

Colombia/Displacement of Civilians

In Colombia, although multiple ceasefires have been concluded between the government and the Revolutionary Armed Forces of Colombia (FARC), a large number of people remains away from their homes, having been internally displaced due to the ongoing hostilities. These mass displacements of population especially affect the indigenous population.

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. INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM) COLOMBIA CRISIS RESPONSE PLAN 2023 – 2024

Source: International Organization for Migration (IOM), “Colombia Crisis Response Plan 2023 – 2024”, 22 January 2024, available at:
https://crisisresponse.iom.int/sites/g/files/tmzbd11481/files/appeal/pdf/2024_Colombia_Crisis_Response_Plan_2023__2024.pdf

[1]. Despite the signature of the Peace Agreement between the Revolutionary Armed Forces of Colombia (FARC) and the Government of Colombia in 2016, the country is still dealing with the consequences of five decades of violence. There are 9.5 million victims of armed conflict, out of which 8.5 million are victims of forced displacement that require reparation and reintegration support (Victim's Unit, GoC).

[...]

[2]. Colombia's context is highly marked by criminal violence of non-state armed groups which control illegal economic activity including drug trafficking and illegal mining, thus increasing violence in regions historically affected by conflict. These factors trigger killings of social leaders, unlawful confinements, forced displacements and a high risk of human trafficking and child recruitment (HNO 2023).

[3]. The Government of Colombia (GoC) will continue to implement the 2016 Peace Agreement signed with the FARC guerrilla and other legal frameworks such as the Victims Law, concerning the reintegration of former combatants, the reparation of victims, and supporting GoC capacity-building to develop actions of peace-building and durable solutions.

[4]. The Government of Colombia started the implementation of the Total Peace Strategy by establishing a dialogue roundtable (November 2022) with the National Liberation Army (ELN) in order to negotiate a peace accord. As of August 2023, a bilateral ceasefire - expected to last until January 2024 - was established. This context sets several challenges for the GoC such as the continuity of armed actions given that the group's lack of a unified command has made it difficult to negotiate in the past. Individual factions often act autonomously - at times over the objections of high commanders. Additionally, ELN leaders have indicated that the group's financing activities - which the government says include kidnapping, extortion, drug trafficking and illegal mining - will not stop. The UN Verification Mission in Colombia will monitor the effort under a mandate from the Security Council, and international cooperation could be required to provide assistance during the different stages of the negotiation, including technical assistance in the dialogue.

[5]. The war in Ukraine continues to affect the global economy, resulting in high inflation and affecting the capacity of crisis-affected communities to cope in Colombia. Additionally, armed conflict incidents have experienced a surge: 67 humanitarian alerts have been issued by OCHA in 2023, with the two most common events being forced displacement and confinement, and 714,900 people were affected by armed violence between 1 January and 24 October 2023 (OCHA Monitor, 2023).

[...]

[6]. Colombia hosts an estimated 2.89 million migrants and refugees from the Bolivarian Republic of Venezuela (Migración Colombia), and an increasing number of migrants in transit - more than 500,000 people (who additionally were reported to enter Panama irregularly through the Darien, according to the National Migration Service Panama). This context has had a significant effect on the country considering that these populations arrived in areas with existing economic needs and institutions with limited capacity for appropriate responses, and since these irregular flows are also associated with illegal armed groups, drug traffickers and smugglers that put migrants at a higher risk. Despite the reopening of the border between Colombia and Venezuela as a result of the reactivation of diplomatic relations, after more than four years of closure, massive returns are not expected in 2024. IOM and the Interagency Group for Mixed Migration Flows (GIFMM) foresee that by the end of 2024, nearly 3.2 million Venezuelans will be residing in Colombia.

B. UNITED NATIONS SECURITY COUNCIL, REPORT OF THE SECRETARY GENERAL ON THE IMPLEMENTATION OF THE MANDATE OF THE UNITED NATIONS VERIFICATION MISSION IN COLOMBIA

Source: United Nations Security Council, "United Nations Verification Mission in Colombia: report of the Secretary-General", 27 March 2024, S/2024/267, available at <https://digitallibrary.un.org/record/4043274?ln=en&v=pdf>

United Nations Verification Mission in Colombia

Report of the Secretary General

I. Introduction

1. The present report is submitted pursuant to Security Council resolution 2704 (2023), by which the Council extended the mandate of the United Nations Verification Mission in Colombia, and resolution 2366 (2017), in which the Council requested the Secretary-General to report on the implementation of the mandate of the Mission every 90 days. The report covers the period from 27 December 2023 to 26 March 2024.

II. Major developments

[...]

