

Colombia: time to invoke the cessation clause?

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After more than five decades of internal armed conflict, in November 2016 the Colombian government signed a peace agreement with the FARC-EP. Does this mean that those Colombians who had been forced to leave the country must now begin to return?

International refugee protection – as well as other forms of international protection – is designed to be temporary. The ‘cessation clause’ included in the 1951 Convention Relating to the Status of Refugees, its Protocol and other international instruments in this area provides for four scenarios in which international protection may come to an end.¹ One of these occurs when the country of origin experiences a profound change of circumstances which is significant enough to remove the causes that prompted its people to flee. Once those causes vanish, host countries (and UNHCR, the UN Refugee Agency) can declare the end of the provision of international protection and require the refugees to return, while the country of origin is obliged to resume its responsibility for their protection. The question now arises as to whether the signing of the peace agreement in Colombia will entail the cessation clause being invoked by countries that host Colombians either as refugees or as beneficiaries of some other type of international protection.

According to UNHCR’s interpretation, the change of circumstances requires the conjunction of three elements. Firstly, it must be sufficiently profound to resolve the causes that caused the displacement. Secondly, it must be sustainable over time, guaranteeing that those who return will not be forced again to flee. And, lastly, those who return must have effective access to protection in the country of origin.²

These conditions are not currently present in the Colombian case. Forced displacement in this country has multiple causes, and the government’s peace agreement with one of the guerrilla forces – the FARC-EP³ – does not necessarily resolve all the factors that caused the displacement, nor does it imply the full establishment of conditions

of security for the return of exiles, as vast territories of Colombia are now controlled by violent criminal gangs.⁴ Moreover, there is still one guerrilla group active, the ELN.⁵

Reasons to invoke cessation

UNHCR’s interpretation, however, is not binding in law. Host countries may choose to ignore it and invoke cessation. In the case of those countries hosting the largest numbers of Colombian refugees (Venezuela, Ecuador and Panama), there are good reasons why this might be a strong possibility.

Venezuela, which by December 2016 was hosting nearly 173,000 Colombians, has been experiencing a profound economic and political crisis. The Venezuelan authorities may therefore be tempted to get rid of a population that consumes public resources and is perceived as responsible for increased insecurity. The mass expulsion of Colombians in an irregular situation that took place in August 2015 reflected these sentiments.

Ecuador, hosting over 101,000 Colombians, is facing economic difficulties too; it has asked for help from the Colombian government in order to be able to continue offering protection to the refugees, and has taken steps to prevent the increase in size of this population. In 2012, for example, Ecuador’s laws were modified in order to restrict the concept of refugee.⁶

Finally, Panama, which hosts just over 17,000 refugees, is experiencing an economic slowdown, according to the World Bank, and in the past has cited the size of the burden it carries in caring for and protecting Colombian refugees.

Additionally, it should be noted that in the past, Ecuador and Venezuela were particularly open to the arrival of Colombian refugees because of the heightened tension between them and their neighbour Colombia. Nowadays the dynamics

October 2017

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of these relationships have changed, diminishing the political and strategic value of taking in Colombian refugees.

Guaranteeing protection

Colombia's Binational Commissions with Ecuador, Costa Rica and Venezuela and its Neighbourhood Commission with Panama offer opportunities for the government to negotiate agreements in order to avoid the imminent invocation of cessation. Through the Binational Commission with Ecuador, agreements have already been reached regarding the care of this population and the implementation of a voluntary return plan. It is essential, however, to expand negotiations and to speed up the decision-making process, not only to avoid the cessation clause being invoked but also to reach agreements on how to ensure the well-being of those who, at the time, had no choice but to leave their country or lose their lives. Joint voluntary return plans will increasingly be needed as Colombia's situation stabilises and becomes more conducive to offering a safe return for those who wish it.

UNHCR has an important role to play in all this. Firstly, it is UNHCR's job to monitor compliance with the guidelines relating to cessation. Secondly, UNHCR can facilitate

negotiations between the States. And, finally, UNHCR can support voluntary return schemes, reminding national authorities that the population choosing to return must be fully informed of the conditions they will encounter in Colombia, and that their security and rights must be fully guaranteed.

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https://humanities-center.ie.edu/dt_team/851/

1. <http://bit.ly/UNHCR-CessationClauseNotes-1997>
2. UNHCR (2003) *Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the 'Ceased Circumstances' Clauses)*, HCR/GIP/03/03 www.refworld.org/docid/3e50de6b4.html
3. Revolutionary Armed Forces of Colombia – People's Army (Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo)
4. Sánchez B E (2016) 'A silenced exodus: intra-urban displacement in Medellín' and Rojas Andrade G 'Post-demobilisation groups and forced displacement in Colombia: a quantitative approach' in Cantor D & Rodríguez Serna (Eds) *The New Refugees: Crime and Displacement in Latin America*, London: Institute of Latin American Studies. (Spanish edition published 2015)
5. National Liberation Army (Ejército de Liberación Nacional)
6. Decree 1,182 of 2012 replaced the broader notion of refugee, which included persons fleeing situations of armed conflict and widespread violence without demanding proof of individual persecution, by a definition based on the original, more narrow 1951 Convention definition.