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JUDICIAL PROTECTION OF INTERNALLY DISPLACED PERSONS: THE COLOMBIAN EXPERIENCE

RODOLFO ARANGO RIVADENEIRA
EDITOR

NOVEMBER 2009

THE BROOKINGS INSTITUTION – UNIVERSITY OF BERN
PROJECT ON INTERNAL DISPLACEMENT

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PUBLISHED BY:

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ABOUT THE PROJECT ON INTERNAL DISPLACEMENT

Unlike refugees who cross national borders and benefit from an established system of international protection and assistance, those forcibly uprooted within their own countries, by armed conflict, internal strife, systematic violations of human rights, or natural disasters, lack predictable structures of support. There are currently 25 million internally displaced persons (IDPs) worldwide in at least 50 countries. No continent has been spared. Internal displacement has become one of the more pressing humanitarian, human rights and security problems confronting the international community.

The Project on Internal Displacement was created to promote a more effective national, regional, and international response to this global problem and to support the work of the Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons in carrying out the responsibilities of the mandate. The Brookings-Bern Project on Internal Displacement monitors displacement problems worldwide; promotes the dissemination and application of the Guiding Principles on Internal Displacement; works with governments, regional bodies, international organizations, and civil society to create more effective policies and institutional arrangements for IDPs; convenes international seminars on internal displacement; and publishes major studies, articles and reports.

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LIST OF ACRONYMS

Acción Social	Presidential Agency for Social Action and International Cooperation
CIAT	Inter-institutional Early Warning Committee (Comité interinstitucional de Alerta Temprana)
CNAIPD	National Council for Comprehensive Assistance to the Population Displaced by Violence (Consejo Nacional para la Atención Integral a la Población Desplazada por la Violencia)
CODHES	Consultancy for Human Rights and Displacement (Consultoría para los Derechos Humanos y el Desplazamiento)
CONPES	National Council for Economic and Social Policy (Consejo Nacional de Política Económica y Social)
ELN	National Liberation Army (Ejercito de Liberación Nacional)
ESCR	Economic, social, and cultural rights
IDPs	Internally displaced persons
IGOs	Inter-governmental organizations
INCODER	Colombian Institute for Rural Development (Instituto Colombiano para el Desarrollo Rural)
INCORA	Colombian Institute for Agrarian Reform (Instituto Colombiano para la Reforma Agraria)
INURBE	National Institute of Social Interest, Housing, and Urban Reform
MIJ	Ministry of the Interior and Justice
NGOs	Non-governmental organizations
PIU	Unified Comprehensive Plan (Plan Integrales Únicos)
RUP	Central Registry of Abandoned Properties (Registro Único de Predios Abandonados del INCODER)

RUPD	Central Registry for the Displaced Population (Registro Único de la Población Desplazada)
SAT	Early Warning System (Sistema de Alerta Temprana)
SNAIPD	National Comprehensive Assistance System for the Displaced Population (Sistema Nacional de Atención Integral a la Población Desplazada)
UNHCR	United Nations High Commissioner for Refugees

FOREWORD

Colombia is not only a country with one of the largest populations of internally displaced persons worldwide but also the state with the most important contributions by the judiciary to the protection of such persons. I am pleased to present this publication of the Brookings-Bern Project on Internal Displacement on the *Judicial Protection of Internally Displaced Persons: The Colombian Experience*, which provides the first comprehensive analysis of the role of the Colombian Constitutional Court in addressing the situation of internal displacement in Colombia and the protection needs of one of the world's largest populations of internally displaced persons (IDPs). It is also among the first resources of its kind to examine how a court of law has incorporated the Guiding Principles on Internal Displacement into national law and relied upon this instrument to construe the nature and scope of fundamental rights enjoyed by internally displaced persons at the national level.

Through its jurisprudence, the Colombian Constitutional Court has had a significant impact on government policy and its response to the specific needs and vulnerabilities of the internally displaced. In issuing Decision T-025 of 2004, the Court declared that an "unconstitutional state of affairs" existed as a result of the gap between the rights guaranteed to IDPs by domestic law and the insufficient resources and institutional capacity of the government to protect these rights. In addition to setting forth a basic bill of IDP rights in this Decision, the Court issued a series of orders that spelled out concrete programs and policies that should be pursued in order to overcome the state of unconstitutionality in matters related to internal displacement. This jurisprudence is a particularly fine example of what principled and courageous judges can achieve under difficult circumstances. These orders have compelled national and local officials to take corrective measures to improve assistance to IDPs and give effect to their fundamental rights and freedoms. Although progress in meeting the benchmarks set forth by the Constitutional Courts has been achieved, much more can be done to protect IDPs and end their displacement.

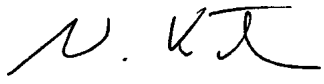
To promote greater awareness and understanding of IDP-related litigation in Colombia and the constitutional complaint process, known as

the *tutela* petition, that gave rise to the Decision T-025 and its progeny, the Brookings-Bern Project commissioned a group of leading legal scholars and practitioners in Colombia to develop analytical studies on the Court's jurisprudence, challenges to its implementation, and the impact this jurisprudence has had on the protection of Colombia's internally displaced. Contributors of these studies include several magistrates of the Constitutional Court, one of whom drafted Decision T-025.

These studies have been translated into English along with Decision T-025 and the Court's subsequent decisions on internal displacement with the purpose of making these decisions and their authoritative analysis easily available to scholars, practitioners, policymakers and others interested in exploring how courts and judicial processes can contribute to comprehensive and effective responses to situations of displacement.

This publication is the most recent in a series of resources developed by the Brookings-Bern Project based on research related to internal displacement and humanitarian issues, peacebuilding, and justice in Colombia. Other publications in this series include *Internal Displacement and the Construction of Peace* and *Protecting the Displaced in Colombia: The Role of Municipal Authorities*, both of which have been disseminated widely and are available on the Project's website. In addition, English-language versions of the Constitutional Court's decisions analyzed in this publication have also been made available online by the Project.

I hope each of these resources will contribute to the ongoing efforts by government officials, civil society, and the international community to protect the fundamental rights of Colombia's displaced persons and to find solutions to their displacement in a just and equitable manner. I am convinced that beyond Colombia they will inspire lawyers, judges and human rights activists to improve the legal protection of internally displaced persons through judicial means.



Walter Kälin
Representative of the Secretary-General
on the Human Rights of Internally Displaced Persons

ACKNOWLEDGEMENTS

The Brookings-Bern Project on Internal Displacement wishes to express its appreciation to the authors of this publication and to the many individuals who contributed to finalizing the manuscript over the course of its long incubation period. We are particularly indebted to Professor Rodolfo Arango Rivadeneira of the Universidad de los Andes for his dedication to seeing this project through to its completion. Special thanks are also due to Gregory Pinel for his unwavering commitment to editing the manuscript. The Project similarly wishes to express our gratitude to Amina Ibrahim and Erin Williams for reviewing and preparing the manuscript for publication. Federico Guzmán translated the manuscript from Spanish to English. Sarah Deardorff reviewed the final draft and provided valuable comments. We also wish to thank Erin Bourgois, Khalid Koser, and Jessica Wyndham for their valued assistance in managing this project. Funding this for publication was provided by the Canadian Department of Foreign Affairs and International Trade (DFAIT), the Swiss Federal Department of Foreign Affairs, the UK Department for International Development, and the Paul D. Schurgot Foundation. No set of acknowledgements would be complete, however, without mentioning the internally displaced persons of Colombia to whom this publication is dedicated.

IDPs at a transit center in Los Altos de Cazuca, Ciudad Bolivar shantytown, Bogota. Photo courtesy of UNHCR, B. Heger January 2006.

CHAPTER 1

The Constitutional Protection of IDPs in Colombia

Manuel José Cepeda Espinosa[*]

Colombia is a land of sharp contrasts, and forced internal displacement is no exception. Colombia is afflicted by the globe's second largest humanitarian crisis in this field, with between three and four million internally displaced persons (IDPs) who come from the most vulnerable segments of the rural population. At the same time, Colombia also has one of the world's most progressive legal and judicial systems for the human rights protection of displaced persons. In spite of the violence Colombia has endured as a result of its internal armed conflict, the country also has a one-hundred year tradition of democracy, rule of law and judicial review of legislation. Moreover, the generous human rights provisions of the 1991 Constitution, enforced by all of the country's judges through the constitutional writ of protection of human rights—*acción de tutela*—have marked a significant turning point in the lives of ordinary citizens and opened their possibilities of access to the administration of justice in concrete cases.

In this chapter, I present a general overview of the judicial protection of the constitutional rights of IDPs in Colombia. I shall begin with a brief depiction of the problem of forced internal displacement in the country (Section I) and a description of the main decisions adopted in this regard by the Constitutional Court (Section II). Thereafter I intend to describe the philosophy of the judgments adopted in this sphere (Section III), highlighting their contributions to the protection of this vulnerable population's rights (Section IV) and the results they have produced in legal and factual terms (Section V). Finally, I shall point out the main areas where improvements are still required, as well as some dilemmas and risks that the Colombian authorities will have to address in the future (Section VI).

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[*] *Justice (2001-2009), Constitutional Court of Colombia.* I am grateful to Federico Guzmán for his support in the preparation of this essay.

I. The problem of forced displacement in Colombia and its context[1]

As a consequence of the armed conflict that has spanned the last four decades, Colombia has one of the world's highest rates of forced internal displacement. There was a sharp increase in this phenomenon since the nineties. The immediate effect of this massive, violence driven phenomenon is a humanitarian crisis, the magnitude of which has placed Colombia just behind Sudan in terms of global displacement figures and at the head of Latin America's long list of socio-political emergencies. Indeed, Colombia has roughly four million forcibly displaced persons within its national borders, afflicted at an everyday level by massive, systematic and grave violations of their fundamental rights.

In order to frame the problem of forced internal displacement in the Colombian context, it is important to bear in mind several basic features of this country's territory, population and location. Colombia has a territorial size of 1,141.748 km^2. The presence of illegal armed groups has varied over the last two decades. Nevertheless, even at the peak of the illegal armed groups' territorial presence, they only extended control over less than one-fifth of the territory, an area which did not include the main urban centers. Their presence has been reduced in the last six years, so that illegal armed groups are now concentrated in the rural areas of the Amazon, in the departments of the south of Colombia[2], and near the border with Ecuador, with some presence also in the border areas near Venezuela. Colombia's population totals 41.5 million inhabitants, in addition to almost three million Colombians who live abroad and who maintain ties with their families in the country.

Even the most exaggerated estimates acknowledge that the number of guerrillas and their associated militias is no higher than 40,000

[1] The information included in this description of the problem of forced internal displacement in Colombia has been taken from the different reports and assessments submitted to the Constitutional Court by governmental, non-governmental and international sources. Specific figures and detailed assessments may be found in the corresponding websites: www.accionsocial.gov.co (for the official governmental data), www.codhes.org (for the information produced by the different organizations of the displaced population and the Church), or www.acnur.org (for the different reports produced and compiled by the office of the UN High Commissioner for Refugees).

[2] Colombia is a unitary republic made up of thirty two administrative units known as departments.

individuals. In 2004, paramilitary groups began a gradual demobilization process, which has so far led to the demobilization of 32,000 persons. The Government is currently advancing a complex peace process with these groups, as well as peace conversations with one of the active guerrilla organizations, the National Liberation Army (ELN). On the other hand, it has sharply escalated its military offensive against insurgent groups across the country and hastened its drive in the fight against illicit drug crops—chiefly by way of aerial fumigation and increased manual eradication—*inter alia* through military and intelligence cooperation programs such as Plan Colombia, mainly financed by the United States. All of the above factors cause the forced displacement of individuals, families and communities—usually from the countryside to urban environments. Some paramilitaries still operate and some have rearmed themselves, but their numbers have decreased significantly in recent years.

The Colombian internal armed conflict is complex and long-standing. It is currently waged in specific rural areas by three main actors: the State's armed forces, extreme-right paramilitary groups and extreme-left guerrillas. All of these actors invest considerable resources to fuel Colombia's war. The conflict, which is connected to the political violence that struck the countryside in the middle of the twentieth century, was initially motivated by social and agrarian claims pursued during the 1960s through violent means by incipient guerrillas of a peasant and communist profile. However, the conflict's current dynamics differ greatly from its initial course of action, and have now acquired a markedly military and territorial nature, permeated at all levels by the drug trade. The civilian population has borne the brunt of the violence and suffered unspeakable outrages to its most basic human rights. Colombian violence ordinarily includes acts such as massacres, selective murders, forced disappearances, extra-judicial executions, kidnappings, torture, extortion, forced recruitment of children and others by illegal armed actors, attacks against defenseless villages with internationally prohibited weapons (including, for example, rudimentary explosives such as domestic gas pipes used against civilians), blockades, confinements, mass arbitrary detentions, acts of terrorism, installation of anti-personnel mines and sexual assault of women and children. All of the parties to the conflict have been found to be responsible for such acts, whose victims number in the tens of thousands each year.

Forced displacement is not new to Colombia; it was frequent during the violent political clashes that have shaken the country since the 1940s, and it played an important part in shaping the socio-geographical

structures that prevailed during the second half of the twentieth century. However, especially since the 1990s, forced displacement has gained momentum at a disturbing rate. The main factor behind the current trend of forced internal displacement is the armed conflict. Forced displacement takes place in Colombia either as a deliberate criminal act committed (at differing rates) by the parties to the armed conflict, or as a direct byproduct of the violence that marks the confrontation.

According to the United Nations High Commissioner for Refugees (UNHCR), the displaced population totals 8 percent of the Colombian population, and Colombia has the second largest displaced population in the world after Sudan. However, there is disagreement over the total number of IDPs in the country. It is now commonly acknowledged that from 1995 to 2007 between three and four million Colombians were expelled from their habitual places of residence or work, mainly in the countryside but also in urban settings, thereby expanding cities, towns and villages' ever-expanding slums.

Every single municipality in the country, regardless of its size, has been affected by the phenomenon. According to the data included in governmental databases, each of the country's 1,098 municipalities has been affected by forced displacement, either because part of its population has fled, or because it has received displaced persons and families. However, a careful assessment, such as the one made by UNHCR, reveals that 189 municipalities are responsible for the expulsion of 70% of IDPs, and that these municipalities only account for 16% of the country's population.

Current estimates of forced displacement in Colombia fluctuate between 1.9 million (in the Government's database) and 3.9 million IDPs (according to unofficial estimates by NGOs, including organizations of the displaced population, and the Church) between 1995 and 2006. However, in 2005, the Head of the *Acción Social*, which is in charge of the overall coordination of the system for assisting the displaced population, publicly recognized that the figure was over three million. Differences in the estimates of forced displacement between governmental and non-governmental records are due to several factors that prevent the entire affected population from being included in the official database. These factors include the following: under-registration; refusal of registration by the officials in charge of feeding the system; systematic non-recognition of certain types of displacement (State-caused displacement through the aerial fumigation of crops, intra-urban or intra-shire displacement, and

individual or "drop-by-drop" displacement, which is difficult to track); reluctance of the victims to be officially recognized as IDPs; ignorance; and fear or impossibility of accessing State authorities. Most under-registration involves those who were displaced before the official database was managed by a special presidential agency.

Regardless of the considerable differences in the calculation of the magnitude of the phenomenon, it is clear that forced displacement in Colombia now constitutes one of the worst humanitarian crises in the world. Colombian individuals and families who have been forcibly expelled from their lands and residences, or who are at risk of becoming displaced, are among the most harshly affected victims of the armed conflict. This assessment takes into account the displaced population's large number, its overall conditions of deprivation and misery, and its extreme vulnerability to all sorts of general, specific and extraordinary risks. Several factors also contribute significantly to the daily experience of being displaced, resulting in a complex cycle of human rights violations, thereby degrading people's quality of life. Some of these factors are: high levels of poverty; the loss of cultural and social bonds; the abandonment of the scarce patrimonial assets held before displacement; low levels of education; the shock of having experienced traumatic acts of violence; being forced to live in alien settings with no social or official support; severe difficulties in finding employment in urban areas; limited educational opportunities for children; and limited access to social security, health and pension benefits.

Forced displacement disrupts the social fabric at both the place of origin and destination, which not only hampers families' basic patterns of self-provision, participation and socialization, but often causes the rupture and collapse of family ties themselves. Official and unofficial sources acknowledge that most displaced households are headed by single, separated or widowed women who are usually illiterate, unemployed and unprepared for tasks other than domestic or agricultural activities, but who nevertheless must provide for their typically large families through whatever means they are able to find. Children and youth under 18 years of age account for over 50 percent of the displaced population, and their families also include significant proportions of elderly persons and individuals with disabilities, all of whom are forced to live in miserable conditions in marginal urban settlements, with the nutritional, health, educational, social and psychological consequences that inescapably arise. These consequences include: unusually high rates of premature pregnancy and childrearing; higher exposure to the risks of prostitution; forced

recruitment and trafficking in human beings; initiation into criminal gangs; high levels of child and infant malnutrition; and an increase in domestic violence rates. Furthermore, the country's indigenous and Afro-Colombian populations have been disproportionately affected by forced internal displacement. Violently expelled from their ancestral territories—which, in addition to the natural resources located there, have become the axis of the armed conflict—more than a dozen of the country's indigenous cultures are at high risk of extinction in the near future.

II. State responses to forced displacement in Colombia. A landmark decision: T-025 of 2004

The institutional response to the problem of forced displacement in Colombia has undergone three main stages: 1) before 1997 (prior to the adoption of specific legislation to address the issue); 2) between 1997 and 2004 (with the adoption and initial implementation of Law 387 of 1997); and 3) from 2004 onward (after the issuance of Decision T-025 of 2004).

A. Law 387 of 1997: its importance in spite of implementation failures

Before 1997, the State responded to forced displacement in an *ad hoc* and ineffective manner. A specific national policy to address the problem did not exist. Aid of any sort was provided to IDPs within the general social welfare and emergency response systems. Overall, the problem was given an extremely low priority and accorded little visibility within the Colombian public sphere.

The adoption by Congress of Law 387 of 1997 represented a major breakthrough. This Law, composed of 33 articles, enshrines in legal terms a distinct public policy for assisting IDPs, structured upon three main pillars. First, it includes an enumeration and definition of the rights and duties of IDPs. In general terms, this is consistent with the formulation of rights and duties set forth in international instruments. Second, it creates a National Comprehensive Assistance System for the Displaced Population (SNAIPD); this includes a central coordinating council, in which Ministers and other high-level public officials have a seat. It also creates territorial councils charged with aiding in the policy's implementation at the departmental and municipal levels, and it mandates the creation of a specific national plan to address the phenomenon, as well as a national information network to facilitate the effective implementation of the system. Third, it structures the policy in accordance with three main

phases of displacement: prevention and protection during displacement, emergency humanitarian aid following displacement, and socio-economic stabilization, including return and re-establishment in order to find durable solutions to displacement. There has been a significant gap between the formulation of this policy in Law 387 and its effective implementation in practice, and it has several concrete flaws, which have been identified by social organizations and judicial bodies over the course of the years. Nonetheless, it is undeniable that the very adoption of Law 387 of 1997 represented a substantial achievement for the Colombian institutional framework, as it did the following:

- contributed to identifying IDPs' specificities and particular needs;
- officially recognized the gravity of the problem of forced displacement in Colombia;
- increased the visibility of and priority of assistance toward IDPs at all the relevant official levels;
- countered the risks of policy discontinuance resulting from the periodic change of public officials;
- provided a stable framework for protection;
- distinguished the special situation of IDPs from the classic response to "emergencies;"
- created a bureaucracy specifically charged with assisting IDPs;
- involved the entire Colombian State within the response system; and initiated the introduction of a "rights-based" perspective for the protection of the rights of IDPs.

Given the magnitude of these achievements, social and political organizations have recently celebrated the tenth anniversary of the Law's adoption, taking the opportunity to point out the massive gaps in its implementation and the continuous plight of IDPs in Colombia.

B. *Acción de tutela* and Decision T-025 of 2004

The third phase of the institutional response begins with the adoption of Decision T-025 of 2004 by the Constitutional Court, in response to hundreds of *tutela* petitions by IDPs during 2003.

Since the adoption of the 1991 Constitution, Colombia has developed a large body of jurisprudence with regards to human rights. Among the constitutional mechanisms to ensure the effective exercise of human rights is the *acción de tutela*, a petition procedure, which enables any person whose fundamental constitutional rights are being threatened or violated to request judicial protection of their fundamental rights. Citizens may file informal claims without an attorney, before any judge in the country with territorial jurisdiction. That judge is legally bound to give priority attention to the request over any other case. Judges have a strict deadline of ten days to reach a decision and, where appropriate, to issue a mandatory and immediate order.

In accordance with the requirements of the specific situation, the *tutela* procedure allows judges to order the adoption of any measure necessary to protect threatened fundamental rights, even before rendering a final judgment. The first judgment can be appealed before the superior judge or court. In addition, every single *tutela* judgment can be reviewed by the Constitutional Court, which may, with total discretion, select those that it considers necessary to correct or that it considers pertinent for the development of constitutional law. The Constitutional Court can then issue a corresponding final judgment. Except for decisions in which the Court seeks to unify its doctrine on a given matter (*Sentencias de Unificación* or "Unification judgments") or its decisions of abstract judicial review of legislation that are adopted by the Full Chamber (*Sala Plena*), *tutela* judgments are issued by Review Chambers (*Salas de Revisión*).

The Court's Review Chambers are composed of three magistrates and there are nine chambers, each presided over by one of the nine justices. Although the *tutela* is formally defined in the Constitution as a means to protect fundamental rights, the Constitutional Court has issued numerous and uniform decisions expanding the catalogue of protected rights beyond basic civil and political rights, to include economic, social and cultural rights, and indigenous peoples' rights. The constitutional doctrine concerning the enforceability of such rights is still in the making. Moreover, the protective spirit that is usually present in Colombian constitutional case law has expanded in several ways.

First, incorporated entities are now allowed to make use of this action. This development recognizes the existence of IDPs' fundamental rights because of their definition as legal entities. Second, the writ now includes all State authorities and officials as potential respondents in such a claim, making them potential violators of fundamental human rights. Third, the

jurisprudence allows the presentation of *tutela* claims against private persons in positions of power, provided that certain conditions are met. This substantial expansion of the *tutela* procedure's admissibility has had the effect of granting a higher degree of protection to all types of constitutional fundamental rights. More and more citizens are using the *tutela* in defense of civil liberties, social rights and indigenous peoples' collective rights.

IDPs often resort to judicial defense mechanisms, especially to the *acción de tutela*, in order to obtain a State response to their problems. Since 1997, the Court has addressed individual IDP *tutela* cases that invoke specific fundamental rights—including rights to non-discrimination, life, access to health and education services, minimum income, housing and freedom of movement. Since its first decisions, the Court acknowledged the existence of a humanitarian crisis. By 2003 the Court had dossiers submitted by over a thousand IDP families.

In 2004, after reviewing over one hundred *tutela* files, the Colombian Constitutional Court formally declared that the fundamental rights of the country's internally displaced persons were being disregarded in such a massive, protracted and reiterated manner, that an "unconstitutional state of affairs" had arisen.[3] This conclusion was reached after verifying that the competent authorities were not duly addressing the extremely vulnerable conditions of IDPs. This conclusion was also reached because the Court found that responsibility rested not only with the actions or omissions of a single State entity, but also as a consequence of structural factors affecting the entire public policy for assisting the displaced population. The result, the Court concluded, caused a wide gap between the formal legal definition of the policy's components (as reflected in Law 387 of 1997) and the financial resources allocated for said policy's execution (as well as the State's inadequate institutional capacity to implement the policy). The Court therefore identified two main factors that accounted for the State's incapacity to respond adequately to the needs of the displaced population and thereby to effectively protect its rights: "(i) The precariousness of the institutional capacity to implement the policy, and (ii) the insufficient appropriation of funds."[4]

[3] Colombian Constitutional Court, Decision T-025 of 2004, adopted by the third chamber of the Court, composed by Manuel José Cepeda-Espinosa, Jaime Córdoba-Triviño and Rodrigo Escobar-Gil.
[4] *Id.*, Section 6, initial paragraph.

The *institutional capacity* to protect the displaced population was affected at three levels: (i) the design and regulatory development of the public policy to respond to forced displacement; (ii) the implementation of the policy; and (iii) the follow-up and evaluation of the activities carried out during implementation of the policy.

Regarding the design and regulatory development of the policy, the Court identified seven salient problems: (i) the inexistence of a plan of action for the overall national system of assistance, precluding it from having a global view of the policy and its operation;[5] (ii) a lack of specific goals, priorities or indicators;[6] (iii) a vague distribution of functions and responsibilities between the different participating state entities;[7] (iv) a perceived absence of policy elements regarded as fundamental by its implementing agencies;[8] (v) a lack of implementation and development of many of the policy's elements, including those that concerned the participation and information of IDPs, the administration of international cooperation in the field, awareness-raising activities, the training of responsible public officials and the recognition of gender-, ethnicity- and age-based specificities among the target population;[9] (vi) the excessive

[5] "There does not exist an updated plan of action for the operation of SNAIPD, which can allow it to take a comprehensive look at the policy." [*Id.*, Section 6.3.1.1.-(i)].

[6] "No specific goals or indicators have been established, which can allow for a verification of whether the purposes of the policy have been fulfilled or not. There are no clear priorities or indicators." [*Id.*, Section 6.3.1.1.-(ii)].

[7] "The distribution of functions and responsibilities between the different entities is vague. This is proven by the facts that (a) even though the entities that form part of SNAIPD and the territorial entities have been assigned functions in accordance with their jurisdictions, the pertinent legal provisions do not clarify exactly what each one of them must do, and on many occasions, responsibilities are duplicated; (b) the Social Solidarity Network is supposed to have coordinating functions, but lacks adequate instruments to carry out an effective coordination of the other entities that form part of SNAIPD. These deficiencies hamper the coordination of the different entities' actions, they preclude an adequate follow-up of the conduct of affairs, they undermine the establishment of priorities among the most urgent needs of the displaced population, and they stimulate the inaction of the entities that form part of SNAIPD and the territorial entities." [*Id.*, Section 6.3.1.1.-(iii].

[8] "Some of the organizations that provided reports for the present proceedings registered an absence, or a serious insufficiency, of some elements of the policy they regard as fundamental. In this sense, (a) no time terms are set for achieving the stated objectives, (b) there is no indication of the level of budgetary appropriations required to comply with the stated goals, (c) there is no concrete provision of the human resources needed to implement the policies, and (d) the appropriate administrative resources required for executing the policies are not assigned either." [*Id.*, Section 6.3.1.1.-(iv)].

[9] "Many of the policies to attend the displaced population have lacked sufficient development. This is particularly the case in regards to the following aspects, according

rigidity of the system's design in the provision of emergency humanitarian aid;[10] and (vii) a lack of clarity in the distribution of functions among competent entities in the field of urban productive projects.[11]

Problems in the policy's implementation[12] were identified by the Court, in section 6.3.1.2. of the judgment, as follows: (i) insufficient concrete actions by the competent entities resulting in inadequate levels of implementation;[13] (ii) inappropriate means employed in the policy—

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to the reports presented to the Court: (a) the participation of the displaced population in the design and execution of the policies has not been regulated. No efficient mechanisms aimed at fostering real intervention by the displaced population have been designed. (b) The displaced population lacks timely and complete information about its rights, the institutional offer, the procedures and requirements to gain access to it, and the institutions in charge of its provision. (c) The procurement and administration of the resources provided by the international community are managed in a fragmented and disorderly way. (d) There is no comprehensive or concrete development of the policies to raise the awareness of civil society about the magnitude of the phenomenon, and to involve the business sector in programs for its resolution. (e) There has not been any comprehensive development of programs or projects aimed at training the public officials. Especially at the territorial level, public officials are not adequately informed about their functions and responsibilities, the features of the phenomenon of displacement, nor about the necessities of the displaced population. They are not trained either in dealing with persons in conditions of displacement. (f) The policies to facilitate access to the institutional offer by the weakest displaced groups—such as women providers, children or ethnic groups- have not been regulated[9]. There are no special programs to respond to the specificity of the problems that affect said groups." [*Id.*, Section 6.3.1.1.-(v)].

[10] "(…) the design of emergency humanitarian aid, which emphasizes the time factor, has turned out to be too rigid to attend the displaced population effectively. The three-month time limit does not respond to the reality of the continuous violation of their rights, in such a way that the renewal of this aid over time does not depend on the objective conditions of that population's needs, but on the simple passage of time." [*Id.*, Section 6.3.1.1.-(vi)].

[11] "The distribution of functions in regards to urban productive projects is unclear, given that the IFI is undergoing a merger. The same may be said of the land distribution programs, because the INCORA is in liquidation. The evidence tends to indicate that at the moment, there are no entities that include within their functions the components related to land distribution and productive projects at the urban level." [Section 6.3.1.1.-(vii) of the judgment].

[12] The Court held in general terms, in the heading of section 6.3.1.2. of Colombian Constitutional Court, Decision T-025 of 2004, that the policy "(…) is still centered in the formulation stage (…) and there exists an excessively broad gap between the issuance of legal provisions and the drafting of documents, on the one hand, and practical results, on the other."

[13] "As regards the level of implementation of the policies for the attention of the displaced population, the Court notes an insufficiency of concrete actions by the entities who have been assigned functions in this field. Many of the entities that form part of

means that were inadequate or not pertinent to achieving the policy's stated aims;[14] (iii) impossible evaluation mechanisms to assess the timeliness of the State response and program execution, although some

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SNAIPD have not yet created special programs for the displaced population, even though the latter were defined as necessary. In turn, some of the territorial entities have failed to appropriate the necessary human or financial resources to comply with their obligations, and they have not yet established territorial committees. This is proven in regards to almost all of the components of the attention package: (a) prevention mechanisms, i.e. the Early Warning System and Decree 2007—with regard to the freeze-up of transactions over rural land in areas with displacement risk-, have not been applied in a comprehensive manner, and they have been unable to prevent the phenomenon. (b) Information systems do not include all of the aid received by the registered population, nor the immovable properties abandoned on account of the displacement. (c) Emergency humanitarian aid is provided in a delayed manner, and with very low coverage levels. (d) As to the education of the displaced population in schooling age, the scarcity of school seats in some places is added to the lack of programs that can facilitate support in books, materials and minimum elements required by the different institutions, which stimulates school drop-out. (e) Socio-economic stabilization programs and land/housing distribution programs are made available to a minimum number of displaced persons. In the few cases in which credit facilities are granted, the responsible entities fail to provide the necessary counseling and advise. (f) As to the component on return processes, the economic re-activation programs have not been applied, and the elements which can allow the communities that try to return to their places of origin to survive autonomously have not been provided. The mechanisms to protect the property or possession of land by displaced persons have not been implemented either." [*Id.*, Section 6.3.1.2.-(i)]

[14] "With regard to the adequacy and effective pertinence of the different components of the policy, the Chamber notes that, in certain cases, the means used to achieve the aims of the policy are not appropriate, as indicated by the reports presented to the Court: (a) In the field of socio-economic stabilization of displaced persons, the requirements and conditions to gain access to capital are not coherent with the economic reality of displaced persons. For example, in order to have access to some of the offered programs, the displaced population must prove that they own a house or land in which to develop the project. Likewise, the technical evaluation criteria for the productive projects submitted for financing do not match the conditions and skills of displaced persons. In addition, the establishment of maximum levels of finance for productive options excludes the possibility of taking into account the socio-demographic and economic specificities of each project. (b) In regards to health care, access by the displaced population to health services has been obstructed by the procedures required to have access to the service, on the one hand, and those required for the entities in charge of providing the service to be able to charge it to the FOSYGA[14], on the other. (c) The requirements and conditions to have access to housing loans do not match the economic necessities of displaced households. The requirements of savings periods, personal and commercial references, and other conditions, are in many cases impossible to meet by the displaced population. Such demands are discriminatory, and constitute entry barriers for access to this type of aid. (d) As to education, requiring displaced households to pay a minimum payable amount so that displaced persons in schooling age can gain access to educational positions has been an -often insurmountable- barrier for these minors' registration in the system." [*Id.*, Section 6.1.3.2.-(ii)].

deficiencies in this regard could be clearly identified;[15] (iv) inflexible components of the policy, resulting in deficient responses to the problem at hand;[16] and (v) the generation of negative impacts by some of the tools used to implement the policy upon the achievement of its goals.[17]

[15] "With regard to the implementation and continuity of the policy, given that there are no mechanisms to follow-up the conduct of affairs by the different entities that form part of SNAIPD, nor fixed periods to evaluate the achievement of the objectives set for each component of the attention package for the displaced population, it is not possible to evaluate the timeliness of the responsible entities in the execution of the programs. Nevertheless, it is possible to observe some deficiencies in the implementation of the policies, in regards to their times of execution. For example, the disbursement of the funds required to begin productive projects is delayed, and it is not made in accordance with the productive cycles of the businesses that actually manage to have access to credit aid. In addition, the provision of aid and services throughout the different stages of the process of attention to the displaced population is carried out in a discontinuous and delayed manner… Hence the provision of emergency humanitarian aid can take up to six months, whereas the waiting periods to gain access to socio-economic stabilization programs and housing solutions are even more delayed (two years). In this sense, the transition period between the provision of emergency humanitarian aid and the socio-economic stabilization aid is excessively long, which forces the displaced population to bear highly precarious living conditions." [*Id.*, Section 6.1.3.2.-(iii)].

[16] "(…) the implementation of the policy, in some of its components, has been excessively inflexible, for example, in the field of contracts, which precludes a prompt institutional response to the problem, that responds to the situation of emergency of the displaced population." [*Id.*, Section 6.1.3.2.-(iv)].

[17] "Finally, certain tools used to implement the policy have generated negative effects upon the materialization of its objectives: (a) in the case of healthcare, the adoption of Memorandum 042 of 2002 which, in spite of having been designed to avoid double payments and to reincorporate part of the displaced population to the social security health system, generated over time a barrier in access to health services. (b) In regards to emergency humanitarian aid, it is noted that the domiciliary visit requirements imposed for the provision of said service have contributed to delay its provision. (c) In the housing acquisition subsidy programs, the lack of adequate information about the areas which are apt for the construction of housing have generated re-locations in marginal neighborhoods that lack basic public utilities, or in high-risk areas. (d) Agrarian credit lines have been developed in such a way that the responsibility of paying the debt is not assumed by displaced persons, but by organizations that "incorporate" the displaced population into productive projects, which generates a disincentive for these organizations to actively participate in the implementation of said solutions. In turn, this has made access by the displaced population to income generation programs extremely difficult." [*Id.*, Section 6.1.3.2.-(v)].

Finally, the policy's follow-up and evaluation was affected by problems in the existing information systems[18] and lack of evaluation mechanisms.[19]

The conclusion drawn by the Court after its assessment was clear:

> "(…) the State's response has serious deficiencies in regards to its institutional capacity, which cross-cut all of the levels and components of the policy, and therefore prevent, in a systematic manner, the comprehensive protection of the rights of the displaced population. The *tutela* judge cannot solve each one of these problems, which corresponds to both the National Government and territorial entities, and to Congress, within their respective margins of jurisdiction. Nevertheless, the above does not prevent the Court, in verifying the existence of a situation of violation of fundamental rights in concrete cases, from adopting corrections aimed at ensuring the effective enjoyment of the rights of displaced persons, as it will do in this judgment, nor from identifying remedies to overcome these structural flaws, which involve several State entities and organs."[20]

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[18] "As regards information systems, (a) the problem of sub-registration persists, particularly in cases of minor displacements, or individual ones, in which the affected persons do not resort to the Network to request their inscription. This weakness prevents an adequate estimation of the future effort that will be necessary to design the policies on return and devolution of property or reparation of damages caused to the displaced population; it is an obstacle to the exercise of control over the aid provided by other agencies; and it hampers the evaluation of the impact of the aid provided. (b) The single registration system does not include the aid that is not provided by the Social Solidarity Network, which excludes the follow-up of the provision of the education, healthcare and housing services from registration. (c) Registration systems are not sensitive to the identification of the specific needs of the displaced persons that belong to highly vulnerable groups, such as women providers and ethnic groups. (d) Registration systems do not include information about the lands that were abandoned by the displaced persons. (e) The available information on each displaced person is not aimed at identifying their possibilities of autonomous income generation in the receiving areas, which undermines the implementation of socio-economic stabilization policies." [*Id.*, Section 6.3.1.3.-(i)].

[19] "(…) there do not exist systems to evaluate the policy. [fn.: The existence of these instruments is, to say the least, very difficult, if it is taken into account that there are no precise objectives, clear goals, or terms for the achievement of such goals nor specific responsibilities in regards to their materialization.] The policy does not include a system designed to detect mistakes or obstacles in its design and implementation, needless to say one that allows an adequate and timely correction of such failures. There are no systems or indicators for the verification, follow-up and evaluation of results, either at the national or territorial levels." [*Id.*, Section 6.3.1.3.-(ii)].

[20] *Id.*, Section 6.3.1.4. of the judgment.

On the other hand, the Court established that the appropriation of resources for the policy's implementation was insufficient to meet its different goals, thus preventing the effective protection of the displaced population's rights:

> "The central government has destined financial resources which fail to meet the requirements of the policy, and many territorial entities have failed to destine their own resources to attend the different programs, even though the [National Council for Economic and Social Policy] CONPES Documents[21] established the level of resources required to secure the fundamental rights of the victims of displacement. The insufficiency of resources has affected most of the components of the policy, and it has caused the entities that form part of SNAIPD to be unable to advance concrete actions which are adequate to materialize the objectives set forth in the policy. It is for this reason that the level of implementation of the policies is insufficient *vis-á-vis* the necessities of the displaced population, and that the degrees of coverage of its different components are so low. // Even though there was a significant increase in the resources destined to assist the displaced population between 1999 and 2002, the absolute level of the amounts included in the budget is still insufficient, and way below the levels required to (a) satisfy the demand of displaced persons, (b) protect the fundamental rights of the victims of this phenomenon, and (c) effectively develop and implement the policies established in the Law and developed by the Executive through regulations and CONPES documents. In addition, this Chamber verifies that for the year 2003, the amount of resources expressly and specifically appropriated for the execution of said policies was reduced. For example, in 2002 103.491 million pesos were assigned within the Nation's General Budget for the "displaced population", whereas in 2003 such amount was of 70,783 million, thus undergoing a 32% reduction in the funds appropriated for that purpose."[22] [23]

The Court acknowledged that the limited number of resources appropriated for the implementation of this policy was a reflection of the country's critical fiscal situation. However, it expressly held that this

[21] CONPES documents are adopted by the National Council on Economic and Social Policy, and they contain the Council's guidelines on specific aspects of the policy.
[22] See section 1.1. of Annex 4 of this judgment.
[23] Section 6.3.2. of the judgment.

situation did not allow for a reduction of the State obligations established in the existing legislation:[24]

> "(…) from the constitutional point of view, it is imperative to appropriate the budget that is necessary for the full materialization of the fundamental rights of displaced persons. The State's constitutional obligation to secure adequate protection for those who are experiencing undignified living conditions by virtue of forced internal displacement may not be indefinitely postponed… This Court's case-law has reiterated the priority that must be given to the appropriation of resources to assist this population and thus solve the social and humanitarian crisis generated by this phenomenon… the National Council for Comprehensive Assistance to the Population Displaced by Violence … composed of the different public officers who have responsibilities regarding the assistance to the displaced population, including the Ministry of Public Finance… has the responsibility of calculating the dimensions of the budgetary efforts required to secure the effectiveness of the protection designed by the Legislator through Law 387 of 1997.
>
> "Nonetheless, this has not happened, and thus the Constitution has been disregarded, as well as the mandates of Congress and the contents of the development policies adopted by the Executive itself."

[24] "The fact that the annual budget laws have limited the appropriation of resources for the assistance of the displaced population is an indicator of the fiscal and macro-economic reality of the country. However, this does not mean that the budget laws can modify the scope of Law 387 of 1997, for the following reasons. First, whereas annual budget laws include, in a general way, all of the chapters and appropriations that are to be spent within a fiscal year, Law 387 of 1997 establishes specific legal provisions on the public policy for the attention of the displaced population. Therefore, budgetary laws lack the material specificity required for them to be considered as a modification of the legal mandates concerning assistance to the victims of displacement and legally recognized rights… Second, constitutional case-law has established that annual budget laws contain authorizations, and not orders, for the materialization of certain expenditures. In turn, Law 387 of 1997 contains an order directed to certain authorities, in the sense of "guaranteeing" the procurement of the resources that may be necessary to comply with the mandates on the attention of the displaced population. Consequently, the distribution of resources made in the General Budget may not be taken as a legal statement that modifies the orders included in Law 387 of 1997. On the other hand, the resources destined by private persons, non-governmental organizations and the international community to the attention of the displaced population do not compensate the insufficient appropriation of funds by the State. In addition, no mechanisms have been established to cover the long-term imbalances that may arise whenever the resources from said sources are less than what has been budgeted, or fail to arrive on time" [Section 6.3.2. of the judgment].

Therefore, the Court concluded that,

> "(…) in order to correct this situation, it is necessary for the different national and territorial entities in charge of assisting the displaced population to fully comply with their constitutional and legal duties, and to adopt, in a reasonable term and within their spheres of jurisdiction, the necessary corrective measures to secure sufficient budgetary appropriations."[25]

As a consequence of the State's inability to afford IDPs timely and effective protection, the Court held that their rights to personal integrity, equality, petition, work, health, social security, education, minimum subsistence income, housing, land protection, return and re-establishment, and to a dignified life were all being continually violated on account of the unconstitutional state of affairs. It also declared that special protection of elderly persons, women (especially female heads of households), children and members of ethnic groups—all of which comprise a significant proportion of the country's displaced population—was not being provided.

Having declared the existence of an unconstitutional state of affairs, the Court issued a number of complex orders aimed at overcoming the problems that gave rise to this situation and protecting the rights of the country's entire displaced population. Additionally, the Court issued specific orders to protect the rights of the individual plaintiffs in the files under review. The complex orders may be summarized as follows: (i) the Court ordered the national and territorial entities in charge of assisting IDPs to adjust their activities in order to achieve harmony between their constitutional and legal commitments toward the displaced, as well as the level of resources allocated and their institutional capacity to guarantee them; (ii) it established minimum mandatory levels for the protection of IDPs' rights, which were to be secured in an effective and timely fashion regardless of the circumstance; (iii) it granted the National Council for Comprehensive Assistance to the Population Displaced by Violence (CNAIPD) a two-month period to define the level of resources that was to be effectively used—at the national and territorial levels—toward the fulfillment of the State's obligations to IDPs. This two-month period was also allotted in order to establish mechanisms to procure adequate resources, thereby underscoring the need to respect the minimum levels of protection of IDPs' basic rights. The Court also pointed out that should the Council identify the need for a re-definition of the legally established

[25] Section 6.3.2. of the judgment.

priorities or a modification of the State policy, or any of its components on account of budgetary restrictions, it would have a period of one year to carry them out in a public and transparent manner, with due respect for the aforementioned minimum rights of IDPs and for the rules of international law that govern retrogressions in this area; and (iv) it ordered CNAIPD to adopt, within a three-month period, a program of action with a precise schedule, aimed at correcting the flaws in institutional capacity that hampered the materialization of the State's policy toward IDPs. The Court stressed that in the adoption of the decisions aimed at overcoming the unconstitutional state of affairs, authorities were to grant the organizations that represent the displaced population effective participatory opportunities. It also outlined authorities' minimum duties in regards to the requests for assistance presented by IDPs, and summarized the Charter of Basic Rights that every IDP should be made aware of by the competent authorities.

The formal declaration of an unconstitutional state of affairs enabled the Court to adopt a decision for the benefit of the entire displaced population in the country, and not just for the specific plaintiffs in the *tutela* cases under review. Prior to this judgment, the Court had declared an unconstitutional state of affairs on nine different occasions, in which the following factual elements were present: a repeated and constant violation of fundamental rights, affecting a multitude of persons, due to problems of a structural nature and requiring the intervention of several State authorities for its resolution. As was the case in Decision T-025 of 2004, in these decisions the Court issued complex orders to protect the rights, not only of the plaintiffs who filed *tutela* lawsuits, but also of *all* the persons who shared the same situation and who had not resorted to judicial channels. These orders included the design and implementation of the relevant policies, plans and programs, the appropriation of the necessary funds in national and territorial budgets, the modification of administrative practices, the resolution of organizational and procedural flaws, the amendment of the relevant legal framework, or the advancement of administrative, budgetary or contracting procedures required to guarantee the fundamental rights at risk. In Decision T-025 of 2004, the Court followed this doctrine and adopted the corresponding remedies, ordering the national and territorial authorities to adopt the required corrective measures within their own spheres of competency. However, the unconstitutional state of affairs declared in this decision implied a significant advance in the scope and effects of such doctrine, as described in the following sections of this publication.

One novel aspect of the declaration of an unconstitutional state of affairs in the field of internal displacement is that after its adoption, the Court retained its jurisdiction over the case and issued a series of follow-up awards (*Autos*). In these awards, the Court verified the level of compliance given to its orders over time, fine-tuned some of the details, and issued specific instructions to the authorities aimed at securing the adoption of the measures required to advance in an accelerated and sustained manner towards the resolution of the identified problems. Moreover, these awards have required the entities that form part of the SNAIPD to submit periodical reports to the Court, describing the manner in which they have fulfilled the mandates issued therein—a feature which had not been present before.

The follow-up process that ensued after the adoption of Decision T-025 of 2004 is described in detail in the chapter of this publication written by Clara Elena Reales. Nonetheless, a short summary is pertinent for purposes of this chapter. The follow-up process has produced the following sets of awards:

In the first place, a number of awards focused on the fundamental rights of the most vulnerable and specially protected segments of the displaced population—namely women, children and adolescents, indigenous peoples, Afro-Colombian communities, persons with disabilities, and leaders of IDP organizations. Throughout 2007 and 2008, by means of a complex process of thematic hearings, the Court gathered a large amount of information related to each one of these groups, and thereafter issued comprehensive awards that described the relevant situation and their special risks and necessities, assessed their impact upon the effective enjoyment of fundamental rights, and issued the corresponding complex orders to the relevant competent authorities. These awards were: (a) Award 092 of 2008, on women and girls affected by the armed conflict and by internal displacement; (b) Award 251 of 2008, on children and adolescents affected by the armed conflict and internal displacement; (c) Award 004 of 2009, on indigenous peoples affected by the armed conflict and internal displacement; (d) Award 005 of 2009, on Afro-Caribbean communities affected by the armed conflict and internal displacement; (e) Award 006 of 2009, on persons with disabilities affected by the armed conflict and internal displacement; and (f) Award 200 of 2007, on the protection of leaders of the displaced population and IDPs at risk.

Second, a number of awards were issued to supervise the constitutionality of the general public policy for assisting the displaced population, and to oversee the resolution of the unconstitutional state of affairs declared in Decision T-025 of 2004. Several awards have been issued in this field, dealing with different aspects of the policy. One should highlight those that deal with the adoption of a rational set of public policy indicators based on the criterion of "effective enjoyment of rights," and those that strive to bridge the gap between the national and the territorial authorities, fostering their coordination so as to better overcome the existing situation. The latest group of decisions along this line was adopted in early 2009, after analyzing the policy in light of the criterion of "effective enjoyment of fundamental rights." The Court concluded that a number of areas of public policy had to be wholly reformulated, namely in the fields of income-generation, housing, and the rights of victims. It also concluded that a number of other areas had to be adjusted, and it ordered that the Civil Society Follow-up Commission on the Public Policy for Internal Displacement and IDPs themselves must actively participate in the processes of reformulating and adjusting these aspects of the policy.

The Court also acknowledged that some progress had been achieved in the resolution of the unconstitutional state of affairs, but it concluded that in general terms, such a state of affairs still persisted. The Court ordered the Government to assume the burden of proving that it had effectively overcome the unconstitutional state of affairs, in particular by targeting one of the issue's structural causes, namely, a lack of administrative capacity, and also to prove that the public policies it adopts are fit to protect IDPs' fundamental rights. The Court also ordered that *Acción Social* establish a certification mechanism, by which it can indicate whether the public officials responsible for the policy are effectively contributing to the resolution of the unconstitutional state of affairs. Finally, two more deadlines were set: one for the Government to submit a partial progress report in 2009, and another for a final report in 2010, before the current presidential term expires.

Third, a number of awards have been issued to address highly specific situations, or aspects of the public policy, that warrant the Court's intervention because there exists at least one of the following scenarios: a risk to a specific displaced population, a visible gap in the public policy, or a risk derived from the armed conflict that may cause massive displacement in the foreseeable future. For example, the Court ordered the Government, in Award 248 of 2008, to address the serious and urgent problem caused to both displaced and non-displaced populations by anti-

personnel mines in the southern municipality of Samaniego. Another example of this set of decisions is Award 011 of 2009, in which the Court held that IDPs have the right to *habeas data*, and thereby ordered the Government to protect its positive dimension, namely the right to be included in the governmental databases that enable IDPs to access the benefits to which they have a fundamental right, and also the right to have a coordinated set of governmental databases that interact in order to protect these rights.

III. Philosophy of the Court's decisions in the field of forced internal displacement

In designing and adopting Decision T-025 of 2004 and its follow-up awards, the Court followed certain parameters in order to preserve a balance between its role as an arbiter of human rights and its deference for the executive and legislative powers. This philosophy can be summarized as follows.

A. Constitutional rights were directly incorporated into the public policy for the protection of the displaced population

The immediate impact of this incorporation was to cause a re-formulation and re-visualization of the policy, which is now oriented towards the effective enjoyment of constitutional rights, and includes a component of judicial control. Moreover, in enunciating and protecting the constitutional rights of IDPs, the judgment provided a common basis for dialogue among all relevant actors. For this reason, the organizations representing the displaced population and NGOs have stated that they are adopting Decision T-025 of 2004 as the basis of their claims. In addition, the incorporation of constitutional rights into the policy provides a new criterion for the analysis of its rationality, which is not assessed strictly in accordance with economic, organizational or similar criteria, but rather in the light of the adequacy of the means it employs to secure the effective enjoyment of the human rights of IDP.

