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978-1-107-07888-8 - Radical Deprivation on Trial: The Impact of Judicial Activism on Socioeconomic Rights in the Global South

César Rodríguez-Garavito and Diana Rodríguez-Franco

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## RADICAL DEPRIVATION ON TRIAL

This book is an empirical study of contributions by courts in the Global South to comparative constitutionalism. It offers an analytical and comparative framework for understanding these constitutional innovations and illustrates them with a detailed qualitative study of the most ambitious case in constitutional adjudication in Latin America over the last decade: the Colombian Constitutional Court's structural injunction affecting the rights of more than four million internally displaced people (IDPs) in Colombia, and its implementation process. Although the ruling (known as T25 in Colombia) was handed down in 2004, its monitoring process continues to this day. This book traces the case's evolution over the last ten years, from its origin to its effects on law, policy, politics, and public opinion.

It also compares the implementation and effects of T25 with those of other structural rulings on the right to health, the right to food, prison overcrowding, and the right to housing in Colombia, India, and South Africa. The far-reaching insights from this case study will be of interest to scholars of comparative constitutionalism as well as leading constitutional courts in Latin America, Africa, and Asia.

César Rodríguez-Garavito is an associate professor and founding director of the Program on Global Justice and Human Rights at the University of the Andes (Colombia), and a founding member of the Center for Law, Justice, and Society (Dejusticia). He has published widely on law, social movements, and human rights. He is the author or editor of several books including *Law and Society in Latin America* (2015), *Balancing Wealth and Health* (2014), and *Law and Globalization from Below* (2005).

Diana Rodríguez-Franco is a PhD candidate in sociology at Northwestern University and a researcher at the Center for Law, Justice, and Society (Dejusticia). Her research focuses on the political economy of development, comparative environmental politics, sociology of law, and human rights. She is the author of several articles including *Internal Wars, Taxation, and State Building* (2015), *Globalizing Intellectual Property Rights: The Politics of Law and Public Health* (2012), and *Dependency Theory* (with James Mahoney, forthcoming).

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# Radical Deprivation on Trial

THE IMPACT OF JUDICIAL ACTIVISM  
ON SOCIOECONOMIC RIGHTS IN THE GLOBAL  
SOUTH

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32 Avenue of the Americas, New York, NY 10013-2473, USA

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[www.cambridge.org](http://www.cambridge.org)

Information on this title: [www.cambridge.org/9781107078888](http://www.cambridge.org/9781107078888)

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First published 2015

*A catalog record for this publication is available from the British Library.*

ISBN 978-1-107-07888-8 Hardback

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## Acknowledgments

The work that culminates in this book has been as intense as it was challenging. Intense because the field research took us from court and government offices in the center of Bogotá to cities and neighborhoods in the Colombian periphery where the victims of forced displacement live with one of the greatest humanitarian emergencies in the world. Challenging because what we found along the way in Colombia and other countries of the Global South, where courts have challenged radical deprivation, did not easily fit within the models that comparative constitutional studies have created to conceptualize the connections between these different places.

This book attempts to trace these connections through a detailed analysis of the Colombian Constitutional Court's decisions regarding forced displacement, which many have recognized as one of its most notable and innovative contributions to contemporary constitutionalism. What impact has it had on public policy, public opinion, and, lastly, the displaced population's condition? What does this case study tell us about classic questions regarding the role of law and courts in social transformation, or about judicial activism's legitimacy and usefulness? What political, legal, economic, and social effects do the aforementioned judicial interventions have on structural social problems such as these? Lastly, how does it compare to similar cases in India, South Africa, and other countries of the Global South?

In the following pages we explain our analytic framework and the empirical evidence with which we have tried to respond to these questions. But first, we would like to express our deep and hearty gratitude to all the people that supported us in this effort, without whom this endeavor would have undoubtedly been harder and less fascinating. First, we would like to thank our colleagues and friends in the Center for Law, Justice, and Society (Dejusticia), who have accompanied us since the project's beginning with ideas and suggestions. We give special thanks for the unconditional support

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from Carolina Bernal, Mauricio García-Villegas, Diana Guzmán, Diego López, Natalia Orduz, Javier Revelo, Camilo Sánchez, and Rodrigo Uprimny. We also thank the researchers that have contributed to specific aspects of the study: Carlos Andrés Baquero, Julián Berrío, Luisa Ferreira, Catalina Góngora, Patrick M. Higgins, Sean Luna McAdams, Magnolia Prada, Hernán Ramírez, and Benjamin Saper.

We have been privileged to count on four experts' guidance in traversing the various complexities of forced displacement: Andrés Celis, Luis Jorge Garay, Luis Eduardo Pérez, and Clara Elena Reales. We thank them for generously sharing their knowledge with us. Lastly, the members of the Constitutional Court's Special Monitoring Chamber, in particular Lucía Delgado, Ingrid Santos, and Félix Torres, were extremely generous with their time and knowledge when we were updating the book.

For detailed and generous comments on earlier drafts of Chapter 1, we would like to thank Daniel Brinks, Jackie Dugard, Siri Gloppen, Patrick Heller, and Malcolm Langford. For permission to reprint in Chapters 1 and 8 parts of an earlier article (Rodríguez-Garavito 2011a), we are grateful to the Texas Law Review Association.

