

**Submission from the Internal Displacement Monitoring Centre (IDMC)
of the Norwegian Refugee Council (NRC) for consideration in the formulation of the
List of Issues by the Human Rights Committee's Task Force during the 97th Session
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Internal Displacement Monitoring Centre

The Internal Displacement Monitoring Centre (IDMC) was established in 1998 by the Norwegian Refugee Council (NRC) and monitors conflict-induced internal displacement worldwide. The Geneva-based Centre runs an online database providing comprehensive and regularly updated information and analysis on internal displacement in more than 50 countries. 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. The online database can be accessed at www.internal-displacement.org

I. Scale of the internal displacement crisis in the Republic of Colombia.

1. The internal displacement crisis has to date affected 3,115,266 people according to the Government's registry,¹ and 4,628,882 according to a reliable non-governmental source.² If one takes into account the latter figure, Colombia has the largest IDP situation in the world after that of Sudan. Internal displacement currently affects 6 to 10% of the national population. In 2008 alone, 380,863 people (or 76,172 families) were newly displaced. Internal displacement takes a heavier toll on the most vulnerable segments of the population.

2. It is important to note that the rates of under-registration are substantially high, a fact that has been pointed out by the Constitutional Court of Colombia,³ which ordered the Government to improve the IDP registrations systems. A national-scale survey showed that the 65,7% of IDPs are registered in the National Register of Displaced People (RUPD, for its name in Spanish) and the rest, 34,3%, are not.⁴

II. Issues of concern and questions for the State

Article 1 (Self-determination) in connection to Article 27 (rights of minorities)

3. In its sixth report to the HRC (Government of Colombia, sixth report, paragraphs 103 to 105 and 658 to 668), the State of Colombia does not provide any information in relation to the heavy burden shouldered by indigenous and afro-Colombian minorities in the midst of the armed conflict, particularly in relation to loss of land, a fundamental requisite for self-determination. Furthermore, these paragraphs only make reference to normative measures, and do not provide any factual information on the enjoyment of rights by these segments of the population.

4. In Colombia, indigenous and Afro-Colombian peoples have been displaced and lost their land because of direct violence against them by the illegal armed groups (one-sided violence), because of ongoing violence between the parties to the conflict, and because of causes not related to the conflict. Among the latter, projects for the cultivation of oil palm

¹ Acción Social's data on internal displacement, available at <http://www.accionsocial.gov.co/contenido/contenido.aspx?catID=383&conID=556>. Attached to the Office of the President, Acción Social is the agency in charge of leading IDP policy in the country.

² The NGO is CODHES, a respected non-governmental source of data on the numbers of IDP. www.codhes.org (last visited 5/4/08).

³ Constitutional Court of Colombia, Writ 11 of January 26, 2009.

⁴ This survey was conducted by the Commission for the Observation of Public Policy on Internal Displacement (*Comisión de Seguimiento a la Política Pública sobre Desplazamiento Forzado*), Fifth Report to the Constitutional Court. The Commission was created as a civil society group and given a mandate by the Constitutional Court of providing research and data on the situation of IDPs. It includes respected academics, writers, and other personalities. The commission has implemented two thorough, national-scale surveys on the situation and rights of the displaced population. The Commission's reports are available at http://www.codhes.org/index.php?option=com_content&task=view&id=39&Itemid=52 (last visited 5/4/09).

have led to illegal appropriation and forced sales of land belonging to minorities.⁵ Given their special dependency on and attachment to land, this phenomenon has challenged the survival of some of these groups and their self-determination as peoples.⁶ Furthermore, beyond land, the Court has also declared that other rights of indigenous and afro-Colombians are far from being fulfilled (these are addressed in more detail under the next article).

Questions:

- Please provide information about the extension of land lost by indigenous and afro-Colombian peoples as a result of the conflict and one-sided violence.
- Please provide detailed information about the places to which affected groups have moved and their current living conditions.

Article 2 (Non-discrimination) in connection with Article 26 (Equality before the Law).

5. The conjunction of afro-Colombians' and indigenous' special attachment to their land and the ongoing violence in the ancestral territories inhabited by them, which results in forced displacement, has created a situation of particular risk for their way of life. The trends show that the displacement of indigenous and afro-Colombians has increased in the period under review by the HRC. Currently, between 17% and 23% of the displaced population in Colombia is afro-Colombian.⁷ 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.

