

COLOMBIA:

Property restitution in sight but integration still distant

A profile of the internal displacement situation

5 September, 2011

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Through its work, the Centre contributes to improving national and international capacities to protect and assist the millions of people around the globe who have been displaced within their own country as a result of conflicts or human rights violations.

At the request of the United Nations, the Geneva-based Centre runs an online database providing comprehensive information and analysis on internal displacement in some 50 countries.

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OVERVIEW

Property restitution in sight but integration still distant

Threats, assassinations, massacres, forced recruitment, and forced disappearances perpetrated by numerous illegal armed groups, and armed confrontations between these groups and government forces, continue to force Colombians to flee their homes, mostly from rural areas.

A reliable national NGO has reported that 280,000 people were newly displaced in 2010, adding to previous displacement to create a total number of 5.2 million internally displaced people (IDPs). The government, however, registered only 109,000 people as IDPs during the year. The total, cumulative figure also varies significantly, as the government had registered a total of 3.6 million IDPs by December 2010. In the first quarter of 2011, the government has registered 16,000 IDPs, which would signal a decline of displacement in 2011. As before, the problem of under-registration in the government registry remains significant.

The new government's successful military strikes against the Revolutionary Armed Forces of Colombia (FARC) combined with its political tone of moderation and unity seemed to create an opportunity for resolution of the conflict in 2010. However, in 2011, both the FARC and the National Liberation Army (ELN) have increased their attacks on government forces, roads, and infrastructure. In addition to these rebel groups, a large number of armed groups, which emerged following the paramilitary demobilisation of 2006, have become pervasive perpetrators of human rights abuses and displacement.

In June 2011, the government adopted a programme to give back roughly two million hectares of land to IDPs, as part of a broader reparations scheme for all victims of conflict which also includes the first-ever acknowledgement by the Government that Colombia confronts an internal armed conflict. This restitution process will take time to implement and faces no shortage of difficulties, not least because it will take place in the midst of ongoing conflict.

Meanwhile, IDPs continue to struggle to integrate in their (predominantly urban) places of displacement. Recent data shows uneven government progress in supporting this: support to help IDPs access housing, steady income, and emergency support has been negligible in the last year, while more significant progress has been made in facilitating their access to education, health care and food security.

Finally, in 2010 Colombia was hit by the wettest rainy season in the country's recent history, resulting from a particularly intense La Niña phenomenon in the Pacific Ocean. Virtually the entire country was affected by floods and landslides. Even though no exact figures are available, thousands of people were reportedly displaced, including people who had been already displaced by conflict or violence.

Context and causes of displacement

Colombia's internal armed conflict has continued for four decades and has affected most of the country's regions, including the Pacific and Caribbean coasts, the central Andes, and the Amazon region. Parties to the conflict include government forces and rebel groups including the Revolutionary Armed Forces of Colombia (*Fuerzas Armadas Revolucionarias de Colombia* or FARC) with its 10,000 members, and the National Liberation Army (*Ejército de Liberación Nacional* or ELN), which between them are active in 24 of the country's 32 departments, but

particularly in the departments of Caquetá, Meta, Cauca, Putumayo and Chocó (Nuevo Arco Iris, 2010).

The demobilisation in 2006 of the right-wing paramilitary United Self-Defence Forces of Colombia (*Autodefensas Unidas de Colombia* or AUC), then hailed as a success by the government, has been undone by a resurgence in violence by new paramilitary groups, which the government describes as “criminal bands” (Comisión Colombiana de Juristas, 2010; Human Rights Watch, 2010). A large number of groups now operate in hundreds of municipalities in all of the country’s departments (Indepaz, 2010), and are recognised by local populations as paramilitaries which never demobilised or else demobilised but then rearmed (ICG, 2011). These groups perpetrate threats and abuses against the population, at levels comparable to or higher than the armed rebel groups, and they have been acknowledged as the country’s greatest security threat. The presence and influence of these groups also poses a threat to the independence of local elections due in October 2011 (ICG, 2011).

In 2010, all illegal armed groups continued to force rural and urban people to flee their homes. Direct threats were the most frequent trigger: 55 per cent of internally displaced people (IDPs) fled following threats against them (Comisión de Seguimiento, 2010).

In 2010 the new government of President Juan Manuel Santos made significant military strikes against the FARC while presenting a political tone of moderation and unity; this seemed to have created a valuable opportunity for resolution of the conflict (Nuevo Arco Iris, 2010; ICG, 2010; BBC, 2010). In 2011, however, both the FARC and the ELN have increased their attacks on government forces, roads, and infrastructure, and the leadership of the FARC has reportedly adopted a more violent strategy, including through the use of more land mines (The Economist, 2011). Crimes such as kidnapping have also recently risen, although these have also been perpetrated by the new paramilitary groups.

The adoption of the Victims’ Law in June 2011 signals a new commitment to provide redress to victims of conflict; the previous administration of President Álvaro Uribe had blocked the passage of a similar law in 2009. Beyond creating a mechanism to provide reparations to victims of various violations and abuses, it proposes a programme to restitute the property of IDPs. (*See the section below on property restitution.*)

In 2010, Colombia was hit by the wettest rainy season in recent history, resulting from the intense La Niña phenomenon in the Pacific Ocean. Almost the entire country was affected by floods and landslides. No exact estimates of their numbers were available, but many thousands of people were reportedly displaced, and many people who had already been displaced by conflict or violence were affected.

Latest displacement figures

According to the reliable non-governmental Observatory on Human Rights and Displacement (*Consultoría para los Derechos Humanos y el Desplazamiento* or CODHES), 280,000 people were newly displaced in 2010, adding to previous displacement to create an estimated total of 5.2 million IDPs up to December 2010. This cumulative figure amounts to almost 12 per cent of the national population.

Government figures for 2010 differ significantly from those of CODHES: it registered 109,000 people during the year in its IDP registry (*Registro Único de Población en Situación de Desplazamiento* or RUPD). The government’s cumulative total was also significantly lower, as it had registered a total of 3.6 million people as internally displaced between 2000 (when the registry was launched) and December 2010. In the first three months of 2011, the government registered 16,000 people.

Two caveats are important when referring to displacement figures in Colombia. Firstly, both the total figures cited above are cumulative, and do not take into account IDPs who may have reached durable solutions and would therefore no longer have protection needs associated to their displacement, or those who have died since being registered or estimated as IDPs. On the other hand, they do not include children born to displaced families.

Secondly, the RUPD figure reflects high rates of under-registration. A national survey mandated by the Constitutional Court, and carried out for the third time in 2010, showed that 23 per cent of IDPs have not registered, either because they did not ask to (in 45 per cent of cases because they did not know how, and in 30 per cent of cases because they were afraid of being identified), or because their request was denied.

The under-registration rate has dropped since 2008, when it was at 30 per cent, as a result of an order by the *Consejo de Estado*, Colombia's administrative court, removing the clause that IDPs must request registration within a year of being displaced. Addressing the problem of under-registration is fundamental to IDP protection, as it has been shown that, in practice, unregistered IDPs have a lower enjoyment of their rights across the board (Comisión de Seguimiento, 2011).

Profile of the displaced population

The RUPD allows for the disaggregation of IDP numbers according to indicators including age, sex and ethnicity. In 2010, as in previous years, children under 18 years of age made up over 50 per cent of the internally displaced population, and women and girls made up 52 per cent (GoC data, 2010). 45 per cent of displaced families registered in the RUPD were headed by an unaccompanied woman.

Minority ethnic groups, including indigenous people and Afro-Colombians, continued to make up a significant percentage of the internally displaced population in 2010, as in the previous year. Roughly 30 per cent of registered IDPs identified themselves as belonging to an ethnic minority, an alarmingly disproportionate rate given that these groups make up only five per cent of the Colombian population.

Roughly 20,500 Afro-Colombians were registered in the RUPD in 2010. Most of them were displaced from the Pacific coast departments of Nariño, Valle del Cauca, and Chocó (GOC, 2011). 4,700 indigenous people belonging to various ethnic groups were registered in 2010. As in 2009, the departments from which most of them had come were Nariño, Putumayo, and Cauca. Afro-Colombians and members of indigenous peoples made up to 19 per cent and 4.5 percent of the total displaced population, respectively.

Physical security of IDPs and others affected by the conflict

Direct threats, violence including sexual violence, restrictions on free movement including through the deployment of landmines, and forced recruitment have continued to threaten the civilian population and to cause new displacement.

The International Committee of the Red Cross (ICRC) documented 768 violations of international humanitarian law in 2009, and 800 in 2010 (ICRC, 2010 *and* 2011). These violations were perpetrated by the rebel groups and the new illegal armed groups.

57 mass displacement events took place during 2010; they were caused by intense military confrontations, threats or attacks which often involved assassinations of community members. As before, the majority of these events affected indigenous and Afro-Colombian populations. The International Committee of the Red Cross/Red Crescent (ICRC) reported having implemented a response in 35 of these cases (ICRC, 2011).

The security of human rights defenders and IDP representatives has continued to be threatened. In May 2011, it was reported that 61 IDP leaders advocating for land rights had been assassinated in recent years (Semanario Virtual, 2011). Mechanisms to protect the physical security of human rights defenders and IDP leaders have not worked, or have even placed targets at greater risk. The Constitutional Court has repeatedly found that responsible authorities have failed to protect IDP leaders (Constitutional Court, 2007 *and* 2009). The Inter-American Commission on Human Rights has urged the government to provide effective measures to guarantee the right to life, integrity, and security of human rights defenders, some of whom already benefit from decisions by the Commission requiring the government to take measures to protect them (IACHR, 2011).

Property restitution in the midst of conflict

The Victim's Law adopted by Congress in June 2011, which aims to provide reparations for victims of conflict, proposes a programme of property restitution for IDPs. The programme aims to reconstitute over two million hectares of land abandoned by people who fled violence or stolen from IDPs by illegal actors since 1991. The law also contains the first-ever acknowledgement by the government that Colombia faces an internal armed conflict.

The Victim's Law marks the end of a contested negotiation process and its enactment represents a victory for victims of conflict. Overall, it has been positively received by opposition groups and victim's advocates. However, they still have reservations about certain aspects of the Law: for example, IDP organisations have reported that the process leading to the programme's adoption did not allow for enough effective participation; that mechanisms to support eventual returns are not sufficiently developed in the text; and that the law excludes restitution of other property such as movable property (Declaración Organizaciones de Desplazados, 2011).

The programme will take time to implement, and faces no shortage of difficulties. Firstly, the government needs to guarantee the safety and security of victims applying for property restitution. Illegal armed groups whose interests it threatens will probably use violence to prevent restitution; they have repeatedly threatened and killed advocates of restitution, including most recently in June 2011, a long-serving land rights activist and Afro-Colombian leader in the city of Medellín who had been displaced from Urabá in 2001.

Secondly, the government must secure those areas prioritised for restitution which are currently controlled by armed groups. A programme to regain territories controlled by armed groups through military campaigns, while simultaneously providing social support services for the population (through so-called "centres of coordination and integrated action"), has provided only marginal benefits to affected populations. Indeed, most of the areas with the highest rates of displacement in 2010 were reportedly those where the programme had been applied (CODHES, 2010).

Thirdly, the government needs to ensure that the administrative and judicial institutions created to handle the process are independent and effective, and that their creation does not amount merely to a reshuffling of responsibilities.

Access of IDPs to basic necessities of life

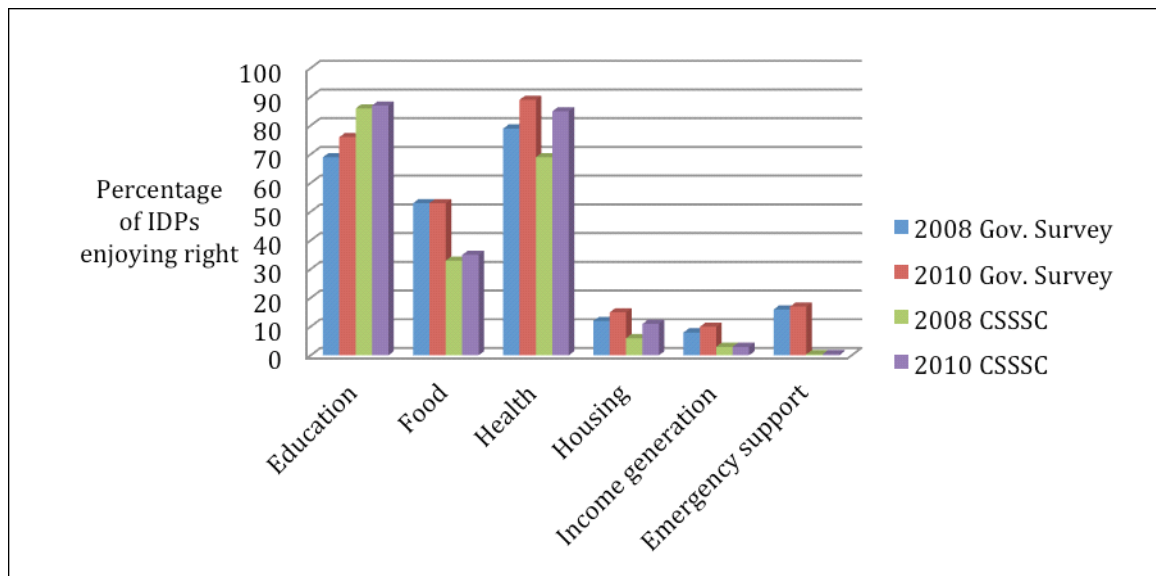
While the Victim's Law and prospects of property restitution for IDPs have brought hope, IDPs have continued to struggle to achieve durable solutions; most are trying to integrate and make a living in the urban areas to which they were displaced. The Law does not yet mean anything in practical terms for IDPs, who have for the most part been unable to successfully integrate in their places of displacement.

In 2010, the latest of three country-wide surveys of the situation of the internally displaced population was administered by the Civil Society Monitoring Commission (*Comisión de Seguimiento de la Sociedad Civil* or CSSC), as part of the Constitutional Court's oversight of the government response to internal displacement. These sustained efforts to gather data on the conditions of IDPs over the last four years have made it possible to compile a detailed picture of the conditions they have faced and how they have changed over time. This is particularly significant in the predominantly urban contexts in which IDPs have mixed with poor non-displaced populations.

The government has also gathered data on the conditions of registered IDPs, as demanded by the Constitutional Court. Both the government and the CSSC have focused on determining if IDPs enjoyed access to the following sets of rights:

- Access to education, measured as the proportion of registered internally displaced children up to 18 years of age currently going to school at least 80 per cent of the time.
- Food security, measured as the proportion of internally displaced households who had an adequate amount and diversity of food, and a perception of food security.
- Access to health care, measured as the proportion of IDPs in the registry who were also registered in the national subsidised health care scheme (*Sistema General de Seguridad Social en Salud* or SGSSS).
- Access to emergency humanitarian support, measured as the proportion of internally displaced households which received all components of humanitarian emergency support (shelter, food and health care).
- Housing, measured as the proportion of IDPs who lived in conditions of dignity (security of tenure, materials, habitability, accessibility and location of housing).
- Income generation, measured as the proportion of internally displaced households whose income is above the poverty line.

The graph below shows the findings from both sources about the conditions of IDPs in 2008 and 2010:



Sources: Government of Colombia; Comisión de Seguimiento de la Sociedad Civil. Graph: IDMC

A few points are worth highlighting. For housing, income generation, and emergency support, progress has been negligible. The proportion with access to adequate housing has only

progressed from six to 11 per cent according to the CSSC, leaving the overall rate of access to housing very low. Income generation and emergency humanitarian support have remained stagnant. Thus, IDPs' most pressing needs still remain in these three areas.

The impact of mechanisms such as the prioritisation of IDPs' access to housing subsidies remained limited: in the last survey, roughly half of IDPs registered in the RUPD had requested a housing subsidy, but only 34 per cent of applicants had received one. Likewise, unemployment rates for IDPs continued to be extremely high: 53 per cent of IDPs were unemployed in 2010. This is reflected in the very low percentage (three per cent) of IDPs who fulfilled the income generation indicator.

The figures show that slightly better progress has been made in ensuring education, food security, and health care, and that outstanding needs are not as acute in these three areas, even though a 65 per cent rate of food security is still alarming. Regarding health care, the CSSC found that roughly 70 per cent of the internally displaced population was affiliated to the health system in 2008 and 85 per cent in the 2010 survey. However, compared to the rest of the population, IDPs still lag behind: 93 per cent of the rest of the population was affiliated in 2010.

Regarding access to education for internally displaced children, the public education system had enrolled displaced children almost to the same extent as non-displaced children.

Another important finding by both the government and the CSSC is that IDPs have a lower enjoyment of the basic necessities of life than the rest of the population as a whole. The CSSC also gathered data and compared the situation of registered and unregistered IDPs, and found that the latter were in a more precarious situation across the board.

Disaggregation of data by sex, age and ethnicity

In general, indigenous and Afro-Colombian IDPs and internally displaced women have been worse off than the rest of the displaced population. While the latest CSSC survey did not disaggregate each set of rights by sex, age and ethnicity as previous editions had, some noteworthy findings nevertheless emerged. Firstly, women continued to have a higher difficulty accessing the labour market: 56 per cent of displaced men were working while for women the rate was only 32 per cent. As before, of those women who were working, 60 per cent worked in the informal labour market, and 20 per cent in domestic service, with lower pay and longer working hours. There is thus still an acute need for programmes to encourage the access of internally displaced women to labour markets.

A finding related to security of housing tenure, however, is counter-intuitive. While, as described above, security of tenure was low for IDPs overall, it was found that women actually fare better than men in this regard: roughly half of homes belonging to IDPs that had a property deed were registered to a woman alone, and 20 per cent were registered to both a man and a woman.

Government response

The government's response to internal displacement may be considered in two phases: before and since 2004. In 2004, the Constitutional Court ruled that the situation of IDPs in the country amounted to an "unconstitutional state of affairs." A key aspect of this decision was the Court's order to evaluate the government's response not in terms of programmes that had been set up to support IDPs, but in terms of the actual impact of those programmes and the actual conditions of life of IDPs, what the Court called the level of enjoyment of their rights. This order set off the process to survey and gather data on IDPs' conditions which has been examined above. The decision also created a follow-up process by the Court, according to which dozens of protection standards have been set.

The recent Victim's Law introduces a number of changes in the existing government response framework. The Constitutional Court will probably examine its constitutionality and compliance with the standards it has set in the coming months. Changes that are of concern and should be reviewed include: a rule on "the end of the situation of vulnerability" which states that the government shall determine if and when IDPs no longer have vulnerabilities associated with their displacement; a limit of two years within which people can apply to be registered as IDPs; and a reference that returnees should remain in their place of return to access special support mechanisms.

Regarding the response for the 2010 rainy season, the government's response was inadequate in terms of its impact despite having been relatively generously funded: \$500 million were allocated to fund the emergency response (Refugees International, 2011). It was reported in May 2011 that significant numbers of people affected and displaced by floods had still not received basic humanitarian assistance including food and water. Among the most vulnerable among them were people who had previously been displaced by conflict or violence (Refugees International, 2011).

