



**Fundación Karisma and Privacy International’s Submission to the UN Special Rapporteur on extreme poverty and human rights to the Call for submissions on Colombia in advance of visit**

17<sup>th</sup> June 2024

Fundación Karisma<sup>1</sup> and Privacy International<sup>2</sup> welcome the opportunity to provide input on the Special Rapporteur’s priority issues to assist in preparations for the visit to Colombia.<sup>3</sup> We highlight in this contribution the challenges facing the existing social protection system in Colombia to address poverty, inequality, and social exclusion.

To understand the full range of obstacles that individuals and households face when seeking access to social protection, policymakers and other actors with a decision-making mandate in this sector must consider and assess the systemic problems emerging from the increased digitalisation, automation and intrusive data collection in the “digital welfare state”.

In Colombia, the government has operationalised the National System for the Identification of Potential Social Program Beneficiaries (Sisbén). Sisbén is a classification algorithm that ranks the population according to income level to grant or deny access to social assistance programs. The implementation of this algorithm is problematic insofar as beneficiaries do not have official explanations on their

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<sup>1</sup> Fundación Karisma is a Colombian civil society organization that seeks to ensure that digital technologies protect and advance fundamental human rights and promote social justice.

<sup>2</sup> Privacy International (PI) is a London-based non-profit, non-governmental organization (Charity Number: 1147471) that researches and advocates globally against government and corporate abuses of data and technology. PI has previously raised the priority issues listed by the Special Rapporteur on Extreme Poverty in its submission [to the OHCHR on the rights of persons with disabilities](#), [to the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health: Input for the thematic report titled “Digital innovation, technologies and the right to health”](#), [to the call for input to a report on the right to privacy in the digital age by the UN High Commissioner for human rights](#), [to the UN Special Rapporteur on extreme poverty and human rights: Input for the thematic report titled “Social protection: a reality check](#), [to the UN High Commissioner for Human Rights \(HCHR\) on the right to privacy and artificial intelligence](#), and to the Special Rapporteur on Extreme Poverty and Human Rights [on digital technology, social protection and human rights](#).

<sup>3</sup> UNOHCHR, Call for submissions on Colombia in advance of visit, <https://www.ohchr.org/en/calls-for-input/2024/call-submissions-colombia-advance-visit>

classification and the algorithm's code is kept secret<sup>4</sup> on the grounds of protecting the financial security of the state. This impenetrability of the algorithm makes it impossible to monitor how it operates.

In addition, the National Planning Department, which manages the Sisbén database, has established data-sharing agreements with 36 public and private entities<sup>5</sup> to verify the information provided by the population during the enrolment surveys. This verification process can lead, in cases where there are discrepancies between the information in the databases of different agencies, to the expulsion or suspension of individuals from social assistance programs<sup>6</sup>—which, in turn, can lead to a violation of their fundamental rights, including their rights to health and to education. When this occurs, it is not possible for the individual to know which data contain discrepancies, nor are there adequate mechanisms available to correct such discrepancies without jeopardizing their rights.<sup>7</sup>

Simultaneously, the information in the Sisbén database has been made available to financial entities to develop credit products aimed at potential Sisbén beneficiaries<sup>8</sup> without these individuals' explicit consent, which constitutes a violation of their right to the protection of personal data.

## **From Sisbén to the Social Household Registry (RSH)**

Sisbén was created in 1994 and has had various versions and updates.<sup>9</sup> Its data sources initially included a survey conducted directly with households. In its latest version, it

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<sup>4</sup> Fundación Karisma, Datos y dignidad: una guía para el uso justo de datos en la protección social desde el caso del Sisbén, 2022, <https://web.karisma.org.co/datos-y-dignidad-una-guia-para-el-uso-justo-de-datos-en-la-proteccion-social-desde-el-caso-del-sisben/>

<sup>5</sup> Fundación Karisma, Recomendaciones de derechos humanos para la regulación del uso de datos en los sistemas de clasificación social en Colombia, 2023, <https://web.karisma.org.co/informe-recomendaciones-de-derechos-humanos-para-la-regulacion-del-uso-de-datos-en-los-sistemas-de-clasificacion-social-en-colombia/>.

