person, in particular murder of all kinds, mutilation, cruel treatment and torture.² The given reference is only of some help. The legal definition of the term violence in the context of this project is not of major importance. For the determination of the applicable legal framework, it is rather the intensity of such violence and the organisation of actors involved that decide the applicable legal framework.

The understanding of the term urban violence is twofold. Urban violence may, on the one hand, refer to the urbanisation of non-international armed conflicts and international armed conflicts. On the other hand, urban violence can be understood as referring to socially and economically motivated urban violence, involving urban armed actors that seek to exploit weak government presence in mostly poor, peripheral areas, by seizing illicit economic opportunities as well as social and physical space.³ These areas are also referred to as “ungoverned spaces”, a term referring to a “lack of effective state presence” in a city.⁴ As a consequence, urban residents face little or no provision of security by the state, which fails to uphold the “legitimate monopoly of coercion”.⁵ As a result of clashes between the urban armed actors and official security forces, urban residents are subject to the daily impact of urban violence.⁶

Preparedness

The United Nations International Strategy for Disaster Reduction defines preparedness as:

“The knowledge and capacities developed by governments, professional response and recovery organizations, communities and individuals to effectively anticipate, respond to and recover from, the impacts of likely, imminent or current hazard events or conditions.”⁷

¹ Other sources, stemming for instance from differing domestic police and security laws, might be taken into consideration if necessary for the elaboration of a specific country-context.

² 1949 Geneva Conventions I-IV Common Art. 3.

³ K. Koonings in ICRC and ISS, ‘Urban violence and humanitarian challenges’, Joint Report, EUISS-ICRC Colloquium, Brussels 2012, p. 13.

⁴ J.M. Hazen, ‘Understanding gangs as armed groups’, 92(878) *International Review of the Red Cross* (2009), p. 378.

⁵ Koonings in ICRC and ISS, Urban violence and humanitarian challenges, p. 13.

⁶ Ibid.

⁷ UNISDR, ‘Terminology on Disaster Risk Reduction’, <https://www.unisdr.org/we/inform/terminology#letter-p>.

A more specific kind of ‘preparedness’ in the context of legal frameworks is the notion of ‘legal preparedness’. Law and legal frameworks play a pivotal role in an adequate and timely response to emerging threats and/or disasters. An international framework dealing with preparedness are the *Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance*, whose primary purpose is to ameliorate states’ national legal preparedness regarding disaster relief and initial recovery assistance by “improving their domestic legal, policy and institutional frameworks.”⁸ Preparedness is therefore closely related to the concept of prevention.

Resilience

In light of the plethora of definitions of ‘resilience’ and in the absence of a legal definition, work package III draws on the IFRC’s understanding of resilience. The IFRC describes resilience as the:

*“the ability of individuals, communities, organizations or countries exposed to disasters, crises and underlying vulnerabilities to anticipate, prepare for, reduce the impact of, cope with and recover from the effects of shocks and stresses without compromising their long-term prospects.”*⁹

Accordingly, the IFRC defines the following distinction: the individual level, the household level, community level, local government, national government, organisational level, and the regional and global levels.¹⁰

Resilience can be viewed as a dynamic process of both learning and adapting.¹¹ Transformative change, as opposed to returning to the point of origin, is hence key to the concept.¹² The underlying rationale of highlighting different levels of resilience stem from the work package’s prime focus on the resilience of the law and legal frameworks (local and national government, regional and global level). Likewise, work package III will examine the individual and community level of resilience. Resilience is therefore not only understood as

⁸ Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, 30IC/07/R4 Annex, para 1(3).

⁹ IFRC, ‘IFRC Framework for Community Resilience’, Geneva 2014, p. 6.

¹⁰ Ibid.

¹¹ A. Almedom, ‘Profiling Resilience: Capturing Complex Realities in One Word’, 35(1) *The Fletcher Forum of World Affairs* (2014), p. 147.

¹² Ibid.

the resilience of individuals and/or the community, but also the resilience of the law and legal frameworks.

3. Review of Secondary Literature

The current academic discourse reflects an overlap between legal approaches and political sciences approaches. One major source of secondary literature stems from publications and output provided by international organisations and non-governmental organisations working in the given field. This literature provides a valuable source of country and topic specific information. Indeed, focusing on urban vulnerabilities, in particular on urban violence and resilience, is closely linked to the ongoing work undertaken by the ICRC in urban operations, and more specifically in the *favelas* in Rio de Janeiro.¹³ Similarly, urban violence, natural hazards and urban resilience are key objectives in the UN Conference on Housing and Sustainable Urban Development, currently in its third round (HABITAT III). Humanitarian considerations in situations of continuous urban violence and/or armed conflict, but similarly other situations of distress, including natural disasters, play a unique role in the process.