B. Balancing of rights and establishing minimum, mandatory levels of satisfaction under any circumstance

The Court applied a balancing method to incorporate the complexities of the factual situation in which the rights of IDPs were being disregarded. In this way, it analyzed the conditions of vulnerability in which the

plaintiffs and other IDPs were living in light of the State's financial constraints and the existing institutional capabilities to attend to the requirements of this massive segment of the population. As a result of having weighed the diverse relevant factors, the Court crafted a creative set of remedies that exacted minimum degrees of satisfaction of the affected constitutional rights and the design and implementation of a rational public policy to assist them. It did so while also paying due attention to the State's institutional limitations and realistic possibilities of overcoming the crisis.

The process by which this balancing was carried out and how the exercise resulted in the establishment of mandatory minimum levels of satisfaction of IDPs' basic rights are noteworthy. In section 9 of the judgment, after having declared the existence of the unconstitutional state of affairs, the Court explained that a balance had to be struck among the material limitations of the resources available to the State, the need to satisfy the needs of the plaintiffs, and the displaced population's constitutional rights in accordance with the legally designed policy in force. Hence the Court pointed out:

> "(…) given the current dimension of the problem of displacement in Colombia, as well as the limited nature of the resources available to the State to comply with this goal, it must be accepted that at the moment of designing and implementing a given public policy for the protection of the displaced population, the competent authorities must carry out a balancing exercise, and establish priority areas in which timely and effective assistance shall be provided to these persons. Therefore, it will not always be possible to satisfy, in a simultaneous manner and to the maximum possible level, the positive obligations imposed by all the constitutional rights of the entire displaced population, given the material restrictions at hand and the real dimensions of the evolution of the phenomenon of displacement."

Nevertheless, it was clarified:

> "(…) notwithstanding the above, the Court highlights that there exist certain minimum rights of the displaced population, which must be satisfied under all circumstances by the authorities, given that the dignified subsistence of the people in this situation depends on it."

Along this line of reasoning, the Court explained that, in order to define the minimum levels of satisfaction of IDPs' rights, the authorities were bound to ensure that "a distinction must be drawn between (a)

respect for the essential nucleus of the fundamental constitutional rights of displaced persons, and (b) the satisfaction, by the authorities, of certain positive duties, derived from the rights constitutionally and internationally recognized to displaced persons." This distinction was drawn as follows:

> "In regards to the first aspect, it is clear that the authorities may not, in any case, act in such a way as to end up disregarding, violating or threatening the essential nucleus of the constitutional fundamental rights of IDPs—just like they cannot act in such a way as to affect the essential nucleus of the rights of any person within the Colombian territory… In regards to the second aspect, the Chamber notes that most of the rights recognized by the international provisions and the Constitution to displaced persons bind the authorities, because of the very circumstances of displaced persons, to comply with clear obligations of a positive nature, which will necessarily entail public expenditure... In the Court's view, the rights with a markedly positive-duty imposing content that form part of the minimum levels that must always be secured to the displaced population, are those that have a close connection with the preservation of life under elementary conditions of dignity as distinct and autonomous human beings… It is there, in the preservation of the most basic conditions that permit a dignified survival, where a clear limit must be drawn between the State obligations towards the displaced population of imperative and urgent compliance, and those which, even though they must be fulfilled, do not have the same priority—which does not mean that the State is exempt from the duty of exhausting, to the maximum possible level, its institutional capacity to secure the full enjoyment of all the rights of displaced persons...When a group of persons, which has been defined—and is definable—by the State for a long time, is unable to enjoy its fundamental rights because of an unconstitutional state of affairs, the competent authorities may not admit the fact that those persons die, nor that they continue living under conditions which are evidently harmful to their human dignity, to such a degree that their stable physical subsistence is at serious risk, and that they lack the minimum opportunities to act as distinct and autonomous human beings."

Based on this reasoning, the Court concluded that the minimum rights of IDPs include the following: the right to life;[26] the rights to dignity and to physical, psychological and moral integrity;[27] the right to family life

[26] "1. The right to life, in the sense of article 11 of the Constitution and Principle 10."
[27] "2. The rights to dignity and to physical, psychological and moral integrity (Articles 1 and 12 of the Constitution), as clarified in Principle 11."

and to family unity and reunification;[28] the right to a basic level of subsistence, including food, water, shelter, clothing, essential medical services and sanitation, obtained chiefly through the provision of emergency humanitarian aid;[29] the right to health care, particularly in cases of children and infants;[30] the right to protection from discrimination

[28] "3. The right to a family and to family unity, enshrined in articles 42 and 44 of the Constitution, and clarified for these cases in Principle 17, especially—although not exclusively- in cases of families that include persons who are specially protected by the Constitution—children, elderly persons, persons with disabilities or women providers-, who have the right to be reunited with their families."

[29] "4. The right to a basic subsistence, as an expression of the fundamental right to a minimum subsistence income *[Mínimo Vital]* and clarified in Principle 18, which means that "competent authorities shall provide internally displaced persons with and ensure safe access to: (a) essential food and potable water; (b) Basic shelter and housing; (c) appropriate clothing; and (d) essential medical services and sanitation". Authorities must also make special efforts to secure the full participation of displaced women in the planning and distribution of these basic supplies. This right must also be read in the light of Principles 24 through 27 (…), given that it is through the provision of humanitarian assistance that the authorities satisfy this minimum duty in regards to the dignified subsistence of displaced persons. (…)In this sense, and in regards to emergency humanitarian aid, the Court must point out that the duration of the minimum State obligation to provide emergency humanitarian aid is, on principle, the one established in the law: three months, renewable for up to another three months for certain types of persons. The Chamber considers that this term, established by the Legislator, is not manifestly unreasonable, if it is borne in mind that (a) it sets a clear rule on the grounds of which displaced persons can carry out short-term planning and adopt autonomous self-organization decisions which can allow them to have access to reasonable possibilities of autonomous subsistence, without being hastened by the burden of immediate subsistence needs; and (b) it grants the State an equally reasonable term to design the specific programs required to satisfy its obligations in the field of aid for the socio-economic stabilization of displaced persons (…). (…) the Court must also point out that there are two types of displaced persons that, because of their particular conditions, have a minimum right to receive emergency humanitarian aid for a period of time which is longer than the legally established one: such is the case of (a) persons in situations of extraordinary urgency, and (b) persons who are not in a condition to assume their own self-sufficiency through a stabilization or socio-economic re-establishment project, such as children without guardians and elderly persons who, because of their old age or their health conditions, are not fit to generate income; or women providers who must devote their entire time and efforts to take care of infant children or elderly persons under their responsibility. In these two types of situation, it is justified for the State to continue providing the humanitarian aid required for the dignified subsistence of the affected persons, until the moment in which the circumstances at hand have been overcome (…). The Court notes that, even though the State cannot abruptly suspend humanitarian aid to those who are not capable of self-sufficiency, people cannot expect to live indefinitely off that aid, either."

[30] "5. The right to health (Article 49 of the Constitution), whenever the provision of the corresponding healthcare service is urgent and indispensable to preserve the life and

based on the conditions of IDPs;[31] the right to basic education for children under 15;[32] the right to self-sufficiency through the identification of alternatives for dignified socioeconomic stabilization;[33] and the rights to

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integrity of the person, in cases of illness or wounds that threaten them directly, or to prevent contagious or infectious diseases, in accordance with Principle 19. On the other hand, in the case of children, article 44 shall apply, and in cases of infants under one year of age, article 50 of the Constitution shall apply."

[31] "6. The right to protection (Article 13 of the Constitution) from discriminatory practices based on the condition of displacement, in particular when such practices affect the exercise of the rights enunciated in Principle 22."

[32] "7. For the case of displaced children, the right to basic education until fifteen years of age (article 67, paragraph 3, of the Constitution). The Chamber clarifies that, even though Principle 23 establishes the State duty to provide basic primary education to the displaced population, the scope of the international obligation described therein is broadened by article 67 of the Constitution, by virtue of which education shall be mandatory between five and fifteen years of age, and it must comprise at least one pre-school year and nine years of basic education. (…) the State is bound, at the minimum to secure the provision of a school seat for each displaced child within the age of mandatory education, in a public educational institution. That is to say, the State's minimum duty in regards to the education of displaced children is to secure their access to education, through the provision of the seats that are necessary in public or private entities of the area. This was the order issued by the Court in Decision T-215 of 2002 to the respondent Municipal Education Secretariat: to secure access to the educational system by the plaintiff children, using the available places in the schools of the area. This preferential treatment for displaced children is justified, not only because education is one of their fundamental rights—as happens with all the other children in the national territory-, but because of their especially vulnerable conditions they receive reinforced constitutional protection, which means, in the educational field, that if at least their basic education is not secured, the effects of displacement upon their personal autonomy and the exercise of their rights will be worsened.]"

[33] "8. In regards to the provision of support for self-sufficiency (Article 16 of the Constitution) by way of the socio-economic stabilization of persons in conditions of displacement—a State obligation established in Law 387 of 1998 and which can be deduced from a joint reading of the Guiding Principles, in particular Principles 1, 3, 4, 11 and 18-, the Court considers that the State's minimum duty is that of identifying, with the full participation of the interested person, the specific circumstances of his/her individual and family situation, immediate place of origin, particular needs, skills and knowledge, and the possible alternatives for dignified and autonomous subsistence to which he/she can have access in the short and mid term, in order to define his/her concrete possibilities of undertaking a reasonable individual economic stabilization project, of participating in a productive manner in a collective project, or entering the work market, as well as to use the information provided by the displaced population in order to identify income-generation alternatives for displaced persons. It is important to note that this minimum right of displaced persons does not bind the authorities to provide, in an immediate manner, the material support required to begin the productive projects which are formulated, or to secure access to the work market on the grounds of the individual evaluation at hand; even though such support must necessarily materialize through the programs and projects designed and implemented by the authorities for the purpose, the

return and re-establishment.[34] The Court also asserted that authorities' have obligations to secure a minimum level of satisfaction of these rights through positive actions.

C. Respect for other authorities' spheres of jurisdiction

As a consequence of the Court's awareness of the factual complexity of the situation, a complexity that required coordinated action by several different State entities, the orders issued in the judgment in question were marked by respect for the different spheres of jurisdiction of the executive branch, congress and other competent authorities. The Court did not spell out how these authorities were to fulfill their duties; it did not even tell them when they had to adopt the relevant measures (though it did establish some time periods for the submission of information and reports, which have been extended whenever the authorities themselves have stated that they are insufficient). What it did require of them is to report on what they are doing, to establish their own goals and the timetables that they are to follow when complying with their constitutional and legal obligations, and to explain to the Court—and the public—how the activities that they have

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minimum and immediately enforceable duty imposed by this right upon the State is that of gathering the information which can allow it to provide the necessary attention and consideration to the specific conditions of each displaced person or family, identifying with the highest possible accuracy and diligence their personal capacities, so as to extract from such evaluation solid conclusions that can facilitate the creation of stabilization opportunities that respond to the real conditions of each displaced persons, and which can, in turn, be incorporated into the national or territorial development plans."

[34] "9. Finally, in regards to the right to return and re-establishment, authorities are in the obligations of (i) abstaining from applying coercive measures to force persons to return to their places of origin, or to re-establish themselves elsewhere; (ii) not preventing displaced persons from returning to their habitual place of residence, or from re-establishing themselves in another part of the territory, although it must be noted that whenever there exist public order conditions which make it possible to foresee a risk for the security of the displaced person or his/her family at their places of return or re-establishment, authorities must warn in a clear, precise and timely manner about this risk to those who inform them about their purpose of returning or moving elsewhere; (iii) providing the necessary information about the security conditions at the place of return, as well as about the State's commitment in the fields of security and socio-economic assistance to secure a safe and dignified return; (iv) abstaining from promoting return or re-establishment, whenever such decision implies exposing displaced persons to a risk for their lives or personal integrity, because of the conditions of the route and of the place of destination, for which reason every State decision to promote the individual or collective return of displaced persons to their places of origin, or their re-establishment at another geographical location, must be preceded by an assessment of the public order conditions at the place to which they will return, the conclusions of which must be communicated to the interested parties before the act of return or re-establishment."

chosen are going to lead to the results that they are expecting. The Court thus exercises judicial control over the *rationality* of the policy process, as opposed to the content of the policy itself.

Apart from requiring minimum levels of protection the most basic rights enjoyed by IDPs, the Court did not impose any specific requirements upon the substance of the policy, restricting itself to demanding a basic level of seriousness in the formulation and implementation of policy. In later decisions, however, the Court took steps that touched upon the content of the policy. It also called for certain conditions to be met. One of them was the acknowledgment by the government of the existence of gaps not filled by executive action—for example, the total lack of indicators based on the effective enjoyment of rights. Another was a clear proof that an element of the policy had become an insurmountable obstacle for the effective enjoyment of IDPs' rights—for example, the three-month limit for the provision of emergency humanitarian aid with a three-month renewal in special cases. Both time limits had been partially struck down by the Court in Decision T-025 of 2004 and then totally invalidated in Decision C-287 of 2007.

D. Requirement of gradual satisfaction of the affected rights

The Court's approach has been marked by gradualism. It has not ordered a full resolution of the problem, not even within a specific period of time. The Court has, however, ordered the competent authorities to pursue an accelerated, sustained solution to the unconstitutional state of affairs through the adoption of any measures they deem necessary for the achievement of that purpose. That is why the issue of the *result indicators* has become so important. Should the Court remain focused, within its gradual approach, on the mere adoption of measures aimed at overcoming the problems, without requiring accelerated advances towards the effective enjoyment of rights, the competent authorities would always be able to say that they have carried out more meetings, appropriated more funds and assigned more public officials to the relevant task. But this would be a gradual approach centered merely on process—rather than on the material effects of the process of achieving the enjoyment of the rights in question. Accordingly, such a limited focus (on process only) would ultimately become a justification for failing to protect such rights. That is why in the 2005 follow-up decisions, the Court decided to fine-tune its gradual approach, shifting its focus towards the results of the public policy's implementation and thus to the effective enjoyment of rights. But even

within this new approach, the Court has not ordered the achievement of a full resolution of the problems at hand, nor has it ordered the relevant entities to produce specific judicially mandated results. Instead, it has accelerated and sustained advances, measurable on the basis of clear indicators, of the policy goals set by the competent authorities themselves. In the end, however, the policy goals and means must achieve the effective enjoyment of rights by a large proportion of displaced persons.

E. Focus on the effective enjoyment of constitutional rights

More than ordering mere respect for IDPs' rights, the Court has also centered its attention on their effective enjoyment and has required certain actions to be carried out in accordance with its results-centered gradual approach. This, for instance, has required the executive branch to undertake affirmative measures aimed at providing protection to IDPs. This protection has two levels. First, specific actions are aimed at the provision of aid, the opening of opportunities, the facilitation of access, etc; and second, programs and strategies are designed from a medium term perspective, for the purpose of improving the institutional infrastructure for the protection of IDPs. However, the Court has understood that the design and implementation of indicators based on the effective enjoyment of constitutional rights is a complex task with technical components. For this reason, it initiated a process of information exchange that culminated in Award 109 of 2007, in which the Court ordered the Government to adopt a set of effective rights-enjoyment indicators to measure the advances of the policy on the ground. For example, the Government is not only to report on efforts to obtain additional resources, but also on how the actual increase in public expenditure has improved the access of IDPs to humanitarian aid, food, health services, education, housing, etc.

F. Preserving minimum levels of protection for IDPs' rights

Within the aforementioned gradual approach, which is targeted towards the effective enjoyment of constitutional rights, a specific problem has arisen for the Court—namely that of preventing the transformation of basic rights into "progressive development rights" (i.e., how to avoid a situation in which the Court admits a gradual satisfaction of rights, such as to life or integrity, which should on principle be secured in an immediate and effective manner). In order to overcome this risk, the Court demanded the satisfaction of certain minimum levels of enjoyment of IDPs' fundamental rights. That is to say, Decision T-025 of 2004 and

its follow-up awards adopted an approach based on gradualism, but on the grounds of having secured a minimum degree of satisfaction of certain essential rights, which are *not* subject to progressive development.

G. Mobilization of authorities and society

The Court has sought to mobilize the State and society around the protection of IDPs. In this sense, the Court has not attempted to replace the competent authorities or social institutions in the fulfillment of their tasks. Rather, it has sought to exercise its own jurisdiction, imparting a number of orders in such a way as to mobilize the State and civil society for the resolution of the displaced population's problems, and activating and maximizing efforts in the achievement of this goal. Some manifestations of this approach are as follows:

(i) Since the adoption of the judgment, the Court has required that the decisions adopted by CNAIPD include the participation of displaced persons and their organizations. This has had the effect of mobilizing and empowering IDPs, and helps to focus their activities on the public policy that benefits them. In the same sense, all of the follow-up decisions adopted by the Court have been communicated to IDP organizations. In adopting its own decisions, the Court has kept in mind the different assessments of the assistance policy provided by these organizations. In this sense, they were invited to participate in a public hearing held on June 29, 2005, and in the latest follow-up decision they were asked to evaluate reports submitted by the Government. In other words, displaced persons have been mobilized around Decision T-025 of 2004 and its ensuing decisions.

(ii) State entities have also been mobilized, in the sense that the Court has issued orders which imply an exercise of mutual comparison between them, so as to establish which is advancing the most, which is producing the best results and which is lagging behind the rest. This reciprocal comparison increased the visibility of their respective actions and omissions, and has catalyzed authorities' efforts to resolve IDPs' problems. Furthermore, in two follow-up decisions, the Court placed all of the entities that form part of the National Council on common ground, given that it ordered the submission of a single, unified common report—which has allowed them to understand what each one is doing from a comparative perspective. This element of mutual comparison facilitates their mobilization.

(iii) The issue of coordination has been granted increasing importance, both at the national level and in regard to the territorial entities. In one of its follow-up decisions, the Court identified the overall coordination of SNAIPD and the coordination of territorial entities' efforts as two of the critical areas where significant gaps existed in the policy's implementation, and where the most important improvements were required.

(iv) The different State oversight authorities have also been mobilized, not by means of Court orders, but through requests issued in Decision T-025 of 2004 and its follow-up decisions. Therefore, the disciplinary and budgetary oversight authorities, the Controllers Office and the Public Prosecutor's Office, and the Public Ombudsman's office (*Defensoría del Pueblo)*, which have available infrastructure and staff across the national territory, have incorporated the issue of internal displacement into their agendas. Additionally, they have provided critical follow-up support and have submitted the relevant information to the Court.

(v) Congress has also been mobilized around internal displacement. Although the results are less visible, a number of congressional debates on the issue have already taken place. The Court has requested the inclusion of the issue of displacement in the national budget and the national development plan (both of which are approved by Congress), which entails the advancement of democratic debate on the level of priority afforded to the topic, and on public policy as such.

(vi) Civil society has been actively mobilized around the issue of forced internal displacement. The most significant development in this area is the creation of the Civil Society Follow-up Commission on the Public Policy on Internal Displacement, created as a forum that gathers representatives of IDP organizations, NGOs, indigenous peoples, Afro-Colombian groups and academia, with the task of closely overseeing the actions and programs adopted by the different competent authorities for the resolution of the unconstitutional state of affairs and compliance with the Court's orders.

In short, through the mobilization of different authorities and of civil society, the Court has managed not only to include the problem of displacement in the national agenda, but to keep it there and maintain its visibility. This is all the more significant considering that the Colombian public agenda is quite crowded, and the issues included therein tend to become invisible over time (especially if they concern traditionally weak

segments of the population that lack strong voices, as in the case of displaced persons). In adopting follow-up decisions by mobilizing State entities and by receiving and analyzing periodic reports, the Court has managed to keep displaced persons visible and on the agenda.

IV. Contributions of the judgment and its follow-up decisions

Decision T-025 of 2004 and its follow-up awards have not only contributed significantly to the effective protection of IDPs' rights, but also to the development of complex legal notions and current constitutional debates, which will be instrumental for future actions. These contributions in the Colombian context are explained below.

A. Indivisibility of rights

The Court adopted a comprehensive approach towards the rights of IDPs, conceptualizing these rights as an indivisible group that includes first-generation rights (life, integrity, equality, basic freedoms), economic, social and cultural rights (health, education, housing, minimum subsistence income) and even collective rights (such as those of ethnic groups). This indivisibility was expressed in three main ways:

(i) From a procedural standpoint, all of the rights were protected simultaneously—the Court refrained from adopting a judgment exclusively in relation to the affected *fundamental* rights, and it did not resort to its prior doctrine of "connection" (*conexidad*) between fundamental and non-fundamental constitutional rights. Instead, it granted protection to the entire set of rights enjoyed by IDPs, rights which were understood to be inseparable from one another.

(ii) The Court also defined minimum levels of satisfaction for several different rights, which had to be simultaneously secured, and that were ultimately grounded in the need to secure a dignified life within the parameters of respect for the diversity and specificity of each affected person.

(iii) In addition, the Court emphasized that all of the rights that form part of this indivisible group have both a negative and a positive dimension. In other words, they impose both positive and negative duties and obligations upon the State. Thus, taking distance from the traditional viewpoint (where first-generation rights only impose negative duties of respect and non-violation upon States, and where second-generation rights

impose positive duties of satisfaction), the Court held that all types of rights generate both types of obligations for authorities and society alike. This implies, moreover, that in the Court's view, all of the protected rights have a specific economic cost that must be assumed by the State, given that there are no rights with a merely negative dimension.

B. Incorporation of public international law into the rationale of the judgment

In order to justify its decision in legal terms, the Court relied on to two main sources of authority: (i) its own prior case-law, in which it upheld not only the rights of displaced persons but also social, economic and cultural rights, as well as collective rights; and (ii) the applicable rules of public international law, namely those found in the Guiding Principles on Internal Displacement compiled by the Representative of the UN Secretary-General for Internal Displacement in 1998—principles which specified the relevant treaty-based and customary rules in the fields of human rights law, international humanitarian law and, by analogy, international refugee law. These principles were applied by the Court as basic criteria to determine the scope of IDPs' fundamental rights and the extent of the State's obligations to protect them. Although this was an ambitious step, it was grounded on concrete constitutional clauses (Articles 9, 93 and 94 of the Constitution), which state that constitutional rights must be interpreted according to international human rights and international humanitarian law. Thus, the Guiding Principles showed how general rights provided specific protection to IDPs according to their needs.

C. Development and application of a complex notion of "progressiveness"

Several aspects of the Court's judgment and its follow-up decisions have emphasized the notion of "progressiveness" in the protection and materialization of constitutional rights. Even though it has usually been accepted that certain types of rights—mostly rights of an economic, social or cultural nature—are subject to progressive development on account of the types of obligations they impose upon States, the Court explored the relationship between a progressive development of rights and the protection of an essential nucleus or minimum level of protection that must always be afforded under any circumstance. Indeed, the Court applied this "minimum level of protection" doctrine in relation to the

entire displaced population and the entire set of constitutional rights, regardless of whether they were first, second or third-generation rights.

On the grounds of having secured the protection of those minimum levels of satisfaction of rights, the Court accepted that the Government could gradually advance further towards the full realization of the entire set of IDP rights through the progressive implementation of its public policy. In Decision T-025 of 2004, the Court even accepted that because of the complexity of the issues at stake, the Government could conclude that its financial restrictions would justify retrogression by reducing the scope of the legally defined protection system. It also would adopt such a decision within a specific period of time (one year), in a transparent and public manner, and with due regard for the rules of international law that govern the retrogression of human rights with a positive dimension. The Government, however, did not adopt this course of action, but rather insisted on its commitment to pursue the entire assistance policy as it was legally defined. This has provided an additional basis for the Court to demand the full, albeit gradual, satisfaction of the entire set of constitutional rights enjoyed by IDPs through the materialization of all legally established components of the relevant public policy.

A second noteworthy aspect of the way the Court dealt with progressiveness in its decisions is that it recognized the progressive development of IDPs' rights with regard to the coverage of the assistance policy (that is, the number of IDPs who receive protection), to the quality of the policy itself, and to the construction of the State's institutional capacity to protect IDPs. Thus, the Court has not required emergency humanitarian aid to be provided to the entire displaced population at once, but rather has ordered the achievement of steady progress towards that goal. Likewise, the Court has not required the provision of top-quality emergency humanitarian aid, but it has established a minimum baseline for its provision. For instance, at the most basic level, displaced women or displaced families with children should be provided a humanitarian aid kit that satisfies their specific needs.

Regarding the construction of institutional capacity, the Court has ordered CNAIPD to design its own plan for overcoming the existing flaws, and it has allowed authorities reasonable periods of time to strengthen their capacity to provide assistance. For example, reforms initiated by *Acción Social* have fostered cooperation agreements with entities like the Red Cross or NGOs in order to provide timely aid to IDPs. The budgetary aspects of the policy can also be gradually developed over

time. Thus, according to the goals and estimates set by the Government, the Court has accepted that the amount of resources included in the national budget is to be progressively increased over the course of several years. Indeed, the Court has not ordered the budgetary authorities to appropriate a specific amount of money to finance the policy, but rather ordered them to establish their own timetables and programs, so as to secure the gradual satisfaction of the diverse needs of IDPs.

Another aspect of progressiveness is how it is associated with the protection of a basic nucleus of rights, or minimum levels of protection that have been established by the Court. In this regard, it must be borne in mind that the declaration of an unconstitutional state of affairs was issued to protect the country's entire displaced population, and that the Court issued specific orders to protect the rights of the plaintiffs in the *tutela* proceedings under review. In regards to the protection of the specific plaintiffs, the Court allowed no margin for progressive development. It ordered the full protection of any rights whose violation was proven, ranging from the resolution of requests for aid, to the provision of housing subsidies. However, in regards to the rest of the displaced population, which comprises an unknown but determinable number of IDPs and which covers all past, present and future displaced persons, the Court accepted a progressive satisfaction of those minimum levels of protection of constitutional rights in accordance with the evolution of the registration of the displaced population. In other words, the Court has required that the minimum levels of protection of the rights of all IDPs included in the official registration system must be satisfied, while the minimum levels of protection of the rights of the IDPs who are not included in such system can be subjected to progressive satisfaction in accordance with the rate they are included in such a registration system. This goes hand in hand with the fact that the Court has ordered the authorities to overcome the severe under-registration problem that exists, understanding that its resolution requires highly important efforts at the technical and financial levels. Therefore, as a consequence of the Court's decisions, all evolution in the registration of the country's IDPs shall involve directly proportional increases in the amount of public expenditure, and the satisfaction of the minimum levels of protection of their constitutional rights.

Some critics have argued that with its gradual approach, the Court has allowed for a progressive realization of basic rights which in actuality should always be secured. This argument is only pertinent in relation to the portion of the displaced population not yet included in the official registration system, and whose rights will be progressively secured as they

become included in the official database. Even though it is true that the Court has not ordered the satisfaction of the minimum levels of enjoyment of the rights of the non-registered displaced population, and that with regard to this significant group of people it could be concluded that the Court has allowed for a "progressive" satisfaction of their most basic rights, the truth is that State authorities cannot be ordered to fulfill impossible tasks—authorities can only provide comprehensive assistance to the persons and families who they have knowledge of—that is, who are included in the official information system or otherwise identified by other means. That is why the Court has placed so much emphasis on the resolution of the problem of under-registration.

D. Governmental accountability to judicial authorities

One salient effect of Decision T-025 of 2004 and its follow-up decisions has been to bind the Government to submit periodic reports to the Court, informing it about the results of the policy's implementation and the resolution of the different problems that the Court has identified. It is not only noteworthy that the Court issued this order, but also that the Government has abided by it (with the exception of some areas where the Court has had to invoke contempt of Court powers against specific mid-level public officials). This has established a dynamic of inter-institutional dialogue among the different branches of government. This dialogue provides a solid guarantee that the results of the assistance policy will improve over time. It should also be noted that this has placed an enormous burden of work upon the Court, which has had to devote its limited institutional resources to the evaluation of the government's extremely lengthy reports, even requiring external support for the evaluation of the more technical aspects of the policy. However, these obstacles have so far been successfully overcome, and the incorporation of external evaluation sources—including the State oversight authorities, organizations of displaced persons, non-governmental organizations (NGOs) and inter-governmental organizations (IGOs)—has borne positive outcomes, including additional participation forums for IDP organizations, which improve and enrich the policy overall.

E. Extension of the effects of the judgment

On account of the declaration of an unconstitutional state of affairs, the effects of Decision T-025 of 2004 and its follow-up decisions have been extended beyond the plaintiffs, in order to cover an entire segment of the population that is in constant evolution. Thus, persons who became

displaced after January 2004 are also covered by the orders issued therein. These orders relate to an unknown—but measurable and determinable—universe of people (i.e. to the "forcibly displaced population" in the country) and can therefore provide newly displaced persons with the full range of benefits awarded to the specific plaintiffs and to the pre-existing IDPs. Thus, in August 2007, for example, the Court adopted Award 200, which protected the right to personal security of IDP leaders who were not plaintiffs in the original *tutela* cases of 2003.

Moreover, in 2007 the Court convened public hearings dedicated to the evaluation of governmental actions concerning vulnerable IDP groups. The first concerned women, the second children, the third indigenous peoples, the fourth Afro-Colombians, and, in the future, additional hearings will address the situation of the elderly and disabled. In these hearings, IDPs who were not plaintiffs in the original 2003 *tutelas* could participate.

F. A creative remedy

In the judgment and its follow-up decisions, the Court issued orders that were tailored in accordance with each of the structural causes of the unconstitutional state of affairs. Moreover, the content of the remedies ordered by the Court has evolved over time in accordance with the results of the policy's implementation, and also as a result of the dialogue established with the competent authorities. Hence, when the Court has identified a specific problem to be addressed, the authorities respond by crafting a specific solution within the framework of the public policy that works toward the effective enjoyment of constitutional rights by IDPs. This is exemplified in budget levels, coordination, program design, etc.

V. Results of the judgment and its follow-up decisions

While the preceding paragraphs have made some reference to the results of the Court's decisions on internal displacement, it is convenient to summarize and highlight the most significant ones.

A. Increase and rationalization of the budget

The budget for the implementation of the public policy to address forced displacement has been substantially increased, and the details of its progressive execution over the course of a five-year period have been refined and clarified. Furthermore, it has been amended in accordance

with the evolution of forced displacement in the country, as ordered by the Court in Award 176 of 2005. Thus, in the report submitted by the budgetary authorities to the Court on September 13, 2006, the overall amount of the funds allocated was increased in conformity with the new data provided by the official registration system. Indeed, on December 1, 2005, the budgetary authorities informed the Court that they had arrived at an estimate of 5.1 billion pesos[35] to assist the population that became displaced between 1995 and 2005—that is to say, a total of 1,719,873 people included in the official registration system—throughout the fiscal years 2005 to 2010. At the request of the Court on September 13, 2006 these authorities updated their calculations and reached a figure of 5.7 billion pesos in assistance to the population that had become displaced by August 2006—a total of 1,842,262 people officially recognized as such—to be used between the fiscal years of 2006 and 2011. So far, these funds have been duly incorporated by the Government into the National Budget bills to be approved by Congress.

B. Improvement of public institutional capacities for the provision of quality assistance

A number of State entities have undertaken significant efforts to improve their institutional capacity for assisting IDPs, and to provide qualitatively better services within their spheres of jurisdiction. Although this has not been the case of all of the entities that form part of SNAIPD, those entities that are lagging behind have also committed themselves to achieving better results, especially after having been placed on common ground with the remaining competent authorities and having compared the results of their activities with those of the most diligent entities. In spite of this positive development, it is clear that some of the authorities charged with the central responsibilities within the assistance system have failed to comply with their duties on a number of critical areas, including those identified in Award 218 of 2006. Moreover, on August 13, 2007, the Court reassumed its jurisdiction to oversee the effective implementation of the orders it issued in Decision T-025 of 2004 and its follow-up awards, which includes the power to initiate non-compliance procedures against any public officials who disregard such mandates.

Institutional capacity has advanced at a comparatively slower pace than in other areas, such as those regarding budget increases or result

[35] One Colombian billion is the equivalent of one million million, as opposed to an American billion, which amounts to one thousand million.

indicators. This has been the component where fewer ideas and proposals have emerged to date.

C. Some rationalization, organization and expansion of the public policy for the assistance of displaced persons

Efforts have been made to design and implement a rational, organized and comprehensive public policy to deal with this humanitarian crisis. Even though these efforts may be taken for granted in other countries, in the case of Colombia they are highly significant. They are even more significant if one takes into account the complexity of the problems that are to be addressed. This complexity is revealed by the fact that two years after the adoption of the judgment, it has not been possible to implement a coherent set of result indicators to measure the outcomes of the policy in terms of how it results in the effective enjoyment of rights. For this reason, the Court devised a technical participatory process, which resulted in the adoption of a set of effective enjoyment indicators after Award 109 of 2007. In this sense, the policy for the assistance of the displaced population has been significantly improved and better structured since it was first analyzed in Decision T-025 of 2004, and the process of improvement continues. At the very least, all of the relevant actors are advancing in the same direction.

D. Formal incorporation of the public policy into legal instruments

The Government has approved the public policy and incorporated it into a specific, comprehensive implementation plan, which has itself become enshrined in different binding legal instruments, most importantly Decree 250 of 2005 and CONPES Document 3400.[36]

E. Thorough involvement of authorities at every level of government

There has been a direct involvement of most of the levels of the executive branch, from the President of the Republic down to local officials. The President himself has requested that specific and concrete

[36] CONPES Documents are adopted by the National Council on Economic and Social Policy, a body in charge of defining and orienting the Colombian State's policies in different fields, including forced internal displacement. Although they are not binding, they are in practice considered as mandatory guidelines for the deployment of State action in pertinent fields.

information be submitted to the Court. He promoted the preparation of his Ministerial Cabinet's reports to the Court during the June 29, 2005 public hearing, and he has summoned extraordinary sessions of the Council of Ministers to deal exclusively with the subject of the governmental response to internal displacement. This means that the priority afforded to the issue of displacement within the governmental bureaucracy has now reached the highest possible level, even though not all of the Ministries of the Cabinet have been entrusted with equal shares of responsibilities and functions within the protection system.

F. Higher transparency and accountability in policy design and execution

A higher degree of transparency exists in the design and implementation of the public policy at hand, in the sense that the periodical reports submitted to the Court have expressly recognized both the achievements and the problems met during the policy's development. Additionally, whenever the Court has come across aspects of the policy that are unclear, it has requested and obtained the relevant clarifications. This serves the purpose of increasing the policy's overall accountability and transparency. The Court has also demanded transparency in the governmental reports themselves, rejecting the initial strategy deployed by SNAIPD entities of presenting extremely long monthly and bi-monthly reports to the Court, which totaled tens of thousands of pages. Because they included several hundred documents that were simply not pertinent to the evaluation of compliance with Decision T-025 of 2004, these reports prevented any reasonable observer from obtaining a clear view of the general panorama of the public policy for the assistance to IDPs. Indeed, in Award 218 of 2006, the Court noted that it had been swamped by massive reports and returned the entire set of dossiers to the Government. The Court accordingly ordered the submission of a comprehensive, common report with a strict page limit (60 pages). The report was delivered by SNAIPD entities on September 13, 2006.

G. Identification of responsibilities

The Court has required and obtained the identification of each individual public official directly responsible for the formulation and implementation of the IDP assistance policy. As a consequence of the Court's orders, each part of the system has a top-level officer in charge of the coordination of the corresponding activities. Each top-level officer also acts as a link to the other entities within the system.

VI. Some areas where improvements are still required

Even though important achievements and advances have been made thus far, there are still very important aspects of the assistance policy where improvements are yet to be made, or where significant delays have been identified.

A. Gradual approach vs. complete satisfaction of rights

Due to the general complexity of the problem of displacement, the Court, in requiring a basic rationality in the progressive development of the public policy, has had to tolerate the continuation of certain impingements upon the constitutional rights of IDPs. The Court has had to adopt a realistic point of view, in the sense that it cannot order the final resolution of such a serious crisis, but it can and indeed has ordered an end to the unconstitutional state of affairs. Before the adoption of this perspective, IDPs' rights tended to be protected from a maximalist standpoint in each individual *tutela* case. However this approach did not protect all IDPs, especially those who were deprived of even a minimum level of protection. After Decision T-025 of 2004, the Court assumed a complex approach, which was positive because it secured the adoption of gradual, albeit accelerated and sustained measures towards the resolution of the problem in question, even though IDPs' expectations of full judicial protection in the near future were reduced.

B. Overwhelmed institutional capacities

It appears that the State has been unable to implement the reforms required to strengthen its institutional capacity. Even though some re-structuring efforts have taken place in priority areas, and although there has been a general climate of demanding results from the authorities, the State's capacity to reform itself has been overwhelmed by the magnitude of the problems to be solved. The authorities themselves have attempted to overcome this problem by including IDPs in pre-existing programs that have the greatest institutional capacity. For example, the "Families in Action" (*Familias en Acción*) program has incorporated a substantial number of displaced families. However, it lacks the requisite specificity to address the problems of IDPs properly. This demonstrates that the State entities are aware of their inability to carry out the necessary measures with the effectiveness and speed required. This strategy may prove to be effective in providing for some of the IDPs' specific needs in the short-term. It is, however, nevertheless an indicator of the State's inability to

strengthen its own institutional capacity through the structural reforms ordered by the Court.

C. Competition among vulnerable segments of the population for limited resources and services

On account of the lack of specificity of the policy to assist the displaced, IDPs are placed in a position where they have to compete with other vulnerable and poor segments of the population for limited resources. Since Decision T-025 of 2004, the Court warned that needs of IDPs should be addressed in the design and implementation of relevant programs. However, this result is yet to be attained in some crucial areas, such as in education and housing.

D. Ignorance of IDPs' basic rights

The Charter of Basic Rights of Displaced Persons, which provides a summary of IDPs' rights enumerated by the Court in Decision T-025 of 2004, has not been accorded the impact and transcendence that it should have. Most IDPs are still unaware of the extent of their constitutional rights. Nevertheless, while significantly stronger efforts are needed, some advances have been made in the dissemination of the Charter through the activities of leaders and civil society organizations.

E. Scant participation of IDP organizations

Even though the displaced population has been substantially empowered to assume the defense of its own rights, the degree of its participation in the decision-making processes that concern it is still very low. IDP participation is neither timely nor effective, and it tends to be simply formal in scope. Nonetheless, the work of the national follow-up commission has in part compensated for this problem. Moreover, since the Court started issuing awards to protect IDPs with specific needs, their participation has become more effective and coordinated. However, there is still a long ways to go.

F. Formal reporting processes

The authorities' obligation to provide periodic reports to the Constitutional Court on the results of the policy entails a very clear risk of formalism, as their efforts may focus on the mere elaboration of the reports, rather than the activities required to ensure the effective

enjoyment of the constitutional rights of IDPs. This was certainly the case with a number of the bi-monthly reports presented to the Court by some of the entities that form SNAIPD. The Court was inundated by almost twenty thousand pages of unorganized information, which, at the end of the day, brought about scant results. This situation led the Court to order the submission of a short, common governmental report, which was presented on September 13, 2006, and has since been the object of an extensive process of circulation, observation, assessment and counter-response by the Government. In conjunction with reports from other official and non-governmental sources and individual petitions, this report has also provided the basis for the adoption of a new set of follow-up awards by the Court, described in detail in other chapters of this book.

VII. Dilemmas, risks and challenges for the future

After the adoption of this Decision T-025 and its follow-up decisions, the Court has had to address a number of dilemmas that have required a realistic assessment both of its own role as guardian of constitutional rights, and the limitations it has when attempting to fulfill its task in practice. I will mention two of the most salient dilemmas.

In the first instance, when evaluating compliance with the orders it has issued and deciding on which measures to adopt, the Court has had to choose between advancing towards the imposition of immediate sanctions at the highest levels of government, or maintaining its jurisdiction and continuing to require gradual advances in the satisfaction of IDPs' rights. So far, it has opted for the latter alternative. If the Court imposes sanctions for non-compliance with its orders, it would be argued that it lost jurisdiction after this final evaluation. Sending public servants to prison for contempt of court would convey an important message, but it could be useless for realizing the ultimate purpose of protecting the constitutional rights of IDPs, because from prison these public servants will be less effective, to say the least. Organizations representing displaced persons have requested that the Court carry on with its gradual approach because this approach has proven to be much more effective.

Nonetheless, as this chapter is being written, the Court has adopted several decisions on the basis of the reports submitted by the external evaluating bodies that point to the definition of a new balance regarding this dilemma. Indeed, having identified certain areas of the policy where gaps and delays were most significant, the Court sent the relevant case documentation to one of the lower judges who adopted the initial *tutela*

decisions that led to Decision T-025 of 2004. This judge was to decide whether he should initiate contempt of court proceedings against the mid-level public officials within the entities of the system that have been slow to apply the Court's orders. Several months after this decision, the lower court judge informed the Court of his office's material incapacity to deal with the high level of information and documentation that was implied with Decision T-025 of 2004 and its subsequent awards. As a result the Court decided on August 13th, 2007 to reassume jurisdiction over the oversight process, including any contempt of court proceedings that were necessary against the competent authorities. This was a major step forward in the enforcement of the orders issued to overcome the unconstitutional state of affairs in the field of internal displacement. Accordingly, senior public servants may be held responsible if they do not push their subordinates to act, and it is the Court itself that will ensure material compliance with its own orders. In April 2009, after the election by the Senate of six new justices, the plenary of the Court decided to directly assume two key future decisions: first, whether government officials were in contempt of court, and, second, whether the structural failures that led to the declaration of the state of unconstitutional affairs had been solved.

From another perspective, the Constitutional Court's main challenge after its judgment has been that of maintaining a position centered on its role as *tutela* judge and preserving its jurisdiction until the effective enjoyment of the protected rights has been reestablished.[37] The challenge

[37] According to Article 27 of Decree 2591 of 1991, "the judge shall determine the remaining effects of the decision for that concrete case, and will keep his jurisdiction until the right has been completely reestablished or the causes of the threat have been eliminated." In Decision T-086 of 2003, the Court pointed out the following: "*tutela* judges keep their jurisdiction to impart orders aimed at ensuring that the right is fully reestablished or the causes of the threat are eliminated, which includes introducing adjustments to the original order, insofar as this is carried out within the following parameters, in order for *res judicata* to be respected: (1) This power can be exercised whenever it is necessary, due to the factual conditions of the case, to modify the order in its accidental aspects, be it because (a) the original order never guaranteed the effective enjoyment of the protected fundamental right, or it did so at first but then became ineffective; (b) because it entails a serious, direct, certain, manifest and imminent harm to the public interest, or (c) because it is evident that the orders will always be impossible to fulfill. (2) This power must be used in accordance with the following purpose: the measures must be aimed at achieving compliance with the decision and with the original and essential meaning of the order that was issued in the judgment, for purposes of securing the effective enjoyment of the protected fundamental right. (3) Judges are allowed to alter the order in its accidental aspects, that is to say, in relation to its conditions of time, space and manner, provided that this is necessary to attain such goal.

also involves avoiding unnecessary or excessive interventions upon the design and implementation of the public policy to protect the displaced population. The preservation of this balance has allowed the Court to follow-up on the implementation of its own orders, introduce the amendments required to ensure their realization, and point out the areas that continue to threaten or violate the rights of the displaced population. Nevertheless, the preservation of this balance has been challenged by different tensions, explained below. Resolving these tensions has affected the design of the orders issued by the Constitutional Court, especially regarding orders issued in the follow-up decisions.

A first tension emerges when a constitutional judge has an effect on the establishment of State priorities to protect the rights of a highly vulnerable segment of the population. The declaration of an unconstitutional state of affairs in Decision T-025 of 2004 conferred the issue of forced displacement a higher priority than the one granted to it by the executive branch. This was done at a moment when many of the existing policy instruments tended to make the needs of this population invisible, and when it was commonplace to disregard the problem's real dimensions and seriousness. It was the judicial acknowledgment of the gravity of this humanitarian crisis and the governmental acceptance of such recognition that led to this modification in the order of priorities. This in turn allowed the Court to point out the urgency of adopting corrective measures to prevent the continuous and repeated violation of multiple constitutional rights affecting the forcibly displaced population.

A second tension arises when the Constitutional Court's decisions have an impact upon the definition of some of the public policy's elements. Decision T-025 of 2004 introduced criteria that were traditionally alien to those in charge of designing and implementing a public policy (for example, on the "effective enjoyment of rights" or on the international principles on internal displacement). These criteria were to be applied in order to determine the minimum levels of assistance and protection that would be acceptable from a constitutional point of view, or to define the content of the policy's different components. The resolution of this tension has had an impact not only upon the identification of the most salient policy flaws requiring immediate attention (as the Court did

(4) The new order to be issued must seek the slightest possible reduction of the protection that is granted, and compensate such reduction in an immediate and effective manner."

in Decision T-025 of 2004[38]) but also upon the adoption of concrete orders to develop adequate instruments for measuring the progress and impact of the governmental policy (as was the case of Awards 178 of 2005[39] and 218 of 2006[40]), in which the Court demanded the adoption of evaluation

[38] Section 6.3. of Colombian Constitutional Court, Decision T-025 of 2004 and sections 2, 3, 4 and 5 of the final decision adopted in T-025 of 2004.

[39] In Award 218 of 2006, the Court ordered each one of the entities in charge of attending the displaced population to adopt indicators and evaluation mechanisms, after having pointed out, in section 9 of Award 178 of 2005, the following: "9. That on the ground of the analysis of the information and the evaluations of the actions carried out by the different entities to overcome the unconstitutional state of affairs (…) the Third Review Chamber of the Constitutional Court considers that the unconstitutional state of affairs declared in decision T-025 of 2004 has not yet been overcome. Although the Court acknowledges that given the seriousness and extension of the violation of the displaced population's rights, it was not possible to overcome such state of affairs within one year, it was nonetheless necessary for the entities in charge of the attention of the displaced population to advance in an accelerated and sustained manner towards the resolution of such state of affairs within a reasonable term… In addition, although each one of the entities in charge of the components of the attention policy for the displaced population faces specific problems… the different evaluating entities and organizations identified several common problems, which have delayed the resolution of the unconstitutional state of affairs, namely… (iii) the lack of results indicators that take into account the effective enjoyment of the displaced population's rights and which can allow for a determination of the dimension of the specific demand which has been attended, as well as the advances, retrogressions or delays in each program and attention component; (iv) the insufficiency of effective instruments which can allow for the adoption of corrective measures in relation to retrogressions or delays in the programs and attention components; (v) the absence of permanent evaluation and follow-up mechanisms for the programs to attend the displaced population."

[40] In section 4 of the considerations of Award 218 of 2006, the Constitutional Court pointed out, as one of the critical areas which had not received adequate governmental attention, the lack of reliable and significant results indicators, in the following terms: "4.1. As of this date, there is no series of indicators that responds, on the ground of the specificities of each component of the public policy, to homogeneous criteria in its design, application and validation. On the contrary, each one of the entities that form part of SNAIPD has generated its own set of indicators, in many cases modifying them throughout the different bi-monthly reports… 4.3. It is not clear, in any of the cases, whether the result indicators are applicable or significant. In fact, apart from presenting the indicators as mere criteria for measuring compliance with the goals set by each SNAIPD entity in the reports they have submitted to the Court, it does not seem clear that there exists an officer or entity in charge of applying said indicators, carrying out a follow-up of the policy's implementation and orienting it in accordance with its results, introducing the pertinent corrections or modifications. // In this way, one of the main flaws which had already been identified by the Court still persists, and there is now a pressing need to adopt different sets of results indicators which, more than being mere enunciations of isolated elements or criteria that refer to certain goals, can serve as instruments to measure in a transparent, reliable and significant manner the effectiveness of the public policy for the attention of the displaced population, both in relation to said

and follow-up indicators and mechanisms that took into account the effective enjoyment of the displaced population's rights.

A third tension is created when the constitutional judge's decisions stimulate a process of correction and adjustment of a pre-defined public policy, which is enshrined in a legal instrument with a specifically assigned budget, designated entities and public officials who are responsible for its execution. In Annex 5 of Decision T-025 of 2004, the Constitutional Court summarized the observations made by experts, governmental entities and human rights organizations about the main weaknesses and obstacles when addressing the needs of the displaced population. It also underscored the most important gaps in both the design and the implementation of this public policy, and it identified its most salient failures, so as to order their correction in the final part of the judgment.

The fourth tension emerges when the Constitutional Court, acting as the highest *tutela* judge, on the one hand acknowledges its own constitutional role in the protection of the population affected by forced internal displacement and the limitations in the instruments at its disposal, and, on the other hand, also acknowledges the risk that its decisions may excessively interfere with the legitimate sphere of jurisdiction of the public policy's designers and implementers. All of the orders issued to date reflect this tension insofar as they do not indicate the contents of the policy to be implemented by the Government in a final manner, nor the instruments through which it should be executed. But the orders do set minimum parameters that must be borne in mind by the executive branch when deciding, discretionally, on the orientation and scope of the policy for assisting the displaced population.

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policy as a whole and to each one of its components, based on the need to secure effective enjoyment of forcibly displaced persons' fundamental rights. There are, therefore, three (3) sets of results indicators whose adoption was ordered in Award 178/05, and which are required to comply with this purpose, namely: (i) one set of results indicators that refers to the national coordination of all of the components of the public policy for the attention of the displaced population, (ii) one set of indicators that refers to the coordination of the activities of the territorial entities in the development of all of the components of the policy for the attention of the displaced population, and (iii) one specific set of indicators for each one of the components of the public policy under the responsibility of the entities that form part of SNAIPD within their spheres of jurisdiction—e.g. guarantee of minimum subsistence levels, support for self-sufficiency, housing, returns, lands, healthcare, education, etc."

A fifth tension arises when the constitutional judge, who must order the adoption of measures required to protect citizen rights, accepts that the resolution of the unconstitutional state of affairs will take a reasonable period of time. This acknowledgment does not entail an authorization to postpone the adoption of such corrective measures indefinitely, nor does it ignore the need for providing the immediate assistance required by millions of displaced persons. However, it does exact specific, effective and timely measures to overcome such a state of affairs, which runs contrary to constitutional mandates. This tension can be seen in Awards 176, 177 and 178 of 2005.[41]

Finally a sixth tension arises when the constitutional judges define orders that are aimed at the protection of the rights of the displaced population. These orders should be issued in such a way as to address situations of systematic and repeated violations of the rights of IDPs. At the same time, these orders should be issued in a manner that facilitates compliance by the authorities so as to guarantee that the rights of IDPs are not merely symbolic.

The resolution of these tensions has been addressed by the Court throughout the follow-up process, which is described in detail in this book's chapter by Clara Elena Reales.