8. The Government and the Ejército de Liberación Nacional (ELN) held a sixth round of talks in Cuba from 22 January to 6 February. Of all the dialogues currently taking place, this is the most advanced. The sides held frank and, at times, challenging discussions, focusing mostly on the implementation of the bilateral, national and temporary 180-day ceasefire which began on 3 August 2023. The Minister of Defence, who attended the talks for two days, reiterated the commitment of the Government to the ongoing dialogue and to the ceasefire. At the end of the round of talks, the sides announced they had agreed to extend the ceasefire for another 180 days, starting on 6 February, making it the longest ceasefire ever between the Government of Colombia and ELN. So far, the ceasefire monitoring and verification mechanism has been able to take actions to prevent 27 instances of potential armed clashes between the sides, thereby fulfilling an important confidence-building role in support of positive developments at the negotiating table.

[...]

III. Main activities and priorities

A. Verification of the implementation of the Final Agreement

[...]

19. While the comprehensive and ambitious nature of the policies of the Government and its planning and prioritization efforts are to be commended, there is a growing need, given the challenging context on the ground, for swift and concrete actions to translate those policies and plans for the implementation of different sections of the Final Agreement into tangible results.

[...]

51. Between 27 December and 26 March, the Office for the Coordination of Humanitarian Affairs documented the forced displacement of 14,365 people and the confinement of 35,432 across nine Departments and 35 municipalities with a disproportionate impact on ethnic communities, which represented 64 per cent of those affected (42 per cent Indigenous people and 22 per cent Afro-Colombians). Insecurity was particularly acute in Departments such as Antioquia, Bolívar, Caquetá, Cauca, Chocó, La Guajira, Nariño, Putumayo and Valle del Cauca, owing to conflicts between armed groups and criminal organizations, and to a limited State presence. The violence is disrupting the lives of entire communities and further constraining the ability of those authorities present to fulfil their responsibilities.

52. Illegal armed actors enforced a complete stop of daily activities for communities in five municipalities in Chocó Department, four in Caquetá Department and three in Putumayo Department, lasting between 4 and 27 days. According to the Office of the Coordination of Humanitarian Affairs, those events disrupted the lives of some 61,000 people, who faced hindered access to essential goods and services. Moreover, the Office of the United Nations High Commissioner for Human Rights (OHCHR) registered 18 massacres (4 verified, 13 in the process of verification and 1 inconclusive), with a total of 13 victims (10 men and 3 children) among the verified cases. The massacres took place in Bolívar, Huila, Nariño and Putumayo Departments.

[...]

73. Regarding the involvement of ethnic peoples in the implementation of development programmes with a territorial focus, representatives of the Special Consultation Mechanism, which was designed to ensure their participation in decisions made by the Agency for Territorial Renewal, warned that continued violence and insecurity in municipalities with development programmes with a territorial focus may jeopardize programme implementation.

74. Indeed, violence continued to disproportionately impact ethnic peoples across various Departments, notably in northern Cauca, as seen in killings, kidnappings, and threats against traditional authorities and Indigenous guards. Amid the ongoing conflict between armed actors in their territories, stigmatization against Indigenous guards increased. Two guards who were killed during the reporting period in Cauca were former FARC-EP combatants with significant leadership roles in their communities.

75. Clashes among illegal armed groups also continued to cause massive displacements of Indigenous communities. Of particular concern were the situations of the Wiwa peoples in La Guajira Department, and the Eperara Siapidara, Awá, and Afro-Colombian peoples in Nariño Department. Moreover, territorial disputes in Caquetá and Putumayo Departments caused the confinement of ethnic communities, some for periods lasting over a month, limiting their access to basic necessities.

C. INTER-AMERICAN COMMISSION ON HUMAN RIGHTS PRESS RELEASE ON THE SITUATION IN COLOMBIA

Source: Inter-American Commission on Human Rights, “IACHR Concerned About Violence in Colombia's Pacific Region and About the Impact It Has on Indigenous Peoples and on Afro-Descendant and Peasant Communities”, 1 Septiembre 2023, available at: https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2023/208.asp