<sup>6</sup> Departamento Nacional de Planeación, Manual Operativo Sisbén IV, 2021, p. 22 [https://colaboracion.dnp.gov.co/CDT/DNP/SIG/M-GI-02%20MANUAL%20OPERATIVO\\_Sisben%20IV%20Final.Pu.pdf](https://colaboracion.dnp.gov.co/CDT/DNP/SIG/M-GI-02%20MANUAL%20OPERATIVO_Sisben%20IV%20Final.Pu.pdf)

<sup>7</sup> The digitisation of the application process for social assistance was included in the annual report of the Special Rapporteur on extreme poverty and human rights on the non-take-up of rights in the context of social protection. The report raised concerns about how this process “thus exacerbates the digital divide and may lead to more, not less, uncertainty for vulnerable groups” and that it “can also discourage people from applying.” See A/HRC/50/38, paras. 74–77; Privacy International, Submission for the UN report on social protection (2021), <https://privacyinternational.org/advocacy/4864/privacy-internationals-submission-un-report-social-protection>

<sup>8</sup> Fundación Karisma, Experimentando con la pobreza, 2020, <https://web.karisma.org.co/wp-content/uploads/download-man-ager-files/Experimentando%20con%20la%20pobreza.pdf>

<sup>9</sup> The first version of Sisben was set by Departamento Nacional de Planeación, Documento CONPES 22 “Focalización del gasto social en las entidades territoriales”, 1994, which was later added by Documento CONPES 40 “Focalización del gasto social”, 1997. Sisben II was set by Documento CONPES Social 55 “Reforma del sistema de focalización individual del gasto social”. Sisben III was outlined in Law 715, 2001, Art. 94 and later added by Documento CONPES Social 100 “Lineamientos para la focalización del gasto público social”, 2001, and Documento CONPES Social 117 “Actualización de los criterios para la determinación, identificación y selección de los beneficiarios de programas sociales”, 2006. Finally, Sisbén 4 was published in Documento CONPES 3877

also includes data from the public and private sectors to verify what beneficiaries declare in the survey. For example, information on household location is verified with data from the Geographic Institute, information on expenditure is verified with the tax authority, Experian and the regulatory agency on public services, and information on labour is verified with social security databases and the National Employment Service.<sup>10</sup> During the COVID-19 pandemic, the Solidarity Income program was created, a monetary transfer program that sought to mitigate the economic impacts of the pandemic on households in poverty and economic vulnerability that were not beneficiaries of other social programs. The selection of potential beneficiaries was made through the information registered in Sisbén.<sup>11</sup>

Subsequently, the database formed for Solidarity Income integrated the Social Household Registry.<sup>12</sup> In the 2023 elections, the development plan of the new presidency, "Colombia World Power of Life," includes the Social Household Registry (RSH) and the Universal Income Registry (RUI) as key components of its social policy.<sup>13</sup>

The National Planning Department (DNP) has explained that the Social Household Registry (RSH) is an information system that seeks to replace Sisbén and will be used to target, design public policies, and monitor the living conditions of households. This registry integrates data from public and private entities, encompassing: i) the identification of individuals, ii) the socioeconomic characteristics of the population and territories, and iii) the records of beneficiaries of social programs at the national and local levels.<sup>14</sup> According to the RSH website<sup>15</sup>, all Colombians are registered in the system, but only entities can access the information contained therein.

The former director of the DNP argued that the RSH is necessary because data collected and used by the algorithm could no longer indicate the situation of households and because of potential inefficiencies in data sharing between government agencies and program eligibility. The changes are mainly oriented towards the direct measurement of income to decide who are the beneficiaries of social programs and the creation of a dynamic and interoperable system built on administrative data and self-reporting mechanisms.<sup>16</sup>

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"Declaración de importancia estratégica del sistema de identificación de potenciales beneficiarios (Sisbén IV)" in 2016.

<sup>10</sup> A detailed account of databases and their use for verification of information can be found in Fundación Karisma, Experimentando con la pobreza , 2020, <https://web.karisma.org.co/wp-content/uploads/download-man-ager-files/Experimentando%20con%20la%20pobreza.pdf> , pp.15-16.

<sup>11</sup> Decree 518, 2020, Art. 1.

<sup>12</sup> Decree 812, 2020, Art. 2 Transitory Para.

<sup>13</sup> Law 2294, 2023, Art. 70.