In any case, the permanent migration of the newly displaced population into most of the country's municipalities has provided a significant reminder of the law's inherent limitations in the face of a complex and protracted armed conflict. Regardless of how strongly IDPs' constitutional rights are protected by the country's activist judges, the persistence (and, in some instances, the intensification) of the conflict in Colombia will continue to generate masses of uprooted citizens who flee to the cities and towns seeking protection. Perhaps this is an area where it is not a judicial decision, but a remote peace agreement that may be called upon to provide lasting solutions to the causes of the underlying humanitarian crisis.

[41] Award 176 of 2005, considerations 2, 8 and 11; Award 177 of 2005, consideration 13; Award 178 of 2005, considerations 9, 11 and 12.

The women of the barrio, *Los Altos de la Florida, just outside Bogota.*
Photo courtesy of UNHCR, B. Heger, January 2006

CHAPTER 2

Design and Implementation of the Orders Issued in Decision T-025 of 2004: An Assessment of the Process

Clara Elena Reales[*]

From many standpoints, Decision T-025 of 2004 establishes a balance that is difficult to preserve by a constitutional judge acting as guardian of human rights, and as a judicial mediator in a humanitarian crisis. The need to protect the rights of the displaced population in Colombia led the Constitutional Court (hereafter the Court) to address the multiple failures of a public policy that was in the process of implementation—a policy that would perpetuate the violation of the rights of the displaced population.

As mentioned in the first chapter of this book, the balanced position assumed by the Court, centered on its role as *tutela* judge, has been continuously challenged since Decision T-025 of 2004 was issued. The need to adjust the orders initially issued in this decision, for the purpose of ensuring that the measures adopted by the Government are aimed at guaranteeing the effective enjoyment of the displaced population's rights, has given rise to the following tensions.

(1) Respect for the functions of each branch of public power and the meaning of the principle of harmonious collaboration between these branches, in the context of a humanitarian crisis of the magnitude of forced internal displacement; (2) the urgency of significantly advancing the resolution of the unconstitutional state of affairs and providing durable solutions to the victims of displacement; (3) the limitation of the resources available to the Colombian state to address the humanitarian crisis; and (4) the persistence of the phenomenon of forced displacement in the context of internal armed conflict that continues to be unresolved.

Bearing this context in mind, the Court has adopted the following decisions since February 2004 (when Decision T-025 of 2004 was delivered):

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(1) An initial award adopted in December 2004 (when the Court established the criteria to determine whether the orders had been complied with) requested additional information about the satisfaction of IDPs' basic rights, and asked for external evaluations of authorities' activities;[1] (2) a decision to convene a public hearing for the purpose of receiving information from the members of CNAIPD[2] regarding the manner in which they had complied with the orders issued in Decision T-025 of 2004;[3] and (3) on the grounds of the information received during this public hearing, and of the additional reports submitted thereafter to the Court, three critical follow-up decisions were adopted on August 29, 2005 (Awards 176, 177 and 178 of 2005) that dealt with the budgetary aspects of the public policy to assist IDPs,[4] the coordination of the activities of

[1] On December 10, 2004, the Court issued a decision in which it (i) established precise criteria to determine the degree to which the orders issued in Decision T-025 of 2004 had been complied with, clarifying the guidelines that should be followed at the moment of ascertaining whether the competent entities had given low, medium or high levels of compliance to said orders, or conversely, whether they had failed to fulfill them; (ii) requested additional, precise information to different national entities in regards to the satisfaction of the minimum rights of the displaced population, as defined Decision T-025 of 2004; and (iii) requested the National Controller's Office (*Contraloría General de la República*), the Public Prosecutor's Office (*Procuraduría General de la Nación)*, and the National Ombudsman's Office (*Defensoría del Pueblo*) to evaluate, on the grounds of the aforesaid compliance criteria, the actions developed by the authorities who received orders in Decision T-025 of 2004.

[2] The National Council for Comprehensive Assistance to the Population Displaced by Violence officially changed its name in July 2004 to *the Presidential Agency for Social Action and International Cooperation*. In this text, we will be referring to it as *Acción Social*.

[3] The hearing was held on June 29, 2005. Practically all of the Ministers of the Cabinet attended and submitted individual reports to the Court, together with the Director of the Presidential Agency for Social Action. The National Controller, *Procurador General de la Nación*, the National Ombudsman and the Representative of the United Nations High Commissioner for Refugees (UNHCR) were also present, and delivered their reports as external evaluators of the process. Several NGOs and organizations representing displaced populations were also invited. They presented reports about the measures adopted by the national government to overcome the unconstitutional state of affairs. This hearing was a remarkable event, insofar as it placed the representatives of the displaced population on an equal footing with the members of the national government and the external evaluators.

[4] In Award 176 of 2005, the Court noted the efforts made by the budgetary authorities (the Ministry of Public Finance, the National Planning Department and the Presidential Agency for Social Action) in estimating the costs of implementing the policy regarding forced displacement. However, the Court also highlighted the insufficiency of such efforts and ordered said authorities to submit a detailed timetable indicating the mechanisms and the rhythm to procure the required resources by December 1, 2005. The Court also asked for clarification regarding the officials in charge of executing such

territorial entities in this regard,[5] and the activities of the authorities that form part of SNAIPD.[6]

After receiving an extremely large amount of information through the monthly and bi-monthly reports submitted by the competent authorities in compliance with Awards 176, 177 and 178 of 2005, the Court issued a new follow-up decision in August 2006 (one month before the expiration of the longest term conferred in such Awards). Through Award 218, the

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resources, the proportions in which national and territorial entities would contribute to their provision, and the components of the policy to which they would be designated. The Court also ordered the above authorities to secure reasonable, sustained and progressive financing for the execution of the policy, to update their calculations in accordance with the evolution of forced displacement, and to submit periodical reports to the Court, indicating the manner in which the economic component of the policy had been included in the annual budget law, as well as how the resources had been used during each fiscal year by each of the competent entities.

[5] In Award 177 of 2005 the Court noted that the Ministry of the Interior and Justice (MIJ), which was responsible for the coordination of the efforts of territorial entities (departments and municipalities) regarding IDPs, had submitted highly inadequate reports on the fulfillment of its duties. This led the Court to assume that MIJ had not properly coordinated the above efforts. Therefore, noting the critical importance of securing territorial entities' full commitment to the implementation of the policy, the Court ordered the Minister to design, implement and promptly apply a strategy to promote and coordinate territorial efforts, which could lead the departmental and municipal authorities to assume a higher budgetary and administrative responsibility to secure IDPs' rights. In addition, the Court ordered the Ministry to submit periodic reports to the Court and to other oversight authorities on the above matter.

[6] Finally, in Award 178 of 2005, the Court made a careful evaluation of the way in which each of the national entities that form part of SNAIPD had been complying with the orders issued in Decision T-025 of 2004. On the grounds of the external assessments provided by the entities that participated in the public hearing, the Court concluded that the unconstitutional state of affairs had not yet been overcome. The Court also pointed out that although it was not feasible or realistic to order its material resolution in the term of one year, the actions by these national entities should have translated into accelerated and sustained advances towards that goal. Three main reasons were identified for the national entities' failure to comply with their obligations: (i) the lack of criteria to distinguish the displaced population from the rest of the country's vulnerable population, which prevented the competent authorities from identifying the dimension of the problem to be addressed; (ii) the insufficiency of the funds allocated for the purpose; and (iii) the absence of developed administrative, coordination and follow-up capabilities that measured up to the job of attending to IDPs. The Court also identified a number of basic deficiencies in the design, implementation and application of the public policy to attend to the displaced population, and ordered each one of the authorities involved to solve them within their respective spheres of jurisdiction, in accordance with their own priorities and goals, and to submit the corresponding periodic reports. The Court granted a number of different time periods for compliance, the longest of which was to last for one year.

Court called upon the national authorities responsible for comprehensive assistance to IDPs in the following fashion:

1) To submit a new, brief and clear report that provided a concise evaluation of the progress they had made in the implementation of the policy;
2) To seriously address the problems of general coordination within SNAIPD;
3) To correct the registration and characterization of the country's displaced population in order to have a proper assessment of the factual evolution of the crisis;
4) To allocate sufficient resources for assisting the displaced population according to the real dimensions of the problem;
5) To develop significant indicators of results based on the criterion of the "effective enjoyment of rights;"
6) To rectify the lack of specificity for IDPs in the different components of the policy;
7) To adopt mechanisms for the protection of indigenous and Afro-Colombian groups (who have been the most affected segments of the population and are at serious risk of extinction as a consequence of the armed conflict);
8) To increase levels of security when IDPs return to their land;
9) To advance the attention and services available to recently displaced people;
10) To improve the coordination of the territorial entities' activities in the field; and
11) To include a preventive approach within the relevant public policy (especially during the deployment of military operations that can, in turn, generate displacement of the population).

After this follow-up decision, the national government presented a common report on September 13, 2006. The report is currently under evaluation by the Court in light of the external reports submitted by the entities whose cooperation the Court has requested. In order to clarify a number of the time periods and measures mentioned by the Government in this report, the Court issued Award 266 on September 25, 2006. In this Award, the Court requested that the competent authorities, IDP organizations, and the Office of the UN High Commissioner for Refugees evaluate the actions carried out by the national government prior to Decision T-025 of 2004 and its follow-up Awards.

Even though the final evaluation of the Government's common report and of the evaluations submitted to the Court has not been concluded at this time, a preliminary analysis of these documents revealed the need to examine the possible responsibilities and liabilities of several public officials whose performance had been sharply called into question in the different reports. This preliminary evaluation gave way to the adoption of Awards 333, 334, 335 and 336 of 2006.[7] In that same evaluation, the Court verified that the Government had failed to adequately adopt indicators to measure the effective enjoyment of IDPs' rights. Likewise, it warned that the Government's strategy for adopting these indicators was excessively long, thereby precluding an assessment of whether advances were being made toward overcoming the unconstitutional state of affairs. Consequently, the Court issued Award 337 of 2006, in which it established an expedited procedure for the adoption of these indicators. As a result of this process, which involved a public information session with the Government, competent authorities, IDP organizations, and UNHCR, a set of indicators was adopted to measure the effective enjoyment of IDPs' rights (as regards Award 109 of 2007).

Two aspects of the follow-up decisions in question are particularly noteworthy. On the one hand, the decisions advance the individualization of the competent public officials (in accordance with the different components of the policy). On the other hand, the decisions shift the focus from the means to solve the unconstitutional state of affairs to the requirements associated with specific and concrete achievements towards this state of affairs' resolution—which translates into the importance granted therein to the adoption and application of results indicators, follow-up mechanisms and instruments to correct any detected failures.

In the following sections, I shall first examine the orders originally issued in Decision T-025 of 2004 in order to identify the main features of those orders in solving the tensions identified in the first chapter of this book and the early part of this chapter. Second, I will refer to the implementation process of some of the orders issued in this judgment, so as to exemplify the difficulties encountered by this process. Third, I will analyze some of the challenges that lie ahead in the process of implementing the orders issued by the Court to secure the resolution of the unconstitutional state of affairs.

[7] In these Awards, the Court adopted a special procedure to consider whether its orders had been complied with by public officials within *Acción Social*, the Colombian Institute for Rural Development (INCODER) and MIJ.

I. The contents of the orders issued in Decision T-025 of 2004

In Decision T-025 of 2004, the Court issued both (a) orders aimed at responding to the concrete petitions of the plaintiffs whose lawsuits had been accumulated in the dossier for review,[8] and (b) orders required to overcome the unconstitutional state of affairs related to forced internal displacement.

The acts and omissions alleged by the different plaintiffs as causes for the violation of their rights made two types of orders necessary: (i) specific orders to address the plaintiffs' claims, aimed at obtaining emergency humanitarian aid, economic stabilization, housing, access to education for children, access to health care services and the provision of medicines within a given period of time; and (ii) complex orders necessary to overcome the unconstitutional state of affairs and to correct the policy flaws affecting the displaced population.

A. The specific orders issued by the Court to address the plaintiffs' petitions

The orders issued within this category correspond to those which are normally issued in any *tutela* judgment—i.e., orders directed to a specific authority, so that it modifies the behavior through an act or omission—that gave rise to the rights violation.

In the case of the *tutela* lawsuits that resulted in Decision T-025 of 2004, most of the plaintiffs' complaints related to the lack of effective response to the petitions they presented to obtain different elements of aid established in Law 387 of 1997. The Court considered that the manner in which these petitions were answered, the procedure through which the effective delivery of aid was indefinitely postponed, and the fact that many of the entities required the presentation of *tutela* lawsuits in order to apply the law, constituted a violation of the displaced population's rights. Consequently, the Court defined the parameters that should be met by the different entities when answering these petitions. These parameters are to guarantee an effective protection of the displaced population's rights.

[8] In the *tutela* procedures between March and November 2003 that gave way to the adoption Decision T-025 of 2004, the Court decided to accumulate 108 lawsuits filed by 1150 family groups belonging to the displaced population, with an average of four persons per group, and composed primarily of women heads of household, elderly persons and minors, as well as some indigenous persons, located in 22 cities and municipalities across the Colombian territory.

Thus, for example, in the *Tenth* order of Decision T-025 of 2004, the Court decided:

> "In regards to the specific orders for granting the aid established in the housing and socioeconomic reestablishment programs… [*Acción Social*, the National Institute for Urban Reform] INURBE or whichever institution replaces it, FIDUIFI or whichever institution replaces it, [Colombian Institute for Agrarian Reform] INCORA or whichever institution replaces it, as well as the entities in charge of these programs at the departmental and municipal level, must give substantial, clear and precise responses to the petitions filed by the plaintiffs in the present proceedings, bearing in mind the following criteria:
>
> 1) Incorporating the request within the list of displaced petitioners;
>
> 2) Informing petitioners, within a period of 15 days, about the maximum term in which the request shall be responded;
>
> 3) Informing petitioners, within a period of 15 days, on whether the request fulfills the requirements to be processed, and should it not fulfill them, indicating clearly how they can correct them in order to gain access to the aid programs;
>
> 4) If the request complies with all the requirements, but there are no available funds in the budget, carrying out the necessary procedures to obtain the resources, establishing priorities and the order in which they will be solved;
>
> 5) If the request complies with the requirements and there are enough available funds in the budget, informing the petitioners about when the benefit will become effective and the procedure that will be followed in order for him/her to effectively receive it;
>
> 6) In any case, they must abstain from demanding a *tutela* judgment in order to comply with their legal duties and respect the fundamental rights of displaced persons."

The different entities therefore had to provide concrete responses to the petitions presented by the plaintiffs, taking into account the parameters set forth by the Court.

Even though the reports presented by the Government in the months of March, April and May 2004 describe the manner in which the Court's specific orders were complied with in general terms, in some cases—particularly in the area of access to housing and productive projects—the persistence of flaws in the policy has delayed the effective enjoyment of

the corresponding rights by the plaintiffs. In Award 050 of 2004, the Court pointed out:

> "[*Acción Social*] has been submitting periodical reports that account for partial compliance with the judgment, at two levels: (i) at the level of compliance with the specific orders issued in relation to the plaintiffs, and (ii) at the level of compliance with the general orders relating to the entire displaced population and the responsible public entities. As to the former… [*Acción Social*] has informed the Court about the actions it has developed to attend the specific orders related to the *tutela* lawsuits reviewed by the Court in Decision T-025 of 2004, since the moment this decision was notified and without awaiting the personal notification of the plaintiffs: (a) it has made important efforts to identify the current location of the different petitioners; (b) it has verified the need for support and the aid that has already been received by the plaintiffs in the *tutela* proceedings that were accumulated to issue Decision T-025 of 2004; (c) it has given out emergency humanitarian aid and initiated evaluation processes to determine whether there exist extreme vulnerability conditions that may justify, in certain specified cases in accordance with the decision, the continuation of the provision of such aid; and (d) it has made concerted efforts with the Education and Health Secretariats to satisfy the needs of the plaintiffs."

Regarding the provision of emergency humanitarian aid and access to healthcare and education, the rights of the plaintiffs were effectively protected and the Government complied with the orders issued in Decision T-025 of 2004. However the high number of *tutela* actions filed after the adoption of this decision, as well as the reports sent to the Court by different IDP organizations, indicate that there are still serious flaws that have not been corrected.

With regard to the economic stabilization petitions,[9] the Court ordered the competent authorities to give substantial responses to plaintiffs' requests within thirty days. These orders followed the guidelines pointed out in paragraph 10.1.3 of Decision T-025 of 2004, and were made in accordance with the Court's case-law on the matter.[10] Regardless of this

[9] This "economic stabilization" category includes the aid provided in the fields of housing, productive projects, training and food security.

[10] Colombian Constitutional Court, Decision T-025 of 2004 made express reference to Decisions T-602 of 2003 and T-721 of 2003, on the right to housing; T-669 of 2003, on

order's clarity, the Court has received several requests for the initiation of "non-compliance proceedings,"[11] presented against the entities in charge of giving responses to the plaintiffs—particularly relating to housing, and land projects. These requests were received mainly because the effectiveness of the housing and economic stabilization solutions depends on the adoption and application of appropriate corrective measures.[12]

Likewise, in the case of the requests for (i) effective access to the social security system, healthcare system and provision of medication, as well as for (ii) access to the educational system until fifteen years of age, the Court ordered *Acción Social* and the Health and Education Secretariats of the territorial entities to follow the Court's case-law on the matter.[13] Consequently, the Court ordered these agencies to coordinate and carry out the actions required for securing effective access to the healthcare system and education within fifteen and thirty days, respectively.

The same report presented in March 2004 by *Acción Social* described compliance with these two specific orders by both the Ministry of Social Protection and the Ministry of Education.[14] In spite of this, the Sixth

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the protection of the rights to petition and work and access to different economic consolidation alternatives; T-645 of 2003, about healthcare provision, and T-419 of 2003, about housing, economic stabilization and education. The guidelines for the substantial responses that were to be provided by the Government were also included in para. 10 of Decision T-025 of 2004.

[11] See, for example, Awards 203 and 205 of 2005, which sent the requests to the lower *tutela* judges in order for them to initiate non-compliance proceedings.

[12] The housing, land and productive project components, such as large design problems, poor implementation and low coverage, were pointed out in the evaluation documents sent to the Court with regard to the T-025 ruling of 2004. None of these three components was designed with consideration for the needs and traits of the displaced population. This caused few displaced people to have access to these benefits. The identified flaws resulted in the redesign of these components. However, the Government has been remiss in making the necessary adjustments, and has only introduced minor changes, which actually perpetuate the identified problems.

[13] The Colombian Constitutional Court made express reference to Decisions T-215 of 2002, T-419 of 2003, T-645 of 2003 and T-790 of 2003 for the protection of the displaced population's right to health.

[14] *Acción Social*, as the entity responsible for coordinating other entities, is responsible for periodically presenting the governmental report to the Constitutional Court. In these reports, *Acción Social* generally reports the way in which each organization has accomplished its court orders. In health matters, the actions relative to the protection of the displaced people's right to health services are the responsibility of the Social Protection Agency. In terms of education, these obligations are under the National Education Agency. The Government reports used to show favorable results in the carrying out of the court orders. Simultaneously, the Public Prosecutor's Office

Report of the *Procurador General de la Nación* on compliance with the orders issued in Decision T-025 of 2004 reported that administrative and budgetary obstacles continued to impede the effective enjoyment of the right to health. Moreover, in the case of the right of access to education, the figures presented by the Ministry on the demand for services were neither adequate nor reliable. The *Procurador* pointed out:

> "Obstacles still persist in the effective enjoyment of the displaced population's right to health. Unnecessary bureaucratic procedures and severe budgetary restrictions prevent the government from fulfilling this obligation. Some of the instruments reported by the Ministry of Social Protection are still at an experimental stage, and the ones already designed do not provide satisfactory results, when compared with the efforts required of the government to secure the entire displaced population's access to the right to health."
>
> "The information provided in the field of education does not make it possible to determine the scope of the goals set to overcome the unconstitutional state of affairs, for which reason the *Procuraduría General* finds that the orders issued by the Constitutional Court have not been complied with. The lack of information by the Ministry of Education in relation to the displaced population's demand for the educational offer runs counter to the clarity and transparency exacted by the Court in its Award 218 of 2006. The goals fixed do not indicate a progressive effort to materialize, in the shortest possible time, the order to secure access to and permanence in the educational system by displaced children, in the manner required by the Court. [The *Procuraduría* also] notes the lack of information on the long-term goals required to overcome the unconstitutional state of affairs."[15]

As to the requests for inclusion in the Central Registry of the Displaced Population (RUPD), the Court ordered that responses to these petitions were to be made within eight days in order to determine whether

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(*Procuraduría General de la Nación)*, which is responsible for an objective system of following up on matters of forced displacement, also remitted periodic reports about the actions and omissions of the different entities which are part of the larger agency. The Procurement documents pointed to persistent administrative and financial problems, which affected the health and education rights of the displaced population and questioned the permanent numbers presented by the Government.

[15] Cf. Page 119 of the *Procurador's* Sixth Report.

the petitioner was a displaced person and whether she or he had the right to the different types of aid established in Law 387 of 1997 (in accordance with guidelines set out in Decision T-025 of 2004). Even though *Acción Social* had reported on its response to this concrete order in March of 2004, the conclusions presented by the *Procurador General de la Nación* and other organizations pointed out that many of the problems detected in Annex 5 of Decision T-025 of 2004 persisted, and that they have currently become worse.[16]

While every request for IDP status in RUPD may be reconsidered by the government—be it as a product of the internal appeals procedures established for the matter, or as a consequence of *tutela* actions—the frequent complaints and requests related to deficiencies in the registration system indicate that the flaws identified by the Court in Decision T-025 of 2004 have not yet been overcome. Accordingly, violations of the displaced population's rights, in the above regard persist. In his Sixth Report, the *Procurador* pointed out the following:

> "Obstacles persist in the displaced population's access to the Single Registration System. It is alarming for… [*Acción Social*] to reject declarations made by population which has been displaced as a consequence of opposing the national government's policies, or because it has been forced to abandon its residence by paramilitary groups which, according to… [*Acción Social*]… have already been demobilized. Likewise, the persistence of the high rates of rejection for 'belatedness' [is alarming]."[17]

In relation to the requests for the extension of emergency humanitarian aid, the law granted an extension of an additional three months in exceptional cases only. The Court found that these terms were at odds with IDPs' rights and ordered that humanitarian aid be continued for as

[16] Most of the *tutela* lawsuits related to forced internal displacement; they have been reviewed by the Colombian Constitutional Court after the adoption of Decision T-025 of 2004, and refer to obstacles relating to the process of IDP status recognition and registration. See Colombian Constitutional Court, Decisions T-740 of 2004; T-770 of 2004; T-1094 of 2004; T-175 of 2005; T-563 of 2005; T-882 of 2005; T-1076 of 2005; T-1144 of 2005; T-086 of 2006; and T-468 of 2006.

[17] Conclusion 9 of the *Procurador's* Sixth Report, submitted to the Court on October 27, 2006, page 119.

long as extraordinary and urgent circumstances persist.[18] Even though the Government submitted a report in December 2004 about how it had complied with this order, the persistence of complaints about delays in the provision of emergency humanitarian aid, and the refusal to extend this aid indicate that the problems identified in Decision T-025 of 2004 have not been resolved.

As a general rule, orders of this type do not entail an unnecessary intrusion by the *tutela* judge within the sphere of jurisdiction and functions of the governmental authorities, insofar as the authorities' aim is to correct institutional practices that violate rights in concrete cases. The correction of these practices also has an impact that transcends the concrete case, and can imply the modification of internal procedures. In this context, the intervention of the *tutela* judge through a decision that orders the protection of rights becomes an instrument to modify a public policy adopted by the Executive. Nevertheless, that intervention does not encroach upon the jurisdiction of the Government, but activates the application of the principle of harmonious collaboration between the different branches of public power.

B. The complex orders issued by the Court to overcome the unconstitutional state of affairs

The tensions that challenge the balanced position, which must be maintained by the *tutela* judge, are best exemplified in the design and implementation of the complex orders issued by the Court in Decision T-025 of 2004. By definition, these orders (i) demand a complex implementation process; (ii) extend over a period of time; (iii) require the collaboration of different authorities; (iv) require coordinated actions from these authorities; (v) imply the allocation and expenditure of resources; and (v) may require, because of the complex nature of this type of order, periodical adjustments.[19]

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[18] The Court considered that there were conditions of extraordinary urgency in cases of elderly persons, persons with disabilities, or among women heads of household, because such people were unable access to economic stabilization programs on their own.

[19] In Colombian Constitutional Court, Decision T-086 of 2002, the Court drew the difference between simple and complex orders, in the following terms: "[T]he orders issued by *tutela* judges can be of different kinds, and therefore, their simplicity or complexity is a matter of degree. However, it can be stated that a *tutela* order is simple when it includes one single decision, in the sense of doing or abstaining from doing something that is within the exclusive sphere of control of the order's recipient, which

Therefore, the design and implementation of these orders implies the review of State priorities. It also implies the modification of the Government's discretional decisions in order to harmonize them with the constitutional and international standards in the field of protection of the rights of internally displaced persons. It is equally necessary to adjust the work schedules established by those responsible for the execution of the policy, so as to expedite their work and achieve the resolution of the unconstitutional state of affairs within a reasonable period of time. It is also necessary to increase the resources originally allocated in order to adjust them to the needs and dimensions of the problem, and to advance the effective enjoyment of the displaced population's rights. Furthermore, it entails the acceptance of permanent vigilance and the follow-up of the Executive's actions by the State controlling entities, by the Court as *tutela* judge, by the organizations of the displaced population and by international organizations. This helps to verify that all the measures that are adopted are effectively aimed at overcoming the unconstitutional state of affairs.

After identifying the problems with the policy for the comprehensive assistance to the displaced population—problems that were generating the systematic violation of the rights of IDPs[20]—the Court then addressed which flaws required immediate attention by the Government. This led to the adoption of specific orders to address these flaws in each assistance component of the policy, as seen in Decision T-025 of 2004.[21]

The main flaws in the policy were briefly described in Chapter I, Section II. In the present section, I shall refer to the content of the complex orders defined by the Court when addressing each flaw. I will also discuss

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can be adopted or executed in a short time, usually through one single decision or act. On the contrary, a *tutela* order is complex when it entails a set of actions or omissions that overcome the recipient's exclusive sphere of control, and frequently require a term longer than 48 hours to achieve full compliance."

[20] Section 6 and Annex 5 of Colombian Constitutional Court, Decision T-025 of 2004.

[21] Even though the Complex orders issued by the Court only referred to the main problems detected in Decision T-025 of 2004, and not in a detailed manner to each one of the flaws identified both in section 6.3 and in Annex 5 of the judgment, the resolution of the unconstitutional state of affairs also implies the adoption of targeted corrective measures in each one of the problematic aspects identified in the Judgment. The Court reiterated this when it pointed out that the Annexes formed an integral part of the decision, and when it expressly referred to the corresponding section of its analysis in the Annexes. See, for example, sections 2.2 and 10 of Colombian Constitutional Court, Decision T-025 of 2004.

how the Court attempted to design its strategy for resolving problems with the policy in question.

In the first instance, one of the major flaws was the "insufficient allocation of resources for the implementation of the policies and the development of the programs for assisting the displaced population." The allocation of resources that took place between 1999 and 2002 was insufficient to begin with, and it was significantly reduced during 2003. The Court pointed out that the government's effort in this area was still clearly below the levels required to satisfy the displaced population's need for services and assistance.

In section 10.1.1 of Decision T-025 of 2004, the Court identified CNAIPD as the entity in charge of complying with the order relating to the insufficiency of resources. The Court identified this council for this task because it is the body in charge of formulating the policy and securing the budgetary allocation for the programs to assist the displaced population. Consequently, the Court ordered the above agency to define the dimension of the budgetary effort required for honoring (a) the commitments established in the policy, (b) the manner in which this effort would be attended by the State, (c) the territorial entities and international cooperation, and (d) the mechanisms to procure such resources. Likewise, the Court gave the Government a year to examine whether it was possible to uphold the original commitments. Such a possibility was left open, owing to the magnitude of the required budgetary efforts, and to the question of whether it was necessary to reorganize the priorities and temporarily modify the policy in order to introduce regressive measures. Finally, given that the organizations representing the displaced population had been completely marginalized from the decision-making processes of the public policy in question, the Court demanded that their right to effective participation be guaranteed.

This "insufficient allocation of resources" gave rise to the order issued in sections 2 (a) and 2 (b) of the decision in question, as follows:

> "To communicate, through the General Secretariat of the Court, such unconstitutional state of affairs to… [CNAIPD], so that it can verify, within its sphere of jurisdiction and complying with its constitutional and legal duties, the magnitude of said lack of coherence, and design and implement a plan of action to overcome it, granting special priority to humanitarian aid, within the terms indicated as follows:

> a. No later than March 31, 2004… [CNAIPD] shall (i) clarify the current situation of the displaced population included in the Single Registration System, establishing its number, location, necessities and rights according to the corresponding stage of the policy; (ii) determine the dimension of the budgetary effort it is necessary to undertake in order to comply with the public policy aimed at protecting the fundamental rights of displaced persons; (iii) define the percentage of participation in the allocation of resources that corresponds to the Nation, the territorial entities and international cooperation; (iv) establish the mechanism to procure such resources, and (v) establish a contingency plan in case the resources that should be provided by the territorial entities and the international cooperation are not provided in time or in the scheduled amount, in order for such gaps to be compensated through other finance mechanisms.
>
> b. Within the term of one year after the communication of the present judgment, the Director of… [*Acción Social*]… the Ministers of Public Finance and of the Interior and Justice, as well as the Director of the National Planning Department and the other members of CNAIPD, shall make all necessary efforts to secure that the budgetary target they have established is achieved. If, during the course of that year or before, it becomes evident that it will not be possible to allocate the established amount of resources, they must (i) redefine the priorities of said policy, and (ii) design the modifications it will be necessary to introduce to the state policy for assisting the displaced population. In any case, for the adoption of these decisions, the effective enjoyment of the minimum levels on which the exercise of the right to life in conditions of dignity must be secured, as pointed out in section 9 of this Judgment.
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> c. Afford the organizations that represent the displaced population opportunities to participate in an effective manner in the adoption of the decisions to be made in order to overcome the unconstitutional state of affairs, and inform them on a monthly basis about the advances made therein."

The traditional position assumed by *tutela* judges would have led the Court to distance itself from budgetary matters. However, the declaration of an unconstitutional state of affairs in the field of internal displacement allowed the Court to expressly refer to the inconsistencies found between the public discourse and the resources effectively meant to assist to the victims of forced internal displacement. This intervention did not imply a modification of its role as *tutela* judge, nor did it imply an unnecessary intrusion in affairs that should be defined by the Executive. The Court

restricted itself to pointing out the aspects that had to be addressed by the Government. The determination of the specific solution was left in the hands of the Executive, which preserved a broad margin of action to set forth (i) the amount of resources required, (ii) the rhythm at which they could be procured and executed, (iii) the sources from which they would be obtained, and (iv) contingency plans, should the procurement of the entire amount of resources required prove impossible.

For this reason, the Court pointed out "the lack of coherence between the seriousness of the violations of the rights recognized in the Constitution and developed by the legislation, on the one hand, and the volume of resources effectively destined to secure effective enjoyment of said rights and the institutional capacity to implement the corresponding constitutional and legal mandates, on the other hand."[22] Consequently, it ordered the competent authorities to determine the magnitude of this inconsistency, and to design and implement an action plan to overcome it. These actions had to include both the allocation of resources, and the adoption of measures to correct the flaws in the policy's design, implementation and execution—flaws that were causing the violation of the displaced population's rights.

Second, the Court pointed out the "lack of effective coordination in the formulation and implementation of the policies, and the dispersion of the functions and responsibilities of each of the entities that form part of SNAIPD",[23] both at the national and territorial levels. The Court identified the following entities as those in charge of implementing coordination mechanisms: Acción Social as the coordinator of national efforts, and the Ministry of the Interior and Justice (MIJ) as coordinator of territorial entities' efforts. However, a "lack of effective coordination" gave rise to the order issued in number 3 of the decision, as follows:

> "To communicate, through the general secretariat of the Court, the unconstitutional state of affairs to the Minister of the Interior and Justice, so that he promotes that the governors and mayors… adopt the decisions required to ensure that there exists coherence between the constitutionally and legally defined obligations of assisting the displaced population under the responsibility of the corresponding territorial entity, and the resources that it must allocate to effectively protect their constitutional rights. In the adoption of such decisions, they shall afford sufficient

[22] Order 1 of Colombian Constitutional Court, Decision T-025 of 2004.
[23] Annex 5, section B.1 of Colombian Constitutional Court, Decision T-025 of 2004.

> opportunities of effective participation to the organizations that represent the interests of the displaced population. The decisions adopted shall be communicated to the National Council no later than March 31, 2004."

Decision T-025 of 2004 assigned the responsibility for coordinating territorial entities to the MIJ, given that Law 387 of 1997 (article 7, paragraph) allows for this Ministry to participate directly in the activities of territorial committees "for purposes of coordinating the execution of the actions and/or providing technical support in any of the intervention areas."[24] Moreover, Decree 200 of 2003[25] granted this Ministry the authority to carry out functions in the fields of coordination and promotion of the national and territorial efforts in matters of citizen coexistence, human rights protection, public order, decentralization, and territorial autonomy. The administration of these functions was closely related to the improvement of assistance to the displaced population. The exercise of these functions allowed the Ministry to establish direct communication

[24] Article 7-2, paragraph 1, of Law 387 of 1997 states: "The Ministry of the Interior or any entity of the national level, which forms part of the National Council, can attend these committees' sessions for purposes of coordinating the execution of the actions and/or providing technical support in any of the intervention areas."

[25] Decree 200 of 2003, Article 2:

> "Functions. The Ministry of the Interior and Justice, in addition to the functions defined in the Political Constitution, will have the following: 4. Formulating, coordinating, evaluating and promoting the State policy in matters of public order conservation, in coordination with the Ministry of National Defense in its own sphere of jurisdiction, citizen coexistence and the protection of human rights. 5. Formulating, promoting and executing policies, within the framework of its jurisdiction, in matters of decentralization, territorial organization and autonomy, institutional development and the political and public order relations between the Nation and territorial entities. 10. Participating with the national government in the design of the policies for public registration of immovable property, and of the registration system and function. 12. Coordinating and organizing the National System for the Prevention and Attention of Disasters and participating in the design of the policies related to the prevention and attention of emergencies and disasters. 21. Promoting and enforcing, within its sphere of jurisdiction, the legal provisions about the extinction of the right to property, and directing the policies and the agenda for the destination of seized and confiscated assets, in accordance with the Law."

channels with the local authorities,[26] who are crucial to the process of this coordination.

Third, the Court identified "the lack of participation of the displaced population"[27] in the process of policy formulation and implementation at the national and territorial levels. Consequently, in numbers 2(c) and 3 of the decision in question, the Court demanded that sufficient opportunities for effective participation be afforded to the organizations representing the displaced population's interests. The Court directed that the opportunities should be afforded during the process of defining the budgetary effort required to assist the displaced population, and when designing and implementing measures to improve institutional capacity. Effective participation of the displaced population implied, in the Court's words, "at the very least, to have prior knowledge of the projected decisions, to receive the opportunity of making observations, and that any observations in regard to the decision projects must be duly valued, so that there is an answer in regards to every observation—which does not imply that decisions must be agreed upon."[28]

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[26] Given that Colombia is a centralized state, it is possible for a central authority to coordinate with the local authorities the actions that should be carried out in order to guarantee the rights of the displaced population. When this obligation was derived from the Constitution alone, the local authorities were reluctant to carry out their obligations towards the displaced population. It was, therefore, necessary to expedite Law 1190 (2008) to establish the obligations of the territorial entities towards the displaced population in a more precise way.

[27] Annex 5, section B.1. of Colombian Constitutional Court, Decision T-025 of 2004.

[28] Article 6-2, paragraph 1, of Law 387 of 1997, establishes the possibility for the National Council for Comprehensive Assistance to the Population Displaced by Violence to invite representatives of displaced persons' organizations to participate in its meetings, whenever it is deemed appropriate because of the nature of the displacement. In the absence of specific legal provisions for the case of the policy for the attention of the displaced population, recourse may be made to the general rules. One example of such provisions is Decree 2130 of 1992, issued in development of Transitory Article 20 of the Constitution, which provides in Article 1 that the Ministers, Directors of Administrative Departments, Directors, Presidents or Managers of decentralized entities, Superintendents and Heads of administrative entities or bodies of the national Executive Branch, have the following functions: "1. Indicating the projected decisions of a general scope that, because of their implications, it is convenient to inform citizens and interested groups about, so as to listen to their opinions on the matter beforehand;" 2. Provide public communication to all interested parties, through any adequate means, of the basic content, purpose and scope of the projected administrative decisions of a general scope… [I]n the corresponding report, indication shall be made of the term during which observations may be presented. In any case, the administrative authority shall autonomously adopt the decision that, in his/her criterion, best suits the general interest;"

Fourth, the Court pointed out the institutional flaws that hindered finding mid- and long-term solutions to assist the problem of forced internal displacement. The particular flaws identified were the lack of training of public officials on their functions and responsibilities towards the displaced population; the lack of a definition of objectives, and the lack of evaluation and follow-up mechanisms; and the absence of indicators which could provide reliable information about the demand for services and policy advances. These deficiencies gave rise to the order issued in number 4 of the decision, as follows:

> "To order CNAIPD to adopt, within the three months following the communication of this judgment, a program of action, with a precise schedule, aimed at correcting the flaws in institutional capacity, at least with regard to the ones indicated in the reports that were incorporated to the present process and summarized in Section 6 and Annex 5 of this Judgment."

The Court also identified the individual public entities and officials that were responsible for compliance with the complex orders, taking into account the constitutional and legal definition of their duties. Thus, for example, bearing in mind the legal responsibilities of CNAIPD,[29] the Court invested this entity with three new obligations: (1) defining the budgetary amount required to assist the displaced population;[30] (2) adopting the program of action and the timetable for the correction of the institutional failures;[31] and (3) concluding the actions that are necessary to secure a minimum level of protection for the entire displaced population.[32]

Fifth, as a consequence of the deficient budgetary efforts, the Court noted that "the scarce coverage of the programs for the assistance of the

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"3. Providing for the public registration of said observations and of the answers provided by the entity to those observations that were filed by the representatives of significant sectors of the community and by non-governmental organizations that promote the public interest;" "9. Elaborating an annual report on the fulfillment of these functions, which shall be adjoined to the report they present to Congress, or to the corresponding Minister or Director of Administrative Department, on the opportunity indicated by the latter."

[29] CNAIPD is the body in charge of formulating the policy and of securing the budgetary allocations for the programs for the displaced population. This body comprised of the main national authorities with responsibilities in the field

[30] Number 2 of Colombian Constitutional Court, Decision T-025 of 2004.

[31] Number 4 of Colombian Constitutional Court, Decision T-025 of 2004.

[32] The minimum level of protection for IDPs was defined bearing in mind the applicable constitutional provisions and the international principles on forced internal displacement Number 5 of Decision T-025 of 2004.

displaced population" was also a general deficiency of the policy in question. This coverage fluctuated between 3 percent in some programs (e.g. housing and training) and 33 percent in the programs with the highest coverage (e.g. emergency humanitarian aid and health care).[33] The coverage of priority programs, such as emergency humanitarian aid for the period 1998-2002, had only reached a level close to 30 percent of the total displaced population. Yet the Court defined these as minimum levels of satisfaction of the constitutional rights of IDPs—rights that had to be secured at all times to the entire displaced population.

Given the gravity of the humanitarian crisis and the urgency of securing a minimum degree of protection of the displaced population's rights in the mid-term, section 9 of Decision T-025 of 2004 points out that "there exist certain minimum rights of the displaced population, which must be satisfied under all circumstances by the authorities, given that the dignified subsistence of the people in this situation depends on it."

The Court considered that regardless of the level of resources that were available for the execution of the policy to assist the displaced population, or of the time frame that was required to correct the institutional and coordination failures, respect for the dignity of the displaced population required guaranteeing a minimum level of their rights at all times. This respect—derived from the constitutional protection of certain rights of the displaced population and interpreted in light of the international principles on forced internal displacement[34]—was introduced as a matter of priority. Such respect had not been expressly considered

[33] In section 1.2. of Annex 5 of Colombian Constitutional Court, Decision T-025 of 2004, the Court points out: "Even though the Court verifies evident efforts by State entities to broaden the coverage of aid for displaced communities… the assessments made over the last two years by both private organizations and State entities, coincide in reporting the insufficiency of the policies to attend the entire displaced population. Both UNHCR and the Social Solidarity Network coincide in stating that the policy to attend the displaced population has "insufficient coverage" (UNHCR and Social Solidarity Network, 'Balance of the Policy for the Attention of Forced Internal Displacement in Colombia 1999-2002', August 6, 2002, p. 4), or that, in the same sense, 'attention coverage does not reach satisfactory response levels'. This insufficient coverage is a phenomenon that is present in all of the components of the institutional response to the phenomenon of displacement."

[34] In Annex 3 of Colombian Constitutional Court, Decision T-025 of 2004, the Court recognized the Guiding Principles on Internal Displacement's value as a document for interpreting the existing international law in the field of internal displacement (Article 93 of the Constitution), even though they did not have the nature of an international treaty ratified by Colombia.

within the policy designed by the Government. Until Decision T-025 of 2004 was issued, the satisfaction of the displaced population's rights had been construed as a matter of progressive development, which was not judicially enforceable.[35] The declaration of the unconstitutional state of affairs modified this situation.

Consequently, the Court clarified the content of the rights that comprise the minimum positive levels of protection that must always be satisfied by the State, and included the following rights: (1) the right to life, in the sense of Article 11 of the Constitution and Guiding Principle 10; (2) the rights to dignity and physical, psychological and moral integrity (Articles 1 and 12 of the Constitution), as developed in Guiding Principle 11; (3) the right to a family and to family unity, as established in Articles 42 and 44 of the Constitution and clarified for these cases in Guiding Principle 17; (4) the right to a minimum level of subsistence, as an expression of the fundamental right to a vital minimum, as developed in Guiding Principles 18 and 24 through 27; (5) the right to health for the adult displaced population (Article 49 of the Constitution) and for displaced children (Articles 44 and 50 of the Constitution), in accordance with Guiding Principle 19; (6) the right to protection from discriminatory practices based on the condition of displacement (Article 13 of the

[35] A notion developed in the Constitutional Court's case law that contributed to the design of the orders issued in Decision T-025 of 2004 was the enforceability of "progressive development" rights. Even though it had traditionally been considered that rights of a programmatic content were not enforceable through the writ of protection of human rights, the Constitutional Court's case-law had pointed out that, in spite of the fact that the design and planning of these rights required time and exacted the allocation and destination of resources, this did not mean that they were not enforceable or that they could be perpetually disregarded. In Decision T-595 of 2002, the Court pointed out the State's obligations vis-à-vis those rights, in the following terms: "the progressiveness of certain positive actions protected by a right, requires that the State incorporate in its policies, programs and plans, resources and measures aimed at advancing gradually in the achievement of the goals set by the State for itself, in order to ensure that all of its inhabitants can effectively enjoy their rights. Thirdly, the State can define, through its competent organs, the magnitude of the commitments it acquires towards its citizens for the fulfillment of this purpose, and it can also determine the rhythm at which said commitment's materialization will take place. However, these publicly adopted decisions must be serious, for which reason they must be grounded upon a rational decision-making process, which can structure a public policy that is apt for being implemented, in such a way that the democratically acquired commitments are more than mere promises lacking any prospect of being carried out. Thus, when such commitments have been enshrined in the legislation and represent measures which are indispensable to secure the effective enjoyment of fundamental rights, interested parties may demand compliance with the corresponding positive actions through judicial channels."

Constitution), bearing in mind the provisions of Guiding Principle 22; (7) the right to basic education until 15 years of age for children in situations of displacement (Article 67-3 of the Constitution); (8) the right to the provision of support for self-sufficiency, by way of the socio-economic stabilization of persons in conditions of displacement, interpreted in accordance with Guiding Principles 1, 3, 4, 11 and 18; and (9) the right to return and resettlement (Article 2, 13 and 24 of the Constitution), developed in Article 2-6 of Law 387 of 1997, and which must be interpreted in accordance with the provisions of Principles 28, 29 and 30.

In order to secure this minimum level of protection, the Court ordered CNAIPD to conclude, within a maximum period of six months after the communication of the judgment, the actions aimed at securing the effective enjoyment of the minimum level of protection of the rights of all IDPs.[36] Even though the requirement of a minimum level of protection implied a modification of the governmental priorities, the modification ordered by the Court was not tantamount to an extra-limitation of the Court's functions as *tutela* judge and guardian of the Constitution, but rather as the express recognition of an unconstitutional omission in the policy designed by the Government—an omission that had to be corrected. Consequently, the order did not establish a new obligation for the Government, but reminded it of its constitutional obligations vis-à-vis the displaced population, highlighting the gravity of the identified omission.

The reports presented by *Acción Social* indicate that the Government had complied with a minimum level of protection for IDPs. However, the evaluations presented by the *Procurador General de la Nación*, the National Ombudsman's Office and different organizations of the displaced population suggest that such a minimum level of protection has not yet been achieved, especially as a result of the delay in the effective and timely provision of emergency humanitarian aid.

In its September 13, 2006 report, the Government pointed out that it had corrected the delay in the delivery of emergency humanitarian aid to the displaced population, obtaining coverage of more than 80 percent. However, the *Procuraduría General de la Nación*, after applying its

[36] Order 5 of the Colombian Constitutional Court's Decision T-025 of 2004 expressly states: "To order the National Council for Comprehensive Assistance to the Population Displaced by Violence to conclude, within a maximum term of 6 months since the moment of the communication of the present judgment, all actions aimed at securing the effective enjoyment, by all displaced persons, of the minimum levels of protection of their rights which were referred in Section 9 of this judgment."

Module for the Follow-up and Evaluation of SNAIPD Entities to the information gathered in the field all across the national territory, pointed out in its Sixth Report that the provision of emergency humanitarian aid continued to record low levels of under 50 percent coverage.[37]

Orders were also issued to *Acción Social*, the Ministry of Public Finance, and the Director of the National Planning Department so that they would adopt the measures required securing the enjoyment of the displaced population's rights within their spheres of competency. Among these special measures, one should be highlighted: the obligation to disseminate the Charter of Basic Rights to any person who has become the victim of forced internal displacement. This Charter had to be circulated through an effective medium to all national and local authorities, as well as civil society, and informed to each individual victim of forced displacement who requested the protection of his or her rights. In section 10.1.4 of Decision T-025 of 2004, the Court clarified the content of the Charter of Rights in the following terms:

> "[E]very displaced person shall be informed that:
>
> 1. He/she has the right to be registered as a displaced person, alone or with his/her family group;
> 2. He/she maintains all of his/her fundamental rights, and the fact of displacement has not led him/her to lose any of his/her constitutional rights, but on the contrary, she/he has become a subject of special State protection;
> 3. He/she has the right to receive humanitarian aid as soon as the displacement takes place and for a period of 3 months, renewable for up to 3 more months, and such aid includes, at the very least, (a) essential foodstuffs and drinking water, (b) basic shelter and housing, (c) adequate clothing, and (d) essential medical and sanitary services;

[37] Sixth report, Procurador General, pages 24-28. In this report, it is pointed out that "this control mechanism reports the results presented in Appendix 1 of the common report, which signals the paying of emergency attention to 82.3% of the displaced population in 2006. The law considers that those indicators are not enough for the following reasons: (i) they do not distinguish the attention components, except in the case of boys and girls and the elderly, and it is not possible to measure the satisfaction of food and housing rights; (ii) they do not cover the effort needed by the territorial entities; and (iii) they do not measure the supply of care, even though an indicator exists that intends to establish this aspect."

4. He/she has the right to receive a document that proves his/her inscription with a health service provider, so as to secure effective access to healthcare services;
5. He/she has the right to return, in conditions of security, to his/her place of origin, and may not be forced to return or re-locate him/herself in any specific part of the national territory;
6. He/she has the right to have the specific circumstances of his/her personal and family situation identified, with his/her full participation, so as to define—insofar as he/she hasn't returned to the place of origin—how he/she can work in order to generate income which can allow him/her to live in a dignified and autonomous manner;
7. He/she has the right, if younger than 15 years of age, to have access to a seat in an educational institution;
8. These rights must be immediately respected by the competent administrative authorities, which may not establish, as a condition to grant said benefits, the filing of *tutela* actions—even though displaced persons remain free to do so; and
9. As a victim of a crime, he/she has all of the rights recognized by the Constitution and the legislation on account of such condition, so as to secure that justice is made, the truth of the facts is revealed, and reparation is obtained from the authors of the crime."

The Court warned that the definitions included in this Charter could not be interpreted as an authorization to disregard the rest of the constitutionally recognized rights, and that it could not be understood that displaced persons obtained an automatic protection of their basic rights solely because of having been informed of the Charter. But it did at least secure the provision of timely and complete information about the authorities' duties, and the special protection to which they are entitled because of their displacement. According to the Government, the most effective means to disseminate this Charter was through *Acción Social's* website, which calls the effective publication of the Charter into question, given that few displaced persons have access to a computer.

Finally, the Court defined reasonable temporal terms for correcting the aforementioned flaws when implementing these complex orders. Thus, for

example, CNAIPD was granted two months to establish budgetary goals and for the general definition of the dimensions of the budgetary effort. For the effective allocation of the defined resources, a one-year term was conferred. To ensure the effective enjoyment of the minimum levels of protection of the displaced population, a six-month term was granted. Finally, for the design of the action plan for the correction of institutional failures, a three-month term was granted.

The different evaluation reports submitted to the Court indicate that in relation to some of the orders and different components of assistance, the terms that were conferred have expired without giving full compliance to the Court's orders. This will be one of the topics of the Court's final evaluation of compliance with Decision T-025 of 2004.

II. The process of implementing some of the complex orders issued in Decision T-025 of 2004

In spite of the establishment of precise responsibilities, minimum guidelines and constitutional standards for the definition of strategies, plans and programs, as well as the definition of reasonable terms for their execution, the implementation of the Court's orders has been a slow and difficult process. Some of the major factors contributing to this situation are accounted for below.

First, the Court's orders made incorrect assumptions about the capabilities of the entities responsible for assisting the displaced population and about the minimum level of resources available to them. Examples of these assumptions are: the degree of governmental knowledge about the current situation faced by the displaced population and the level of information available to SNAIPD when defining the demand for services. This affected the dimensions of the budgetary effort that was required to ensure comprehensive assistance to the displaced population.

