

# CHAPTER 5

## The Judicial Protection of Internally Displaced Persons in Colombia: National and Inter-American Perspectives

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*Displacement is hard, it breaks the soul, shatters human relations. Sometimes one doesn't even trust oneself*—Victim (Juanita León)

Forced displacement violates human rights. In the case of Colombia, the human rights of millions of people are violated by forced displacement.<sup>1</sup> The Colombian State can be considered responsible for the violation of these peoples' rights because it has not met its obligations to protect people from being displaced by force. In this chapter, I explore how the Inter-American Court of Human Rights (hereinafter “the Inter-American Court”) and the Colombian Constitutional Court (hereinafter “the Colombian Court”) have treated the violation of human rights experienced by victims of forced displacement.

The Inter-American Court has held that forced displacement is a serious and complex phenomenon that violates several human rights. It has also pointed out that whenever a State allows forced displacement to occur, it fails to comply with its obligations to protect its citizens' rights. The Colombian Court, in turn, has identified the obligations that the State must fulfill in order to prevent forced displacement from occurring. The Colombian Court has also identified what fundamental rights are violated whenever Colombia disregards those obligations. Furthermore, both of the

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<sup>1</sup> The official figures differ from those of human rights NGOs. However, according to UNHCR, the number of internally displaced persons in Colombia would amount to more than three million (3,000,000), around eight percent of the total population of Colombia. See UNHCR, March 16, 2007.

aforementioned courts have established clear standards for protecting those rights which are in danger of being violated as a consequence of forced displacement. In that sense, the two courts have established the content and scope of several State obligations.

Bearing in mind some of the considerations and developments achieved by the two courts in question, I intend to reveal how the decisions of both judicial bodies regarding forced displacement are not only complementary—as should be the case with bodies from different jurisdictions—but mutually reinforcing.<sup>2</sup> The two courts created a potent framework for protecting human rights that is particularly relevant to Colombia. The judgments adopted by the Colombian Court have played a fundamental role in this framework’s creation. Many developments achieved by the Inter-American Court (which aimed to strengthen the protection of rights among victims of forced displacement) have been fueled directly by the decisions of the Colombian Court. One particularly important effect of this is that the standards established by the Colombian Court have been recognized as international standards. This has a positive impact, in turn, on the domestic State because it establishes a broader and more forceful normative framework for protecting rights.

In order to demonstrate the above relationship between the two courts, I will refer to several decisions by the Inter-American Court—primarily to those involving judgments on forced displacement in relation to Colombia. I will also refer to *tutela* Decision T-025, of January 22, 2004, by the Colombian Constitutional Court. This decision includes—as has been demonstrated in earlier chapters—a fundamental nucleus of decisions by the Colombian Court on forced internal displacement.<sup>3</sup>

First, I will refer to the decisions of the Inter-American Court in order to show how it has constructed and developed the standards referred to above, and how the Colombian Court’s sentences have influenced this

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<sup>2</sup> The Inter-American Court of Human Rights is the only judicial body of the Inter-American system for the protection of human rights. It is an international human rights judicial body, not an appeals tribunal. Its function of protecting human rights is, in this sense, a complement to the judicial functions of internal entities.

<sup>3</sup> According to the “Background” of *tutela* Decision T-025 of 2004, the decision accumulated, under dossier No. T-653010, another “108 dossiers... which correspond to a similar number of *tutela* actions filed by 1150 family groups, all of them belonging to the internally displaced population, with an average of four persons per family, and primarily composed of women providers, elderly persons and minors, as well as a number of indigenous persons.”

development. I will then identify some themes developed by the Colombian Court in order to show the similarity between standards previously established by the Colombian Court and those established by the Inter-American Court. I will end with a brief analysis of the normative framework of protection created by the two courts, in order to show how they interrelate and support each other's decisions and thereby generate a greater protection of rights.

### ***I. The Inter-American Court of Human Rights' Decisions on Forced Displacement***

The Inter-American Court adopted its first ruling on forced displacement in the contentious case of the *Moiwana Village v. Suriname* (Inter-American Court, 2005).<sup>4</sup> It declared that the event violated certain human rights protected by the American Convention on Human Rights (hereinafter “the American Convention”). Later, it made similar decisions in three other cases: the case of the *Mapiripán Massacre v. Colombia* (Inter-American Court, 2005b); the case of the *Pueblo Bello Massacre v. Colombia* (Inter-American Court, 2006), and the case of the *Ituango Massacres v. Colombia* (Inter-American Court, 2006a).

In all four cases, the Inter-American Court referred to forced displacement and declared that certain rights had been violated. In the *Moiwana*, *Mapiripán*, and *Ituango* cases, the Court recognized that the forced displacement of people violates the rights of freedom of movement and residence. In the *Moiwana* and *Mapiripán* cases, and in the *Ituango Massacres* case, the Inter-American Court held that forced displacement disregards a litany of rights, and that it places victims in a situation of extreme vulnerability. In all four cases, the Inter-American Court clarified the meaning and scope of the general duties to respect and to guarantee human rights, which are enshrined in the American Convention.<sup>5</sup> In the following paragraphs, I provide a brief analysis of the content of the above decisions passed by the Inter-American Court.

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<sup>4</sup> The Inter-American Court has referred to the forced displacement of persons in several decisions on provisional measures, including: *Colotenango* case-Provisional Measures (Inter-American Court, 1994, number 2); *Giraldo Cardona* case-Provisional Measures (Inter-American Court, 1997, paragraph 5); case of the *Comunidad de Paz de San José de Apartadó*-Provisional Measures (Inter-American Court, 2000, paragraph 8 and number 5).

<sup>5</sup> The American Convention on Human Rights was adopted in San José, Costa Rica on 22 November 1969, during the Special Conference on Human Rights.

## **A. Forced displacement as a violation of freedom of movement and residence**

### *1. Extent and content of the law*

The Inter-American Court has held that the right to freedom of movement and residence protected by Article 22 of the American Convention refers to the right of all people to move freely from one place to another and to establish themselves at the place of their choice. The Inter-American Court has stated that the enjoyment of these rights “must not be made dependent on any particular purpose or reason for the person wanting to move or stay in a place. This is an essential condition for an individual to be able to live his life freely.”<sup>6</sup>

The Inter-American Court has also pointed out that this right can be restricted, in accordance with the provisions of Articles 22.3<sup>7</sup> and 30<sup>8</sup> of the Convention. However, it also noted that “these restrictions must be expressly established by law and must be designed to prevent criminal offenses or to protect national security, public order or safety, public

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<sup>6</sup> Canese Case (Inter-American Court, 2004, para. 115). According to the facts established by the Inter-American Court, Mr. Ricardo Canese was restricted from leaving his country of Paraguay for eight years and four months, from 1994 to 2002. As an engineer and expert on the Itaipú dam project, Mr. Canese had presented various complaints to Paraguay’s Public Prosecutor of corruption against the company CONEMPA and the manager of the project. Likewise, when he ran as a presidential candidate in 1993, he publicly charged his political opponent with corruption. His opponent was elected president the following year. Based on his formal complaints about corruption, Mr. Canese was criminally charged for the offenses of insult and slander. The measure restricting his movement was imposed by the judge who issued, in 1994, the sentence in the first place. Mr. Canese was fined and sent to prison. Mr. Canese and his lawyer appealed this decision, and for eight years battled in the courts to demonstrate Mr. Canese’s innocence and the violation of his human rights. Upon hearing the case, the Inter-American Court considered that the measure restricting his movement had been an illegal and arbitrary one, and that it violated the principles of legality, necessity, and proportionality in a democratic society. The Inter-American Court considered that the State of Paraguay had violated Article 22 of the American Convention by violating Mr. Ricardo Canese’s right to freedom of movement and residence.

