

## Colombia, Response of armed groups to COVID-19

*In 2020, the UN Security Council called for a 'global ceasefire' and 'humanitarian pause' in order to address problems posed by COVID-19. Reports emerged that some Non-State armed groups (NSAGs) complied with this request. However, others continued to conduct hostilities and many adopted measures of control to combat the pandemic. This case discusses the response of those armed groups to the pandemic and explores the issues associated with armed group governance. The case also raises questions whether the pandemic represents a shift towards an understanding that NSAGs have broader human rights obligations.*

### Acknowledgments

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**N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents.** Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

## A. REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS ON THE SITUATION OF HUMAN RIGHTS IN COLOMBIA

[Source: Report of the OHCHR: Situation of Human Rights in Colombia, 26th February 2020, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/110/95/PDF/G2011095.pdf?OpenElement>; footnotes omitted]

[...]

## I. Introduction

1. The present report assesses the human rights situation in Colombia between 1 January and 31 December 2019. [...]

[...]

## II. Context

5. [...] While the vast majority of former members of FARC-EP remained committed to the peace process, OHCHR was deeply concerned that a number of former commanders, including two head negotiators, returned to arms.

6. OHCHR continued to observe persistently high levels of violence generating serious human rights violations. [...]

[...]

8. The National Liberation Army (ELN) operated mainly in Antioquia, Arauca, Cauca, Chocó, Norte de Santander and Nariño, persistently breaching international humanitarian law. On 17 January, ELN perpetrated an attack with improvised explosive devices against a police academy in Bogotá, killing 22 persons and triggering the breakdown of dialogue between the Government and ELN. [...]

9. Other violent groups continued to perpetrate threats, homicides and other serious human rights abuses, and to cause displacement. Based on OHCHR observation related to the criteria of intensity and organization, such groups, for example the Popular Liberation Army (EPL) in Cauca and Norte de Santander, and groups composed of former members of FARC-EP in Caquetá, Meta and Guaviare, would not currently be categorized as armed groups under international humanitarian law.

10. Criminal groups, such as the Autodefensas Gaitanistas de Colombia (or “Clan del Golfo”), the Caparros and La Mafia, and transnational criminal organizations, employed extreme violence in disputes over the control of illicit economies. These groups operated mainly in Antioquia, Cauca, Chocó, Córdoba, Guainía, Huila, La Guajira, Magdalena, Nariño, Norte de Santander, Putumayo and Valle del Cauca.

[...]

## B. HRW REPORT, COLOMBIA: ARMED GROUPS' BRUTAL COVID-19 MEASURES

[Source: HRW Report, Colombia: Armed groups' brutal COVID-19 measures. 15th July 2020, available at: <https://www.hrw.org/news/2020/07/15/colombia-armed-groups-brutal-covid-19-measures>]

[1] [...] Armed groups in Colombia have committed killings and other abuses against civilians in an effort to enforce their own measures to prevent the spread of Covid-19 [...]

[2] Since the arrival of the novel coronavirus to Colombia, armed groups in several parts of the country have imposed curfews, lockdowns, and other measures to prevent the spread of the virus. To enforce their rules, the groups have threatened, killed, and attacked people they perceive are failing to comply.

[3] "In communities across Colombia, armed groups have violently enforced their own measures to prevent the spread of Covid-19," said José Miguel Vivanco, Americas director at Human Rights Watch. "This abusive social control reflects the government's long-standing failure to establish a meaningful state presence in remote areas of the country, including to protect at-risk populations."

[4] Between March and June 2020, Human Rights Watch interviewed 55 people in 13 states in Colombia by phone, including community leaders, prosecutors, staff at humanitarian organizations, police officers, and local residents. Human Rights Watch also reviewed pamphlets signed by armed groups, as well as a range of secondary sources, including publications by the Human Rights Ombudsperson's Office and local human rights groups, and media reports.

[...]