On account of the deficiencies in the information available to the Government, *Acción Social* requested an extension until September 30, 2004 in order to "prove the [completion of the] budgetary effort required to comply with the policy for assisting the displaced population." The extension was also requested in order to "determine the current situation

of the displaced population included in the Single Registration System,[38] so that the population's number, location, needs, and rights could be established in accordance with the corresponding stage of the policy." The Government argued that the current state of the information contained in the Single Registration System of the Displaced Population did not make it possible to fulfill the second order issued in Decision T-025 of 2004 within the original timeframe.

In order to verify the magnitude and the deficiencies of *Acción Social's* databases, a judicial inspection was carried out. Serious flaws were found in the state of the information needed for determining the socio-economic needs of the displaced population. Serious flaws were also discovered in relation to the Social Solidarity Network's capacity to have such information made available within the term originally set in Decision T-025 of 2004. The magnitude of these flaws led the Court to examine their effect on the fulfillment of each of the components of the second order issued therein. Following this assessment, the Court distinguished between the information that was necessary for the characterization of the population, and the information required for estimating the budgetary effort. The Court granted the time extension requested by *Acción Social* to finalize the process of characterizing the needs of the displaced population registered in the Central Registration System.

Insofar as public policy decisions are almost invariably adopted with certain elements of uncertainty, it was not necessary for the Court to have all the detailed financial information available when passing its decisions regarding costs for implementing the policy. In the past, the Government had also approximated costs without having detailed information at hand.[39] The Court warned that the extension of the time period originally granted to assess the needs of the displaced population did not entail an authorization to re-define priorities. The Court also pointed out that the extension of time did not imply an authorization for retrogressions in the

[38] This system contains the basic information on those who have been recognized as victims of forced displacement by the Government: the composition of the nuclear family; the moment they joined the national care system and the help they received. However, registration problems have impeded this system from carrying out its principal function: to estimate the magnitude of the displacement problem.

[39] The Court also underscored that the same public officials who were responsible for calculating the budgetary effort had pointed out that "…the global costs of each component of the attention policy can be [calculated] through the maximum levels established in the Law [387 of 1997] and Decree 2569." Cf. Minutes of the judicial inspection carried out on April 22, 2004.

commitments assumed through the legal provisions in force.[40] For these reasons, the Government submitted its first calculation of the budgetary effort required for the comprehensive policy in May 2004. It was estimated at $4.5 billion (COP).

By December 2004, *Acción Social* had made progress in the assessment process. However, it had not yet been finalized, even though it had been announced that it would be finished by September 2004. By August 2005 the above process had not yet been completed. *Acción Social* underscored that it had not been possible to complete the characterization process due to, among other reasons, the fact that it had not been possible to locate all of the people who had been displaced between 1998 and 2001. Therefore, the Court, in Award 178 of 2005, ordered the Director of *Acción Social* to design, implement, and promptly apply (within a three-month term), "all the procedures and corrective measures that are required to overcome the difficulties indicated in paragraph 1.4… so that within the maximum term of one (1) year… the process of characterization of the internally displaced population has been finalized."

In addition to the delay in the characterization process, *Acción Social* and other SNAIPD entities considered that the information included in the SURPD only reflected the situation of the displaced population at a fixed moment in time. These entities also considered that this feature did not allow for projections or evolutionary assessments of the phenomenon of forced displacement—assessments that were necessary to adjust the institutional offer. In order to obtain a more accurate characterization, the Government decided to complete the existing information with a "s*ystem of contrasted sources.*"[41] As the Government stated on September 13, 2006, this process has not yet been finalized.[42]

[40] Award 050 of 2004, consideration 11.

[41] The denominated "system of contrasting sources" is composed of a series of statistical and analytical methods that allow for the evaluation of the phenomenon of forced displacement, and for the prediction of its evolution.

[42] In May 2007, during a public technical information hearing held before the Constitutional Court for the adoption of indicators related to the effective enjoyment of the displaced population's rights, the Government announced a new modification to the displaced population's registration system, so as to ensure its compatibility with the newly adopted indicators. See governmental report in response to the questions posed by the Constitutional Court during the public technical information hearing held on March 1, 2007, and delivered to the Court on March 15, 2007, pages 4-7.

In Award 218 of 2006, the Court pointed out that the registration system was one of the critical areas where no adequate advances had been made. On this issue, Award 218 states the following:

> "Even though… [*Acción Social*]… informed, in its first reports, that a system for the 'estimation of contrasted sources' was being implemented for purposes of measuring under-registration and implementing the appropriate corrections, the last reports received by the Court are silent on the matter. In other words, almost one year has gone by after the Court indicated, in the decisions adopted on August 29, 2005, that the problem of under-registration had to be addressed, and it has not yet been proven that the appropriate measures have been adopted to solve this serious flaw in the public policy. In this sphere, the responsibility corresponds to… [*Acción Social*]… which is the governmental entity in charge of the registration of the displaced population and of proving the resolution of the problems in this field."

In addition, apart from the technical difficulties to correct the under-registration and poor quality of the information, in Award 218 of 2006 the Court underscored the existence of obstacles to IDP registration. This Award stated:

> "[T]he Court notes that in the course of the last six months there has been a higher number of complaints, filed both informally before this Court and through *tutela* lawsuits presented at the different locations where the phenomenon of displacement has taken place, in relation to the existence of higher obstacles and reticence or refusal by the public officials in charge of registration to include recent cases of forced displacement within the system, thus leaving individuals and families who require immediate assistance, because of their lack of protection, excluded from the assistance system. The Court has also been informed about the repeated refusal to register second displacements, intra-provincial or intra-urban displacements, and displacements caused by police or military operations in which no humanitarian components or humanitarian contingency plans have been included, as well as the requests for registration made after one year has gone by since the displacement. These situations have taken place in relation to cases of displacement which have been publicly known, such as the cases of the Nariño, Cauca, Antioquia, Chocó, Putumayo and Caquetá departments, inter alia."

In spite of the importance of having an adequate information system concerning the displaced population, such a system is not yet available. The lack of such a system negatively affects the possibility of introducing adequate adjustments when calculating the required budgetary efforts and when defining the institutional offer required to secure the effective enjoyment of the displaced population's rights.

The evaluation reports submitted by the *Procurador General de la Nación*, the Ombudsman and the different organizations representing IDPs on October 27, 2006, highlight the persistence of serious failures in the information and registration systems related to the displaced population. Even though the Government has not yet responded to these indications, the flaws in the information system will be one of the central issues to be included in the Court's evaluation of the fulfillment of the orders issued in Decision T-025 of 2004 and Awards 178 of 2005 and 218 of 2006.

A second factor that has delayed the resolution of the unconstitutional state of affairs is that some of the entities that form part of SNAIPD have not assumed their responsibilities seriously. One example of major delays can be found in the system coordination at the national level (through CNAIPD and *Acción Social*), and between the Nation and the territorial entities (through the Ministry of the Interior). In relation to the coordination carried out by CNAIPD and *Acción Social*, for example, the Court pointed out the following in Award 218 of 2006:

> "According to Decree 250 of 2005, the obligation of coordinating the system corresponds to… [*Acción Social*]… however, there is no indication in the reports submitted to the Court by this entity about its compliance with the role of coordinating the system. At the same time, a clear order was issued to CNAIPD in Award 178 of 2005, aimed at overcoming the flaws in the overall institutional capacity of the system for assisting the displaced population . In order to comply with this order, CNAIPD was to adopt a coordinated program of action, with a series of common result indicators, for purposes of overcoming the institutional flaws identified therein within a maximum term of six months. Even though the term granted to CNAIPD in Award 178/05 to adopt such coordinated program of action has expired, said Council has not adequately proven that it has complied with the mandate issued therein. In the different reports filed by this Council to the Constitutional Court the information presented only referred to isolated measures that did not constitute a coordinated program.

> For the Constitutional Court, even though these activities may be important in themselves, they do not make up for the absence of a central coordinating entity which can ensure the harmonious and coordinated development and execution of the public policy at hand. ... Likewise, the reports presented by… [*Acción Social*]… fail to prove that this entity has properly fulfilled its obligations as system coordinator. On the other hand, even though some of the reports presented to the Court by CNAIPD announce that a coordinated program shall be adopted to overcome the flaws in the institutional capacity, and inform about some concrete actions aimed at eventually developing such program, the latter has not yet been formulated. Although the six-month term conferred to the Government for developing such a program expired in 2006… [*Acción Social*]… has failed to provide any explanations to justify the delay."

Regarding the coordination and promotion of tasks that should have been carried out by the MIJ in order to achieve higher levels of budgetary and administrative commitment from the territorial entities, the reports received by the Court and the evaluations made by the *Procuraduría General de la Nación* and several organizations of the displaced population on October 27, 2006 indicate that this Ministry's efforts continue to be the most insignificant ones.[43] This delay reveals a lack of political will rather than an institutional incapacity to coordinate. For example, although the Constitution and the law have provided national authorities with instruments to coordinate national and territorial efforts on issues of national interest, such as the resolution of the unconstitutional state of affairs in the field of internal displacement, the Ministry of the Interior defined its coordinating role as the mere exchange of correspondence[44] and "permanent telephonic monitoring."[45] In Decision C-579 of 2001, the Court explained the interaction of the principles of territorial autonomy and national unity, and held that territorial autonomy may be limited for the promotion of national interests, such as the resolution of the unconstitutional state of affairs in the field of forced internal displacement. This would allow for a higher incidence of national

[43] In response to this situation, the Court issued Award 334 of November 27, 2006, with the aim of examining the individual responsibility of a high public officer of MIJ in charge of coordinating the territorial entities' efforts in the field of comprehensive attention to the displaced population.
[44] Award 177 of 2005, consideration 15.
[45] Reports submitted by the Ministry of the Interior in compliance with the orders issued in Award 177 of 2005, in the months of September, October, November and December 2005.

entities at territorial levels, such as the Ministry of the Interior, wherever this national interest is present.

A third factor that has delayed the resolution of the unconstitutional state of affairs is the absence of indicators that (a) take into account the effective enjoyment of the displaced population's rights, and that (b) reveal whether advances are being made in the resolution of this humanitarian crisis, and what additional efforts are required.

Although the Court pointed out a lack of evaluation and follow-up systems, and a lack of the aforementioned indicators, there still remains a distinct lack of these systems and indicators since Decision T 025 of 2004. This absence has prevented the Government from determining the demand for services from the displaced population, and also from determining what services are offered.[46]

Even though the different entities undertook an initial effort to generate the aforementioned indicators, this effort was inconsistently applied and uncoordinated. The result was that few indicators were actually developed in the manner requested by the Court. In its September 13, 2006 report, the Government pointed out that the set of indicators developed by each of the SNAIPD entities would be submitted to a review process. It was also noted that this process would include UNHCR's technical counseling for the purpose of adjusting the indicators so that they would meet the Court's requirements by March 2007.[47] The National Planning Department was also in the process of developing a set of indicators to measure the effective enjoyment of the displaced population's rights in relation to economic stabilization.

[46] In section 6.3.1 of Decision T-025 of 2004, the Court stated that the lack of indicators was one of the factors that had contributed to the unconstitutional state of affairs. Due to the insufficiencies in the information presented by the different SNAIPD entities to prove the conclusion of actions aimed at securing the effective enjoyment of the displaced population's rights, Award 185 of 2004 requested supplementary information to determine whether the orders issued in Decision T-025 of 2004 had been complied with. In Award 218 of 2006, the Constitutional Court pointed out once again the "general absence of significant results indicators based on the criterion of 'effective enjoyment of rights' by the displaced population in all of the policy's components." The Court also stressed that this was an area of the policy where the most serious problems and the most significant delays exist.

[47] Report submitted by the Government on September 13, 2006, in compliance with Award 218 of 2006, p. 77.

At that time, none of the existing follow-up systems on the policy for assisting the displaced population used indicators associated with measuring the effective enjoyment of rights. Although the *Procuraduría General de la Nación* had a system in place, this system was not based on an evaluation of the effective enjoyment of rights. And while the Civil Society Commission for the Follow-up of Compliance with Decision T-025 of 2004 (*Comisión de la Sociedad Civil para el Seguimiento al Cumplimiento de la Sentencia T-025 de 2004*) designed indicators in accordance with the Court's guidelines, the information that was required to apply them lacked common baselines.

The delay in the development of indicators may be due to a lack of understanding of the meaning of the term, "effective enjoyment of rights," especially as the term relates to each one of the policy's components. The delay may also result from difficulties in identifying relevant, measurable factors of IDPs' "effective enjoyment of rights." Additionally, the figures used by the different entities that form part of SNAIPD were not comparable because of a lack of a common baseline. For this reason, it was not possible to know whether advances had been made in resolving the unconstitutional state of affairs. In order to overcome the lack of evaluation and follow-up systems and the lack of aforementioned indicators, and given the Government's repeated delay in the adoption of such indicators, the Court, by means of Award 337 of 2006, established an accelerated procedure. The Court requested that the Government, the follow-up Commission, the *Procuraduría General de la Nación*, the *Contraloría General de la República*, the Ombudsman and the Office of the UN High Commissioner for Refugees present proposals with indicators that would measure the effective enjoyment of IDPs' rights. Over 500 indicators resulted from this process of information exchange. The Court then considered it necessary to summon a hearing in order to determine which indicators were useful, applicable and pertinent.[48]

In Award 027 of 2007 the Court summoned a public information hearing in order to consider which indicators should be adopted to (a) evaluate the advances, delays or retrogressions in the resolution of the unconstitutional state of affairs, and to (b) measure the effective enjoyment of IDPs' rights. In that session, carried out on March 1, 2007, the Government presented a serious proposal of indicators for the first time. The proposal was discussed by the Follow-up Commission, the

[48] See considerations 16 to 25, Award 027 of 2007.

Procuraduría General de la Nación, the *Contraloría General de la República*, the Ombudsman's Office and UNHCR.

Following the above discussion, a new exchange of documents and comments took place. Consequently in Award 109 of 2007 the Court adopted a catalogue of indicators to measure the effective enjoyment of IDPs' rights. In this Award, the Court distinguished between three groups of indicators: (1) indicators that had to be rejected for not complying with the requirements of relevance, adequacy, and sufficiency (as pointed out by the Court in the same Award 109 of 2007);[49] (2) indicators that had significant gaps despite complying with some of the above requirements;[50] and (3) indicators that should be adopted because they complied with the requirements in question.[51]

Specific individual responsibilities were also identified for *Acción Social*. With regard to the adjustment and design of the remaining indicators, concrete responsibilities were assigned to *Acción Social* and to the National Planning Department. In relation to the incorporation of the adopted indicators at the territorial level, the MIJ was deemed in charge (given its role as the coordinator of territorial efforts).

A fourth factor contributing to the delay in overcoming the unconstitutional state of affairs is the continuing insufficient levels of appropriation and execution of the necessary budget, which was pointed

[49] Within this first group, the Court rejected the indicators proposed by the Government for the rights to life, personal integrity, liberty and security, reparation and participation because: (i) it was not pertinent to apply one single indicator to measure these rights which have different content and require specific, separable measures for their protection and safeguard; (ii) the proposed indicators were not adequate to provide the Constitutional Court with relevant information; or (iii) the proposed indicators only referred to isolated aspects of the right's content. (See paragraphs 57 to 71 and 81.1. of Award 109 of 2007).

[50] This category included all of the indicators presented by the Government, insofar as they failed to incorporate the differential approach exacted in Decision T-025 of 2004 in a systematic manner, in relation to the groups of persons that receive special constitutional protection, such as women, children, elderly persons, persons with disabilities, members of indigenous groups and of Afro-Colombian communities (see paragraph 81.2. of Award 109 of 2007). Likewise, the indicators relating to the right to return required important modifications because they only covered the aspects of socio-economic stabilization, leaving aside essential aspects of the right to return (see paragraphs 28-31 of Award 109 of 2007).

[51] The third group included the indicators that relate to socioeconomic stabilization and the right to identity. This group of indicators complied with the requirements of pertinence, sufficiency and adequacy. (See paragraph 81.3. of Award 109 of 2007.)

out in Decision T-025 of 2004 and reiterated in Award 176 of 2005. Although the Government has undertaken an important effort to increase the resources available for assisting the displaced population, and also to quantify the resources required to finance the policy in question,[52] the budget for the programs to assist the displaced population is still not visible. Moreover, the differentiated approach to the displaced population demanded by the Court has yet to be applied. Consequently it is still impossible to carry out a transparent follow-up of these resources' execution.

Many of the assumptions that were used to carry out the calculation of the budgetary effort have not been sufficiently explained. Accordingly, it is still not possible to know whether those assumptions have varied over time.[53] With regard to budgetary allocation, many of SNAIPD entities still lack the infrastructure required to spend the resources properly. It is also of concern that the territorial entities' budgetary contributions are still unclear. According to the report submitted by the *Contralor General de la República*,[54] "the resources invested during 2005 by the territorial entities were mostly allocated to education and health programs… which are mainly financed through the General Participations System, which indicates that the territorial entities' fiscal effort in the development of programs to assist the displaced population is low and depends on the transfers made from the central level."

Finally, another factor which has contributed to the delay in the resolution of the unconstitutional state of affairs relates to the fragmented way in which the Government has construed the orders issued by the Court, both in Decision T-025 of 2004 and in its subsequent awards.

Since the adoption of Decision T-025 of 2004, the Court has sought to clarify the content of its orders for the purpose of resolving the

[52] The initial estimate of $4.5 billion (COP) to attend to the displaced population was adjusted to $4.7 billion. In December 2005, the National Planning Department once again adjusted it to $5.1 billion.

[53] One of the presumptions the Government used to calculate the dimension of the financial effort was that forced internal displacement has a tendency to decrease. This presumption was based on the fact that during 2002, the displacement numbers were unusually high, and then decreased in 2003. However, after examining the behavior of the phenomenon during 1999-2001, 2003 and thereafter, the opposite effect was seen: the phenomenon increases year over year.

[54] National Controller's Office (Contralor General de la República), *Evaluation Report*, 2006, p.31.

unconstitutional state of affairs. It has also attempted to correct some of the problems that arose during the implementation of its orders. Even though they are essentially the same orders initially issued by the Constitutional Court, the reports submitted by the Government, which usually responds to what has been ordered in each specific Award, indicate that they have been perceived as isolated orders. That is, they are viewed to be unrelated to their overall final objective, namely to the resolution of the unconstitutional state of affairs in question.

For the following reasons, many organizations representing the displaced population have expressed concern that the corrective measures adopted by the Government are aimed at satisfying the Court rather than IDPs. This perception is reflected in the volume of irrelevant information sent by the different entities responsible for assisting the displaced population. It is also reflected in the design of short-term solutions, which are not aimed at overcoming the unconstitutional state of affairs or targeted towards securing the effective enjoyment of the rights of the displaced population. Although one should not disregard the sincere efforts and commitment of hundreds of public officials and governmental entities in the adoption of lasting solutions, it is also true that there are several authorities and public officials who are not committed to overcoming the unconstitutional state of affairs, but rather focus on other interests and priorities. Insofar as this situation continues, it will take more time to secure the effective enjoyment of the affected rights.

III. Future challenges to the process of complying with Decision T-025 of 2004

A new cycle in the process of evaluating compliance with Decision T-025 of 2004 was completed with the submission of the Government's reports on September 13 and October 5, 2006. The completion of this cycle fulfilled the orders issued in Awards 218 and 266 of 2006. This cycle also implied the submission of periodical reports by the Public Prosecutor's Office (*Procuraduría General de la Nación)*, the Ombudsman's Office (*Defensoría del Pueblo*), the National Controller's Office (*Contraloría General de la República*), and the different organizations of displaced persons.

Even though the evaluation of the above reports appears to indicate the persistence of many of the problems identified in Decision T-025 of 2004, it is interesting to examine at least two possible scenarios before arriving at a conclusion.

This first scenario involves a conclusion by the Court that the unconstitutional state of affairs has not yet been overcome, in spite of sincere Government efforts to comply with the orders. This would imply that the Court would have to continue following-up on compliance with Decision T-025 of 2004, until "the right [has been] completely reestablished or the causes of the threat have been eliminated."[55]

In this scenario, it is clear that continuing to adjust the orders in order to give the Government new deadlines is not a reasonable alternative—not unless significant and expedient Government progress is seen. This is because the situation faced by the displaced population continues to be critical, and because in spite of the Government's efforts to date, this population is not directly enjoying its rights.

In this same scenario, there would have to be a significant improvement of the situation that initially led to the declaration of the unconstitutional state of affairs. This evaluation would justify granting new deadlines, in order to avoid undermining the Court's role as guarantor of the rights of the displaced population. Likewise, it would be urgent to have adequate instruments (i.e. indicators) to determine with higher certainty whether improvements occurred.

A second scenario would occur in the event that the Court concludes that the unconstitutional state of affairs has not been overcome because, *inter alia*, some of the entities responsible for assisting the displaced population refused to comply with the Court's orders. In this event, it is possible that there would be a need for initiating one or more "non-compliance procedures" (*incidentes de desacato*). The initiation of these procedures could take place in relation to non-compliance with the specific orders issued by the Court to solve the claims filed by the plaintiffs in the T-025 processes, and in relation to the complex orders issued to overcome the unconstitutional state of affairs.

One issue to be solved in this scenario would be that of determining the competent authority to advance these proceedings. The Court's case law on the competence to carry out non-compliance procedures indicates that it is the lower judge who initially decided the *tutela* lawsuit who has jurisdiction to conduct these "procedures."[56] However it is also true that

[55] Article 27, Decree 2591 of 1991.

[56] Decree 2591 of 1991, Article 52. "Non-compliance. Anyone who fails to comply with an order issued by a judge on the ground of the present Decree shall incur in non-

the Court has maintained its own jurisdiction to evaluate compliance with the orders it issued in order to overcome the unconstitutional state of affairs in the field of forced displacement. Were the Court to directly assume the initiation of these procedures, a door would be opened for the presentation of *tutela* lawsuits against the Court's judgments—a situation that has not yet been accepted in case law. Accordingly, it is unlikely that this alternative will be chosen for the time being.

On the other hand, should the lower judge be selected to conduct the "non-compliance" procedure, the possibility of filing a *tutela* lawsuit against that judge's decision would enable the Court to review such a judgment. It would also allow the Court to determine whether its own orders were fulfilled. In spite of the above, designating a lower judge to evaluate compliance with the complex orders issued to overcome the unconstitutional state of affairs is also risky, because it may well be that the lower judge does not have the necessary tools to assess whether there was non-compliance. Therefore, such procedures would be invalidated or terminated. If this scenario were to proceed, it would also be necessary to define which lower court judge would be responsible for conducting the "non-compliance proceedings." In responding to this question, it should be borne in mind that most of the displaced population's requests for the initiation of these proceedings were filed by people who did not take part in the proceedings of Decision T-025 of 2004. This circumstance would require the Court to consider three alternatives.

The first alternative would be to consider that there is no lower judge with jurisdiction to conduct these procedures. This alternative would prevent effective protection of IDPs' rights, and it would open a door for disregarding the Court's decisions and the Constitution.

A second alternative would be to consider that any judge in the country is competent to conduct the "non-compliance procedures" in relation to Decision T-025 of 2004. However, this hypothesis would generate institutional chaos, as the public officials responsible for assisting the displaced population at the national and territorial levels could well

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compliance, punishable with arrest of up to six months and fines of up to 20 minimum monthly legal wages, unless this Decree points out to a different legal consequence, and regardless of any applicable criminal sanctions. The sanction shall be imposed by the same judge, through incidental procedures, and shall be consulted to its functional superior, who shall decide within the three following days whether the sanction should be revoked."

have to become parties to several different non-compliance procedures initiated against them anywhere in the country.

A third alternative would be to consider that any of the lower judges who adopted decisions in the proceedings, which were reviewed by Decision T-025 of 2004, may conduct the non-compliance procedures. This alternative is the most viable of the three, insofar as these are judges whose decisions were already reviewed by the Court, and who were consequently involved in the process that led to Decision T-025 of 2004.[57]

In this second scenario, it does not seem likely that the Court would transfer jurisdiction to continue examining compliance with Decision T-025 of 2004 and its complementary awards to the lower judges after "non-compliance procedures" are initiated. The very complexity of the orders issued to overcome the unconstitutional state of affairs, the current state of the policy to assist the displaced population, and the continuity of the humanitarian crisis make it necessary for the Court to keep open the possibility of adopting any measures necessary for ensuring the effective enjoyment of the rights of victims of internal displacement—regardless of the fact that some public officials may be charged with non-compliance.

Even though there are several procedural aspects that could be examined,[58] one last element which I consider interesting to examine is the function that "non-compliance procedures" may fulfill vis-à-vis the materialization of the complex orders issued to solve the unconstitutional state of affairs.

[57] On November 26, 2006, the Constitutional Court decided to send the controlling entities' conclusions and other pertinent information to one of the judges who had decided on the original lawsuits, which gave way to judgment T-025 of 2004. This was so that this judge would consider the possibility of initiating several non-compliance procedures against officials of MIJ, *Acción Social* and INCODER (Awards 333, 334 and 335 of 2006). Several months later, the Judge had not adopted a decision, for which reason the Court, on August 13, 2007, decided to reassume its jurisdiction to follow-up compliance with the orders issued to protect IDPs' constitutional rights.

[58] For example: the determination of the requirements to be fulfilled by the requests for initiation of non-compliance procedures, given that most of the requests presented up to this date are directed against all of the public officials in charge of attending to the displaced population, and responsibilities are rarely individualized; or the conditions for such requests to be valid; or the possibility of initiating non-compliance procedures against local authorities, even though the orders issued in Decision T-025 of 2004 are addressed to the responsible national authorities.

Although the non-compliance procedure has a "disciplinary" nature insofar as it punishes those who refuse to fulfill the orders issued by a *tutela* judge, the initiation of "non-compliance" proceedings also serves the purpose of compelling the effective materialization of such orders. In this sense, the judge is empowered to impose arrests or fines. However, the penalty of arrest does not appear to contribute adequately to overcoming the unconstitutional state of affairs. It would only undermine the rights of the displaced population if public officials responsible for implementing the complex orders were arrested, even if just temporarily arrested. Given that the complex orders entail the development of continuous successive-execution processes, which require the presence of the responsible public officer, it would seem that the imposition of reiterated fines could be a more adequate means for the purpose.

IV. Conclusion

From the above discussion, it seems evident that in spite of the setbacks and delays in the implementation of the orders issued in Decision T-025 of 2004, the Court's intervention to protect the rights of the displaced population has had a positive impact. For the displaced population and for the authorities in charge of its assistance, Decision T-025 of 2004 has led all of the interested parties to discuss the future of the policy and of the State's commitment towards the displaced population in a serious manner. Likewise, it has been useful in containing discriminatory practices and ensuring that the displaced population's rights are taken seriously.

This exceptional judicial intervention has also served the purpose of achieving harmonious collaboration among the three branches of public power, in order to address one of the largest humanitarian crises in the world. This collaboration has proven to be respectful of the roles and functions assigned to each branch of Government.

In spite of the significance of this judicial intervention, the complexity of the problem of internal displacement in Colombia and the limitations on the tools that become available to displaced persons through the *tutela* action indicate that judicial intervention has material and temporal limits which should be noted. It is therefore urgent to seek alternative instruments to follow-up and evaluate the public policy for assisting the displaced population—a policy that can secure the responsible fulfillment of every public official's constitutional and legal duties towards the

displaced population so that the effective enjoyment of its rights is secured.

CHAPTER 3

Protection of the Internally Displaced by Constitutional Justice: The Role of the Constitutional Court in Colombia

Andrés Celis[*]

Forced displacement temporarily prevents internally displaced persons (IDPs) from providing for themselves. Particularly in its initial stages, forced displacement jeopardizes the chances of a population's survival. This humanitarian emergency obliges certain authorities, whose primary responsibility is to meet the urgent needs of this population, to prevent the situation from deteriorating in the short-term, and to work with IDPs on achieving durable solutions. At the same time, all Colombians have a duty to respond with solidarity and humanity to the problems caused by forced displacement.[1] At the very least, the general population has a responsibility to encourage the State to respond.

Having suffered the original aggression that caused their displacement, IDPs must then face challenges resulting from their arrival in a new environment, in which social solidarity and institutional responses to their plight are limited. In Colombia, in spite of efforts by the State, the initial, short-term response to forced displacement is insufficient and does not generate the conditions necessary for durable solutions. Faced with a lack of prompt and persistent assistance to meet their needs, hundreds of IDPs have turned to constitutional protection to stop their situation from worsening.

Constitutional justice has not just protected the rights of individual applicants, but it has also prompted the authorities to make structural

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[1] Colombian Constitution. Article 95: "Every person must… 2) comply with the principle of social solidarity, responding with humanitarian actions to situations that place at risk the life or health of persons."

changes in public policy. The Colombian Constitutional Court (hereafter termed the "Court") has set forth a series of guidelines that should be used when developing public policy, in order to ensure that the State's response is consistent with Constitutional values and that the State effectively protects IDPs' rights.

The purpose of this chapter is to review how the Court's decisions have affected public policy. In particular, the chapter analyzes the reach and limitations of these decisions, taking into account that the decisions have been made against a background of internal armed conflict.

I. IDPs' need for judicial protection

Faced with a large humanitarian crisis generated by forced displacement, the State and society in general have an ethical imperative to immediately and comprehensively protect IDPs, who represent one of the most vulnerable sectors of the population. The displaced population should not have to take direct action to be recognized by institutions, nor should they have to take legal action to demand that the authorities assist them effectively.

In Colombia, the gap between the imperative to act and the action taken is evident. Despite the fact that some sectors of society first drew attention to the humanitarian crisis of displacement over 20 years[2] ago, neither State action nor societal reaction has managed to assess how the conflict has affected the displaced population.

Public protests by the displaced population, reports from NGOs, Church reactions and court intervention resulted in the state policies and the legal framework contained in Law 387 of 1997.[3] In 1995, the Episcopal Conference and the Consultancy for Human Rights and Displacement (CODHES) published *Human Rights: Displaced by Violence in Colombia*. In 1996, a displaced community occupied the buildings of various public institutions in an effort to draw attention to its

[2] Forced displacement in Colombia predates Law 387. Government records of displacement began in 1997 and NGO records began in 1985. Nevertheless, displacement has occurred in Colombia since the middle of the twentieth century.

[3] Law 387 of July 18, 1997. This law establishes measures that are taken for the prevention of forced displacement, and the assistance, protection, consolidation and socio-economic stabilization of persons internally displaced by violence in the Republic of Colombia.

situation and try to obtain an effective response from the authorities.[4] The community additionally sought judicial protection of its rights under the *tutela* action.[5] The Court ruled in favor of the displaced community. It was the first court-ruling to do so.[6] Four months later, Law 387 was passed.

Thus, it became apparent that displaced populations had to demonstrate the gravity of their situation to the State and civil society. To obtain a response from the State, these populations had to take legal action. Consequently, from their first contact with the authorities, displaced populations identified the Court as a key ally in the protection of their rights.

One would hope that the ethical imperative to act and the legal obligation to do so would mean that the authorities would effectively assist and protect the displaced. However this is not necessarily the case. Despite the fact that the authorities have adopted public policies and legal measures that address displacement, the displaced do not perceive these measures to translate into a significant, general improvement of their well-being.

The Executive branch has responded in reaction to judicial intervention, more than on its own initiatives. However, the Executive branch has not been consistent in its efforts to protect IDPs. As a result, the Court had to give follow-up orders for compliance to keep the Government committed to addressing IDP issues in a coherent and consistent way.

Several reasons could partially explain why it is so difficult to develop an adequate and sustained response in favor of the displaced population: ongoing conflict; the magnitude of the crisis of displacement (at least three million Colombians);[7] the geographical dispersion of displacement; and the disparate capacities of the more than 980 affected municipalities.[8]

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[4] Between March and September 1996, the displaced communities from Hacienda Bellacruz occupied buildings of the Institute of Agrarian Reform (INCORA), the Ministry of the Interior and the Ombudsman's Office.

[5] The *tutela* action is a constitutional action for immediate legal protection of human rights, a kind of writ of injunction.

[6] Colombian Constitutional Court, Decision T-227 of 1997.

[7] Constitutional Court Award 218 for compliance with Decision T-025 of 2004.

[8] See Episcopal Conference & CODHES, 2006. This diversity is all the more important, given the decentralized model of political organization in Colombia.

Furthermore, the armed conflict generates other priorities for the State and civil society. The result is often that humanitarian issues and the duty of social solidarity are overlooked or, at best, relegated as secondary priorities. In other words, displacement is assumed to be a natural consequence of the conflict and thus an acceptable cost that does not cause surprise among the general population. Therefore, society tends not to pressure the State to take effective action. Furthermore, the effects of the conflict are felt only marginally in the centers of power, such as Bogotá and the other principal cities in the country.

Additionally, IDPs compete with other sectors of the population. IDPs are not the only people who need State support, nor are they the only ones affected by the conflict—though they may face the greatest difficulties in making their interests heard in the democratic debate.

Given the general scarcity of resources, social investment in favor of IDPs results in an opportunity cost for other sectors, which are better represented in Congress and other forums of public policy discussion. In this debate, it is assumed that the only way to assist the displaced population would be to reduce investment in other vulnerable sectors of the population. These other sectors may thus perceive assistance to IDPs as illegitimate and lobby against it, increasing the vulnerability of IDPs. Some local authorities also use the argument of opportunity costs to try to justify their lack of effective response to displacement.

There is no formula to tackle the aforementioned difficulties to develop an adequate and sustained response in favor of the displaced population. Furthermore while policymakers look for solutions and a number of well-intentioned measures are designed, these biased measures often adversely affect how IDPs' rights are protected. These intentions and measures include: (i) the wish to avoid creating an incentive to displace people; (ii) the desire to prevent a situation where people are able to effectively present themselves as displaced when in fact they are not displaced; (iii) the aim to facilitate social integration and to avoid "ghettoizing" IDPs, and (iv) the prioritization of IDP returns. These biased intentions and measures, however, tend to make the displacement crisis invisible, leading to a decline in the welfare of urban IDPs. This, in turn, often causes IDPs to consider returning to their original residence, even in the absence of the necessary conditions to facilitate their safe return.

All of this can explain, though not justify, the situation of thousands of displaced families. It is clear that this reality, and the response to it,

contradicts the axiological order of Colombia's Constitution. For this reason, the Court classified the displacement crisis as an unconstitutional state of affairs.[9]

For the displaced population facing the lack of an effective response from the State, the law establishes the ultimate limit of the deprivation caused by armed conflict and by the changing priorities generated by it. This makes the possibility of judicial protection of the displaced population's rights all the more relevant.

II. Judicial action to correct IDP public policy failures

An armed conflict results in a general decrease in the welfare of the population and affects the normal functioning of the State. The increasing number of legal claims brought by IDPs is a symptom of the difficulties they face when seeking assistance, and is a sign of institutional weakness. The inadequate response of public entities causes them to lose legitimacy in the eyes of the displaced population and thus to lose the confidence that the displaced population had placed in them. In the context of an armed conflict, this has a negative impact on the ability to govern. Paradoxically, the legal demands brought by the displaced population are a demonstration of its faith in institutional procedures. These legal demands are an opportunity for institutions to regain the legitimacy lost by the State's failure to fulfill its duties.

Compliance with the orders of a constitutional judge therefore transcends mere compliance with a judgment. In the context of a conflict, it represents a way to strengthen the relationship between a citizen and authority. Unfortunately, this relationship has been damaged by the State's inadequate protection of the displaced population. This relationship is neither sufficient for eliminating the causes of displacement nor for mitigating the effects of displacement. Institutional practices affect the relationship between the authorities and IDPs. An examination of the cases reviewed by the Court reveals two common elements in this relationship: (i) limits in the capabilities of IDPs to access public services for IDPs, owing to insufficient legal and public policy parameters; and (ii) discretional interpretation of the law and public policy by public officials.

Public officials tend to confuse the content of IDPs' rights with the content of IDP policy. For example, authorities confuse people's rights to

[9] Colombian Constitutional Court, Decisions T-215 of 2002 and T-025 of 2004.

adequate food and to an adequate standard of living with the "right" to the standard temporary offer of three months assistance, regardless of the fact that the subsistence needs, for example, of the displaced population may extend beyond a three-month period.[10]

The officials in charge of assistance to IDPs interpret the law in such a way that it becomes an inefficient instrument for protection.[11] Authorities often interpret legal rulings as an obstacle to policy development and implementation—especially under circumstances where there is tension between IDPs seeking assistance and the authorities who are obliged to provide it. Officials feel that the need to respond to legal rulings affects their planned response to displacement and limits their ability to meet their other obligations. They accordingly perceive the constitutional action taken by IDPs as a betrayal of the relationship between official and beneficiary. A high departmental official, for example, stated, "IDPs have become *tutela* mercenaries and use Decision T-025 as their arsenal." The above problems with the relationship between IDPs and the authorities who are responsible for protecting them partially explain why IDPs regularly turn to the courts for protection. In addition, these problems reveal the importance of an effective response to displacement—both to protect the rights that have been violated and to strengthen the relationship between IDPs and authorities.

It is difficult to establish which claims judges hear most frequently. Nevertheless, it is possible to get an idea of what the displaced population demands by looking at the *tutela* cases that the Court reviews.

The greatest number of claims relate to conditions allowing IDPs to reach a durable solution to their displacement—predominantly to solutions associated with housing, access to land, and to income generation.[12] The authorities themselves have recognized that the key shortfalls in their

[10] In Colombian Constitutional Court, Decision T-025, the Court clarified that these time limits should be extended in the event that at the expiration of the three-month period, people remain unable to provide for themselves (chapter 9, paragraph 4).

[11] For example, in refusing assistance to those who are displaced within the same city and seek protection in a different neighborhood. See Colombian Constitutional Court, Decision T-268 of 2003.

[12] See Colombian Constitutional Court, Decisions SU-1150 of 2000, T-025 of 2004, T-078 of 2004, T-770 of 2004, among others, which ruled on hundreds of claims related to the rights to life and to an adequate standard of living.

actions result from policy flaws and also from the low coverage of the programs in the above-mentioned areas.[13]

The absence of effective policies on housing, land, and income generation creates a vicious circle, in which IDPs, who are not given the necessary resources to sustain themselves, continue to demand that the State cover their basic needs. With time, IDPs become even more vulnerable—which is to the further detriment of their other rights, such as the right to healthcare and education.

The high price of land in urban areas means that the coverage of State programs is insufficient to meet the displaced population's housing demand. As a consequence, the displaced population may illegally occupy private or municipal property, or settle in such high-risk areas as unstable slopes or riverbanks. Authorities act to protect this private or municipal property and also to protect the lives of the IDPs living in high-risk areas, which often results in the eviction of IDPs from these areas.[14]

The scarcity of available housing and employment opportunities (in addition to the number of displaced families and the high *per capita* cost of solutions to IDPs' myriad of difficulties) explains the critical situation of the displaced population, and thus the high number of claims for housing and income relief. As long as the conflict continues and security remains unstable in the areas of origin, judicial protection of IDPs' rights represents the only alternative to returning to their original residence—but without the guarantees of security, dignity, and voluntary return.

Numerous examples of the conflict between the rights of IDPs and the rights of others exist. Some of these conflicts demonstrate the lack of an axiological consensus on how to deal with the problems caused by displacement. This is the case with debts that IDPs are unable to pay because of their flight. IDPs have either abandoned their land, or an armed group or third party has occupied it. Thus IDPs no longer receive an income from those lands. In spite of the fact that a *force majeure* prevents them from meeting their financial obligations, financial institutions demand payment through the courts, which end up auctioning the assets of IDPs. The obvious question is why the State does not protect the rights of IDPs with the same determination that it protects the rights of banks to demand payment. The Court has had to intervene to ensure compliance

[13] CONPES Document CONPES 3400 of 2005.
[14] Colombian Constitutional Court, Decision T-078 of 2004.

with the duty of solidarity[15] and to maintain an equitable contractual relationship between IDPs and the banks.[16]

As a prerequisite for accessing State programs, the State mandates inclusion in the SNAIPD. The purpose of this mechanism is to prevent non-IDPs from illegitimately accessing programs designed for the displaced population. Nevertheless, the State recognition of the situation in which IDPs find themselves, as well as certain administrative practices, exclude IDPs from accessing these programs. For example, persons who request to be recognized as IDPs are required to prove that they have suffered a direct threat, notwithstanding the fact that, in areas of conflict, threats and risks to inhabitants can be sufficient reason for fleeing. Often there is evidence of accidents from landmines as well as evidence of limitations upon freedoms imposed by armed combatants, all of which constitute objective causes for people to fear for their lives and safety.

In the past, legal arguments have been invoked by the authorities in order to refuse to attend to cases of intra-urban displacement. For example, in quoting the literal meaning of the term 'place of residence' (Article 1 of Law 387 of 1997), authorities argue that people must cross the frontier of their municipality's urban area in order to be protected by the SNAIPD.

The operations to eradicate illicit crops represent the most complex example of the criteria for registration in the system. It is now common administrative practice to refuse IDP recognition to persons who flee the areas of these operations. The authority in charge of IDP recognition disregards the fact that such crops are the main source of funding for guerrilla and paramilitary groups, and that during the eradication operations combat is intensified, with a particular increase in the use of landmines.[17]

The obstacles to registering in the system that were previously mentioned explain why the bulk of individual claims by IDPs must be

[15] Article 95 of the Colombian Constitution establishes that "Every person must… 2) comply with the principle of social solidarity, responding with humanitarian actions to situations that place at risk the life or health of persons."

[16] See Colombian Constitutional Court, Decisions T-419 of 2004 and T-640 of 2005.

[17] The increase in landmines during the eradication of illicit crops became evident in the operations that were developed in the area of the Serranía de la Macarena (200 kilometers south of Bogotá), and in the municipalities of the North of the Nariño Department (along the border with Ecuador).

included in the register—so that IDPs attain necessary access to programs that can, in theory, assist them.[18] The cases that the Court has reviewed show that the decision not to include IDPs in the registry is often a result of public officials' discretionary evaluation of IDPs' declarations.

The displacement of public officials from areas of conflict is another demonstration of the double vulnerability of IDPs and of the impact of displacement on their welfare. If public officials cannot remain in conflict areas, no one will be able to assume the role of preventing displacement and of providing IDPs with assistance and protection. The first case of displacement that the Court reviewed was the following example: a healthcare worker was threatened by an armed group for carrying out his job.[19]

Teachers, healthcare workers, and municipal *personeros*[20] have all sought judicial protection of their rights to live and to work, seeking transfers to areas in which these rights are guaranteed. The Court has analyzed the problem from the perspective of the nature of official public duty and has concluded that public duty does not include the obligation to risk one's life. Ironically, public officials who do not work in conflict areas and who do not recognize the great danger faced by those who do are those who end up denying this protection. Threatened officials are left with no other option than to continue risking their lives or to flee, thus losing their jobs in the process.[21]

These, and other similar cases, show the difficulties faced by authorities and the displaced population when dealing with the effects of displacement. In the Colombian context, the situation is paradoxically worsened by the strength of institutions and by the inertia of active and highly developed public policy sectors. This prevents institutions—such as those in the health and education sectors—from responding to the reality of the conflict. Authorities and policymakers design "business-as-usual" policies and consistently decide to tackle displacement as a problem of

[18] See Colombian Constitutional Court, Decisions T-327 of 2001, T-268 of 2003, T-339 of 2003, T-417 of 2004, T- 740 of 2004, T-1094 of 2004, T-175 of 2005, T-563 of 2005, T-882 of 2005, T-1076 of 2005, T-1144 of 2005, T-086 of 2006, T-482 of 2006.

[19] Colombian Constitutional Court, Decision T-120 of 1997.

[20] *Personeros* are the municipal level representatives of the Public Ministry (which includes the functions of both National Controller's Office and Ombudsman's Office).

[21] See Colombian Constitutional Court, Decisions T-120 of 1997, T-258 of 2001, T-419 of 2003, T-539 of 2004, T-813 of 2004, T-852 of 2004, T-976 of 2004, T-1132 of 2004, T-685 of 2005, T-998A of 2005.

poverty, without responding to the specific needs of the displaced population. For this reason, the Court has emphasized the need for affirmative action in favor of the displaced population.[22]

Particularly in urban areas, the general level of awareness of the plight of IDPs is low because armed conflict does not affect all areas of the population or all regions to the same extent. The safer that the general public feels in urban areas, the less willing they often are to help the victims of the conflict. This means that the public's perception of security increases the vulnerability of the displaced population that is fleeing conflict areas. As a result, urban planners appear to be more concerned with preventing the arrival of more IDPs in major cities without paying due attention to how to prevent people from being displaced in the first place.

III. The effects of the Constitutional Court's judgments

The Court has been behind the most important advances and developments in policies regarding the displaced population in Colombia—especially since 2004 when it handed down Decision T-025. Structured judgments of the Court have had an impact on institutional activities, political and legislative developments, and the allocation of resources in favor of the displaced population.[23]

Because the Court's most important judgments have tackled problems with public policy at a macro level, the resulting impact on the welfare of the displaced population has been determined by the willingness and capacity of institutions to implement these judgments. It is thus difficult for IDPs to perceive the direct impact that these judgments have had on their welfare. Furthermore, the lack of a baseline establishing the conditions in which the population lives makes measuring results even harder.

A. Clarity regarding the content of State obligations

The Court has defined State obligations and IDPs' rights by integrating international standards in the national legal framework, bearing in mind the strong legal standard by which the institutions of the Colombian

[22] See Constitutional Court, Decisions T-602 of 2003 and T-025 of 2004.
[23] See Constitutional Court, Decisions SU-1150 of 2000 and T-025 of 2004.

State[24] operate. Many of the international standards are designed for circumstances different than those that apply to Colombia. Accordingly, it would appear reasonable to hold Colombia to higher standards.

One of the most important aspects of the Court's definition of IDPs' rights and the State's corresponding obligations is that the Court takes into account the level of constitutional and institutional development of the State. The Court does so by applying the principle: "to the maximum of its available resources." This approach could be adopted in the context of other displacement crises in the world.

The Guiding Principles on Internal Displacement are an example of the link between international parameters and domestic law. The Court held that the Guiding Principles form part of the "Constitutional Block"[25] because the majority of these principles originate from treaties duly ratified by the Colombian State. This means that the Guiding Principles constitute a fundamental parameter for interpretation of domestic legislation and for the design and execution of policies and programs in favor of the displaced population.[26]

B. Displacement on the public agenda

The Court has encouraged the Government to change the priority of policies in order to meet the axiological order set out in the Constitution. According to the Court, attending to and overcoming a humanitarian crisis such as displacement must be a priority for the State. Nevertheless, diverse sectors of the population have different interests, and the interests of the displaced population end up taking a back seat to other interests related to armed conflict. For example, protecting the productive system and continuing with a "business-as-usual" development model often takes precedence over protecting IDPs. In order to give displacement the

[24] This is precisely the content of Principle 3 of the Guiding Principles on Internal Displacement (UN, 1998).
[25] Article 93 of the Colombian Constitution establishes that "treaties and international covenants ratified by Congress, which recognize Human Rights and which prohibit their limitation in states of emergency, will take legal primacy internally."
[26] See Colombian Constitutional Court, Decisions SU-1150 of 2000, T-327 of 2001, T-602 of 2003.

priority it deserves, the Court has ordered that the authorities take urgent and positive action in favor of IDPs.[27]

The low priority that the State has historically given displacement is also reflected in the irregular functioning of the entities in charge of evaluating IDPs' needs, of defining public policies, and of coordinating processes of assistance.[28] One of the Court's concrete results has been the insistence that authorities guarantee that these entities operate on a permanent basis.[29]

C. Allocation of resources in favor of the displaced population

In order to protect IDPs' rights and ensure preferential treatment, the Court, in accordance with domestic legislation, sought clarity from the authorities regarding what resources should be assigned to displacement. The Court ordered the Government to calculate the financial effort necessary to guarantee the effective protection of IDPs' rights and to act in such a way as to ensure coherence between the budgets required and allocated. The Court respected the competency of the legislature to set the budget and of the Executive to execute the budget, but it mandated that the process be coherent.

The Court ordered that the Government evaluate the resources necessary to attend to displacement in the medium and long-term, thus leading the Government to make a multi-year financial commitment. This has given the displaced population certainty on the minimum amounts that will be assigned to displacement in future fiscal years. This ruling also indirectly led to priority being given to displacement at the most practical

[27] See Colombian Constitutional Court, Decisions SU-1150 of 2000, T-1635 of 2000, T-1346 of 2001, T-098 of 2002, T-215 of 2002, T-602 of 2002, T-669 of 2003, T-790 of 2003, T-985 of 2003, T-025 of 2004.

[28] In all municipalities, a Committee for Comprehensive Assistance to the Displaced Population should operate regularly. This Committee is in charge of coordinating the response of different institutions to prevent displacement, assist IDPs and promote durable solutions for IDPs. At the national level, the CNAIPD is charged with defining public policy on displacement. High officials of the Government must participate in the National Council (Articles 6 and 7 of Law 387 of 1997).

[29] The National Council has met regularly during two periods. It met on three occasions following Decision SU— 1150 of 2000. It then did not meet for two and half years, and only following Decision T-025 has it has begun to function on an ongoing basis (at least from March 2004 until the writing of this document in August 2006).

level of public policy, providing an answer to the question: "How much is the State willing to invest to protect the 8 percent of the population affected by the humanitarian crisis?"

The Government response to the Court's decision represents a triumph for the displaced population, which, through constitutional mechanisms, achieved a commitment from the Government to spend an average of US $420 million annually on displacement for a period of five years. This represents a substantial increase from the average $69 million that the Government had assigned annually in the five years prior to Decision T-025.[30]

D. Strengthening institutions

It is complicated to evaluate the impact of the increased financial commitment noted in the previous section, but it is not the purpose of this document to do so. This commitment has not yet translated into a substantial improvement in the welfare of the displaced population. Nevertheless, the fact that numerous State institutions assign resources to displaced populations (implying a commitment to spend these resources) is a significant advancement, particularly in the midst of a conflict in which other interests and needs could be given priority over attention to displacement.

A consequence of Decision T-025 of 2004 has been that some institutions have strengthened their ability to assist the displaced population, providing assistance that at least responds to this population's specific needs. In the two years following T-025 of 2004, the norm is that institutions have trained technical personnel in charge of responding to forced displacement. As a result, public officials' discourse on displacement is no longer focused solely on the lack of budget, but also on how to guarantee that the displaced population receives an effective enjoyment of its rights.

