

Protecting the health sector in Colombia: A step to make the conflict less cruel

by

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For more than forty years, Colombia has been suffering from the effects of a conflict between opposition armed groups and governmental armed forces. Because of this type of violence and other worrying practices such as social cleansing, corruption, drug trafficking, domestic violence and common delinquency, compounded by the impunity with which criminal offences can be committed, the care offered by health services in Colombia is insufficient.

During the conflict, the health care sector has come under attack by the warring parties to such an extent that in various regions the health care services available and medical work as a whole have been seriously affected. The aim of this paper is to share our experience of the protection of medical personnel and facilities in Colombia, thereby helping to develop similar programmes in other contexts that so require, and showing one of many possible ways of working towards the implementation of international humanitarian law.

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Human rights and international humanitarian law: the situation in Colombia

Colombia has subscribed to most international treaties and agreements on human rights and international humanitarian law. Nevertheless, and despite incorporation of their provisions in the national constitution, Colombia still occupies a significant place in reports by non-governmental organizations such as Human Rights Watch and Amnesty International on violations of these international rules.

In 1998, a total of 23,096 killings were recorded in that country.¹ In 1997, there were 288 massacres that took a toll of 1,420 civilian lives; in 1998, 1,231 civilians died in 194 massacres.² Over the past four years, 4,925 persons have been abducted³ and there is currently an average of six abductions per day.⁴ Moreover, records show an average of one forced disappearance per day.⁵

The cost of the Colombian war is high: its indirect cost ranges from 1% to 1.5% of the gross domestic product (GDP). Although 2.6% of the GDP⁶ is allocated to military expenditure, this does not mean greater protection of the citizens by the government. Indeed, of the country's 1,074 municipalities, 133 have no police presence.⁷ In addition, foreign investment has fallen sharply in recent years, largely because of the persistent violence which leads to the flight of capital out of the country.

As far as civil, economic and political rights are concerned, summary executions, arbitrary arrests, torture and other cruel

1 Centro de Investigaciones Criminológicas de la Dirección de Policía Judicial, quoted in "23.096 homicidios en 1998", *El Espectador*, Bogotá, 24 April 1999, p. 7A.

2 Defensoría del Pueblo (Ombudsman), Fifth report to the Congress, quoted in "Una masacre cada 48 horas durante 1998", *El Tiempo*, Bogotá, 13 February 1999, p. 7A.

3 "En cuatro años, 4.925 secuestrados", *El Espectador*, Bogotá, 5 May 1999, p. 6A.

4 "Cada día secuestran seis personas", *El Espectador*, Bogotá, 27 April 1999, p. 7A.

5 "Una desaparición cada 24 horas", *El Espectador*, Bogotá, 25 May 1999, p. 8A. — In 1996, 134 disappearances were recorded and 356 in 1997. Defensoría del Pueblo, *Derechos Humanos para vivir en paz*. Fifth report to the Congress, Bogotá, 1998, p. 31.

6 "La guerra desajusta la economía", *El Espectador*, Bogotá, 13 June 1999, p. 3B.

7 "Sin seguridad en 133 municipios", *El Espectador*, Bogotá, 7 June 1999, p. 10A.

and degrading treatment,⁸ and forceful displacement are common practices.⁹

In the armed conflict, the Colombian armed forces are fighting against paramilitary groups and leftist guerrilla organizations. Most of the paramilitary groups are coordinated in a unified structure, the United Self-Defence Groups of Colombia. As for the guerrilla organizations, the most important are the Colombian Revolutionary Armed Forces (FARC) and the National Liberation Army (ELN).

Colombia has subscribed to the four Geneva Conventions of 1949 and their two Additional Protocols of 1977, all of which are currently in force and have been incorporated in domestic law by the 1991 constitutional reform. Moreover, several violations of international humanitarian law are included as offences in the Military Penal Code. The Colombian armed forces are obliged by the constitution and the Military Penal Code to respect the rules of international humanitarian law. For their part, the organized armed groups (through a series of public communications and statements) have undertaken to respect those same rules.

On this basis, the International Committee of the Red Cross has defined the rights and duties of the health care sector in Colombia. This framework of interpretation enables the ICRC to develop specific strategies for the protection of that sector.

The international humanitarian law rules in force in Colombia stipulate that medical activities must be respected. The term *medical activities* is used in the 1977 Additional Protocol II¹⁰ in connection with the protection of medical personnel (Article 9), of medical units and transports (Article 11), of medical activities (Article 10) and of professional secrecy (Article 10).