Colombia does not have a framework for the protection of people displaced by disasters. The existing legal framework only recognises displacement caused by armed conflict and violence. As a result, the response to the 2010 floods was not informed by the protection framework in place to safeguard the rights of conflict IDPs (Refugees International, 2011; Albuja and Cavelier, 2011).

Humanitarian access and international response

As before, the new armed groups have continued to threaten various humanitarian agencies, including UN agencies and international NGOs. These threats have resulted in increased security measures and in reduced access (Pastoral Social, UNDSS, 2010). At the same time, greater field presence by international agencies has been identified as needed (Moro, 2009).

Emergency humanitarian assistance is provided mainly by the government in coordination with ICRC and the World Food Programme (Presidente de la República, 12 December 2000; Ministerio del Interior y de Justicia, 2005). UNHCR has supported the efforts of government institutions to improve the response from Bogota and 12 field offices, but its announcement to close down three field offices is a concern. The UN has implemented the cluster approach to improve coordination of the humanitarian response in Colombia.

International NGOs and governments have continued to call attention to the situation of internal displacement in Colombia. The Inter-American Commission on Human Rights' 2010 annual report referred to Colombia, as in previous years, as one of the countries in the region whose situation required its special attention (IACHR, March 2011).

RESUMEN DEL INFORME EN ESPAÑOL

Restitución de bienes a la vista, pero integración todavía distante

Las amenazas, asesinatos, masacres, el reclutamiento forzado y las desapariciones forzadas perpetradas por numerosos grupos armados ilegales, así como las confrontaciones armadas entre estos grupos y las fuerzas gubernamentales, siguen forzando a los colombianos a huir de sus hogares, mayoritariamente de las zonas rurales.

Una ONG nacional confiable ha informado que en 2010 hubo 280.000 nuevos desplazados, los cuales, agregados al número de desplazados ya existentes en el país, suman un total estimado

de 5,2 millones de desplazados internos. El Gobierno, sin embargo, registró solamente 109.000 personas como desplazados internos en 2010. La cifra cumulativa total también varía significativamente, ya que el gobierno ha registrado un total de 3,6 millones de desplazados internos a diciembre de 2010. Durante el primer trimestre de 2011, el gobierno registró 16.000 desplazados internos, lo que podría sugerir un descenso del desplazamiento en 2011. El problema del subregistro en el Registro Único de Población Desplazada (RUPD) continúa siendo importante.

El éxito de los campañas militares del nuevo gobierno contra las Fuerzas Armadas Revolucionarias de Colombia (FARC), junto con su tono político de moderación y unidad, parecieron crear una oportunidad para la resolución del conflicto en 2010. Sin embargo, en 2011, tanto las FARC como el Ejército de Liberación Nacional (ELN) han intensificado sus ataques contra las fuerzas gubernamentales, carreteras e infraestructura. Además de esos grupos rebeldes, un gran número de grupos armados, que surgieron después de la desmovilización paramilitar de 2006, se han convertido en los principales perpetradores de abusos de los derechos humanos y del desplazamiento.

En junio de 2011, el gobierno aprobó un programa para la devolución de aproximadamente dos millones de hectáreas de tierras a los desplazados internos, como parte de un esquema de reparaciones más amplio para todas las víctimas del conflicto, que también reconoce por primera vez que Colombia enfrenta un conflicto armado interno. La implementación de este proceso de restitución llevará tiempo y enfrentará muchas dificultades, en gran parte porque se llevará a cabo en medio de un conflicto armado persistente.

Mientras tanto, los desplazados internos siguen luchando por integrarse en sus lugares de desplazamiento (predominantemente urbanos). Los últimos datos muestran que el progreso del gobierno en brindar apoyo a la integración ha sido dispar: el apoyo para ayudar a los desplazados internos a obtener una vivienda e ingresos estables, así como el apoyo de emergencia, han sido insignificantes en el último año, mientras que se ha progresado más en facilitar el acceso de los desplazados internos a la educación, la atención de salud y la seguridad alimentaria.

Por último, en 2010, Colombia fue víctima de la temporada de lluvias más catastrófica en la historia reciente del país, debido al especialmente intenso fenómeno de La Niña en el Océano Pacífico. Inundaciones y deslizamientos de tierras ocurrieron en casi todos los departamentos del país. A pesar de que no se dispone de cifras exactas, se reportó que miles de personas fueron desplazadas, incluyendo personas que ya habían sido desplazadas con anterioridad debido al conflicto armado o la violencia.

Contexto y causas del desplazamiento

El conflicto armado interno de Colombia ha durado cuatro décadas y ha afectado a la mayoría de las regiones del país, incluyendo las costas del Pacífico y el Caribe, los Andes centrales y la región del Amazonas. Los actores del conflicto son las fuerzas gubernamentales y los grupos rebeldes, entre ellos, las Fuerzas Armadas Revolucionarias de Colombia (FARC), que cuentan con 10.000 miembros, y el Ejército de Liberación Nacional (ELN). Ambos grupos están activos en 24 de los 32 departamentos del país, pero especialmente en los departamentos de Caquetá, Meta, Cauca, Putumayo y Chocó (Nuevo Arco Iris, 2010).

La desmovilización en 2006 del grupo paramilitar de derecha, Autodefensas Unidas de Colombia (AUC), que fue considerada por el gobierno como un éxito, se ha desecho debido a un resurgimiento de la violencia por parte de nuevos grupos paramilitares, que el gobierno describe como "bandas criminales" (Comisión Colombiana de Juristas, 2010; Human Rights Watch, 2010).

Un gran número de grupos operan ahora en cientos de municipalidades en todos los departamentos del país (Indepaz, 2010) y son reconocidos por la población local como paramilitares que nunca se desmovilizaron o bien paramilitares desmovilizados que después retomaron las armas (ICG, 2011). Estos grupos cometen amenazas y abusos contra la población, a niveles comparables o superiores que los grupos rebeldes armados, y han sido recientemente reconocidos como la mayor amenaza a la seguridad del país. La presencia e influencia de estos grupos también representa una amenaza a la independencia de las elecciones locales que se celebrarán en octubre de 2011 (ICG, 2011).

En 2010, todos los grupos armados ilegales continuaron forzando a personas en zonas rurales y urbanas a huir de sus hogares. Las amenazas directas fueron la causa más frecuente de desplazamiento: el 55 por ciento de los desplazados internos huyeron después de recibir amenazas en su contra (Comisión de Seguimiento, 2010).

En 2010, el nuevo gobierno del Presidente Juan Manuel Santos emprendió una campaña militar importante contra las FARC, al tiempo que adoptó un tono político de moderación y unidad que pareció crear una oportunidad valiosa para la resolución del conflicto (Nuevo Arco Iris, 2010; ICG, 2010; BBC, 2010). En 2011, sin embargo, tanto las FARC como el ELN han intensificado sus ataques contra las fuerzas gubernamentales, carreteras e infraestructura, y el liderazgo de las FARC ha adoptado una estrategia más violenta, aumentando, por ejemplo, el uso de minas terrestres (The Economist, 2011). Recientemente, también han aumentado delitos tales como el secuestro, a pesar de que éstos también han sido cometidos por los nuevos grupos paramilitares.

La aprobación de la Ley de Víctimas en junio de 2011 marca un nuevo compromiso por parte del gobierno de ofrecer reparaciones a las víctimas del conflicto; la administración anterior del Presidente Álvaro Uribe bloqueó la aprobación de una ley similar en 2009. Además de crear un mecanismo para ofrecer reparaciones a las víctimas de varias violaciones y abusos, propone un programa de restitución de bienes a las víctimas del desplazamiento interno. (*Véase la sección más abajo sobre restitución de bienes.*)

En 2010, Colombia fue víctima de la temporada de lluvias más catastrófica en la historia reciente del país, debido al especialmente intenso fenómeno de La Niña en el Océano Pacífico. Prácticamente todo el país se vio afectado por inundaciones y deslizamientos de tierras. No se dispone de estimaciones exactas, pero muchos miles de personas fueron desplazadas, incluyendo personas que ya habían sido desplazadas con anterioridad por el conflicto armado o la violencia.

Últimas cifras del desplazamiento

Según una organización no gubernamental fidedigna, la Consultoría para los Derechos Humanos y el Desplazamiento (CODHES), en 2010 hubo 280.000 nuevos desplazados, los cuales, agregados al número de desplazados ya existentes en el país, suman un total de 5,2 millones de desplazados internos a diciembre de 2010. Esta cifra acumulada representa casi el 12 por ciento de la población nacional.

Las cifras que el gobierno registró en 2010 difieren notablemente de las de CODHES: durante el año, el gobierno registró a 109.000 personas en su Registro Único de Población en Situación de Desplazamiento (RUPD). Su total acumulado también sigue siendo significativamente más bajo pues ha inscrito a un total de 3,6 millones de personas como desplazados internos entre 2000 (cuando el registro se inauguró) y diciembre de 2010. Durante el primer trimestre de 2011, el gobierno registró a 16.000 personas como desplazados internos.

Cuando se hace referencia a las cifras de desplazamiento interno en Colombia cabe hacer dos consideraciones importantes. En primer lugar, las dos cifras totales mencionadas con

anterioridad son acumuladas, y no toman en cuenta los desplazados internos que pueden haber encontrado soluciones duraderas y que, por lo tanto, ya no tienen necesidades de protección asociadas con su desplazamiento, o aquellos que han fallecido desde que fueron registrados como desplazados internos. Por otro lado, no incluyen a los niños nacidos de familias desplazadas.

En segundo lugar, el RUPD tiene tasas elevadas de subregistro. Una encuesta nacional ordenada por la Corte Constitucional, y llevada a cabo por tercera vez en 2010, mostró que el 23 por ciento de los desplazados internos no están inscritos en el registro gubernamental, o porque no declararon su situación de desplazamiento (en el 45 por ciento de los casos debido a que no sabían como hacerlo, y en el 30 por ciento de los casos por temor a ser identificados), o porque su solicitud fue rechazada.

La tasa de subregistro ha descendido desde 2008, cuando era del 30 por ciento, como resultado de una orden del Consejo de Estado, el máximo tribunal administrativo de Colombia, que anuló un decreto por el que se determinaba que, tras su desplazamiento, los desplazados internos solamente tenían un año para inscribirse. Es fundamental solucionar el problema del subregistro para la protección de los desplazados internos, ya que, en la práctica, se ha demostrado que los desplazados internos no inscritos en el RUPD gozan en menor medida de sus derechos (Comisión de Seguimiento, 2011).

Características de la población desplazada

El registro gubernamental de población desplazada permite desglosar las cifras de desplazados internos según edad, sexo y origen étnico. En 2010, como en años anteriores, los niños menores de 18 años de edad representaban más del 50 por ciento de la población internamente desplazada, y las mujeres y niñas representaban el 52 por ciento (Gobierno de Colombia, 2010). El 45 por ciento de las familias desplazadas inscritas en el RUPD estaban encabezadas por una mujer no acompañada.

Los grupos étnicos minoritarios, incluyendo los pueblos indígenas y afro-colombianos, siguieron representando un porcentaje significativo de la población internamente desplazada en 2010, como en el año anterior. Aproximadamente el 30 por ciento de los desplazados internos inscritos se identificaron a sí mismos como miembros de un grupo étnico minoritario, una tasa extremadamente alta, ya que estos grupos representan solamente el cinco por ciento de la población colombiana.

En 2010, aproximadamente 20.500 afrocolombianos se inscribieron en el RUPD. La mayoría, fueron desplazados de los departamentos de Nariño, Valle del Cauca y el Chocó, en la costa del Pacífico (Gobierno de Colombia, 2011). En 2010, se inscribieron 47.000 personas indígenas pertenecientes a varios grupos étnicos. Como en 2009, la mayoría fueron desplazados de los departamentos de Nariño, Putumayo y Cauca. Los afrocolombianos y los indígenas constituyeron hasta un 19 por ciento y un 4,5 por ciento del total de la población desplazada, respectivamente.

Seguridad física de los desplazados internos y de otras personas afectadas por el conflicto

Las amenazas directas, la violencia, incluyendo la violencia sexual, las restricciones a la libertad de movimiento por el uso de minas antipersonales y el reclutamiento forzado, son amenazas que se siguen cerniendo sobre la población civil y causan nuevos desplazamientos.

En 2009, el Comité Internacional de la Cruz Roja (CICR) documentó 768 casos de violación del derecho internacional humanitario, y 800 durante 2010 (CICR, 2010 y 2011). Los perpetradores de estas violaciones son los grupos rebeldes y los nuevos grupos armados ilegales.

Durante 2010, ocurrieron 57 casos de desplazamientos masivos, causados por enfrentamientos militares intensos, amenazas o ataques, con frecuencia relacionados con asesinatos de miembros comunidades. Como en años anteriores, la mayoría de estos eventos afectaron a las poblaciones indígenas y afro-colombianos. El Comité Internacional de la Cruz Roja (CICR) atendió 35 de estos casos (CICR, 2011).

La seguridad de los defensores de los derechos humanos y representantes de los desplazados internos ha seguido siendo amenazada. En mayo de 2011, se informó que, en los últimos años, 61 líderes de la población internamente desplazada han sido asesinados por reclamar sus derechos a las tierras (Semanario Virtual, 2011). Los mecanismos para proteger la seguridad física de los defensores de los derechos humanos y líderes de la población internamente desplazada no han funcionado, e incluso han creado mayores riesgos para sus beneficiarios. La Corte Constitucional ha fallado en repetidas ocasiones que las autoridades competentes han fracasado en la protección de los líderes de la población internamente desplazada (Corte Constitucional, 2007 y 2009). La Comisión Interamericana de Derechos Humanos ha instado al gobierno a que establezca medidas eficaces para garantizar el derecho a la vida, la integridad y la seguridad de los defensores de los derechos humanos, algunos de los cuales ya se han beneficiado de decisiones de la Comisión que ordenan al gobierno a tomar las medidas adecuadas para su protección (CIDH, 2011).

Restitución de bienes en medio del conflicto

La Ley de Víctimas aprobada por el Congreso en junio de 2011, que tiene por objetivo proporcionar reparaciones a las víctimas del conflicto, incluye un programa de restitución de bienes a las víctimas del desplazamiento forzado. El objetivo del programa es restituir más de dos millones de hectáreas de tierras abandonadas por personas que huyeron de la violencia o que fueron despojadas a los desplazados internos por actores armados ilegales desde 1991. Además, en esta Ley, el gobierno reconoce por primera vez Colombia enfrenta un conflicto armado interno.

La Ley de Víctimas marca el final de un controvertido proceso de negociación, y su promulgación representa un hito para las víctimas del conflicto. En general, ha sido recibida positivamente por los grupos de la oposición y los defensores de las víctimas. Sin embargo, todavía se observan algunas reservas sobre ciertos aspectos de la Ley: por ejemplo, las organizaciones de desplazados internos indican que el proceso que condujo a la adopción del programa no permitió una participación efectiva suficiente; los mecanismos de apoyo para eventuales retornos no están lo suficientemente detallados en el texto; y la ley es excluyente en cuanto a la restitución de otros bienes, como los bienes muebles (Declaración de Organizaciones de Desplazados, 2011).

La implementación del programa llevará tiempo y enfrentará varias dificultades. En primer lugar, el gobierno debe garantizar la protección y seguridad de las víctimas que reclaman la restitución de sus bienes. Es muy probable que los grupos armados ilegales, cuyos intereses se ven amenazados por la restitución, utilicen la violencia para socavar el proceso de restitución. Estos grupos han amenazado y asesinado en repetidas ocasiones a los defensores de la restitución. En el caso más reciente, en junio de 2011, una activista y defensora de los derechos de propiedad de la tierra y líder afro-colombiana fue asesinada en la ciudad de Medellín, a donde había sido desplazada desde Urabá en 2001.

En segundo lugar, el gobierno debe proteger aquellas zonas que son prioritarias para la restitución y que actualmente se encuentran bajo el control de los grupos armados. Un programa para recuperar los territorios controlados por los grupos armados a través de campañas militares, que brinda simultáneamente servicios de apoyo social a la población (a través de los

denominados “centros de coordinación y acción integrada”), ha generado solamente beneficios marginales para las poblaciones afectadas. De hecho, la mayoría de las zonas con las tasas más elevadas de desplazamiento en 2010 fueron justamente aquellas donde el programa se había ejecutado (CODHES, 2010).

En tercer lugar, el gobierno debe garantizar que las instituciones administrativas y judiciales creadas para manejar el proceso sean independientes y eficaces, y que su creación no signifique simplemente una redistribución de responsabilidades.

Acceso de los desplazados internos a las necesidades vitales básicas

Si bien la Ley de Víctimas y las perspectivas de restitución de bienes a los desplazados internos han generado esperanza, los desplazados internos han seguido luchando por el logro de soluciones duraderas; la mayoría están intentando integrarse y ganarse la vida en las zonas urbanas a las que han sido desplazados. La Ley todavía no significa nada en términos prácticos para los desplazados internos, quienes en su mayor parte no han podido integrarse satisfactoriamente en sus lugares de desplazamiento.

En 2010, la Comisión de Seguimiento de la Sociedad Civil (CSSC) realizó la última de tres encuestas sobre la situación de la población internamente desplazada, como parte del seguimiento que la Corte Constitucional ha venido dando a la respuesta gubernamental al desplazamiento interno. Estos esfuerzos sostenidos para recopilar datos sobre la situación de los desplazados internos a lo largo de los últimos cuatro años han permitido tener una visión detallada de las condiciones de vida de los desplazados y cómo estas han ido cambiando con el transcurso del tiempo. Ello es especialmente importante en los contextos predominantemente urbanos, en los que los desplazados internos se han mezclado con poblaciones pobres no desplazadas.

El gobierno también ha recopilado datos sobre las condiciones de los desplazados internos inscritos en el RUPD, siguiendo las órdenes de la Corte Constitucional. Tanto el gobierno como la CSSC se han centrado en evaluar si los desplazados internos han tenido acceso a los siguientes derechos:

Acceso a la educación, expresado como la proporción de desplazados internos inscritos menores de 18 años que actualmente acuden a la escuela al menos un 80 por ciento del tiempo.
Seguridad alimentaria, definida como la proporción de los hogares de desplazados internos que disponen de una cantidad y variedad adecuada de ingesta alimentaria, y tienen la percepción de disfrutar de seguridad alimentaria.