In October 2005, the Government established a working group through which public officials identified practices that could constitute discrimination against displaced populations. In several regions of the country, public officials met with displaced populations in order to seek new mechanisms to replace known discriminatory practices. A catalogue of conduct interpreted by the displaced population as discriminatory was

[30] Document CONPES 3400 of 2005.

assembled. In order to further clarify the impact of discriminatory conduct, workshops were carried out with different sectors of the population—indigenous peoples, Afro-Colombian communities, women, and youth—so as to gather sufficient information for allowing the construction of a catalogue of discriminatory behavior. Once the catalogue had been compiled, the CNAIPD adopted Agreement 03 of 2006, in which it issued precise instructions to public officials in order to eradicate these types of discriminatory practices.[31]

This change in institutional perspective can be seen only in the accompanying processes of policy formulation, but it is an important change, and one that would not have taken place without the intervention of the Court.

E. Public policy development

Following rulings such as SU-1150 of 2000 and Decision T-025 of 2004, the Government identified areas of action that required legal developments to attend to the specific needs of the displaced population and to respond to the impact of the armed conflict. One example is the case of land: Law 387 of 1997 required the Government to establish mechanisms for the protection of land abandoned by IDPs. This is important, as it constituted an acceptance by the State that in the context of armed conflict, the State was incapable of protecting the rights of all its citizens to possess property. Furthermore, the State recognized that the weakness of the land registration system in some parts of the country operates as an incentive to displace people from their land, which can then be appropriated by armed groups or unscrupulous third parties. Thus, a special, temporary framework for the protection of landholders' rights is required.

Law 387 of 1997 required the State to develop a mechanism for the protection of land. Faced with the continued lack of a regulatory framework to do so, the Court reminded the Government of its obligation to uphold the provisions of Law 387 of 1997 in Decision SU-1150 of 2000. The Government responded with Decree 2007 of 2001.[32] Nevertheless, the implementation of this Decree was insufficient and the

[31] In spite of the positive nature of the process and the importance of this measure, as of this date there are no follow-up reports that can account for the effect of Agreement 03 of 2006.

[32] Colombian Constitutional Court, Decision SU-1150 of 2000, (paragraph 45).

Court reiterated the importance of protecting IDPs' abandoned assets in Decision T-025.[33]

Decree 2007 of 2000 is one of the most important legal provisions regarding the protection of IDPs. It mandates that whenever there is risk of displacement, or that whenever displacement has taken place, an inventory of the lands and of the population's rights to that land must be carried out. This procedure would protect the displaced population from the dispossession of its land, insofar as it grants certainty to its rights. Once the assets have been identified, the protective measure ("declaration of displacement or of imminence of displacement") is registered in the Public Deeds Offices and the Central Registry of Abandoned Lands (RUP).[34] This declaration is then binding for third parties and can be held against them. The measures entail restrictions upon the sale of the identified assets, thereby preventing under-priced and forced sales.

These judgments, including Decision SU-1150 of 2000, have propelled the development of public policy not only on land issues, but also on health, housing, education, the production of identity documents, and the generation of income.[35] These judgments have also provided the impetus for the formulation of the SNAIPD.

F. The relationship between IDPs and authorities: the role of IDP participation

Displacement fractures organizational processes and therefore takes a high toll on social and community organization. Armed groups target their aggression toward community leaders and toward those with community influence, such as teachers and even religious leaders. In areas of arrival, those that were local leaders prior to their displacement are often afraid to resume their work at the head of their communities. For this reason, Decision T-025 promoted a new relationship between authority and citizen, which was an important development, particularly given that these citizens are victims of the conflict.

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[33] Colombian Constitutional Court, Decision T-025 of 2004 (6.3.1.2).

[34] This protective measure was implemented in 2006 by INCODER.

[35] As well as Decree 2007 on land, the results of Colombian Constitutional Court, Decision SU-1150 included decrees on housing, health, education and Decree 2569 of 2000, modifying Law 387. Similarly, Colombian Constitutional Court, Decision T-025 of 2004 not only caused the Government to issue SNAIPD (Decree 250 of 2005), but also to issue decrees on health and housing, to advance public policies in relation to land, and to update Decree 2569 of 2000.

The Court set out some rules for the participation of the displaced population—rules that, if they were to be respected in all cases, would establish a relationship of mutual respect between public official and IDP. In order for this participation to be effective, the opinions of the displaced population need to be taken seriously by the authority in question. The person formulating public policy needs to explain why he is taking a particular measure, to listen to IDPs' views and, in the event that the official does not share the opinion of the displaced population, to explain the reasons for the decision he or she is taking. In a context such as Colombia, these basic rules constitute an unprecedented development in terms of the exercise of democracy.[36]

In accordance with the above principle of participation, in June 2005 the Court invited displaced populations to take part in a public audience on compliance with Decision T-025 of 2004. This public audience represented the first time that cabinet-level government had met with IDP organizations. In this forum, the Government explained the advances it had made in complying with Decision T-025 of 2004, not only regarding obligations to the Court, but also to displaced populations. Following this account, IDP groups set forth their own views on the level of compliance. This process was unique. Indeed, in what other country affected by an internal armed conflict have the victims of forced displacement evaluated the expositions of cabinet ministers before responding with respectful and well-founded recommendations?

IDP organizations delved into the need to establish more flexible criteria for the adoption of measures to protect the rights to life, integrity and personal security of the leaders of the displaced population. The opinion of IDP organizations is that authorities assess risk levels without taking into account the special types of persecution to which leaders of the displaced population are exposed. In the field of healthcare, the IDP representatives pointed out, for example, that access to a service does not necessarily guarantee the provision of the corresponding treatment offered in theory by that service, given that there is neither access to a specialist, nor provision of prescribed medications. IDP organizations revealed that only 19.1 percent of displaced populations arriving in a city such as Bogotá have access to emergency humanitarian aid. They also pointed out that programs lack attention to specific psychosocial needs, and that

[36] Colombian Constitutional Court, Decision T-025 of 2004 (10.1.2).

housing programs are not designed to attend to the requirements and capacities of the displaced population.[37]

Displaced populations also reported problems in the structure of the national system itself. They pointed out how the institutions' offer of a process of re-establishment is restricted to the departmental capital cities, and that institutional presence is limited in small municipalities—though it is these small municipalities that bear the strongest impact of displacement. IDP organizations recommended increasing the local presence of *Acción Social* in its role as the coordinating entity for the national system.

The above public audience was not only the first such audience in the history of the Constitutional Court, but was also an audience that demonstrated the importance of the organization of the displaced population. Due to a lack of representation in political parties, IDPs face the difficult task of rebuilding community organizations for the defense and protection of their rights following displacement.

The participation of victims of the armed conflict in the processes around Decision T-025 of 2004 constitutes recognition by the authorities of the citizenship of these victims. It also serves to reaffirm their status as the recipients of special rights and as agents of change. This participation has a favorable social and political impact with regard to advancing and reestablishing said rights. It also affects reparations and reconciliation[38] because recognition of the displaced population as victims of the conflict brings respect from the authorities. It is precisely this respect that was lost in the context of armed conflict, and which causes people not only to be victimized, but also to seek and fight for recognition and assistance from the State. Given the ongoing conflict and the impact of this conflict on the displaced population, the participation of IDPs in general and in the audience of the Court is even more important than the participation of society as a whole within the social State based on the rule of law.[39]

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[37] *Mesa de organizaciones de la población desplazada*. Document presented during the June 19, 2005 public hearing in Bogotá.

[38] To clarify, the participation of IDPs in general, and particularly their participation in the process of Colombian Constitutional Court, Decision T-025 of 2004, has a reparative effect and can have a positive impact in terms of reconciliation. This is not to say that the audience is, in itself, a form of reparation.

[39] According to André Du Toit (2000), in the context of transitional justice, it is important to reestablish the human and civic dignity of the victims of serious violations of human

Even though a set of rules was defined in the T-025 process regarding the participation of IDPs, these rules could and should be used for the population as a whole and toward a diverse set of State policies. Therefore, this should be one of the most important consequences of the T-025 process.

G. System of accountability

The system of accountability outlined in Awards 176, 177, and 178 (orders for compliance with Decision T-025 of 2004) involves State institutions and civil society in a joint evaluation of the State response to the IDP situation. As mentioned above, this system is particularly relevant, given that it relates to victims in the context of an armed conflict. Further, like other systems developed by the Court, it has the potential to be applied to other policy initiatives, such as:

(1) The State should have a system for self-evaluation, based on clear indicators and precise goals;

(2) Information on the results of measures adopted by the State should be shared with State control mechanisms, NGOs working in the area, and the beneficiaries of the relevant policies;

(3) State control mechanisms should publish regular evaluations of institutions that administer policies including: (i) the *Contraloría General de la República* on the management of resources; (ii) the *Procuraduría General de la Nación* on the behavior of public officials; and (iii) the Ombudsman's Office on the respect for human rights; and

(4) Civil society organizations and organizations representing the target population could publish reports evaluating the results of IDP policies.

This model of accountability, if adopted, should strengthen the State's control mechanisms and establish clear rules enabling populations to see

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rights. He points to the necessity that justice (in the context of the article, *Truth Commissions*) strengthens the reestablishment of an "egalitarian moral respect for people as the publicly recognized basis for (new) rights-based cultures" (this author's translation).

how they can contribute to the construction of relevant and effective public policy.

H. Rights-based focus in public policy development

Decision T-025 of 2004 established practical criteria to apply a rights-based focus in the design and implementation of IDP public policy or any public policy. These criteria are extremely useful for policymakers because they are not familiar with principles or with human rights concepts such as progressive realization and the prohibition to adopt regressive measures.

Decision T-025 of 2004 and the associated orders for complying with measures to protect IDPs have influenced a policy approach that emphasizes a focus on rights. The Court's starting point is what it calls the principle of coherency: the principle that public policy should be formulated to meet the State's aims on a particular subject and should be set up in such a way so that the necessary conditions are guaranteed for enabling public policy to achieve its specific goals. This coherency among goals, means, and mechanisms is the basic rule that the State should apply when formulating its policies for assisting the displaced population.[40]

The goals should be established based on the obligations of the State. The goals in turn should be derived from a revision of the legal framework applicable to a given situation, in this case to forced displacement. The State's obligations and the specific needs of the population determine the basic parameters to be used in the formulation of public policy. Thus, a State policy is only constitutionally acceptable when it offers guarantees that the State can achieve its goals. Policy, therefore, must always be an instrument for the realization of the rights of the target population.

The Court, however, cannot tell the Government what the content of its policies should be. But it can set out "some guidelines and criteria that should be applied in the assistance to the displaced population to guarantee the respect of its fundamental rights… [T]hese guidelines are constitutional imperatives, meaning that in the event that they are not complied with, they can be enforced legally."[41] In other words, it should

[40] This concept on the reach of Colombian Constitutional Court, Decision T-025 of 2004 was set out by Manuel José Cepeda (the presiding judge of the Constitutional Court for this Decision), in a seminar at the University of Los Andes in Bogotá on November 17, 2005.

[41] Colombian Constitutional Court, Decision SU-1150 of 2000.

be possible to evaluate *ex-ante* whether a given policy is an adequate means of achieving the State's declared objective. Of the various alternatives open to the State, the best policy (and therefore the one the State should implement) is the one that will most effectively guarantee the enjoyment of the relevant rights.

Moreover, it is not the Court's role to tell the Government exactly what it must do to comply with these policies. Consequently, the Court asks the Government to define what it needs and later tells the Government that it should take follow-up action. In addition to these rules, there are a series of guidelines that set out the State's obligation in terms of affirmative action, progression, progressive realization, and the prioritization of actions. Regarding the latter, the Court recognizes the restrictions on the ability of the State to immediately and comprehensively attend to the needs of each sector of the population, and to comply with obligations to uphold social and economic rights.

With respect to affirmative action, it follows from the aforementioned principle of coherence that it is not enough for the State to indicate that it will develop programs in favor of the displaced population. The history of public policy is full of examples where policies aimed at advancing the material equality of a given sector of the population did not progress further than the drafting table. Decision T-025 of 2004, and in particular Award 176, establishes a procedure to translate policy objectives into concrete results. According to this procedure, all policies have to be accompanied by mechanisms that are clear with regard to the following: (i) the content of the policy; (ii) how the policy meets the specific needs of the target population, particularly people enjoying special constitutional protection (a differential approach); (iii) defining which institutions are responsible; and (iv) the goals, benchmarks, and resources that are to be destined for the target population. Defining policies in this way allows for the follow-up and evaluation of concrete results in favor of the displaced population (or any sector of the population to which these constitutional guidelines may be applied).

It is not sufficient to ensure access to State resources for vulnerable groups of a population. The State must define more precisely the appropriation and allocation of resources for each of these groups. Otherwise, the displaced population's rights would be jeopardized even further and the situation aggravated by poor organization and lack of representation.

The challenge set by the Court is to formulate, apply, and evaluate public policies that translate into the progressive and effective protection of the displaced population's rights. To that effect, the Court has established practical guidelines that can be used by those designing and implementing public policy. There was a general consensus that it was necessary to establish a baseline for the displaced population's situation in order to assess improvements in the effective enjoyment of rights. The State carried out a demographic survey to characterize segments of the displaced population registered by the Government in the second half of 2004. At the conclusion of this exercise the State had, for the first time, an estimate of the situation of the displaced population and the results of public policies.

In technical terms, the most complicated exercise has been the elaboration of common indicators (used by all those working for the assistance and protection of the displaced population) that evaluate the level of the population's enjoyment of its rights. Traditionally, public policy was evaluated using purposes and benchmarks outlined in the public policy itself. Using the effective enjoyment of rights as the criteria for evaluation makes explicit the State's obligation to achieve results. Though governments should take the required measures, doing so does not necessarily guarantee the effective enjoyment of the rights that these policies seek to protect. As seen above, the Court's view on the evaluation of public policy represents a qualitative leap forward toward a human rights-based perspective.

The concept of "to the maximum of its available resources," contained in Article 2 of the International Covenant on Economic, Social, and Cultural Rights, is a concept that, in the absence of clear guidelines, remains vulnerable. Without clear guidelines, the interests of landowners, merchants, and miners with government influence can often be considered before the interests of IDPs or any other vulnerable population. By examining the mechanisms for the allocation, execution and revision of budgets, the Court has given the Government and the displaced population practical tools to ensure the adequate protection of the displaced population's rights.

The Court promotes a system of institutional action whereby the allocation of resources is a basic tool for the advancement of the population's rights. Resources should be allocated based on an axiological exercise, which determines the State's priorities using the values enshrined in the Constitution. The amount allocated should correspond to the

magnitude of the problem that the public policy aims to address and should be sensitive to changes in demand (in this case, to the size of the displaced population), the needs of the population, and restrictions or improvements in the State's capacity to assist the population. For this reason, the starting point for budget allocation was the evaluation of the needs of the population—an evaluation that provided an estimate of the cost of the State's response. Given the inability of the State to resolve all the problems in a single fiscal year, the Court established two rules: (i) progressive realization and (ii) a minimum level of protection, which consists of a nucleus of rights that should be guaranteed to all IDPs at all times.

In Award 176 of 2005, according to the annual budget cycle, the Court established mechanisms to assure resources that guarantee the financing of effective programs for displaced persons. These mechanisms include the following steps: (i) the planning should be adjusted on the basis of the needs of the population, identified in the survey mentioned above; (ii) annual budget allocation (i.e. the relation between the amount estimated as necessary and the allocation in the annual Budget Law); and (iii) evaluation of execution (i.e. at the end of each fiscal year the Government should report on how it spent the resources allocated). Such a scheme of planning, follow-up, and evaluation in relation to a determined sector of the population, and one that involves an important number of institutions, had not yet been applied in Colombia. It represents a demonstration of what the Court calls the "principle of seriousness," or that the State should comply with what it has promised.

If both the State and society were to respect these guidelines for the social policy development set by the Court, they would be taking a significant step toward the realization of the social and economic rights of the population.

IV. Limitations of constitutional justice

It is clear that the continuing armed conflict not only causes the total number of IDPs in the country to increase constantly, but that it also creates a far from perfect operating environment for the institutions responsible for assisting the displaced population.

There are several interests that may overshadow those of the victims in an armed conflict. They include:

i. The interests of the persecutors, who retain the force to silence those who seek to defend their rights;

ii. The interests of third parties that take advantage of institutional weakness, public disorder and the fragility of communities to obtain illegal or undeserved profits; and

iii. The interests of other sectors of the population who do not act in solidarity with the displaced population and who have greater influence than the displaced population in the definition of public policy.

It is the belief of many policymakers that action in favor of the displaced population would discriminate against other groups in the population. Thus policymakers with this orthodox view often use technical arguments against the priorities set by the Court. In practice, these arguments act as a barrier to the implementation of the Court's rulings, though they fall short of acting against the Court in any way that the Court can currently question.

National and local public officials do not have the legal background to understand many of the Court's decisions. A continuous training model does not exist for them. The public officials in charge of carrying out public policy lack the necessary legal tools to respond adequately to the demands of the Court. These public officials need to be trained to properly interpret legislation and judicial rulings.

Whilst the high levels of Government respect judicial actions and obey the Court's rulings, it is clear that these rulings create tension within the Executive branch. The position of the Executive is ambiguous. On the one hand, it recognizes that the Court's interventions create the conditions necessary for all of the State's entities to commit to aiding and protecting IDPs. On the other hand, it sees judicial action as an interference with its normal operation, and as a risk to its autonomy in managing institutional policies.

A limitation of an impact of a judicial action is related to authorities' lack of comprehension of the importance, urgency, and necessity of responding effectively to judicial order. This lack of comprehension creates the risk that the interaction between the Executive and the Court reduces the debate on displacement to a debate on compliance with the Court's judgments. That is, public officials concentrate on complying with Court orders rather than on resolving the underlying problems set out by

the Court. The danger here is that the exercise becomes an exchange of information between two public branches—an exercise that does not result in a material improvement in the welfare of the displaced population. An interaction of this kind that does not get to the bottom of the problem would lead to the following adverse situations: (i) a person, unprotected by the State, would be displaced; (ii) having been displaced, the person would seek assistance from the authorities who would not provide it; and (iii) even after seeking constitutional protection for her or his rights, said rights would still not be effectively protected.

The *tutela* action has a potential risk. It can establish discrimination between the population that demands their rights through this action and the population that does not. The authorities' response can be faster and more comprehensive for IDPs who use the above action. This risk was identified by the Court's Decision T-025 of 2004.

However, as the Court itself has made clear, the unconstitutional state of affairs has not been remedied and the displaced population continues to find that the *tutela* method is the most efficient form of protection that it has. This is exemplified by the number of *tutela* cases related to the protection of the displaced populations' rights that the Court is reviewing. In the last two years, the number has increased five-fold.

Judicial protection has proven to be the fastest and most efficient mechanism that the displaced population has found for the protection of their rights. For this reason, the State should guarantee that certain conditions be met in order to facilitate judicial assistance to the displaced population.

The Constitutional Court's intervention has been the principal encouragement behind the response of the Colombian State. Without judicial intervention to protect IDPs' rights, the State response could decrease and lose momentum, resulting in the increased vulnerability of the displaced population.

V. Conclusion

In many cases, judicial protection has become the most effective way to protect the displaced population's rights. This is apparent given the following: (i) the fragility of IDP organizations (a logical consequence of displacement); (ii) the need to attend simultaneously to the requirements of various sectors of the population; (iii) the difficulty that institutions

have in adapting to the reality of the conflict; and (iv) the existence of diverse interests (many of which are linked to the on-going armed conflict).

The Colombian experience underscores the importance of strengthening and consolidating national protection mechanisms, particularly as the armed conflict is taking place in a solid, well-developed State in which different branches of public power function relatively well. In a context like this, it is important to strengthen the work of all branches of the State in order to increase the efficiency of the State's response to IDPs' myriad of adverse circumstances.

The intervention of the judicial system not only protects relevant rights, but also reestablishes the relationship between citizen and State that had been affected by the lack of prompt protection and the weakness of the assistance offered. It is essential to reestablish this relationship in the context of an armed conflict in order to strengthen institutional legitimacy and to recover the ability to govern. An adequate institutional response has the additional benefit of helping to achieve durable solutions, and of thereby favoring reconciliation in a post-conflict future.

Though the importance of individual protection must not be neglected, due to the magnitude of the displacement crisis, judicial action has the greatest impact when directed at an analysis of structural problems that limit the State's response. The issues that judicial action seeks to correct are indicators of the most important gaps of the State's response. Therefore, it favors the adoption of necessary adjustments by the authorities.

The Court demonstrates that its effect is more significant when there is a follow-up mechanism to the compliance of a Court order. In general, displacement does not take first priority in the public policy agenda. Constitutional, judicial interventions therefore have a clear impact in that they ensure that the State recognizes displacement as one of its priorities. In order for a judicial decision to be effective and for the relevant rights to be protected, it is necessary to institutionalize participative mechanisms to follow-up on the Court's structured judgments.

In the case of displacement, judicial intervention responds to a structural flaw in the State response to a problem that affects broad sectors of society. In order to avoid the response to this decision becoming an endless exchange of demands and legal sanctions, or excuses and

explanations, it is necessary to reach a consensus among the displaced population, all branches of the State, and the social actors involved in the response to displacement.

The fact that the population whose rights have been violated turns to the judicial authorities is a demonstration of institutional capacity and of the population's faith in these institutions. Faith in institutions cannot be squandered, especially in the context of a conflict. The challenge faced by the authorities is to guarantee that judicial decisions are respected, thereby achieving effective protection of the population's rights and reinforcing the identity of the State as a "social State" based on the rule of law.

CHAPTER 4

The Human Rights of the Victims of Forced Internal Displacement in Light of the Progressivity of Economic, Social, and Cultural Rights

Rodolfo Arango[*]

The internal displacement of people as a consequence of the armed conflict in Colombia tests the State's capacity to fulfill its international obligations concerning human rights. One major test emanates from the sheer number of internally displaced people (IDPs), as well as from the composition of the internally displaced population. This population varies between two and three and a half million individuals. The average person in this population is twenty-three years old. Approximately fifty percent of the population comprises of women and about fifty percent comprises of boys and girls under fifteen years of age.[1] A second major test emanates from the historical lack of Government assistance to this population. As of September 2006, according to the Colombian Constitutional Court,[2] the authorities have not guaranteed that a minimum level of human rights—as set forth in the Guiding Principles on Internal Displacement—be afforded to Colombia's internally displaced population. In fact, the actions and omissions of public authorities have shown tendencies that present challenges to the protection of displaced people's human rights.

The Constitutional Court has declared this an unconstitutional state of affairs, and is adopting measures to ensure that the State's obligations towards internally displaced people are met in accordance with the Guiding Principles on Internal Displacement. Judicial review has come to be the principal institutional means of monitoring public policy on displacement, and of protecting the human rights of those affected by the

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[1] CODHES & Secretariado Nacional de Pastoral Social. Desafíos para construir nación. El país ante el desplazamiento, el conflicto armado y la crisis humanitaria 1995-2005. Colombia, 2006. p. 67.

[2] Award 266 of September 2006.

armed conflict. The Court's judicial review shows that in practice, the authorities in Colombia unjustifiably fail to fulfill international commitments and fail to recognize the human rights of displaced persons. In spite of the legislative and administrative actions undertaken to respond to the phenomenon of displacement, the omissions and errors in the design and implementation of public policy enable human rights violations to persist during the state of people's internal displacement. The effectiveness of judicial review on this subject depends on realizing the minimum fundamental rights of people who are victims of displacement. To fail to realize these fundamental rights would be one more reason to find the Colombian State responsible in violation of international treaties on human rights.

The complexity surrounding the forced internal displacement of millions of people demands a permanent and coordinated intervention from relevant public authorities. The principle of the progressivity of economic, social, and cultural rights (ESCR) is of central importance to this intervention, which centers on the review of the implementation of public policy expressed in Law 387 of 1997 and its statutory decrees. That is, this principle constitutes an objective criterion to measure the fulfillment of state obligations. It also includes the prohibition of backsliding on guarantees already achieved. In light of Decision T-025 of 2004 and its subsequent awards,[3] the principle of progressivity of the ESCR has not, however, been satisfied. Consequently, according to the jurisprudence of the Court, the fundamental rights of the victims of displacement continue to be violated.

My hypothesis is that these rights are violated due to three factors: (1) inadequate design of the public policy associated with the comprehensive assistance to the displaced population; (2) incapacity of the proper authorities to protect the displaced population and combat the causes of displacement; and (3) the contradiction between the protection of the displaced population's rights and the policy of democratic security promoted by the current Colombian Government. The fulfillment of these principles by the public authorities would remedy this current humanitarian catastrophe of IDPs in Colombia. Without such assistance from the authorities, it would seem that the only recourse would be to seek intervention from the international community.

[3] Awards 176, 177 and 178 of 2005, and 218 and 266 of 2006.

I. Characteristics of the conflict and the displaced population

Forty years of armed conflict in Colombia have left great desolation and destruction, and much death behind. The drug trafficking business—with its enormous economic gains—finances the participants in the conflict, as well as political, business, and social sectors. The social and economic inequality reflected in the structure of land ownership in Colombia, the clientelism and political corruption, and the precarious state of Colombia's democratic structure and function are factors that favor the power of irregular armed groups. This constellation of factors contributes to the massive violation of the human rights of the population, and in particular of people displaced by the violence.

The arrests of more than twenty Colombian parliamentarians[4] and the investigations of more than seventy others for massacres of peasants have been widely documented in the press,[5] and reflect the complicity of politicians in drug trafficking and in paramilitary operations. According to the statements of well-known paramilitary leaders, thirty-five percent of the Congress of the Republic is under paramilitary control. The Public Prosecutor's Office (*Procurador General de la Nación*) is pursuing various investigations concerning the intervention of paramilitaries in the elections for Congress and President of the Republic in the years 2002 and 2006. The intervention of paramilitaries in the legislative and presidential elections involved providing financial support to the candidates. For its part, the Government is advancing a policy of democratic security that intends to reveal and dismantle guerrilla bases and paramilitary forces, both of which are supported by some local administrations and part of the population.

In this context, one can appreciate that there is a large number of displaced people. However, the Government, the Catholic Church, and NGOs do not agree over the total number. The Government estimates the population of IDPs at two million, while the latter two groups estimate the

[4] http://www.elpais.com.co/paisonline/notas/Marzo262008/nac02.html (consulted February 8, 2009).

[5] The Washington Post, February 17, 2007, page A28: "Scandal in Colombia Raises Skepticism on Capitol Hill, by Juan Forero." Cfr. also, *El Tiempo*, November 2006; *El Espectador*, November 2006.

population at three and a half million.[6] There is also no consensus on which armed groups are responsible for the forced displacement. According to governmental sources of 2001, the paramilitaries are responsible for 48.2% of the displacement, the guerillas are responsible for 12%, and the combined actions of both armed groups are responsible for 37% of the displacement.[7] Academics and intellectuals argue that "guerrillas, military, paramilitaries, livestock farmers, drug traffickers, emerald dealers, merchants, national companies and corporations and transnational companies" cause displacement. Some affirm that "there are not displaced persons because of war but rather that there is war so that displaced persons will exist."[8]

II. Legislative response and regulation

Although forced displacement has been quantified in Colombia in the period between 1946 and 1958 (called "The Violence"), when it is estimated that two million people were expelled from their lands, forced displacement has only been considered a pervasive phenomenon since 1995. For some, displacement fundamentally results from the action of illegal armed groups. For others (e.g. academics during the 1990s), displacement's roots are in "the consolidation of a model of exclusive development, characterized by… corrupt relationships… patronage and force."[9] In this latter perspective, people are removed from their agricultural lands. Forced displacement also results in lands being used for illicit activities such as coca production, which fuels guerilla and paramilitary operations.[10]

The response of the Colombian legislature to the situation of internal displacement was to expedite Law 387 of 1997. These measures were "adopted for the prevention of forced displacement; assistance protection,

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[6] CODHES & Secretariado Nacional de Pastoral Social. Desafíos para construir nación. El país ante el desplazamiento, el conflicto armado y la crisis humanitaria 1995-2005. Colombia, 2006. p. 19.

[7] These proportions change in 2003 to 32.7% for paramilitaries, 22% for the guerrillas and 42% for combined (UNHCR. 2004. *Balance de la política pública de prevención, protección y atención al desplazamiento interno forzado en Colombia, agosto 2002-agosto 2004*. Bogotá: UNHCR, p.137).

[8] Bello, Martha. 2004. "El desplazamiento forzado en Colombia: acumulación de capital y exclusión social", en: Martha Bello (ed.). *Desplazamiento forzado. Dinámicas de guerra, exclusión y desarraigo*. Bogotá: UNHCR & Universidad Nacional de Colombia, p. 25.

[9] *Id*., p. 20.

[10] *Id*., p. 21.

consolidation and socio-economic stabilization of persons internally displaced by violence in the Republic of Colombia."[11] This law defines who may be considered a forcibly displaced person, and also defines the rights such people enjoy. It also recognizes the responsibility of the State on the subject; creates the SNAIPD, with a National Council (an advisory body), municipal committees, district committees, and department committees, as well as the institutions of which they are comprised; orders the design of a National Plan for Comprehensive Assistance to the Population Displaced by Violence and determines its objectives; creates a National Information Network for Assistance to the Population Displaced by Violence to assure that measures of immediate assistance are taken; establishes measures to prevent forced displacement and tend to emergencies in a humanitarian manner, and to support the return of affected persons, promoting their socioeconomic consolidation and stability; creates a National Fund for Comprehensive Assistance for the Population Displaced by Violence, administered by the Ministry of the Interior; defines the origin of the resources of said fund; and adopts other measures for the protection of the displaced population.

The Law above has been developed through various statutory decrees[12] and from documents of CONPES.[13] Regulating by means of various statutory decrees responds to the need to give specialized assistance to the displaced population on the subjects of registration, health, education, land, and housing. The general State policy is reflected by two additional instruments: the National Plan for Development and Decree 2002 of 2002.

The National Plan for Development 2003-2006 (Law 812 of 2003) and the Decree on Interior Disturbances of 2002 frame the public policy of assistance to the population displaced by violence within the policies of the communitarian State and democratic security. This has meant that the policy on returning the displaced population to their places of origin, on their involvement in the armed conflict, and on their assistance, is constructed in the framework of the anti-guerrilla fight. The Government of Álvaro Uribe Vélez views assistance to people who have suffered from forced displacement as a function of the State's policies of public order.

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[11] http://www.secretariasenado.gov.co/senado/basedoc/ley/1997/ley_0387_1997.html (consulted February 8, 2009).

[12] Cfr. among them Decree 266 of 2000, Decree 2569 of 2000, Decree 2007 of 2001, Decree 2131 of 2003.

[13] CONPES (in Spanish).

These policies are based on the "fortification of public force and citizen cooperation within philosophies of military intelligence and direct participation in the conflict (network of cooperatives and peasant soldiers)."[14]

The Government enacted Decree 2569 of 2000, through which it partially regulated Law 387 of 1997 with the goal of specifying the responsibilities of some of the entities charged with assisting the displaced population. This decree also established norms that regulated the inclusion and expulsion of people in the official registry, as well as the stabilization and economic consolidation of the affected persons.

By means of Decree 250 of February 7, 2005, the National Plan was adopted for the Comprehensive Assistance for the Population Displaced by Violence. This replaced the former plan contained in Decree 173 of 1998. In the new plan, a "matrix approach" was developed for each of the phases of comprehensive assistance: prevention and protection, humanitarian emergency assistance and socioeconomic stabilization. This type of approach was also developed for the policy's four strategic lines: humanitarian actions, local economic development, social management, and habitat. Despite these policy advances, the results of the comprehensive assistance plan continued to be, in the view of the Constitutional Court, insufficient to guarantee the minimum obligations towards displaced persons.

Moreover, several measures clearly go against guiding principles on assistance to the displaced population. For example, the governmental project for the legalization of land allows for land possession to transpire after a person has resided for five years on a particular piece of land, and the statutory decree of the Law of Justice and Peace (Law 975 of 2005) favors the demobilized paramilitaries who negotiated IDPs' delivery to justice.

III. The intervention of the Constitutional Court

The Constitutional Court, exercising its particular review of the *tutela* of fundamental rights, had already pronounced the protection of IDPs' specific rights in successive decisions.[15] But it was by means of Decision

[14] Bouley, 2004, p. 370.

[15] The Court summarizes some previous decisions in Decision T-025 of 2004:

> "Since 1997, when the Court dealt with the extremely serious situation of displaced persons in Colombia for the first time, 17 judgments have

T-025 of 2004 (with Justice Manuel José Cepeda Espinosa presiding) that the Constitutional Court analyzed the situation of thousands of people who were victims of forced internal displacement. In this decision, the Court conducted a general evaluation of the public policy of assistance to the displaced population in relation to the fulfillment of minimum obligations correlating to the rights of petition, meeting measures that secure an individual's level of subsistence, and various rights regarding work, health, housing, and education. The Court adopted the analysis of the public policy of displacement, starting by focusing on the realization of the minimum demandable contents of the rights. This is in contrast to the aggregative focus on the fight against poverty adopted by Government's policy.

The Court concluded, after a meticulous constitutional analysis of the strategies advanced by the State beginning with Law 387, that a massive and ongoing violation of the affected persons' fundamental rights existed.[16] It was deemed that such violations did not result from the action

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been adopted by the Court to protect one or more of the following rights: (i) on 3 occasions, to protect the displaced population from acts of discrimination; (ii) on 5 occasions, to protect life and personal integrity; (iii) on 6 occasions, to guarantee effective access to health care services; (iv) on 5 occasions, to protect the right to a minimum subsistence income… securing access to programs for economic re-establishment; (v) on 2 occasions, to protect the right to housing; (vi) in one case, to protect freedom of movement; (vii) on 9 occasions to guarantee access to the right to education; (viii) in 3 cases to protect the rights of children; (ix) in 2 cases to protect the right to choose their place of residence; (x) in 2 opportunities to protect the right to free development of their personality; (xi) on 3 occasions to protect the right to work; (xii) in 3 cases to secure access to emergency humanitarian aid; (xiii) in 3 cases to protect the right of petition, related to requests for access to any of the programs for the attention of the displaced population; and (xiv) on 7 occasions to prevent the use of the requirement of being registered as a displaced person as an obstacle for access to aid programs."

[16] The Court concludes that,

"…given the conditions of extreme vulnerability of the displaced population, as well as the repeated omission by the different authorities in charge of their attention to grant timely and effective protection, the rights of the plaintiffs in the present proceedings -and of the displaced population in general- to a dignified life, personal integrity, equality, petition, work, health, social security, education, minimum subsistence income and special protection for elderly persons, women providers and children, have all been violated (sections 5 and 6). These violations have been taking place in a massive, protracted and reiterative manner,

of a specific authority, but rather from the structural defect of the policy on comprehensive assistance to the displaced population. As far as the Court was concerned, the response towards the displaced population did not satisfy the constitutional and legal parameters that the State had taken on, and to which it had committed itself before the international community.

After its analysis of public policy with a focus on rights, Decision T-025 of 2004 considers that the situation of IDPs in Colombia constitutes "an unconstitutional state of affairs," which demands the adoption of urgent and special measures for assuring rights—measures that must be carried out by the relevant authorities.[17] According to the doctrine of the unconstitutional states of affairs, such urgent measures for protecting the essential nucleus of fundamental rights are justified when there exist factors such as:

> "(i) a massive and generalized violation of several constitutional rights, which affects a significant number of people… (ii) a protracted omission by the authorities in complying with their obligations to secure rights… (iii) the adoption of unconstitutional practices, such as the incorporation of the *tutela* action as part of the procedure to secure the violated rights… (iv) failure to adopt the legislative, administrative or budgetary measures required to prevent the violation of rights… (v) the existence of a social problem whose resolution requires the intervention of several entities, demands the adoption of a complex and coordinated set of actions, and exacts a level of resources that implies an important additional budgetary effort… (vi) if all the persons affected by the same problem were to resort to the *tutela* action in order to obtain the protection of their rights, a higher judicial congestion would be produced."

> and they are not attributable to a single authority, but are rather derived from a structural problem that affects the entire attention policy designed by the State, as well as its different components, on account of the insufficiency of the resources allocated to finance such policy, and the precarious institutional capacity to implement it (section 6.3.). This situation gives rise to an unconstitutional state of affairs, which shall be formally declared in this judgment" (section 7 and paragraph 1 of the final decision).

[17] The doctrine of the unconstitutional state of affairs has been applied by the Constitutional Court in several cases relating to persons in prison, the situation of pensioners, the protection of human rights activists and the omission of calling for competition to become public notary.

Since Decision T-025 of 2004, the Court has passed diverse awards (Awards 176, 177 and 178 of 2005, and 218 and 266 of 2006[18]) for reviewing the completion of what was ordered in the original decision.

IV. Application of the Guiding Principles

In Decision T-025 of 2004, the Constitutional Court embraced the Guiding Principles on Internal Displacement (compiled by the Representative of the UN Secretary-General on Internally Displaced Persons, Francis Deng, in 1998) in an interpretation of the scope of the rights of IDPs. In the analysis at hand, we are interested in the minimum rights of the displaced population that the Constitutional Court specifies on the grounds "of the international obligations acquired by Colombia in the field of human rights and international humanitarian law, as well as the compilation of criteria for the interpretation and application of measures to assist the displaced population which is contained in the Guiding Principles." Such rights comprise the minimum assistance that must always be satisfied by the State.[19]

V. Doctrine of the minimum and the principle of progressivity

Starting from the constitutional precedent and the Guiding Principles referred to above (regarding Decision T-025 of 2004), the Court specified the minimum content of IDPs' rights, which must be guaranteed at all times. The content of these rights is part of the content of the minimum obligations owed by States that have ratified international human rights instruments. Moreover, the Court imposes a higher standard on the authorities than in ordinary civil law cases, in order to combat a backsliding in the level of protection of social, economic, and cultural rights. This high standard of obligations imposed on the authorities is

[18] After this analysis was prepared, the Constitutional Court issued other additional rulings (awards)[18] in which it calls for compliance with the requirements of Decision T-025 of 2004. Some of these rulings are: ruling 109 of 2007, ruling 233 of 2007, and ruling 116 of 2008 (in which the Constitutional Court adopted a set of 174 obligatory indicators for measuring progress, stagnation, or backward movement in overcoming the state of unconstitutionality, and in the guarantee of effective enjoyment of the twenty rights of the displaced population); ruling 005 of 2009 (regarding protection of the fundamental rights of those of African descent who are victims of forced displacement); ruling 008 of 2009 (regarding the persistence of the state of unconstitutionality); ruling 009 of 2009 (adopted as a result of the assassination of a displaced leader); ruling 011 of 2009 (regarding the shortcomings in the registration systems for the displaced).

[19] Decision T-025 of 2004, paragraph 9. Concerning the Constitutional Court's application of the Guiding Principles, see Chapter 6 in this book.

based on the principle of progressivity of ESCR (Article 2, paragraph 1 of the International Covenant on Economic, Social, and Cultural Rights,[20] ratified by Law 74 of 1968) and on the special protected condition that internally displaced people enjoy.

In its task of specifying the review of restrictive measures of claimants' rights, the Court defines the scope of the displaced population's minimum rights. To this end, it distinguishes between the essential nucleus of their fundamental constitutional rights and the satisfaction of duties of assistance for immediate compliance in accordance with the State's international commitments.[21] In doing so, the Constitutional Court formulates a constitutional rule, from which it interprets the minimum rights of the displaced population. Such a constitutional rule presupposes the existence of an unconstitutional state of affairs—that is, the massive and recurrent violation of fundamental rights.[22] The constitutional rule formulated by the Court establishes:

> "When a group of persons, which has been defined—and is definable—by the State for a long time, is unable to enjoy its fundamental rights because of an unconstitutional state of affairs, the competent authorities may not admit the fact that those persons die, nor that they continue living under conditions which are evidently harmful to their human dignity, to such a degree that

[20] International Covenant on Economic, Social, and Cultural Rights, Article 2, para. 1:

> "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

Article 11, para. 1:

> "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."

[21] For the difference between the essential nucleus of the constitutional fundamental rights and the minimum level of protection to be satisfied by the State in accordance with international duties, see paragraph 9 of the Colombian Constitutional Court, Decision T-025 of 2004.

[22] There exist a broad number of decisions about unconstitutional states of affairs—see the website of the Constitutional Court (www.constitucional.gov.co) under "estado de cosas inconstitucional."

> their stable physical subsistence is at serious risk, and that they lack of the minimum opportunities to act as distinct and autonomous human beings."

Based on this rule, the Court specifies, the minimum content of assistance. This minimum content must always be satisfied by the State. According to the Court:

> **"**[The] minimum level of protection that must be guaranteed in an effective and timely manner… implies (i) that the essential nucleus of the constitutional fundamental rights of displaced persons may not be threatened in any case, and (ii) that the State must satisfy its minimum positive duties in relation to the rights to life, dignity, integrity—physical, psychological and moral—family unity, the provision of urgent and basic health care, the protection from discriminatory practices based on the condition of displacement, and the right to education of displaced children under fifteen years of age.
>
> In regards to the provision of support for the socio-economic stabilization of persons in conditions of displacement, the State's minimum duty is that of identifying, in a precise manner and with the full participation of the interested person, the specific circumstances of his or her individual and family situation, his or her immediate place of origin, and the alternatives of dignified subsistence available to him or her, with the aim of defining that person's concrete possibilities of undertaking a reasonable project for individual economic stabilization, or of participating in a productive manner in a collective project, for the purpose of generating income which may allow him or her, and any dependent displaced relatives, an autonomous livelihood.
>
> Finally, in regards to the right to return and re-establishment, authorities' minimum duty is that of (i) not imposing coercive measures to force persons to return to their places of origin or to re-establish themselves elsewhere, (ii) not preventing displaced persons from returning to their habitual place of residence or re-establishing themselves elsewhere; (iii) providing the necessary information about the security conditions that exist at the place where they will return, and about the responsibilities that the State shall assume in the fields of security and socio-economic assistance in order to guarantee a safe and dignified return; (iv) refraining from promoting return or re-establishment whenever such decisions imply exposing displaced persons to a risk for their lives or personal integrity, and (v) providing the support required to secure that return is carried out in safe conditions, and that those

> who return are able to generate income which can provide them autonomous livelihoods."

In Decision T-025 of 2004, the Constitutional Court refers to the principle of the progressivity of ESCR, and the implicit prohibition of retrogression in the protection of the displaced population's rights. Concerning the application of international law as a criterion of judicial review against measures that can constitute a retrogression in the level of protection of ESCR already achieved, the Court specified the conditions that must be met so as not to violate the prohibition of retrogression as they have been understood by the UN Committee on Economic, Social, and Cultural Rights. These measures or conditions are set out as follows:

> "These four conditions may be applied to all rights with a markedly positive-duty imposing dimension, because of the specific conditions of their bearers, and may be summarized in the following parameters. First, the prohibition of discrimination (for example, an insufficiency of resources may not be invoked to exclude ethnic minorities or the supporters of political rivals from State protection); second, the necessity of the measure, which requires a careful study of alternative measures, which must be unattainable or insufficient (for example, if other sources of finance have been explored and exhausted); third, a condition of future advance towards the full realization of the rights, in such a way that the reduction of the scope of protection is an unavoidable step to return, after overcoming the difficulties which led to the transitory measure, to the route of progressiveness in order to achieve the highest degree of satisfaction of the right… and fourth, a prohibition of disregarding certain minimum levels of satisfaction of the right, because measures cannot have the effect of violating the basic nucleus of protection which can ensure the dignified subsistence of human beings, nor can they begin by the priority areas which bear the highest impact upon the population. The Court shall now define those minimum levels."

In two previous cases the Constitutional Court had already declared legislative measures as unconstitutional because the measures had ignored the prohibition of retrogression deduced from the principle of ESCR progressivity. In Decision C-991 of 2004,[23] the Court declared the

[23] The Constitutional Court indicated here that the limitation introduced by Law 812 of 2003 in the protection of single parents and people with some incapacity represented an important retrogression in comparison with what was established by Law 790 of 2002.

statements of Law 812 of 2003 as unconstitutional, and thereby established which temporal limits were to be set for the special protection of persons in a situation of disadvantage in relation to a policy of the restructuring and downsizing of State entities.. The Court maintains that "if in general terms the retrogressions in matters concerning the protection of ESCR are prohibited, such *prima facie* prohibition appears with special force when the enforcement of ESCR of special protected persons is at stake."[24] The cases of victims of internal displacement are perhaps the most important application of the stated duty of the special protection of disadvantaged persons.

In Decision T-595 of 2002, the Constitutional Court had ordered the public administration to guarantee, without delay, access to mass transportation services for claimants with physical limitations and those deserving special protection based on their condition of vulnerability. The Court also referred to the enforcement of ESCR, making it clear that progressivity predicates the effective enjoyment of ESCR and requires, among other things, the obligation to adopt decisions "that are based on a rational decision process which structures a realistic public policy, so that the democratic compromises taken by the government do not turn into an empty promise."[25] Accordingly, the presumption of the unconstitutionality of retrogressions, the burden of argument on the head of the State, and the strict review of adopted measures added to the demand for a public policy and for its support in a rational decision-making process.

In "*La prohibición de retroceso en Colombia*,"[26] it was suggested that a step-by-step test be used in the judicial review of regressive measures for ESCR. The above text also discusses a test based on the reconstruction of decisions of the Constitutional Court regarding the realization of ESCR. For example, if the legislator is going to design public policy for the development of ESCR and modify the measures previously adopted, this must be done within the constitutional framework that requires the progressivity of ESCR and prohibits—except for arguments of great weight—a return to previous, lower levels of achievement vis-à-vis rights protection (i.e. regressive measures). The test to be utilized by the judge in reviewing supposedly regressive measures has the following structure:

Therefore, the Court concluded that such limitation violated the minimum level of protection of social rights which had just been gained.

[24] Colombian Constitutional Court, Decision C-991 of 2004.

[25] Colombian Constitutional Court, Decision T-595 of 2002.

[26] Arango, 2006.

"Test of Constitutionality of Regressive Measures for Social Rights"

1. Existence of measure that negatively interferes in the area of a social right
(+)
2. Prohibition of regressive measures for social rights
(applied by means of presumption of unconstitutionality)
(+)
3. The prohibition is accepted if it meets the following conditions:

3.1 The reasons that justify the measure are valid

3.1.1 The financial crisis invoked does not exist at the moment of recognizing the benefit (+)

3.1.2 The administration is not exclusively responsible for the crisis
(+)

3.1.3 The errors are not predicable to the beneficiary of the benefit
(+)

3.1.4 The dismissal is not exclusively based on the suppression of an accusation (entity) (+)

3.2 The reasons justifying the measure are sufficient

3.2.1 The measure meets the principle of reasonableness:

3.2.1.1 It does not discriminate against any specific person or group
(+)

3.2.1.2 A public policy exists for the progressive development of the right
(+)

3.2.1.3 The public policy is implemented within a reasonable amount of time (+)

3.2.1.4 The restrictive measure is upheld in a rational decision process
(+)

3.2.2 The measure meets the principle of proportionality:

3.2.2.1 It pursues a vital end
(+)

3.2.2.2 It is necessary (inexistence of less harmful alternatives)
(+)

3.2.2.3 It is strictly proportional (benefit of protection>magnitude limitation) (+)

3.3 The measure does not affect persons with special constitutional protection
(+)

3.3.1 The specific obligations to special protection are met
(+)

3.3.2 Affirmative actions required by the subjective condition are adopted
(+)

3.4 The measure permits the effective realization of the right
(+)

3.4.1 There is no absolute omission
(+)

3.4.2 The measure permits the extension of assistance coverage
(+)

3.4.3 The measure permits the increase in quality of assistance
(+)

3.5 The measure does not ignore the minimum or lower level

3.5.1 It does not ignore the essential content of the right (= no tragic case exists) (+)

3.5.2 The essential nucleus of the fundamental right is protected (= 3.8.1.1)
(+)

3.5.3 Retrogression is an inevitable step towards future progress
(+)

3.6 The measure respects the priority of social public spending above other allocations

3.6.1 It respects the priority of social public spending
(+)

3.7 The impact of the measure has been evaluated systematically and integrally

3.7.1 Systematic evaluation of impact does not show violation of tax progressivity
(+)

3.7.2 Integral evaluation of impact does not show violation of tax progressivity
(+)

3.8 The measure meets the parameters of international law

3.8.1 It attends to the norms of the ESCR Convention
(+)

3.8.1.1 The essential nucleus of the fundamental right is protected
(+)

3.8.1.2 The minimum assistance obligation for immediate compliance is met
(+)

3.8.1.3 The measures are adopted to the maximum of available resources
(+)

3.8.1.4 The measures are justified before the totality of the rights of the Pact
(+)

3.8.1.5 The measures are applied after an exhaustive examination of alternatives (+)

3.8.2 The parameters (Directives) of the ESCR Committee are attended to
(+)

3.9. The measure meets the burden of argument on the head of the State

3.9.1 It was assumed by public authority
(+)

3.9.2 It was satisfied to the level required in the concrete case
(+)

4. Declaration of constitutionality or unconstitutionality of the measure under review

The general conditions numbered in 3.1 to 3.9 must be met in their totality to conclude that the regressive measure is justified. The numerals of more than two digits (e.g., 3.1.1 and 3.9.2) illustrate conditions stated by the Constitutional Court in concrete cases, by reason of which not all of

these conditions have general obligatory force.[27] Not meeting even one of the conditions above (from 3.1 to 3.9) is enough to conclude the contrary—that is, that the regressive measure violates constitutional rights.

VI. Evaluation of the Colombian authorities' actions and omissions

The aim of the present analysis is not to evaluate the entire design and implementation of the Colombian State's public policy on forced internal displacement, as such an analysis exists in diverse reports and related documents in the decisions of the Constitutional Court.[28] The present analysis addresses the question of whether the Colombian authorities' actions (and omissions) are tantamount to ignoring the State's international obligations to guarantee minimum rights to the displaced population. More specifically, it seeks to evaluate whether the existing policy and its execution violate the Guiding Principles' prescriptions (numerals 3.5 and 3.8 of the test of constitutionality) to protect a minimum content of fundamental rights to this population. In particular, this section examines whether the policy fails to protect these rights by failing to recognize the prohibition of retrogression as regards social, economic, and cultural rights.