[7] The armed groups have imposed brutal "punishments," including killings, on people for allegedly failing to comply. Groups involved in these crimes include the ELN, groups that emerged from the 2016 demobilization of the Revolutionary Armed Forces of Colombia (FARC) guerrillas, and the Gaitanist Self-Defense Forces of Colombia (AGC), which emerged from the supposed demobilization of right-wing paramilitary groups in the mid-2000s.

[...]

[10] Armed groups have burned the motorcycles of people who violated the groups' movement restrictions.  
[...]

[11] As of July 13, Colombia had confirmed over 150,000 cases of COVID-19, and more than 5,000 deaths linked to the virus. The government has adopted a series of measures to contain the spread of Covid-19,

including a nationwide lockdown that began in late March and remains in effect.

[12] Measures imposed by armed groups have further undermined access to food for communities living in poverty, which had already been limited by the government lockdown. A community leader from the southwestern port-city of Tumaco said that due to armed groups' rules limiting fishing, residents no longer have fish or shellfish to sell. The 5 p.m. curfew also means they can no longer make a living selling food from street food stands at night. "If [people] dare to go outside, there is no one to buy, so families are starving," he said.

[...]

[14] Under international human rights law, the Colombian government is obligated to protect the rights to life and physical integrity by taking adequate preventive measures against reasonably foreseeable threats from private actors, including organized criminal groups and other armed groups. International humanitarian law is also applicable to all parties to ongoing armed conflicts in Colombia, prohibits deliberate attacks on civilians, and requires respect for their rights.

[15] The Colombian government also has an obligation to take effective and adequate steps to prevent the spread of Covid-19 to protect people's right to health, as well as to ensure the rights to food and water.

[...]

#### Covid-19 Measures imposed by Armed Groups

[17] Numerous armed groups operate in Colombia. Some are parties to the ongoing armed conflicts in the country. Many exercise effective control over specific communities or neighbourhoods, enabling them to impose their own measures against Covid-19. In some other parts of the country, groups are challenging government forces' territorial control.

[18] Armed groups imposing measures to prevent the spread of Covid-19 include the National Liberation Army (ELN) guerrillas; the Popular Liberation Army (EPL); the Gaitanist Self-Defenses of Colombia (AGC); and several groups that emerged from the 2016 demobilization of the Revolutionary Armed Forces of Colombia (FARC) guerrillas, often called "FARC dissident groups." Human Rights Watch has also documented that Contadores in Nariño and La Mafia in Putumayo have imposed Covid-19 measures.

[19] FARC dissident groups imposing such measures include the Oliver Sinisterra Front and the United Guerrillas of the Pacific, which operate in the southwestern state of Nariño; the Jaime Martínez mobile column and the Dagoberto Ramos mobile column, which operate in the southwestern state of Cauca; the 10th Front, in the eastern state of Arauca; the 7th and the 1st fronts in eastern state of Guaviare; and the

Carolina Ramírez Front, in the southern state of Putumayo.

[20] One or more of these armed groups have committed violent abuses in connection with their Covid-19 measures in at least five states – Córdoba, Cauca, Guaviare, Nariño, and Putumayo. In four other states – Arauca, Bolívar, Chocó, and Huila – armed groups have threatened to use violence to enforce their measures, but Human Rights Watch has not documented specific cases of abuse in those states. In Caquetá, the Carolina Ramírez Front threatened to “fine” people who failed to comply. In North Santander, the EPL “invited” people to comply and said their troops would “contribute to control compliance.”

[21] Armed groups have used pamphlets and WhatsApp to establish curfews, lockdowns, and restrictions on movement for people and on opening days and hours for shops. Some armed groups have organized meetings to communicate their rules to the population, humanitarian and human rights officials said.