<sup>7</sup> Article 22.3 of the Convention reads: “The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.”

<sup>8</sup> Article 30 of the Convention states: “The restrictions that, pursuant to this Convention, may be placed on the enjoyment or exercise of the rights or freedoms recognized herein may not be applied except in accordance with laws enacted for reasons of general interest and in accordance with the purpose for which such restrictions have been established.”

health or morals, or the rights and freedoms of others, to the extent necessary in a democratic society.”<sup>9</sup>

If a State imposes a restriction on the right of freedom of movement and residence that does not pass this basic protection test—as set out by the American Convention—the State may be violating that right.<sup>10</sup>

## 2. *The Inter-American Court’s decision in the Moiwana Village Case*

In the case of the *Moiwana Village*, the Inter-American Court decided that the facts of the case pointed to a violation of the right of freedom of movement and residence. Even though neither the Inter-American Commission on Human Rights (hereinafter “the Commission”) nor the representatives of the victims had claimed the violation of this right, the Inter-American Court, applying the principle *iura novit curia* (literally, “the judge knows the law,” meaning that there is no need to explain the law to a judge or legal system), considered that the facts presented in the Commission’s petition represented a rights violation.<sup>11</sup>

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<sup>9</sup> Canese Case (Inter-American Court, 2004, para. 117).

<sup>10</sup> Since its early decisions, the Inter-American Court has applied the general principle of State responsibility for the acts or omissions of any of its powers or organs that violate the American Convention. International State responsibility also extends to acts of private individuals whenever said acts—that are not on principle attributable to the State—have been made with the support or permission of State agents. In this regard, the Inter-American Court has held: “Such international responsibility can also arise from acts of private persons which are, on principle, not attributable to the State. The effects of these State obligations transcend the relation between State agents and the persons under its jurisdiction, given that they are also reflected in the State’s positive obligation to adopt the measures required to ensure effective protection of human rights in inter-individual relations. The attribution of State responsibility for acts of private persons can take place in cases in which the State fails to comply with those *erga omnes* obligations contained in Articles 1.1. and 2 of the Convention, by the action or the omission of its agents whenever they are in a position of guarantors” (unofficial translation from the Case of the Mapiripán Massacre, Inter-American Court, 2005a, para. 111).

<sup>11</sup> According to the facts established in the Inter-American Court’s ruling, the Moiwana village was founded by N’djuka clans, belonging to the Maroon population, at the end of the nineteenth century. During the internal armed conflict in Suriname of the 1980s, the National Army responded to attacks by the jungle commando—an armed force that opposed the military regime of Desire Bouterse, primarily composed of Maroons—by means of military actions carried out in the eastern region of Suriname. From 1986 until 1987, approximately 15,000 people fled from the combat zone to the capital, Paramaribo, and another 8,500 escaped to French Guiana. Most of the displaced people were from the Maroon population. On November 29, 1986, a military operation was carried out in the

In accordance with proven facts during the case in question, the Inter-American Court established the following: (a) that the members of the community resided in the Moiwana village (part of their ancestral territory); (b) that because of the attack suffered on November 29, 1986, they had been forced to abandon the village and their traditional surrounding lands; and (c) that they were displaced internally in Suriname or living as refugees, and that the State of Suriname did not help them or facilitate their return to their lands.<sup>12</sup>

Analyzing these facts in light of Article 22 of the American Convention, the Inter-American Court made, amongst others, the following points:

1) It reiterated that the right to freedom of movement and residence is an indispensable condition for a person's free development, and it pointed out, again, that this right includes: (a) the right of those who are legally within a State to freely circulate within that State and to choose their place of residence; and (b) the right of a person to enter her or his country and remain there.<sup>13</sup>

2) It also took into consideration the facts of that case and thereby determined that the content and scope of Article 22 should be interpreted in the context of internal displacement. The Court granted particular relevance to the Guiding Principles on Internal Displacement as rules for the interpretation of Article 22.<sup>14</sup> The Court considered that Principles 1.1,

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Moiwana village. State agents and their collaborators killed at least thirty-nine members of the community, including children, women and elderly persons, and they wounded several others; they burnt and destroyed the community's property, and forced the survivors to flee. Many of the village's inhabitants escaped to the forest, where they lived under difficult conditions until they reached refugee camps in French Guiana. Others were internally displaced: some fled to larger cities in Suriname, others to Paramaribo. The displaced persons, both in French Guiana and Suriname, experienced poverty and deprivation after their escape from the Moiwana village, and were unable to carry out their traditional subsistence practices. The Moiwana village and its traditional surrounding lands have been abandoned since the 1986 attack. Some members of the community visited the area later, without an intention to remain there. In 1993, some of the community members who were taking refuge in French Guiana returned to Suriname, and there they were relocated in a place that had been designed as a temporary reception center in Moengo. They remained there until the Inter-American Court adopted its judgment.

<sup>12</sup> Cf. Case of the Moiwana Village (Inter-American Court, 2005, paras. 112, 113).

<sup>13</sup> Cf. Case of the Moiwana Village (Inter-American Court, para. 110).

<sup>14</sup> Guiding Principles on Internal Displacement (1998) (hereinafter "Guiding Principles on Internal Displacement").

5, 8, 9, 14.1 and 28.1 were especially pertinent to the case. In making this interpretation of Article 22, the Court found that, based on the established facts, the above two dimensions of the right had been violated.

The Principles invoked by the Inter-American Court demonstrate the direction it followed in evaluating and declaring the violation of Article 22 of the American Convention, as put into practice in an actual case.

