



Auto 092/08

Corte Constitucional [C.C.][Constitutional Court], Sala Segunda de Revisi3n No. 092 abril 14, 2008, M.P.: Manuel Jos Cepeda Espinosa, Auto 092/08 (Colom.).

Country: Colombia

Region: Americas

Year: 2008

Court: Constitutional Court

Health Topics: Child and adolescent health, Disasters and emergencies, Environmental health, Health care and health services, Health systems and financing, Mental health, Sexual and reproductive health, Violence

Human Rights: Freedom from discrimination, Freedom from torture and cruel, inhuman or degrading treatment, Freedom of movement and residence, Right to bodily integrity, Right to due process/fair trial, Right to education, Right to health, Right to liberty and security of person, Right to life, Right to property, Right to work

Facts

The Constitutional Court considered the persistence of an unconstitutional state of affairs with regard to forced displacement, which disproportionately affected women in Colombia. The Court originally declared an unconstitutional state of affairs in Ruling T-025 of 2004 and again in Resolution 218 of 2006. More than half the displaced people in Colombia  (54 per cent) were women. The Court considered reports of the Commission on Human Rights, which found that 52 percent of displaced women had suffered some form of physical abuse. Additionally, 8.1 per cent of the women reported having been raped by persons other than their spouse or partner. Forty-four percent reported having been victims of physical aggression by their spouse or partner and 18.5 percent reported that they had experienced some form of physical violence while pregnant. Evidence also showed that displaced women between the ages of 40 and 49 had, on average, 5.8 children, a much higher number than the national average of 3.1. The Court thus analyzed the large-scale, systemic, profound and persistent violation of the fundamental rights of millions of women in Colombia who had been victimized by the complex phenomenon.

Decision and Reasoning

The situation of women, young women, girls and elderly women who had been displaced as a result of the armed conflict in Colombia constituted one of the most critical manifestations of the unconstitutional state of affairs declared in decision T-025 of 2004, given that they had been subject to multiple and reinforced constitutional protections and their rights had been systematically, extensively, and massively violated throughout the nation. The state's response to his problem was glaringly inadequate. The Colombian authorities at all levels had a vital constitutional and international obligation to act decisively to prevent the disproportionate impact of displacement on women, and to guarantee effective enjoyment of their fundamental rights to women who had been affected by displacement. The Colombian authorities at all levels had a vital constitutional and international duty to act decisively to effectively prevent the root causes of the general climate of sexual violence.

Decision Excerpts

Internal displacement has a number of gender-related aspects that account for their qualitatively disproportionate and differential impact on the exercise of fundamental rights of an equally disproportionate number of women. The gender-based aspects of displacement that have been brought to the attention of the Court number eighteen in total and each carries with it serious violations of the constitutional rights of those women affected. Their cumulative effect, which reinforces them and renders them glaringly contrary to the Constitution and to the principle of human dignity on which the Constitution rests, affects all displaced women. These gender-based aspects can be grouped into two main categories: (1) the patterns of gender-related violence and discrimination that are preexisting in Colombian society and that are intensified exponentially by (a) the living conditions of displaced women, and (b) the differential and acute impact of the failures of the state system intended to care for the displaced population to help these women, and (2) the specific problems and needs of displaced women that are not shared by women who are not displaced or by displaced men.

The Constitutional Court asserts that the Colombian State has a current obligation to fulfill, with the greatest diligence, its various constitutional and international obligations to protect, reestablish, and promote the rights of women, girls, young women and older adult women who have been displaced as a result of the internal armed conflict, and to fulfill its obligation to prevent forced displacement of the population, and specifically to prevent the disproportionate impact of this phenomenon on women.

The Colombian State has, therefore, a constitutional and international obligation to rectify, quickly and effectively and with resolve and agility, the numerous failures and gaps in the official response to the situation of women facing forced displacement in the context of the armed conflict. It must acknowledge and respond to the differential and disproportionate impact this phenomenon has on the ability of these women to exercise their most basic fundamental human rights and the different options they have to rebuild their lives once they are no longer displaced. Not to take decisive action with regard to this matter would constitute neglect of the differential impact of forced displacement on women and would contribute in turn to reinforcing the disproportionate impact of this phenomenon on their fundamental rights.

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