[22] In late March, the Jaime Martínez column released a pamphlet saying that “[M]any did not understand, did not comply with the lockdown established by the national government, therefore our organization will take control to protect the population.” It said that “The opening times for authorized businesses will be between 8 a.m. and 2 p.m., and during those times people should do their groceries; no one should be on the streets after 2 p.m., except for a medical emergency.”

[23] In early April, the ELN released a pamphlet in the western state of Chocó, listing eight rules. These included a “total closure of the roads,” the prohibition of “any type of public events and meetings” with more than 10 people, a curfew from 8 p.m. to 6 a.m., and an isolation requirement for people who arrive in the area.

[24] Similarly, in late April, the Carolina Ramírez Front released a pamphlet in Putumayo announcing that due to Covid-19 it was “totally forbidden to transit after 7 at night except for sick people.” The pamphlet also said that “Only the previously authorized entry and exit of boats is allowed,” noting that people failing to comply would have to pay a “penalty” of COP 2,000,000 (approximately US\$550).

[25] While the government has allowed stores selling food, medicine and other basic supplies to open, armed groups in the southwestern port-city of Tumaco, in Nariño state, have at times told store owners that they must close, community leaders said. Similarly, the government allows people to leave their houses to access health services or banks as well as in other cases of serious necessity, even during curfew hours. Yet humanitarian workers said that armed groups in parts of Nariño, Arauca, Putumayo, and Guaviare have not allowed people, including those who are sick, to leave their houses at all during their curfews.

[26] Measures imposed by armed groups have further undermined people’s ability to secure adequate food without providing alternative options, residents, community leaders, humanitarian actors, and local church authorities told Human Rights Watch. For example, even though government rules would allow the sale of food on the streets so long as sellers avoid crowding, one community leader told Human Rights Watch that

because armed groups in Tumaco “do not allow street selling or [at times] allow [it] only until 5 p.m.... families do not achieve sufficient income to feed themselves.” Some families started sharing communal noodle soups or are just sharing “one single pound of rice” among all family members, she said.

#### Killing and other violent attacks

[27] Human Rights Watch documented nine killings in three states connected to armed group measures to prevent the spread of Covid-19. Eight civilians appear to have been killed because they did not comply with the measures. The other victim was a community leader who appears to have been killed for opposing the measures. Ten people were injured in some of these incidents, as well as in one in Nariño.

#### Killings of civilians in Cauca

[28] Human Rights Watch documented six killings by armed groups in the state of Cauca [...] to enforce measures against the spread of Covid-19.

[29] On April 4, José Rubiel Muñoz Samboní, a farmer, was killed in the community of La Medina after he arrived from a nearby community to meet some friends. A prosecutor who looked into the case and the Human Rights Ombudsperson’s Office believe that ELN guerrilla fighters killed him because he failed to comply with the group’s lockdown in the area.

[30] On April 26, members of the Jaime Martínez mobile column killed Armando Montaña, Weimar Arará, and Humberto Solís and injured four other civilians. The armed group attacked them in a public park, a prosecutor and an official of the Human Rights Ombudsperson’s Office who investigated the case said. The prosecutor said that armed groups had warned the victims that they would be killed if they failed to comply.

[31] Similarly, on May 30, members of the Dagoberto Ramos mobile column attacked four Venezuelan migrants in the Toribío municipality, killing two of them – Johan José Ibáñez Hernández and Yonier Alexis Matute Solano – and injuring the others – Anayibe del Carmen Guerrero Loyo and Erick Alexander Torrealaba Arismendi. The victims had been drinking alcohol in a cellphone repair shop in the urban center of the municipality, an activity that armed groups have banned in the area to prevent the spread of Covid-19, said humanitarian workers. Local humanitarian workers and a judicial official said the victims were most likely killed for breaking the rule. The attack caused fear among the municipality’s Venezuelan population, leading to the displacement of at least 15 Venezuelans, human rights and humanitarian officers said.