This term comprises all temporary or permanent, civilian or military, fixed or mobile personnel, units (facilities), activities, equipment, material and means of transport exclusively assigned to

⁸ Amnesty International, *Crónicas del Terror y de la Dignidad*, Report 1997, EDAI, Madrid, p. 145.

⁹ Report by the US State Department on the human rights situation in Colombia, 1999.

¹⁰ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

medical purposes and necessary for the provision, administration and functioning of medical and auxiliary services in the areas of prevention, health care promotion, and the assistance and rehabilitation of persons affected or who might become affected by or in connection with an armed conflict. It thus covers the persons and facilities needed for:

- assistance to, searches for and collection, transport, diagnosis, treatment and rehabilitation of the wounded, the sick and the shipwrecked;
- the prevention of diseases;
- the administration and operation of medical units and means of transport.

The performance of medical duties implies:

- medical personnel;
- medical units;
- medical means of transport;
- equipment and medicines;
- medical activities.

Not all activities carried out by medical personnel are strictly medical activities; only the medical care and attention required by the condition of the wounded, the sick or the shipwrecked are considered as such. However, overall medical activities include vector control, vaccination programmes, the monitoring of sources of clean drinking water, the zoonotic diseases programme, home care and, in general, all kinds of humanitarian services specific to health care, this being understood as a composite process.

International humanitarian law also establishes some duties for health care personnel.¹¹ They are required, among other things:

- to provide humanitarian assistance, i.e. rescue sick, wounded and shipwrecked persons and give them protection, respect and the best possible care;

¹¹ J. Miné, "The Geneva Conventions and medical personnel in the field", *IRRC*, March-April 1987, pp. 183/184.

- to be impartial, i.e. make no distinction between victims, especially between wounded comrades and enemies, on any but medical grounds;
- to set priorities for treatment that are based solely on the degree of medical urgency;¹²
- to show solidarity, i.e. not to abandon wounded or sick persons who have fallen into the hands of the adversary.

Protocol II, applicable to the internal armed conflict in Colombia, stipulates that:¹³

- the wounded and the sick must be collected and protected;
- they must be treated humanely in all circumstances;
- no distinction may be made among them except on the basis of medical criteria alone;
- the wounded must be given the necessary medical assistance;
- medical personnel must be respected and protected;
- medical personnel may not be compelled to perform acts which are not compatible with their humanitarian mission;
- medical personnel may not be punished for carrying out medical activities;
- subject to national legislation, the obligation of professional secrecy must be respected;
- medical units (hospitals and health centres) must be respected and protected;
- means of transport (ambulances) must be respected and protected;
- the distinctive emblems of the red cross and the red crescent must be respected and protected and not misused.

Compliance with these rights and duties benefits the civilian population, since it guarantees them the following rights:

- the right to receive, thus to have access to, health care;
- the right to mental health;

¹² On medical urgency as the sole valid criterion for favourable distinction, see Art. 12, First Geneva Convention for the Amelioration of the Condition of the Wounded and the Sick in Armed Forces in the Field.

¹³ See in particular Protocol II, Part III, "Wounded, sick and shipwrecked".

- the right to receive humanitarian assistance (free movement of food aid and other humanitarian relief supplies);
- the right to be sure that any confidential information given to medical personnel will be respected and not be disclosed.

Attacks on medical work

Acts by the warring parties in Colombia have in many ways seriously affected the provision of health care and the well-being of medical personnel, thus jeopardizing the civilian population's right to respect for their health. We therefore conducted a survey of violations from January 1995 to December 1998, during the Colombian armed conflict, of the rights inherent in the performance of medical duties. Taking the provisions of international humanitarian law as a reference, we defined five categories of violations that we intended to examine:

- violations of the right to life and personal liberty;
- attacks on the medical infrastructure (for research purposes, we grouped medical units and means of transport in the same category);
- attacks on activities performed in the course of medical duties;
- acts of perfidy;
- violations of the right to professional secrecy.

We sent out 450 forms to various institutions such as hospitals, human rights organizations and health care authorities and asked them to provide information on these issues.

Although we had a clear problem of insufficient registration (due mainly to the respondents' fears), the survey showed that there had been a total of 220 cases in 1998, thus a violation on average every 1.6 days, which means that the problem of attacks on the performance of medical activities is systematic and alarming. The situation was no better in previous years, but perception of it was altered by inadequate reporting of incidents and lack of awareness of the facts.

