

# Human beings: an end in themselves

**Humanitarian agreements aim to do what every kind of protection does: reduce the suffering of flesh-and-blood human beings. Colombia has met with obstacles to gaining the freedom of citizens being held by the guerrillas, among others. Nonetheless, there is still some hope that a solution will be found.**

People are not a means for achieving strategic objectives or advantages. They are an end in themselves. That is why their protection ought to be "a moral, political and juridical imperative," states the Colombian National Commission for Reparation and Reconciliation (CNRR).

Following on this principle, humanitarian agreements have been conceived as a mechanism about which a great deal has been spoken in Colombia as a way to obtain the freedom of those agents of the Armed Forces and those civilians who are in the hands of the FARC and see them safe and sound again. Apart from men in uniform, there are senators,

ex presidential candidates as Ingrid Betancourt, ex deputies, and many others, some of whom have been held for over nine years.

During recent governments, humanitarian criteria have led to the application of humanitarian agreements and therefore of International Humanitarian Law (IHL), bearing in mind that such measures "are useful for relieving the misfortune of the victims of war, favoring consensus and fomenting a measure of reciprocal trust between declared enemies with a view to reaching a peaceful settlement," to quote the words of Colombia's Constitutional Court in a pronouncement in 1995.

Thus, based on the four Geneva Conventions, it has been possible

to obtain the liberation of civilians and military personnel. "The ideal situation as regards International Humanitarian Law is that its application should not be required," said the Commission. That is to say, a situation in which there was no armed confrontation. However, since conflicts do exist, it becomes necessary to regulate or humanize them in the most legitimate manner possible.

Which is why, during recent governments and the present one, doors have been opened and shut again, always hoping that Colombian families will be reunited and will receive back into their homes those members who have lost years of their lives and of their freedom in the Colombian jungle due to the activity of the FARC.

On this path many obstacles have stood in the way and possible solutions have failed, although they are still being sought today and ought to have, as their premise, that the main objective in the humanitarian field is to regularize the conflict and humanize it.

## The humanitarian field

The humanitarian aspect is conceived "as a combination of proposals, initiatives, undertakings, achievements and experiences for protecting the civilian

Humanitarian agreements are useful for relieving the violence and favoring consensus.



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population and the combatants who, for whatever reason—because of wounds, of being captured, of becoming ill, of surrendering—, have ceased to participate in hostilities (and even those who are still participating), since they should not be attacked with combat measures that cause them unnecessary suffering,” states the National Human Development Report *El Conflicto: callejón con salida*.

In this sense, the report insists that, in order to approach the humanitarian aspect, it is important to adopt a focus that bears in mind the following three factors:

- The attitudes of the relevant actors: examining the obstacles and the openings.
- The conception of humanization of the conflict as a process of modification of these attitudes: modification achieved voluntarily, or under pressure, or negotiated, or by force.
- The combination of gradual change with complete compliance with International Humanitarian Law by the armed actors.

Likewise, one must keep in mind certain keys to the humanitarian aspect:

### 1. Humanitarian agreement and humanitarian exchange

The concept of humanitarian accords is much broader than that of humanitarian exchange. The former embraces much more and suggests that, besides acts and humanitarian commitments (such as exchange), a step can be taken towards negotiation and debate on subjects such as a cease fire, the use of non-conventional weapons (anti-personal mines) and an end to kidnapping, among others. The latter, on the other hand, conceives exchange of kidnap victims for members of irregular armed groups who are in prison, without looking much beyond a simple exchange.

This was expressed by Camilo González Posso, Director of the NGO Indepaz, and by Carlos Lozano, Director of the paper voz and mediator for peace on the matter of humanitarian agreements, who added: “It is necessary to differentiate the two terms and give priority to humanitarian exchange without adding other matters to it.”

### 2. Humanitarian commitments, humanitarian actions and humanitarian agreements

As González Posso points out, humanitarian commitments are not necessarily carried out between parties to a conflict. They can be simply unilateral manifestations. Such commitments are not pacts and are engaged in by third parties.

Humanitarian actions, on the contrary, are not carried out between parties to a conflict. The experience of Micoahumado, for example, was a humanitarian action that led to de-mining fifteen kilometers along



Relatives of those who are in the hands of FARC still wait for their dear ones.

the road between Micoahumado and Guásima, and was the result of accords arrived at by various national, regional and international actors and the ELN.

Humanitarian agreements are arrived at with parties to the conflict. They must be achieved within the context of IHL and their content must be specifically referred to humanitarian norms.

### 3. Aims of the humanitarian agreements

The main objective in reaching humanitarian agreements is to regularize the conflict through commitments acquired by the parties. The Peace Tables in the Southwest of Colombia stated last September more specific objectives such as these defined by them for an agenda between the government and the ELN:

- To abolish conduct or practices used by combatants that are prohibited by IHL.
- To facilitate the application of IHL dispositions that regulate aid for the victims of armed conflict.

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- Establish mechanisms that guarantee compliance with commitments: verification commissions and security conditions for such commissions.

### 4. Beneficiaries of humanitarian agreements

The meeting concluded that humanitarian agreements should benefit the civilian population and vulnerable groups; combatants outside combat zones; persons with a humanitarian mission; members of facilitation bodies, among others.

5. Basic content

The basic content of the "Global Accord on Human Rights and IHL" (2001), a document of the Office of the United Nations High Commissioner for Human Rights, contains dispositions on the following:

- Human rights: to broaden and ensure the exercise of human rights and the public freedoms of the inhabitants, so that its dispositions cannot be interpreted as restrictive of rights and freedoms stipulated in the Constitution and in international treaties on the subject.