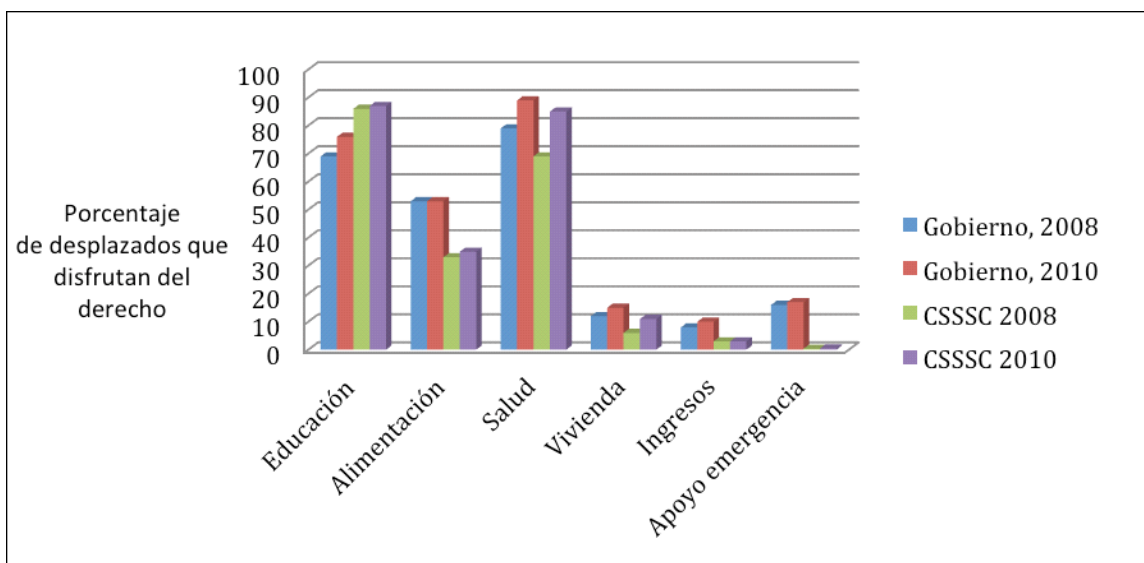
Acceso a la atención de salud, medido como la proporción de desplazados internos inscritos en el RUPD que también están inscritos en el sistema nacional de salud subvencionado, el Sistema General de Seguridad Social en Salud (SGSSS).

Acceso a la asistencia humanitaria de emergencia, expresado como la proporción de hogares de desplazados internos que han recibido todos los componentes de la asistencia humanitaria de emergencia (vivienda, alimentos y atención sanitaria).

Vivienda, definida como la proporción de desplazados internos que viven en condiciones dignas (protección contra el desalojo, materiales, habitabilidad de la vivienda, accesibilidad de la vivienda y localización de la vivienda).

Generación de ingresos, expresada como la proporción de los hogares de desplazados internos cuyos ingresos están por encima de la línea de pobreza.

El gráfico a continuación ilustra los resultados de ambas fuentes de datos con relación a las condiciones de los desplazados internos en 2008 y 2010:



Fuentes: Gobierno de Colombia; Comisión de Seguimiento de la Sociedad Civil. Gráfico: IDMC

Cabe destacar algunos puntos. En cuanto a la situación relativa a la vivienda, la generación de ingresos y la asistencia humanitaria de emergencia, el progreso logrado ha sido insignificante. La proporción de desplazados internos con acceso a vivienda adecuada sólo ha progresado de un seis a un 11 por ciento, según la CSSC, lo que indica una tasa general muy baja de acceso a vivienda. La generación de ingresos y la asistencia humanitaria de emergencia han permanecido estancadas. Por consiguiente, las necesidades más apremiantes de los desplazados internos todavía siguen encontrándose en estas tres áreas.

El impacto de mecanismos tales como la priorización del acceso de los desplazados internos a los subsidios de vivienda siguió siendo limitado: según la última encuesta, aproximadamente la mitad de los desplazados internos inscritos en el RUPD habían solicitado subsidios de vivienda, pero solamente el 34 por ciento de los peticionarios los obtuvieron. De forma similar, las tasas de desempleo entre los desplazados internos siguen siendo muy altas: en 2010, el 53 por ciento de los desplazados internos estaban desempleados. Ello queda reflejado en un porcentaje muy bajo (tres por ciento) de desplazados internos que cumplieron con el indicador relativo a la generación de ingresos.

Las cifras muestran que, en los aspectos relativos a la educación, la seguridad alimentaria y la atención de la salud, se han logrado avances más significativos y las necesidades aún por satisfacer en estos ámbitos no son tan críticas. Sin embargo, con una tasa del 35 por ciento, los niveles de seguridad alimentaria siguen siendo alarmantes. En cuanto a la atención de salud, la CSSC concluyó que, en 2008, aproximadamente el 70 por ciento de la población internamente desplazada estaba afiliada al sistema de salud, comparado con el 85 por ciento en la encuesta de 2010. Sin embargo, comparado con el resto de la población, los desplazados internos todavía se quedan atrás: en 2010, el 93 por ciento del resto de la población estaba afiliada al sistema de salud subvencionado.

En cuanto al acceso de los niños y niñas internamente desplazados a la educación, el sistema de educación pública había matriculado a niños y niñas desplazados casi en la misma medida que niños y niñas no desplazados.

Otra conclusión importante a la que han llegado tanto el gobierno como la CSSC es que los desplazados internos tienen menor acceso a las necesidades vitales básicas que el resto de la

población en su conjunto. La CSSC también recopiló datos y comparó la situación de los desplazados internos inscritos y no inscritos en el RUPD, y encontró que, por lo general, los desplazados no inscritos se encuentran en una situación más precaria.

Desglose de datos en función del sexo, la edad y el origen étnico

En general, los desplazados internos indígenas y afrocolombianos, así como las mujeres internamente desplazadas, se encuentran en una situación peor que el resto de la población desplazada. Mientras que la última encuesta de la CSSC no desglosa cada conjunto de derechos por sexo, edad y origen étnico, al contrario de las publicaciones anteriores, algunos de sus hallazgos son, no obstante, dignos de mencionar. En primer lugar, las mujeres seguían teniendo más problemas para acceder al mercado laboral: el 56 por ciento de los hombres desplazados trabajaban, en comparación con el 32 por ciento de las mujeres desplazadas. Como en años anteriores, de las mujeres que trabajan, el 60 por ciento lo hacía en el mercado laboral informal y el 20 por ciento en el servicio doméstico, cuyas condiciones de remuneración son más bajas y los horarios de trabajo más largos. Por consiguiente, sigue habiendo una necesidad apremiante de programas que fomenten el acceso de las mujeres internamente desplazadas a los mercados de trabajo.

Un hallazgo relacionado con la seguridad del título de propiedad de la vivienda no es, sin embargo, nada intuitivo. A pesar de que, como se describe más arriba, la seguridad del título de propiedad es por lo general baja para los desplazados internos, se encontró que, en realidad, las mujeres se desenvuelven mejor que los hombres en este sentido: aproximadamente la mitad de las viviendas que pertenecen a desplazados internos que contaban con un título de propiedad estaban registradas a nombre de una mujer sola, y el 20 por ciento estaban registradas a nombre de un hombre y una mujer.

Respuesta gubernamental

La respuesta del gobierno al desplazamiento interno se puede examinar en dos fases: antes y después de 2004. Ese año, la Corte Constitucional dictaminó que la situación de los desplazados internos en el país equivalía a un “estado de cosas inconstitucional.” Un aspecto clave de esta decisión fue la orden de la Corte de evaluar la respuesta del gobierno no en lo que se refiere a los programas de apoyo a los desplazados internos establecidos, si no en cuanto al impacto real de estos programas y las condiciones de vida de los desplazados internos, lo que la Corte denominó el nivel de disfrute de sus derechos. Esta orden puso en marcha el proceso de encuestas y recopilación de datos sobre las condiciones de los desplazados internos que se examinó más arriba. La decisión también creó un proceso de seguimiento por parte de la Corte, conforme al cual se han establecido docenas de normas de protección.

La reciente Ley de Víctimas introduce varios cambios en el sistema actual de respuesta. La Corte Constitucional probablemente examinará su constitucionalidad y su concordancia con las normas establecidas en los próximos meses. Algunos de los cambios que son motivo de preocupación y que deberían ser examinados incluyen: una disposición sobre “la cesación de la condición de vulnerabilidad” que estipula que el gobierno nacional determinará cuándo cesa la situación de vulnerabilidad asociada con el desplazamiento; la creación de un plazo de dos años para que las personas puedan inscribirse como desplazados internos; y una referencia a que los desplazados que regresen al lugar de origen deberán permanecer allí para poder tener acceso a los mecanismos de apoyo especiales.

En cuanto a la respuesta gubernamental durante la intensa temporada lluviosa de 2010, ésta no fue adecuada en lo que se refiere a su impacto, a pesar de haber gozado de un financiamiento relativamente generoso: se asignaron \$500 millones para financiar la respuesta de emergencia (Refugees International, 2011). En mayo de 2011, se informó que un número significativo de personas afectadas y desplazadas por las inundaciones todavía no había recibido la asistencia

humanitaria básica, incluyendo alimentos y agua potable. Entre los más vulnerables se encontraban las personas que ya habían sido previamente desplazadas por el conflicto armado o la violencia (Refugees International, 2011).

Colombia no cuenta con un marco para la protección de las personas desplazadas por desastres. El marco jurídico vigente solamente reconoce el desplazamiento causado por el conflicto armado y la violencia. Como resultado, la respuesta a las inundaciones de 2010 no se apoyó en el marco de protección establecido para salvaguardar los derechos de las personas desplazadas por el conflicto (Refugees International, 2011; Albuja y Cavelier, 2011).

Acceso humanitario y respuesta internacional

Como en el pasado, los nuevos grupos armados han continuado amenazando a diferentes agencias humanitarias, incluyendo organismos de las Naciones Unidas y a ONG internacionales. Tales amenazas han resultado en un aumento de las medidas de seguridad y una reducción del acceso (Pastoral Social, UNDSS, 2010). Al mismo tiempo, se ha identificado la necesidad de incrementar la presencia de los organismos internacionales en el terreno (Moro, 2009).

La asistencia humanitaria de emergencia proviene principalmente del gobierno, en coordinación con el CICR y el Programa Mundial de Alimentos (Presidente de la República, 12 de diciembre de 2000; Ministerio del Interior y de Justicia, 2005). El ACNUR, desde Bogotá y sus 12 oficinas en el terreno, ha apoyado los esfuerzos de las instituciones gubernamentales encaminados a mejorar la respuesta al desplazamiento, pero el anuncio del cierre de tres oficinas en el terreno ha causado preocupación. En Colombia, las Naciones Unidas han aplicado el sistema de coordinación por áreas para mejorar la respuesta humanitaria.

Las ONG internacionales y varios gobiernos han continuado enfocando su atención en la situación de los desplazados internos en Colombia. La Comisión Interamericana de Derechos Humanos, en su informe anual 2010, se refiere a Colombia, como en años anteriores, como uno de los países de la región cuya situación requiere la atención especial de la Comisión (CIDH, marzo de 2011).

BACKGROUND AND CAUSES OF DISPLACEMENT

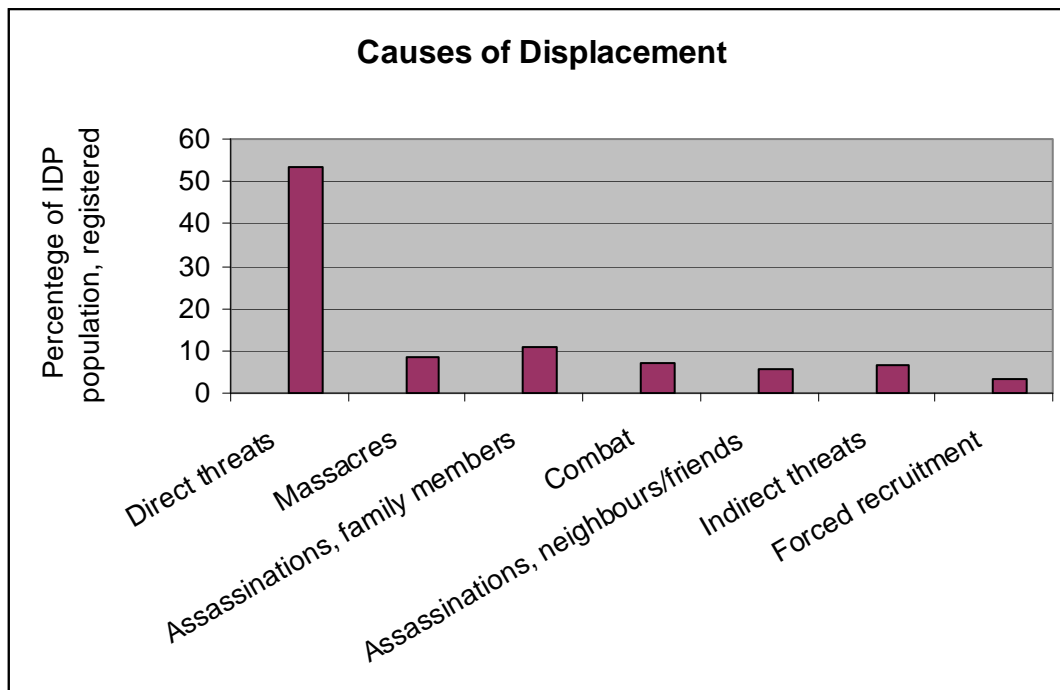
Causes of Displacement

Causes of Displacement

The “armed conflict” is the general label that is usually identified as the main cause of displacement in Colombia. However, a more detailed look into specific causes of displacement included under this label nuances the reasons why people abandon their homes. For instance, open military confrontation is not the main reason why people flee their places of residence. A much more subtle form of violence is, direct threats against the civilian population.

Such specific information on the causes of displacement has been gathered through a national-level survey of the IDP population conducted by the Civil Society Monitoring Commission, a civil society body asked by the Constitutional Court to study the conditions of the IDP population. (For more background on this survey, including a brief description of its methodological aspects, please refer to the methodological note included in Section entitled “Basic necessities of life,” below.

The results of this survey, showing specific drivers of displacement, appear below. The distribution of displacement per cause is similar for people registered in the Government IDP registry (RUPD) and for those not registered. The perpetrators of these abuses include all illegal armed groups and in some cases Government forces—this is discussed in more detail in the next section.



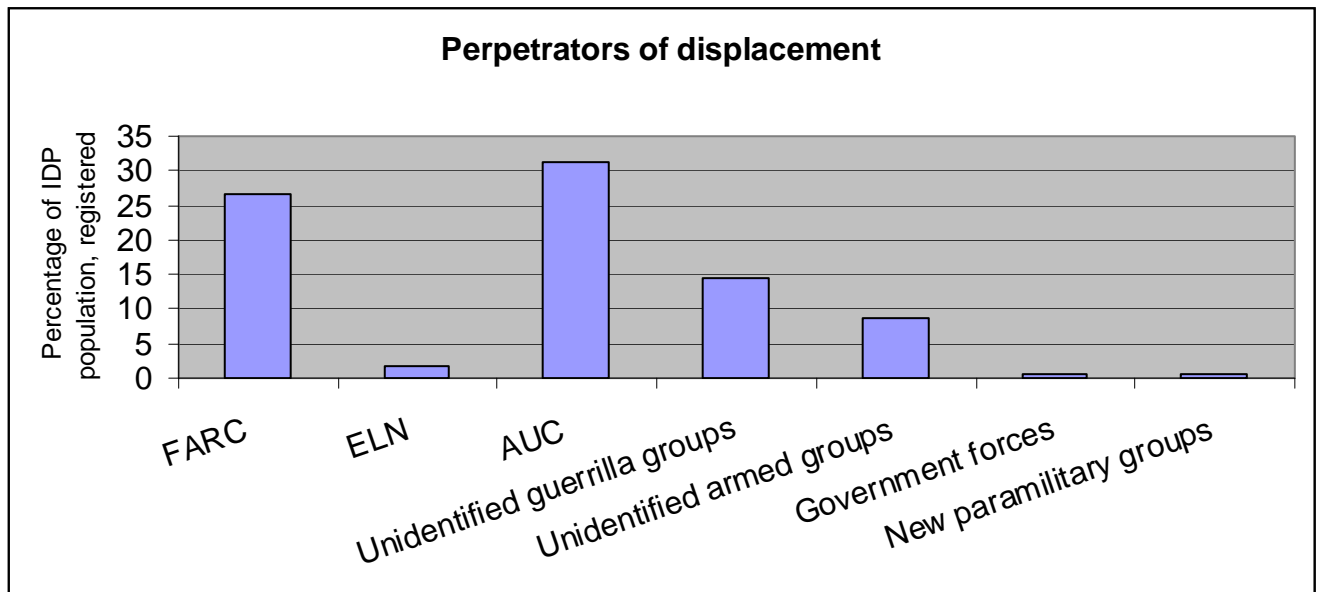
The Comisión de Seguimiento's survey also found that, historically, the incidence of direct threats by illegal armed groups as a cause of displacement has increased over the years, from 40% in the 80s to roughly 60% in the last five years. In contrast, the assassination of family members has dropped over time, from 21% in the nineties to 7% in the last years. (Comisión de Seguimiento, 2010).

Agents of Displacement

Forced displacement in Colombia is caused by various actors in the multi-party armed conflict. Traditionally, perpetrators of displacement have been guerrilla and paramilitary groups. These groups have caused displacement to expand their strategic military presence, secure access routes, and establish zones of political influence. They have also displaced people for economic gain, either to secure land for coca plantations or, in the case of the paramilitaries, to secure land for large projects owned by corporate groups.

The civil society survey described in the previous section asked IDPs to identify which actor was responsible for their displacement. IDPs identified guerrilla groups (FARC and ELN), paramilitary groups (Autodefensas Unidas de Colombia), unidentified guerrilla groups, unidentified armed groups, Government forces, and new paramilitary armed groups.

The graph below shows the rate of displacement caused by each of these groups and the rate of displacement they have produced (as percentage of total IDP population registered in the Government system), since 1980:



Over time, there have obviously been variations in the incidence of each group on displacement, for different reasons. 40% of people that were displaced before 1998 identified the AUC as the group causing their displacement, and this rate fell to 22,6% after 2005. This reduction is most likely caused by the paramilitary demobilization that took place in 2006.

In contrast, FARC's incidence on displacement went up from 14,2% in the eighties to 32% in the last years. This could be explained by the group's increasing participation in the drug trade and the waning of its ideology as a pro-peasant group.

It is noteworthy that IDPs identified paramilitary groups as their cause of displacement even after the paramilitary demobilization, while the post-demobilization new paramilitary groups were not identified as causing displacement. This suggests either that IDPs continue to see the so-called new-armed groups as the same previous paramilitary structures (AUC), or that they attribute displacement caused by these groups to 'unidentified armed groups'.

IDP POPULATION FIGURES

Rules on IDP registration and their impact on official IDP figures

Law 387 of 1997 (Congress of Colombia, 1997), which was the first statute focusing on the protection of displaced persons, established in its article 32 the principle that displaced persons have the right to assistance after rendering a simple statement before the authorities. If, afterwards, it was determined that the facts rendered in the statement were not true, the person would lose benefits. Therefore, according to Law 387, registration came first, opening the possibility to accessing assistance, and evaluation of the veracity of the declaration came afterwards.

In 2000, the Government passed decree 2569 (Presidente de la República, 2000) which regulated Law 387, restricting its application. Firstly, this decree established the opposite principle, i.e., that evaluation of the veracity of the declaration was to come first, and registration afterwards (article 9 and following.) Secondly, Article 8 of the decree set a deadline of one year after displacement for rendering the declaration. Follow-up reports by the Procuraduría General de la Nación, the highest control body, showed that, after that decree was implemented, 40% of the requests for registration were turned down. (Procuraduría de la Nación, 2007).