Analysis per type of violation

For research purposes, violations were grouped in five categories, which provided focal points for analysis both of them and of potential forms of intervention.

| Type of violation | Total | Percentage |
|--|-------|------------|
| Attacks on life and person | 341 | 72.86 |
| Attacks on the medical infrastructure | 61 | 13.03 |
| Attacks on medical and related activities | 51 | 10.9 |
| Acts of perfidy | 11 | 2.35 |
| Violations of the right to maintain professional secrecy | 4 | 0.86 |
| Overall total | 468 | 100 |

The main findings in relation to each of these five domains were as follows:

- there is a very high percentage of attacks on life and person (72.86% of the reported cases), a fact which is extremely disquieting;
- attacks on medical objects are mainly concentrated on ambulances (69%).

Attacks on life and person

The most common acts endangering the lives or physical and mental health and integrity of medical personnel include the following:

- killing of health sector officials by parties to the armed conflict;
- threats against and forced displacement of health sector workers;
- retention of health sector workers by parties to the armed conflict in order to force them to provide health care for their own personnel;
- killing of sick and wounded placed under the protection of medical personnel.

Many of these acts were committed in response to humanitarian services which had been provided by medical personnel to one of the warring parties and were considered by the opposing party as complicity with the enemy. It is therefore vital that all parties to the conflict clearly understand the impartiality of health sector

personnel and the negative effect of these attacks on that sector, since they severely obstruct the health care services' work and moreover endanger the lives of wounded or sick combatants.

| Type of violation | Total | Percentage |
|---------------------------------------|-------|------------|
| Killings of medical personnel | 76 | 22.29 |
| Forced disappearance of med.personnel | 4 | 1.18 |
| Injury of medical personnel | 9 | 2.64 |
| Threats to medical personnel | 114 | 33.43 |
| Forced displacement of med. personnel | 57 | 16.72 |
| Retention of medical personnel | 59 | 17.30 |
| Killings of wounded under protection | 21 | 6.17 |
| Detention of medical personnel | 1 | 0.27 |
| Overall total | 341 | 100 |

The threats against health care personnel (33.43%) and the close links between this phenomenon and the forced displacement of such personnel are very worrying. In most cases the displacement was preceded by a direct threat.

The killing of health care workers is also highly alarming, both in terms of the total (76 cases in the past two years) and average number (1 killing every fortnight) and because of its repercussions: displacement of other health care workers (ripple effect), difficulty to fill vacancies, etc.

Health care professions more closely related to home care services are precisely those most frequently attacked: of the total number of deaths, those of community health workers account for 29% and those of auxiliary nurses for 25%.

One of the main concerns of medical personnel is retention by one of the warring parties, because:

- the other parties will accuse them of being accomplices of those who have retained them;
- those who retain them threaten to kill them if they inform the authorities;
- they are obliged to carry out medical procedures under inappropriate

conditions and without being able to ensure any medical follow-up for their patients;

- they are obliged to assume total responsibility for the recovery of the sick, although it is impossible for them to handle all variables (adequate provision of medicines, physiotherapy, dressings, diets, etc.).

Attacks on the infrastructure

The humanitarian treaties stipulate that medical objects shall not be the targets of attacks, nor may they be used for hostile purposes; if they are, they will lose their protected status. One of the most frequent violations of the right of medical units (hospitals, health centres, health posts) to protection is occupation by armed groups.¹⁴ There are two main reasons for such occupation: a search for persons who have taken part in previous hostilities, and the use of those premises as a fortified position. The latter is a far more serious violation of the duty to provide, and hence the right to receive, medical care, since it endangers all persons in the premises (patients, relatives, visitors, health care personnel, etc.).

Attacks on the vehicles of health care personnel (ambulances) directly threaten the lives of their occupants (drivers, paramedics, patients, occasional passengers), endanger a medical means of transport and, in the long run, also undermine the emergency care network, as they prevent the timely and rapid transport of the wounded and the sick which is its very *raison d'être*. This can have dire effects not only on the victims of the armed conflict but also on any wounded or sick requiring assisted transport.

| Type of violation | No. of cases | Percentage |
|---|--------------|------------|
| Attacks on medical means of transport | 25 | 41 |
| Attacks on medical units | 12 | 20 |
| Transformation of medical means of transport into military objectives | 17 | 28 |
| Transformation of medical units into military objectives | 7 | 11 |
| Total | 61 | 100 |

Obstruction of medical activities

The parties to the conflict are bound not only to allow health care personnel to work but also to facilitate any humanitarian activity. Article 3 common to the 1949 Geneva Conventions stipulates quite clearly that “each party to the conflict shall be bound to apply, as a minimum, the following provisions: (...) the wounded and sick shall be collected and cared for”.

Additional Protocol II stipulates in Article 9 that: “Medical (...) personnel shall (...) be granted all available help for the performance of their duties [and that] in the performance of their medical duties medical personnel may not be required to give priority to any person except on medical grounds”.