Turning to legal research: traditional legal research on the application of international and regional human rights law, humanitarian law and disaster response law has so far only taken minor note of the urban setting and megacities in particular. A central topic has been progressive urbanisation, as describing a shift of the hostilities during an armed conflict to urban, mainly civilian areas and the ensuing risks of displacement, injury or death for civilian persons.¹⁴

Only in the last decade has legal scholarship centred on progressive urbanisation as a source of conflict. Along the same lines of the academic discourse on the application of international humanitarian law in weak or so-called failing or failed states, marked by weak or insufficient government control, academia has posed the question what the implications are for “fragile cities” or so-called “ungoverned spaces”.¹⁵ Further considerations emanating from these situations question if situations of urban violence can meet the threshold of a non-international armed conflict and consequently trigger the application of international

¹³ A. Gussing in ICRC and ISS, *Urban violence and humanitarian challenges*, pp. 48-50; R. Banfield & H. Slim, ‘Armed Violence and the New Urban Agenda – The ICRC’s Recommendations for Habitat III’, Policy Paper (2016), p. 2.

¹⁴ Banfield & Slim, Policy Paper (2016).

¹⁵ See ICRC, ‘Interview with Dennis Rogers’, 92(878) *International Review of the Red Cross* (2010), p. 325; Hazen, 92(878) *International Review of the Red Cross* (2010), p. 369, 378.

humanitarian law. Affirming the application of international humanitarian law needs to be premised on a convincing determination of the intensity of hostilities and the organisation of the parties. Consequently, previous research has begun examining the typology of armed actors in the urban violence setting.¹⁶ The appearance of non-state actors in relation to both urban violence and urban vulnerabilities has gained little attention from legal scholarship. Therefore, traditional legal research on the role and nature of non-state armed actors needs to be applied to this specific setting as well.

And while academic legal literature concerning the wider urban sphere has increased in the last decade, so far, its focus has mostly been fixed on preparedness to address urban vulnerabilities, while the aspect of resilience has been neglected from a legal point of view. Furthermore, legal academia has widely debated the protection of various vulnerable groups as well as organized crime, however, the link between the two needs to be analysed in depth and in this context.

4. Research aims

Primary research aims

Two overarching research aims can be identified: **Firstly**, how does law further and ensure preparedness? And **secondly**, how does law promote resilience and reduce vulnerabilities?

Providing an adequate answer to the **first research aim** requires identifying the existing rights and obligations of all pertinent actors involved in the urban setting. The most evident actors in this context are states and their organs. Additionally, the analysis seeks to bring further clarity to the status of non-state actors and their potential rights and obligations in the urban context. The non-state actors this research design refers to are, among others, criminal networks, so-called ‘gangs’, paramilitaries, and PMSCs. Along the same lines, the research examines the role of humanitarian actors in the urban setting in disaster prevention as well as in gaining access to and providing relief for situations of urban violence.

At the individual and community level, work package III focuses on the securement and the protection of human rights, particularly civil, political as well as socio-economic rights, of different (vulnerable) groups in the volatile urban areas. The rationale for this stems from the

¹⁶ See e.g. Hazen, 92(878) *International Review of the Red Cross* (2010); O. Bangerter, ‘Territorial gangs and their consequences for humanitarian players’, 92(878) *International Review of the Red Cross* (2010).

belief that the enjoyment of civil and political as well as of socio, economic and cultural rights enhances the individuals' and communities' resilience to respond to, address and reduce urban vulnerabilities.

The **second research aim** concerns the promotion of resilience and diluting vulnerabilities. Addressing this research aim needs to be premised on the identification of vulnerable groups pertaining to each PRUV city as well as on national and international regulations pertaining to their protection. In a second step, the research will turn its focus to rights' enforcement and promotion, particularly emphasising legal enforcement and complaint mechanisms. Encompassed in the enforcement of the law is the dissemination and awareness raising of existing rights and entitlements of the citizens and duties of the different obligation holders respectively. Therefore, both research aims seek to result in the development of actor-sensitive dissemination tools.

City-specific research objectives

The envisaged research follows a **threefold structure**: the **pre-field research phase**, the **field research phase**, and the **final evaluation stage**. The research will be undertaken in three different city-contexts: Bogotá, Colombia, Jakarta, Indonesia and Nairobi, Kenya (hereinafter PRUV cities).

Bogotá, Colombia

In the context of Bogotá, the primary focus of work package III lies on urban violence and legal issues and questions pertaining to situations of violence. Cognate challenges include, but are not limited to, urban violence, internal and intra-urban displacement, human security, liberty and security of persons and the protection of vulnerable groups, in particular women and children.