6. In this context of targeted, one-sided violence and increasing forced displacement of indigenous and afro-Colombians, racial discrimination, which is widespread in Colombia,⁸ is all the more problematic. Because of widespread racial discrimination,

⁵ Constitutional Court of Colombia, Writ 005 of January 26, 2009, paragraphs 70 onwards.

⁶ This has been acknowledged by various UN agencies, including UNHCR. 'La población indígena colombiana está siendo devastada por el desplazamiento forzado,' 8 August 2008, available at <http://www.reliefweb.int/rw/rwb.nsf/db900SID/STRI-7HBBQQP?OpenDocument&rc=2&cc=col> (last visited 15/8/09).

⁷ Civil Society Commission for the Monitoring of Public Policy on Internal Displacement (*Comisión de Seguimiento a la Política Pública sobre Desplazamiento Forzado*), V Report to the Constitutional Court. The Commission was created as a civil-society group with the mandate of providing support to the follow-up process started by the Constitutional Court; it includes respected academics, writers, and other personalities. The commission has implemented two thorough, national-scale surveys on the situation and rights of the displaced population. The Commission's reports are available at http://www.codhes.org/index.php?option=com_content&task=view&id=39&Itemid=52 (last visited 5/8/09).

⁸ Recent research focusing on the afro-Colombian population shows the extent to which racial discrimination is entrenched in Colombia. See 'Racial Discrimination and Human Rights in Colombia,'

indigenous and afro-Colombian IDPs experience a situation that is across-the-board more precarious than the one experienced by the rest of the displaced population. As referred in a submission by IDMC to the Committee on the Elimination of Racial Discrimination,⁹ data show that afro-Colombians experience a lower comparative enjoyment of, *inter alia*, the right to work, housing, health, and education than the rest of the displaced population.¹⁰

Question:

- Please provide information about efforts made to eliminate the documented unequal level of enjoyment of rights—those included in the ICCPR and in other instruments—between minority and non-minority IDPs, which occurs as a result of widespread discrimination.

Article 3. Equal rights of men and women

7. In the Concluding Observations issued by the HRC in 2004 after the last review of Colombia, the Committee noted with concern the situation of violence and vulnerability to which women are exposed, particularly internally displaced women.¹¹ In its sixth report, the State provides information about programs that have been implemented to protect women from violence, including internally displaced women (Paragraph 141 onwards). Nevertheless, no information is provided about the impact of displacement on women nor about the outcomes of these programs. The adoption of programs is not exhaustive of the human rights obligations contained in the Pact. The focus must shift from means (programs) to ends (enjoyment of rights).

8. Indeed, women are among the populations hardest-hit by internal displacement. Reliable and extensively-gathered data show that women comprise 48 per cent of IDPs, and that 47 per cent of displaced families are headed by women.¹² Displaced women continue to face particular and enhanced threats, including enhanced risk of sexual violence and sexual exploitation; risk of exploitation for labor considered for women in a patriarchal society; risk of their children being forcibly recruited by armed groups; risk of being persecuted by reason of their membership in women's organizations.

Observatory on Racial Discrimination, Universidad de los Andes, 2008, available at <http://odr.uniandes.edu.co/pdfs/DerHechos/inglesinformeodr.pdf> (last visited 15/8/09).

⁹ Available at http://www2.ohchr.org/english/bodies/cerd/docs/ngo/IDMC_Colombia_CERD75.doc

¹⁰ IDMC submission to the Committee on the Elimination of Racial Discrimination (CERD), available at <http://www2.ohchr.org/english/bodies/cerd/cerds75.htm> (last visited 17/8/09).

¹¹ CCPR/CO/80/COL, Paragraph 14.

¹² Commission for the Observation of Public Policy on Internal Displacement (*Comisión de Seguimiento a la Política Pública sobre Desplazamiento Forzado*), V Report to the Constitutional Court, *supra* note 4.