The concept of “medical grounds”¹⁵ in Additional Protocol II imposes absolute impartiality on those who provide health care. Accordingly:

- priority in receiving health care must depend on the gravity of the patient’s condition; and
- health care personnel must not take sides with any of the armed parties or become involved in hostilities.

Thus medical personnel have to provide medical care based on strictly technical criteria. These criteria also apply to the administrative services.

As for the evacuation of the wounded, it is hard to tell, even in theory, which patient has priority. In practice, the decision becomes more complicated since patients may at times face more serious dangers than those related to their injuries. In fact, it may sometimes be necessary to evacuate a slightly wounded patient to prevent him from being killed within the medical facility. This being so, the traditional medical criterion has to be qualified by another one: the patient's life must be protected, and consequently no unjustified risks must be taken.¹⁶

¹⁴ “Medical units and transports shall be respected and protected at all times and shall not be the object of attack.” Protocol II, Art. 11.

¹⁵ See also Protocol II, Art. 7, para. 2.

¹⁶ “The physician shall not expose his patient to unjustified risks.” Medical Ethics Act, 1981, Art. 15.

The extreme difficulty of providing health care in combat zones not only diminishes the availability of health care services (lack of personnel willing to work there), but also endangers the right of the population to receive direct treatment. This situation explains the appearance, in combat zones, of conduct such as:

- theft of medicines, food or medical equipment or restriction of their transport;
- direct or indirect hindrance of health care provision through strict curfews, checkpoints and other restrictive measures;
- pressure on medical personnel to provide health care under inadequate conditions;
- disregard for medical priorities.

| Type of violation | No. of cases | Percentage |
|---|--------------|------------|
| Restricting the transport of medicines, equipment and food | 13 | 25.49 |
| Stealing of medicines and equipment | 17 | 33.33 |
| Restricting and/or prohibiting the work of health care services | 12 | 23.53 |
| Forcing medical personnel to provide assistance under inadequate conditions | 7 | 13.73 |
| Disregard for medical priorities | 2 | 3.92 |
| Total | 51 | 100 |

With regard to the above-mentioned forms of conduct, it should be noted that:

- restriction, control or prohibition of the transport of food and medicines or the theft thereof constitute a violation both of the right to health as a whole and of the rights of the civilian population;
- armed checkpoints and other forms of coercion limiting the freedom of movement hinder the transport of the wounded and the right of ambulances to move freely in performing their humanitarian work;
- curfews prevent the civilian population from going to medical facilities when they need to do so, and oblige them to adopt

inadequate solutions or to postpone the consultation even in cases that require immediate attention;

- the fact that vector control personnel are prevented from doing their job of controlling tropical diseases such as malaria has serious consequences for the population, which shows clearly that the relationship between health and armed conflict is not confined to medical attention for the war-wounded but also comprises all aspects and programmes of the health care sector;
- the impact of war on the population goes beyond the time and place of the actual hostilities; for example, outbreaks of fighting or patrols near a health centre prevent many people from going there — or oblige them to postpone the consultation — which might aggravate their condition and in certain cases endanger their lives;
- to prevent health care personnel from moving freely, on the pretext that they might assist the enemy, is tantamount to refusing the humanitarian assistance they can give to the civilian population and even to the wounded and sick of the side that imposes the restriction. The same effect occurs when health care personnel are obliged to remain within the premises of the health facility and prevented from providing home care of any kind.

Acts of perfidy

Literally speaking, perfidy means “breaking of faith”.¹⁷ In the days of chivalry, during the Middle Ages, “perfidy was considered a dishonour which could not be redeemed by any act, no matter how heroic”.¹⁸ The following acts are examples of perfidy: the feigning of incapacitation by wounds or sickness; the feigning of non-combatant or civilian status; the feigning of the status of a protected person by using protective signs, emblems or uniforms; or, finally, the feigning of a surrender.¹⁹

¹⁷ Y. Sandoz/C. Swinarski/B. Zimmermann, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC/Martinus Nijhoff, Geneva, 1973, p. 430.

¹⁸ *Ibid.* p. 434.

¹⁹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Art. 37.

| Type of violation | No. of cases |
|---|--------------|
| Use of means of transport for acts of war | 9 |
| Use of means of identification of medical personnel to commit acts of war | 2 |
| Total | 11 |

Violation of the professional secrecy of medical personnel

Information handled by medical personnel concerning the wounded and sick under their care is protected by international humanitarian law. Domestic legislation should also regulate professional secrecy. On this subject, the findings of our survey are somewhat biased because, in practice, professional secrecy in Colombia is virtually non-existent owing to:

- lack of knowledge of legislation on professional secrecy;
- lack of clarity or erroneous interpretation of such legislation;
- a purely pragmatic and contextual implementation of the law;
- non-existence of the concept of professional secrecy in the traditional mentality of Colombian health care and combatant personnel.