Principles 1.1, 5, 8, 9, 14.1, and 28.1 make reference to the obligation of the State to undertake the following: (a) to prevent forced internal displacement (an obligation that acquires a special relevance for such people and communities who have a strong relationship with, or dependence upon, the land (e.g. indigenous communities, rural communities, and peasant communities); (b) to respect and guarantee the rights to life, dignity, integrity, liberty, and the security of people whose displacement may be legitimate and necessary; (c) to respect and guarantee—with equality and without discrimination—the liberties of people who have been internally displaced by force; and d) to guarantee the return of displaced persons to their home or residence—or to a place of resettlement that has been voluntarily accepted under dignified and secure conditions.<sup>15</sup>

After carrying out the above interpretation of Article 22, the Inter-American Court concluded that two dimensions of the right had been violated: the right of those who are legally within a State to move freely

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<sup>15</sup> In effect, the orders contained in the principles concerning internal displacement, invoked by the Inter-American Court in the *Moiwana Village* case, make as much reference to the rights of internally displaced persons as to the obligations and responsibilities of the State and its authorities. These principles refer to the following: the right of internally displaced people to enjoy equality and, without discrimination, some of the same rights and liberties that international law and internal law recognize for the rest of the country's inhabitants (Principle 1.1); the obligation of State authorities to respect and enforce respect of the obligations imposed on them by international law, including human rights and international humanitarian law; to avoid and prevent conditions that could provoke internal displacement (Principle 5); the demands imposed with respect to the rights to life, dignity, liberty, and security, in the cases in which displacement may be legitimate and necessary (Principle 8); the specific obligation that the State has to take measures of protection for indigenous peoples, peasants, rural folk, and other groups that experience a special dependency on the land or a particular attachment to it (Principle 9); the right of all internally displaced persons to move freely and to choose their residence (Principle 14.1); and the obligation and responsibility that the authorities have to establish conditions and provide means that permit the voluntary, safe, and respectable return of internally displaced persons to their home or place of habitual residence, or their voluntary resettlement in another part of the country (Principle 28.1).

within that State and to choose their place of residence; and the right of people to enter their country and remain there.

It is important to point out that by virtue of the *rationae temporis* element, the Inter-American Court was unable to decide on the fact of the massacre itself.<sup>16</sup> However, the Inter-American Court found that the situation of forced displacement persisted over time, even after Suriname accepted the Inter-American Court's jurisdiction, allowing the Court to adopt a ruling on the violation.

Finally, by indicating how Suriname had prevented a voluntary, safe and dignified return of the members of the community to their ancestral lands, the Inter-American Court identified two major failings.<sup>17</sup> First, Suriname failed to carry out an effective criminal investigation, and second, it failed to adopt measures to secure the safety of the members of the community. The Inter-American Court held the following:

“(...) only when justice for the events of November 29, 1986 is met will the members of the community be able to 1) placate the infuriated spirits of their relatives and purify their traditional land; and 2) cease to fear further hostilities against their community. These two elements are, in turn, indispensable for a permanent return of the members of the community to the Moiwana Village, which many—if not all of them—wish.”<sup>18</sup>

“(...) in this case the freedom of circulation of the members of the community is limited by a very precise *de facto* limitation, originated in the founded fears (...) that keep them away from their ancestral territory.”<sup>19</sup>

The Inter-American Court found that, among other rights, the right to freedom of movement and residence had been violated in this particular case by the forced internal displacement of the members of the community, and that the absence of justice and the victim's reasonable fears of suffering new aggressions caused the forced displacement.<sup>20</sup> The Court concluded the following on the above issue:

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<sup>16</sup> Suriname accepted the jurisdiction of the Inter-American Court in 1987.

<sup>17</sup> Guiding Principles on Internal Displacement (UN 1998, Principle 28.1).

<sup>18</sup> Case of the *Moiwana Village* (Inter-American Court, 2005, para. 228).

<sup>19</sup> *Id.*, para. 119.

<sup>20</sup> The Inter-American Court also referred to the fact that many members of the community took refuge in French Guiana, as a violation of Article 22 of the Convention by the State of Suriname.

“[T]he State has failed to establish the conditions or provide the means that would allow the members of the community to return in a voluntary, safe and dignified manner to their traditional lands, to which they have a special dependency and attachment—given that there are no objective safeguards of respect for their human rights, particularly their rights to life and personal integrity. In failing to establish such elements—including, in particular, an effective criminal investigation to put an end to the prevailing impunity over the 1986 attack—Suriname has not secured the right to freedom of movement and residence of the members of the community.”<sup>21</sup>

Therefore, within the limits of its jurisdiction, the Inter-American Court clarified what obligations the State of Suriname had disregarded in this particular case with regard to forced displacement. The disregarded obligations were (a) the obligation to guarantee an effective investigation of the facts, and (b) the obligation to secure respect for the rights to life and personal integrity of the members of the community.

### *3. Decisions in the cases of the Mapiripán Massacre and the Ituango Massacres*

In the *Mapiripán Massacre v. Colombia* case, the Inter-American Court also found that the State had violated the right to freedom of movement and residence of the victims because the victims were forcibly displaced.<sup>22</sup> The Court made a similar declaration in the *Ituango Massacres* case.

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<sup>21</sup> Case of the *Moiwana Village* (Inter-American Court, 2005, para. 120).

<sup>22</sup> In accordance with the facts established in the Inter-American Court’s sentence, at dawn on July 15, 1997, more than 100 armed men belonging to the paramilitary group United Self-Defense Forces of Colombia (AUC), surrounded the town of Mapiripán, blocking all land and water routes. These men bore guns and uniforms that were for the private use of the Armed Forces of Colombia, and they had the cooperation of the Army. According to what was established by the Court, this cooperation was not limited to the abstention to block the paramilitaries’ arrival to Mapiripán, but also involved the provision of gear and communications. Upon entering the town, the paramilitaries took control of the town, the communications, and the public offices and proceeded to intimidate its inhabitants, and to kidnap and cause the death of others. The paramilitaries remained in Mapiripán from July 15 to 20, 1997, a period during which they prohibited the inhabitants free movement within the town, and they tortured, dismembered, gutted, and cut the throats of approximately forty-nine people, and threw their remains into the Guaviare River. Several of the victims had been pointed out by the AUC for collaborating or belonging to the guerrilla group Revolutionary Armed Forces of Colombia (FARC). Moreover, once the operation was concluded, the AUC destroyed a

In the following paragraphs, I will refer to the Inter-American Court's sentence in the *Mapiripán Massacre* case, as it was the first sentence that this court passed regarding forced internal displacement in Colombia. I will also note some of the considerations formed by the Inter-American Court in the *Ituango Massacres* case, as well as standards developed by the Court following decisions of the Colombian Court.<sup>23</sup>

In the *Mapiripán Massacre* case, and later in the *Ituango Massacres* case, the Inter-American Court referred to the Guiding Principles on Internal Displacement as relevant rules for the interpretation of Article 22 of the Convention.<sup>24</sup> But the Inter-American Court advanced much further in the identification of an international *corpus iuris* to protect this right.

