



## International humanitarian law and policy in Colombia: progress and challenges

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Over the last several years, while attention was turned to tackling the impact of the COVID-19 pandemic on public health, the economy, and society as a whole, the humanitarian consequences of conflict and violence in Colombia worsened. According to the figures, the effects of armed conflict and violence were higher in 2021 than at any other time in the past five years.

In this week's episode of *Humanity in War*, podcast host Elizabeth Rushing spoke with Mariana Chacón Lozano, ICRC's Legal Adviser in Bogotá, to discuss the humanitarian context, IHL and policy challenges, and progress in the country.

*Humanity in War* · Episode 10: International humanitarian law and policy in Colombia – progress and challenges

It's now been six years since the government of Colombia and the Revolutionary Armed Forces of Colombia – an armed group formerly known as the FARC-EP and now known as the 'Comunes' Political Party – signed their famous peace agreement, which included humanitarian issues such as the protection of children, the search for the missing and demining, as well as obligations relating to international humanitarian law in a post-agreement scenario.

**Has this peace agreement translated into a post-conflict context for Colombia? What is the situation of violence that you're seeing in the country today?**

Regrettably, no, it has not translated into post-conflict. While the peace agreement did succeed in ending the conflict between the now *Comunes* party and the government, several other non-State armed groups were still operating in the country, and they rushed to take over the territories that were left by the

FARC-EP at the time.

At the same time, there were remnants of the FARC-EP that never demobilized. They never adhered to the peace process. And since 2017, they have slowly but surely regrouped, restructured, and now have become a nationwide organization again. Therefore, while we still see that, say, 30% of the peace agreement between the FARC-EP and the government has been implemented, there are parallel situations with violence that have become or were non-international armed conflicts.

Right now, the ICRC has classified six non-international armed conflicts in Colombia. Three oppose the government of Colombia to armed groups, and the other three oppose non-State armed groups to other non-State armed groups.

Regarding the first type of conflict, we have the government of Colombia against the former FARC currently not adhered to the peace agreement, the ones I referred to that never demobilized. The second one we have between the government and the *Autodefensas Gaitanistas* de Colombia, the AGC. The third one is the State versus the National Liberation Army, the ELN. Regarding conflicts between non-State armed groups, the ELN is fighting the AGC in a NIAC and the former FARC-EP, that never demobilized, also are classified in two different armed conflicts against other post-FARC groups.

So while violence against the government has decreased because of the ceasefire, fighting among the groups has not decreased. And as you said, this has meant that over the last years, humanitarian consequences have regrettably increased in the country.

**As with any other context of violence or conflict, it's often the civilians who are caught up in between these clashes. Can you please tell us the main humanitarian concerns that we're seeing there created by the clashes between these armed actors?**

Over the last five years, for example, we've seen that displacement has increased by 360%, from 14,000 people to 52,000 people. Victims of explosive devices have also increased by 800%. In 2017, there were 57 victims, and in 2021, there were 449. We've also seen an increase of attacks against the provision of health care services, a 500% increase from 101 incidents in 2017 to 553 in 2021.

Before 2016 in Colombia, we had maybe three non-State armed groups with a clear hierarchy and military organization and a central command. But after 2016, the reality has been much more fluid and the structures have been difficult to follow, as you say, for classification purposes. So again, while any peace agreement and any situation that will decrease the humanitarian consequences for the population is welcomed by the ICRC, it is of the utmost importance to keep the classification and the technical view of these events in the field objective.

**Let's start turning towards some of the work being done, both nationally and with regard to international humanitarian assistance, to counter the effects of this violence.**

**Last year, the UN hailed Colombia as having an unprecedented achievement in transitional justice, and a large part of any ICRC delegation work is the dissemination of international humanitarian law. Could you outline how the ICRC legal department is addressing both the humanitarian consequences that you just described and also what progress has been made in Colombia to this end?**

Yes, gladly. And to your comment, I think it's important to say that the legal department here works closely with the field to make sure that we have a clear reading not only of the conflict dynamics, but of these humanitarian consequences to try to find an answer, a systemic answer for them and prevent them from happening in the future.

For example, the legal department has worked in a project for the last three years with the Ombuds office in which we've diagnosed, which are the legal obstacles faced by migrants affected by NIAC, because they are particularly vulnerable population within the population affected by NIACs, and we've worked with them in issuing guidelines and regulations that more properly address their needs.

Often these migrants are irregular migrants in a situation of irregularity and they don't go to the authorities to report issues or they don't have enough information on their fear of being pointed out as not having the proper documentation. So we are working with authorities to try to find a solution to these issues based on our field experience.

Another thing that we've been doing is that we've been working with the Ministry of Health to make sure that the respect of the medical mission, the respect of the provision of healthcare for healthcare personnel is well implemented and that they are not prosecuted for providing medical services to non-State armed groups or the armed forces.