<sup>14</sup> Departamento Nacional de Planeación, Lanzamiento del Registro Social de Hogares, 2023, May 29, <https://www.youtube.com/watch?v=qYL0In5uFs>

<sup>15</sup> Departamento Nacional de Planeación, Registro Social de Hogares, 2024, <https://registrosocial.dnp.gov.co/>

<sup>16</sup> Law 2294, 2023, Art. 70.

Like the algorithm used by Sisbén to generate the classification of individuals, the income estimation algorithm and all the information that integrates the Social Household Registry is kept concealed.<sup>17</sup>

According to figures from the Ombudsman's Office<sup>18</sup>, the update of the Sisbén IV database through the Social Household Registry has affected 60% of Sisbén beneficiaries. As classifications determine which social programs beneficiaries can apply to, changes in the classification might result in the exclusion of a number of people from social programs they were part of but for which the new classification is too high. The classification ranges from extreme poverty (group A) to moderate poverty (group B), vulnerable population (group C) and finally the “not poor, not vulnerable” population (group D). This “abrupt” transition in reclassification has had significant consequences:

- \* 732,740 households have moved out of the extreme poverty classification, which is the lowest classification in the scheme.
- \* 615,526 households are now considered vulnerable.
- \* 63,355 households have been reclassified as not poor and not vulnerable.

Although these changes may seem like socioeconomic improvements, many households have been excluded from assistance programs without substantial improvement in their living conditions.

## **The Rights of Beneficiaries**

In response to continuous requests for human rights protection in relation to Sisbén, the Constitutional Court's position has been that targeting beneficiaries of social expenditure through Sisbén is initially an adequate policy.<sup>19</sup> However, there are cases where Sisbén mechanisms and decision-making processes are clearly insufficient to understand individual conditions and adequately grant access to programs when needed. Exclusion of beneficiaries, lack of relevant information about their classification, and the inability to challenge decisions which impact them are all factors in need of further exploration.

### **1. Exclusion by Design**

The Constitutional Court identified Sisbén’s design as a potential source of exclusion of people from the protection of their rights. In ruling T-177, 1999, the Court held that

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<sup>17</sup> Law 2294, 2023, Art. 70.

<sup>18</sup> Defensoría del Pueblo, Defensoría del Pueblo alerta sobre posible vulneración de derechos ciudadanos con la actualización del Sisbén, 2024, february 17, <https://www.defensoria.gov.co/-/defensor%C3%ADa-del-pueblo-alerta-sobre-posible-vulneraci%C3%B3n-de-derechos-ciudadanos-con-la-actualizaci%C3%B3n-del-sisb%C3%A9n>

<sup>19</sup> Constitutional Court, ruling T- 949, 2006.

“[t]he regulation of Sisbén is inefficient for detecting poor people who, in addition, are in circumstances of manifest weakness due to the diseases that afflict them, [...], for the simple reason that it was not designed to allow them to be identified”. It continued by stating that “socioeconomic stratification and individual targeting are measuring instruments that only serve to measure what was taken into account when designing them, and the Sisbén regulation includes abstract poor entities, and not people in situation”<sup>20</sup>. This position highlights the limited nature of the targeting tool and the fact that the repetition of the survey, the most common remedy offered by the DNP, and which has been ordered by the Constitutional Court, could not solve an issue that comes from the very design of the tool. Beneficiaries might consider their exclusion from a social program to be due to the lack of consideration of certain social conditions that make Sisbén's design unfair but they do not have any formal way to challenge their classification beyond the request of a new survey.

## **2. Access and Information about Surveys**

The problems of access to the survey, updating and correction of information fundamentally impact the most vulnerable people who depend on this classification to access essential services. As the budget and execution of surveys depends on local administrations at the town or city level, lack of political will, or organization results in the lack of access to the survey which means the lack of the classification which is needed for accessing social programs.<sup>21</sup> People also face delays or rejection by civil servants when asking for an appointment to get the survey done.<sup>22</sup>

The Constitutional Court has ruled<sup>23</sup> that the suspension of a specific benefit based on changes in Sisbén classification can only result from a new survey that shows how the socioeconomic conditions of the individual or household have changed. Furthermore, the decision must be made through an administrative order. The order must contain the reasons justifying the exclusion, and the decision must be notified to the beneficiary so that they can act if they decide to challenge the administrative order.