This decree (its relevant articles) was invalidated by the Consejo de Estado (the highest Administrative Court) in June 2008. With this decision, the one-year limit was eliminated, opening the possibility for people that were displaced in preceding years to request registration.

The Constitutional Court, for its part, in January 26, 2009, handed down a decision, Auto 011, (Constitutional Court, 2009) on the issue of the registration of displaced persons. In this decision, the Court established that a) important deficiencies with the registration system persist, resulting in significant rates of under-registration; b) that displaced persons have the right to be included in government information systems for displaced persons, through what it called positive or additive *habeas data*—*habeas data* is generally understood as a complaint that can be filed to find out what information is held about the plaintiff in government information systems. c) The Court ordered the Government to register people displaced before 2000, and between 2000 and 2008.

Under registration in the IDP registry needs to be solved. The most recent data showed that 23 per cent of IDPs have not registered, either because they did not ask to (in 45 per cent of cases because they did not know how, and in 30 per cent of cases because they were afraid of being identified), or because their request was denied. The first two causes for under-registration, lack of information and fear, need to be addressed through information campaigns and by providing security measures to people at high risk, respectively. The last cause, denial of registration, is what the Constitutional Court decision cited above addresses by eliminating arbitrary denials of registration.

Note on methodologies to gather IDP figures in Colombia

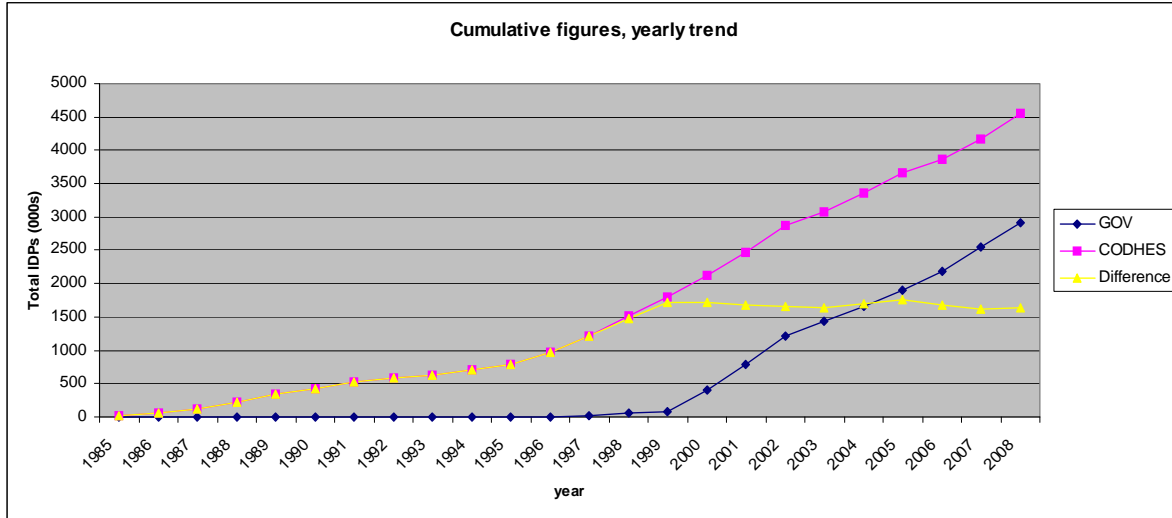
For more than a decade, there has been disagreement between the government and the civil society about the total number of IDPs in Colombia. The government created a system to count the number of IDPs in 2000, seven years after the civil society, which started systematically counting IDPs in Colombia since 1993, and did an original study in 1985 together with the Catholic church.

The difference in the cumulative figure is accounted for by various reasons. First, as mentioned above, CODHES's system has been estimating IDP movements since 1993, while the government's National Registry of Displaced Population (Registro Único de Población Desplazada or RUPD) was only launched in 2000. Second, as the government has acknowledged, there is a high rate of under-registration. A recent survey mandated by the Constitutional Court showed that only 65 per cent of IDPs are registered in the RUPD, as some IDPs do not declare their situation of displacement because of lack of information or their fear of coming forward, and other IDPs who declare are rejected (Comisión de Seguimiento, 2009). Under-registration may also be due to the limited registration period: shortly after the RUPD was launched, Decree 1569 of 2000 restricted the time that IDPs had to register to one year from their displacement. This decree was subsequently derogated by Colombia's highest administrative Court.

It is important to note, however, that, while there is a significant difference in the total figure of IDPs in Colombia--currently, the Government registers a total of 3.3 million people, while CODHES registers 4,9 million---the yearly figures and the trends through time are not significantly different. Consider the graph below, by CODHES, displaying IDP figures by the Government (red line for people who declared displacement) and by CODHES (green line). It is remarkable that, at points, government figures have been higher than CODHES's.



And consider this graph comparing CODHES's and the Government's cumulative figures and their yearly growth (using estimated figures). It is remarkable that both follow a very similar trend. (IDMC, 2009).



CODHES's methodology

CODHES, the Consultoría para los Derechos Humanos y el Desplazamiento uses a cross-referencing system to estimate the number of displaced persons. CODHES is able to gather information nationally thanks to its network of partners developed through the years, which includes Government human rights and monitoring bodies (Defensoría del Pueblo, Procuraduría del Estado), human rights NGOs, IDP organizations, academic institutions, local governments, and the Catholic church, which has national presence. The organization's researchers visit the sites periodically to contact their network of data sources. Additionally, CODHES conducts a daily, national review of local and regional newspapers and newsletters. In other words, CODHES gathers information from sources present on the ground across the country, cross-referencing the data provided by all these sources to produce an estimate. CODHES registers intra-urban displacement (displacement within towns) and displacement caused by aerial fumigations for coca eradication. (the government does not.)

Government's methodology

The government's methodology is a 'quasi-census' in the sense that it relies on individual head counts of the people registered in the Unified Registry of Displaced Population (RUPD). Because of its nature, this methodology provides a figure that is accurate down to each person, just like a census provides an exact population count. That is, however, the principle. In reality, the government RUPD does not reflect the real number of IDPs because of enormous under-registration. In other words, the situation resembles that of an inaccurate, incomplete census that for various reasons (discussed in sections below) fails to count the entire population.

Current IDP figures

Internal displacement currently affects 8 to 11.6% of the national population. According to CODHES, in 2010 (the latest period for which data are available from CODHES) 280,000 people were newly displaced, adding to previous displacement to create a total number of 5,200,000.

Government figures for 2010 differ significantly from CODHES's, registering a total of 109,358 people in 2010. The total, cumulative figure also varies significantly, as the Government registers a total of 3,600,000 to December 2010. 2008, 2009 and 2010 government figures are influenced by the decision of the Consejo de Estado that invalidated Decree 2569 of 2000, and by the Constitutional Court's Auto 011. (See previous section entitled 'Rules on IDP registration and their impact on official IDP figures'). For the first trimester of 2011, the Government has registered 16,159. This figure could signal a decrease in the rate of displacement for 2011, but it is more likely caused by the lag between displacement and registration—it takes people months and sometimes years to request registration in the IDP system.

Currently, the rates of under-registration are substantially high. The national-survey by the Civil Society Follow-up Commission (CSSC) showed that the 65,7% of IDPs are registered in the RUPD, and the rest (34,3%) is not. Of the non-registered IDPs, 72,8% did not declare their being displaced to the relevant authorities, and 26,2% declared it but were not included in the Registry (Comisión de Seguimiento, 30 April 2009, pp. 50).

Number of IDPs disaggregated by gender, age, ethnicity, and disability

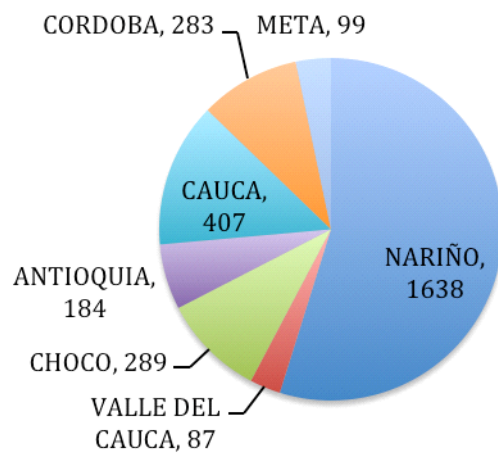
The latest survey conducted in 2010 by the Civil Society Monitoring Commission CSSC, a body mandated by the Constitutional Court to evaluate the situation of IDPs using a specific set of indicators (see Methodological Note in the following section), offered a description of the main demographic characteristics of the IDP population in Colombia. The data below comes both from that survey, its predecessor, and the data contained in the Government Registry for IDP Population (or RUPD for its name in Spanish).

IDP women comprise 52% of the total displaced population. 43,4% of IDP households are female-headed households (Comisión de Seguimiento, Garantizar la Observancia de los Derechos de la Población Desplazada, 30 April 2009, 2010). Internally displaced families include an average of 5.2 children, compared to four for non-displaced families. Of the total number of displaced women between 12 and 49 years of age, 4,7% were pregnant when the data were gathered. This rate was slightly higher for women not registered in the RUPD: 5,1%.

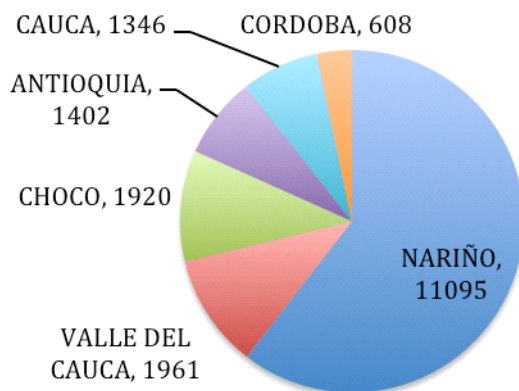
65,5% of people registered in the RUPD are under 25 years of age. The average age of the displaced population registered in the RUPD is 21,9 years. Those not registered are on average one year older. More than 50% of the displaced population is under 18 years of age.

23,7% of the total IDP population belongs to an ethnic group. 16,6% of the total IDP population is afro-Colombian. The number of displaced afro-Colombians has increased steadily over time: in 2003, 6% of the displaced population was afro-Colombian, and in 2005, according to the Government census, this group made up 10% of the displaced population (Census DANE, cited by CSSC). Likewise, in 2010, 4,5% of the total IDP population belonged to an indigenous group, compared to 3,4% in 2005. Most indigenous and afro-Colombian IDPs come from six departments, shown below:

Number of indigenous IDPs, by departments of highest incidence, 2010



Number of Afro-Colombian IDPs, by department of highest incidence, 2010

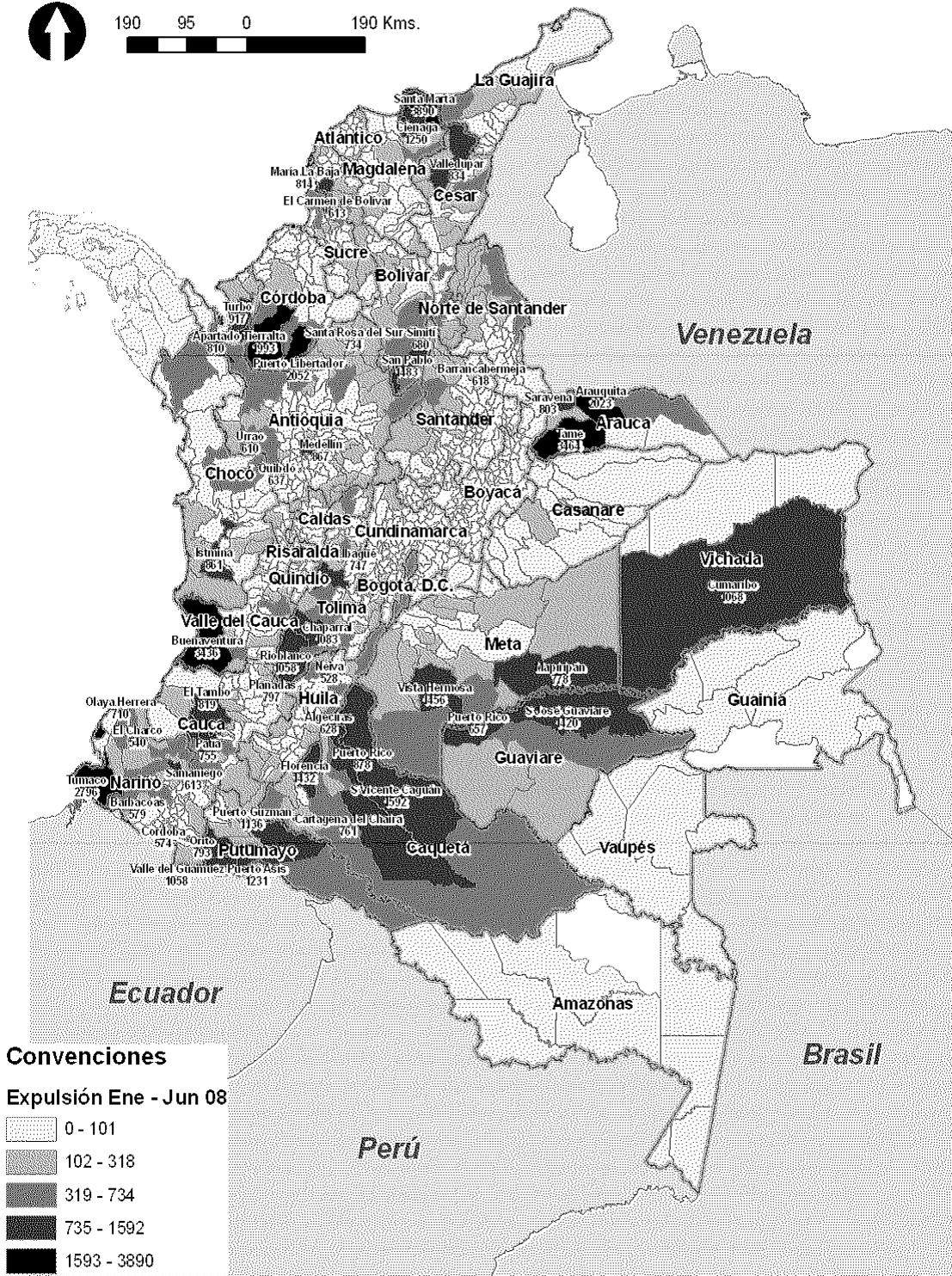
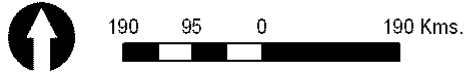


Data sources: Acción Social. Graph: IDMC

Finally, 17,5% of the families registered in the RUPD has a family member with some form of disability (including mental and physical; the most common are problems with eyesight and mobility) out of which 25% have been disabled by the armed conflict (CSSC, 2010). These numbers are significantly higher than those reported by the Government, according to which only 0,64% of the people displaced in the RUPD are disabled. The difference is explained by the Constitutional Court by the large under-registration levels in the Government registry.

Locations of Displacement

Internal displacement occurs in all six of Colombia's regions. The department with the highest rates of expulsion of IDPs are shown in the map below. They are the Pacific Coast departments of Chocó, Valle del Cauca, Cauca and Nariño; the Caribbean departments of César, Magdalena, and Bolívar; the Andean departments of Antioquia, Tolima, Cundinamarca; the Amazon departments of Meta, Caquetá, Putumayo:



IDP POPULATION MOVEMENTS AND PATTERNS

IDP Population Movements and Patterns

Mass vs. individual displacement.

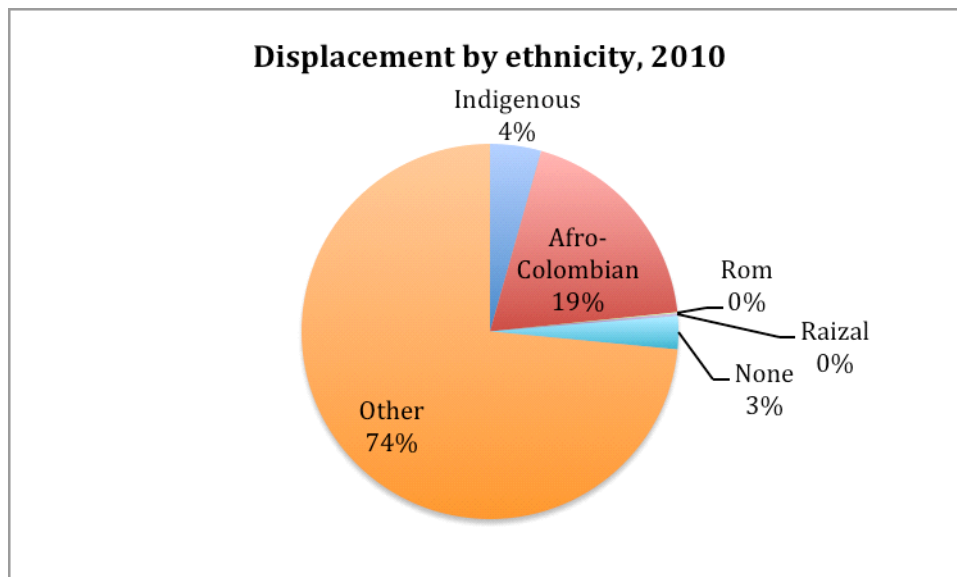
Individual displacement, or displacement *gota a gota* (drop-by-drop) as it is referred to in Colombia, continues to be the dominant pattern of displacement in the country, accounting for 93% of displacement. Mass displacement accounts for the difference. This may be explained by the fact that the biggest cause of displacement is direct threats against individuals or families (see section on Causes of Displacement, above).

In 2010, there were 57 cases of mass displacements in Colombia. The departments most affected with mass displacement were, to the South, Nariño, Putumayo Cauca, Chocó; Caquetá, Meta and Guaviare in the East, and Chocó and Córdoba in the Urabá region. (CODHES, February, 2011), all of which have high rates of afro-Colombian and indigenous populations.

Displacement of Ethnic groups

Most mass displacement events affected indigenous and Afro-Colombian populations because these groups commonly have tightly-knit communities that tend to flee together after acts of violence or threats, and which have repeatedly been the targets of acts of violence.

Minority ethnic groups including indigenous people and Afro-Colombians continued to make up a significant percentage of the total IDP population in 2010 as in the previous year (data for 2011 are not yet available, as the latest survey was conducted in 2010). Combined, people identifying themselves as belonging to an ethnic or racial minority made up roughly 26% of the displaced population, a rate that is all the more alarming if one considers that together, these groups make up only 5% of the Colombian population. The graph below shows the distribution of displacement by ethnicity:



Data source: Acción Social. Graph: IDMC

Urban displacement

Despite an increase in a pattern of expulsion from urban areas (intra-urban displacement) since 2003, the main pattern of displacement continues to be rural-urban. Latest data available shows that 92% of the displaced population has been displaced from rural areas, 24% from small rural settlements, and 8% from mid-size towns. Of those displaced from rural areas, 93% arrive into an urban environment and 7% into a rural area. Of those displaced from urban areas, 93% stay in urban areas, and 7% go to rural areas. IDPs arriving into the large cities of Bogotá, Barranquilla, Medellín, Cali and Cartagena, end up in the slum areas (Departamento Nacional de Planeación, 30 June 2008). Displaced populations are dispersed throughout 1,023 of the 1,098 municipalities in the country.