1. Washington, D.C. – The Inter-American Commission on Human Rights (IACHR) is concerned about high levels of violence in Colombia's Pacific region, and about the impact this violence has on the rights of indigenous peoples and of Afro-descendant and peasant communities. The Commission urges the State to step up its efforts to address the relevant structural factors and to tackle with determination all violence in Colombia and the discrimination these groups have historically suffered in the country.
2. According to reports issued by the Ombudsperson's Office, civil society organizations, and international organizations, violence in the Pacific region stems mostly from factors linked to historical discrimination, armed conflict, and disputes among armed groups for control of illegal economic activities. Further, this violence takes place in territories with high rates of poverty and extreme poverty where the State is hardly present. This context favors violations of human rights including the rights to life, physical integrity, and access to justice, as well as economic, social, cultural, and environmental rights.
3. The extent of this violence is apparent in the prevalence of forced displacement—whether mass or individual in scope—and confinement. Over the period January–June 2023, the International Committee of the Red Cross (ICRC) counted the mass displacement of 26,915 individuals—mostly linked to armed clashes—and the individual displacement of 34,212 people—usually linked to selective homicides, threats, and forced recruitment attempts. The ICRC further recorded 22,755 individual cases of confinement in the first half of the year.
4. The Pacific region holds more than 90% of all forced displacement victims and 84% of all confined individuals in Colombia, with forced displacement being particularly serious in the department of Nariño and confinement being particularly serious in the department of Chocó. The United Nations Office for the Coordination of Humanitarian Affairs (OCHA) noted that, in 2023, 45% of all displacement victims in

Colombia were Afro-descendant and 32% were indigenous, while Afro-descendant persons made up 37% of all confinement victims and indigenous persons amounted to 25%.

5. The IACHR notes with concern that, according to the OCHA, 24% of all mass displacement victims in Colombia in 2022–2023 (equivalent to approximately 75,000 individuals) had not returned to their home areas. This lays the groundwork for future violations of the rights of these individuals. On the one hand, it reproduces the territorial disputes that have fueled both armed conflict and other violence, particularly targeting the leaders of movements to demand land ownership. On the other hand, individuals who have been forcibly displaced are exposed to weak responses by State institutions and often end up settling in the outskirts of urban centers in highly precarious social and economic conditions.

6. The State informed the IACHR that, over the period February–May 2023, it provided assistance to 50,421 forced displacement victims. Of these, 21,204 were in the Pacific region and more than half were children and adolescents.

7. According to the available information, armed groups have set up camps next to indigenous and tribal communities or even within these communities, which has led to much tighter control of these territories and their residents and has had a serious social impact, as well as affecting locals' self-determination and safety. Restrictions of movement in certain areas at certain times imposed by these groups and an impact on the governance of traditional authorities are particularly evident, as these groups are determined to influence communities' decisions and their ancestral social organization mechanisms. That influence is exerted through threats, harassment, and murders targeting community leaders, but also through acts of corruption and through the provision of funding that formal institutions have failed to provide for the basic activities and needs of communities.

8. In this context, power and material resources are used to present illegal armed groups as a more effective partner to attain social and personal transformation, which is in turn used as a strategy to recruit children and adolescents.

9. The Commission was further informed of an increase in cases of sexual violence against girls, female adolescents, and women, particularly those who are indigenous or Afro-descendant. There has also been a rise in the incidence of femicides and disappearances of women, particularly Afro-Colombian women. "We black women not only need to fight to live with dignity, but we also need to campaign to die with dignity," one leader said. Civil society organizations warn that many of these cases are not reported to formal institutions, given the territorial control exercised by armed groups and the absence of the State.

10. The State noted that it had recorded 158 sex crimes in the Pacific region over the period January 1–May 30, 2023. The Colombian Institute for Family Welfare said that, over the same period, 63 indigenous children and adolescents from the Pacific region (83% of them girls) had entered the Administrative Rights Restoration Process. The Office of Colombia's Attorney General said it had launched 39 investigations for

sexual violence against Afro-descendant and indigenous persons in the departments of Cauca, Valle del Cauca, and Chocó in 2023.

11. The Commission notes that the combination of all these processes has led to a disintegration of the social fabric and of various tools for community organization, which has endangered the very existence of indigenous and tribal groups in the country.

12. The State reported that the Office of the High Commissioner for Peace has reactivated formal peace talks with the National Liberation Army (ELN), one of the armed organizations active in the Pacific region. A Temporary Bilateral National Ceasefire Agreement was signed with the ELN and went into force on August 3, 2023.

13. Concerning the recruitment of children and adolescents, the Colombian Intersectoral Commission to Prevent the Recruitment, Use, and Abuse of Children and Adolescents and Sexual Violence Against Them by organized armed groups and organized crime gangs (CIPRUNNA) has launched talks with indigenous authorities to address the issue of recruitment and to develop prevention strategies with a differentiated focus on ethnicity and territory.

14. The IACHR was informed that the National Police was helping to provide information and raise awareness about risk factors linked to the recruitment and other forms of abuse of children and adolescents by organized armed groups and organized crime gangs, including sexual violence, and to identify and mitigate those risk factors.