9. Furthermore, the State report cites in paragraph 132 Constitutional Court decision 092 of 2008¹³ as part of the jurisprudential progress made towards protecting the rights of IDP women. While the fact that a high court has been able to issue this decision indeed constitutes jurisprudential progress and speaks highly of judicial independence in Colombia, it is important not to overlook the substance and content of the decision, which finds the Government in violation of the rights of displaced women. Furthermore, the sixth State report provides no information about the actions taken by the government to *implement* the thirteen programs ordered by the Court to protect internally displaced women. In fact, the State report omits any mention of Constitutional Court decision 238 of September 2008,¹⁴ in which the Court declared that the Government of Colombia had not fulfilled the orders handed down in Decision 092, and called on the Government again to implement these programs, to evaluate their outcomes, and to report back to the Court.

Question:

- Provide information on progress made to protect the rights of women as mandated by Constitutional Court in Decision 092 and subsequently in decision 238.
- Provide evaluations and data on the outcomes reached by these programs in terms of the enjoyment of rights of displaced women.

Article 6. Right to Life.

10. In addition to battle-related violence affecting civilians in Colombia, a defining feature of the Colombian conflict is the generalized use of indiscriminate, one-sided violence against civilians by the illegal armed groups, which results in forced displacement. Further, human rights and IDP leaders in Colombia have been targeted and assassinated, and these are not isolated cases: a clear and consistent pattern exists.¹⁵

11. In its sixth report, the Government describes (paragraphs 211 onwards) protection measures that have been implemented, in relation to Constitutional Court decision 200 of 2007, in which the Court wrote:

“The response by the authorities to this serious and worrisome situation has not been adequate nor has it fully fulfilled the State’s Constitutional duties related to the protection of life, personal security, and integrity of all people, and in particular of leaders and representatives of the displaced population.”¹⁶

12. While measures described by the Government’s report in paragraphs 211 onwards are an important step, they have not been sufficient nor fully effective. In fact, what the Government report does not relate is that more IDP and human rights leaders were

¹³ Constitutional Court of Colombia, Writ 092 (Auto 092), April 14, 2008.

¹⁴ Constitutional Court of Colombia, Writ 238 (Auto 238), September 19, 2008. This was a follow-up writ to writ 092.

¹⁵ Constitutional Court of Colombia, Writ 200 of August 13, 2007, paragraph II.1, pp. 4.

¹⁶ *Ibid*, paragraph II.3, pp. 5. (IDMC translation).

assassinated after the Court issued decision 200. This led the Court to adopt a new decision on the same subject in January 2009, again finding the Government in violation of its obligations and ordering to provide effective protection.¹⁷

13. It is also important to note, in relation to the information provided under Article 2 above, that direct violence and threats have been directed against indigenous and afro-Colombians, many of whom have been threatened, attacked, or murdered.¹⁸

14. Furthermore, in 2008, systematic extrajudicial executions by government armed forces were made public. This practice, which in Colombia became known as “false positives”, was first reported to have taken place in Soacha, a slum around Bogotá where thousands of IDPs settle after being displaced. As the UN Special Rapporteur on Extrajudicial Executions, Philip Alston, in his preliminary statement after his recent visit, put it:

“The phenomenon is well known. The victim is lured under false pretenses by a “recruiter” to a remote location. There, the individual is killed soon after arrival by members of the military. The scene is then manipulated to make it appear as if the individual was legitimately killed in combat. The victim is commonly photographed wearing a guerrilla uniform, and holding a gun or grenade. Victims are often buried anonymously in communal graves, and the killers are rewarded for the results they have achieved in the fight against the guerrillas.”¹⁹

15. Furthermore, as the UN Secretary-General’s Representative on the human rights of IDPs pointed out after his visit to Colombia in 2006, increased military presence among the civilian population has blurred the lines between military and civilian parties, thus increasing the danger faced by civilians.²⁰

Questions:

- Please provide information about all the known cases of IDP and human rights leaders that have been threatened or assassinated, even after early warnings had been issued.
- Please provide information about new measures taken to comply with Constitutional Court decision 009 of 2009, in which previous protection measures were declared insufficient.

¹⁷ Constitutional Court of Colombia, Writ 009 of January 26, 2009.

¹⁸ This has been extensively documented and reported. In its decisions 004 and 005 of January 26, 2009, the Constitutional Court incorporates all this information, based on reports by the authorities and the civil society.

¹⁹ United Nations Special Rapporteur on extrajudicial executions, Mission to Colombia 8-18 June 2009, preliminary statement. Available at: <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/C6390E2F247BF1A7C12575D9007732FD?opendocument> (last visited 17/8/09).