First, the Inter-American Court assumed that an internal armed conflict existed in Colombia, and thus it referred to the provisions of international humanitarian law as equally providing relevant rules for the interpretation of Article 22 (and other articles of the Convention) during the case in question. Consequently, the Inter-American Court explicitly stated that general and special State duties to protect the civilian population existed,

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large part of the physical evidence, with the goal of obstructing the collection of evidence. According to what was established by the Inter-American Court, the internal displacement of entire Mapiripán families was a result of several causes: fear that similar deeds would be repeated; intimidation by the paramilitaries; the experience of the massacre, which occurred over several days; and damages suffered by the families. The families also feared additional suffering if they testified against the perpetrators. (Cfr. *Mapiripán Massacre case*, para.96.30 a 96.67).

<sup>23</sup> The *Ituango Massacres* case makes reference to events that occurred in the villages of La Granja y El Aro in the municipality of Ituango, in Antioquia. According to the facts considered proven by the Inter-American Court's sentence, on June 11, 1996 around twenty-two men from paramilitary groups headed towards the village of La Granja in two vans, heavily armed with rifles and revolvers. The paramilitary group began its route around the outskirts of the town of San Andrés de Cuerquia. On arriving at the village of La Granja, the paramilitaries ordered the closing of public establishments. Once they had taken control of the village they began a chain of selective executions, without encountering any opposition from the Police Forces (Fuerza Pública), according to the villagers. Once the executions had occurred, the paramilitaries abandoned the La Granja area again without encountering any opposition from the Police Forces. Between October 22 and November 12, 1997, the paramilitary attacked the village of El Aro. During these twenty days, the paramilitaries carried out selective executions, destroyed houses, stole cattle, and implemented forms of slave labor. Among the victims of the events at La Granja and El Aro were men, women, boys, girls, and the elderly. Several children were tortured and executed by the paramilitaries. (Cr. *Ituango Massacres* case, para. 125.30 a 125.40, 125.55 a 125.79, 125.81 a 125.86).

<sup>24</sup> Cf. Case of the *Mapiripán Massacre* (Inter-American Court 2005b, para. 171). *Ituango Massacres* case, para. 209.

and that these were derived from international humanitarian law—in particular, from Common Article 3 of the Geneva Conventions of August 12, 1949, and the provisions of Additional Protocol II to the Geneva Conventions, on the protection of victims of non-international armed conflicts.<sup>25</sup> With regard to forced displacement, the Court made an express reference to Article 17 of Additional Protocol II.<sup>26</sup> Likewise, following the facts of the case, the Inter-American Court recognized that civilians were not protected during the internal armed conflict.<sup>27</sup>

Additionally, the Inter-American Court applied the interpretation criteria established in Article 29 of the Convention and invoked the case law of the Colombian Court that related to international humanitarian law, in order to determine the State's obligations.<sup>28</sup> For example, the Inter-American Court held the following:

“Although it is clear that this tribunal may not declare an attribution of international responsibility under the rules of international humanitarian law as such, said rules are useful to interpret the Convention, in establishing State responsibility and other aspects of the violations claimed in the present case. Those rules were in force for Colombia at the time of the events, as International Law to which the State is a party and as internal law, and they have been declared by the Constitutional Court of Colombia to be norms of *ius cogens*, that form part of the Colombian ‘constitutionality block’ and which are binding for States and for all State or non-State actors that take part in an armed conflict.”<sup>29</sup>

The Inter-American Court ruled that the forced displacement of persons violated the right to freedom of movement and residence. It based this ruling on the fact that an internal armed conflict existed and that the relevance of this was established as being within the purview of international humanitarian law and Article 22 of the Convention. Other factors influencing the ruling were the domestic normative framework and the case law of the Colombian Court.

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<sup>25</sup> Cf. Case of the *Mapiripán Massacre* (Inter-American Court, 2005b, para. 114).

<sup>26</sup> *Id.*, para. 172.

<sup>27</sup> *Id.*, para. 117; and *Ituango Massacres* case, para.209. In both cases, the Inter-American Court made express reference to decisions of the Colombian Constitutional Court, citing Sentence C-225 of 1995, with the goal of specifying the extent of Article 22.1 in light of international humanitarian law, in the context of Colombia's internal conflict.

<sup>28</sup> In this regard, Colombian Constitutional Court, Decision C-225 of 1995.

<sup>29</sup> Case of the *Mapiripán Massacre* (Inter-American Court, 2005b, para. 115).

The Inter-American Court pointed out that the facts of the case were framed in a generalized situation of forced displacement, caused by internal armed conflict.<sup>30</sup> Thus, it identified the existence of an armed internal conflict in Colombia as one of the causes of forced displacement in the concrete case.<sup>31</sup> It considered that this cause, in addition to the particular traits of the massacre, had caused the forced displacement of the victims. As stated by the Inter-American Court:

“In the present case, the traits of the massacre that took place in Mapiripán, the experiences of the days in which the massacre occurred, the damages borne by the families, together with the relatives’ fear of the repetition of similar events, of the threats received by some of them from the paramilitaries for giving or having given their testimonies, provoked the internal displacement of many Mapiripán families. It is possible that some of the displaced relatives did not live in Mapiripán at the time of the incident and in the surrounding areas, but they too were forced to displace themselves as a consequence of the events.”<sup>32</sup>

By interpreting Article 22 according to the criterion of evolutionary interpretation of treaties, and by interpreting Article 29.1 of the American Convention (which forbids a restrictive interpretation of rights), the Inter-American Court expressly established that Article 22.1 of the Convention “protects the right to not be forcibly displaced within a State Party thereof.”<sup>33</sup> The Court also pointed out that, for the purposes of this particular case, the above right had already been recognized by the Colombian Court in its interpretation of the content of the fundamental right to choose the place of residence.<sup>34</sup>

The Inter-American Court made progress in identifying and protecting the right of people not to be forcibly displaced on the grounds of (a) having declared a violation of Article 22 of the Convention and of (b)

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<sup>30</sup> Cf. Case of the *Mapiripán Massacre* (Inter-American Court, 2005b, para. 173). In the same vein, the *Ituango Massacres* case, para. 208.

<sup>31</sup> In the Case of the *Moiwana Village*, given the restrictions upon its jurisdiction, the Inter-American Court did not get to point out this cause.

<sup>32</sup> Case of the *Mapiripán Massacre* (Inter-American Court, 2005b, para. 180).

<sup>33</sup> In the Case of the *Moiwana Village*, the Inter-American Court did not make express reference to the right to not be forcibly displaced within a State. In the *Ituango Massacres* case, para. 207, the Inter-American Court again referred to the right to not be forcibly displaced within a State as a right protected by Article 22.1 of the American Convention.

<sup>34</sup> Cf. Case of the *Mapiripán Massacre* (Inter-American Court, 2005b, para. 188).

having incorporated the recognition already made by the Colombian Court of the right's existence within the domestic legal system as an interpretive guideline.