#### Killing of community leaders in Putumayo

[32] On June 8, Edison León Pérez, a community leader from Putumayo, was killed after the bodyguards assigned to him by the government’s National Protection Unit had dropped him off at his home. León Pérez

had been threatened several times, including in connection with his work as the president of a local Neighborhood Action Committee, local humanitarian and human rights officials said. Members of La Mafia, which operates in the area, appear to have killed him in retaliation for sending a letter days earlier to local authorities accusing the group of exposing local residents to Covid-19 by forcing them to staff a health checkpoint, a prosecutor who looked into the case said. At this and other checkpoints established by armed groups in Putumayo, community members ask people entering the area questions related to Covid-19, including what other areas they have visited recently, and at times conduct temperature checks, a local humanitarian worker said.

[33] Pérez's letter, which Human Rights Watch reviewed, said that:

*As you are aware, a health checkpoint has been established by the communities [and]... imposed by the narcotrafficking group that operates in the region, where communities ... are forced to have personnel 24-hours [a day] without any protection ... [potentially] exposing us to Covid-19.... Many sick people are not allowed to cross [the checkpoint], but people authorized by the narco group face no problems [...]*

#### Attacks on vehicles in Tumaco

[34] On April 4, armed men shot at a private vehicle on the road from Barbacoas to Tumaco, in the state of Nariño. The car was carrying four people, including a sick passenger and a paramedic, and had a flag that is often used in Colombia to identify vehicles on a "medical mission." Two passengers were killed, and the others injured.

[35] The attack was carried out by members of Contadores, an armed group involved in drug trafficking that operates in the region, judicial officials and humanitarian and human rights officers who looked into the case said. They said that the group carried out the attack to enforce their order that no one could leave their house after 6 p.m.

[36] [...] a private vehicle transporting two prosecutors was attacked on a road near Tumaco. Two bullets grazed the head of one of them; the other was shot three times in the legs.

[37] One of the prosecutors described the incident to Human Rights Watch:

*We saw several armed people in civilian clothes on the road. We stopped the car and tried to go in reverse, [but they] started shooting at us. One of them yelled at us: "Get out of the car."... We identified ourselves as civilians and asked them not to kill us.... They told us to leave.... We drove for a few minutes [and then] asked for help from people who lived nearby. Several came out, but when they saw that we were wounded and bleeding, nobody helped us. They locked themselves in their homes again ... one of them approached the car and asked me to stop screaming. He told me that they were forbidden to help us.*

[38] Judicial officials and humanitarian and human rights officers familiar with the case said the attack was perpetrated by members of the Oliver Sinisterra Front, which emerged from the FARC. They said that fighters apparently attacked the car because it was not complying with the group's 4 p.m. curfew. A judicial official in the area said that the group patrols the streets from 4 p.m. until dawn to enforce the curfew. "We live in constant fear, pressured and threatened by the groups," said a community leader from the area where the attack against the prosecutors took place. "Nothing and no one moves without their knowledge, and if someone dares to move against their orders, they end up dead or disappeared."

#### Threats and other forms of coercion

[39] Armed groups have enforced their measures through threats and other forms of coercion. Many of the pamphlets Human Rights Watch reviewed contain threatening language. [...] the Oliver Sinisterra Front released a pamphlet warning it would consider people who did not comply with their measures "military targets." "All commercial and public activities are suspended ... and anyone found out of their house after curfew starts will be considered a military target," they said.

[40] Similarly, a pamphlet released in May by the Jaime Martínez mobile column says that "Those who fail to comply will be held to account under our law with his own life." "Either you comply or you die."

[41] Some of the threats in the pamphlets target Venezuelans, whom some armed groups have accused of spreading the virus. For instance, a pamphlet released in late March by the Jaime Martínez mobile column says that the group "will have no mercy" toward Venezuelans who fail to comply with the measures; "they will pay with their death ... [or be] expelled."