Latest data from the Comisión de Seguimiento de la Sociedad Civil (CSSC), a group mandated by the Constitutional court to evaluate the situation of IDPs, breaks this data in more detail, showing that 63% of families registered in the Government IDP Registry (RUPD, for its name in Spanish) have been displaced from rural areas, 21,4% from small towns, and 15,6% from larger towns (cabecera municipal) (Comisión de Seguimiento, December, 2010)

Urban displacement, which is also predominantly individual displacement (as opposed to mass displacement) is not very visible and is easily confounded with economic migration. It is thus important to understand forced displacement to urban areas in Colombia in the context of rural-urban migration. For instance, the mix flow complicates the IDP registration process, and makes it necessary for local authorities to include displacement in urban planning, social protection, and development programs. (Albuja and Ceballos, 2010).

Multiple displacements

Most IDPs included in the RUPD have been displaced only once (86,2%). However, a still significant proportion—13,8%—has suffered more than one displacement. Within that group, 12% has been displaced twice, while 1,8% has been displaced more than twice. The average number of displacement per family is 1,2 (Comisión de Seguimiento, 30 June 2009, pp. 45)

PHYSICAL SECURITY AND INTEGRITY

Physical Security and Integrity

Threats, assassinations, massacres, forced recruitment, forced disappearances, landmines, and sexual violence perpetrated by numerous illegal armed groups, continue to affect the population, causing displacement in most cases. In recent years, 61 IDP leaders have been assassinated because of their work, in addition to union leaders and human rights defenders in general. (Semanario Virtual, 2011).

In 2010, the ICRC documented 768 violations of IHL. The most reported violations found by the ICRC were forced disappearances, threats and assassinations of people protected under IHL (ICRC, 2011). In the first semester of 2010, the ICRC documented 315 cases of IHL violations (ICRC, 2011).

As before, threats and attacks targeted at IDP leaders, which in some cases were identified by the Defensoría del Pueblo's Early Warning System, were not swiftly dealt with, resulting in assassinations. On June, 2011, a land rights activist and Afro-Colombian leader was assassinated in the city of Medellín, where she had lived since being displaced from Urabá in 2001.

The emergence of new illegal groups after the paramilitary demobilization in 2006 has become one of the most serious security threats in 2010. Information on the presence and strength of these groups vary: according to the Government, there are seven such groups, while civil society organizations argue that there are fifteen. They operate in hundreds of municipalities in seventeen departments (according to the Government) and in all the country's departments according to the civil society (Indepaz, 2010).

These groups perpetrate threats and abuses against the population, to levels comparable or higher than the guerrillas, and have been acknowledged to be the country's greatest security threat. The presence and influence of these groups also poses a potential threat to the independence of forthcoming local elections, which will take place in October 2011 (ICG, 2011). These groups have sent written death threats to human rights leaders, including IDP leaders, and to officials at the Defensoría del Pueblo (ombudsman office) in Bogotá and other departments. (UNHCR, 22 May 2009).

Landmines continue to be used by the illegal armed groups throughout the country. According to the latest available Landmine Monitor report, published by the International Campaign to Ban Landmines, Colombia was second only to Afghanistan in the number of people killed by mines in a year (2009): 674 (Afghanistan had 859). (Landmine Monitor 2010)

The group that most commonly lay landmines is the FARC, for whom mines is the single most effective military strategy. Other illegal armed groups reportedly lay land mines mostly to protect illegal coca plantations from eradication. The largest proportion of mines are civilian and manual coca eradicators (Landmine Monitor, 2010).

PROPERTY, LIVELIHOODS, EDUCATION AND OTHER ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Methodological note and data sources for this section and the next section

The inadequate governmental response to the situation of the internally displaced population—despite the existence of a domestic law for the protection of IDPs, passed in 1997—led the highest Court in Colombia, the Constitutional Court, to declare in 2004 that the government's response to internal displacement amounted to an “unconstitutional state of affairs” (Constitutional Court, Sentencia T-025, 2004). Through this innovative legal concept, the Court ruled that the precarious situation of IDPs led to a violation of the rights of the entire IDP population beyond those particular individuals who brought the complaint. Also, it ruled that it was caused by a structural failure of the government's response.

To overcome this situation in which the entire IDP population's rights are not realized, the Constitutional Court ordered the government to produce outcome indicators to evaluate its response and to allow the Court to determine if the response's structural inadequacy had been overcome. The Court emphasized that the indicators should be quantifiable and should provide information about the living conditions of IDPs rather than describe institutional aspects of the government's response. The Court adopted a final set of indicators on May 2008 (Constitutional Court, Auto 116, 2008), which were to be used to evaluate the conditions of life of IDPs.

This launched a follow-up process known as the “verification process.” Relevant government agencies were charged with producing accurate data on the situation of the displaced population using the set of indicators, and, additionally, the Court charged a civil society body, the Civil Society Monitoring Commission (Comisión de Seguimiento de la Sociedad Civil - CSSC), to run its own assessments on the situation of IDPs using the indicators, and to report back to the Court. The government's control entity, the Procuraduría General de la Nación, was also due to report back to the Court.

The Government and the Civil Society Monitoring Commission reported back to the Court at the end of 2008. In January, 2009, the Court found, based on the data brought back by both parties, that IDPs were still unable to enjoy their rights to the same level of the non-displaced population, and sustained the “unconstitutional state of affairs.” (Constitutional Court, Auto 008 of 2009). The Court gave a new term for the Government to adjust its policy and for a new evaluation exercise. Since then, a new survey has been conducted in 2010.

This section, particularly the subsections dealing with livelihoods and education, and the following section on basic necessities of life of IDPs, are based on data gathered by the Civil Society Monitoring Commission and by the Government in this process. These data constitute the most accurate, comprehensive, and up-to-date indicators of the situation of IDPs in Colombia. Both the Commission and the Government conducted national-level surveys on statistically generalizable samples, in addition to using other sources of data (such as the 2005 census data). The latest information available is for 2010, when the last CSSC survey was conducted, and when the Government last reported to the Constitutional Court.

The 2008 Civil Society Monitoring Commission's survey included a sample of 8.442 IDP families, in 61 municipalities throughout the country, and included both IDPs registered in the Government's Registry of Displaced Population (RUPD) and non-registered IDPs. The municipalities that were selected comprise 92% of the total displaced population (Comisión de

Seguimiento, 2009). The 2010 CSSC survey included a sample of 8.304 IDP families in 68 municipalities.

Other sources of data are also used for these sections when available and relevant, particularly a study conducted in 2007 by WFP and ICRC on the conditions of IDP families in eight cities in the country. When applicable, information from local organizations on specific situations is included, but the aim of these data is to provide a comprehensive, national-level picture of the situation of displacement.

At the beginning of each sub-section, the indicators that were used to measure the enjoyment of rights of IDPs will be transcribed, and the section will describe the information on the enjoyment of rights based on these indicators, as reported by the Civil Society Follow-up Commission and the Government. Additionally, each section will offer a comparison, when data are available, between the enjoyment of rights by the displaced population and the non-displaced population.

Work and livelihood opportunities and coping strategies

Specifying the general non-discrimination clause included in Principle 1, Principle 22 of the Guiding Principles on Internal Displacement determines that IDPs shall not be discriminated in the enjoyment of certain individual rights. One of those rights, spelled out in letter b), is the “right to seek freely opportunities for employment and to participate in economic activities.”

In order to verify if the right to food is effectively being enjoyed by the IDP population, the Constitutional Court of Colombia adopted a set of indicators. In turn, these indicators were used by the Civil Society Monitoring Commission in its national survey of the IDP population to determine the enjoyment of this right. The results of the survey were then transmitted to the Court. The indicators were:

The family has at least one autonomous source of income and this income is above the indigence line.

The family has at least one autonomous source of income and this income is above the poverty line.

Additional complementary indicators aimed at evaluating the length of the work day, nature of the work relationship (formally employed vs. informally employed), access to social security in the workplace.

These indicators were in turn used by the National Verification Survey to measure the enjoyment of this right in 2008 and 2010. These data reveal that the situation of IDPs has had a minor improvement, particularly when it comes to extreme poverty, but continue to be significantly high: in 2008, 98,6% of IDP families had income below the poverty line and 82,6% has income below the indigence line. In 2010, the figures were 97,6% and 78,8%, respectively. These levels are significantly lower than those experienced by the general Colombian population: 45% of the population is below the poverty line, while 17% is below the indigence line. The situation of households headed by women is even more worrisome—more than half of IDP households are headed by women. For these households, indigence levels reach 86%.

Education and educational programs

Guiding Principle 23, drawing on applicable and binding human rights law, re-states the right of every human being to education, which shall be compulsory and free at the primary level, and shall respect cultural identity, language, and religion, and shall also assure equal participation of women and girls.

In order to verify if the right to education is effectively being enjoyed by the IDP population in Colombia, the Constitutional Court of Colombia adopted, in 2007, a set of indicators, which were then used by the Civil Society Monitoring Commission in its national survey of the IDP population to determine the enjoyment of this right. The results of the survey were given back to the Court. The indicators pertaining education were:

- 1. The percentage of displaced children registered in the Unified Registry of Displaced persons that are currently receiving education at a government school.*
- 2. Percentage of children that benefit from additional support measures to assure that they continue with their education.*

Additionally, the Court ruled that other aspects of access to education that needed to be evaluated were quality, availability and permanency of education for IDP children, which were also subsequently used in the national survey. The 2008 survey found that 82,6% of displaced children and youth between 5 and 17 years of age are registered and attend classes at a formal education centre. This rate improved considerably by 2010, when 87,1% of IDP children were attending school.

In comparison to other rights, access to education is the area in which IDPs have been more effectively integrated in their place of displacement. The Government, through Acción Social, has been implementing the program Familias en Acción (Families in Action), which is a subsidy for education (and nutrition) for displaced families, and has had a positive impact in increasing access to education for IDP children.

Despite the encouraging improvements, IDP children still fare worse than their non-displaced peers. 50% of IDP youth has access to secondary education, compared to 63% for non-IDP youth. Furthermore, over age in education is problematic: 17% of non-IDP youth between 12 and 15 years of age are in grade school, while for IDPs it is as high as 34%.

Land and Property (arbitrary deprivation, inheritance, restitution, and compensation)

Drawing on international human rights law, Guiding Principle 21 establishes that no one shall be arbitrarily deprived of property and possessions, and that the property and possessions of internally displaced persons shall in all circumstances be protected. Principle 29 establishes the right to recover property and possessions left behind, and when recovery is not possible, the right compensation or another form of just reparation.

Additionally, the Principles on Housing and Property Restitution for Refugees and Displaced Persons (“Pinheiro Principles”) further develop and specify the right to property restitution for uprooted people, providing a framework and standards that States should apply to guarantee that uprooted people recover property lost or taken as a result of their displacement.

Finally, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law shall enjoy a right to remedies including equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms.

Property Restitution in Colombia finally in sight

On November, 2010, IDMC published a Special Country Report on land rights and property restitution for IDPs in Colombia, discussing the Government-backed initiative for a property restitution plan in Colombia. Since the publication of our report, the Colombian Congress adopted the property restitution plan (in June 2011), which is due to be implemented over a period of 10 years. For more details on this issue, please refer to that report, available [here](#), which includes an in-depth discussion of the context of violence, displacement, and land dispossession; the property restitution mechanism to redress these violations; and the road ahead for its implementation.

This is the report's executive summary, which highlights the report's key information and main messages:

The long-running internal armed conflict and the massive scale of human rights abuses by illegal armed groups in Colombia have resulted in extensive loss of land by internally displaced people (IDPs) over the last decades. The number of IDPs is estimated to be between 3.3 and 4.9 million, most of them peasants, indigenous people and Afro-Colombians.

According to a civil society group created to support the constitutional court's oversight of the government's response to internal displacement, roughly half of internally displaced families had owned or had occupied land before their displacement, and almost all of them have lost it as a result. In this context, redressing the land rights of IDPs is an urgent task, and an unfulfilled obligation of the state under international law. In September 2010, the new government of Juan Manuel Santos presented to Congress a bill for the restitution of land, which is a welcome initiative. This report evaluates the bill and proposes amendments which should increase its chances of protecting the land rights of IDPs who have been forced to abandon their land.

Armed groups including the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia or FARC) and the National Liberation Army (Ejército de Liberación Nacional or ELN), paramilitary groups, and the new armed groups that emerged in their place following their formal demobilisation from 2006, have all appropriated land to expand their strategic military presence, secure access routes, and establish zones of political influence.

They have also appropriated land for coca plantations which have brought them enormous economic gain, while paramilitary groups have appropriated land for large monoculture projects owned by corporate groups which have benefited from government support. IDPs have also lost land when they have fled fighting between the armed groups and state forces.

The illegal armed groups have in many cases killed or threatened to kill family members in order to force owners or occupiers to abandon their land. In other cases, illegal groups have acquired formal ownership of land through forced sales in which victims have been threatened and forced to sign contracts and subsequently to register a deed, or fraudulent "false sales", in which illegal occupiers have obtained sales contracts, forged the signatures of the contracted parties or forced them to sign, and used the document to complete and register title deeds.

Peoples with a special dependency on or attachment to their lands have also been dispossessed following direct and indirect use of force. The state's use of compulsory purchase orders to

acquire collectively-owned land for development and new agricultural projects, without the consultation process required by law, has also led to the displacement of these communities.

The government started in 2003 to protect land from appropriation through forced and false transactions by enabling people who are either displaced or at risk of displacement to request a prohibition of sale or transfer on their property, and add their property to a registry of abandoned properties.

This mechanism has been applied in favour of individuals with different forms of land tenure, and the registry includes about 3.2 million hectares of land. However the scale of land loss is believed to be much higher: a civil society organisation's nationwide survey of IDPs led to an estimate of 5.5 million hectares.

The appropriation of land has also had significant economic impacts, both for victims, who have clearly become more vulnerable, and for the country as a whole. Around half of Colombia's IDPs were above the poverty threshold before their displacement, but only three per cent afterwards. Overall agricultural output has also fallen: from 1998 up to 2009, around 25 per cent of cultivated land fell fallow as a result of forced displacement.

Thus the restitution of land to IDPs is a task long overdue. There have been several attempts to start the process. The 2005 Justice and Peace Law created two frameworks for reparations. The first was to be applied when individual perpetrators of human rights abuses had been identified and convicted as part of the paramilitary demobilisation process; however no such convictions have yet taken effect.

The second framework within the Justice and Peace Law was to apply in the absence of the conviction of individual perpetrators. It included the establishment of the National Commission for Reparations and Restitution, which has drafted a national property restitution plan.

In 2007 a bill was proposed for a victim's law that included a reparations plan. The government initially backed it, but finally rejected the proposed legislation because it included victims of violations perpetrated by agents of the state, and it included reparations for movable personal property, as opposed to immovable real estate. These reparations, the government argued, would be impossible to implement because of the difficulty inherent in identifying such property and the amount of funding required.

A separate scheme adopted in 2008 created a mechanism for administrative reparations (rather than reparations awarded by a judicial body) for victims of human rights abuses by illegal armed groups. However, the mechanism does not cover land appropriations and does not include the possibility of land restitution. Furthermore, it has been criticised because it offers as reparations non-restorative "awards" such as subsidies and humanitarian aid, and because it excludes victims of human rights violations committed by agents of the state.

Thus the government's will to restitute land to IDPs has been shown lacking. Nevertheless, these processes have made more visible the ethical and legal obligations to restore IDPs' land. In addition, the Constitutional Court has taken steps to encourage restitution. In January 2009, it ordered the government to take comprehensive steps to redress the land rights of IDPs and to put in place mechanisms to prevent future violations. With this order the Court upheld its 2004 ruling that the general failure to protect IDPs' land rights was unconstitutional, and built on its 2007 ruling that the government had a duty to fulfil the rights of victims to reparation and property restitution. In response to these rulings, the government laid down principles for a comprehensive land restitution plan, to be drafted by a new inter-agency land forum.

The newly-instated Santos administration, which during the election campaign pledged to restitute land to Colombia's IDPs, has recently taken steps to fulfill its promise by introducing a bill for land restitution in Congress in September 2010. The bill offers an opportunity to provide restitution, with the government support that previous attempts lacked.

The scheme that it proposes is welcome, and it includes a number of measures that are in line with international standards on restitution, including those set out in the "Pinheiro Principles" on Housing and Property Restitution for Refugees and Displaced Persons.

However, the bill excludes some fundamental measures to ensure equitable application and the sustainability of returns. In focusing exclusively on areas affected by generalised paramilitary violence, it does not allow victims outside those zones and victims of abuses by other perpetrators to bring claims.

The bill establishes an administrative entity which may play a major role in supporting the claims of IDPs. However the assigns this unit important decision-making powers, without specifying rules to govern decisions or enable claimants to appeal against them.

The bill exclusively privileges return by preventing beneficiaries from subsequently selling their land for two years. While intended to protect against renewed dispossession, this limits people's right to dispose of their property. In addition, the bill lacks specific measures to guarantee property restitution for people displaced from collectively-owned land, and for women. In Colombia women have a more precarious enjoyment of property rights than men, and displaced widows and female heads of households are much more vulnerable to losing their land.

The bill should be amended to resolve these issues and to build more effectively on the relevant achievements of some of the past initiatives. The guidelines offered by the National Commission for Reparations and Restitution and by the inter-agency land forum remain relevant, and should inform the new bill.

Restitution will inevitably face opposition by powerful landowners and companies who have benefited from displacement, and it will take place alongside continuing violence and displacement. If the programme goes forward, measures must be taken to prevent the repetition of violations following restitution. To this end, the Constitutional Court has called for land registries to be improved and updated and a nationwide "census" of land lost to be compiled. In other words, the government should go beyond registering land in the limited restitution areas to include the entire country.

If restitution is to prove sustainable and promote peace in Colombia, it will have to be accompanied by a new agrarian development model that promotes small-scale agriculture instead of large-scale agroindustry. The government has pledged to revitalise small-scale agriculture by providing incentives and support for returnees. Even though these measures are mentioned as part of the motivations of the bill, they should be developed within its articles.

The government should also amend or repeal norms that hinder the right of IDPs to property restitution. For example, the provisions of Law 1182 of 2008, which established an abbreviated oral procedure to deal with incomplete or encumbered land titles and those transferred by parties without the legal rights of ownership to do so, are highly detrimental to victims of dispossession in a conflict setting, and should be repealed.

The media in Colombia and internationally have referred to the proposed bill as an agrarian reform. However, it includes no elements intended to redistribute land to correct the country's historic inequalities. It addresses a more immediate and narrow problem: giving back land to those who lost it as a result of conflict and human rights abuses. Restoring the circumstances of

victims before the abuses took place is a duty under international law, but it does not directly tackle the underlying issue of inequality.

BASIC NECESSITIES OF LIFE

Right to Food

Guiding Principle 18, drawing on applicable and binding human rights law, determines: “1. All internally displaced persons have the right to an adequate standard of living. 2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to: a) Essential food and potable water.”