Again, accepting what had been decided by the Colombian Court, the Inter-American Court emphasized that a forcibly displaced person gains such status through the involuntary abandonment of her or his place of residence, not by having been included in a formal registry. On this matter, the Court said:

“[T]his Tribunal agrees with the criterion established by the Colombian Constitutional Court, in the sense that “it is not the formal registry before government bodies which gives the character of being displaced to an individual, but rather the mere fact of having been compelled to abandon the place of regular residence.”<sup>35</sup>

Finally, in both the *Mapiripán Massacre* and the *Ituango Massacres* cases, the Court concluded that the Colombian State had failed to adopt the necessary measures to prevent internal displacement in the context of internal armed conflict, and that this failure amounted to a violation of Article 22. However, the Inter-American Court considered that it was not possible to restrict the violation of rights in these specific cases to Article 22 of the Convention due to the magnitude of forced internal displacement in Colombia and of the extreme vulnerability of its victims. For the Inter-American Court, the circumstances of both the above cases, and the special and complex situation of vulnerability that affected the victims and their relatives “include but transcend the scope of protection required of States in the framework of Article 22 of the Convention.”<sup>36</sup>

## **B.      Forced displacement of persons as a violation of other rights**

In the case of the *Moiwana Village*, the Inter-American Court held that the separation of the members of the community from their ancestral land, on account of being internally displaced or of being refugees, also amounted to a violation of the right to personal integrity--a right recognized by Article 5 of the American Convention. The above Court considered that such separation produced emotional, psychological and spiritual suffering for each community member—suffering of such a

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<sup>35</sup> *Ituango Massacres* case, para. 214.

<sup>36</sup> Case of the *Mapiripán Massacre* (Inter-American Court, 2005b, para. 186). *Ituango Massacres* case, para. 234.

magnitude and unnecessary nature that it constituted a violation of human rights. Likewise, the Inter-American Court considered that the right of the Moiwana Community's members to inhabit, use and enjoy their traditional lands had been denied because of the violent events that generated their forced displacement and refugee status. The Inter-American Court thus established that the forced internal displacement and refugee status was, in this case, a violation of Article 21 of the Convention, which protects the right to property.<sup>37</sup> This understanding of forced displacement, as an act that violates several rights, was maintained and broadly developed by the Inter-American Court in the case of the *Mapiripán Massacre*.

In the *Mapiripán* case, the Inter-American Court identified a group of rights, in addition to those of freedom of movement and residence, which were violated by the sole fact of forced displacement. In doing so, the Court clarified the extent of State obligations. Thus, the Court indicated, for example, that the forced displacement of children in that specific case was a serious violation in accordance with Article 19 of the Convention. The Court further indicated that the above displacement implied non-compliance by the State regarding its duty to provide special protection to children.

The Inter-American Court expressly established a close link between forced internal displacement and the violation of children's rights to a dignified life—a link protected by Article 4 of the Convention in connection with Article 19.<sup>38</sup> In pointing out that link, the Court once again applied the interpretation criterion established in Article 29.1 of the Convention, and thereby enacted a provision for the protection of children. Specifically, the Inter-American Court made reference to the United Nations Convention on the Rights of the Child (in particular, to articles 6, 37, 38, and 39) and to Additional Protocol II of the Geneva Conventions, both current instruments currently in use in Colombia.<sup>39</sup> The above Court also referred to Article 44 in the Constitution of Colombia concerning children's rights.<sup>40</sup> The Court referred to the Constitutional Colombian

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<sup>37</sup> Case of the *Moiwana Village* (Inter-American Court, 2005, paras. 128-135).

<sup>38</sup> Cf. Case of the *Mapiripán Massacre* (Inter-American Court, 2005b, paras. 161 and 162).

<sup>39</sup> Articles 38 and 39 of the Convention on the Rights of the Child make express reference to the obligation of member states to be vigilant in respecting the norms of international humanitarian law applicable in armed conflicts and relevant for protecting and guaranteeing the rights of boys and girls.

<sup>40</sup> Article 44 of the Political Constitution of Colombia establishes the following: "These are the fundamental rights of children: life, physical integrity, health and social security,

Court's Decision C-225 of 1995, through which it declared the constitutionality of a law that incorporated the aforementioned Additional Protocol II of the Geneva Conventions into domestic Colombian law.<sup>41</sup>

Recognizing the complexity of forced displacement and the particular weakness, vulnerability and defenselessness that displaced persons generally experience, the Inter-American Court made express reference to the right to equality and non-discrimination in Article 24 of the Convention. The Court referred to the inequality and discrimination that forcibly displaced people experience. It then referred to the State's obligation to grant them preferential treatment, and to adopt "positive measures to reverse the effects of their aforementioned weakness, vulnerability and defenselessness, even vis-à-vis actions and practices by private individuals."<sup>42</sup>

Apart from guaranteeing the safe and peaceful return of displaced people to their habitual place of residence, the obligation of adopting the aforementioned positive measures must translate to a guarantee of dignified living conditions. This implies the State's creation of an environment free of violence and insecurity.<sup>43</sup> It also implies the reparation of the damages and losses suffered by the victims in

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balanced nutrition, their name and nationality, to have a family and not be separated from it, care and love, education and culture, recreation and free expression of opinion. They will be protected against all forms of abandonment, physical or moral violence, kidnapping, sale, sexual abuse, labor or economic exploitation and risky work. They will also enjoy the other rights established in the Constitution, in the laws, and in the international treaties ratified by Colombia... The family, society, and the State have the obligation to care for and protect children in order to guarantee their peaceful development and full exercise of their rights. Any person may demand the fulfillment of these rights and the sanction of offenders before any competent authority. The rights of children preside above the rights of all others."

<sup>41</sup> Cf. Case of the *Mapiripán Massacre* (Inter-American Court, 2005b, paras. 153). The Inter-American Court expressly cited the grounds of Sentence C-225/95 of the Colombian Court in which it is emphasized: "Numeral 3º of Article 4º of [Protocol II] confers a privileged treatment towards children, with the goal of giving them the care and help that they need, above all in relation with education and family unity. It also stresses that minors under fifteen years of age will not be recruited into armed forces or groups, and will not be permitted to participate in hostilities. The [Colombian] Court considers that this special protection of children is in harmony with the Constitution, since it is not only they who find themselves in situations of evident weakness (CP art. 13) facing armed conflicts, but also the Constitution that confers prevalence to the rights of children (CP art. 44) [...]"

<sup>42</sup> Cf. Case of the *Mapiripán Massacre* (Inter-American Court, 2005b, paras. 179).

