

# Measuring the enjoyment of rights in Colombia

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**Colombian law protects the fundamental rights of IDPs but the country lacks policies to guarantee respect for those rights. This structural gap is recognised by the Constitutional Court, the highest judicial organism of the state, and recent developments offer hope of change.**

Colombia has a long history of conflict-induced displacement. Most displaced persons, estimated to be as many as four million,<sup>1</sup> seek refuge internally, in a constant flow from rural areas to the fringes of

rights, including those pertaining to education, health, work, income generation and physical safety. They declared the problems so severe that it amounted to an unconstitutional state of affairs. Two structural problems

population. In other words, the Court demanded that the government diagnose the problem, respond to it and establish mechanisms to monitor the effectiveness of policies.

The government dithered in deciding on adequate outcome indicators, making it impossible for the Court to assess progress. The Court asked the Civil Society Monitoring Commission, the Inspector General's Office, the Human Rights Ombudsman, the Comptroller General of the Republic and UNHCR to provide technical documents to help establish outcome indicators. Based on the input from these organisations, the Court then established a series of guidelines for the indicators, including that they should be quantifiable and comparable, providing information about IDPs' lives and living conditions rather than institutional aspects of the government's performance.

Firstly, the Court said the indicators should allow measurement of progress in overcoming the problems and identify obstacles hindering the adoption of remedial measures. The indicators should thus say something meaningful about the impact of government policies. If the policies are unsuccessful in changing the lives of IDPs for the better, the indicators should signal ways to improve them.

Secondly, the indicators should measure the fulfilment of the policies' goal, namely the realisation of IDP rights and, in particular, the effective enjoyment of rights in every phase of displacement. The specific needs of particular groups such as children, women, the disabled and indigenous communities should be considered.

Thirdly, the indicators should be significant. They should provide information about essential, rather than dispensable, aspects of IDP rights and the policies' impact on them. This is a key concept, since monitoring is a demanding and expensive process. In addition, the



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*IDP settlement, Magdalena (Sierra Nevada), Colombia.* Colombia's expanding cities. In 1997 Congress passed a law which granted extensive rights to IDPs. Successive governments, however, failed to implement the law, limiting themselves to providing humanitarian aid to fewer than 30% of IDPs and having marginal impact on improving education and health provision. Between 1997 and 2003, the Constitutional Court ruled 17 times that the fundamental rights of IDPs were violated.

In a landmark ruling in 2004,<sup>2</sup> the Court concluded that local and national authorities in different parts of the country had failed to protect a wide range of fundamental

were identified. Firstly, the resources assigned by the government were insufficient to fulfil its obligations under international and national law. Secondly, institutional capacities on all levels were insufficient to attend to the needs of the displaced population.

Rather than initiate criminal prosecution of individual officials who had not fulfilled their obligations, the Court instructed the government to find the necessary resources and to provide detailed information regarding IDPs and policies relating to them. Most notably, it ordered the establishment of outcome indicators for the effective enjoyment of rights of the displaced

selection of indicators should not depend on what information is accessible but on IDP rights. Nor should IDPs be simply incorporated into existing government programmes aimed at the general population.

### IDP rights

Two Court Orders adopted indicators for the right to housing, health, education, food, income generation, identity, economic stabilisation, and the right to life, integrity and liberty.<sup>3</sup> However, other outcome indicators have yet to be developed and there is still a lack of clarity with respect to the relation between the different phases of displacement. While significant improvements have been made in the access to rights for IDPs during displacement, only modest changes have been made in the phases of prevention and durable solutions.

With more than 200,000 people forcibly displaced every year in Colombia, there is an urgent need for policies to prevent further displacements taking place. The government understands prevention as having or regaining control over territory. While the presence and proper functioning of civilian state institutions are key ingredients of this policy, military operations are often their only expression. Furthermore, while military control is an important preventive factor, it also can be part of the problem as armed activity significantly increases the risk of displacement. Thus, the emphasis on a military rather than a civilian presence in conflict zones and the failure to design an efficient early warning system must be dealt with in order to provide a comprehensive prevention policy. Meanwhile, the highly politicised nature of such a policy seems to make the Court reluctant to take a stand on the issue. This is perhaps against the Court's better instincts but it could also be interpreted in light of their desire to look for consensus wherever possible.

The discussions regarding the establishment of outcome indicators for comprehensive reparation have not been straightforward because they reflect controversial political issues nationwide. In the light of continuing expulsions of the civilian population by paramilitary groups or their successors, it is difficult to ask victims to cohabit with the perpetrators

and to trust in guarantees that there will be no repetition of crimes. But despite a questionable demobilisation process and the fact that paramilitary forces continue to exercise political and social control through the use of violence in large parts of the country, the construction of effective reparation policies for the IDP population should be a priority for at least the next 10-15 years. The establishment of outcome indicators for the right to reparation is a significant part of that effort.

The main indicator of effective enjoyment proposed by the government in March 2007 is defined as: "Persons who request it can access the mechanisms of justice, restitution and protection."<sup>4</sup> The proposed complementary indicators measure the ratio of people who are able to access mechanisms of justice compared to those that request it – and the ratio of those displaced persons or ethnic communities who have their property legally protected compared to those who apply for such protection. Lastly, the government suggested including the right to family reunion through an indicator which would measure those who had received financial support to reunite with their family as compared to the total number of people who had applied for such support.

The Attorney General's Office, however, commented that access to justice does not necessarily amount to reparation and that the indicator should instead be oriented towards access to mechanisms of justice which can achieve reparation. In the view of the Civil Society Monitoring Commission and UNHCR, the indicators proposed by the government emphasised only some components of comprehensive reparation, namely truth and justice, but did not measure the extent to which the IDPs were indemnified for material and non-material losses as a result of their displacement. UNHCR also pointed out that an indicator cannot be expected to measure a policy in which the question of how to repair the damages caused by the violation has not been defined. Instead UNHCR recommended some elements which could be the subject of monitoring by indicators, including equal treatment for IDPs compared to other victims of serious crimes, the

degree to which the IDPs participate in programmes designed to assist them, access to legal assistance and access to mechanisms for demanding restitution of goods and land.

After considering these observations, the Constitutional Court rejected the government's indicators because they excluded essential aspects of the right to reparation.

### What's next?

If this process is eventually successful, it will represent important achievements. Colombia's justice system will have gained substantial legitimacy, legal complaints mechanisms will have demonstrated their efficacy, and the Colombian state will have acquired important experience as to how to undertake social policy development during a humanitarian crisis. Conversely, if the rights continue to be unfulfilled at current levels, this process will lay bare the government's incapacity to deal with the conflict's humanitarian consequences, and the situation is likely to deteriorate further.

Meanwhile, the Court's indicators provide a detailed and extremely useful tool which all donors should incorporate into their humanitarian strategies in Colombia – and the whole process offers valuable lessons for policymakers elsewhere

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*Court Orders relating to the establishment of the indicators can be found at [www.codhes.org](http://www.codhes.org), [www.nrc.no](http://www.nrc.no) and [www.idmc.org](http://www.idmc.org).*

1. The government has only been registering IDPs over a 10-year period. The numbers registered over 20 years by the Consultoría para los Derechos Humanos y Desplazamiento (CODHES) indicate more than four million IDPs.

2. Constitutional Court ruling T-025/2004\_

3. AUTO 109/2007 and AUTO 233/2007

4. Court Order 109 of 2007: 20