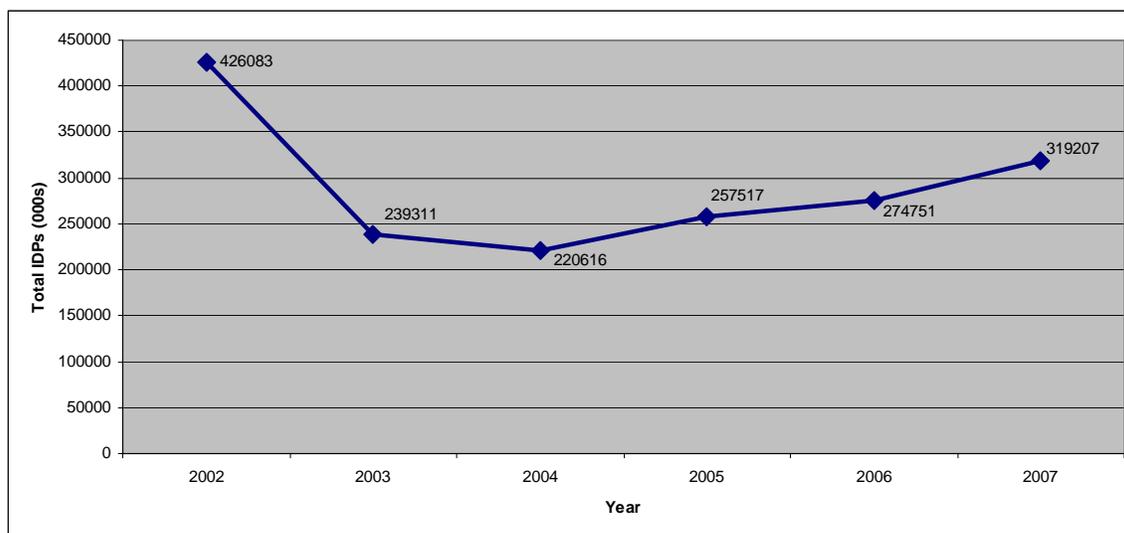
²⁰ A/HRC/4/38/Add.3

Article 12 (freedom of movement) in connection with Article 17 (freedom from arbitrary interference with one's home).

16. As the Committee has established, State reports “should not be confined to lists or descriptions of legal instruments adopted in the country concerned in recent years, but should indicate how those legal instruments are reflected in the actual political, economic, social and cultural realities and general conditions existing in the country.”²¹

17. In light of this criterion, the paragraphs in the sixth report by the Government of Colombia related to Article 12 (paragraphs 370 to 383) do not offer any factual information about the enjoyment and violations of the right to liberty of movement, freedom to choose a place of residence, and freedom from arbitrary interference with one's privacy and home, especially in view that forced displacement in Colombia has reached enormous proportions, as described above. These paragraphs only relate normative and programmatic efforts but, again, do not reveal any facts about the actual enjoyment of this right by the population.

18. In this context, the affirmation contained in the sixth State report (paragraph 370) that “[...] since 2002, the phenomenon [internal displacement] has decreased [...]”²² is entirely inaccurate. While internal displacement in Colombia reached unprecedented heights in 2002 after the breaking of peace negotiations, and did decrease in 2003, it has been steadily rising since 2004, as shown by the Government's data itself,²³ depicted in the graph below:



²¹ HRI/GEN/2/Rev.5, paragraph 25.

²² State report, paragraph 370.

²³ Data from Acción Social, *supra*, note 1.

19. Furthermore, data by a reliable non-governmental source show that internal displacement in 2008 reached a magnitude comparable to that of 2002, with a total of 380,863 newly displaced people.

20. In addition to lacking information about the scale of internal displacement in Colombia, the State report does not provide information about the actual situation of those who have been forced to leave their homes because of the conflict. While the Government has in fact improved its response—through the programs and laws mentioned in paragraphs 370 to 383 of the State report—and has allocated increasing funds to assist IDPs, important gaps remain in the enjoyment of rights of IDPs, which were identified by the Constitutional Court when declaring the “unconstitutional state of affairs” caused by the inadequate Governmental response. In January 2009, the Court sustained the “unconstitutional state of affairs” after analyzing data and evidence which showed that IDPs continue to live in a situation that violates their Constitutional rights,²⁴ which in the Colombian legal system fully incorporate international human rights.