[42] Members of armed groups have also communicated their threats verbally. On April 16, members the 10th Front threatened members of the indigenous Hitnū community in the eastern state of Arauca. Fighters told them that they would face reprisals if they left their community, the Human Rights Ombudsperson's Office reported. Local humanitarian workers said that the entire community is confined in their territory, due to fear of attacks by the 10th Front.

[43] Similarly, human rights officers said that on April 19 members of the 10th Front threatened a group of Venezuelan exiles in the Puerto Jordán community in Arauca. Fighters approached the Venezuelans and threatened to kill them if they did not go back inside.

[44] On April 8, in the northern state of Córdoba, members of the Gaitanist Self-Defense of Colombia held a bus driver for several hours, accusing him of violating their lockdown. Fighters let him go, but forced him to leave the area.

[45] In Guaviare and Putumayo, groups that emerged from the FARC have established checkpoints, often



forcing residents to control the access of foreigners to the communities. A community leader from Guaviare described to Human Rights Watch the social control exercised by the 1st Front:

*They're in charge here and we have to obey them.... They order us to put checkpoints on roads; they order they do not want to see anyone on the roads when it gets dark, that whoever moves when it is forbidden must be punished for disobeying.... They say they do this to prevent the virus from reaching us, but they have always imposed their measures for social and territorial control.... We pay attention to them because otherwise they can harm us or harm our families [...]*

## C. UN SECRETARY-GENERAL: REPORT ON PROTECTION OF CIVILIANS IN ARMED CONFLICTS

[Source: UN Security Council Secretary-General Report, Protections of civilians in armed conflict, 3rd May 2021, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/110/87/PDF/N2111087.pdf?OpenElement>; footnotes omitted]

### I. Introduction

[...]

4. [...] in March 2020 the Secretary-General called for an immediate global ceasefire to help to create corridors for life - saving aid, open windows for diplomacy and bring hope to those most vulnerable to the pandemic. In its resolution 2532 (2020), adopted in July 2020, the Security Council also demanded a general and immediate cessation of hostilities in all situations on its agenda, recognizing that conditions of violence and instability in conflict situations could exacerbate the pandemic. The Council reiterated that demand in its resolution 2565 (2021). The call for a global ceasefire generated widespread support. A total of 180 Member States and one non-member observer State endorsed the call, as did more than 20 armed groups and other entities and more than 800 civil society organizations. That broad support notwithstanding, armed conflict continues to deepen vulnerabilities and exacerbate the impact of the pandemic.

[...]

### III. Medical care still in peril five years after adoption of resolution 2286 (2016)

[...]

### D. Need for States and parties to conflict to expand good practices

67. As the facts on the ground demonstrate, many parties to conflict have flouted their obligations under international humanitarian law and failed to protect medical care. Nevertheless, some States and armed groups have developed and implemented good practices. Such practices must be expanded in order to ensure that the wounded and sick receive the care that they need and that the medical personnel, facilities and transport that they rely on are protected.

[...]

72. Two non-State armed groups – in the Democratic Republic of the Congo and the Syrian Arab Republic – have signed Geneva Call's Deed of Commitment for the protection of health care in armed conflict. In Iraq, the Syrian Arab Republic and Yemen, armed groups have signed unilateral declarations to protect health care in the context of the pandemic, including by respecting and protecting health-care personnel, transports, facilities and goods, taking preventive measures to avoid the spread of COVID-19, ensuring, maintaining and providing access for affected populations to essential health-care facilities, goods and services without discrimination, and facilitating the provision of health care by impartial humanitarian organizations. Principled, sustained and strategic humanitarian engagement with non-State armed groups is vital for strengthening the protection of medical care.