The examination of the applicable legal frameworks in the context of Bogotá includes, most importantly international human rights law and international humanitarian law as well as their relationship, interplay, and transformation into Colombia's domestic law.

Nairobi, Kenya

In the context of Nairobi, work package III analyses the application of the laws of peace, in particular international human right law. Urban challenges pertaining to Nairobi include the

securement and protection of various human rights norms in the face of Kenya's rapid population growth, increase in (informal) urban settlements and extreme poverty. Of particular importance in this context is the concept of human security and the state of housing, land and property rights. The latter was addressed in the Special Rapporteur's most recent report on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and highlights the significance of adequate housing for the right to life, security and dignity.¹⁷

Jakarta, Indonesia

The legal frameworks most relevant in the context of Jakarta include the application of the law of peace, in particular international human rights law, and the humanitarian action and disaster response law framework. The most pertinent vulnerability in Jakarta is the exacerbation of urban vulnerabilities through natural hazards.

Research objectives in the pre-field phase

The three identified urban vulnerabilities, i.e. urban violence, extreme poverty and natural hazards, are most prevalent in Bogotá, Nairobi and Jakarta respectively. The research undertaken in the three PRUV cities will primarily focus on the most pressing urban vulnerability in each city and issues pertaining to it. Nonetheless, work package III recognises that these urban vulnerabilities are overarching issues in megacities. Therefore, the research in situ may overlap and address urban vulnerabilities beyond the primary focus.

The **first research objective** in the pre-field phase is to further identify urban vulnerabilities relating to the securement of human rights in each of the three PRUV cities. For these purposes, work package III currently drafts background papers. The background papers can be divided into two categories: **review articles** and **legal briefs** on the protection of specific human rights in the country context of Colombia, Indonesia and Kenya. The legal briefs largely rely on state reports, concluding observations, the work of the UN Special Rapporteur and shadow reports. The review papers are of an academic nature and identify relevant primary and secondary sources on specific legal issues in the context of urban vulnerability and urban resilience.

¹⁷ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, A/71/310, 08 August 2016, para 1.

The legal briefs centre on identifying challenges to ensuring the enjoyment of central civil and political human rights, including the right to life (Art. 6 ICCPR); personal freedom, security, and arbitrary detention (Art. 9 ICCPR), human dignity (Art. 10 ICCPR), freedom of movement (Art. 12 ICCPR), equality before the law (Art. 14); privacy and family life (Art. 17 and 23 ICCPR respectively). Moreover, the legal briefs examine socio, economic and cultural rights in the three country contexts, in particular the right to an adequate standard of living (Art. 11 ICESCR); the highest attainable standard of health (Art. 12 ICESCR); education (Art. 13 ICESCR) as well as the right to take part in cultural life (Art. 15 ICESCR).

Furthermore, the legal briefs focus on the protection vulnerable groups, i.e. migrants, refugees and internally displaced people, women, children, disabled persons, the elderly, and minorities in the framework of the ICCPR and specialised human rights treaties. Moreover, a number of legal briefs focus on the concept of human security in the urban context, the relationship between law enforcement and the military in the three test-bed cities, and discuss the human rights law framework in Indonesia and its interaction with Islamic law. Lastly, two legal briefs highlight regional human rights instruments, namely the Inter-American Court of Human Rights and the African Court of Human and Peoples' Rights.

The review papers examine situations of urban violence and critically question the application of the three different legal frameworks, i.e. international humanitarian, human rights law, and the humanitarian action framework to the urban violence context. The review papers accordingly follow three scenarios: the first one applies the laws of peace, specifically human rights law to situations of urban violence. This review paper focuses on international and regional human rights obligations, enforcement and complaints mechanism and the national implementation and practice. The review paper seeks to further distinguish between states a) derogating and b) not derogating from human rights norms on the basis of a declared state of emergency. The paper enquires if derogations are allowed under the applicable treaties and asks what the implications for law enforcement agencies are.

The second scenario discusses the question of and challenges to the applications of the laws of armed conflict to situations of protracted urban violence. It pursues the conundrum if and under what conditions situations of violence can trigger the application of international humanitarian law relating to non-international armed conflict and, further, if specific gangs, criminal networks and/or cartel can be regarded as armed non-state actors and thus as parties to the conflict.

The last scenario highlights the humanitarian action framework in the cities. How does the urban context affect the role, rights and responsibilities of humanitarian actors in situations of urban violence, extreme poverty and natural hazards? What challenges, inherent in the three urban contexts, do humanitarian organisations face? Are the humanitarian principles applicable or is there a need to adapt the existing or develop a new relationship between human rights and humanitarian organisations?