In order to address the above question, the test of the constitutionality of regressive measures presented above was applied. Our conclusion is that the proper authorities, in spite of their efforts, continue to fail to fulfill their international obligations and to provide sufficient support for protecting a minimum standard of fundamental rights to IDPs. This conclusion is based on the analysis of two recent documents: Award 266 of the Constitutional Court on September 25, 2006 and the follow-up report presented by the Ombudsman's Office to the Constitutional Court in October 2006. From these documents, it is possible to glean nine groups of regressive measures (by action and omission) that affect the minimum rights of forcibly displaced people. These regressive measures are then evaluated for their constitutionality in accordance with the reasons that the public authorities could use to justify them.

[27] *Id*., pp. 168-9.

[28] Cfr. UNHCR. 2005. *Report to the Constitutional Court*, March, 2005; National Controller's office, *Fifth Surveillance Report*, May, 2006; Ombudsman's Office, *Evaluation report*, October 2006.

A. Recognition of persons victims of forced internal displacement

The first way in which the minimum rights of displaced persons are disregarded is that the law requires that a person must be registered as a displaced person in order to receive State assistance. The petition for such recognition must be made by the interested party within the year following displacement. Additionally, there is a statutory norm[29] denying the recognition of displaced status to a person who completes the application after having passed a year in displacement. Both of these related State measures, although they may have relevance for the purpose of curtailing fraud, are not justified from the perspective of protecting minimum IDPs' rights, as displacement is a fact that should not depend on administrative recognition. Moreover, the impossibility of being recognized as displaced after having passed a year in displacement is entirely unreasonable. The abandonment of the place of residence to save one's life puts displaced people in a situation that impedes them from meeting the legal requirements for recognition. To receive State protection, the interested party only has to manifest that she or he is a displaced person. To deny State assistance, the public authorities must prove that this is not true—otherwise, the State would violate its obligations as set out in the Guiding Principles, in particular as regards protection during displacement (Principles 10 to 23) and humanitarian assistance (Principles 24 to 27).

B. The problem of under-registration of the displaced population

While the State claims that there are less than two million displaced people in Colombia, the Church and other social organizations (e.g. CODHES), as independent observers, argue that the number is about three million.[30] Thus, with perhaps over a million more people displaced and unregistered than are actually accounted for by the State, a minimum level of rights clearly cannot be upheld for a large portion of displaced people. Moreover, under-registration distorts the public policy of comprehensive assistance for displacement, as well as the policy's design, execution, and effectiveness. Thanks to the intervention of the Constitutional Court, the public authorities (e.g. *Acción Social*) reported an increase in the number of individuals and families registered in the Central Registry for the

[29] Para. 3 of Article 11 of the Decree 2569 of 2000, which further develops Law 387 of 1997.
[30] Bello 2004, p. 30.

Displaced Population.[31] However, as the Ombudsman[32] maintains, the official response to the requirements and needs of displaced people is not sufficient. Authorities do not record the number of rejections or the reasons for rejections. Similarly, the State does not keep records of the number of appeals or of the responses to appeals. Without these data, it is not possible to establish exactly how many displaced people there are or if the public authorities have taken the necessary measures to protect people. The above omissions in data translate to a failure to recognize the Guiding Principles and the minimum fundamental rights of all the people not included in the system, which by principle and policy entitles them to receive State assistance.

C. Institutional coordination for guaranteeing comprehensive implementation of public policy

Award 266 of 2006 of the Constitutional Court and the report of the Ombudsman's Office (2006) make it possible to confirm that the problems of institutional coordination for displacement assistance have not been resolved. This omission violates the Guiding Principles and the minimum rights of victims of displacement. The most evident proof of the lack of institutional coordination is that the reports from State entities do not include uniform information on the subject of content and periods of assistance. Similarly, they do not contain unified criteria, they repeat information, and they provide inconsistent data. The lack of institutional coordination complicates the State's ability to adhere to what was ordered by Decision T-025 of 2004. The failure on the part of the State to meet international obligations was made evident in the commentary of the Constitutional Court in Award 218 of 2006:

> "[T]he reports presented to the Constitutional Court by the recipients of the orders issued in Decision T-025 of 2004 and Awards 176, 177 and 178 of 2005, so as to determine (i) whether such entities have properly proven that they have overcome the unconstitutional state of affairs in the field of internal displacement, or that they have advanced significantly in the protection of the rights of the displaced population, and (ii) whether the Court has been provided with serious, precise and depurated information to establish the level of compliance given to the orders issued in the aforementioned judicial decisions."

[31] Sistema Único de Registro, SUR, in Spanish.
[32] Ombudsman's Office, *Evaluation report*, October 2006, p. 6-7.

D. The allocation of responsibilities among central and territorial entities

According to the 2006 report of the Ombudsman's Office to the Constitutional Court, the State's actions for resolving the problems of allocating responsibilities between the national government and territorial entities (e.g. departments and municipalities) have not worked. The creation of a group for coordinating territorial action and assuring the financial effort of territorial bodies by means of the General Budget Law, among other things, is not a novel measure. It follows the line of action that the Government has set in recent years, and has demonstrated the State's inefficiency in resolving the subject in question.[33] Likewise, the Court notes in Award 266 of 2006 that the MIJ has determined the creation of a special leadership committee within the institution to guarantee this process of coordination and follow-up with the municipalities and departments. However in response to Court authorities, "no specific term has been established for the creation of this directive committee."

The aforementioned omissions do not allow for the minimum rights of displaced people to be recognized. After Decision T-025 of 2004, which declares the unconstitutional state of affairs, and despite of the efforts of the national and local governments, the omission to fulfill the State's obligations to protect a minimum standard of fundamental rights to IDPs prevails.

E. Budgetary responsibility at the central and territorial levels

The Ombudsman's Office reports that the budgetary measures taken by the national government present three problems: (1) a problem of focus—i.e. the individualization of economic assistance to specific groups and people without seeking a solution to the structural problem of displacement; (2) a problem of allocating responsibilities; and (3) a problem of inconsistency between budgetary efforts and the Government policy of restricting the transfer of economic resources to the regions where displacement takes place.[34]

[33] Controller's Office, *Fifth Surveillance Report*, May 2006, pp. 20 f.
[34] Ombudsman's Office, *Evaluation report*, October 2006, pp. 10-13.

Regarding the first problem, according to the Ombudsman's Office the State's focus on attempting to treat forced displacement as if it were simply another commonplace component of the national budget is wrong. The aid-based focus of the assistance to displaced people prevents special allocations from being included in the budget for correcting the structural problems that lead to displacement, such as the dismantling of armed groups. This ignores the kind of urgent and complex approach that the situation requires, and it illustrates the pressing need to overcome the situation of displacement.

Concerning the second problem, the Ombudsman's Office identified the following contradiction: while the national Government affirms that it is the territorial governments (departments and municipalities) who are responsible for the least budgetary effort, and that these territorial governments failed to fulfill their obligations of displacement assistance, the 2005 report shows that, to the contrary, the territorial entities implemented resources that were twelve percent above the goal initially programmed by CONPES.

With respect to the third problem, the current Government promotes constitutional reform of the system of budgetary transfers from the central Government to the territorial authorities. These transfers would result in the reduction of resources for territorial bodies. This goes against the increase in the growing responsibilities that they are assigning to the territorial bodies.

State investment shows an increase in resources set aside for displaced people. In 1995, 1.108 million pesos were invested in the displaced population; in 2004, 318.949 million pesos, and for the 2005-2006 period, 1.3 billion pesos were set aside.[35] Despite the increase in resources assigned to the displaced population, the Government has not included any strategies in its public policy on displacement assistance that would increase municipal and departmental governments' responsibility and management capabilities. To the contrary, the Government seeks to cut economic resources from the budget in order to achieve fiscal savings. Moreover, the public policy of displacement assistance is centered on an aid-based focus to the displaced groups. This causes these groups to depend increasingly on State assistance, without including strategies and programs to achieve a true socioeconomic stabilization of the displaced

[35] Ibáñez Londoño, Ana María. La estabilización económica de la población desplazada, Working Papers FIP, Fundación Ideas para la Paz, Bogotá, November 2006, p. 9.

population, such as through the creation of employment and stable income.[36]

In accordance with the above, it is possible to establish that the reasons given by the Government to justify the failure to fulfill international obligations (in particular the prohibition of retrogression in satisfying economic, social and cultural rights of people who are victims of forced displacement) are not acceptable.

F. Differential treatment of individuals who have special constitutional protection

The Constitution and international law recognize the need to protect individuals and groups according to their particular situation (e.g. boys and girls, the elderly, women, and ethnic minorities). In particular, the State has recognized a series of fundamental obligations to protect individuals or groups with special status. These obligations derive from international human rights treaties, which are an integral part of Colombia's legal system. In the case of people who are victims of forced displacement, an even greater level of higher protection is required than for the rest of the Colombian population, as they do not have their specific needs assured. Moreover, the harmful effects of displacement leave them in a situation of imminent risk. In this respect, the fourth Guiding Principle on Internal Displacement establishes that,"[c]ertain IDPs, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs."

According to the Ombudsman's Office,[37] in the reports that were presented in compliance with the Court's orders, the authorities "do not take into account the essential differences within the displaced population, which causes difficulties at the moment of realizing the protection of specific rights like the rights to truth, to justice, to reparation, and to non-repetition, rights which the displaced persons are entitled to." As with other subjects, the authorities' responses consist of simple plans and projects of future action, without demonstrating differentiation in treatment. This violates the Guiding Principles, as well as the principle of progressivity in the protection of ESCR. These principles include (a) the

[36] *Id*., p. 10.
[37] Ombudsman's Office, *Evaluation report*, October 2006, p. 13.

order to meet the duties of special protection and (b) the adoption of affirmative measures in favor of IDPs.

G. Differential treatment of ethnic communities who are victims of displacement

The Constitution, the International Covenant on Civil and Political Rights (ICCPR), and the 1969 International Labor Organisation (ILO) Treaty concerning indigenous peoples recognize that indigenous peoples are holders of specific rights, which must be kept in mind by the State. According to the Ombudsman's Office's report, as regards the treatment of indigenous peoples, the greatest advances have been made in public policy. In three principal documents, the authorities have presented reports of events and activities that are planned with and for these populations:

(i) Long-term Plan for Afro-Colombian Communities (Plan a Largo Plazo para Comunidades Afrocolombianas) that will form part of the 2006-2010 National Development Plan (Plan Nacional de Desarrollo 2006-2010). This plan seeks to encourage the participation of Afro-Colombian communities in formulating public policy concerning the improvement of their living conditions. The plan also includes an information system to identify, characterize and quantify the population in this group and thus allows for their inclusion in social, economic, and cultural Government assistance programs. The plan establishes goals to be met every four years, with the first period ending in 2010.

(ii) Plan for Comprehensive Assistance to Vulnerable Populations and Populations at Risk of Forced Disappearance (Plan de Atención Integral a Población Vulnerable y en Riesgo de Desaparición), approved by CNAIPD on June 13, 2005 (Agreement 05). This is a Government program that "establishes the programming, financial, and work objectives of those institutions that make up SNAIPD, so that they may aim, with opportunity and efficiency, towards meeting the commitments that the Colombian State has with its fellow citizens who suffer from vulnerability due to the internal violence and forced displacement."[38] The plan of assistance to the vulnerable population defines the principles that guide it, its objectives, the phases of intervention and action strategies, the development of stages of assistance, the national network of information

[38] National Comprehensive Assistance System for the Displaced Population (SNAIPD), President of the Republic, January 2005 (http://www.acnur.org/biblioteca/pdf/4849.pdf).

on the displaced population, and the SNAIPD technical national committee.

(iii) Directive of Comprehensive Assistance to Indigenous Communities Displaced or at Risk of Forced Disappearance (Directriz de Atención Integral a Comunidades Indígenas Desplazadas o en Riesgo de Desplazamiento). This directive establishes:

> "[i]ndigenous peoples, to a lesser or greater extent, maintain particular characteristics that differentiate them from the rest of Colombians: their own languages, cosmology, customs and traditional ways that govern their daily life. Displacement not only affects the families and leaders that must abandon their territories, but also the communities themselves, given that these peoples are united by strong ethnic, territorial, and cultural ties, taking into account that the hardships occurring as a result of generalized violence generate a weakening in the ethnic integrity of these groups as collective subjects of rights.
>
> The assistance distinguishes, starting from the elements expressed above, those elements which must be specified in such aspects as: an adequate support of their traditional methods of providing nourishing diets, the way they organize themselves in housing, the role of the traditional doctor in psychosocial care, their educational processes and their processes of participation in making decisions, aspects that must be specified in the Unique Integrated/Comprehensive Plans—PIU—that the Departmental Committee formulates and in the contingency plans that the respective Displaced Population Assistance Committee formulates for each case."[39]

Nevertheless, for the Ombudsman's Office[40] the actions and plans "do not contain precise information about how they will be implemented and evaluated." In the same vein, the Controller's Office recognizes that the Government has established strategies towards the indigenous population through its compliance reports in Decision T-025 of 2004. However, the Controller's Office considers that the measures adopted by the

[39] Guidelines for Prevention and Comprehensive Assistance to the Indigenous Population in Situations of Displacement and Risk, with a Differential Focus, Ministry of the Interior and Justice, October 2006.
[40] Ombudsman's Office, *Evaluation report*, October 2006, p. 14.

Government have only been designed on paper, but not yet put into practice."[41]

In spite of the Ombudsman's Office's positive stance on the adopted measures in relation to the special protection of ethnic communities, these measures are merely plans and future projects. They are not results. Moreover, there is not a clear measure for addressing differential rights amongst the Afro-Colombian population.[42]

Policy on assisting the return of IDPs to their original residence

According to the Guiding Principles, the process of returning displaced people to the places from which they were expelled or forced to flee must be realized under conditions foreseen in the framework of forced displacement—that is, under voluntary, secure, and dignified conditions. In the opinion of the Ombudsman's Office in its report before the Constitutional Court (2006), the measures of returning the population to their original municipalities (as promoted by the entities of the SNAIPD) have been brought forward "without giving attention to the security conditions of transport to and permanence in the places of origin, and they [the above measures] don't fulfill the necessary conditions of a returning process."[43]

The opinion of the Ombudsman's Office is worrisome because the governmental omission puts at risk the minimum rights of the displaced population. The Government's report does not specify concrete, specific actions for protecting the rights of IDPs. Clearly, the framework and the plans for returning IDPs are not sufficient for assuring the effective protection of the displaced population's rights at the moment of return, and, especially, for assuring the possibility of achieving future socioeconomic stability. For example, according to information from the Controller's Office that was turned over to the Constitutional Court at the end of 2006, "In 2004, 17,458 out of a total of 326,541 families registered in the RUPD were accompanied, while in 2006 this number increased to 31,899 out of a total of 413,533 enrolled families. For 2005 there is no information, which complicates analysis on this subject and reduces reliability in the reported numbers." [44] In the opinion of the Ombudsman,

[41] Controller's Office, *Sixth Surveillance Report*, October 2006.
[42] Controller's Office, *Fifth Surveillance Report*, May 2006, p. 15.
[43] Ombudsman's Office, *Evaluation report*, October 2006, pp. 15-16.
[44] Colombian Constitutional Court, Award 333 of 2006.

"the absence of this mechanism is made evident in the processes of return that have already occurred. In studying the information required in Writ 218, regarding massive displacements—whose analysis will be presented below—the Public Prosecutor's Office found that in none of these cases was it reported that a return plan had been applied that provided for conditions of security and dignity." [45]

On the other hand, the return of the displaced population depends, in large part, on the success of the measures that seek labor stabilization for displaced families, especially the turning over of lands permitting the independent satisfaction of basic needs. In this regard, Government policy has been a total failure, and has resulted in retrogression regarding the guarantee of minimum social, economic, and cultural rights. The newspaper *El Tiempo* reports that in 2006 only 0.3% of persons displaced by violence obtained access to a plot or portion of land.[46] Of the goal for fifteen thousand families to benefit from the turning over of lands between 2002 and 2006, land was only handed over to 5,500 families (36.6%). Of the 150 thousand hectares of land that the national Government was thinking of handing over, only about seventy-nine thousand (52.8%) was conceded. On the other hand, the State organization in charge of executing this policy turned over large areas of land to paramilitary bosses when these lands were originally assigned to displaced persons.[47] For its part, the Controller's Office informed the Constitutional Court of the following in its sixth surveillance report of Decision T-025 of 2004:

> "This review body considers that the efforts reported by the various competent authorities of SNAIPD in the formulation of policy to surmount the unconstitutional state of affairs in the area of economic stabilization are obviously insufficient for those ends, which proves the failure to carry out the Constitutional Court's orders on this subject… The common report establishes that Incoder has handed over 21,881 hectares to 1,694 families from 2002 to the present day, distributed thus since 2004:

	2004	**2005**	**2006**
HOMES	36%	31.9%	24.2%
HECTARES	43.54%	31.19%	20.86%

[45] *Id.*
[46] El Tiempo, Sunday 27 May 2007, p. 1-12.
[47] *Id.*

> In consideration of the percentages above, this review body considers that it is not admissible that obvious retrocession in the awarding of lands to the displaced population be presented as advances. The Office of the *Procurador General de la Nación* must conclude that not only are there no advances on this topic, but also that the regressive nature is evident." [48]

Experts on the subject have brought to light the deficiencies in the policy of IDPs' return and economic stabilization. According to Ana María Ibáñez:

> "Colombia has strong legislation to tackle the problem of displacement and some components of the policy, like the provision of emergency humanitarian aid and access to social services... Even though these elements require adjustments in order to improve their effectiveness, it is now necessary to concentrate on programs that would boost the displaced population's economic stabilization… As economic stabilization is achieved, the displaced population ends its condition of displacement, which alleviates the pressure on State resources. In spite of the foregoing, the current policy contains an aid-based focus and has neglected this important component. It must, therefore, adopt innovative programs and assume the necessary investments to settle the socioeconomic stabilization component. Although they can be substantial investments in the short-term, in the long-term it is essential in order to prevent that one group of the Colombian population faces chronic poverty and is so greatly dependent on State help." [49]

VII. Preventive measures for forced displacement

One of the most critical points of the Government's policy is the prevention of forced displacement. This is due to the current Government's focus on democratic security, which is based on a military approach and not on protection of the civil population, such as victims of the armed conflict. Faced with the above policy constraints, efforts from organizations that seek to protect and improve the lives of IDPs and those in threatened communities—such as the Early Warning System (SAT) and the Inter-institutional Early Warning Committee (CIAT)—have not been effective.

The SAT functions out of the Ombudsman's Office. It is the instrument with which the Ombudsman gathers, verifies, and analyzes the

[48] Colombian Constitutional Court, Award 335 of 2006.
[49] Ibáñez 2006, p. 17.

information related to the civil population's states of vulnerability and risk as a consequence of the armed conflict. It also advises the relevant authorities of their duties of protection, so that they may coordinate and offer timely and integrated assistance to affected communities." [50]

The function of the SAT is "to warn about situations of risk and promote the integrated humanitarian prevention of the State before the effects of the armed conflict, with the goal of protecting and guaranteeing the civil population's fundamental rights in a timely manner." [51] Its strategic goals are to "promote policies and prevention strategies for massive human rights violations… and to promote the humanitarian intervention of the State, social solidarity, and the generation of spaces and attitudes that favor a political solution to the internal armed conflict."

To accomplish its task, the SAT has an organizational structure of three working groups. The Structural Analysis and Early Action Group analyzes the conflict, and identifies and evaluates threats and vulnerabilities. It also receives, analyzes, interprets, and systematizes the information relevant to the risk of massive human rights violations. The Social and Inter-institutional Projection Group promotes policies and public efforts, social processes, solidarities, and alternative mechanisms of conflict resolution and communication processes in order to create inter-institutional and community synergies, which affect the structural causes of the conflict. In conjunction with the regional and sectional ombudspersons, the Regional Analysts Group supports and carries out SAT activities in a determined jurisdiction. These activities include monitoring the number of IDPs, creating risk reports, and tracking situations already reported. It also includes the promotion of local and regional actions in the area of social and inter-institutional projection.[52]

As the Ombudsman's Office indicates, the UNHCR report[53] about Colombia in 2004 expresses that "this positive reaction in response to the High Commissioner's recommendations has showed, nevertheless, deficiencies in the risk's evaluation and the efficacy of the responses. In many occasions, such responses aren't capable to avoid rights violations or infractions due to different factors." The same report affirms that "the recommended measures to CIAT have had mainly a military character,"

[50] http://www.defensoria.org.co/?_s=sat&_op=1 (Accessed June 1, 2007).
[51] *Id*.
[52] See, http://www.defensoria.org.co/?_s=sat (Accessed June 1, 2007).
[53] UNHCR/ACNUR 2004, p. 16.

while the measures of the civil authorities limit the measures to departmental order "without having designed effective control mechanisms which secure their implementation."[54]

A policy of displacement prevention that is based on the incorporation of the civil population in the conflict (peasant soldiers, informants, and rewards) and on a military approach (massive detentions, war zones, and population control) fails to recognize the principles of international humanitarian law. Such a policy not only violates the principle of distinction between combatants and non-combatants, but also places the civil population in a situation of grave risk. On this point, the Government not only fails to fulfill its international obligations, but also does so in a massive and conscious manner, thereby violating the rights of displaced persons.

VIII. The reality of human rights in societies that are not well-ordered

John Rawls made the idea of well-ordered societies popular in his *Theory of Justice*.[55] According to this idea, advanced societies with solid public institutions and stable social structures, allow everyone to develop a sense of justice. In this context, human rights can be a parameter of action that is fulfilled spontaneously in social relations, or that is fulfilled through the intervention of public authorities. The strict priority of basic liberties (represented in the first principle of justice) over and above the principle of difference (second principle of justice) assures civil and political rights a place of privilege in well-ordered societies. For its part, the development of ESCR is left to the action of public powers, in particular to the legislative branch.[56]

Nevertheless, in societies that are not well-ordered, the validity of human rights is precarious or non-existent. Societies that are not well-ordered are defined as those in which the State does not have a monopoly of force in all the national territory; the public institutions are weak and do not accomplish their functions; corruption is extensive and economic inequality divides the social classes and excludes large sectors of the population from the benefits of progress. In this context, the declarations and interventions of judges can only be a part of the solution. Issues of poverty and social exclusion must be considered in the institutional

[54] *Id.*, p. 127 ff.
[55] Rawls 1971.
[56] Arango, 2005, pp. 142 ff.

responses of judges and international human rights entities. In this perspective, Partha Dasgupta proposes an alternative vision of justice for societies that are not well-ordered in his book, *An Inquiry into Well-Being and Destitution.* It is worth noting Dasgupta's following reflections: "The research about poverty shows that there exists a clear interdependence among rights. The absence of food, for example, directly affects the possibility to exercise the right to work and the right to health. In the absence of enough food, in quality and quantity, the level of involuntary unemployment grows."[57] The most affected are women.[58]He also adds a psychological factor not taken into account by traditional economic theory: an undernourished person lacks the motivation and capacity necessary to employ himself or retain employment.[59] Moreover, chronic hunger ruins self-esteem and the capacity to express one's emotions and needs in a coherent way. On the other hand, there also exists a tie between nourishment and propensity to illness. He writes, "Of all the infectious diseases that have been identified as leading causes of deaths during the eighteenth and nineteenth centuries, those whose relationship with nutritional status could be considered 'perverse,' accounted for about one-third of the number of deaths."[60]

At an institutional level, the Constitutional Court reviews the public policy on displacement. One of the most important advances in the judicial protection of displaced people's fundamental rights is the establishment of indicators for measuring the effective enjoyment of rights. The Constitutional Court, by means of Award 109 of May 4, 2007, adopted a list of such indicators. This adoption resulted in part from a debate on these indicators, involving the Government, representatives of displaced people, review agencies, and the Constitutional Court. The indicators for measuring the satisfaction of the rights established by the Constitutional Court are as follows:

[57] Dasgupta 1993, p. 482.
[58] *Id*., pp. 306, 310.
[59] *Id*., p. 42. Dasgupta continues: "The range of purposes and plans a person can reflect upon and choose from is itself dependent on the state. If he is badly undernourished and ill, most activities are out of his reach. His agency role is impaired in all senses" (*Id*., p. 61).
[60] *Id*., p. 407.

HOUSING
Indicator of effective enjoyment:
***Legal dwelling on land*—**Home legally occupies land in decent condition

HEALTH
Indicator of effective enjoyment:
Access to general social security system in health (SGSSS)—All individuals have affiliation to SGSSS
Access to psychosocial care—All individuals who seek psychosocial support receive it
Access to vaccination schedule—All children in the home have the complete vaccination schedule

EDUCATION
Indicator of effective enjoyment:
Regular attendance in formal education—All children and youth in the home regularly attend a level of formal education (5-17 years)

FOOD
Indicator of effective enjoyment:
Availability of food in sufficient quantity—The home has adequate food for consumption and has access to a sufficient quantity of the same
Childcare—All children in the home who are not under the care of an adult attend childcare programs

GENERATION OF INCOME
Indicator of effective enjoyment:
Remunerated occupation or access to autonomous source of income—At least one member of the home who is of working age has a remunerated occupation or autonomous source of income

IDENTITY
Indicator of effective enjoyment:
Possession of identity documents—All members of the home have their complete identification documents

ECONOMIC STABILIZATION
Indicator of effective enjoyment:
Inscription of displaced households in the System of Social Protection—Percentage of families that gradually meet the nine criteria of stabilization

The Constitutional Court ordered the competent authorities to present indicators that show results that would allow the real and measurable enjoyment of rights by the displaced population in the stages of prevention of displacement, immediate assistance, return migration, and emergency humanitarian aid by June 22, 2007 at the latest. The Court also ordered these authorities to announce the indicators that would incorporate the differential focus of specific assistance that subjects of special constitutional protection must receive. [61]

As other experiences have shown, Colombia has attempted to adopt all measures necessary to overcome a critical situation. However the distance between the written right and the reality is great. Problems present themselves because the institutions, people with relevant knowledge, logistical capacity, established and effective procedures, and a commitment and coordination of responsible organizations do not exist.

The intervention of Decision T-025 of 2004 and its follow-up awards provide the following conclusion about the State's capacity to fulfill its international obligations concerning the human rights of IDPs: the lack of resources and the institutional insufficiency in Colombia require that the comprehensive assistance to displaced people be more than an intention and future project, and more than a current reality. The steps forward are few, and reflect the failure to recognize the international obligations for the protection, promotion, respect, and guarantee of human rights. This is especially true on the subject of ESCR. As the Ombudsman's Office notes in a recent report, "It is worrisome that thirty-two months after an unconstitutional state of affairs being declared, and after more than ten years of these number of problems' existence, the responsible entities of SNAIPD still find themselves in a phase of design and planning, perpetuating the situation and ignoring the rights of the victims of forced displacement, faced with the absence of effective answers."[62]

In accordance with the above conclusion, the judicial strategy must be complemented with a political strategy.[63] It is important to ensure the redistribution of income and at the same time to guarantee economic growth. Such an objective can be promoted through effective public policies in favor of the following: land protection; environmental protection; the education for women and allocation of basic resources; the

[61] Award 109 of May 2007.
[62] Ombudsman's Office, *Evaluation Report*, October 2006, pp. 26-27.
[63] Abramovich 2006.

guarantee of balanced nutrition; and the promotion of employment opportunities. As far as the above policies are implemented, access to basic services (as far as health, education, housing, clothing, work, and social security are concerned) will be guaranteed to all citizens—thereby increasing the aggregate level of general well-being.[64]

Being conscious of the importance of social movements for elaborating appropriate public policies and for guaranteeing the realization of minimum ESCR is of vital importance. In this way, one can fight against the institutional and bureaucratic fraud. Popular movements for health, education, or land in Colombia, Argentina, Brazil, Ecuador, or Paraguay, like the action of social organizations dedicated to the defense of human rights, have the capacity to convert plans, policies and programs into reality.

An especially grave limitation in achieving progressivity in the enjoyment of social, economic, and cultural rights by people displaced by the internal armed conflict is the absence of adequate coordination among the different authorities and administrative levels. This negative aspect in the implementation of public policies on displacement is highlighted by the Controller's Office:

> "The Reporting Body recognizes the meetings of these coordinating authorities and the documents that result from them, but no relation is shown between these and effective assistance to the displaced population in each of the components of the policy; that is to say, the real effect of the institutional coordination in front of the needs of the target population.
>
> In the case of territorial coordination, no leadership role on the part of Ministry of the Interior and of Justice is observed that would allow them to complement the actions of the territorial bodies at the central level, a situation that becomes worrisome, since it requires the joint participation of the same, for the purpose of achieving the fulfillment of the goals proposed for each component of the public policy…
>
> Additionally, the report does not supply a breakdown of the data by department and municipality, which does not allow a more concrete evaluation to be realized about who the investment is

[64] Arango 2006, pp. 153-171.

> affecting and how, nor a determination of the beneficiary population of the same."[65]

The lack of adequate coordination among the national and territorial organizations impedes the progressive development of internally displaced people's fundamental rights.

V. Conclusion

In conclusion, the public policy of assistance, protection, and prevention of internal displacement in Colombia presents grave errors in its design and execution. These errors have to do with: (1) the lack of clarity in the allocation of obligations (Article 4 of Law 387 of 1997 assigns obligations on the subject of internal displacement to a "system" [i.e. to SNAIPD], and not to concrete authorities); (2) the lack of clarity in the budgetary responsibilities between the central Government and territorial entities (departments and municipalities that receive the displaced population); (3) the under-registration of people affected by displacement (fewer than two million, according to the Government, and more than 3.5 million according to the Church and other organizations); (4) the standstill of State actions in planning, so that precise dates for achieving results in the prevention and assistance of displacement are not established; (5) the absence of differential treatment in the implementation of policies according to characteristics of age, gender, and cultural and ethnic origin; (6) the inconsistency between the policy of democratic security that involves civilians in the armed conflict (e.g. informants) and the prevention of displacement; (7) the deficiencies when estimating the risk involved during the return of the displaced population to its place of origin; and (8) the contradictory results of a displacement prevention strategy that has a military approach.

The defects in design and implementation of the policy on forced internal displacement ignore the principle of progressivity of social, economic, and cultural rights, and violate the minimum ESCR of displaced persons. The actions and omissions of the Colombian State do not ensure the minimum rights of the affected population. The analysis of the principle of progressivity of ESCR shows that the reasons given by the authorities do not satisfy the international parameters for rights protection as outlined by the Guiding Principles. Even when there have been

[65] Controller's Office, *Sixth Surveillance Report: Constitutional Court, Award 333 of 2006*.

budgetary efforts on the part of the Government, the destined monies have not been sufficient to provide basic necessities for all of the displaced population. One major factor of this failure stems from the underestimation of the number of displaced people in Colombia. The Government claims that there are more than a million fewer displaced people than other organizations claim. Accordingly, the Government begins from a position where it cannot abide by the Guiding Principles, even if it were able to satisfy said principles amongst the people it does recognize as displaced.

Decision T-025 of 2004 widely establishes the faults in design and implementation of the policy to address displacement and its follow-up awards. The democratic security policy of the Government exacerbates the state's omissions and errors in the design and implementation of that public policy. The creation of peasant soldiers, the establishment of networks of informants, the massive detentions of persons, the creation of war zones, and the offering of rewards for accusations are measures that can be effective within a military approach. At the same time, they cause forced displacement. On this point, the Government not only violates the minimum rights of the displaced population by omission, but also fails in actively recognizing and complying with international humanitarian law, including laws associated with human rights.

The policy opposing forced displacement in Colombia must be examined from the perspective that special conditions exist in societies that are not "well-ordered." This sort of scrutiny is essential because institutions that do not function well can cause many economic resources meant for victims of violence to end up in the wrong hands (e.g. with an inefficient bureaucrat who is incapable and ineffective at protecting the human rights of the affected people, or who is simply corrupt). The judicial review of public policy by the Constitutional Court in Colombia, with its great prestige and responsibility, is indispensable and has been important for realizing human rights. A new conceptualization of rights, however, is needed from the perspective of societies that are not "well-ordered." The national and international response to massive displacement requires a comprehensive, structural, and long-term strategy against poverty. This strategy, as Dasgupta's aforementioned analysis shows, must start from the principles of interdependence and integrality of human rights, and must also involve the active participation and social mobilization of displaced persons.

CHAPTER 5

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

Tatiana Rincón[*]

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.[1] 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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[1] 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.[2] 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.[3]

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

[2] 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.

[3] 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).[4] 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.[5] In the following paragraphs, I provide a brief analysis of the content of the above decisions passed by the Inter-American Court.

[4] 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).

[5] 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."[6]

The Inter-American Court has also pointed out that this right can be restricted, in accordance with the provisions of Articles 22.3[7] and 30[8] 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

[6] 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.

[7] 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."

[8] 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."[9]

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.[10]

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.[11]

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[9] Canese Case (Inter-American Court, 2004, para. 117).

[10] 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).

[11] 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.[12]

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.[13]

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.[14] 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.

[12] Cf. Case of the Moiwana Village (Inter-American Court, 2005, paras. 112, 113).

[13] Cf. Case of the Moiwana Village (Inter-American Court, para. 110).

[14] 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.[15]

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

[15] 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.[16] 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.[17] 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."[18]
>
> "(…) 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."[19]

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.[20] The Court concluded the following on the above issue:

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[16] Suriname accepted the jurisdiction of the Inter-American Court in 1987.
[17] Guiding Principles on Internal Displacement (UN 1998, Principle 28.1).
[18] Case of the *Moiwana Village* (Inter-American Court, 2005, para. 228).
[19] *Id.*, para. 119.
[20] 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."[21]

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.[22] The Court made a similar declaration in the *Ituango Massacres* case.

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[21] Case of the *Moiwana Village* (Inter-American Court, 2005, para. 120).

[22] 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.[23]

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.[24] 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).

[23] 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).

[24] 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.[25] With regard to forced displacement, the Court made an express reference to Article 17 of Additional Protocol II.[26] Likewise, following the facts of the case, the Inter-American Court recognized that civilians were not protected during the internal armed conflict.[27]

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.[28] 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."[29]

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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[25] Cf. Case of the *Mapiripán Massacre* (Inter-American Court, 2005b, para. 114).
[26] *Id.*, para. 172.
[27] *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.
[28] In this regard, Colombian Constitutional Court, Decision C-225 of 1995.
[29] 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.[30] Thus, it identified the existence of an armed internal conflict in Colombia as one of the causes of forced displacement in the concrete case.[31] 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."[32]

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."[33] 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.[34]

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

[31] 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.

[32] Case of the *Mapiripán Massacre* (Inter-American Court, 2005b, para. 180).

[33] 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.

[34] 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."[35]

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." [36]

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

[35] *Ituango Massacres* case, para. 214.
[36] 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.[37] 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.[38] 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.[39] The above Court also referred to Article 44 in the Constitution of Colombia concerning children's rights.[40] The Court referred to the Constitutional Colombian

[37] Case of the *Moiwana Village* (Inter-American Court, 2005, paras. 128-135).
[38] Cf. Case of the *Mapiripán Massacre* (Inter-American Court, 2005b, paras. 161 and 162).
[39] 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.
[40] 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.[41]

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."[42]

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.[43] 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."

[41] 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) […]"

[42] Cf. Case of the *Mapiripán Massacre* (Inter-American Court, 2005b, paras. 179).

[43] Ibid., paras. 162.

abandoning their houses, lands, and goods, and being obliged to live in conditions of abandonment, extreme instability, and even extreme poverty.[44]

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.[45] 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.[46] The Inter-American Court pointed out the following:

[44] Ibid., paras. 180 and 186.

[45] 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).

[46] 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."[47]

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.[48] 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

[47] Case of the *Pueblo Bello Massacre* (Inter-American Court, 2006, paras. 159).
[48] *Ituango Massacres* case, paras. 271 and 274.

> persons who found themselves obliged to disperse, but whose housing were not destroyed."[49]

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.[50] In this regard, the Court reaffirmed

[49] *Id.*, para. 272.

[50] 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.'"[51]

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

[51] 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.[52]

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.[53] 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."[54] 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),[55] and displacement occurs, then it is obliged to protect the victims (a positive obligation).

[52] Cf. Colombian Constitutional Court, Decision T-025 of 2004, pp. 43-48.
[53] Cf. *Id.*, pp. 48-49.
[54] *Id.*, p. 49.
[55] 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.[56]

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.[57] 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.[58]

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

[56] 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).

[57] Cf. Colombian Constitutional Court, Decision T-025 of 2004, pp. 55-58.

[58] *Id.*, p. 58.

that thwarted sufficient protection of the rights of displaced persons.[59] 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.[60]

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.[61] 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

[59] 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.
[60] Cf. Colombian Constitutional Court, Decision T-025 of 2004, pp. 60-62, 71-72.
[61] *Id.*, p. 71.

obligations with which the State must comply in order to secure the rights of the victims of forced displacement.[62]

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.[63]

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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[62] 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.

[63] 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.[64] 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.[65]

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

[64]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.

[65] 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.[66] 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.[67] 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.

[66]See the Inter-American Court, among others. Case of the *Yakye Axa Indigenous Community v. Paraguay*. Sentence of June 17, 2005.

[67] 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)

IDP children in the Mutata area of Uraba. Photo courtesy of UNHCR, P. Smith, October 2002.

CHAPTER 6

The Guiding Principles on Internal Displacement: Judicial Incorporation and Subsequent Application in Colombia

Federico Guzmán Duque

The process by which the Guiding Principles on Internal Displacement (hereinafter the "Guiding Principles") have been incorporated into the Colombian system for the assistance of internally displaced persons (IDPs) has both legal and socio-political dimensions.

Apart from their nature as a partial compilation of legal provisions that already form part of the Colombian legal system and its international obligations, the Guiding Principles have been through the following: a judicial incorporation into the Colombian constitutional order as mandatory criteria for interpreting the scope of IDPs' fundamental rights; a judicial adoption of rules to determine minimum levels of satisfaction of IDPs' rights; a general adoption of governmental reporting, evaluation and monitoring criteria; an application of decisive factors in the process of designing and adopting effective enjoyment indicators for the minimum rights of IDPs; and an application of key parameters for the adoption of new judicial decisions aimed at overcoming the existing humanitarian crisis, as well as new *tutela* judgments adopted to protect IDPs' rights in specific cases.

In socio-political terms, after their formal incorporation into the Colombian legal system, the Guiding Principles have become the basis for IDPs' claims before the State. They have also come to represent important standards for the development of public policy on IDP-related issues.

The Guiding Principles pose a remarkable example of the process by which international legal provisions and instruments can enter national legal systems via constitutional adjudication, and by which they progressively transcend the legal realm to permeate official administrative practices, social and political processes and, ultimately, State-civil society relations. In this short chapter, I intend to provide some telling examples of these different aspects of the process.

I. Legal aspects of the Guiding Principles' incorporation into the Colombian system

Binding nature of obligations codified by the Guiding Principles in Colombian Law

As stated in its, the Guiding Principles are largely a compilation of legal provisions pertaining to IDPs' basic rights, which are found in various international treaties and other legal instruments in the fields of human rights, international humanitarian law and, by analogy, refugee law. Many of these legal provisions have also attained the status of customary rules of international law, as proven by the recent study published by the International Committee of the Red Cross on customary international law.[1] These legal provisions have binding force within the Colombian legal system because of their nature as conventional and customary rules of international law. Therefore, the Guiding Principles are, for the most part, a statement of pre-existing international obligations of the Colombian State.

It is pertinent here to briefly sketch out the status of international law, particularly international human rights and international humanitarian law, within the Colombian constitutional order. This is relevant because the legal provisions comprising these two fields have a special rank in the overall legal system, which places them at the same level of the Constitution by way of (a) direct reference in constitutional clauses, and (b) incorporation through the "constitutionality block."

1. Direct incorporation through constitutional provisions

The 1991 Constitution contains several articles that establish the relationship between international law—particularly international human rights and international humanitarian law—and the system of domestic law. Article 9 of the Constitution establishes that the State's foreign relations are based on the recognition of the principles of international law accepted by Colombia. Article 93 states that the international treaties, which have been duly ratified by Colombia and which recognize human rights and prohibit their limitation during states of emergency, "prevail in the domestic legal system." Article 44 holds that children shall enjoy the rights expressly included in the international treaties ratified by Colombia.

[1] Jean-Marie Henckaerts and Louise Doswald-Beck, eds., CUSTOMARY INTERNATIONAL LAW, ICRC (Cambridge University Press, 2005)

Furthermore, Article 94 states that the guarantees and enunciation of rights set forth in the Constitution shall not be understood as an exclusion or denial of other rights, which inherently belong to the person and are not expressly included therein. Moreover, during states of emergency, Article 214 provides that the rules of international humanitarian law must be complied with in every aspect.

2. Incorporation through the "constitutionality block"

Since the early stages of its case law, the Constitutional Court has held that the constitutional judicial review of the legal provisions and situations subject to its scrutiny must be carried out with reference to different mandatory parameters including (i) the actual text of the Constitution; and (ii) a set of norms and principles that have constitutional hierarchy, even though they are not expressly included in the Constitution. The latter norms and principles are incorporated into the so-called "constitutionality block," a French-inspired notion with rather specific traits in the Colombian legal system. By way of this legal device, all of the provisions included in human rights treaties to which Colombia is a party (as well as the human rights provisions customary in nature and, as a sub-chapter thereof, all the principles and rules of international humanitarian law) have become mandatory parameters for constitutional review in Colombia.

The Court has not been consistent in the way it incorporates international human rights and international humanitarian law into the constitutional order through its decisions. It has indistinctly resorted to the aforementioned channels (a) and (b) in its case law, although significant efforts have been made in recent years to elaborate and crystallize the notion of "constitutionality block" and its specific content and modes of application. This has not, however, precluded the Court from directly applying international treaty law or customary provisions and principles, giving direct application to the above-referenced reception clauses in the Constitution. Nonetheless, this fluctuation is not an obstacle to the effective incorporation and application of international human rights and humanitarian law in the Colombian legal system, but rather an example of the Constitutional Court's willingness to apply binding international legal standards to the resolution of the cases brought to its jurisdiction. In practical terms, such an alternative recourse to the above channels (a) and (b) has translated to a broader and significantly stronger impact of international law within our legal system—an impact now shared by the Guiding Principles on Internal Displacement.

The provisions of international human rights law and international humanitarian law have been applied with different objectives by the Court, thereby fulfilling different functions in our legal system. The main functions are: (i) to aid in the determination of the content of constitutional provisions on human rights; (ii) to broaden the scope of the rights expressly included in the Constitution; (iii) to incorporate new rights that are not expressly protected by the constitutional text; and (iv) to establish the scope of any admissible limitations. As I shall illustrate in the following section, the Guiding Principles have, since their time of incorporation, fulfilled functions (i)-(iv) in the Colombian system.

Strengthened legal force of the Guiding Principles as a result of their judicial incorporation through constitutional adjudication

Even though most of the obligations codified in the Guiding Principles are in and of themselves binding within the Colombian system, their incorporation into the decisions adopted by the Constitutional Court in exercise of constitutional judicial review has granted them additional legal strength, reinforcing their significance for the interpretation of the scope of IDPs' rights. The importance of this judicial incorporation of the Guiding Principles is underpinned by three factors: (i) by mandate of Article 241 of the Constitution, the Constitutional Court is the authorized interpreter of the text of the Constitution, including the human rights provisions therein, which means that, when incorporating the Guiding Principles as necessary references for the interpretation of IDPs' fundamental rights, the Court binds all lower authorities to such an understanding of these rights' scope and content—while deciding on specific cases and providing assistance for their needs; (ii) as the highest *tutela* judge in the country, the Court is in charge of establishing the constitutional doctrine to be followed by each individual judge in the country when settling human rights cases through this procedural channel; and (iii) the Court is the authority that defines the elements that compose the "constitutionality block," and therefore the inclusion of the Guiding Principles within the scope of this legal device formally confirms their high rank within our legal system.

Prior to Decision T-025 of 2004, the Court had already resorted to specific provisions within the Guiding Principles as it had done in its case law. However, the judgments adopted before Decision T-025 of 2004 had not carried out an explicit incorporation of the entire set of principles into the national system for the protection of IDPs' rights.

Decision SU-1150 of 2000, in particular, marked a milestone in this process, holding that:

> "…the Guiding Principles have not been approved by means of an international treaty. However, given that they fundamentally reflect and fill in the gaps of the provisions of international human rights treaties, which have received widespread acceptance by different international human rights bodies, this Court considers that they must be held as parameters for legal creation and interpretation in the field of the regulation of forced displacement and State assistance to IDPs. Needless to say this does not preclude the fact that all of the provisions [of the Guiding Principles] that reiterate norms already included in international human rights treaties and international humanitarian law treaties approved by Colombia have constitutional rank, as provided by article 93 of the Constitution."

In spite of this general statement, the Court did not invoke or apply specific provisions included within the Guiding Principles in the actual resolution of this particular case. Moreover, the description of the Guiding Principles and their legal force was made in the context of a rather general presentation of the legal framework, which was in place at the time to respond to internal displacement.

Another decided step forward was taken in Decision T-327 of 2001, in which the Court examined the situation of an IDP who had been denied inclusion in the official registration system because of alleged contradictions in his declaration and a lack of documentary evidence to support his claim. Accordingly, the State refused to assist him and his family. In its legal reasoning, the Court resorted to several points in the Guiding Principles.

The Court started by explaining that situations of forced displacement are configured objectively or *de facto*, and not by means of a formal declaration by a State officer. To reach this conclusion, the Court invoked the definition of internal displacement included in the Guiding Principles, and pointed out that "nowhere is it mentioned, within the content of the [Guiding Principles], that the configuration of a situation of internal displacement requires a declaration by a public or private officer." The Court also expressly included the Guiding Principles as the legal grounds to adopt such a course of reasoning when it held that, "…according to the notions of forced displacement established in the Guiding Principles on Internal Displacement, Law 387 of 1997, this Court's case law and the concepts submitted by CODHES and the Colombian Commission of

Jurists, it is clear that forced displacement, being a factual situation, does not require for its configuration, nor as an indispensable condition to acquire the status of IDP, a formal declaration by any public or private entity." In other words, the Court held that the governmental creation of a registration system is no more than a mechanism for recognizing a *de facto* situation.

The Court then expressly held that a reasonable constitutional interpretation of the domestic legal provisions governing the IDP registration process required making recourse to the Guiding Principles as binding international guidelines. This particular matter did not require the issuance of an official certification for the purposes of configuring a situation of forced displacement. It further held that in order to interpret the applicable legal provisions in a manner that produces the most favorable result for human rights, every competent public official in this field is bound to apply the Guiding Principles as follows:

> "In order to carry out a reasonable interpretation of [the applicable legal provision], recourse must be made to the systematic and finalistic ... to those who are more favorable to protecting peoples' human rights. This being so, in applying a systematic interpretation, it must be very clear that the decree in which the article at hand is contained is the legal development of a Law that recognizes forced displacement as a factual situation; in turn, this Law is the development of a constitutional system to which international provisions have been incorporated, such as the Guiding Principles on Internal Displacements, issued by the UN, and Article 17 of the Additional Protocol to the Geneva Conventions of August 12, 1949, which purport to protect IDPs and do not require a certification of such a factual phenomenon… Finally, according to the interpretative criterion of the most favorable interpretation for the protection of human rights... the provision at hand must be taken to be a series of guidelines to facilitate an organized protection of IDPs' fundamental rights. The most favorable interpretation for the protection of IDPs' human rights makes it necessary to apply the Guiding Principles on Internal Displacement contained in the Report of the Special Representative of the UN Secretary-General for the issue of Internal Displacements of Persons. This forms part of the international legal provisions that compose the constitutionality block relevant for this case. Consequently, all of the public officials involved in assisting IDPs… should act in accordance with the provisions, not only of the Constitution, but also of such Principles."

Thereafter the Court, in enunciating the constitutional rights of IDPs to justice, truth, and reparation as victims of a crime, resorted to the relevant

Guiding Principles in order to delimit the exact scope of these legal entitlements—specifically to Principles 16.1, 16.2 and 29.2. On the grounds of these considerations, among other constitutional arguments, the Court concluded that IDPs who declare their situation before the authorities are covered by the constitutional presumption of good faith, and may not be the object of unreasonable requirements by the authorities in charge of their registration. For example, by the authorities demanding the provision of additional evidence, or by discarding declarations because they are incomplete or *prima facie* inconsistent.

Finally, the Court prompted the State authorities to train the public officials in charge of receiving IDPs' declarations about the content of the Guiding Principles:

> "Given the serious situation of displacement experienced by our country, it is imminently urgent for all the public officials who, according to [the relevant legal provision] can receive or appraise declarations, have [the necessary forms] available and are trained to fill them out in the shortest possible time. Such training must include preparation in the criteria of dignified treatment, presumption of good faith, efficacy, expediency in the registration process and the Guiding Principles on Internal Displacement. In addition to being a direct application of the Constitution, this implies setting in motion the Declaration Appraisal Form and Filling-in Manual of the National Comprehensive Assistance System for the Displaced Population, which establishes as principles for information management, inter alia, the presumption of good faith, the benefit of doubt and the expediency of the process. Through the mandatory application of this set of principles, the Court intends to halt the obstacles for the reception, and particularly the appraisal of IDPs' testimonies, of which the case under review in the present proceedings is a manifestation."

The writ of protection in question was consequently granted, and the competent registration authorities were ordered to include the plaintiff and his family group in the system, warning the State authorities not to perform this type of act in the future (a general order that has been manifestly and systematically disregarded as of the present date).

Similar to the above case, in Decision T-098 of 2002, the Court analyzed the *tutela* actions presented by 128 displaced families composed primarily of female heads of households, children, elderly persons and indigenous peoples. These plaintiffs' requests for assistance in the fields of healthcare, economic stabilization and relocation had not been

addressed by the relevant authorities. In the process of identifying the constitutional rights that had been disregarded, the Court made several references to the Guiding Principles, specifically in order to do the following: (i) highlight the State's obligation to respond to IDPs' lack of protection and defenselessness through effective measures aimed at giving effect to both their constitutional rights and the Guiding Principles; (ii) draw attention to authorities' duty to provide special assistance and protective measures for IDPs who belong to ethnic groups; and (iii) explain how the obligations derived from international humanitarian law in regard to the prohibition of forced displacement, particularly those included in Additional Protocol II to the Geneva Conventions of 1949, are developed and further clarified in the Guiding Principles—specifically Principles 19 on healthcare, 23 on education, 18 on adequate standards of living, and 26 on the primary responsibility of national authorities to provide for IDPs' rights.