73. Extensive consultations with State armed forces and international organizations with a military component have revealed practical ways to better protect medical workers and equipment and safeguard access to care in armed conflict. These include:

- (a) Civil-military coordination to share public health information and allow armed forces to understand the operating environment and meet the health-care needs of civilians;
- (b) Rules of engagement that take into account the protection of civilian health-care personnel and facilities;
- (c) Precautions to minimize the impact on the provision of health care of attacks on military objectives in the vicinity of medical facilities or on medical facilities that have lost protection;
- (d) Measures to minimize the negative effects of stopping and searching vehicles transporting the wounded and sick at checkpoints;
- (e) Measures to minimize the effects of military operations inside medical facilities, such as interrogating and searching patients, visitors and medical personnel or arresting or detaining people.

74. While the onus to prosecute war crimes is on States, Médecins Sans Frontières has adopted professional standards and tools for internal reviews of serious incidents against patients, personnel and facilities. Such reviews can equip an organization to respond to public reactions, improve its understanding of security

conditions and refine its engagement with parties to armed conflict.

#### IV. Recommendations

75. Drawing on measures developed by Member States, parties to conflict and humanitarian organizations and on recommendations following the adoption of resolution 2286 (2016), I urge all Member States, and non-State armed groups as appropriate, to adopt and share good practices to enhance the protection of medical care in armed conflict. The following measures merit particular attention, noting that they equally apply to strengthening the protection of civilians more generally:

(a) Ratifying or acceding to relevant treaties and advocating their universalization; considering that the most prevalent type of armed conflict today is non-international, becoming a party to [...] Protocol II [...], is of particular importance for ensuring medical care for all wounded and sick persons without distinction on any grounds except medical grounds; the protection of medical personnel, units and transports; and the non-punishment of any person carrying out medical activities compatible with medical ethics, regardless of the person benefiting therefrom;

[...]

(c) Adopting, reviewing, revising and implementing military policy and practice at the strategic, operational and tactical levels throughout military operations in order to ensure the protection of medical care. [...];

(d) Establishing capabilities to track, analyse, respond to and learn from allegations of harm to medical personnel, facilities and transports, as well as civilians and civilian objects more generally, and ensuring that battle damage assessments routinely examine the impact of attacks on them;

[...]

76. To further draw on good practices to strengthen the protection of civilians, I also urge all Member States, and non-State armed groups as appropriate:

(a) To incorporate their international humanitarian law treaty obligations into national laws and review them in order to strengthen relevant provisions; incorporate international humanitarian law into military manuals, rules of engagement and training materials for armed forces; and carry out international humanitarian law training of armed forces and other relevant personnel;

[...]

(c) To use influence to ensure respect for international law and the protection of civilians, including through political dialogue, sanctions, training and dissemination, [...];

(d) To ensure that administrative procedures are in place to investigate the behaviour of armed forces and impose disciplinary and penal measures; carry out effective investigations into alleged war crimes, prosecuting perpetrators and ensuring reparations for victims, bearing in mind that accountability for serious violations must be systematic and universal, and requires strengthening States' political will, capacity and resources to investigate and prosecute them;

(e) To ensure that there is an equitable and fair distribution of COVID-19 vaccines to all, including those most affected by armed conflict.

## V. Conclusion

77. [...] Where conflict endures, the proper application of international humanitarian law and international human rights law would contribute to the prevention and alleviation of human suffering, including from COVID-19. Over the years, dozens of practical measures have been developed and shared to respect and ensure respect for those norms and strengthen the protection of civilians. What is needed urgently now from all Member States and all parties to armed conflict is the political will to respect the rules and implement good practices.

# Discussion

## I. Classification of the Situation and Applicable Law

1. (*Document A, paras 8-10 and Document C, paras 14, 17-19*) How would you classify the situation in Colombia following the outbreak of the pandemic? Is there an armed conflict? Several armed conflicts? If so, of what type? (GC I-IV, Common Art. 3; P II, Art. 1)