21. Furthermore, the State cites in its report (paragraphs 373 and 374) as jurisprudential progress Constitutional Court decision T-025. As said above in Paragraph 9, while the fact that a high court is able to issue decisions such as decision T-025 indeed constitutes jurisprudential progress and speaks highly of judicial independence in Colombia, it is important to recall the substance and content of this decision and its follow-up writs, which, in sum, find the Government in violation of its duties to respect, protect, and fulfil the human rights of IDPs. The Court declares in decision T-025 that the violation of 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.

22. Violations of rights contained in articles 12 and 17 of the ICCPR result in lower levels of enjoyment of other rights, as displacement creates a situation of particular vulnerability. Thus, for example, IDPs experience very low levels of enjoyment of rights to housing, income generation, and property. Recent data show that only 5.5 per cent of the displaced population lives in homes complying with standards on construction materials, available space, access to drinking water and sanitation, and stability of tenancy or ownership.²⁵ The lack of livelihoods for internally displaced families is also one of the most pressing problems: 98,6% of IDP families has income below the poverty line and 82,6% has income below the indigence line.²⁶ Finally, roughly half of the IDPs had land before they were displaced, and 94 per cent of those families were forced to abandon that land. Up to ten million hectares of land (nine per cent of national territory)

²⁴ Constitutional Court of Colombia, Writ 008 (Auto 008) of January 26, 2009.

²⁵ Commission for the Observation of Public Policy on Internal Displacement (*Comisión de Seguimiento a la Política Pública sobre Desplazamiento Forzado*), ‘Garantizar la Observancia de los Derechos de la Población Desplazada,’ April 30, 2009.

²⁶ *Ibid.*

have been left behind by the displaced population and land and livestock left behind have generally been appropriated by the agents of displacement.²⁷

Questions:

- Please explain the grounds on which paragraph 370 of the sixth State report asserts that internal displacement in Colombia has decreased since 2002.
- Please provide accurate data on the current scale of internal displacement, including patterns of movement of people forced to leave their homes.
- Please provide information about the number of homes and extension of land left behind by IDPs, the current state of this land, and the state of reparations processes.

Article 24. Rights of the Child.

23. In the section pertaining the rights of the child, the State report refers in passing (paragraph 531) to Constitutional Court Decision T-025 saying that it “establishes the obligation by the State to adopt prevention and protection measures for boys, girls, and youth who are victims of forced displacement facing risk of labor exploitation.” In the same paragraph it also makes a passing mention of Writ 251 of 2008, saying “in which the Court treats specifically the issue of displaced children.” What the State report does not mention is that these two decisions, particularly Writ 251, rule that the governmental response for displaced children is entirely inadequate and amounts to a violation of their rights. The Court writes:

“The Court notes that, in past decisions, the Court clearly directed the authorities comprising the SNAIPD (*National System for Attention to the Displaced Population*) to adopt a differential focus in relation to the displaced population, a focus recognizing, among other things, the rights and special needs of displaced children. As it will be shown throughout this decision, while acknowledging progress that has been made in general by government authorities to protect displaced people, this directive given by the Court has not resulted, to date, into integral, concrete, and well-differentiated actions aiming at solving the critical situation of displaced children in the country.”²⁸

24. The State report (paragraphs 558 and 560) limits itself to describing programs adopted by the Colombian Institute for Family Welfare (ICBF), but does not provide information about how these programs respond to the Court’s mandate, or how these programs serve, in a differentiated manner, the one million displaced children in Colombia.

²⁷ Commission for the Observation of Public Policy on Internal Displacement (*Comisión de Seguimiento a la Política Pública sobre Desplazamiento Forzado*), ‘Reparar de Manera Integral el Despojo de Tierras y Bienes.’ April 30, 2009.

²⁸ Constitutional Court of Colombia, Writ (Auto) 251 of October 6, 2008, paragraph I.3.3. (IDMC translation.)

Question:

- Please inform on the progress made to comply with Constitutional Court Writ 251 of 2008, and on the outcomes of the differential focus ordered by the Court.