15. The State stressed that comprehensively addressing the various forms of gender-based violence, including sexual violence, is one of its priorities. In this context, the State adopted a roadmap involving the creation of national system to record, provide assistance, monitor, and follow up on various forms of gender-based violence, with the aim of reporting data, taking prevention measures, and providing assistance based on alerts issued by this system. The State also noted that an emergency had been declared concerning gender-based violence and that various technical cooperation initiatives had been adopted with United Nations agencies to promote the rights of girls and women, with a differentiated focus.

16. The Office of the High Commissioner for Peace is further coordinating an intervention strategy for the Pacific region, to address the situation of displaced or confined ethnic communities in the Calima and San Juan river basins. Community assemblies have been summoned and a preparatory interinstitutional meeting is set to be held, bringing together various government institutions and ethnic organizations. The main goal of these efforts is to collect proposals for the return and relocation of these communities, considering productive projects, land, education, and other crucial aspects of any comprehensive response. These assemblies are set to be held in September 2023 in several towns.

17. The IACHR acknowledges and supports the State's efforts to promote peace and structural transformations required to comprehensively implement the Peace Agreements. In this context, the Commission stresses victims' right to be involved in all efforts aimed at ending conflicts and all mechanisms to verify compliance. Participation is crucial to ensure the adoption of ethnic-racial, gender, and territorial perspectives.

18. The Commission reminds the Colombian State of its international obligations concerning its duty to protect the survival, dignity, and well-being of indigenous and tribal peoples, as well as to effectively ensure the exercise of their rights in practice. The IACHR urges the State to diligently investigate all rights violations—with enhanced due diligence in cases involving sexual violence—and to punish their perpetrators and masterminds. The Commission notes and stresses victims' right to access justice, as well as the importance of this right to ensure non-recurrence.

19. A principal, autonomous body of the Organization of American States (OAS), the IACHR derives its mandate from the OAS Charter and the American Convention on Human Rights. The Inter-American Commission has a mandate to promote respect for and to defend human rights in the region and acts as a consultative body to the OAS in this area. The Commission is composed of seven independent members who are elected in an individual capacity by the OAS General Assembly and who do not represent their countries of origin or residence.

DISCUSSION

I. Classification of the situation and applicable law:

1.
 - a. How would you classify the situation in Colombia? Can it be classified as an armed conflict? Why? If so, of which type? (GC I-IV, Art. 3; P II, Art. 1)
 - b. Does the plurality of non-state actors affect the classification of the situation? Why? Is the same legal regime applicable to all actors? (GC I-IV, Art. 3; P II, Art. 1)
 - c. What are the criterion of identification of armed groups under IHL? (P II, Art. 1; ICC, *The Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06, Judgment, 8 July 2019) Are armed groups bound by IHL?

II. Temporal application of IHL

(Document A; Document B)

2.
 - a. What is the temporal scope of applicability of IHL? When can an armed conflict be considered to be over? Is there a difference between IACs and NIACs? (P II, Art. 2; ICTY, *The Prosecutor v. Tadić*, Appeals Chamber, Decision, 1995)
 - b. Does the signature of a ceasefire necessarily mean the end of an armed conflict? Does it trigger the end of applicability of IHL? In your opinion, can it be considered that the armed conflict in Colombia has come to an end?

- c. Considering that various peace agreements and ceasefires were concluded between the FARC and the Colombian government, would you consider that each ceasefire constitutes the end of an armed conflict? Does the violation of a ceasefire necessarily constitute the beginning of a new armed conflict, or is it a continuation of the previous one? Does it affect the applicable law?
- d. Do some provisions continue to apply even after the end of an armed conflict?

III. Internally displaced persons (IDP)

(Document B; Document C)

3. Does IHL provide a definition of internally displaced persons (IDPs)? How is the displacement of a population regulated under IHL? Under what conditions may it be lawful? Does it make a difference if the population fled because of direct threats or as a result of hostilities? In your opinion, does the displacement of populations in Colombia fall within the situations in which persons can lawfully be displaced? (CG IV, Art. 49; P II Art. 17; CIHL Rule 129, 130, 131, 132 and 133)
4. Is forced displacement a grave breach of IHL? A war crime? What is the difference between the two? (GC IV, Art. 147; P I, Art. 85; Rome Statute, Art. 8 (2) (b) (viii))
5. What is the difference between a migrant, a refugee and an IDP? Does IHL provide a legal framework for each category?

IV. Relationship between IHL and International human rights law (IHRL)

(Document B; Document C)

6. Is International Human Rights Law (IHRL) still applicable during armed conflicts? If so, can there be restrictions to human rights in the context of armed conflicts? How does the interplay between IHL and IHRL articulate?
7. Are indigenous people protected under IHL? If so, what is the scope of such protection? (CIHL, Rule 88) What about IHRL? How are indigenous people protected under the latter framework?