In order to verify if the right to food is effectively being enjoyed by the IDP population, the Constitutional Court of Colombia adopted a set of indicators. In turn, these indicators were used by the Civil Society Monitoring Commission in its national surveys of the IDP population to determine the enjoyment of this right. The results of the survey were then forwarded to the Court. The indicators were:

- 1. The family has available edible food and has access to enough quantity of it.*
- 2. All children in the family who are not under and adult's care have access to food programs.*
- 3. Number of families in which all family members are able to eat three meals a day.*

The Commission's 2008 survey found that the food security situation among the adult IDP population was critical. 67,6% of the IDP population registered in the Unified Registry of Displaced Population (RUPD), and 69,9% of the IDP population not registered in the RUPD, declared having experienced at least one of the three symptoms of insufficient food security during the week preceding the survey (Comisión de Seguimiento, Garantizar la Observancia de los Derechos de la Población Desplazada, 30 April 2009, pp. 151).

For 2010, food security improved slightly in relative terms, but the food security situation remained alarming: overall, in 2010, 65% of the IDP population had experienced food insecurity, a two-per-cent-point improvement. Also, while in 2009 women showed the highest symptoms of food insecurity, in 2010 it was men who were exposed to higher rates of food insecurity (Comisión de Seguimiento, 2010).

Furthermore, it was found that the overall food security situation of non-registered IDP population in comparison to RUPD-registered population was worse in 2010 as it was in 2008.

When the results are disaggregated by age groups, it is found that the right to food for children and old people is also severely unfulfilled, even if less than for the adult population. 52,3% of the RUPD-registered children and 56,8% of the non-registered population declared experiencing at least one of the situations described in the three indicators. For the population over 60 years of age, an alarming 73,4% (people between 60 and 64) and 72,5% (people over 65) declared experiencing at least one situation of food insecurity. Likewise, their situation worsened in 2008 (Comisión de Seguimiento, 2010).

For its part, the World Food Program, which operates large-scale emergency food assistance in Colombia in support of the Government, reported on its latest assessment:

“Food security continues to be a source of concern for the vast majority of the families [in the reference study]. Only 6.3 percent of the households were food-secure, but this represents a rise of 4 points above the baseline.” (WFP, 2010).

The Government implements three main food programs for IDPs: food vouchers, dry food rations, and a wet feeding program. The impact of these programs has been uneven. For example, it was reported that less IDPs benefitted from dry food rations, but more had access to the wet feeding program.

Right to Health

Guiding Principle 18, drawing on applicable and binding human rights law, determines: “1. All internally displaced persons have the right to an adequate standard of living. 2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to: d) Essential medical services and sanitation.” Guiding Principle 19 reflects both humanitarian law and human rights law in establishing that “All wounded and sick internally displaced persons, as well as those with disabilities, shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services.” Further, paragraphs 2 and 3 of the same Principle establish the need for special attention to the health needs of women, including reproductive health, and to the prevention of contagious diseases, including AIDS, among IDPs.

In order to verify if the right to health is effectively being enjoyed by the IDP population, the Constitutional Court of Colombia adopted a set of indicators. In turn, these indicators were used by the Civil Society Monitoring Commission in its national survey of the IDP population to determine the enjoyment of this right. The results of the survey were then transmitted to the Court. The indicators were:

- 1. Percentage of people included in the Unified Registry of Displaced Population (RUPD) that are affiliated to the General System for Health Social Security (SGSSS).*
- 2. Percentage of people included in the Unified Registry of Displaced Population (RUPD) that receive psycho-social support.*
- 3. Percentage of children included in the RUPD with access to all required vaccines.*

Additionally, the national survey conducted by the Civil Society Monitoring Commission looked into the actual state of health of the IDP population, as well as the levels of impacts of various diseases.

Mixed results were found in relation to the realization of this right. A positive result is that the majority of the displaced population is affiliated with the SGSSS under the subsidized scheme—69,7% for the RUPD-registered population and 57,4% for the non-registered population. The IDP population affiliated to the contributive health scheme (not subsidized) is only 6,7%. In 2010, roughly 85 per cent of the registered internally displaced population was affiliated to the health system. According to the Government, the percentage of affiliation to the public health system is 80% (Government of Colombia, 2010).

While it is encouraging that most of the IDP population has access to subsidized health care, this is also an indicator of the low and unstable income of the IDP population, which does not allow it to switch to the contributive scheme.

While these registration rates are encouraging, a gap remains between registration in the public health system and access to services. Firstly, an unjustifiable problem is that the affiliation to the system is linked to the place of residence and is not movable. This renders access for IDPs

entirely ineffective, as, by definition, IDPs are forced to leave their place of residence. Additionally, other sources have identified coordination problems between agencies: for example, entities providing health services sometimes lack access to the RUPD. Therefore, they can not quickly ascertain if a person is in fact included in the RUPD. This has a negative impact on displaced families' access to health services (ICRC/WFP, 2007, pp. 50). Another study also found that members of the subsidized scheme have had more difficulty obtaining services or have received services of lower quality as members of these schemes (World Bank, September 2008).

Pertaining the health condition of IDPs, the Commission's survey found that 23,9% of the IDP population registered in the RUPD was sick sometime in the 30 days before the survey. 86% of children under 5 years of age has been vaccinated with the first dose of the NMR vaccine, a level significantly below the 95% threshold of impact for vaccinations (Comisión de Seguimiento, Garantizar la Observancia de los Derechos de la Población Desplazada, 2009, pp. 115).

Right to Shelter and Housing

Guiding Principle 18 establishes that all internally displaced persons have the right to an adequate standard of living, which includes, at the minimum, regardless of the circumstances, and without discrimination, basic shelter and housing.

In order to verify if the right to housing is effectively being enjoyed by the IDP population, the Constitutional Court adopted a set of indicators. In turn, these indicators were used by the Civil Society Monitoring Commission in its national survey of the IDP population to determine the enjoyment of this right. The results of the survey were then transmitted to the Court. The indicators for the right to housing were:

1. *Legal security and stability pertaining to owners' rights.*
2. *Availability and accessibility of services, materials, facilities, and infrastructure.*
3. *Sustainability of expenses.*
4. *Habitability of housing.*
5. *Accessibility of housing.*
6. *Location of housing.*
7. *Cultural sensitivity of housing.*

The Constitutional Court declared that, pertaining the IDP population, the right to adequate housing is a key right because IDPs have been forced to abandon their own houses and consequently experience inappropriate housing conditions in their places of displacement. According to the data gathered by the Commission and the Government, housing for IDPs is precisely the area where IDPs experience more hardship.

In 2008, only 5,5% and 6,9% of IDP families registered in the RUPD and not registered, respectively, enjoyed access to housing, measured using a *dignity of housing* composite index comprising all the above indicators (Comisión de Seguimiento, 30 April 2009). In 2010, by the same indicators, access to housing increased to 11%, a significant improvement but still an extremely precarious overall rate of access to housing (**Comisión de Seguimiento, 2010**). Government data gathered using the same indicators differed slightly from these data, finding that 15% of IDPs enjoy access to housing. (**Government of Colombia, 2010**).

The most common tenure arrangement for IDP families is through verbal rent agreement, which, according to Colombian law, must be renewed every month, which causes high instability. Further, 11,1% of the IDP population live in housing occupied *de facto*, i.e., without any legal arrangement and tenure security (Comisión de Seguimiento, 30 April 2009, pp, 174).

Pertaining the other aspects of access to housing, the CSSC Survey found that among the IDP population, 3,2 people share a bedroom, a number above the standard used to measure crowding, according to which a room is crowded if more than three people live in it. Pertaining materials of housing, 73,3% and 76,6% of registered and non-registered IDP population, respectively, lives in housing built with adequate materials, percentages that are lower compared to the 90,98% registered for the general population. 16,5% of IDP RUPD-registered families live in locations declared as high-risk, and 11,9% in areas that have been affected by some form of high-risk event.

The bulk of the government's response to IDPs' housing needs is implemented through partial subsidies. In 2008, 56,4% of the families registered in the RUPD requested a housing subsidy, and 24,8% of these families received the subsidy. In 2010, more people accessed the Government's housing subsidy (34%) (Comisión de Seguimiento, 2010).

FAMILY LIFE, PARTICIPATION, ACCESS TO JUSTICE AND OTHER CIVIL AND POLITICAL RIGHTS

Documentation and Citizenship

In view that most human rights instruments do not adequately protect the right to identity documents, the Guiding Principles on Internal Displacement devote a full paragraph to specifying the importance of this right and the obligations of states under it. Principle 20, paragraph 2 thus determines that IDPs shall be issued the documents necessary to the enjoyment and exercise of their legal rights. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost during displacement, without imposing unreasonable conditions, such as requiring the return of one's area of residence to obtain the required documents.

As part of the verification process led by the Constitutional Court, described in the Methodological note included at the beginning of the section on "Property, Livelihoods, Education and Other Economic, Social and Cultural Rights", above, it was found that in Colombia 96,4% of displaced children between 0 and 6 years of age is registered in the civil registry, 62,4% of displaced children and youth between 7 and 17 years of age has an identity card, 96,2% of displaced women older than 18 has an identity card, 79,6% of displaced men in the same age group has an identity card but not the required military document, and 16% have both. Thus, the group in the worst situation is men of 18 years of age and older that do not have both an identity card and the military document (84%), as *both* of these documents are generally required to have formal employment and to exercise citizen rights. This may be one of the causes why so many displaced men are employed in the informal labor market (Comisión de Seguimiento, Garantizar la Observancia de los Derechos de la Población Desplazada, 30 April 2009, pp. 97).

Public Participation

The right to effective and free public participation by IDPs—and by any other group or individual—set forth in Guiding Principle 22.1—is fundamental for the fulfilment of other rights. In this sense, it is a cross-cutting or transversal right. Through effective participation, IDPs can set forth mechanisms for the representation of their interests in political, economic, and social decisions. A survey by the Brookings-Bern Project on Internal Displacement further specifies the *reasons why* public participation is fundamental for IDPs. These include: "The special needs of IDPs are often different from those of other war affected populations; heeding what IDPs have to say can correct misinformation about their priorities in emergencies; information from IDPs helps bring to light human rights and humanitarian abuses in a country that need to be aired; IDP information enables governments, international organizations and NGOs to design responsive policies; Consultations with IDPs can reinforce peace processes; reconstruction and development projects have a better chance at sustainability if the views of IDPs are taken into account; failure to listen to the voices of IDPs can promote instability and sometimes lead to violence; failure to listen to IDPs can lead to complaints in regional and international fora" (Brookings-Bern Project on Internal Displacement, 30 September 2008).

As far as how this right can be operationalized in Colombia (and elsewhere), the Constitutional Court of Colombia has determined that the right to effective participation must *at a minimum*

entail: spaces where such participation can be made concrete; basic conditions allowing for participation; basic guarantees; adequate, understandable, accessible and timely information; and the systematization and evaluation of the observations made by the displaced population.”

Furthermore, the government must promote public participation by IDP associations, which are the main channels by which participation by IDPs can happen. It shall a) provide support to organizational processes; b) allocate funds for logistical support; c) facilitate education and training for IDP leaders; d) guarantee their safety and security; e) respect their autonomy (Comisión de Seguimiento, *Aplicar Políticas Públicas Idóneas y Eficientes*, 30 April 2009, pp. 115).

With this normative framework as the basis, evaluations found that the right to participation for IDPs is far from being fulfilled in Colombia, both nationally and locally. An assessment determined that real and day-to-day participation of IDPs both in decision making processes and as a passive source of information is extremely low. Another characterization using a different method, placed real and day-to-day participation by IDPs at the lowest levels. It was found that participation occurs only *passively*, this is, through massive events to gather the opinion of IDPs (Comisión de Seguimiento, *Aplicar Políticas Públicas Idóneas y Eficientes*, 2009, pp. 123).

Access to Information

The right to information is a right that is fundamental to effectively exercise and guarantee other rights, such as the right to freedom of expression and participation (Article 19.2 ICCPR). The Guiding Principles establish the right to information for IDPs, particularly as a fundamental guarantee when no other alternatives to displacement exist (Principle 7). Principle 16 determines the obligation to inform families of the fate of missing relatives. Additionally, Principle 18 establishes that women shall fully participate in the planning and distribution of basic supplies.

In its landmark decision of 2004, the Constitutional Court of Colombia identified that one of the problems with the governmental response to the situation of displacement was that the displaced population did not had “timely and complete information about their rights, institutional benefits, procedures to access them, and institutions responsible for such benefits.” (Constitutional Court of Colombia, Sentencia T-025 of 2004, pp. 52). In its recent decision of 2009, pertaining the right to access information or *habeas data* (Constitutional Court, Auto 011, 2009), discussed in more detail in this profile’s section entitled ‘IDP Population Figures and Profile,’ the Court identifies this as a persistent problem.

One of the aspects of the right to access information is to be able to know where and how benefits offered by the government may be accessible. (The other aspect is the right to have one’s information included in public information systems). For example, the IDP population must know about the institutions providing services, the procedures to access those services, the rules and mechanisms for demanding such benefits when they have not been provided, etc. As the Civil Society Follow-up Commission notes, “various assessments have shown that the displaced population is not aware of the mechanisms to access services and benefits, does not know which are the institutions responsible,” and do not clearly understand their rights as displaced persons (Comisión de Seguimiento, *Aplicar Políticas Públicas Idóneas y Eficientes*, 30 April 2009, pp. 30). Additionally, many public employees themselves are not aware of the system for the protection and attention to IDPs, and therefore lump the IDP population with the rest of the poor population, placing burdens and requirements that limit the access to benefits from IDPs.

Access to justice and legal remedies

The right to recognition as a person before the law, set forth in Guiding Principle 20, implies the right to justice and, more specifically, the right to equal treatment before tribunals and all other organs administering justice. In Colombia, access to justice and judicial remedies by IDPs has been effectively guaranteed by an exceptional constitutional claim. However, the impact of ordinary claims through trial courts is limited, and specific claims against discrimination remain scarce (Observatory on Racial Discrimination, 2009).

Colombia was one of the first countries in the world to have a domestic IDP statute, which was adopted in 1997, a year before the UN issued the Guiding Principles on Internal Displacement. However, the adoption of this statute failed for many years to improve actual protection of IDPs. It was precisely the involvement of a high court, the Constitutional Court, which led to an improvement of the response to IDPs.

Justice through an exceptional, constitutional claim

This Court decided on the situation of the displaced population and the governmental response through an appeal of a *tutela* action brought by a group of IDP. A *tutela* action, established in Article 86 of the Colombian Constitution, is a claim that may be brought by individuals to demand the “immediate protection of their constitutional rights, when they are violated or threatened by action or omission of any public authority.” (Colombian Constitution, article 86.) The *tutela* brought by a group IDPs was appealed and came to the Constitutional Court for judgment.

Subsequently, the Constitutional Court declared in landmark decision T-025 of 2004 that the government’s response to internal displacement amounted to an “unconstitutional state of affairs”. Through this innovative legal concept, the Court ruled that the violation of basic human rights extends to an unidentifiable number of people – the entire IDP population beyond those particular individuals who brought the complaint – and cannot be ascribed to one government authority, but to a widespread, structural failure of the government’s response.

The involvement of the Court for the protection of IDPs rights not only has been a fundamental way to guarantee IDP rights, but has resulted in effective judicial review of government policy, throughout the subsequent involvement of the Court. It has resulted in significant financial increase for IDP policy, the development of IDP-specific programs, among others.

Paramilitary demobilization and justice

The paramilitary demobilization process which ended in 2006 failed to effectively bring justice to the victims of paramilitary abuses. The proceedings did not effectively guarantee the right to justice, truth, and reparation, but left human rights abuses unpunished (IACHR, 2 October 2007).

The Justice and Peace Law of 2005 (Ministerio del Interior y de Justicia, 24 January 2008), was flawed both substantively and procedurally, and several of its articles were declared unconstitutional by the Constitutional Court (Constitutional Court of Colombia, 18 May 2006). The government then issued various decrees that confounded and sometimes contradicted the Court’s mandate, making impunity possible and violating victims’ rights. The Court also issued, within the process described above, Auto 116 of 2008 declaring that the right to justice needed to be addressed decisively by the Government (Constitutional Court of Colombia, 13 May 2008).

Throughout the Justice and Peace proceedings, the victims were not able to effectively participate, bring evidence, or be directly heard (IACHR, 2 October 2007). For example, they

could not question paramilitary leaders directly during the preliminary hearings, but only during the second stage, and indirectly. The prosecutor was able to eliminate questions and only asked those he or she considered important. Consequently, while forced displacement was the second most-frequently denounced crime after homicide, no questions were presented in relation to this crime during the first hearings. Further, victims were not able to re-question or ask for clarifications. Through the exclusion of direct questioning and re-questioning, the opportunity to find the truth was almost entirely lost.

90 per cent of paramilitaries were given a de facto amnesty by a decree preceding Law 975. Up to December 2007, only 116, less than one in 300 of over 30,000 AUC members were being tried under Law 975, and none of them had been found guilty (Colombian NGO Platforms, 31 July 2008). The first decision condemning a paramilitary member came only in June, 2009 (Saffon, Maria Paula, 23 April 2009).

After demobilizing, paramilitary leaders continued to commit crimes; instead of taking back the sentence reduction benefits that had been given to them under the demobilisation process, and continue their trial under criminal law, the government in May 2008 extradited 14 of these paramilitary leaders to the United States to be tried on drugs-related charges, leaving their human rights abuses unpunished.

Exacerbating it all, and confirming what many warned when the process began (CCJ, MAPP/OEA, 2005), there is clear evidence that many demobilized paramilitaries have re-armed, vie for power and control of the drug trade, and target the civilian population, causing new displacement. As the Organization of American States' Mission to Support the Peace Process in Colombia wrote in its last report:

“This does not mean that this process has come to an end, since other illegal groups that are a product of demobilization remain, along with other unresolved problems, which affect the stability of the limited peace achieved with the disappearance of the AUC” (Organization of American States, 2 February 2009).

Furthermore, the recent failure by the Congress to adopt a new Victim's Law, which would have provided redress and reparations for the victims of violence, came as a blow to the access to justice for the victims. (For more on this, see the section on Land and Property, above).

PROTECTION OF SPECIAL CATEGORIES OF IDPS (AGE, GENDER, DIVERSITY)

Background and methodological note for this section

As explained in the methodological note preceding the section on Property, Livelihoods, Education and Other Economic, Social and Cultural Rights, above, the governmental response to the situation of the internally displaced population—despite the existence of a domestic law for the protection of IDPs, passed in 1997—led the highest Court in Colombia, the Constitutional Court, to declare in 2004 that the government’s response to internal displacement amounted to an “unconstitutional state of affairs”. Through this innovative legal concept, the Court ruled that the violation of basic human rights extends to an unidentifiable number of people – the entire IDP population beyond those particular individuals who brought the complaint – and cannot be ascribed to one government authority, but to a widespread, structural failure of the government’s response.

As part of the process of verification, the Court acknowledged the special situation of vulnerability in which many segments of the displaced population are, including women, children and youth, indigenous peoples, afro-Colombians, and the disabled. Thus the Court issued follow-up decisions (*autos*) for the protection of this particularly vulnerable segments of the IDP population. Through these decisions, the Court ordered the Government to implement *differential* programs to protect people differently situated, i.e., people that were in an added situation of vulnerability. The sections that follow, draw on the contents of these decisions, the results of the evaluation of the levels of enjoyment of rights by these populations, and other information.