Common mistakes occur in the handling of professional secrecy, such as entering the warring party to which a patient belongs in his or her medical record. This stems from the custom of registering the patient's profession in order to provide data for occupational studies, but generates a series of problems for the patients and is useless for humanitarian assistance. Conduct of this kind violates the right to confidentiality, the classified character of the said documents, professional secrecy and the right to privacy.

States have an obligation to improve the protection of professional secrecy, which has long been established as a right — since the time of the Hippocratic oath — and has now been reaffirmed by the World Medical Association. Clearly, medical personnel in the performance of their humanitarian activities do gather information on their patients, but this information must not become a danger to their lives and person or to their personal freedom.

Other relevant findings of the survey

Impact of the armed conflict on the control of malaria and other vector-transmitted diseases: owing to the killings of or threats to officials in charge of this programme, fumigation, community education and entomological research activities have been affected and this in turn has caused an increase in those diseases.

Impact on the Vaccination Programme: despite the availability of human and biological resources, transport and equipment (cold storage facilities), this programme cannot be pursued in some regions because of acts by the warring parties.

Mental health: the Colombians' mental health is seriously endangered by the armed conflict.

ICRC strategy for the protection of medical activities in Colombia

Communication

The ICRC has produced material to promote the programme for the protection of medical duties, such as leaflets on professional secrecy and use of the emblem, posters, stickers and radio and television spots. A book and a widely distributed summary have been used to publicize the results of the present survey. Through these materials, the ICRC aims to make both the general public and the combatants more aware of the respect that must be shown for medical personnel, their work, facilities and equipment, and to remind health-care staff of their rights and duties in the event of armed conflict.

Dissemination

On the basis of the ICRC's long-standing experience and with the aid of the organization's facilities, an effort has been made to spread knowledge of the rules of international humanitarian law concerning medical activities. This has taken the form of lectures, courses and special meetings with armed forces personnel, detained members of guerrilla movements and paramilitary groups, commanders of guerrilla forces and paramilitary groups in the field and, in particular, health-care personnel in areas particularly hard hit by the conflict. The

main themes of these events are the respect due to medical duties in general, respect for the red cross emblem, protection of professional secrecy and the obligation to spare wounded people being treated in health-care facilities.

Protection

While this research has greatly benefited from the ICRC's experience in protection work, the programme lends support in turn to the delegates' activities in the field. Instructions have been formulated to enhance the safety of medical personnel working in conflict zones.

Legal advice

The ICRC delegation provided legal advice to help bring about the adoption, in 1988, of Decree No. 860 on the protection of medical duties. It is currently seeking to have some of the decree's provisions improved and new protective measures adopted in a new Medical Duties Protection Act. ICRC delegates have been working together with health authorities from various parts of the country, particularly from those worst affected by the conflict.

Medical activities

As part of the programme for the protection of medical duties, the ICRC has provided medical assistance to wounded combatants and civilians. It has also given first-aid courses to members of the warring parties, enabling the wounded to be tended more rapidly by their comrades.

Conclusion

Taking into account the findings of this survey, the ICRC delegation has devised a strategy to protect medical activities in Colombia and has issued guidelines for the work of medical personnel. The Medical Duties Protection Programme supports these efforts and also those of other organizations working in the same domain until they have acquired the knowledge needed to develop their own strategies. This will eventually lead to greater compliance

with international humanitarian law in the conflict, especially by reducing the number of attacks on medical personnel.



Résumé

Protéger le secteur de la santé en Colombie : une démarche pour rendre le conflit moins cruel

par VICTOR DE CURREA-LUGO

Le conflit interne en Colombie a déjà fait un grand nombre de victimes et détruit une grande partie des infrastructures du pays, notamment celles de la santé. La survie du personnel médical est directement menacée par les actes de violences et, autre conséquence de cette situation, les services de santé n'arrivent plus à faire face aux besoins, en ce qui concerne les soins aux victimes des affrontements. La mission médicale est donc en danger. Le présent article est issu d'une recherche sur les causes et sur le caractère des actes de violence commis contre le personnel médical. Il présente en outre les mesures prises par la délégation du CICR sur place pour renforcer la sécurité de son personnel médical sur le terrain et contribuer ainsi à un meilleur respect du droit international humanitaire en Colombie.