<sup>43</sup> *Ibid.*, paras. 162.

abandoning their houses, lands, and goods, and being obliged to live in conditions of abandonment, extreme instability, and even extreme poverty.<sup>44</sup>

In the case of the *Pueblo Bello Massacre*, following a perspective similar to the one developed in the *Moiwana Village* case, the Inter-American Court acknowledged that the Colombian State had violated the right to personal integrity.<sup>45</sup> The Court held that there were several violations of rights with respect to the relatives of the forty-three victims who disappeared during the events of Pueblo Bello.<sup>46</sup> The Inter-American Court pointed out the following:

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<sup>44</sup> *Ibid.*, paras. 180 and 186.

<sup>45</sup> According to the facts established the Inter-American Court's ruling, the village of Pueblo Bello was mainly dedicated to agriculture, located in the municipality of Turbo, in the Antioquian region of Urabá. During the period of time between 1960 and 1990, with the arrival of a great banana company to Urabá, the route between Chigorodó and Turbo became referred to as the "Banana Axis." Along this route, the Revolutionary Armed Forces of Colombia (FARC) and the Popular Liberation Army (EPL) were present. For them, this region was of great strategic importance, as, in addition to being a zone where they could charge "war taxes" to merchants and cattle herders, it constituted a corridor to Urabá, where guerrillas had great political and union influence. As a reaction to the guerrilla insurgency, paramilitarism extended to the Urabá region. Between 1988 and 1990 paramilitaries committed more than twenty massacres of farmers and unionists. Between January 13 and 14, 1990 a group of approximately sixty heavily armed men belonging to a paramilitary organization, created by Fidel Castaño Gil and called "los tangueros," departed from the Estate "Santa Mónica," in the Valencia municipality, in the Córdoba department. On the night of January 14, 1990, between 20:30 and 22:50 hours, this paramilitary group violently entered the village of Pueblo Bello. The paramilitaries carried firearms of different calibers, were dressed as civilians, as well as in clothing for private use by the military forces. The paramilitaries sacked some houses, burned others, mistreated their occupants and took an undetermined number of men from their houses and brought them to the town plaza. Likewise, some members of the armed group entered the church located at the front of this plaza, where they ordered that the women and children remain inside and that the men leave and head towards the plaza. There they put the men facedown on the ground and, ready at hand, chose forty-three men who were tied up, gagged, and forced to board two trucks used for transporting the paramilitaries. Six of the bodies of the forty-three kidnapped persons were recovered in April of 1990, after they had been cruelly tortured and finally executed. As of the date of the Court's Sentence, the other thirty-seven victims were still missing. As a consequence of these acts—especially of the material and immaterial damages suffered by the families and the relatives' fear that similar events would occur—several families from Pueblo Bello are internally displaced. Moreover, some of the families have even been forced to leave Colombia (Cf. *Pueblo Bello Massacre* case, paras. 95.21 a 95.44, 95.161).

<sup>46</sup> Cf. Case of the *Mapiripán Massacre* (Inter-American Court, 2005b, paras. 154-162).

“Likewise, it is necessary to highlight that after the events of January, 1990, many inhabitants of Pueblo Bello left Colombia or were displaced from the municipality, on account of the fear and anguish caused by the event and the ensuing situation, and they have had to face the effects of forced internal displacement. Some of them have had to return against their will, having been unable to find means of subsistence outside this area.”<sup>47</sup>

Although the Court did not make express reference to the State’s obligations vis-à-vis those who have suffered from forced displacement, it did hold that forced displacement inflicted serious damage upon the personal integrity of displaced people’s relatives. These relatives were consequently regarded as victims themselves and thus viewed as entitled to reparation.

In the *Ituango Massacres* case, the Inter-American Court’s pronouncement concerning the violation of the right to personal integrity of victims of forced displacement was more forceful and convincing, and it thus advanced the standards of protection. The Court established, for example, a direct link between the destruction of property—caused by the forced displacement of the victims—and the extreme suffering of those who were displaced by this destruction. It stressed that such victims experienced “an especially severe suffering” that deserves special attention, and that constitutes a serious violation of the victims’ right to personal integrity. The Court thus classified this kind of occurrence as cruel and inhuman treatment.<sup>48</sup> On this subject, the Court made the following considerations:

“This Tribunal already established in the current sentence that the paramilitaries, with the acquiescence and tolerance of State officials... destroyed and set fire to a great number of the houses in El Aro, which caused the displacement of its inhabitants. Such acts of violence, and especially the destruction of housing, were aimed to terrorize the population and force the families to disperse from the place. The persons who lost their homes in the fires caused by the paramilitaries, and who therefore found themselves obliged to disperse, lost all possibility of returning home, since it had ceased to exist. This Court considers that these events have aggravated the situation of said persons vis-à-vis other

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<sup>47</sup> Case of the *Pueblo Bello Massacre* (Inter-American Court, 2006, paras. 159).

<sup>48</sup> *Ituango Massacres* case, paras. 271 and 274.

persons who found themselves obliged to disperse, but whose housing were not destroyed.”<sup>49</sup>

The rights-protection approach developed by the Inter-American Court in these four cases has allowed the Court to protect the rights of the victims of forced displacement in a much broader way, and to further identify specific government obligations. This same approach is present in the decisions of the Colombian Court.

## ***II. The Colombian Constitutional Court’s decisions on forced displacement***

The Colombian Constitutional Court has developed its case law on forced internal displacement in light of various fundamental rights recognized in Colombia’s Constitution. On the grounds of the constitutional norm that recognizes these rights, and in accordance with the theory of the “constitutionality block,” the Colombian Court has incorporated principles and standards from international human rights law and international humanitarian law.<sup>50</sup> In this regard, the Court reaffirmed

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<sup>49</sup> *Id.*, para. 272.

<sup>50</sup> According to the case law of the Colombian Court, the “constitutionality block” is composed of “norms and principles which, even though they do not appear formally within the articles of the constitutional text, are used as parameters for constitutional judicial review of legislation because they have been normatively integrated into the Constitution through different channels and by mandate of the Constitution itself. They are, therefore, true principles and rules with constitutional status. That is, they are provisions located at the constitutional level, even though sometimes they may contain amendment mechanisms that are different to those of the provisions of the constitutional articles, *stricto sensu* [brief definition or literal translation]” (Colombian Constitutional Court, Decision C-225 of 1995). The Constitutional Court has also considered that the notion of “constitutionality block” has two meanings: a broad one and a restricted one. In this sense it holds that “it is possible to differentiate two meanings of the notion of constitutionality block. In a first understanding, which could be labeled ‘*stricto sensu* constitutionality block,’ it has been regarded as being composed of those principles and norms that possess a constitutional value and that are restricted to the text of the Constitution itself and to the international treaties protecting human rights, whose limitation is forbidden during states of emergency (Article 93 of the Constitution). More recently, the Colombian Court has adopted a *lato sensu* (brief definition or literal translation) notion of the constitutionality block, according to which the block would be composed of all those provisions that can serve as parameters to carry out constitutional judicial reviews of legislation. According to this understanding, the constitutionality block would not only be composed of the Articles of the Constitution, but also, *inter alia* (brief definition or literal translation), of the international treaties referred in Article 93 of the Constitution, by organic legislation and, on some occasions, by statutory legislation.” (Colombian Constitutional Court, Decision C-191 of 1990).

in Decision T-025 of 2004 that in establishing the scope of IDPs' rights, it makes decisions that take into account "both the constitutional and legal framework, and the interpretation of the scope of the rights summarized in the 1998 international document entitled 'Guiding Principles on Internal Displacement.'"<sup>51</sup>

Just like the Inter-American Court, the Colombian Court has identified the existence of a *corpus iuris* or a "system of protection" of the rights of victims of forced displacement. This system must be kept in mind when specifying the extent and meaning of IDPs' rights. In this system or body of protection, the Colombian Court has incorporated the Guiding Principles on Internal Displacement and the norms of international humanitarian law alongside the Constitution.