Gender

Normative Protection and Policy Development

While internal displacement generally has a negative impact on enjoyment of rights in general, it is the case that women generally bear a heavier burden as a result of displacement. Displacement may enhance already existing differences in gender roles and already existing patterns of discrimination against women, such as limited enjoyment of sexual and reproductive rights, lower rates of access to education, less opportunities for work, to cite a few.

Aware of this, the Guiding Principles on Internal Displacement incorporate a number of provisions aimed at diminishing the negative impact of displacement on the situation of women. Two issues guide the protection of women in the Guiding Principles: protection from gender-based violence, and assuring their access and full participation in assistance programmes (IDMC, available at www.internal-displacement/thematic/women). Guiding Principles including gender-specific provisions are: 4.1.(non-discrimination); 4.2. (protection and assistance to female heads of household); 7.3.d (involvement in planning and management of planned relocation); 11.2.a (protection against gender-specific violence), 18.3 (participation in the distribution of basic supplies); 19.2 (special attention to the health needs of women), 20.3 (Equal rights for women and men to obtain documents); 23.3 (full and equal participation of women and girls in education programmes); 23.4 (access to education and training facilities).

In Colombia, as part of the verification process started by the Constitutional Court, this body ordered, in Writ 092 of April 14, 2008 (Auto 92) the Government of Colombia through its relevant agencies to adopt thirteen specific, tailored-made, *differential* programs to protect displaced women from these risks, i.e., programs to effectively guarantee their rights. Subsequently, in Writ 237 of September 19, 2008, the Court declared that the Government of Colombia had not fulfilled the orders handed down in Writ 92. In this remarkable decision, the Court ruled that given that the Government had not been able to come up with the thirteen programs to protect displaced women, and that civil society organizations working for women's rights had, the programs suggested by the latter would become the mandatory programs for the former. (Constitutional Court, 19 September 2008, pp. 21). The Court then gave a new term for the creation and implementation of the programs.

Human rights violations and abuses

As part of this same verification process led by the Court, the Civil Society Follow-up Commission, mandated by the Constitutional Court, conducted two national-level surveys to evaluate the effective enjoyment of rights of IDPs. The surveys found that women make up 52,3% of the displaced population in Colombia, while women make up 51,2% of the total population in the country. Additionally, female-headed households make up 43,4% of the displaced households.

Women in the midst of the Colombian armed conflict continue to be victims of sexual abuse. As the Constitutional Court of Colombia puts it, "the list of sexual crimes committed recently in the Colombian armed conflict about which repeated testimonies have been made [...] is long and cruel (Constitutional Court of Colombia, 14 April 2008, pp. 25. IDMC translation). Such heinous crimes have been committed as part of military operations and violent attacks, but also individually by members of the armed groups. They include rape, rape followed by assassination, torture and sexual mutilation, forced prostitution, sexual slavery, forced public nudity, individual and collective sexual humiliation, sexual violence as a mechanism to obtain information, threat of sexual violence to women and girls in front of their families [...] and acts heinous acts such as dismembering, in many cases of pregnant or women still alive. (Constitutional Court of Colombia, Auto 092, April 14, 2008, pp. 26. IDMC translation).

Pertaining their basic necessities of life, only 8,8% of displaced women who are breastfeeding do not receive food support. Pertaining access to health, women have a higher rate of affiliation in the public health system than men, but displaced women that are not registered in the Government's Unified Registry of Displaced Population (RUPD) have a significantly lower rate of affiliation (Comisión de Seguimiento, *Superar la Exclusión Social de la Población Desplazada*, 30 April 2009, pp. 78). 40% of the surveyed displaced women declared having been sick in the 30 days prior to the survey, while this percentage was 23,9% for men. On the contrary, men are at loss as far as literacy rates are concerned, with higher illiteracy rates.

Pertaining access to work and livelihoods opportunities, 60% of IDP women are inactive, compared to 35% for men. Of the 40% working, 60% informal, and 20% works in domestic work, with the attendant lower benefits and longer hours. 32% of women active, work for longer hours than those allowed by labour laws (Comisión de Seguimiento, *Superar la Exclusión Social de la Población Desplazada*, 2009, pp. 84).

Boys, girls, and adolescents

Normative Protection and Policy Development

Acknowledging the particularly vulnerable situation of displaced children and youth, the Guiding Principles on Internal Displacement contain a variety of articles that elaborate on their rights: First, the Guiding Principles should be applied without discrimination on basis of age 4(1); Children and unaccompanied minors are entitled to protection and assistance required by their condition and to treatment that takes into account their special needs 4(2); Prohibition on gender-specific violence (11a); Prohibition on contemporary forms of slavery, including sexual exploitation and forced labour of children 11(b); Prohibition on the recruitment, participation and condoning of the participation of children in armed hostilities 13(1); Right to family unity and responsibility of authorities to facilitate and accelerate family reunification when children are involved 17(3); Right to recognition before the law and the authorities' duty to provide personal identification documents, including birth certificates 20 (1) (2); Right to education and responsibility of the authorities to ensure free and compulsory education at the primary level 23(1) and (2); Special efforts should be made to ensure the full and equal participation of girls in education programmes 23(3); Access to educational and training facilities, particularly for adolescents as soon as conditions permit 23(4). (For specific resources on children, see IDMC's page on displaced children, www.internal-displacement.org/children)

In Colombia, the rights of displaced children have been advanced by the differential approach established by the Constitutional Court in Auto 251 of October, 2008. In this decision the Court declared that displaced children's and adolescent's Constitutional rights were not being realized, and that they were not receiving the priority and differentiated protection they required. The Court thus ordered the government to adopt a differentiated policy for the protection of displaced children, including a) prevention from the risks faced by children, and b) integral attention and support with special focus on critical areas.

In this crucial decision, the Court found that displaced children in Colombia face eight types of enhanced vulnerabilities or risks, including risk to their physical security (violence, exploitation, trafficking); hunger and malnutrition; preventable health problems; loss of education; psychosocial trauma.

Children's safety and other rights

Children make up about half of the IDP population in Colombia. In 2005, when the last census was conducted, this rate was significantly lower: 37%. Complicating the situation of displaced children is the fact that 8,3% of them do not live with their parents.

Forced and voluntary recruitment by armed groups continues in Colombia. Children are used by combatants by these groups, used to lay mines and explosives and to carry other military tasks (Coalition to Stop the Use of Child Soldiers, 31 December 2008, pp. 99). The government does not officially recruit children under 18 years of age, but has repeatedly used captured children for intelligence gathering, despite the legal prohibition of the practice (Child Soldiers, Global Report, pp. 101). Additionally, after the demobilization process which ended in 2006, children were believed to remain with some of the partially-demobilized groups. (Child Soldiers, Global Report, pp. 102). Girls have been victims of sexual abuse, including rape and forced abortion.

The Committee on the Rights of the Child, in its 2006 review of the report submitted by Colombia, expressed its concern "at the continuously high incidence of children victims of extrajudicial killings, homicides and massacres as a consequence of the armed conflict. Children continue to be victims of disappearances and social cleansing, in particular due to their stigmatization as displaced" (Committee on the Rights of the Child, 8 June 2006, para. 40). The Committee further noted that it "is concerned over numerous instances of violence by the regular military forces whereby children have been killed, including cases where children have been falsely reported as killed in combat by the army. Finally, the Committee notes with concern the unbroken pattern of

impunity and the continuous tendency to refer serious violation of human rights to the military justice system.” (Committee on the Rights of the Child, 8 June 2006, para. 50). UNHCR, for its part, has stated that “in the context of the Colombian armed conflict, boys and girls are victims of anti-personnel mines, sexual abuse and exploitation, trafficking, kidnapping, they are used as servants, they are tortured, mistreated, and subjected to forced labor. They are also used in the production and commercialization of drugs, and linked to the armed conflict as combatants, informants, and carriers of weapons and ammunition.” (UNHCR, cited in Constitutional Court, Auto 251, 6 October 2008, pp. 34. IDMC translation).

Access to education is worse for pre-school children and adolescent youth, with 50% and 40%, respectively, not receiving education at all. A comparison between school attendance for IDP and non-IDP children reveals that pre-school children and adolescent youth enjoy lower access to education. 51,0% of IDP youth attend secondary school, while 63.2% of non-IDP youth do. 16,5% of IDP youth access university education, while 32,6% of the non-IDP population does. Additionally, 35% of the IDP population between 12 and 15 years of age is still in grade school, while 17,6% of the non-IDP population is.

Indigenous peoples and afro-Colombians

Normative Protection and Policy Development

The Guiding Principles on Internal Displacement contain various articles spelling out the protection of minorities. First the Guiding Principles are to be applied without discrimination of any kind, including on the basis of race and ethnic or social origin (4.1). Furthermore, Principle 9 declares that states are under a *particular obligation* to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists, and other groups with a special dependency on and attachment to their lands. Additionally, principle 6 re-states that minorities shall be protected against displacement when based on policies of apartheid, ethnic cleansing or similar practices aimed at/or resulting in altering the ethnic, religious, or racial composition of the affected population.

In Colombia, the rights of displaced ethnic and racial minorities have been advanced by the differential approach established by the Constitutional Court in decision 004 and 005 of January 26, 2009, taken as part of the process of verification of rights launched after the declaration of the ‘unconstitutional state of affairs’ caused by the precarious situation of IDPs. In decisions 004 and 005, the Court declared that indigenous and afro-Colombians, respectively, have been affected by the armed conflict in an enhanced manner. It ruled that indigenous groups ‘are in danger of being culturally and physically exterminated by the conflict, and have been the victims of very serious violations of their individual and collective rights and of International Humanitarian Law, all of which has resulted in their individual and collective forced displacement.’ (Constitutional Court of Colombia, Auto 004 of January 26, 2009. pp. 35. Translation is ours). Likewise, in decision 004, it ruled that “the fundamental rights of [afro-Colombian individuals and communities] are being massively and continuously ignored.” In both cases, the Court ordered the government to implement specific plans to protect these groups.

Profile of the displaced indigenous and afro-Colombians; Causes of displacement.

There are about one million indigenous persons in Colombia. Almost the entirety of the indigenous populations in Colombia has been a victim of forced displacement. (UNHCR, 8 August 2008). The smallest groups are in risk of disappearing. Currently, between 16,6% and 22,5% of the entire displaced population in Colombia is afro-Colombian (Comisión de Seguimiento a la

Política Pública sobre Desplazamiento Forzado, 4 June 2008). The number of displaced afro-Colombians has increased steadily over time: in 2003, 6% of the displaced population was afro-Colombian, and in 2005, according to the Government census, this group made up 10% of the displaced population. Likewise, in 2008, 6,5% of the total IDP population belonged to an indigenous group, compared to 3,4% in 2005.

Displacement is used as a mechanism to appropriate their land: armed groups use indigenous territories for their purposes because of the location of those territories (Inter-American Commission on Human Rights, 29 December 2007). Indigenous territories also affected by development projects. (OHCHR, 2008) Moreover, indigenous communities are displaced because of armed confrontations, forced recruitment and minefields (Minority Rights International, 11 March 2008).

Inadequacy of the Governmental response

In its decision related to the response for displaced **afro-Colombians** (Constitutional Court of Colombia, Auto 005, 26 January 2009), the Constitutional Court of Colombia wrote “[...] to date, a policy focusing on the special needs of the displaced afro-Colombian population is missing: attention to this population is limited to programs and policies designed for the displaced population in general, and, to make matters worse, the afro-Colombian displaced population has a marginal access to this attention” (Constitutional Court of Colombia, Auto 005, 26 January 2009, para. 132. IDMC Translation). Likewise, ruling on the response for displaced **indigenous groups** in Colombia, the Constitutional Court of Colombia wrote (in auto 004): “in view that the state response to the situation of indigenous peoples has been merely formal and has meant the release of policy documents with no practical effects, the Constitutional Court concludes that the Colombian State has gravely ignored its constitutional duties in this respect” (Constitutional Court of Colombia, Auto 004, 26 January 2009, pp. 38. IDMC Translation). Consequently, the Constitutional Court ordered the Colombian government to design and implement ‘Programs to Guarantee the Rights of Indigenous Peoples affected by Internal Displacement.’

Safety and Security of person and subsistence rights

The conjunction of afro-Colombians’ special attachment to their land, and the ongoing violence in the ancestral territories by them inhabited, has created a situation of particular risk for their **security of person**. In 2006, the UN Office of the High Commissioner for Human Rights in Colombia wrote ‘ethnic groups, in particular (...) afro-Colombians, have been the victims of extra-judicial executions, assassinations, threats, illegal arrests and sexual violence, actions attributed to illegal armed groups and, on occasion, to members of the Public Forces’ (UN Office of the High Commissioner for Human Rights, 20 January 2006, Para. 84). In addition to the ongoing violence against them and their leaders, many of them who have been threatened, attacked, or murdered, (for a full reference of the known cases of threats and assassinations of leaders, see Constitutional Court of Colombia, Auto 200, 13 August, 2007) the collective ownership of land has been disrupted by re-arrangements of land collectively-owned by afro-Colombians, caused by large-scale mono-crop projects. *Supra* note 6, para. 91 (Constitutional Court of Colombia, Auto 005, 26 January 2009, para. 132. IDMC Translation).

Albeit having its own particularities, the situation of indigenous Colombians is roughly similar. Their leaders continue to be targeted, and displacement continues to threaten their way of life, dependent on their attachment to land.

Data show that afro-Colombians experience a lower enjoyment of the **right to work** than the rest of the displaced population. 68,9% of heads of household reported that they had been working the week before a national survey was administered, compared to 72,2% of the rest of the displaced population. Only 11,4% of the displaced afro-Colombian population earns the minimum

salary or more. When gender is factored in, the situation of afro-Colombian women is even more precarious: only 5,3% of them earns minimum salary. For indigenous displaced persons, the right to work shows higher levels of fulfillment than for afro-Colombians, the most important gap being gender: the rate of women that are working is 30% lower than that of men. The data in this paragraph and following paragraphs, unless otherwise noted, come from the 'V Report to the Constitutional Court' by the Civil Society Commission for the Monitoring of Public Policy on Internal Displacement, *Comisión de Seguimiento a la Política Pública sobre Desplazamiento Forzado*.

Pertaining the **right to housing**, afro-Colombians live in housing of lower quality and have less access to services than the rest of the IDP population. For instance, only 35,7% has access to services, compared to 50% for the rest of the displaced population. Only 4,5% of the displaced afro-Colombians live in housing complying with minimum standards (stability of ownership title, materials, services), compared to an already low 5,5% for the rest of the displaced population. Members of indigenous groups also show a worrisomely low enjoyment of the right to housing: only 2,5% of those displaced live in housing complying with minimum standards, compared to the 5,5% for the rest of those displaced.

Pertaining **health**, displaced afro-Colombians, especially those not included in the registry for displaced persons, have an affiliation rate to the public health system of 60%, compared to 75,3% for the rest of the population. Likewise, beyond displacement, afro-Colombians in general have lower affiliation rates than the rest of the Colombian population (Observatory on Racial Discrimination, 31 December 2008, pp. 48). The precarious access to health by afro-Colombians is paired with the more precarious determinants of health faced by IDPs in general, stemming from their proximity to violence and their being forced to flee. For their part, indigenous IDPs not registered in the Registry of Displaced Persons show the lowest rates of affiliation to the health system (67,6% for men and 66% for women).

Rates of access to **education** for displaced afro-Colombians are equally despairing: afro-Colombian displaced people over 15 years of age have higher illiteracy rates than the rest of the displaced population (22,4% vs. 20%). This is merely a reflection of the larger gap between literacy for afro-Colombians in general and the rest of the Colombian population, which is about half. (Observatory on Racial Discrimination, 31 December 2008, pp. 48). It is encouraging that no significant gaps are found in the enjoyment of this right to education by indigenous IDPs and the rest of the IDP population.

There exist marked disparities in the enjoyment of rights between afro-Colombians and indigenous peoples, on the one hand, and the rest of the displaced population, on the other, disparities that are largely related to widespread discrimination. Complicating the situation of these groups, judicial remedies to combat discrimination and unequal enjoyment of rights are next to inexistent in Colombia. There are four rules against discrimination included in the Criminal Code and other codes, but none of them provide a legal channel for complaints. Thus most complaints come via the exceptional or subsidiary constitutional *tutela* complaint—this is precisely how the Constitutional Court came to declare the unconstitutional state of affairs in the response to internal displacement, referred to above. Thus, complaints against discrimination have not adequately redressed rights. (Observatory on Racial Discrimination, 31 December 2008, pp. 60)

Right to Consultation

ILO Convention 169 on Indigenous and Tribal peoples establishes the right to consultation when decisions that affect the rights of these peoples are going to be taken. The violation of this right clearly increases risk of displacement. As reported by a platform comprising hundreds of NGOs to the Universal Periodic Review conducted by the Human Rights Council of the United Nations,

this right has not been respected, as recently adopted rules affect indigenous populations, restricting the growth of "resguardos" of Wounáan, Embera, Eperara y Awá indigenous groups (Colombian NGO platforms, 31 July 2008, Report for the Universal Periodic Review of Colombia, July, 2008).

DURABLE SOLUTIONS (RETURN, LOCAL INTEGRATION, SETTLEMENT ELSEWHERE IN THE COUNTRY)

Durable Solutions

The **Framework on Durable Solutions** suggests that, to determine if durable solutions have been reached, it is necessary to examine the

“*processes* through which solutions are found and the actual *conditions* of the returnees and those persons who have integrated locally or settled elsewhere in the country. In general, it is important to consider whether 1) the national authorities have established the conditions conducive to safe and dignified return or settlement elsewhere; 2) formerly displaced persons are able to assert their rights on the same basis as other nationals; 3) international observers are able to provide assistance and monitor the situation of the formerly displaced; and ultimately, 4) the durable solution is sustainable.”

Pertaining process, IDPs should be able to make an informed decision about whether they want to return, and their decision must be taken into account by the government. In Colombia, “78,7% of displaced families do not want to return while the conditions of insecurity prevail and while socio-economic opportunity is inexistent in their places of origin. Only 2,9% would like to return to their municipality of origin. 10% would like to resettle in a different municipality, 6,2% have not made a decision, and 2,2% would like to leave the country” (Comisión de Seguimiento, 30 April 2009, pp. 57. IDMC translation).

The government has promoted returns under its Integrated Action Plan, whereby efforts have been made to provide social services and support in areas secured from FARC control. There are no accurate overall figures of IDPs that have returned. An estimated 30,000 people have returned with government support under the plan. Still, some actors argue that the returns that have occurred have taken place without providing enough guarantees for their integration and subsistence. As CODHES puts it, “returns without guarantees produce new displacement. Facilitating returns without security and in poverty will produce new forced displacement. Under the view that the armed conflict has ended and that the Armed Forces have gained control, returns have been promoted in departments including Chocó, La Guajira, Nariño, Antioquia y Sucre.” (CODHES, 30 September 2008. IDMC translation).