We are also working on updated the manual on the medical mission, as it's called in Colombia, so that the legal frameworks applicable are more clear. We've also worked in a directive to better provide health assistance to victims of weapon contamination of explosive artifacts, because in Colombia, members of non-State armed groups are not considered to be victims legally according to the system. Hence, they cannot access certain State provision of services. However, with this directive, what we achieved, and I think it was an important achievement was that we separated the technical concept of victim in Colombia from the provision of immediate health services to these members should they be affected by, for example, a mine.

I would like to mention that with regards to missing persons, which is one of the consequences that has increased in the last two years, we are working with the special unit to search for missing persons that was created based on the peace agreement to try to provide content to the humanitarian angle that they search with and to make sure that the system to search for missing persons in Colombia is working as such, as a system, because there are there are many institutions in Colombia that promote the search for the missing, but they're not necessarily always coordinated.

Finally, because you mentioned transitional justice, we also work with a special jurisdiction for peace. They are a jurisdiction that was created based on the peace agreement to prosecute, if that's the case, members of the FARC-EP and members of the armed forces of the State in the framework of the conflict. Among other things, they have to decide who to provide amnesty for and who has committed war crimes and hence cannot be afforded amnesty. In the

concept of war crimes, there are a lot of gray areas and they have the task of providing the widest amnesty possible in line with Additional Protocol II. So we're working with them as well to fine tune certain concepts in IHL, such as hostage taking.

**Let's go a little deeper on that point, actually. As the appointed custodians of international humanitarian law, a question we are regularly asked at the ICRC is what happens when international humanitarian law is violated. Can you tell us, with such a strong judicial branch in place, how is IHL enforced in Colombia?**

Well, that's an interesting and complex question. If we focus on the transitional justice mechanisms, such as the special jurisdiction for peace, I think Colombia has a one-of-a-kind experience, in that the head of this tribunal has different sources of international law and national law that they can apply directly. I cannot say how the result of these processes are going to be because they have not really finished one – they are in the process of analyzing and in the process of recognition and having a hearing with the victims.

So it's a very interesting process that has a legal side to it, a political side to it, but also a very humanitarian side to it, because they are promoting a recognition by the perpetrators, participation by the victims, and the concept of self sanctions, restorative sanctions that would enable perpetrators not necessarily to serve time in prison, but to conduct acts that will repair and give back to the communities that they affected.

For me, that's a fascinating issue in Colombia that coexists with 'ordinary' justice. Colombia has a chapter that has implemented serious violations of IHL into their criminal code, and they do conduct prosecutions. But at the same time, I think the main focus continues to be on these transitional justice mechanisms.

IHL, ironically, is very well known in Colombia in terms of how publicly it's used and how much it's mentioned in the media. I have never been in a context in which IHL is so known – it's on the tip of your tongue, it's always there. Regrettably, it is not always technically and profoundly well understood. So part of our job in the legal department is to disseminate it in a technical and detailed way so that it's not instrumentalized or misunderstood in a context such as Colombia, in which the IHL paradigm and the human rights paradigm coexist all the time.

**A last question would be about the recent elections. In August, when Colombia began a new political chapter with a change in government. In this framework of a now 'total peace' initiative, how is the humanitarian community adapting the plans that you've outlined to this new administration?**

It's been a very interesting and challenging process. The total peace initiative is a massive task that the government has set for themselves. The ICRC again welcomes any initiative that would mean that the humanitarian consequences would decrease for the population.

The government is already sitting down with the ELN, one of the non-State groups that I mentioned, and because of the need to move forward and to have a clear view of the humanitarian consequences, but at the same time bring peace home in a way to make the population feel that peace is next to them already, we have the feeling that the political decisions that are being made in the framework of the negotiations are including humanitarian issues, but not necessarily always keeping the boundaries between them. We understand that the government needs all the tools necessary to work toward peace, but at the same time, there are still humanitarian consequences ongoing in different parts of the country, some more than others.

The humanitarian community recognizes the challenge that the government has and will continue conducting their humanitarian action according to their humanitarian standards, having humanitarian access to the communities, and, yes, promoting an environment that could indirectly help with peace conversations, but not necessarily being the implementers of peace.

I think this is true whether there are peace negotiations or not. In this sense, international humanitarian law is a very powerful and useful tool to remind the parties that even while there are negotiations ongoing, there are a minimum set of obligations that they have to abide by and that they can even be applied to continue protecting people after an armed conflict ends, in a post-conflict situation. These humanitarian consequences, of course, will need to be followed up even after any agreement comes to fruition and can inform as well the parties about which obligations that need to take into consideration when agreeing on these matters.

So the message is the humanitarian space will continue working and needs to continue working based on their standards and access. Yes, there's things that are interlinked and interrelated – the humanitarian world can help create an environment that is conducive for negotiations – but it should not be taken as a direct factor or influence or on this.

I'll give you an example just to finish. When the ICRC was involved in the peace negotiations between the FARC-EP and the government of Colombia, we were facilitators and mediators with logistics, but we also provided legal advice and humanitarian advice on issues such as the protection of children, weapon contamination and missing persons. We can do that now as well while keeping our mandate and working according to our principles.

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