The review articles will aim for publication in academic journals, while the legal briefs will be discussed in several cluster and/or workshop settings.

Research objectives in the field phase

The field research phase which will run continuously throughout the year 2017. During this phase, RUB researchers will undertake mobility to firstly, hone their understanding of the national law and challenges in implementing international legal frameworks, secondly, to refine their understanding of urban vulnerabilities in situ and thirdly, to engage into dialogue with local actors, including researchers and representatives of stakeholders in the PRUV cities. These consultations aim to, firstly, prepare specialised academic research papers on vulnerable groups in the urban setting and secondly in comprehensive academic research papers that address the overarching research questions in each of the city contexts. Additionally, the work package envisages to organise a workshop format with local and international actors and scholars.

Final evaluation stage of the research

The findings of these research papers will be presented and discussed at conferences and/or with local experts and stakeholders. The main aim of these conferences is to develop dissemination tools for target groups, i.e. government officials, non-state actors, humanitarian organisations. This also aims at including the creation of a legal module and a legal simulation exercise for training seminars tailored to the partners in each of the three cities.

5. Methodology

The methodological approach of work package III follows the traditional legal doctrinal approach, which refers to an examination of the law and legal concepts.¹⁸ The doctrinal legal approach systematically exposes the rules governing a specific legal field and proceeds to carefully examine them and their relationship.¹⁹ This is undertaken in line with Article 31 of the Vienna Convention on the Law of Treaties (VCLT) and thus, “in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”²⁰ In line with Article 38(1) of the Statute of the International Court of Justice, the primary sources refer to conventions, international custom and general principles of law recognised by civilised nations. Similarly, the research will draw on subsidiary means, including judicial decisions of international and regional courts and tribunals.

In line with Article 32 of the VCLT, work package III will also rely on “supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion.”²¹ Further secondary sources include but are not limited to soft law instruments, documents of the United Nations, monitoring reports by treaty bodies and non-governmental organisations, and scholarly research.

The declaration of a legal doctrinal approach needs to be followed by an annotation in light of the case studies. While the field research undertaken in the three PRUV cities continues to follow a doctrinal legal approach, the research process will also be informed by consultation with local actors. In addition to this, the research of work package III will benefit from the household questionnaire. The questions contributed by work package III address access to legal remedies, local protection mechanisms, and human rights awareness.

6. RUB Mobility

Key mobility: Staff consists of the following: Prof. Dr. Pierre Thielbörger, Prof. Dr. Hans-Joachim Heintze, Katharina Behmer, M.A., Laura Hofmann, LL.M., Charlotte Lülff, LL.M., M.A., Robin Ramsayhe, Dipl. Jur.

¹⁸ T. Hutchinson & N. Duncan, ‘Defining and Describing What We Do: Doctrinal Legal Research’, 17(1) *Deakin Law Review* (2012), p. 85.

¹⁹ T. Hutchinson, ‘Doctrinal research: Researching the jury’, in D. Watkins & M. Burton (eds.), *Research Methods in Law* (Abingdon Routledge, 2013), p.10.

²⁰ Vienna Convention on the Law of Treaties, 23 May 1969, Art. 31(1).

²¹ *Ibid*, Art. 31(2).

Preliminary Mobility Schedule 2017:

	Bogotá, Colombia	Jakarta, Indonesia	Nairobi, Kenya
January			
February			
March			
April			
May			
June			
July			
August			
September			
October			
November			
December			

7. Synergies with other work packages

Synergies with the other work packages of the PRUV project can be clearly identified. Interdisciplinary aspects are particularly prominent in work package II's (A Protection Approach to Urban Resilience) focus on the concept of protection in ungoverned spaces, also referred to as fragile cities, and urban violence in Bogotá. Similarly, the topic of intra-urban displacement in Bogotá allows for a vivid exchange and collaboration between the two work packages. Furthermore, both work packages address similar question with regard to how humanitarian actors can ensure protection of the civilian population in situations of urban violence. Work package IV's (A Human Security Approach to Urban Resilience) central topic of human security, likewise, allows for collaboration between work package IV and III. Work package I's (Social Capital and Urban Resilience) analysis into the role of the law and legal frameworks in individual's access to livelihoods presents additional room for collaboration between both work packages. Further synergies can be identified between the research of work package V (Developing Human Resilience in Urban Settings using Public Health Preparedness) and III. Both work packages address the question of how the legal preparedness of the (local) government can be furthered in light of disaster response. In a similar matter, both research packages concentrate on implementation challenges of the law.

ANNEX

Preliminary Literature List

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