All those that agreed to be interviewed were equally generous, sharing their experiences and providing us with an essential data source for our study. We thank the judges, public officials, displaced population organizations' leaders, human rights activists, and all others who amongst the demands of daily life kindly opened the doors to their offices or homes to us.

The support of the Ford Foundation, especially Martín Abregú and Felipe Agüero, made possible the action-research projects that resulted in this book. Our deep gratitude also to Zachary Elkins, Tom Ginsburg, and Ran Hirschl for welcoming our work into Cambridge's *Comparative Constitutional Law and Policy* series, and to John Berger for his invaluable guidance throughout the editorial process.

Finally, the most important acknowledgments, the ones that come from the heart but cannot adequately be put into words. César dedicates this book to Ulpi, for filling every place and moment with sweetness and joy. Diana dedicates it to Michel, for valuing and supporting this and other efforts with love and tenderness. If this book helps, even the slightest bit, to ameliorate the situation of those forcefully uprooted from their homes, we know that they both will think it was worth the work.

Abbreviations

ACCI	Colombian Agency for International Cooperation <i>Agencia Colombiana de Cooperación Internacional</i>
Afrodes	Colombian Association of Displaced Afro-Colombians <i>Asociación de Afrocolombianos Desplazados</i>
Bancoldex	Colombian Foreign Trade Bank <i>Banco de Comercio Exterior de Colombia</i>
CCC	Colombian Constitutional Court
CERREM	Committee for the Evaluation of Risks and Recommendation of Measures <i>Comité de Evaluación de Riesgo y Recomendación de Medidas</i>
Cijus	Socio-Legal Research Centre of the University of the Andes <i>Centro de Investigaciones Sociojurídicas de la Universidad de los Andes</i>
CNAIPD	National Council for Integral Assistance to the Displaced Population <i>Consejo Nacional de Atención Integral a la Población Desplazada</i>
Codhes	Consultancy for Human Rights and Displacement <i>Consultoría para los Derechos Humanos y el Desplazamiento</i>
Conpes	National Council for Social and Economic Policy

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	<i>El Consejo Nacional de Política Económica y Social</i>
Dejusticia	Center of Law, Justice and Society <i>Centro de Estudios de Derecho, Justicia y Sociedad</i>
DNP	National Planning Department <i>Departamento Nacional de Planeación</i>
EHA	Emergency Humanitarian Aid
ENDS	National Demographic and Health Survey <i>Encuesta Nacional de Demografía y Salud</i>
ENV	National Verification Survey <i>Encuesta Nacional de Verificación</i>
FARC	Revolutionary Armed Forces of Colombia <i>Fuerzas Armadas Revolucionarias de Colombia</i>
HRW	Human Rights Watch
ICBF	Colombian Institute for Family Welfare <i>Instituto Colombiano de Bienestar Familiar</i>
ICRC	International Committee of the Red Cross
IDMC	Internal Displacement Monitoring Center
IDP	Internally Displaced Person
Incoder	Colombian Institute of Rural Development <i>Instituto Colombiano de Desarrollo Rural</i>
MIJ	Ministry of the Interior and Justice <i>Ministerio del Interior y Justicia</i>
Monitoring Commission	Monitoring Commission on Public Policy on Forced Displacement <i>Comisión de Seguimiento a la Política Pública sobre Desplazamiento Forzado</i>
National Assistance Plan	National Assistance Plan to the Population Displaced by Violence <i>Plan Nacional de Atención Integral a la Población Desplazada por la Violencia</i> (Decree 250 of 2005)
National Roundtable	National Roundtable for the Strengthening of Displaced Persons' Organizations <i>Mesa Nacional de Fortalecimiento de Organizaciones de Población Desplazada</i>
NDP	National Development Plan

	<i>Plan Nacional de Desarrollo</i>
NGO	Non-Governmental Organization
ONIC	National Indigenous Organization of Colombia <i>Organización Nacional Indígena de Colombia</i>
OPD	Displaced Population Organizations <i>Organizaciones de la población desplazada</i>
PIU	Singular Integral Plan <i>Plan Integral Único</i>
The Program	National Program for the Integral Assistance to the Population Displaced by Violence <i>Programa Nacional de Atención Integral a la Población Desplazada por la Violencia</i> (Conpes document 2804 of 1995)
RUPD	Singular Registry of Displaced Population <i>Registro Único de Población Desplazada</i>
SAHRC	South African Human Rights Commission
SENA	National Apprenticeship Service <i>Servicio Nacional de Aprendizaje</i>
SER	Socioeconomic Rights
SGSS	General Health and Social Security System <i>Sistema General de Seguridad Social</i>
SNAIPD	National System for Assistance to the Displaced Population <i>Sistema Nacional de Atención Integral a la Población Desplazada</i>
SNAPIV	National System of Assistance and Reparation to Victims <i>Sistema Nacional de Atención y Reparación Integral a las Víctimas</i>
Social Action Agency	Presidential Agency for Social Action and International Cooperation <i>Agencia Presidencial para la Acción Social y la Cooperación Internacional</i>
UBN	Unmet Basic Needs
UNCDES	Unit of Prosecutors against Crimes for Disappearance and Forced Displacement <i>Unidad Nacional contra el Desplazamiento y la Desaparición Forzada</i>

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UNHCR	United Nations Refugee Agency
UNHRC	United National Human Rights Council
WFP	United Nations World Food Program
WOLA	Washington Office on Latin America