Additionally, municipalities are overwhelmed to adequately manage returns. “municipalities and humanitarian agencies’ economic and logistical capacities are overwhelmed, and they admit that they do not have enough resources to guarantee safe conditions for return and full restitution of rights that were affected during displacement” (Instituto Popular de Capacitación, 22 April 2008. IDMC translation).

NATIONAL AND INTERNATIONAL RESPONSE

International Human Rights and Humanitarian Law Framework. References to the Guiding Principles

Colombia has a progressive legal framework when it comes to the incorporation of international law into the national legal framework. The Constitution of 1991 adopted the system of direct incorporation of international law, by which international law duly signed and ratified by the Country is part of the national legal framework (Congress of Colombia, 6 July 1991, Article 93). Not only that, the Constitutional Court ruled in 1995 that international law in fact prevails over ordinary laws, placing international law at the same level as the National Constitution—the Court coined the term *constitutionality block* to describe the incorporation of international human rights and humanitarian law at the Constitutional level. Thus, all human rights and humanitarian law treaties signed and ratified by Colombia are part of its Constitution and are used as references for its interpretation.

The Guiding Principles on Internal Displacement, not a binding instrument of international law, are not open for ratification. However, Colombian statutory law, case law, and administrative law references the Guiding Principles repeatedly. Virtually all Constitutional Court decisions pertaining to internal displacement reference the Guiding Principles. (For example, Constitutional Court Decisions T-025, Auto 092 of 2008, Auto 004, 005, 006, 008, 011 of 2009, reference the Guiding Principles).

The Legal Database on the Guiding Principles is a useful tool including references to the Guiding Principles globally and other resources. (Georgetown University, 2009)

National Policy and Response

National Policy for Internal Displacement

National policy for the attention to displaced persons is shaped by various laws, decrees, and policy documents. The first statute on displacement was adopted in 1997 (law 387 on internal displacement.) This statute created the National System for the Integral Attention to the Displaced Population (SNAIPD), which comprises 18 government agencies at different levels. This statute also charged the government with designing a National Plan for Attention to the Displaced Population, the implementing tool for the national policy on displacement, and which was first adopted in 1998 (Decree 173). A new version of the National Plan for Attention to the Displaced Population was adopted in 2005 via decree 250, following the Constitutional Court's seminal decision calling the Government to improve its response for IDPs nationally.

The Agency currently coordinating the SNAIPD and the National Plan is Acción Social, which is not an independent ministry, but is ascribed to the office of the President. Other major policy instruments that have set forth policy for internal displacement are the National Development Plan—a four year national plan (2006-2010)—and the decisions issued by CONPES, the Social and Economic Council, which is in charge of drawing the budgetary needs for the implementation of the Plan.

At the local, departmental, and district level, municipalities, departmental governments and districts are responsible for implementing the contents of the National Plan for Attention to the Displaced Population through ad-hoc Committees for the Attention to the Displaced Population, and for designing local plans of attention (Unified Integrated Plans, PIU). (UNHCR, Balance de la política pública para el desplazamiento, 2007, in print only; Brookings, 2008). [For a comprehensive description and analysis of the public policy for displacement, see UNHCR, 'Balance de la Política Pública para la atención integral al desplazamiento forzado en Colombia,' 31 August 2007. In print only].

Evolution of the Response

The creation of the sophisticated SNAIPD, over the years, did not translate into an effective response to the displacement crisis. Thus the 2004 T-025 decision by the Constitutional Court, declaring that the widespread violation of IDPs' constitutional rights amounted to an unconstitutional state of affairs, led to gradual improvements and adjustments to the multi-level, multi-agency SNAIPD, including the design of the National Plan for the Attention of Displaced Persons. First, a new version of the National Plan for Attention to the Displaced Population was passed in 2005 (Decree 250), which includes the normative and implementation standards mandated by the Court.

As a result of the Court's involvement, for starters, financial allocation by government increased steadily from \$177 million (363 billion Colombian pesos) in 2004 to \$525 million (1,080 billion pesos) in 2008. Since decision T-025, the Constitutional Court has asserted its jurisdiction until the unconstitutional state of affairs is overcome. It has thus handed down, on its own initiative, a variety of subject-specific writs describing the special situation of vulnerability of displaced women, children, indigenous, afro-Colombians, and the disabled, and ordering the adoption of differential programs for their attention.

Role and participation of the Colombian civil society in the evolution of the response.

The Colombian civil society has had a fundamental role in advancing the public policy and response for the displaced populations. IDP organizations, together with human rights organizations, universities, and academics, have taken key actions that have resulted in a better response. First, civil society organizations brought or sponsored many of the claims before the Courts, particularly the Constitutional Court, which have so positively impact displacement policy in the country. Colombian NGO also engage at international fora. They have brought petitions and requests for precautionary measures at the Inter-American Human Rights system. Additionally, Colombian NGO work very well in coordination. For instance, over one hundred NGO drafted a single submission for the Human Rights Council's Universal Periodic Review of Colombia, which took place in 2008.

Problems with on-the-ground implementation

While the impact of the policy on the ground has improved, it has not reached adequate levels, as declared by the Constitutional Court in January 2009 after its latest evaluation of the governmental response (Constitutional Court of Colombia, Auto 008, 26 January 2009). The crux of the problem seems to lay in coordination and articulation problems between the different agencies and levels comprising the SNAIPD. (Brookings, 2008) The SNAIPD's National Plan, together with the National Development Plan for the 2006-2010, set forth a comprehensive response for IDPs, including prevention, humanitarian attention, and post-conflict integration. The implementation of those plans, however, takes place through a complex network of entities at the national and local level. As a result, it is not always evident which level holds the responsibility to act, and the extent of that responsibility. For example, during the emergency response phase, both the local Committees for Integrated Attention to People Displaced by

Violence (local level) and the national level institutions are charged with providing humanitarian assistance. (Brookings, 2008, pp. 5). Precisely to overcome coordination barriers, the Unique Integral Plans, which were to be developed by the municipalities, were intended as a tool to improve coordination at the two levels and to assure a similar response across different localities. Nevertheless, to date, not all municipalities have drafted their Plans, both because of lack of capacities and lack of will. (UNHCR, 2007; Brookings, pp. 9).

The Ministry of Interior and Justice was, until 2008, charged with coordinating local implementation and the drawing of the PIU. Law 1190 of 2008 passed transferred that responsibility to the National Council for the Attention to the Displaced Population. Currently, the Ministry of Interior and Justice, Acción Social, and the National Planning Department are responsible of assuring that local governments draw their PIUs in a uniform manner.

Lack of accurate and consistent information on the response given by each municipality to internal displacement is a pervasive problem. The Constitutional Court attempted to gather data on the response given by local and central authorities, with the aim of improving coordination and assuring equal response throughout the country. To this end, the Court issued Writ 052 of 2008 (Constitutional Court, 2008) requesting that the government of each department provide specific information about its response to internal displacement. Drawing on that court order, the Congress passed Act 1190, ordering departmental governors to design, implement, fund and periodically evaluate better strategies based on time-bound goals, as a mechanism to improve coordination. Nevertheless, more recently, the Constitutional Court issued another decision aiming at involving municipal, departmental, and district governments more actively in the implementation of the National Plan for the Attention to the displaced population (Constitutional Court of Colombia, Auto 007, 26 January 2009). This decision establishes responsibilities to prioritize certain municipalities more affected by displacement, and directly calls upon local governments to take a more active role to meet IDPs needs.

Other criticisms of the National Policy

From the civil society, a variety of criticisms have been leveled at the national response, while progress has also been acknowledged. Some of the problems with the response identified by various actors are synthesized by the Civil Society Follow-up Commission as follows:

“[...] it does not clearly accept the existence of the conflict; it has a generalized focus on social assistance, emergency attention, and anti-poverty programs that do not guarantee an adequate standard of living; it has a limited differential focus [...]; there is low coordination and inter-dependency of public policies and institutions [...]” (Comisión de Seguimiento, 30 April 2009, pp. 27. IDMC translation).

Pertaining its application, the Civil Society Follow-up Commission also maintains that:

“there is no effective participation; actions are scattered and not integral; powers and responsibilities between institutions and sectors are not clearly shared; there is no disaggregated information on the institutional offer and management; problems with the information system for registration have not been overcome, which limits effective enjoyment of rights; and there is a large gap between resources, on the one hand, and needs on the other, in addition to the absence of funds for reparations and property restitution” (Comisión de Seguimiento, 30 April 2009, pp. 28. IDMC translation).

UNHCR’s compilation of all legal documents related to internal displacement in Colombia is useful for in-depth research, as it contains all legal norms related to displacement in Colombia.

Colombian legislation relative to internal displacement is available at:
<http://www.acnur.org/secciones/index.php?viewCat=77#833>

Colombian case law is available at:
<http://www.acnur.org/secciones/index.php?viewCat=97>

The Government of Colombia's System for Follow up of the National Development plan contains data for the implementation of programs benefitting IDPs: (in Spanish).
<http://www.sigob.gov.co/pnd/?id=874>

Humanitarian assistance and International Response

UN presence in Colombia

The United Nations has a strong presence in Colombia. UN agencies with offices and programs in Colombia are UNHCR, OHCHR, UNICEF, UNDP, UNIFEM, UNFPA, WFP, HABITAT. The focus of the UN system is on prevention and post-emergency assistance:

"With the presence of the Office of the United Nations High Commissioner for Refugees (UNHCR), the Office for the Coordination of Humanitarian Affairs (OCHA), UNICEF, the Office of the High Commissioner for Human Rights (OHCHR) and other agencies and programmes, United Nations activities related to displacement focus on prevention and post-emergency assistance to complement government programmes. In addition to its refugee mandate, UNHCR works to increase the capacity of Colombian institutions and civil society to strengthen IDP protection and raise standards through technical assistance" (WFP, 16 January 2008).

Emergency humanitarian assistance is provided by the Government of Colombia in coordination with the ICRC and other agencies, notably WFP. (Presidente de la República, 12 December 2000; National Plan for Attention to the Displaced Population). The ICRC has been providing assistance for 12 years. "A total of 70,000 people (18,000 families) were assisted in 2008. Of these, 80% had been displaced on an individual basis, primarily as a result of death threats, psychological ill-treatment or fear of forced recruitment. Massive displacement mainly occurred as a result of death threats, psychological ill-treatment, armed clashes or the death of a family member in the conflict." (ICRC, 2009).

Humanitarian Coordination

The humanitarian reform process to improve response is being implemented in Colombia. Three thematic groups or clusters are already implemented: protection, early recovery, and basic services.) "UNICEF, the World Health Organization (WHO) and WFP co-lead the basic services group, with an emphasis on displaced populations, and are working on health, education, nutrition and food security issues. International NGOs participate actively in the IASC thematic working groups." The protection cluster is co-led by UNHCR and NRC.

Other agencies including IOM and the World Bank also work for the displaced population. The former implements projects in a variety of areas, including education, health, livelihoods, etc. Both agencies have funded and participated in project for the protection of land left behind by IDPs, which is implemented by Acción Social (Acción Social, 2009). This project has protected 2,9 million hectares of land left behind by IDPs. (IOM, 2009)

Furthermore, the situation in Colombia continues to warrant the inclusion of Colombia in the Inter-American Commission on Human Rights Annual Report, as one of the countries in the regions whose situation requires special attention (IACHR, 29 December 2008).

The Commission wrote:

“As in previous years, the situation in the Republic of Colombia in 2008 falls within the framework of the criteria set forth in the introduction of Chapter IV of the Annual Report of the Inter-American Commission on Human Rights (IACHR). In the case of Colombia this framework is relevant in particular as regards to the continued existence of circumstantial or structural situations that, for various reasons, seriously and gravely affect the enjoyment and exercise of the basic rights enshrined in the American Convention on Human Rights.”

Recommendations, Universal Periodic Review

Eight countries in the UPR working group on the review of Colombia made specific recommendations related to internal displacement: Canada, Ireland, Chile, the United Kingdom, Brazil, Austria, Portugal, and Algeria, while many other countries raised the situation of IDPs during the interactive dialogue with the Government. The Human Rights Council fully adopted the recommendations issued by the working group.

The UK called on the Government of Colombia to “increase efforts to address the serious problem of the situation of internally displaced persons, which causes much suffering to the individuals, families and communities affected.” (Recommendations, para 37). Chile called on the Government to “take measures to ameliorate the effects of the displacement of civilians as a consequence of armed fighting, ensuring their return when zones have been pacified and adopting immediate measures for the restitution of lands and/or adequate compensation of those who have lost their lands”. (Recommendations, para 36).

More specifically, Austria called on the Government to “increase efforts to end impunity of those responsible for forced displacement, and intensify security measures for the communities of internally displaced persons, in particular by protecting their property rights”, while Portugal emphasized the need to “prosecute the perpetrators of forced displacement independently of other possible crimes and human rights violations, instead of considering it an accessory fact or a simple consequence of armed conflict.” (Recommendations, para. 39).

The full report of the working group on the universal periodic review of Colombia can be found from the link below.

Concluding Observations, Human Rights Committee (HRC)

The HRC, which monitors the implementation of the International Covenant on Civil and Political Rights, expressed serious concerns about internal displacement in Colombia in the following terms:

“The Committee is concerned at the very high incidence of forced displacement (over 3.3 million persons by the end of 2009 according to the State party) and at the lack of effective measures for prevention and care. The Committee notes with concern that attention to the needs of the displaced population remains inadequate and is marked by an insufficient allocation of resources and the lack of comprehensive measures for providing differentiated care for women, children, Afro-Colombians and indigenous people (arts. 12,

24, 26 and 27).” (para 23).

Due to its concerns on internal displacement, the Committee issued this recommendation:

“The State party should ensure the development and implementation of a comprehensive policy for the displaced population that should provide for differentiated care, with the emphasis on women, children, Afro-Colombians and indigenous people. The State party should strengthen mechanisms for ensuring that the land of displaced persons can be restituted. The State should evaluate the progress being made on a regular basis in consultation with the beneficiary population. The State party must also implement the recommendations made by the Representative of the Secretary-General on the human rights of internally displaced persons following his visit to Colombia in 2006 (A/HRC/4/38/Add.3).” (para 23).

It also paid specific attention to the issue of prevention of displacement and early warnings, stating:

“The Committee recognizes as positive the efforts made by the State party to prevent gross human rights violations through the introduction of the Early Warning System (SAT) of the Ombudsman, designed to prevent displacement and other serious human rights violations. It also takes note of the presence of community defenders in highly vulnerable population groups. However, the Committee is concerned at the increasing number of SAT risk reports which are not converted into early warnings by the Inter-Agency Early Warning Committee (CIAT) and notes that in some cases there are no responses or effective prevention measures, which at times continues to result in massive displacements (art. 2).” (para 13.)

On this issue, the Committee issued the following recommendation:

“The State party must strengthen SAT, ensuring that preventive measures are taken and that the civil authorities at the departmental, municipal and other levels participate in the coordination of preventive measures. The State party must monitor and follow up all risk reports issued, whether or not CIAT converts them into early warnings. Likewise, the State must strengthen the Ombudsman’s presence in areas at high risk of violations and extend the scope of the programme of community defenders.” (para 13).

The Committee’s concluding observations are available from the link below. IDMC's submission to the HRC is also available below.

Concluding observations, Committee on Economic, Social and Cultural Rights (CESCR)

The CESCR, which monitors the implementation of the International Covenant on Economic Social and Cultural Rights, of which Colombia is a party, issued its concluding observation on May 2010. The Committee noted with concern the high rates of malnutrition among internally displaced children; the precariousness of temporary housing in which IDPs are sheltered; the violence to which IDP women are exposed and the lack of access to reproductive health services; the lack of registration at birth of roughly 20% of children born in the country, including IDP children and rural populations.

The Committee highlighted the need to guarantee the ESCR of vulnerable Colombian population, including IDPs, in the following terms:

“The Committee also recommends that the State party take measures to prevent and protect women in situation of forced displacement due to the armed conflict from violence.” (para 15)

“The Committee firmly recommends that the State party adopt an effective national food policy to combat hunger and malnutrition, in particular among children, women, internally displaced persons and persons living in rural areas.” (para 21).

“In line with its General Comment 4, the Committee recommends that the State party adopt a national strategy to provide the population with sustainable solutions for housing; take immediate measures to ensure access to adequate housing, in particular for disadvantaged and marginalized individuals and families, including internally displaced persons, indigenous and afro-colombian peoples.” (para 24).

“The Committee recommends that the State party ensure sexual and reproductive education in schools. It also recommends that the State party increase resources allocated to sexual and reproductive health services, in particular in rural areas and among internally displaced persons, and carry out a proactive strategy to prevent early pregnancies.” (para 26).

Concluding observations, Committee on the Elimination of Racial Discrimination, (CERD)

The CERD, which monitors the International Convention on the Elimination of all Forms of Racial Discrimination, issued its concluding observations on August 2009. The Committee noted with concern the

“large numbers of massive and individual displacements and the disproportionately high and increasing numbers of Afro-Colombians and indigenous peoples among the displaced and over reports that assistance may be denied due to restrictive interpretations of the applicable standards.” (CERD, 2009, para 16).

The Committee recommended “that the State party, as a matter of priority, allocate additional human and financial resources in order to comply with the Constitutional Court decision T-025 of 2004 and the follow-up orders (Auto 092 of 2008, Autos 004 and 005 of 2009). While recognising efforts by the State party, such as the adoption of a National Plan of Assistance for the Displaced (Decreto 250 de 2005) with differentiated assistance measures, the Committee recommends that the State party intensify these efforts to ensure the practical implementation of the Plan, and that it pay particular attention to the rights of Afro-Colombian and indigenous women and children. (CERD, 2009, para 16).

The Committee continued: “The State party is also recommended to pay particular attention to the restitution of land titles to displaced Afro-Colombian and indigenous communities and urged to comply with the decisions of the Inter-American Court of Human Rights and the recommendations of the CEACR of the ILO in relation to the communities of Curvaradó and Jiguamiandó and ensure non-repetition of similar cases.” (CERD 2009, para 19).

Concluding observations: Committee on the Rights of the Child, (CRC OPAC).

The CRC, which monitors the implementation of the Convention on the Rights of the Child and its optional protocol on the involvement of children in armed conflict, issued its concluding observations on June 11, 2010. The Committee was deeply troubled by the widespread forced

recruitment of children by illegal armed groups in Colombia. Forced recruitment is a direct cause of displacement, as children and youth flee rural areas to escape recruitment, most of the times with their families. Afro-Colombian and indigenous children and youth are particularly vulnerable to forced recruitment because their communities are located in the rural areas where the illegal armed groups operate. The illegal armed groups perpetrating these practices are both leftist guerrillas and armed groups that emerged after the paramilitary demobilization.

The Committee wrote:

“The Committee is gravely concerned that children who refuse to be recruited are killed or forcibly displaced and that Afro Colombian and indigenous children are particularly vulnerable as their communities often are affected by the armed conflict.” (para 26).

The Committee called on the Government to step up measures to prevent this abhorrent practice, for example, by taking seriously reports by the Ombudsman’s office indicating areas where risk of recruitment is high.

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