2. (*Document A, para. 9*)

a. What is the applicable law to the situation? Is P II applicable to all groups mentioned in the report? (P II, Art. 1)

b. Does an armed conflict exist between groups that emerged from FARC-EP and the State? What about groups that are solely engaged in narcotrafficking? Is it possible to distinguish these groups? Can criminal gangs be considered as armed groups under IHL? What further information is necessary to make these determinations? (See Online Casebook, ICTY, *The Prosecutor v. Tadić, Appeals Chamber, Jurisdiction*, para. 120)

3. (*Document C, para. 4*) What effect, if any, does the 'call for an immediate cessation of all hostilities' have

on the classification of the conflict between the Government of Colombia and the ELN? (See Online Casebook, ICTY Appeals Chamber, *Prosecutor v Tadic*, *Appeals Chamber, Jurisdiction*, para. 70; Commentary to GC I para. 494).

### III. Nexus to the conflict

4.

a. Are there any geographical limitations placed on the applicability of IHL in NIACs? Does IHL apply only to areas where combat actually takes place? Are civilians living in communities far away from the fighting protected by IHL? (GC I-IV, Common Art. 3; P II Art. 2(1), Art. 6(1); See Online Casebook, ICTY, *The Prosecutor v. Tadić*, *Appeals Chamber, Jurisdiction*, paras 69 – 70)

b. Does IHL apply to all conduct of armed groups occurring within the territory of a State party to a NIAC? Or do specific acts occurring in the context of a NIAC require a nexus to the conflict to be regulated by IHL? How do you determine whether the conduct of an armed group has a nexus to the conflict? Is it sufficient that the armed group could not engage in acts of governance if it had not control over territory or persons due to the armed conflict? (GC I-IV, Common Art. 3; P II Arts 2(1), 5(1), 6(1); Commentary to GC I para. 460; See Online Casebook, ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflict in 2019*, para. 217; ICTY, *The Prosecutor v Kunarac*, *Appeals Chamber*, para. 58; ICC, *The Prosecutor v Jean-Pierre Bemba Gombo*, Trial Chamber III, para. 142; see ICC, *Elements of Crimes*, Arts 8(2)(c), 8(2)(e))

### III. COVID-19 measures imposed by armed group

5.

a. What, if anything, does IHL say about the governance activities of armed groups? Does IHL regulate the enforcement of public health measures? Only those which are violently enforced?

b. (*Document B*, paras 17-45) Does IHL permit the criminalisation of certain acts by armed groups? Under IHL, can Non-State Armed Groups (NSAGs) try civilians for failing to comply with their laws? Is all criminal prosecution of civilians by armed groups regulated by IHL? (GC I-IV, Common Art. 3; P II Arts 2(1), 5(1), 6(1); See Online Casebook, *ICTY Prosecutor v Tadic*, para. 69; *Prosecutor v Delalić, Mucić, Delić and Landžo*, Trial Judgement 1998, para. 193; See also ICRC Commentary on Art. 75 API para. 3011)

c. (*Document B*, para. 31) Would a failure to comply with an alcohol ban have a sufficient link to the conflict to fall under the scope of IHL? Can armed groups impose the death penalty as a consequence for failing to comply with their rules? (P II Art. 6(4))

6.