Decision T-025 of 2004, which has been extensively reviewed in the other chapters of this book, carried out three legal operations with regard to the Guiding Principles. First, it clarified their legal standing, explaining that the Guiding Principles "compile the provisions about internal displacement of international human rights law, international humanitarian law and—by analogy—international refugee law, and that they also contribute to the interpretation of the rules that form part of this protection system." In doing so, the Decision drew attention to the fact that several international bodies have recommended the application of these principles by the different authorities of the States where the phenomenon of forced internal displacement is taking place (such as the Inter-American Commission on Human Rights, the UN Human Rights Commission, the UN Secretary General, the Organization for African Unity, the Organization for Security and Cooperation in Europe, and the Commonwealth Organization, as well as several individual States). For the purposes of clarity, the entire body of the Guiding Principles was included as an Annex to the Court's decision.

Second, when determining the constitutional rights, the Court made specific reference to different Principles that are threatened or violated during forced internal displacement. It also referred to the Principles in the process of ascertaining the specific content acquired by those rights as a consequence of IDPs' exposure to such situations. The Court enumerated the following rights that apply once forced displacement has taken place, citing the specific Guiding Principles that were relevant for the interpretation of their scope:

"1. The right to life in dignified conditions, given (i) the sub-human conditions associated to their mobilization and their stay at their provisional place of arrival, and (ii) the frequent risks that directly threaten their survival. The Guiding Principles on Forced Internal Displacement which contribute to the interpretation of this right in the context of forced internal displacement are Principles 1, 8, 10 and 13, which refer, inter alia, to protection against genocide, summary executions and practices that violate international humanitarian law which might place the life of the displaced population at risk.

2. The rights of children, women providers, persons with disabilities and elderly persons, and other specially protected groups, "on account of the precarious conditions that must be faced by those who are forced to displace themselves."[2] The interpretation of these rights must be carried out in accordance with the content of Principles 2, 4 and 9, on special protection for certain groups of displaced persons.

3. The right to choose their place of residence, insofar as, in order to escape from the risk that threatens their life and personal integrity, displaced persons are forced to flee their habitual place of residence and work[3]. Principles 5, 6, 7, 14, and 15 contribute to the interpretation of this right, in particular to determine the practices which are forbidden by international law because they entail a coercion toward the displacement of persons, or their confinement in places which they cannot leave freely.

4. The rights to freely develop their personalities, to freedom of expression and association, "given the climate of intimidation that precedes displacements,"[4] and the consequences borne by such migrations over the materialization of the affected persons' life projects, which must necessarily adapt to their new circumstances of dispossession. Principles 1 and 8 are pertinent for the interpretation of these rights in the context of forced internal displacement.

5. Given the features of displacement, the economic, social and cultural rights of those who suffer it are strongly affected.[5] The minimum scope of these rights has been interpreted in accordance with Principles 3, 18, 19, and 23 through 27, which refer to the conditions to secure dignified living standards, and access to education, healthcare, work, among other rights.

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[2] See, for example, Colombian Constitutional Court, Decisions T-215 of 2002 and T-419 of 2003.
[3] See, for example, Colombian Constitutional Court, Decision T-227 of 1997.
[4] Colombian Constitutional Court, Decision SU-1150 of 2000.
[5] See, for example, Colombian Constitutional Court, Decision T-098 of 2002.

6. In no few cases, displacement entails a separation of the affected families, thus violating their members' right to family unity[6] and to comprehensive protection of the family.[7] Principles 16 and 17 are aimed, among other purposes, at determining the scope of the right to family reunification.

7. The right to health, in connection with the right to life, not only because displaced persons' access to essential healthcare services is substantially hampered by the fact of displacement, but because the deplorable living conditions they are forced to accept bear a very high potential to undermine their state of health, or aggravate their pre-existing illnesses, wounds or ailments.[8].Principles 1, 2 and 19 determine the scope of this right in the context of forced internal displacement.

8. The right to personal integrity,[9] which is threatened both by the risks that threaten the health of displaced persons, and by the high risk of attacks to which they are exposed because of their condition of dispossession.[10] Guiding Principles 5, 6 and 11 refer to this right.

9. The right to personal security,[11] given that displacement entails specific, individual, concrete, present, important, serious, clear, distinguishable, exceptional and disproportionate risks to several fundamental rights of the affected persons. Guiding Principles 8, 10, 12, 13 and 15 are pertinent for interpreting the scope of this right in the context of forced internal displacement.

10. Freedom of movement across the national territory[12] and the right to remain in the place chosen to live,[13] given that the very definition of forced displacement presupposes the non-voluntary nature of the migration to another geographical location so as to establish a new place of residence therein. Principles 1, 2, 6, 7 and 14 are relevant for interpreting the scope of these rights in regards to the displaced population.

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[6] Colombian Constitutional Court, Decision SU-1150 of 2000
[7] Colombian Constitutional Court, Decision T-1635 of 2000.
[8] Colombian Constitutional Court, Decision T-645 of 2003.
[9] Colombian Constitutional Court, Decisions T-1635 of 2000, T-327 of 2001 and T-1346 of 2001.
[10] See, for example, Colombian Constitutional Court, Decision T-327 of 2001.
[11] See, for example, Colombian Constitutional Court, Decisions T-258 of 2001 and T-795 of 2003.
[12] Colombian Constitutional Court, Decisions T-1635 of 2000, T-327 of 2001, T-1346 of 2001 and T-268 of 2003.
[13] Colombian Constitutional Court, Decision T-227 of 1997.

11. The right to work[14] and the freedom to choose a profession or occupation, especially in the case of agricultural workers who are forced to migrate to the cities and, consequently, abandon their habitual activities. Principles 1 through 3, 18, 21, 24 and 25 are relevant for the interpretation of these rights, given that they establish criteria to secure the means for obtaining adequate livelihoods and protecting their property or possessions.

12. The right to a minimum level of nourishment,[15] which is disregarded in a large number of cases on account of the levels of extreme poverty experienced by numerous displaced persons, which prevent them from satisfying their most essential biological needs and therefore bear an impact upon the adequate enjoyment of their remaining fundamental rights, in particular upon the rights to life, personal integrity and health. This is particularly serious when those affected are children. Principles 1 through 3, 18 and 24 through 27 are pertinent for interpreting the scope of this right, since they refer to the adequate living standards that must be secured for the displaced population, and to humanitarian assistance.

13. The right to education, in particular that of minors who suffer forced displacements and are thereby forced to interrupt their educational process.[16] In regards to this right, Principles 13 and 23 are relevant.

14. The right to dignified housing,[17] given that persons in conditions of displacement have to abandon their own homes or habitual places of residence, and undergo inappropriate lodging conditions at the places where they are displaced to, whenever they are able to obtain them and are not forced to live outdoors. In regards to this right, Principles 18 and 21 establish minimum criteria which must be secured to the displaced population so as to provide them basic housing and lodging conditions.

15. The right to peace,[18] whose essential nucleus includes the personal guarantee not to suffer, insofar as possible, the effects of war, especially when conflict disregards the limits set by international humanitarian law, in particular the prohibition of attacking the civilian population.[19] Principles 6, 7, 11, 13 and 21 are pertinent to interpret this right, given that they prohibit disregarding

[14] See, for example, Colombian Constitutional Court, Decision T-669 of 2003.
[15] Colombian Constitutional Court, Decision T-098 of 2002.
[16] Colombian Constitutional Court, Decision T-215 of 2002.
[17] See, for example, Colombian Constitutional Court, Decision T-602 of 2003.
[18] See, for example, Colombian Constitutional Court, Decision T-721 of 2003.
[19] Colombian Constitutional Court, Decision C-328 of 2000.

> the rules of international humanitarian law that protect non-combatants.
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> 16. The right to legal personality, because on account of the displacement, the loss of identity documents poses obstacles to the registration of these persons as displaced individuals, as well as access to the different types of aid, and the identification of the legal guardians of minors who are separated from their families.[20] The scope of this right in the context of forced internal displacement is expressly regulated in Guiding Principle 20.
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> 17. The right to equality,[21] given that (i) even though the only circumstance which differentiates the displaced population from the remaining inhabitants of Colombian territory is precisely their situation of displacement, by virtue of this condition they are exposed to the aforementioned violations of their fundamental rights, as well as discrimination, and (ii) in no few cases, displacement is produced because of the affected person's affiliation to a specific group of the community, to which a given orientation in regards to the actors of the armed conflict is attributed, or because of their political opinion, all of which are differentiation factors proscribed by article 13 of the Constitution. This does not exclude, as it has already been said, the adoption of affirmative action measures in favor of persons in conditions of displacement, which is in fact one of the main obligations of the State, as recognized by constitutional case-law.[22] The scope of this right has been defined by Principles 1 through 4, 6, 9 and 22, which prohibit discrimination of the displaced population, recommend the adoption of affirmative measures in favor of special groups within the displaced population, and highlight the importance of securing equal treatment for displaced persons."

Third, the Court concluded that, because of the multiplicity of constitutional rights affected by forced internal displacement, IDPs are entitled to urgent preferential treatment by the State. Immediately thereafter, the Court expressly held that "the scope of the measures that authorities are bound to adopt is determined in accordance [with] three basic parameters, which were clarified in Decision T-268 of 2003, as follows: (i) the principle of favorability in the interpretation of the provisions that protect the displaced population, (ii) the Guiding Principles on Internal Displacement, and (iii) the principle of prevalence of

[20] Colombian Constitutional Court, Decision T-215 of 2002.
[21] Colombian Constitutional Court, Decision T-268 of 2003.
[22] See, for example, Colombian Constitutional Court, Decision T-602 of 2003.

substantial law in the context of a social State grounded in the rule of law" (*Estado Social de Derecho*). Hence, the Guiding Principles were held not only to be key interpretative criteria for establishing the scope of IDPs' rights, but also as guidelines in determining the scope of State authorities' duties and obligations in relation to IDPs.

Judicial translation of the Guiding Principles into minimum levels of satisfaction of IDPs' constitutional rights

Decision T-025 of 2004 went further still, in the sense of establishing the Guiding Principles as mandatory interpretation guidelines at the moment of defining the "minimum levels of satisfaction" of IDPs' constitutional rights. The Court explained in section 9 of the judgment that, given the limited resources available to the Colombian State, it is materially impossible to satisfy the entire set of IDPs' constitutional rights. This impossibility makes it necessary for the authorities to establish priority areas upon which they are to focus their efforts, so as to progressively advance in the guarantee of their effective enjoyment, and eventually fulfill the complete series of obligations that bind them.

> "…given the current dimension of the problem of displacement in Colombia, as well as the limited nature of the resources available to the State to comply with this goal, it must be accepted that at the moment of designing and implementing a given public policy for the protection of the displaced population, the competent authorities must carry out a balancing exercise, and establish priority areas in which timely and effective assistance shall be provided to these persons. Therefore, it will not always be possible to satisfy, in a simultaneous manner and to the maximum possible level, the positive obligations imposed by all the constitutional rights of the entire displaced population, given the material restrictions at hand and the real dimensions of the evolution of the phenomenon of displacement."

Nevertheless, the Court specifically warned that "there exist certain minimum rights of the displaced population, which must be satisfied under all circumstances by the authorities, given that the dignified subsistence of the people in this situation depends on it." These minimum rights (or minimum mandatory levels of satisfaction of the State's obligations towards IDPs), which include duties with a positive content that bind the authorities to materially provide necessary goods and services, were defined by the Court (taking into account the relevant Guiding Principles as obligatory interpretative parameters) as follows:

"When a group of persons, which has been defined—and is definable—by the State for a long time, is unable to enjoy its fundamental rights because of an unconstitutional state of affairs, the competent authorities may not admit the fact that those persons die, nor that they continue living under conditions which are evidently harmful to their human dignity, to such a degree that their stable physical subsistence is at serious risk, and that they lack the minimum opportunities to act as distinct and autonomous human beings. On the grounds of this criterion, and of the international obligations acquired by Colombia in the field of human rights and international humanitarian law, as well as the compilation of criteria for the interpretation and application of measures to assist the displaced population which is contained in the Guiding Principles, the Chamber considers that the following minimum rights fit this definition, and therefore, comprise the minimum positive obligations that must always be satisfied by the State:

1. The right to life, in the sense of article 11 of the Constitution and Principle 10.

2. The rights to dignity and to physical, psychological and moral integrity (articles 1 and 12 of the Constitution), as clarified in Principle 11.

3. The right to a family and to family unity, enshrined in articles 42 and 44 of the Constitution, and clarified for these cases in Principle 17, especially—although not exclusively—in cases of families that include persons who are specially protected by the Constitution—children, elderly persons, persons with disabilities or women providers-, who have the right to be reunited with their families.

4. The right to a basic subsistence, as an expression of the fundamental right to a minimum subsistence income and clarified in Principle 18, which means that "competent authorities shall provide internally displaced persons with and ensure safe access to: (a) essential food and potable water; (b) Basic shelter and housing; (c) appropriate clothing; and (d) essential medical services and sanitation". Authorities must also make special efforts to secure the full participation of displaced women in the planning and distribution of these basic supplies. This right must also be read in the light of Principles 24 through 27… given that it is through the provision of humanitarian assistance that the authorities satisfy this minimum duty in regards to the dignified subsistence of displaced persons.

5. The right to health (article 49 of the Constitution), whenever the provision of the corresponding healthcare service is urgent and

indispensable to preserve the life and integrity of the person, in cases of illness or wounds that threaten them directly, or to prevent contagious or infectious diseases, in accordance with Principle 19. On the other hand, in the case of children, article 44 shall apply,[23] and in cases of infants under one year of age, article 50 of the Constitution shall apply.[24]

6. The right to protection (article 13 of the Constitution) from discriminatory practices based on the condition of displacement, in particular when such practices affect the exercise of the rights enunciated in Principle 22.

7. For the case of displaced children, the right to basic education until fifteen years of age (article 67, paragraph 3, of the Constitution). The Chamber clarifies that, even though Principle 23 establishes the State duty to provide basic primary education to the displaced population, the scope of the international obligation described therein is broadened by article 67 of the Constitution, by virtue of which education shall be mandatory between five and fifteen years of age, and it must comprise at least one pre-school year and nine years of basic education… the State is bound, at the minimum to secure the provision of a school seat for each displaced child within the age of mandatory education, in a public educational institution. That is to say, the State's minimum duty in regards to the education of displaced children is to secure their access to education, through the provision of the seats that are necessary in public or private entities of the area.[25]

8. In regards to the provision of support for self-sufficiency (article 16 of the Constitution) by way of the socio-economic stabilization of persons in conditions of displacement—a State obligation established in Law 387 of 1998 and which can be deduced from a joint reading of the Guiding Principles, in particular Principles 1, 3, 4, 11 and 18-, the Court considers that the State's minimum duty is that of identifying, with the full participation of the interested

[23] Article 44 of the Constitution protects children's fundamental right to health.

[24] Article 50 of the Constitution establishes that children under one year of age shall have the right to free and mandatory healthcare in all public institutions.

[25] This was the order issued by the Court in Colombian Constitutional Court, Decision T-215 of 2002 to the respondent Municipal Education Secretariat to secure access to the educational system by the plaintiff children, using the available places in the schools of the area. This preferential treatment for displaced children is justified, not only because education is one of their fundamental rights—as happens with all the other children in the national territory— but for the reason that they are especially vulnerable. Accordingly, they receive reinforced constitutional protection, which in the educational field means that if at least their basic education is not secured, the effects of displacement upon their personal autonomy and the exercise of their rights will be worsened.

person, the specific circumstances of his/her individual and family situation, immediate place of origin, particular needs, skills and knowledge, and the possible alternatives for dignified and autonomous subsistence to which he/she can have access in the short and mid term, in order to define his/her concrete possibilities of undertaking a reasonable individual economic stabilization project, of participating in a productive manner in a collective project, or entering the work market, as well as to use the information provided by the displaced population in order to identify income-generation alternatives for displaced persons.

It is important to note that this minimum right of displaced persons does not bind the authorities to provide, in an immediate manner, the material support required to begin the productive projects which are formulated, or to secure access to the labor market on the grounds of the individual evaluation at hand; even though such support must necessarily materialize through the programs and projects designed and implemented by the authorities for the purpose, the minimum and immediately enforceable duty imposed by this right upon the State is that of gathering the information which can allow it to provide the necessary attention and consideration to the specific conditions of each displaced person or family, identifying with the highest possible accuracy and diligence their personal capacities, so as to extract from such evaluation solid conclusions that can facilitate the creation of stabilization opportunities that respond to the real conditions of each displaced persons, and which can, in turn, be incorporated into the national or territorial development plans.

9. Finally, in regards to the right to return and re-establishment, authorities are in the obligations of (i) abstaining from applying coercive measures to force persons to return to their places of origin, or to re-establish themselves elsewhere; (ii) not preventing displaced persons from returning to their habitual place of residence, or from re-establishing themselves in another part of the territory, although it must be noted that whenever there exist public order conditions which make it possible to foresee a risk for the security of the displaced person or his/her family at their places of return or re-establishment, authorities must warn in a clear, precise and timely manner about this risk to those who inform them about their purpose of returning or moving elsewhere; (iii) providing the necessary information about the security conditions at the place of return, as well as about the State's commitment in the fields of security and socio-economic assistance to secure a safe and dignified return; (iv) abstaining from promoting return or re-establishment, whenever such decision implies exposing displaced persons to a risk for their

> lives or personal integrity, because of the conditions of the route and of the place of destination, for which reason every State decision to promote the individual or collective return of displaced persons to their places of origin, or their re-establishment at another geographical location, must be preceded by an assessment of the public order conditions at the place to which they will return, the conclusions of which must be communicated to the interested parties before the act of return or re-establishment."

A. General adoption of the Guiding Principles as governmental reporting, evaluation and monitoring criteria

The incorporation of the Guiding Principles as necessary references for the delimitation of IDPs' minimum constitutional rights has proven to be critical because in practice, it is this set of basic minimum rights that has framed authorities' efforts to comply with the orders issued in Decision T-025 of 2004. In effect, the recipients of the Court's orders have strived to fulfill their obligations within the nine basic areas of assistance that relate to these minimum rights as a matter of priority and to different degrees of effectiveness. These basic areas of assistance are their effort to adopt a rights-based approach in compliance with the Court's orders. This is reflected both in their reporting structures, which usually make express reference to the satisfaction of authorities' obligations in regards to each of the minimum rights pointed out by the Court, and also in the monitoring and evaluation parameters applied by the external controlling bodies to determine whether the Government has complied with its constitutional obligations.

The government entities that have reported to the Court throughout the T-025 follow-up process have invoked the Guiding Principles on a number of occasions. They have done so in order to prove that they have complied with the orders issued to them in the judgment at hand.

On the other hand, the Guiding Principles have been adopted by the Colombian State's controlling entities (fundamentally the Public Prosecutor's Office) as central criteria to evaluate the Government's compliance with the orders issued by the Constitutional Court, and to assess the general implementation of the national policy for assisting the displaced population.

In its evaluation of the common compliance report submitted by the Government, the Prosecutor referred to the Guiding Principles as criteria

to determine whether IDPs' fundamental rights were being fulfilled, as follows:

(i) With regard to the prevention of displacement, the Prosecutor concluded that:

> "…the national Government has failed to adopt measures that are fit to prevent the operations of the Armed Forces from causing forced displacements, and to apply, in the cases in which such displacements could have been foreseen, measures to secure that the least possible damage be caused upon the victim population, like those established in Principle 7.3. of the Guiding Principles on Internal Displacement."

(ii) With regard to the State duty to protect the abandoned assets of IDPs, the Prosecutor relied upon the Guiding Principles in order to establish the scope of authorities' obligations, clarifying that:

> "…in light of the provisions of Law 387 of 1997 (article 19.1) and the Guiding Principles of Internal Displacement (principles 21.3 and 29.2), the State's obligation in relation to IDPs' assets includes not only the protection of rural immovable assets, but in general of all types of assets which have been left abandoned as a consequence of displacement."

The Prosecutor concluded that "up to this date, nine years after the issuance of Law 387 of 1997, only rural immovable properties are protected, which means that IDPs are not protected in their rights over urban and rural movable assets, and urban immovable properties, without any enunciation by the authorities of the adoption of corrective measures."

(iii) With regard to the State's obligation to protect IDPs' right to return, the Prosecutor asserted that "…according to the Guiding Principles on Internal Displacement, Law 387 of 1997, Decree 2569 of 2000 and Decree 250 of 2005, returns must be secured by respect for the principles of voluntarity, security and dignity, which according to what [the *Procuraduría*] and the Constitutional Court have repeatedly stated, are not being followed in the return processes which have taken place." The Prosecutor also expressed its concern over the fact that *Acción Social* had not reported measures to protect certain communities that had returned to their places of origin and were under threat, quoting the text of Principle 28 in order to illustrate the State's failure to comply with its duties:

> "The *Procuraduría* is concerned that in relation to these threats… [*Acción Social*]… has not specified whether actions have been taken to

> protect the community against said threats, which constitutes a grave failure of the entities in charge of providing security, bearing in mind that both Decree 250 of 2005, and the Guiding Principles on Internal Displacement provide that the 'competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country."

Moreover, with regard to the right to return, the Prosecutor explained:

> "…in light of the Guiding Principles on Internal Displacement (Principle 7.3.), in cases of operations that can place communities at a risk [of such magnitude] that displacement is imminent, the State must adopt all the necessary measures to mitigate its effects and not only to assist the population when displacement takes place. In this sense, the provision of shelters is a measure for the stage after displacement, but it is insufficient whenever displacement can be foreseen."

The impact of these external concepts for the adoption of new judicial decisions is significant. Indeed, in the follow-up awards adopted by the Court thus far, the State's controlling entities' opinion has been held in very high regard and has proven to be decisive in the actual formulation of the Court's orders on several occasions. Thus, through a different channel, the Guiding Principles have had a strong effect upon the overall system for the protection of IDPs in Colombia.

Translation of IDPs' minimum rights into effective enjoyment indicators for human rights

As mentioned in the other chapters of this book, one of the most recent and significant decisions adopted by the Constitutional Court in the process of following up on compliance with Decision T-025 of 2004, was that of adopting a set of indicators to measure the effective enjoyment of IDPs' fundamental rights. This was achieved after a thorough technical-judicial procedure, which resulted in Award 109 of 2007. During the process of designing and adopting these indicators, different organizations submitted their own observations to the Court, many of which were based on their interpretation of the Guiding Principles' scope in relation to a given right. In doing so, these organizations pointed out the manner by which indicators should be crafted in order to be consistent with the Guiding Principles.

In this way, the Civil Society Commission for the Follow-up of Compliance with Decision T-025 of 2004 (an inter-institutional body created by representatives of IDP organizations, NGOs, civil society and academia for the purpose of monitoring the resolution of the unconstitutional state of affairs in the field of internal displacement) expressed to the Court on January 11 2007, among its observations on the various indicators proposed by the Government, that in relation to the process of registration and characterization of the displaced population, any proposed indicator should follow the criteria of the Guiding Principles. For example, the above body stated:

> "…[t]he process of registration and characterization of the displaced population constitutes the baseline for the institutional response. However, as pointed out by different evaluations, these processes still present important deficiencies that bear a negative impact upon the processes of resource allocation and institutional policy projection. In the country's current situation, characterization must be aimed at comprehensively establishing the universe of victims of displacement and identifying the differential needs of the affected groups, taking into account the rights protected by the Guiding principles on Internal Displacements adopted by the United Nations and the Colombian State's internal legislation."

Likewise, the same Civil Society Commission, in its set of observations on the indicators presented by the Government during a public hearing held on March 15, 2007 and in relation to the indicator proposed for the right to dignified housing, expressed:

> "It is understood that in other cases, for example, in relation to housing, access to the right may only be materialized through an initial investment. But this hypothesis is only valid when such initial investment secures access to the ownership of such housing, or when, in cases of support for rent payment, these supports are objectively linked to solutions aimed at returning with all the safeguards established by the Law and the Guiding Principles on Internal Displacement. But the assumptions of the governmental documents only respond very partially to these criteria."

What is most significant is that many of these observations were effectively taken into account by the Court and had a direct impact on the content of its final decision in relation to the indicators. This was the case of the indicators submitted by the Government for the purpose of measuring (i) IDPs' rights to life, integrity, security and liberty (measured

jointly through one proposed indicator), and (ii) IDPs' right to reparation as victims of crime.

In response to the indicator proposed by the Government to measure the effective enjoyment of IDPs' rights to life, integrity, security and liberty, the UNHCR office stated:

> "By definition, persons have to displace themselves because they are in situations of extraordinary risk, which leads them to seek protection in other parts of the country, where the causes of risk often follow them. For this reason, authorities are bound to adopt special protection measures, as indicated by Guiding Principles 10, 11 and 12."

In its final decision on the matter, the Court decided to reject the indicator at hand because the indicator left out fundamental aspects of the essential nucleus of the measured rights. This was "pointed out by the different entities and organizations that participated in the indicators' discussion process." Along this line, the UNHCR office stated that the indicator proposed by the Government to measure the right to reparation was insufficient. The indicator was insufficient given that the effective enjoyment of this right transcended the limited scope of securing access to justice and protection of assets, and that the above right had to include elements such as equality and non-discrimination, among others. UNHCR stated:

> "…[t]he first element that should be the object of follow-up and evaluation is the equal treatment for the victims of displacement vis-à-vis other victims of equally serious crimes--especially, given the context in which there is no clarity about reparation mechanisms for the victims of the crime of displacement. IDPs may not be the object of discrimination because of being displaced. Unequal treatment in the field of reparation could come to constitute a violation of the principle of equality included in the Guiding Principles on Internal Displacement."

The Court, in attending to these observations, rejected the indicators submitted by the Government to measure the right to reparation. It stated:

> "…given that they only refer to the right of access to justice, and not to essential aspects of reparation, and they do not present a complete panorama of all of the rights of the victims of forced displacement. They are inadequate, because they do not help to provide relevant information to the Court in order to evaluate the situation of the displaced population in relation to the satisfaction of their rights as victims of crimes. They are also insufficient, because they leave out of the measurement fundamental

> aspects of the right to reparation. They also fail to include all of victims' rights (truth, justice, reparation and non-repetition), differentiating the essential elements which are specifically relevant from the standpoint of the effective enjoyment of these rights by IDPs."

Given that it is these indicators that will be used to measure and evaluate authorities' compliance with their obligations to protect the fundamental rights of IDPs in the future, it may be said that the Guiding Principles have borne one of their strongest impacts within the overall system for the assistance of the displaced population in this field. On the other hand, these are also centered on the set of IDPs' minimum rights as defined by the Court on the grounds of the Guiding Principles. The impact of the Guiding Principles upon the process of refining the Colombian policy is therefore remarkable.

B. Overcoming the existing humanitarian crisis: applying the Guiding Principles in the adoption of new judicial decisions

Since the adoption of Award 218 in August 2006, various sources have provided the Constitutional Court with substantial and highly detailed information on the state of implementation of the public policy for assisting IDPs, and on the effective enjoyment of their fundamental rights. The sources of this detailed information include the governmental reports submitted in September, their evaluation reports by State controlling entities, NGOs and IDP organizations across the country, as well as the UNHCR office in Colombia. Additional sources include assessments and claims by individual petitioners who have raised their concerns before the Court, thereby demanding the satisfaction of their rights. In response, the Court has now started to issue a new, strong set of follow-up decisions in relation to different aspects of the policy and specific IDPs' rights. This action by the Court serves to continue the fulfillment of its role as the maximum guarantor of IDPs' fundamental rights.

The first one of the above new series of decisions, Award 200 of 2007, was adopted on August 13, 2007. It purports to protect the rights to life and security of the leaders and representatives of IDP organizations, and of other IDPs who are exposed to extraordinary risks against their lives and the integrity of their families. Having identified a number of serious flaws in the existing protection program that has resulted in an overwhelming number of murders and persecutions across the country, the Court has issued detailed orders to public officials. These orders mandate

the above officials to correct said flaws within a short period of time, and also to attend to the situation of ten specific people or groups of people who have proven to be at serious risk. In this Decision, the delimitation of the scope of the protected right to personal security has been carried out by the Court with express reference to the Guiding Principles. Thus, in paragraph 3 of the Award's considerations, the Court recalled that such a right's extent should be interpreted in accordance with Guiding Principles 8, 10, 12, 13 and 15, the text of which was explicitly cited in the Decision.

It is clear that this trend shall be followed in upcoming follow-up awards, for which extensive protective measures shall be adopted in relation, *inter alia*, to displaced children, women, indigenous people, Afro-Colombian communities, people with disabilities and elderly people.

Application of the Guiding Principles in new tutela decisions by the Court

After the adoption of Decision T-025 of 2004, and in parallel to the issuance of the aforementioned follow-up awards, the Court has continued to study and decide *tutela* actions presented by IDPs seeking protection for their entire range of fundamental rights. Reference to the Guiding Principles has been made throughout these subsequent judicial decisions, partly as a consequence of their formal incorporation in Decision T-025. For example, in Decision T-1144 of 2005, which referred to a case of refusal of inclusion of an IDP in the official registration system, the Court began by stating in general terms:

> "Law 387 of 1997 and Decree 2569 of 2000, on the grounds of an internal migratory phenomenon in situations of conflict, clearly determined and particularly defined by the UN Guiding Principles on Internal Displacements and Article 17 of the Additional Protocol to the Geneva Conventions of August 12, 1949, establish the parameters for the authorities of the National Comprehensive Assistance System for the Displaced Population to evaluate, based on their prior knowledge of particular situations of displacement, the plaintiffs' specific requirements in terms of housing, healthcare, education, nutrition, recreation and work."

The Court thereafter reiterated its prior doctrine on the conditions for registration of IDPs and the applicable safeguards in order to grant the writ of protection and order the inclusion of the petitioner and his family in the system.

Likewise, in Decision T-468 of 2006, in solving a case related to the requirement of a certification by the authorities in order to gain access to assistance services for IDPs, the Court explained, "…the most favorable interpretation for the best protection of displaced persons must also include the consideration of the Guiding Principles on Internal Displacement… which are part of the international legal provisions that form part of the constitutionality block for this case." On these grounds the Court concluded that "a certification of the status of displaced person may not be held as a condition sine qua non for the exercise of the fundamental rights of IDPs; in other words, it may not be considered that persons who argue that they are IDPs only have a right to special protection insofar as the competent public officials regard them as such."

Following the trend of these two *tutela* judgments, it may be expected that the Court will carry on deciding individual *tutela* cases by interpreting the rights of IDPs in light of the provisions codified in the Guiding Principles.

II. Socio-political aspects of incorporating the Guiding Principles

In socio-political terms, after their formal incorporation into the Colombian legal system, the Guiding Principles have become grounds for the claims of IDPs and their rights advocates before the State. This has led the Guiding Principles to gain not only a strong legal force within the discourses of IDPs and their advocates, but also a rhetorical force. Thus, the Guiding Principles have been incorporated as significant communicative elements within overall social and political communication processes related to internal displacement. This social process deserves detailed study in itself as a very interesting example of the incorporation of legal instruments into social practices within societies at war. I will provide just a few examples of how the Guiding Principles have been included in IDPs' and in their advocates' claims before the Constitutional Court within the follow-up process of Decision T-025 of 2004.

IDP organizations and NGOs that advocate on behalf of IDPs' rights have referenced the Guiding Principles in their reports to the Court in the form of (i) legal support to substantiate their claims as sufficient legal grounds in themselves and alongside the clauses of the Constitution; and in the form of (ii) instruments to identify flaws in the existing system of protection, just like the State-controlling entities have applied them in their reports. For example, in its general report to the Court on September

13, 2006, the Forum for the Strengthening of Displaced Population's Organizations (*Mesa Nacional de Fortalecimiento a Organizaciones de Población Desplazada*)—one of the formal fora where IDP organizations coordinate their national activities—held, in relation to healthcare, that "although the Guiding Principles on Internal Displacement and the national legislation clearly determine the State's responsibilities in this matter, and though communication channels and collaboration networks have been created between the healthcare entities of the different levels, the health care provided to the displaced population is deficient." In this same fashion, in its October 27, 2006 report to the Court, the National Solidarity Association for the Defense of Displaced Women and Families made the following legal-formal statement:

> "The National Solidarity Association for the Defense of Displaced Women and Families, ANSPALMUFAD, in representation of the persons and/or families worthy of special constitutional protection—women heads of household, children, elderly persons, persons with disabilities—in condition of victims of internal displacement due to the armed conflict in Colombia, and invoking the Guiding Principles of Displacement, the National Constitution, Law 387 of 1997, the different judgments of the Court including Decision T-025/04 and its 5 Awards, where it is ordered that the unconstitutional state of affairs be solved; the different international agreements and covenants signed by Colombia for this purpose, represented by our President, Diana Marcela Caicedo, present the following report."

This same report by the National Solidarity Association for the Defense of Displaced Women and Families follows a pattern by which the rules included in the Guiding Principles and the Constitution are first invoked in order to present vocal claims to the Court in regards to their actual materialization in practice:

> "The Constitution, the Guiding Principles on Displacement, the international agreements signed by Colombia, in regards to persons who are under special constitutional protection, all order the adoption of priorities and special programs. And they hold that abuses committed against IDPs will be punished. And if you see, or request the institutions to present the functions they have fulfilled for this population, at most they will be able to say that they have given them the stacks of insect-infested food, expired and of the worst quality, but needless to say endorsed by very high amounts of money, violating with this even our right to decide how we shall feed our families and ourselves, violating our customs, our tastes and our right to feed our children in coherent conditions."

In the same line of argument, the Forum for the Strengthening of Displaced Population's Organizations of the township of Girón in the Department of Santander, submitted a report to the Court on October 31, 2006, explaining that when drafting the report, constant background was provided by Decision T-025 of 2004 and the Guiding Principles on Internal Displacement:

> "As inputs for this report we can enlist, in addition to the ones included in the chapter of Annexes: the declarations of leaders and members of the different associations; direct dialogue with the displaced population; the memoirs of the weekly meetings of the Strengthening Forum (Mesa de Fortalecimiento) where each case of non-compliance by the municipal administration and other State entities with their obligations is exposed; memoirs of the municipal meetings; answers to the petitions presented to the authorities; the participation of the leaders in the departmental thematic forums and in the municipal and departmental committees; as well as direct exchanges with the authorities, the testimonies gathered in the assemblies of each one of the associations, and always as a theoretical referential framework, the text of Decision T-025 of 2004 and the Guiding Principles on Internal Displacement."

Following the same line, the Civil Society Commission for the Follow-Up of Compliance with Decision T-025 of 2004, in its October 27, 2006, report to the Court included the following observations in the chapter on lands:

> "In the first place, it must be noted that actions in relation to the subcomponent on lands must be framed within the protection and materialization of the human right to property and possession, established in the international and national instruments, including the Guiding Principles on Internal Displacements. In its doctrine on forced displacement the Constitutional Court has reiterated the importance of the Guiding Principles, it has even come to consider that some of the provisions contained in the principles form part of the constitutionality block, clarifying that they compile the international obligations of the Colombian State by virtue of different treaties in the fields of Human Rights and international humanitarian law, but it has also been explicit in considering them as parameters for normative creation and interpretation in the field of regulation of forced displacement and assistance of IDPs by the State. On the issue of lands for the displaced population, the Court has referred in relation to its minimum scope to Principle 21 of the Guiding Principles, which expresses the protection that must be granted to IDPs' properties and possessions, in every place and circumstance, and especially from deprivation, expropriation, destruction, occupation, direct

> and indiscriminate attacks, and reprisals, among other violations. Likewise they state that the properties and possessions abandoned by IDPs must be protected."

In the chapter concerning indigenous groups, this same report by the Civil Society Commission for the Follow-Up of Compliance with Decision T-025 of 2004 stated: "The differential focus of the public policy to assist members of indigenous peoples is grounded on the Guiding Principles on Internal Displacement, which clearly state the obligation of taking measures of protection against the displacement of indigenous peoples." And in the different public hearings held in the past months by the Constitutional Court on different aspects of the system for assisting IDPs, the representatives of IDP organizations and human rights NGOs invoked the Guiding Principles on several occasions during their interventions, citing them as the "Guiding Principles," the "Deng Principles," or the "UN Principles" as a means to substantiate the observations and claims posed before the Court. Similarly, individual IDPs who have submitted petitions to the Court asking for the protection of their rights have frequently invoked the Guiding Principles in general terms as the basis for their requests of assistance.

Given the scope of IDPs' generally limited knowledge of their rights under domestic and international law, it may be concluded that the Guiding Principles have caused a very high impact in the Colombian case. The Guiding Principles have managed to transcend the legal realm, permeate the language used by the victims of forced displacement when resorting to the authorities responsible for their protection, and to structure the discourse used in their overall organizational processes. Regardless of its legal precision, this socio-political and rhetorical use of the Guiding Principles is remarkable.

III. A preliminary appraisal of the Guiding Principles' impact in Colombia

I believe that three short observations are pertinent in relation to the process behind how the Guiding Principles became incorporated and applied in the Colombian context.

First, even though the Guiding Principles have come to play an important part in the State's process of assisting IDPs, of protecting their fundamental rights, and overcoming a massive humanitarian crisis (which now affects roughly 4 million people in the country), there is still a long

way to go before they are effectively implemented in practice. An ideal scenario would be one in which the Guiding Principles were no longer relevant because internal displacement in Colombia has ceased. But as the armed conflict persists, and as future prospects for peace become blurred, this scenario may be discarded as merely ideal. For the time being, it is the Colombian State authorities' legal duty, strengthened by Constitutional Court's decisions, to follow the criteria and obligations compiled in the Guiding Principles in order to alleviate, as much as possible, the plight of IDPs in the context of Colombia's armed conflict.

Second, although the practice of one State is insufficient for generating a rule of customary international law, and also bearing in mind the fact that the Colombian case is hardly representative of the general practice of States experiencing internal displacement problems, it can nevertheless be held that the process described in this chapter could be invoked in the future to ascertain the emergence of new rules of customary international law. That is, the process described herein could act as one of the many elements required for the formation of a rule of customary international law among the different cases of State practice in the implementation of obligations appertaining to the assistance and protection of IDPs worldwide.

Third, when it comes to determining whether the Guiding Principles' stated purpose has been fulfilled in the case of Colombia, I should say it has been fulfilled, very broadly speaking. The Principles have certainly provided guidance to authorities at all levels and in all branches of public power in terms of complying with their duties vis-à-vis IDPs. It has moreover come to provide, in both legal and socio-political terms, the grounds and justification for IDPs' claims for protection, and for authorities' orders and acts of protection. In this sense, the Guiding Principles have indeed contributed to the effective enjoyment of the fundamental rights of internally displaced persons. The Colombian case is, in this sense, a success story—as far as success can be held to take place within a human tragedy of these proportions. Furthermore, the progress made to dates provides a solid basis for additional achievements in the

field of judicial protection of the rights of the internally displaced, as will be illustrated by upcoming Constitutional Court Awards.[26]

[26] In the months that followed the drafting of this paper, the Constitutional Court adopted two new Awards concerning the rights of specific groups within the internally displaced population: Award 092 of 2008, which relates to women affected by the armed conflict and by forced displacement, and Award 251 of 2008, which refers to children and adolescents affected by the armed conflict and forced displacement. Upcoming Awards are expected with regard to indigenous peoples, Afro-Colombian communities and persons with disabilities.

A happy IDP shows her new identity card.
Photo courtesy of UNHCR/P. Smith, October 2002.

ANNEXES[1]

[1] The texts in these annexes are unofficial translations commissioned by the Brookings-Bern Project on Internal Displacement for informational purposes only.

ANNEX 1

Colombian Constitutional Court, Decision T-025 of 2004[1]

Republic of Colombia
Constitutional Court
Third Review Chamber

Decision No. T-025 of 2004

(…) *Tutela* action presented by Abel Antonio Jaramillo, Adela Polanía Montaño, Agripina María Nuñez and others against the Social Solidarity Network (*Red de Solidaridad Social*), the Administrative Department of the Presidency of the Republic (*Departamento Administrativo de la Presidencia de la República*), the Ministry of Public Finance (*Ministerio de Hacienda y Crédito Público*), the Ministry of Social Protection (*Ministerio de la Protección Social*), the Ministry of Agriculture, the Ministry of Education, the National Institute for Urban Reform (*INURBE*), the Colombian Institute for Agrarian Reform (*INCORA*), the National Learning Service (*SENA*), and others.

Manuel José Cepeda Espinosa, J.

Bogotá, D.C., 22 January, 2004

The Third Review Chamber of the Constitutional Court, composed of Justices Manuel José Cepeda Espinosa, Jaime Córdoba Triviño and Rodrigo Escobar Gil, exercising its constitutional and legal powers, has adopted the following

[1] This text is an unofficial translation commissioned by the Brookings-Bern Project on Internal Displacement for informational purposes only.

JUDGMENT

BACKGROUND FACTS

108 dossiers were accumulated to dossier No. T-653010, 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 4 persons per family, and primarily composed of women providers, elderly persons and minors, as well as a number of indigenous persons. (…)

Given the large number of dossiers which have been accumulated for decision in the present proceedings, and the fact that the *tutela* actions under review refer to common problems with regard to the assistance provided by different authorities to internally displaced persons, a brief summary of the facts and elements that gave rise to these *tutela* actions is presented in the following pages. The details of each case are to be found in Annex 1 of this decision.

The plaintiffs are currently located in (…) departmental capitals and municipalities (…). They are persons who became victims of forced internal displacement because of events that took place, on average, over one and a half years ago; most of them received some type of emergency humanitarian aid during the three months that followed their displacement, but such aid did not reach everyone and it was neither always timely nor complete.

The plaintiffs filed *tutela* actions against (…) several municipal and departmental administrations, considering that such authorities were not complying with their mission of protecting the displaced population, and because of the lack of an effective response to their petitions in the fields of housing, access to productive projects, healthcare, education and humanitarian aid.

Some of the plaintiffs have not yet received humanitarian aid, in spite of being registered in the Central Registry for the Displaced Population (*Registro Único de Población Desplazada*). In many cases, a long period has gone by (between six months and two years) without receiving any type of aid from the Social Solidarity Network (*Red de Solidaridad Social*), nor from the other entities in charge of assisting the displaced population.

Most of the plaintiffs have not received adequate guidance in order to obtain access to the programs for assisting displaced persons (…). Displaced persons are frequently forced to undergo an institutional pilgrimage, without receiving an effective response.

An important group of plaintiffs filed requests to gain access to housing aid, and to obtain the starting capital or the necessary training to undertake a productive project, but months after filing their requests, they have not received a substantial response to their petitions. On several occasions, the entities only responded after the *tutela* lawsuit had been filed. In other cases, responses are limited to informing them that there are insufficient budgetary allocations to attend their requests, and that in addition, their requests shall be attended in accordance with the order established by the entity, without clarifying for how long they will have to wait. Waiting periods have been extended for up to two years. Responses (…) are given in a unified format that describes, in general terms, the components of aid for displaced persons, but they very seldom respond in a substantial manner to the displaced persons' requests. Given the lack of adequate guidance, many of the plaintiffs requested aid for housing or productive projects without following the formal procedures, for which reason the aid was denied, thus leading them to begin the procedure all over again. (…)

The different requests filed by the plaintiffs with the entities in charge of assisting the displaced population have been responded through one of the following answers, invoked as justifications to deny the benefits that they were seeking:

1.) That the entity before which the petition has been filed has no powers to grant the requested aid, because it is solely in charge of some aspect of coordination;

2.) That there are insufficient funds in the budget to attend the request;

3.) That emergency humanitarian aid is only granted for three months, and in exceptional cases it can be renewed for up to another three months, but that after such imperative term, it is impossible to renew the aid, regardless of the displaced person's factual situation;

4.) That the requested aid may not be granted because the person is not included in the Central Registry for the Displaced Population;

5.) That the entity in charge of attending the request is undergoing liquidation procedures;

6.) That there is a mistake in the request, or that the petitioner has not yet presented him/herself as a candidate to obtain housing aid;

7.) That the housing aid program is suspended on account of insufficient budgetary allocations;

8.) That requests will be responded strictly in their order of presentation, provided that there are sufficient funds in the budget;

9.) That the housing aid policy was modified by the government and transformed into a credit policy for social welfare housing, and a new request must be filed with the entities in charge of approving the credits;

10.) That the only way of gaining access to aid for economic re-establishment is by presenting a productive project, even though other forms of re-establishment have been created by the relevant legislation.

For the above reasons, the plaintiffs filed *tutela* lawsuits with one or more of the following petitions:

1.) That their requests should be responded in a substantial manner, and within clear and specific periods;

2.) That governmental aid for economic stabilization, housing, re-location, productive projects and access to education for their children should actually materialize;

3.) That the lands that displaced persons held in possession or in property and were abandoned should be protected;

4.) That they should receive, or continue receiving emergency humanitarian aid;

5.) That they should be recognized as displaced persons and obtain the benefits arising from such condition;

6.) That a food security program should be adopted;

7.) That the prescribed medicines should be provided;

8.) That one of the persons registered as part of a family group should be unaffiliated from it and allowed to continue receiving humanitarian aid as [the head of] another family group;

9.) That the budgetary allocations needed to solve the situation of the displaced population should be made, and that the programs to aid displaced persons should become effective;

10.) That the Ministry of Public Finance should disburse the funds required to implement the housing and productive projects programs;

11.) That internally displaced persons should be able to receive training for the development of productive projects;

12.) That the legal representative of the Social Solidarity Network should be warned that whenever he fails to comply with his responsibilities towards displaced persons, he incurs in disciplinary misconduct;

13.) That the Municipal Committees for comprehensive assistance to displaced persons should be established;

14.) That the provision of healthcare services, denied since the moment of adoption of Memorandum 00042 of 2002—which conditioned the provision of such aid to the fact that the health problems to be attended be inherent to displacement—should be re-established;

15.) That the territorial entities, within the limits of their budgets, should contribute to the housing aid plans for the displaced population.

2. The decisions under review

(…) Most of the judges whose decisions are under review refused to grant the *tutela* actions filed by the plaintiffs, for one or more of the following reasons:

1. In regards to petitioners' legal standing to file *tutela* actions, judges denied granting the *tutela* (i) because plaintiffs' associations have no legal standing to file *tutela* actions for the protection of the rights of the displaced population; (ii) because the plaintiff was not a lawyer with the power to represent the displaced population by filing the lawsuit; (iii) because the person who filed the *tutela* lawsuit did not prove that he/she was the legal representative of an association of displaced population.

2. Non-admissibility of the *tutela* action was invoked by the judges to refuse granting the *tutela*: (i) because (…) a different action should be filed [*acción de cumplimiento*]; (ii) because the *tutela* action was not created as a mechanism to alter the order of State institutions, in regards to the internal distribution of their jurisdiction and functions; (iii) because the petition should have been previously addressed to the Social Solidarity Network (…); (iv) because housing is a second generation right which may not be protected by means of *tutela* actions; (v) because the plaintiff's registration as a displaced person had already been recognized, and instructions had been given to register the corresponding family group and to request the benefits to which they were entitled; (vi) because *tutela* actions cannot become means to vary the order in which benefits are granted, given that this would violate the rights of the displaced persons who have not filed *tutela* lawsuits and are waiting for their turn, which must be respected.

3. Judges invoked deficiencies in the evidentiary requirements fulfilled by the plaintiffs to refuse to grant the *tutela*: (i) because they did not prove, in a concrete manner, the violation of fundamental rights by an arbitrary conduct of the authorities; (ii) because it was not proven that the relevant entity had failed to comply with its responsibilities without a justified cause; (iii) because the plaintiff did not demonstrate any act attributable to the respondent; (iv) because the plaintiff's situation did not fit the definition of "internally displaced person"; (v) because the plaintiff did not prove that his/her fundamental rights had been violated by the respondent entities; (vi) because there was no proof of sufficient links between the right to housing and a fundamental right.

4. Judges denied the *tutela* invoking an absence of violation of rights: (i) because the plaintiff filed an individual project format with the respondent entity, and not a formal petition, thus failing to comply with the requirements of Article 5 of the Administrative Code (*Código Contencioso Administrativo*); (ii) because having failed to request access to housing aid, no violation of his/her rights could be invoked; (iii) because displaced persons have already been granted the minimum aid established in the law; (iv) because the facts that caused the displacement happened two or four years before, and not on a recent date; (v) because the Social Solidarity Network acted in accordance with the legislation in force for the protection of displaced persons; (vi) because the Social Solidarity Network cannot protect persons outside of its sphere of jurisdiction; (vii) because a very short time had elapsed (less than a month) since the plaintiff's registration as a displaced person, making it

impossible to conclude that the entities in charge of granting emergency humanitarian aid had failed to comply with their responsibility; (viii) because the Network's tardiness in responding was justified by an excess of work, and because it could not give a substantial response approving the project because it was not within its jurisdiction to do so; (iv) because the mere condition of internal displacement does not grant persons an automatic right to subsidies; (x) because INURBE's refusal did not preclude the presentation of future requests for aid, given that the plaintiffs had been classified as eligible persons; (xi) because the plaintiffs had already been registered as potential recipients of housing subsidies and sustainability projects, and it was only necessary to wait for the finalization of the procedures; (xii) because the plaintiff did not prove that he had taken the necessary steps to obtain a housing subsidy or support for a productive project.

5. Judges denied the *tutela* invoking the alleged existence of an abuse in the exercise of procedural rights[2]: (i) because the displaced person had already received the requested aid as part of another family group which had filed a *tutela* lawsuit in order to obtain it; (ii) because another *tutela* lawsuit filed by the plaintiffs on account of the same facts and against the same respondents was pending review by the Constitutional Court.

6. Judges denied the *tutela* invoking the limitations on the possible orders that may be issued through *tutela* proceedings to protect displaced persons: (i) because it was necessary to wait for the State entities to have enough resources to facilitate housing subsidies, in accordance with the number of requests filed to obtain such benefit; (ii) because there are other displaced persons who have not even received first-level humanitarian aid; (iii) because even though there is a lack of coordination between the relevant entities, the Social Solidarity Network may not carry out functions which have been assigned to other authorities; (iv) because it is not possible to order, through *tutela* proceedings, that the relevant authorities comply with education, housing, food or work programs, nor to disburse money to provide the Social Solidarity Network with resources; (v) because budget limitations may not be overcome through *tutela* proceedings; (vi) because *tutela* judges cannot decide about public expenditure, nor become co-administrators of the Executive's activities or policies; (vii) because *tutela* proceedings cannot be used to alter the legal order of assignation of subsidies, without the relevant administrative acts

[2] "*Temeridad*"

adopted by the INURBE; (viii) because *tutela* judges cannot order public authorities to carry out acts for which they lack the necessary resources.