Regarding access to information, the Constitutional Court ruled<sup>24</sup> that changes in beneficiary selection criteria must also be recorded in duly explained administrative orders and must be public so that they can be legally challenged.

## **3. Accountability**

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<sup>20</sup> Constitutional Court, ruling T-177, 1999. Par. 2.2a. This passage is often cited in other rulings. For example, T-003, 2000; T-1083, 2000; T-190-2001; T-258, 2002, T-121 2005, and T-596, 2006.

<sup>21</sup> Interviews carried by Fundación Karisma.

<sup>22</sup> Interviews carried by Fundación Karisma and Constitutional Court, ruling T-231, 2001.

<sup>23</sup> Constitutional Court, ruling T-441, 2006.

<sup>24</sup> Constitutional Court, ruling T-441, 2006.

The Constitutional Court pointed out that Sisbén does not have adequate means for beneficiaries to challenge their classification, except by requesting a new survey. However, simply repeating the survey with the same criteria would result in the same outcome despite potential fundamental rights violations.<sup>25</sup> Outdated Sisbén databases can cause the same violations and are the sole responsibility of the state.

Moreover, the financing mechanisms established in Conpes 3877 of 2016 only provide national funding for the initial surveys. Thus, a mechanism must be ensured to make surveys fully available to anyone who needs them at any time, barring which the system will maintain manifestly incorrect classifications for those most vulnerable.

## Recommendations<sup>26</sup>

The Ombudsman's Office warned that 1.7 million beneficiaries could lose their status as beneficiaries without a real change in their situation. Therefore, it demanded the following<sup>27</sup>:

1. Establish monitoring mechanisms to evaluate the impact of reclassification on households' living conditions.
2. Implement transition policies to ensure that no household suddenly loses access to social programs.
3. Guarantee an efficient and accessible appeals system for households relocated to categories that do not reflect their socioeconomic reality.
4. Conduct broad and effective information campaigns so that households understand the changes, their implications, and the steps to follow if they need support or review.

In addition, we make the following recommendations to address the specific concerns related to digitalisation and algorithmic decision making:

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<sup>25</sup> Constitutional Court, ruling T-231-01.

<sup>26</sup> Fundación Karisma's report on human rights recommendations for regulating the use of data in social classification systems in Colombia emphasizes the importance of a regulatory framework for Sisbén IV and the Social Household Registry to protect human rights and social justice (available at: <https://web.karisma.org.co/wp-content/uploads/2022/03/informe-datos-y-dignidad.pdf>). The report "Experimenting with poverty: Sisbén and data analytics projects in Colombia," explains the system in detail and highlights other problems with the system for people's rights (available at: <https://web.karisma.org.co/wp-content/uploads/download-manager-files/Experimentando%20con%20la%20pobreza.pdf>). In the Joint Stakeholder Submission for Colombia's Universal Periodic Review, Privacy International, Fundación Karisma, and Dejusticia raised issues surrounding SISBEN (available at: [https://privacyinternational.org/sites/default/files/2023-11/Colombia%20UPR%20-%20Shadow%20Report\\_April%202023-English.pdf](https://privacyinternational.org/sites/default/files/2023-11/Colombia%20UPR%20-%20Shadow%20Report_April%202023-English.pdf)).

<sup>27</sup> Defensoría del Pueblo, Defensoría del Pueblo alerta sobre posible vulneración de derechos ciudadanos con la actualización del Sisbén, 2024, february 17, <https://www.defensoria.gov.co/-/defensor%3%ADa-del-pueblo-alerta-sobre-posible-vulneraci%C3%B3n-de-derechos-ciudadanos-con-la-actualizaci%C3%B3n-del-sisb%C3%A9n>

- Ensure transparency and independent auditability of the algorithm used to classify individuals;
- Guarantee that there are efficient and clear channels to update or correct the personal data contained in the databases;
- Guarantee the right of individuals to object to automated decision-making.
- Ensure the protection of the personal data of beneficiaries and prevent their exploitation by way of non-consensual data sharing

We are hopeful that the UNSR will take the opportunity to integrate critical questions about the use of digital technologies in social benefit systems to address poverty, inequality, and social exclusion.