It can be considered that the two courts share the same approach towards the protection of the rights of people who are victims of forced displacement. Additionally, in agreement with Article 93 of the Constitution, the American Convention forms part of domestic Colombian law—and this determines the general framework of the State's obligations relating to the respect and guarantee of the rights protected in said Convention.

Keeping in mind this normative community framework shared by the two courts, I will only emphasize two aspects of the Colombian Court's Decision T-025 of 2004: (1) the recognition of the plurality of rights that may be violated when forced internal displacement occurs, and the related condition of extreme vulnerability in which the victims of this event find themselves; and (2) the kind of obligations that the State must meet in order to prevent and avoid these rights from being violated.

#### **A.      Forced internal displacement, an event that violates several rights**

As has been analyzed in the previous chapters of this book, the Colombian Court has recognized that forced internal displacement affects

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<sup>51</sup> Colombian Constitutional Court, Decision T-025 of 2004, p. 41. In the same sense, Colombian Constitutional Court, Decision T-268 of 2003, stipulates the criteria to determine the scope of the measures that authorities are bound to adopt in relation to persons in a situation of forced displacement. In Colombian Constitutional Court, Decision T-025 of 2004, pp. 85-87, the Court also applied several of the criteria defined by the UN Committee on Economic, Social and Cultural Rights to establish the content and scope of social rights.

large masses of the population. It has also been pointed out that forced displacement violates several human rights. Likewise, the Colombian Court has referred to the scope of authorities' obligations to uphold and protect IDPs' rights.

By adopting a perspective similar to the one applied by the Inter-American Court in the case of the *Mapiripán Massacre*, the Colombian Court had already held, in its *tutela* Decision T-025 of 2004, that many rights of the displaced population had been violated in the numerous cases under review. These rights included the following: the right to life in dignified conditions; the right to be free from risks that threaten survival; the right to personal integrity; the right to choose a place of residence; the right to personal security; the right to equality; the right to be free from discriminatory practices; the right to freedom of expression; economic, social and cultural rights (such as the rights to education, health, minimum nourishment, dignified housing and work); the right to family reunification; and the myriad rights of specially protected groups (such as children, pregnant women, persons with disabilities and elderly persons) on account of the precarious conditions they were forced to experience.<sup>52</sup>

According to the Colombian Court, the multiple violations of rights noted in the above paragraph place the victims of forced displacement in Colombia in a situation of vulnerability and defenselessness, which grants them the right to receive urgent and preferential treatment by the State.<sup>53</sup> The State's obligation is derived, according to the Colombian Court, from the provisions of Article 13 of the Colombian Constitution and from the State's incapacity to "comply with its basic duty of preserving the minimum public order conditions to prevent the forced displacement of persons and guarantee the personal security of the members of society."<sup>54</sup> In this sense, the Colombian Court has held that if the State fails to adopt the measures necessary to prevent displacement (positive and/or negative obligations, according to the case),<sup>55</sup> and displacement occurs, then it is obliged to protect the victims (a positive obligation).

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<sup>52</sup> Cf. Colombian Constitutional Court, Decision T-025 of 2004, pp. 43-48.

<sup>53</sup> Cf. *Id.*, pp. 48-49.

<sup>54</sup> *Id.*, p. 49.

<sup>55</sup> The Colombian Court has pointed out that "the serious situation of the displaced population is not caused by the State, but rather by the internal conflict, and in particular by the actions of irregular armed groups." Colombian Constitutional Court, Decision T-025 of 2004, p. 53.

## **B. Obligations that the State fails to comply with on account of forced internal displacement according to the considerations of the Colombian Court**

On the grounds of this general framework of obligations, the Colombian Court has identified the actions and omissions of State authorities that give rise to violations of the rights of the displaced population. In Decision T-025 of 2004, the Colombian Court considered that such violations were taking place in a massive, protracted and repeated way, and that it was not attributable to one single authority, but was rather derived from “a structural problem that affects the entire assistance policy designed by the State, as well as its different components.” This situation was declared by the Constitutional Court as an unconstitutional state of affairs.<sup>56</sup>

Even though the Colombian Court recognized that the State actually has a public policy on forced displacement, it also pointed out that the results of the policy were insufficient.<sup>57</sup> Furthermore, the Court revealed that the State had failed to counter the violation of the constitutional rights of most of the displaced population, and that the authorities had not adopted the corrections required to overcome the situation.<sup>58</sup>

In its analysis of the violation of rights of the displaced population, the Colombian Court consequently referred to the deficiencies of the public policy on forced displacement. The Court indicated the omissions incurred by the State in each of its stages of reparation, and at the phases of design, implementation and follow-up. It also assessed actions by the authorities

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<sup>56</sup> Cf. Colombian Constitutional Court, Decision T-025 of 2004, pp. 30 and 78. The Constitutional Court had previously addressed the phenomenon of forced displacement in Colombia, describing it as an unconstitutional state of affairs, but without making a formal declaration on the existence of such state of affairs. See Colombian Constitutional Court, Decision T-215 of 2002, cited in Colombian Constitutional Court, Decision T-025 of 2004. For the Colombian Court, an unconstitutional state of affairs is produced whenever “(1) there is a repeated violation of the fundamental rights of many persons, which can therefore resort to the *tutela* action to obtain the defense of their rights and thus overflow judicial offices, and (2) when the cause of such violation is not solely attributable to the respondent authority, but is due to structural factors” (Colombian Constitutional Court, Decision SU-090 of 2000).

<sup>57</sup> Cf. Colombian Constitutional Court, Decision T-025 of 2004, pp. 55-58.