- a. Does IHL impose obligations on the parties to the conflict regarding healthcare in NIACs? (GC I-IV, Common Art. 3; P II Arts 7, 10 and 11; CIHL Rules 25, 26, 28, 29 and 35)
- b. Does IHL of NIACs impose an obligation to ensure and maintain public health and hygiene? Or are there only obligations to provide medical assistance to the wounded and sick? Is there an obligation to provide generalised medical care to persons who are sick? To prevent the spread of diseases? To ensure adequate access to food? Would your answer change if the situation was an IAC? (GC I-IV, Common Art. 3, GC IV Art. 56; P II Arts 7, 13(1), 18(2); CIHL Rules 54, 55, 110, 138)
7. (*Document B, paras 2, 39*) Do the lockdown and curfews violate IHL per se? What fundamental rules of IHL were violated by the killing of civilians who did not comply with public health measures? (GC I-IV, Common Art. 3; P II Arts. 4, 6, 7, 13; CIHL Rule 2, 87, 89, 90, 98, 110)
8. (*Document B, paras 39-45*) Does IHL prohibit threats of force against civilians? Could such threats amount to an act of terror under IHL? Can the measures described be considered as collective punishments? Does it matter that they were warned of the measures before the being threatened by members of the armed group? (GC I-IV, Common Art. 3; P II Arts. 4, 6, 7, 13; CIHL Rule 2, 87, 89, 90, 98, 110)
9. (*Document B, para. 41*) Can civilians under the control of NSAGs be forced to move from their communities under IHL? In which circumstances? What, if anything, does IHL say about the treatment of displaced persons during pandemics? (P II Art. 17; CIHL Rules 129, 131)
10. Could the treatment identified by the HRW report of NSAGs in Colombia amount to war crimes? (ICC Statute, Art. 8)
- 11.
- a. Can parties to a conflict restrict freedom of movement of humanitarian relief personnel? Do they have obligations to allow access to humanitarian aid in the territories they control during pandemics? Can parties invoke the crisis of a pandemic as justification for denial of humanitarian relief? Do civilians have a right to receive humanitarian relief during pandemics? (P II Art. 18(2), CIHL Rule 56; See also ICRC, IHL Rules on Humanitarian Access and COVID-19, p. 3).
- b. Is consent to humanitarian assistance required by the parties to the conflict? Do parties have absolute discretion over the circumstances they can refuse consent? (GC I-IV, Common Art. 3; P II Art. 18; CIHL Rule 55, 56)
- c. (*Document B, para. 34*) Did the attack against the medical vehicle violate IHL? (GC I-IV, Common Art. 3; P II Arts 9, 10, 11; CIHL Rules 28, 29, 31, 32)

## IV. IHRL and the capacity of NSAGs

### 12. (*Document B; Document C*)

- a. Do NSAGs have obligations under IHRL generally? According to HRW report? According to the UN Secretary General report? If so, what is the source of those obligations? Does IHRL only bind those NSAGs who exercise State-like authority?
- b. Would IHRL displace IHL as the appropriate legal framework for COVID-19 measures undertaken by armed groups? How can IHRL complement IHL in practice?

### 13. (*Document B, para. 14; Document C, paras 67-73*)

- a. Does the right to health under IHRL apply in times of armed conflict? Do States have responsibilities to fulfil the right to health of civilians under the control of a NSAG? How can NSAGs fulfil the right to health? (See Online Casebook, Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, para. 57; IESCR, Art. 12; CESCR, General Comment No. 14, The right to the highest attainable standard of health, 2000, para. 10)
- b. (*Document C, para. 26*) Assuming the right to health applies, are other rights also applicable such as the right to freedom of movement? Could it be argued that NSAGs in Colombia violated this right by imposing strict lockdown and curfew measures? If we accept that NSAGs are bound by IHRL, must they be entitled to derogate from certain human rights in case of an emergency? (ICCPR, Art. 12)
- c. Is an expression of consent necessary to bind NSAGs to IHRL? What role do Deeds of Commitment proposed by Geneva Call play? Are they redundant if NSAGs are already considered bound by IHRL?

### 14. (*Document C*)

- a. Can NSAGs contribute to the formation of customary international humanitarian law? What are the requirements for the formation of customary international law? Would allowing NSAGs to contribute to the formation of CIHL enhance compliance with IHL? Do the recommendations of the UN Secretary-General make it possible for NSAGs to contribute to customary law? (See Draft Conclusions on Identification of Customary International Law, with Commentaries, 2018. p. 132, para. 8)
- b. Given the widespread practice of the adoption of public health measures by NSAGs during the pandemic, has a CIHL positive obligation to 'take measures' to protect the right to health in armed conflicts emerged for NSAGs? If so, would this be confined only to emergency situations such as pandemics?