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- International Humanitarian Law: a humanitarian agreement cannot be limited to obligations that are already stipulated in the Geneva conventions. In this sense, actions can be included which are not obligatory under the norms of I.H.L. but which do contribute to humanizing the conflict and broadening the protection ensured by such norms. It ought to contain concrete measures to regularize the conflict.

According to the "Platform for Accords with Humanitarian Content" of the National Conciliation commission, the minimal elements of a humanitarian agreement are:

- Protection for combatants and non combatants, because "I.H.L. does not just protect the innocent, but also the defenseless."
- Ratification of the commitment by the parties that are confronted to respect the immunity of medical, sanitary and religious missions and other signs or emblems which distinguish persons that are fulfilling these functions and goods belonging to them.
- Extension of their material content to the determination of commitments by the signing parties in the light of the right to human rights, and especially respect for civil and political rights.
- Participation by different sectors and regions throughout the country and their free contribution to defining the reforms that they

require in social, economic and political matters. This participation can only be guaranteed if violence ceases and the rights of the civilian population are ensured.

6. Kinds of humanitarian agreements

There are several kinds of agreement, as was concluded by the Meeting of the Tables for Peace:

- Temporary: such as the setting up of a sanitary area or the search for—and transport of—the wounded.
  - Indefinite: such as the suspension of behavior which is considered to constitute a serious breach of IHL. These accords can be verbal, written or partial agreements.
  - Thematic: such as agreements about the way of conducting hostilities.
  - Regional: these are applicable in determined territories or regions.

7. What a humanitarian agreement does not imply

An agreement does not imply:

- Negotiate nor reduce the norms and international obligations of each one of the parties as regards IHL.
- Affect the principle of non reciprocity.
- Produce effects on the juridical status of parties to the conflict.
- Decide on the legitimacy or illegitimacy of the armed actions of those who are signing.
- Ignore the constitutional and criminal laws that are in force.

8. Minimal ethics

A humanitarian agreement should be ruled by certain minimal ethical standards, in opinion of Camila de Gamboa from the University of El Rosario. These minimal standards are based on viewing individual people as ends in themselves, and therefore one must recognize in the other person another human being. "If the parties utilize citizens as instruments to legitimate their actions, then they are breaking with minimal standards," she says. Likewise, humanitarian agreements should not be used as tools to legitimate actions on one side or the other.

An indispensable condition for regulating hostilities, says Álvaro Villaraga, Director of the Foundation Cultura Democrática, consists of "preserving the very essence of IHL: namely that it be humanitarian, in so far as it calls for an ethical standard which must be imposed over and above any other consideration, whether it be juridical, political or military."

9. A prior step—though not a condition—for negotiating

A humanitarian agreement can constitute a first step in a peace process, but does not constitute an indispensable condition for such a process. In the words of Camila de Gamboa, "we must not create too many expectations nor lead people to think that a humanitarian agreement is going to lead to a peace process." Carlos Lozano shares her opinion, but goes further: "It is important to achieve a suc-



"Yes to a humanitarian agreement" shows this woman in her shirt in front of the legislative house of Colombia.



The relatives of soldiers and policemen stand for the liberation of their brothers, sons and husbands.

cessful humanitarian agreement which, though not a necessary condition for a peace process, does open up the possibilities for one."

#### 10. Recognition

Camila de Gamboa also insists that a humanitarian agreement implies that the parties admit their responsibility in the past and are ready to sacrifice something, thus showing that they are getting ready for peace. But by the same token, it is important that, once the kidnap victims have recovered their freedom, they be recognized in society and their rights respected.

#### 11. The international community

The international community plays a fundamental role in any humanitarian agreement. In fact it can take on several roles, such as accompaniment or verification, for example. Analysts and researchers agree on the importance of an active role, an ability to make proposals and the capacity to generate trust between the parties. The greater the number of friendly countries involved, the greater will be the solidarity and the commitment of the international community.

#### 12. Verification

One of the most important aspects of a humanitarian agreement is the verification of those commitments that have been acquired by the parties, and this can be carried out through the good offices of national or international mediators; arbiters who resolve differences about presumed non-compliance with commitments already agreed upon: and meetings with representatives of each one of the parties, at the request of mediators, arbiters or one of the parties themselves. The more clarity there is about how verification should be applied, the better will those commitments be

monitored. For the National Conciliation Commission, verification builds up mutual trust and offers a wider margin for protection of the defenseless.

#### 13. Costs

Humanitarian undertakings may incur four kinds of costs, and these should be met, given that the lives of human beings are at stake, says *El conflicto: callejón con salida*:

- Ethical costs: these refer to actions that are not implicitly prohibited in humanitarian agreements reached by the parties.
- Political costs: the irregular groups may achieve a leading role thanks to humanitarian undertakings. However, the State will reinforce its legitimacy through these very undertakings.

“The greater the extent and intensity of the conflict, the greater must our efforts be to broaden and consolidate the humanitarian field.”

- Juridical costs: "these are costs incurred when humanitarian acts can only be undertaken by turning a blind eye to certain articles of the Constitution or aspects of the law".
- Military costs: humanitarian and military demands must be reconciled if we are to avoid weakening the official armed forces and strengthening the guerrilla armies.

These are only some of the key issues to bear in mind when seeking a humanitarian agreement or a humanitarian exchange, and even more so when one considers what was stated in *El conflicto: callejón con salida*, namely: "The greater the extent and intensity of the conflict, the greater must our efforts be to broaden and consolidate the humanitarian field." ▀