<sup>58</sup> *Id.*, p. 58.

that thwarted sufficient protection of the rights of displaced persons.<sup>59</sup> Among such omissions and actions, the Colombian Court identified several of the State's failures, which include the following:

- to set specific goals, time schedules and follow-up indicators;
- to allot enough resources to assist the entire displaced population;
- to allocate sufficient human resources for the implementation of the policy;
- to train public officials in their functions and responsibilities in relation to forced displacement;
- to provide the displaced population with timely and complete information about its rights;
- to register the immovable property or land abandoned because of displacement;
- to implement a policy for the protection of IDPs' possession of property;
- to assign enough seats in educational institutions to secure access to education;
- to avoid imposing exorbitant requirements upon displaced persons to gain access to social benefits, subsidies or credits; and
- to avoid creating barriers to access services such as health or humanitarian aid.<sup>60</sup>

The above set of omissions and actions, as well as others identified in Decision T-025 of 2004, led the Colombian Court to conclude that the State had not secured the effective enjoyment of the constitutional rights of all displaced persons.<sup>61</sup> Based on this conclusion, and on the declaration of an unconstitutional state of affairs in relation to the problem of forced internal displacement, the Colombian Court pointed out the special

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<sup>59</sup> These stages are basically three: humanitarian aid, socio-economic stabilization, and return or re-establishment. These references made by the Colombian Court have been extensively analyzed in previous chapters.

<sup>60</sup> Cf. Colombian Constitutional Court, Decision T-025 of 2004, pp. 60-62, 71-72.

<sup>61</sup> *Id.*, p. 71.

obligations with which the State must comply in order to secure the rights of the victims of forced displacement.<sup>62</sup>

The decisions of the Inter-American Court and of the Colombian Constitutional Court about forced internal displacement constitute a substantive framework for protecting human rights. Both the Inter-American Court and the Colombian Court have identified a very broad range of human rights (or of constitutional rights) which are, or can be, violated by forced displacement. In addition, they have specified the dimensions or aspects of the rights that are, or can be, violated. This broad identification of rights and violations of rights makes it possible to clarify both the content of the State's obligations and the conduct that the State must follow in order to prevent such previously stated violations. It also makes it possible to repair the State adequately if such violations take place. This can translate, in practice, into a higher capacity for the victims of forced displacement to achieve the protection of their rights.

The existence of a broad range of rights (many of which are expressly recognized in both the American Convention and the Colombian Constitution) also makes it possible to advance the protection of new aspects or dimensions of the rights of victims of forced displacement. For example, both the Inter-American Court and the Constitutional Court have referred to the rights of particularly vulnerable persons, such as children, women and the elderly, and indigenous communities and peoples. Both courts have reaffirmed that the State is obliged to adopt special protection measures for such people, and they have also pointed out some of those measures. This approach, which is based on the existence of people with significant vulnerabilities, has allowed both courts to advance the protection of the economic, social and cultural rights of the victims of forced displacement.<sup>63</sup>

Both courts can strengthen this approach by making the protection of populations by reason of their specific situations more explicit, and not

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<sup>62</sup> According to the Colombian Court's case law, once an unconstitutional state of affairs is proven and declared, the court extends the effects of its *tutela* rulings so as "to order the adoption of remedies that have a material and chronological scope, which responds to the magnitude of the violation, and to protect, with due regard to the principle of equality, the rights of those who are in a situation that is similar to the one that caused the lawsuit, but who did not resort to the *tutela* action" (unofficial translation). Colombian Constitutional Court, Decision T-025 of 2004, p. 75.

<sup>63</sup>See "The Human Rights of the Victims of Forced Internal Displacement in View of the Progressivity of Economic, Social, and Cultural Rights," Chapter 4 in this publication.

just by reason of being in a vulnerable condition. For example, beyond being mothers or heads of households, women affected by armed conflict are impacted in different and disproportionate ways by forced internal displacement.<sup>64</sup> A similar consideration could also be more explicitly developed regarding indigenous communities and peoples, as well as communities of African descent and other ethnic groups that maintain a special relationship to the land and territory.<sup>65</sup>

Likewise, approaching forced displacement as a violation of multiple rights makes it possible to further identify of other rights that can be affected. This is particularly relevant for the decisions of the Inter-American Court (with regards to rights on which it has not adopted any rulings) and for the Colombian Court (with regards to the State's obligation to effectively guarantee the right of all persons to not be victims of forced displacement).

As far as the Inter-American Court's jurisprudence is concerned, the decisions of the Colombian Court could once again be a source of law. The decisions of the Colombian Court on the issue of forced displacement are generous in their recognition of the rights of the victims that must be protected and guaranteed. And, in this sense, an adequate incorporation of the Colombian Court's case law into the decisions of the Inter-American Court by way of the interpretation criteria established in the American Convention and by the Inter-American Court itself could contribute to the Inter-American system's case law, benefitting Colombia and the other countries of the region.

The Inter-American Court has advanced a great deal towards the protection of this right (as a dimension of the right to life supported by Article 4 of the American Convention) in relation to other situations, such

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<sup>64</sup>Greater development of this perspective would permit the integration of the protection of the right to not be a victim of forced internal displacement into the *corpus iuris* of other international instruments, such as the Convention of Belém do Pará and the Convention for the Elimination of All forms of Discrimination Against Women, which prohibits violence as much as they do discrimination. The Inter-American Court has considered that these two conventions form part of the international *iuris* of protection of the human rights of women.

<sup>65</sup> Using a similar logic, a greater development of this perspective would permit the integration of the protection of the right to not be a victim of forced internal displacement into the *corpus iuris* of different international instruments that the Inter-American Court has considered to form a part of the international *corpus iuris* on the protection of the rights of indigenous peoples and communities, among others, the 169 Agreement of the OIT.

as the conditions of indigenous communities.<sup>66</sup> And as far as the Colombian Court's jurisprudence is concerned, the broad development made by the Inter-American Court on the causal events of forced internal displacement (such as when appropriate preventative measures are not adopted) and on the causal events of its persistence (for example, impunity) constitute a valuable standard of protection that could be expressly incorporated in the already solid jurisprudence of the Colombian Court.

Finally, recognizing forced displacement as a serious and complex fact that violates several rights—a perspective shared by both courts—makes it possible to adopt a structural approach to the issue. Thus, both in the *Moiwana Village* case and in the case of the *Mapiripán Massacre*, the Inter-American Court ordered the respondent State to carry out the required actions to guarantee IDPs' return under adequate security.<sup>67</sup> In the case of the *Moiwana Village*, the Inter-American Court ordered the State to adopt all the required measures (legislative, administrative and of any other type) to secure the property rights of community members to their traditional land from which they had been expelled. Effective compliance with this type of reparation by the states implies true structural change, eliminating, for example, the causes of the violence and denial of justice that motivated the forced displacement of the inhabitants of Mapiripán, in Colombia, and of the Moiwana village, in Suriname.

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<sup>66</sup>See the Inter-American Court, among others. Case of the *Yakyé Axa Indigenous Community v. Paraguay*. Sentence of June 17, 2005.

<sup>67</sup> Cf. Case of the *Mapiripán Massacre* (Inter-American Court, 2005b, paras. 311 and 313); case of the *Moiwana Village* (Inter-American Court, 2005, para. 212)