Some of the judges granted the *tutela* actions for the protection of the rights of the displaced population, holding—among other reasons—that in a Social State grounded on the rule of law (*Estado Social de Derecho*) it is necessary to arrive at a final solution to the problem of displacement, and because the omissions of the Social Solidarity Network and other entities in charge of assisting the displaced population reveal a violation of the constitutional safeguards to which the plaintiffs are entitled.

(…)

III. CONSIDERATIONS AND LEGAL GROUNDS FOR THE DECISION.

(…) 2. Legal issues to be solved; summary of the arguments and the decision.

(…) this Chamber considers that the case under review poses several complex constitutional legal issues, related to the contents, scope and limitations of the State policy for assisting the displaced population, due—*inter alia*—to (i) the serious situation of vulnerability that affects the displaced population; (ii) the problems that internally displaced persons have to face because of the way that their requests are being attended by the respondent authorities; (iii) the excessively long period of time that has gone by without receiving the legally established aid; (iv) the very high number of *tutela* lawsuits filed by displaced persons to obtain the effective aid to which they are entitled, and the fact that many entities have transformed the filing of a *tutela* lawsuit into a part of the ordinary procedure that has to be followed to obtain the requested aid; (v) the fact that the situation that needs to be solved through the present *tutela* proceedings affects the entire displaced population, wherever they may be currently located, and regardless of whether they have resorted to the *tutela* action in order to obtain effective protection of their rights; (vi) the fact that most of the problems posed have taken place repetitively since the creation of the policy for assisting the displaced population; and (vii) the fact that some of the problems faced by displaced persons are going to be examined for the first time by the Court.

2.1. Legal issues.

1. Is the *tutela* action an appropriate channel to examine the actions and omissions of public authorities in regards to the comprehensive assistance of the displaced population, so as to determine whether problems in the design, implementation, evaluation and follow-up of the corresponding State policy contribute, in a constitutionally relevant way, to the violation of displaced persons' fundamental constitutional rights?

2. Are the rights of the displaced population to a minimum subsistence income and to receive a prompt answer to their petitions violated (…) when such access is conditioned by the authorities themselves (i) to the existence of resources which have not been allocated by the State; (ii) to the redesign of the instrument that determines the form, scope and procedure for access to aid; (iii) to the definition of which entity will be in charge of providing aid (…)?

3. Were the rights of petition, work, minimum subsistence income, dignified housing, healthcare and access to education of the plaintiffs in this case violated, given that the entities in charge of providing the legally established aid (i) failed to respond in a substantial, concrete and precise manner about the aid that is being requested; or (ii) refused to grant the requested aid (a) because of the lack of sufficient funds or resources in the budget to attend the requests; (b) because of failure to comply with the legal requirements to access such aid; (c) because of the existence of a list of requests which must be attended previously; (d) because of the lack of jurisdiction of the entity before which requests are presented; (e) because of a change in the requirements and conditions defined by the Legislator to have access to the requested aid; (f) because the entity before which the request is presented is currently undergoing liquidation procedures?

In order to resolve these issues, the Chamber will start by summarizing its doctrine on the rights of the displaced population, with a threefold objective: (i) to recall the main constitutional rights of persons in a situation of forced internal displacement (section 5.1.), indicating the Guiding Principles on Forced Internal Displacement which are pertinent for their interpretation; (ii) to highlight the gravity of the situation of the displaced population and the persistence of the violations of their rights, which have led to the presentation of *tutela* lawsuits (section 5.2.); and (iii) to clarify the type of orders which have been issued by the Court up to this date to protect the rights of the displaced population (section 5.3.). Secondly, the Court will examine the State response to the phenomenon of

internal displacement (section 6.1.), the results of that policy (section 6.2.) and the most salient problems of the existing public policy and its different components (section 6.3.). Thirdly, the Court shall analyze the insufficiency of available resources and its impact upon the implementation of the public policy (section 6.3.2.). Fourth, the Court shall verify whether such actions and omissions amount to an unconstitutional state of affairs (section 7). Fifth, the Court shall indicate the authorities' constitutional duties in regards to human rights obligations with a positive content, even in regards to rights such as life and security (section 8). Sixth, the Court shall determine the minimum levels of protection that must be guaranteed to the displaced population, even after a redefinition of priorities on account of the insufficiency of resources or of the deficiencies in institutional capacity (section 9). Finally, the Court shall impart orders regarding the actions that must be adopted by the different authorities to protect the rights of the displaced population (section 10).

(…) In addition, given that many of the *tutela* lawsuits which have been accumulated in the present proceedings were filed by associations of displaced persons, the Chamber must previously determine whether such associations of displaced persons have legal standing to file *tutela* actions on behalf of their associates, even though the latter have not given them specific powers to do so and their representative does not have the status of judicial attorney (section 3).

It is also necessary to examine the alleged existence of abuse in the exercise of procedural rights[3] in the presentation of some of the *tutela* actions accumulated to the present proceedings, in two factual hypotheses: (1) whenever *tutela* actions that were presented individually had already been filed by an association of displaced persons, on account of the same facts and against the same entities; and (2) whenever *tutela* actions were presented by one of the members of a family group, who became separated from such group in order to form his/her own family group and requests, through a *tutela* lawsuit, access to any of the types of aid to which displaced persons are entitled, even though the family group with which he/she was initially registered had already obtained a similar aid (section 4).

[3] "*Temeridad*"

2.2. Summary of the arguments and the decision.

In deciding on the *tutela* actions under review, the Third Review Chamber of the Court concludes that, given the conditions of extreme vulnerability of the displaced population, as well as the repeated omission by the different authorities in charge of their assistance to grant timely and effective protection, the rights of the plaintiffs in the present proceedings—and of the displaced population in general—to a dignified life, personal integrity, equality, petition, work, health, social security, education, minimum subsistence income and special protection for elderly persons, women providers and children, have all been violated (sections 5 and 6). These violations have been taking place in a massive, protracted and reiterative manner, and they are not attributable to a single authority, but are rather derived from a structural problem that affects the entire assistance policy designed by the State, as well as its different components, on account of the insufficiency of the resources allocated to finance such policy, and the precarious institutional capacity to implement it (section 6.3.). This situation gives rise to an unconstitutional state of affairs, which shall be formally declared in this judgment (section 7 and paragraph 1 of the final decision).

Even though in 2003 the number of new displaced persons decreased, and that the authorities have identified the urgency of adequately attending the situation of the displaced population, designed a policy for its protection and developed multiple instruments for its execution, the actions which have effectively been adopted by the authorities to guarantee the rights of the displaced population (section 6.1. and 6.2.) and the resources which have effectively been allocated to protect these rights (section 6.3.2.), are not in accordance with the provisions of Law 387 of 1997, which developed the constitutional rights of displaced persons (…).

Indeed, even though social expenditure and expenditure for assisting the marginalized population are regarded as priority types of expenditure, and even though there exists a State policy for assisting the displaced population, the authorities in charge of securing the sufficiency of these resources have omitted, in a repetitive manner, to adopt the necessary corrective measures so as to ensure that the level of protection defined by the Legislator and developed by the Executive is effectively attained.

Said violation is not attributable to a single entity; rather, all of the national and territorial authorities that hold diverse responsibilities in assisting the displaced population have allowed it to continue by their

actions or omissions and in some cases, they have allowed the violation of the fundamental rights of displaced persons to become worse.

The formal declaration of an unconstitutional state of affairs (section 7) entails, as a consequence, that the national and territorial entities in charge of assisting the displaced population must adjust their activities in such a way that they are able to achieve harmony between the commitments they have acquired to comply with constitutional and legal mandates, and the resources allocated to secure the effective enjoyment of displaced persons' rights. This decision respects the priorities fixed by the Legislator and the Executive, as well as the expertise of the responsible national and territorial authorities, which have defined the level of their own commitments, but it also demands that they adopt, as soon as possible, the corrective measures required to solve such unconstitutional state of affairs (…).

[The] minimum level of protection that must be guaranteed in an effective and timely manner (…) implies (i) that the essential nucleus of the constitutional fundamental rights of displaced persons may not be threatened in any case, and (ii) that the State must satisfy its minimum positive duties in relation to the rights to life, dignity, integrity -physical, psychological and moral-, family unity, the provision of urgent and basic health care, the protection from discriminatory practices based on the condition of displacement, and the right to education of displaced children under fifteen years of age.

In regards to the provision of support for the socio-economic stabilization of persons in conditions of displacement, the State's minimum duty is that of identifying, in a precise manner and with the full participation of the interested person, the specific circumstances of his or her individual and family situation, his or her immediate place of origin, and the alternatives of dignified subsistence available to him or her, with the aim of defining that person's concrete possibilities of undertaking a reasonable project for individual economic stabilization, or of participating in a productive manner in a collective project, for the purpose of generating income which may allow him or her, and any dependent displaced relatives, an autonomous livelihood.

Finally, in regards to the right to return and re-establishment, authorities' minimum duty is that of (i) not imposing coercive measures to force persons to return to their places of origin or to re-establish themselves elsewhere, (ii) not preventing displaced persons from returning

to their habitual place of residence or re-establishing themselves elsewhere; (iii) providing the necessary information about the security conditions that exist at the place where they will return, and about the responsibilities that the State shall assume in the fields of security and socio-economic assistance in order to guarantee a safe and dignified return; (iv) refraining from promoting return or re-establishment whenever such decisions imply exposing displaced persons to a risk for their lives or personal integrity, and (v) providing the support required to secure that return is carried out in safe conditions, and that those who return are able to generate income which can provide them autonomous livelihoods.

The Court shall grant the National Council for Comprehensive Assistance to the Population Displaced by Violence a period of two months to define the level of resources which will be effectively destined to fulfill the obligations assumed by the State, regardless of the duty to protect, in a timely and efficient manner, the aforementioned minimum rights. In case it is necessary to re-define priorities and modify any aspects of the State's policy in order to comply with this mandate, said Council shall be granted a term of one year for that purpose (…).

In order to protect the rights of the plaintiffs, the Court shall also order the issuance of substantial, complete and timely responses to the requests for assistance that gave rise to the present lawsuit (…).

3. The legal standing of displaced persons' associations to file *tutela* lawsuits for the protection of their members' rights.

(…) Given the conditions of extreme vulnerability of the displaced population, not just because of the fact of displacement in itself, but also because in most of the cases they are persons to whom the Constitution grants special protection—such as women providers, minors, ethnic minorities and elderly persons-, imposing a requirement of filing *tutela* actions for the protection of their rights, either directly or through lawyers, is excessively burdensome for them.

For this reason, the associations of displaced persons, which have been created for the purpose of supporting the displaced population in the defense of its rights, can procure *ex officio* the rights of displaced persons[4]. However, in order to avoid distortions of the *tutela* action through this means, as well as the promotion of collective *tutela* lawsuits without their

[4] "*Agente oficioso*"

members' consent or the use of this instrument to disregard the rules that proscribe abuse in the exercise of procedural rights[5], such possibility must be exercised under conditions which simultaneously guarantee access to justice by the displaced population and prevent possible abuses. Therefore, such organizations shall have *ius standi* to file *tutela* actions on behalf of their members, under the following conditions: (1) that it is their legal representative who does so, duly proving their existence and representation during the *tutela* proceedings; (2) that the names of the members of the association in favor of which the *tutela* action is filed are duly individualized, through a list or a written document; and (3) that the evidence contained in the process does not allow inference of the fact that the displaced person does not want a *tutela* action to be filed on his or her behalf. (…)

Therefore, the judges whose decisions are under review should not have refused to consider and give due course to the *tutela* actions filed by these associations on behalf of the displaced persons, on the grounds of excessively formal interpretations that disregard the informal nature of the *tutela* action and the lack of protection that affects thousands of Colombians, without examining in each concrete case whether these three requirements had been complied with. (…)

5. The constitutional case-law related to the violation of the rights of the displaced population. Orders issued to protect its constitutional rights, and persistence of the patterns of violation of such rights.

(…) Since 1997, when the Court dealt with the extremely serious situation of displaced persons in Colombia for the first time, 17 judgments have been adopted by the Court to protect one or more of the following rights: (i) on 3 occasions, to protect the displaced population from acts of discrimination; (ii) on 5 occasions, to protect life and personal integrity; (iii) on 6 occasions, to guarantee effective access to health care services; (iv) on 5 occasions, to protect the right to a minimum subsistence income[6], securing access to programs for economic re-establishment; (v) on 2 occasions, to protect the right to housing; (vi) in one case, to protect freedom of movement; (vii) on 9 occasions to guarantee access to the right to education; (viii) in 3 cases to protect the rights of children; (ix) in 2 cases to protect the right to choose their place of residence; (x) in 2 opportunities to protect the right to free development of their personality;

[5] "*Temeridad*"
[6] "*Mínimo vital*"

(xi) on 3 occasions to protect the right to work; (xii) in 3 cases to secure access to emergency humanitarian aid; (xiii) in 3 cases to protect the right of petition, related to requests for access to any of the programs for assisting the displaced population; and (xiv) on 7 occasions to prevent the use of the requirement of being registered as a displaced person as an obstacle for access to aid programs.

In spite of the importance of the Court's case-law on forced displacement, this section does not have the purpose of making an exhaustive review of the Court's doctrine on the issue, but rather, firstly, to determine the scope of the rights of the displaced population which have been protected by this Court, bearing in mind both the constitutional and legal framework, and the interpretation of the scope of said rights that was summarized in the 1998 international document entitled "Guiding Principles on Forced Internal Displacement"[7]. (…) In the second place, the purpose of this section is to identify the type of issues which have been resolved by the Court, and to determine the type of orders which have been issued up to this date to address the problem. (…)

5.2. Seriousness of the phenomenon of internal displacement, on account of the constitutional rights which are violated and the frequency of such violations.

The problem of forced internal displacement in Colombia, whose current dynamics began in the eighties decade, affects large masses of the population. The situation is so worrying, that on different occasions the Constitutional Court has described it as (a) "a problem of humanity that must be jointly addressed by all persons, starting, logically, by State officers"[8]; (b) "a true state of social emergency", "a national tragedy (…)" and "a serious danger for the Colombian political society"[9]; and, more recently, as (c) an "unconstitutional state of affairs", which "runs counter to the rationality that underlies constitutionalism", in causing an "evident tension between the pretense of political organization and the prolific declaration of values, principles and rights contained in the Fundamental

[7] United Nations, Document E/CN.4/1998/53/Add.2, February 11, 1998. Report by the Special Representative of the UN Secretary-General on Internal Displacements, Francis Deng.

[8] Colombian Constitutional Court, Decision T-227 of 1997, per Justice Alejandro Martínez Caballero (…).

[9] The three expressions were used in Colombian Constitutional Court, Decision SU-1150 of 2000, per Justice Eduardo Cifuentes Muñoz.

Text, and the daily, tragic verification of the exclusion of millions of Colombians from this agreement"[10].

This Court has also underscored that, because of the circumstances that surround internal displacement, those people who are forced to "suddenly abandon their place of residence and their habitual economic activities, having to migrate to another place within the frontiers of the national territory"[11] so as to flee from the violence generated by the internal armed conflict and the systematic violation of human rights or international humanitarian law—largely women providers, children and elderly persons-, are exposed to a much higher level of vulnerability, which implies a serious, massive and systematic violation of their fundamental rights[12] and, therefore, merits granting special attention by the authorities (…). In that sense, the Court has pointed out "the need to balance the State's political agenda towards the solution of internal displacement, and the duty to grant it priority over several different topics within the public agenda"[13] (…).

Among the fundamental constitutional rights which are threatened or violated by situations of forced displacement, this Court's case-law has pointed out the following:

1. The right to life in dignified conditions, given (i) the sub-human conditions associated to their mobilization and their stay at their provisional place of arrival, and (ii) the frequent risks that directly threaten their survival. The Guiding Principles on Forced Internal Displacement which contribute to the interpretation of this right in the context of forced internal displacement are Principles 1, 8, 10 and 13, which refer, *inter alia*, to protection against genocide, summary executions and practices that violate international humanitarian law which might place the life of the displaced population at risk.

2. The rights of children, women providers, persons with disabilities and elderly persons, and other specially protected groups, "on account of

[10] The three expressions were used in Colombian Constitutional Court, Decision T-215 of 2002, per Justice Jaime Córdoba Triviño.
[11] Colombian Constitutional Court, Decision T-1346 of 2001, per Justice Rodrigo Escobar Gil. (…)
[12] See, among others, Colombian Constitutional Court, Decision T-419 of 2003, SU-1150 of 2000.
[13] Colombian Constitutional Court, Decision T-215 of 2002, per Justice Jaime Córdoba Triviño.

the precarious conditions that must be faced by those who are forced to displace themselves"[14]. The interpretation of these rights must be carried out in accordance with the content of Principles 2, 4 and 9, on special protection for certain groups of displaced persons.

3. The right to choose their place of residence, insofar as, in order to escape from the risk that threatens their life and personal integrity, displaced persons are forced to flee their habitual place of residence and work[15]. Principles 5, 6, 7, 14 and 15 contribute to the interpretation of this right, in particular to determine the practices which are forbidden by international law because they entail a coercion towards the displacement of persons, or their confinement in places which they cannot leave freely.

4. The rights to freely develop their personalities, to freedom of expression and association, "given the climate of intimidation that precedes displacements"[16], and the consequences borne by such migrations over the materialization of the affected persons' life projects, which must necessarily adapt to their new circumstances of dispossession. Principles 1 and 8 are pertinent for the interpretation of these rights in the context of forced internal displacement.

5. Given the features of displacement, the economic, social and cultural rights of those who suffer it are strongly affected[17]. The minimum scope of these rights has been interpreted in accordance with Principles 3, 18, 19, and 23 through 27, which refer to the conditions to secure dignified living standards, and access to education, healthcare, work, among other rights.

6. In no few cases, displacement entails a separation of the affected families, thus violating their members' right to family unity[18] and to comprehensive protection of the family[19]. Principles 16 and 17 are aimed,

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[14] See, for example, Colombian Constitutional Court, Decision sT-215 of 2002, per Justice Jaime Córdoba Triviño (…), T-419 of 2003, per Justice Alfredo Beltrán Sierra (…).
[15] See, for example, Colombian Constitutional Court, Decision T-227 of 1997, per justice Alejandro Martínez Caballero (…).
[16] Colombian Constitutional Court, Decision SU-1150 of 2000
[17] See, for example, Colombian Constitutional Court, Decision T-098 of 2002, per Justice Marco Gerardo Monroy Cabra (…).
[18] Colombian Constitutional Court, Decision SU-1150 of 2000
[19] Colombian Constitutional Court, Decision T-1635 of 2000.

among other purposes, at determining the scope of the right to family reunification.

7. The right to health, in connection with the right to life, not only because displaced persons' access to essential healthcare services is substantially hampered by the fact of displacement, but because the deplorable living conditions they are forced to accept bear a very high potential to undermine their state of health, or aggravate their pre-existing illnesses, wounds or ailments[20]. Principles 1, 2 and 19 determine the scope of this right in the context of forced internal displacement.

8. The right to personal integrity[21], which is threatened both by the risks that threaten the health of displaced persons, and by the high risk of attacks to which they are exposed because of their condition of dispossession[22]. Guiding Principles 5, 6 and 11 refer to this right.

9. The right to personal security[23], given that displacement entails specific, individual, concrete, present, important, serious, clear, distinguishable, exceptional and disproportionate risks to several fundamental rights of the affected persons. Guiding Principles 8, 10, 12, 13 and 15 are pertinent for interpreting the scope of this right in the context of forced internal displacement.

10. Freedom of movement across the national territory[24] and the right to remain in the place chosen to live[25], given that the very definition of forced displacement presupposes the non-voluntary nature of the migration to another geographical location so as to establish a new place of residence therein. Principles 1, 2, 6, 7 and 14 are relevant for interpreting the scope of these rights in regards to the displaced population.

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[20] (…) Colombian Constitutional Court, Decision T-645 of 2003, per justice Alfredo Beltrán Sierra (…).
[21] Colombian Constitutional Court, Decisions T-1635 of 2000, T-327 of 2001 and T-1346 of 2001.
[22] See, for example, Colombian Constitutional Court, Decision T-327 of 2001, per justice Marco Gerardo Monroy Cabra.
[23] See, for example, Colombian Constitutional Court, Decision T-258 of 2001, per Justice Eduardo Montealegre Lynett, (…) T-795 of 2003, per Justice Clara Inés Vargas Hernández (…).
[24] Colombian Constitutional Court, Decisions T-1635 of 2000, T-327 of 2001, T-1346 of 2001 and T-268 of 2003.
[25] (…) Colombian Constitutional Court, Decision T-227 of 1997 (…)

11. The right to work[26] and the freedom to choose a profession or occupation, especially in the case of agricultural workers who are forced to migrate to the cities and, consequently, abandon their habitual activities. Principles 1 through 3, 18, 21, 24 and 25 are relevant for the interpretation of these rights, given that they establish criteria to secure the means for obtaining adequate livelihoods and protecting their property or possessions.

12. The right to a minimum level of nourishment[27], which is disregarded in a large number of cases on account of the levels of extreme poverty experienced by numerous displaced persons, which prevent them from satisfying their most essential biological needs and therefore bear an impact upon the adequate enjoyment of their remaining fundamental rights, in particular upon the rights to life, personal integrity and health. This is particularly serious when those affected are children. Principles 1 through 3, 18 and 24 through 27 are pertinent for interpreting the scope of this right, since they refer to the adequate living standards that must be secured for the displaced population, and to humanitarian assistance.

13. The right to education, in particular that of minors who suffer forced displacements and are thereby forced to interrupt their educational process[28]. In regards to this right, Principles 13 and 23 are relevant.

14. The right to dignified housing[29], given that persons in conditions of displacement have to abandon their own homes or habitual places of residence, and undergo inappropriate lodging conditions at the places where they are displaced to, whenever they are able to obtain them and are not forced to live outdoors. In regards to this right, Principles 18 and 21 establish minimum criteria which must be secured to the displaced population so as to provide them basic housing and lodging conditions.

15. The right to peace[30], whose essential nucleus includes the personal guarantee not to suffer, insofar as possible, the effects of war, especially

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[26] See, for example, Colombian Constitutional Court, Decision T-669 of 2003, per Justice Marco Gerardo Monroy Cabra (…)
[27] (…) Colombian Constitutional Court, Decision T-098 of 2002 (…)
[28] Colombian Constitutional Court, Decision T-215 of 2002, per Justice Jaime Córdoba Triviño.
[29] See, for example, Colombian Constitutional Court, Decision T-602 of 2003, per Justice Jaime Araujo Rentería. (…)
[30] See, for example, Colombian Constitutional Court, Decision T-721 of 2003, per justice Alvaro Tafur Galvis (…).

when conflict disregards the limits set by international humanitarian law, in particular the prohibition of attacking the civilian population[31]. Principles 6, 7, 11, 13 and 21 are pertinent to interpret this right, given that they prohibit disregarding the rules of international humanitarian law that protect non-combatants.

16. The right to legal personality, because on account of the displacement, the loss of identity documents poses obstacles to the registration of these persons as displaced individuals, as well as access to the different types of aid, and the identification of the legal guardians of minors who are separated from their families[32]. The scope of this right in the context of forced internal displacement is expressly regulated in Guiding Principle 20.

17. The right to equality[33], given that (i) even though the only circumstance which differentiates the displaced population from the remaining inhabitants of Colombian territory is precisely their situation of displacement, by virtue of this condition they are exposed to the aforementioned violations of their fundamental rights, as well as discrimination, and (ii) in no few cases, displacement is produced because of the affected person's affiliation to a specific group of the community, to which a given orientation in regards to the actors of the armed conflict is attributed, or because of their political opinion, all of which are differentiation factors proscribed by article 13 of the Constitution. This does not exclude, as it has already been said, the adoption of affirmative action measures in favor of persons in conditions of displacement, which is in fact one of the main obligations of the State, as recognized by constitutional case-law[34]. The scope of this right has been defined by Principles 1 through 4, 6, 9 and 22, which prohibit discrimination of the displaced population, recommend the adoption of affirmative measures in favor of special groups within the displaced population, and highlight the importance of securing equal treatment for displaced persons.

On account of the multiplicity of constitutional rights which are affected by displacement, and in attention to the aforementioned circumstances of special weakness, vulnerability and defenselessness that

[31] Colombian Constitutional Court, Decision C-328 of 2000, per justice Eduardo Cifuentes Muñoz.
[32] (…)Colombian Constitutional Court, Decision T-215 of 2002 (…).
[33] Colombian Constitutional Court, Decision T-268 of 2003, per justice Marco Gerardo Monroy Cabra.
[34] See, for example, Colombian Constitutional Court, Decision T-602 of 2003 (…).

surround displaced persons, constitutional case-law has underlined that these persons have, in general terms, the right to receive an urgent preferential treatment by the State (…).

(…) the State duty at hand finds its ultimate justification, according to constitutional case-law, in the State's inability 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. (…)

Furthermore, the scope of the measures that authorities are bound to adopt is determined in accordance [with] three basic parameters, which were clarified in decision T-268 of 2003, as follows: (i) the principle of favorability in the interpretation of the provisions that protect the displaced population, (ii) the Guiding Principles on Forced Internal Displacement, and (iii) the principle of prevalence of substantial law in the context of a Social State grounded in the Rule of Law (*Estado Social de Derecho*) (…).

5.3. The orders issued to protect the rights of the displaced population.

The Court has decided on 17 occasions about the rights of the displaced population. Its judgments have been primarily aimed at (i) correcting negligent or discriminatory actions[35] and omissions by the authorities in charge of assisting the displaced population[36]; (ii) indicating institutional responsibilities in assisting the displaced population[37]; (iii) clarifying the constitutional rights of the displaced population[38]; (iv) establishing criteria for the interpretation of the legal provisions that regulate the aid for this population, in such a way that its rights are effectively guaranteed[39]; (v) rejecting the authorities' unjustified tardiness

[35] See, for example, Colombian Constitutional Court, Decision T-227 of 1997, per Justice Alejandro Martínez Caballero (…)
[36] See, for example, Colombian Constitutional Court, Decision T-1635 of 2000, per Justice José Gregorio Hernández Galindo.
[37] See, for example, Colombian Constitutional Court, Decisions SU-1150 of 2000, per Justice Eduardo Cifuentes Muñoz; T-258 of 2001, per Justice Eduardo Montealegre Lynett (…).
[38] See, for example, Colombian Constitutional Court, Decision T-268 of 2003, per Justice Marco Gerardo Monroy Cabra (…).
[39] See, for example, Colombian Constitutional Court, Decision T-098 of 2002, per Justice Marco Gerardo Monroy Cabra (…)

or omission in assisting those who are affected by forced displacement[40]; (vi) exacting the development of adequate policies and programs to address this phenomenon[41]; (vii) clarifying the elements which give rise to the condition of displacement[42]; (viii) pointing out the obstacles that prevent the provision of adequate assistance to the displaced population, and which enhance or aggravate the violation of their rights[43]; (ix) indicating flaws or omissions in the policies and programs designed to assist the displaced population[44]; and (x) granting effective protection to the displaced population, particularly in cases of persons who are especially protected by the Constitution such as children, women providers, elderly persons and ethnic minorities[45].

In order to guarantee the effective protection of the displaced population, the Court has ordered (i) the different authorities that participate in the protection of the displaced population, to include the plaintiffs in the existing programs and policies within brief terms that range from 48 hours to 3 months after the notification of the judgment[46]; (ii) the President of the Republic, to coordinate with the different ministries and entities in charge of assisting the displaced population, the actions which are required to secure, within a maximum period of 30 days, a final solution for the problems faced by the plaintiffs[47]; (iii) to carry out, within a period of 48 hours, all the actions which are needed to transfer the plaintiff to a place where his life and integrity are not in danger[48]; (iv) the Social Solidarity Network, to include the plaintiff within the Single

[40] See, for example, Colombian Constitutional Court, Decision T-790 of 2003, per Justice Marco Gerardo Monroy Cabra (…)

[41] See, for example, Colombian Constitutional Court, Decision SU-1150 of 2000, per Justice Eduardo Cifuentes Muñoz (…)

[42] See, for example, Colombian Constitutional Court, Decision T-227 of 1997, per Justice Alejandro Martínez Caballero (…)

[43] See, for example, Colombian Constitutional Court, Decision T-419 of 2003, per Justice Alfredo Beltrán Sierra (…) and T-645 of 2003, per Justice Alfredo Beltrán Sierra (…).

[44] See, for example, Colombian Constitutional Court, Decision T-602 of 2003, per Justice Jaime Araújo Rentería (…)

[45] See, for example, Colombian Constitutional Court, Decision T-215 of 2002, per Justice Jaime Córdoba Triviño (…).

[46] See, *inter alia*, Colombian Constitutional Court, Decisions T-215 of 2002, per Justice Jaime Córdoba Triviño; SU-1150 of 2000, per Justice Eduardo Cifuentes Muñoz; T-327 of 2001 and T-098 of 2002, per Justice Marco Gerardo Monroy Cabra.

[47] See, for example, Colombian Constitutional Court, Decisions SU-1150 of 2000, per Justice Eduardo Cifuentes Muñoz, and T-1635 of 2000, per Justice José Gregorio Hernández Galindo.

[48] Colombian Constitutional Court, Decision T-258 of 2001, per Justice Eduardo Montealegre Lynett.

Registration System of Displaced Population; (v) the constitution of a Municipal Committee for the Comprehensive Assistance to the Displaced Population in a term of 10 days, in order for that Committee to establish, within a maximum term of 20 days, a program for the relocation and stabilization of the plaintiffs[49]; (vi) the Social Solidarity Network to coordinate with the Institute of Family Welfare the inclusion of the underage plaintiffs within the programs that exist in said entity, and to process in a preferential and quick manner, with the corresponding entity, their request for a family housing subsidy[50]; (vii) the Social Solidarity Network to grant the requested Emergency Humanitarian Aid[51]; (viii) the National Director of the Social Solidarity Network to include the plaintiffs within a productive project, articulated with a food security program[52]; (ix) the Social Solidarity Network to carry out, within a 48 hour term, the actions required to provide the comprehensive healthcare required by the plaintiff, through the corresponding entities[53]; (x) the Social Solidarity Network to provide, within a term of 48 hours, the necessary counseling to the plaintiff on the different alternatives of economic consolidation open to her[54]; (xi) the Social Solidarity Network to provide effective assistance and counseling to the plaintiff[55]; (xii) the Public Ombudsman's Office (*Defensoría del Pueblo*) to design and impart courses on the promotion of human rights and respect for the rights of the displaced population to different authorities, in order to increase their sensitivity to this problem[56]; (xiii) the National Government to regulate within a reasonable period Law 715 of 2001 in regards to the transfer and relocation of threatened teachers[57]; (xiv) the Public Ombudsman's Office, to oversee the

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[49] Colombian Constitutional Court, Decision T-1346 of 2001, per Justice Rodrigo Escobar Gil.
[50] Colombian Constitutional Court, Decision T-268 of 2003, per Justice Marco Gerardo Monroy Cabra
[51] Colombian Constitutional Court, Decision T-419 of 2003, per Justice Alfredo Beltrán Sierra
[52] Colombian Constitutional Court, Decision T-602 of 2003, per Justice Jaime Araujo Rentería
[53] Colombian Constitutional Court, Decision T-645 of 2003, per Justice Alfredo Beltrán Sierra
[54] Colombian Constitutional Court, Decision T-669 of 2003, per Justice Marco Gerardo Monroy Cabra.
[55] Colombian Constitutional Court, Decision T-721 of 2003, per Justice Alvaro Tafur Galvis.
[56] Colombian Constitutional Court, Decision T-227 of 1998, per Justice Alejandro Martínez Caballero.
[57] Colombian Constitutional Court, Decision T-795 of 2003, per Justice Clara Inés Vargas Hernández

dissemination and promotion of the rights of the displaced population[58]; (xv) the Nation's General Controller (*Procurador General de la Nación*) to oversee compliance with the orders issued in the corresponding judgment[59]; and (xvi) the Public Ombudsman's Office, to instruct the displaced population on its constitutional rights and duties[60].

The foregoing description of the violated rights, and of the *tutela* judge's response in cases that involve several family groups -which have on occasions been repeated up to nine times and which merited, for their extreme gravity, the intervention of this Court-, goes to prove that the pattern of violation of the rights of the displaced population has persisted over time, lacking the adoption of appropriate solutions to correct said violations by the competent authorities, in such a way that the concrete solutions ordered by the Court to address the violations identified in the judgments adopted up to this date, have failed to contribute to prevent the repetition of violations by the authorities which have been sued through *tutela* actions. Moreover, the situation of violation of the rights of the displaced population has even become worse, on account of the requirement posed [to displaced persons] by certain public officials, in the sense of filing *tutela* actions as a prior condition for the authorities in charge of their protection to comply with their duties.

6. Identification of the State actions or omissions that comprise violations of the constitutional rights of displaced persons.

The public policies for assisting the displaced population have failed to counter the serious deterioration of displaced persons' conditions of vulnerability, they have not secured the effective enjoyment of their constitutional rights, nor contributed to surmount the conditions that cause the violation of said rights. According to a recent study[61], said persons' basic living conditions are far from satisfying the nationally and internationally recognized rights. 92% of the displaced population has unsatisfied basic needs (UBN), and 80% is in conditions of extreme

[58] Colombian Constitutional Court, Decision T-1635 of 2000, per Justice José Gregorio Hernández Galindo

[59] Colombian Constitutional Court, Decision T-1635 of 2000, per Justice José Gregorio Hernández Galindo

[60] Colombian Constitutional Court, Decision T-721 of 2003, per Justice Alvaro Tafur Galvis.

[61] United Nations, World Food Programme, *"Vulnerabilidad a la Inseguridad Alimentaria de la Población desplazada por la violencia en Colombia, informe de 2003"*.

poverty. Likewise, 63.5% of the displaced population has inadequate housing, and 49% lacks access to appropriate public utilities.

In regards to the nutritional situation of the displaced population, it was concluded that the "calories gap"[62] of displaced households adds up to 57%, that is to say, they only consume 43% of the levels recommended by the World Food Program. Likewise, the study found that 23% of the displaced children under six years of age are below the minimum nutritional standards. In turn, the aforementioned nutritional insufficiencies translate into states of malnutrition which bring as consequences, *inter alia*, inadequacies in the size/weight and weight/age ratios, deficits in school attention, a predisposition to respiratory infections and diarrhea, eyesight reductions, and increases in child morbidity.

In regards to the level of access to education of the displaced population in schooling age, it was observed that 25% of the children between 6 and 9 years of age do not attend an educational institution, whereas this proportion for people between 10 and 25 years of age rises to 54%. Lastly, in regards to the health of the victims of forced displacement, mortality rates for the general displaced population are six times higher than the national average.

The serious situation of the displaced population has not been caused by the State, but by the internal conflict, and in particular, by the actions of irregular armed groups. However, by virtue of Article 2 of the Constitution, the State has the duty to protect the population affected by this phenomenon, and in this way it is bound to adopt a response to such situation.

Therefore the Court, in analyzing the public policies for assisting the displaced population, shall determine whether the State, through actions or omissions in the design, implementation, follow-up or evaluation of said policies, has contributed in a constitutionally significant manner to the violation of the fundamental rights of displaced persons. This Chamber shall base its observations on (i) several documents that analyze and evaluate of the policy for assisting the displaced population and its different programs, which have been incorporated into the present proceedings by governmental entities, human rights organizations and international organizations, and (ii) the answers to the questionnaire

[62] The nutritional gap measures a person's nutritional deficiencies in relation to the recommended amounts of nutrients.

formulated by the Third Review Chamber of the Court, which are summarized in Annex 2. (…)

Above all, the Chamber notes that over the last years some State entities, including the Social Solidarity Network, have made considerable efforts to mitigate the problems of the displaced population, and they have achieved important advances. (…) Between 1998 and 2003, the number of displaced persons who received emergency humanitarian assistance or some type of aid for socio-economic reestablishment increased considerably. Likewise, during 2003 a reduction in the number of newly displaced persons in the country was recorded. (…)

For the purpose of this analysis, the Court shall summarize (i) the State response to the phenomenon, (ii) the results of such policy, and (iii) its most salient problems. The detailed assessment of each aspect may be found in Annex 5 of this judgment.

6.1. The State response to the phenomenon of forced displacement.

The Court confirms that the public policy on forced displacement actually exists. A number of laws, decrees, CONPES documents, resolutions, memorandums, agreements and Presidential Directives comprise an institutional response aimed at addressing the problems of the displaced population, and regulate, in a concrete manner, both the assistance to the displaced population in its different components, and the type of behavior required from the different public entities and officials. The Court shall make a brief summary of the contents of such policy in accordance with the following elements: (i) the definition of the problem, (ii) the objectives and goals which have been established, (iii) the means created to achieve the goals, and (iv) the persons or bodies through which governmental entities must participate in the development of these policies.

6.1.1. In regards to the definition of the problem, several State documents contain a general description of the issue. CONPES Document No. 2804 of 1995 made a general description of the socio-economic, political and psycho-social consequences of the phenomenon of forced displacement in Colombia. Likewise, CONPES Document No. 3057 of 1999 defined, also in a general manner, the magnitude and features of forced displacement. In addition, both Law 387 of 1997 and Decree 2569

of 2000 define the condition of "displaced person"[63], and establish a single registration system, which reflects the magnitude of the problem in quantitative terms because it is administered through a database designed to include all of the persons who receive some sort of assistance. Finally, Law 387 of 1997 establishes the principles and the rights of displaced persons, which provide the grounds to interpret the legal provisions regarding State duties towards the displaced population[64].

6.1.2. In regards to the goals of the policies, Law 387 of 1997 and Decree 173 of 1998 point out the objectives of the National Plan for Comprehensive Assistance to the Displaced Population[65]. In turn, both Law 387 of 19997 and Decree 2569 of 2000 indicate the basic goals pursued through each one of the components of the assistance system. Lastly, Decree 173 [of 1998] establishes strategies for the execution of each one of the components, which include the actions, programs and projects that must be developed by State entities. Such goals are different throughout each one of the three stages in which the State policy has been legally structured: humanitarian aid, socio-economic stabilization and return or re-establishment.

6.1.3. These provisions also define the means to achieve the goals stated therein, and point out, at least in general terms, the entities which are responsible for their implementation, and the requirements, procedures and conditions for the provision of said services.

The functions that form part of the system of assistance to the displaced population in its different levels and components are assigned, on the one hand, to the entities that form part of SNAIPD, and on the other hand, to territorial entities. (…) the coordination of SNAIPD, which was formerly assigned to the Ministry of the Interior, became a responsibility of the Social Solidarity Network[66]. Furthermore, the Law assigned the National Council for Comprehensive Assistance to the Population Displaced by Violence the function of "securing the budgetary appropriations for the programs placed under the responsibility of the entities in charge of the functioning of the National Comprehensive Assistance System for the Displaced Population"[67] *inter alia*. The main

[63] (…) Article 1 of Law 387 of 1997 (…), Article 2 of Decree 2569 of 2000.
[64] Article 2, Law 387 of 1997.
[65] Article 10 of Law 387 of 1997, and Article 1-1 of Decree 173 of 1998. See also Article 4 of Law 387 of 1997, which indicates the objectives of SNAIPD.
[66] Article 1, Decree 2569 of 2000.
[67] Article 6, Law 387 of 1997.

Ministries with direct responsibilities in this field have a seat in such Council.

Emergency Humanitarian Aid must be provided by the Social Solidarity Network, either directly, or through agreements with non-governmental organizations (NGOs), private entities and international organizations. Access to such component is restricted to three months, exceptionally renewable for another three-month period. (…) the amount of resources assigned to this component depends on budget availability.

On the other hand, the execution of socio-economic stabilization programs[68] depends on budget availability[69], even though State entities may receive aid by humanitarian organizations, both national and international in nature. Conversely, the goods and services included in this component must be provided by several authorities, whether part of the National Government or of the territorial entities. Thus, in regards to housing solutions for the displaced population, Decree 951 of 2001 establishes the requirements and procedures to have access to housing subsidies, and it sets out the functions and responsibilities of the entities that intervene in the provision of this component of the assistance package (INURBE, for example). The programs for the generation of productive projects and access to work training programs are regulated in a general manner in Decree 2569 of 2000. Lastly, Decree 2007 of 2001 regulates the program for land access and tenure by displaced population, the implementation of which is a responsibility of territorial entities, the former INCORA and the public deeds registration offices, *inter alia*.

6.1.4. Finally, in regards to the persons or the private or international organizations that must participate in the design and implementation of the policy for assisting the displaced population, the pertinent legal provisions establish the following: First, the design and execution of the policies must be carried out with the participation of the displaced communities[70]. Second, State entities may enter into arrangements with NGOs[71]. Third, such provisions establish that the State may request aid from international

[68] Article 25, Decree 2569 of 2000. See also Articles 26-28 of the same decree and Article 17 of Law 387 of 1997.
[69] Article 25, Decree 2569 of 2000.
[70] Paragraph 3, Number 1 of Article 1 of Decree 173 of 1998.
[71] See, for example, the rules contained in Law 387 of 1997 and Decree 2569 of 2000, and Presidential Directive No. 7 of 2001.

organizations[72]. Lastly, the presidential directives hold that the State must promote a higher commitment of the civil society[73].

6.2. The results of the public policy for the attention of the displaced population.

Although the public policy for assisting the displaced population has been developed in normative terms since the year 1997, according to the reports that form part of these proceedings, its results have not managed to counter the situation of violation of the constitutional rights of most of the displaced population. Such results can be assessed according to (i) the data on the coverage of each one of the components of the assistance package, and (ii) the level of satisfaction of the displaced population.

6.2.1. According to the Joint Technical Unit—*Unidad Técnica Conjunta*[74]-, the advances in the formulation of the policies have not translated into the generation of concrete results. (…)

This is recognized by the studies made by the Social Solidarity Network itself—a national public entity, ascribed to the Administrative Department of the Presidency of the Republic[75]. According to data produced by the Social Solidarity Network, "61 per cent of the displaced population did not receive any help by the Government during the period between January 2000 and June 2001". Likewise, "only 30% of the persons who were displaced individually or in small groups received governmental assistance during the first eleven months of the current Government"[76].

The levels of coverage of all the components of the policy are insufficient. Emergency humanitarian aid, which is—as it has been mentioned—the component which has recorded the best results, had between 1998 and 2002 a coverage of 43% of the displaced households recorded by the Social Solidarity Network, 25% of the families reported

[72] For example, Article 23 of Decree 2569 of 2000.
[73] See, for example, the recommendations of Presidential Directive No. 6 of 2001.
[74] The Joint Technical Unit is composed by technicians who represent the Social Solidarity Network and UNHCR. Its tasks include counseling the entities that implement the policies for the attention of the displaced population, evaluating the policy's results, and identifying its problems.
[75] Law 368 of 1997.
[76] Social Solidarity Network, *Población y territorios afectados: Demanda de atención al Estado Colombiano*, at: www.red.gov.co, cited by International Crisis Group, *La Crisis Humanitaria en Colombia.* Informe de America Latina No. 4, July 9, 2003, p. 19.

by CODHES[77], and it has achieved 36% of the level set as a goal in the Strategic Plan[78]. If the focus is placed solely on the cases of individual displacement, the figures are even worse. In this case, coverage rises to 33% of the displaced persons recorded by the Social Solidarity Network, and 15.32% of those recorded by CODHES.

The results of the projects for self-generated income are lower still. In regards to the displaced population registered by the Social Solidarity Network, coverage is 19.5%. Likewise, when compared to the goals of the "Strategic Plan", it is 31.6%[79]. On the other hand, if assistance is placed not on the results of coverage, but on the level of success of the socio-economic stabilization programs to which some displaced persons have had access, it may be verified that, except for the work training programs, the reports presented to this Court regard these results as less than insufficient. The work training projects have obtained high results, but their coverage has been low, given that State action has focused mostly on productive projects.

In the rest of the components, the results are lower still. For example, the Joint Technical Unit estimates that during the 1998-2002 period, the housing programs have only achieved 11.4% of the goals they had stated, and that 3.7% of the potential demand has been satisfied. It also indicates that the housing solutions which have been built do not comply with the minimum conditions of access to public utilities, location, and quality of the materials or space distribution.

6.2.2. On the other hand, there is a high degree of dissatisfaction with the results of the policies. Firstly, the documents analyzed by the Court evince a broad and generalized discontent by the public and private organizations that evaluate the institutional response. Secondly, the same may be said of the displaced communities, as proven by the presentation of a very high number of *tutela* lawsuits, through which said persons try to gain access to the institutional offer, which is unreachable through the ordinary State programs.

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[77] CODHES is one of the country's main NGOs in the field of advocacy of displaced persons' rights.

[78] Between 1998 and 2002, the Social Solidarity Network provided emergency humanitarian aid to 69,054 households, which represents 36% of the 194,000 families set as a goal in the Strategic Plan.

[79] As compared to 100,000 households suggested in the Strategic Plan, these projects' coverage reached 31,623 homes.

6.3. The most salient problems of the policy for assistance to the displaced population.

This Chamber notes that the low results of the State response, because of which it has not been possible to provide comprehensive protection to the rights of the displaced population, may be explained by two main problems. (i) The precariousness of the institutional capacity to implement the policy, and (ii) the insufficient appropriation of funds. Such problems are summarized in the following segments. For a more detailed analysis of the problems of the public policy for assisting the displaced population, please refer to Section 2 of Annex 5 of this judgment.

6.3.1. Problems in the institutional capacity to protect the displaced population.

(…) This assessment will focus on (i) the design and regulatory development of the public policy to respond to forced displacement; (ii) the implementation of the policy; and (iii) the follow-up and evaluation of the activities carried out in implementation of the policy. (…)

6.3.1.1. In regards to the design and regulatory development of the policy, the following problems have been found.

(i) There does not exist an updated plan of action for the operation of SNAIPD, which can allow it to take a comprehensive look at the policy.

(ii) No specific goals or indicators have been established, which can allow for a verification of whether the purposes of the policy have been fulfilled or not. There are no clear priorities or indicators.

(iii) The distribution of functions and responsibilities between the different entities is vague. This is proven by the facts that (a) even though the entities that form part of SNAIPD and the territorial entities have been assigned functions in accordance with their jurisdictions, the pertinent legal provisions do not clarify exactly what each one of them must do, and on many occasions, responsibilities are duplicated; (b) the Social Solidarity Network is supposed to have coordinating functions, but lacks adequate instruments to carry out an effective coordination of the other entities that form part of SNAIPD. These deficiencies hamper the coordination of the different entities' actions, they preclude an adequate follow-up of the conduct of affairs, they undermine the establishment of priorities among the most urgent needs of the displaced population, and

they stimulate the inaction of the entities that form part of SNAIPD and the territorial entities.

(iv) Some of the organizations that provided reports for the present proceedings registered an absence, or a serious insufficiency, of some elements of the policy they regard as fundamental. In this sense, (a) no time terms are set for achieving the stated objectives, (b) there is no indication of the level of budgetary appropriations required to comply with the stated goals, (c) there is no concrete provision of the human resources needed to implement the policies, and (d) the appropriate administrative resources required for executing the policies are not assigned either.

(v) Many of the policies to assist the displaced population have lacked sufficient development. This is particularly the case in regards to the following aspects, according to the reports presented to the Court: (a) the participation of the displaced population in the design and execution of the policies has not been regulated. No efficient mechanisms aimed at fostering real intervention by the displaced population have been designed. (b) The displaced population lacks timely and complete information about its rights, the institutional offer, the procedures and requirements to gain access to it, and the institutions in charge of its provision. (c) The procurement and administration of the resources provided by the international community are managed in a fragmented and disorderly way. (d) There is no comprehensive or concrete development of the policies to raise the awareness of civil society about the magnitude of the phenomenon, and to involve the business sector in programs for its resolution. (e) There has not been any comprehensive development of programs or projects aimed at training the public officials. Especially at the territorial level, public officials are not adequately informed about their functions and responsibilities, the features of the phenomenon of displacement, nor about the necessities of the displaced population. They are not trained either in dealing with persons in conditions of displacement. (f) The policies to facilitate access to the institutional offer by the weakest displaced groups—such as women providers, children or ethnic groups—have not been regulated[80]. There are no special programs to respond to the specificity of the problems that affect said groups.

(vi) the design of emergency humanitarian aid, which emphasizes the time factor, has turned out to be too rigid to assist the displaced population effectively. The three-month time limit does not respond to the reality of

[80] See, for example, numbers 1-6 and 1-8 of Article 1 of Decree 173 of 1998.

the continuous violation of their rights, in such a way that the renewal of this aid over time does not depend on the objective conditions of that population's needs, but on the simple passage of time.

(vii) The distribution of functions in regards to urban productive projects is unclear, given that the IFI[81] is undergoing a merger. The same may be said of the land distribution programs, because the INCORA[82] is in liquidation. The evidence tends to indicate that at the moment, there are no entities that include within their functions the components related to land distribution and productive projects at the urban level.

6.3.1.2. In regards to the implementation of the policy for assisting the displaced population, (…) it is still centered in the formulation stage (…) and there exists an excessively broad gap between the issuance of legal provisions and the drafting of documents, on the one hand, and practical results, on the other. Implementation problems may be grouped in accordance with the following criteria:

(i) As regards the level of implementation of the policies for assisting the displaced population, the Court notes an insufficiency of concrete actions by the entities who have been assigned functions in this field. Many of the entities that form part of SNAIPD have not yet created special programs for the displaced population, even though the latter were defined as necessary. In turn, some of the territorial entities have failed to appropriate the necessary human or financial resources to comply with their obligations, and they have not yet established territorial committees. This is proven in regards to almost all of the components of the assistance package: (a) prevention mechanisms, i.e. the Early Warning System and Decree 2007—with regard to the freeze-up of transactions over rural land in areas with displacement risk-, have not been applied in a comprehensive manner, and they have been unable to prevent the phenomenon. (b) Information systems do not include all of the aid received by the registered population, nor the immovable properties abandoned on account of the displacement. (c) Emergency humanitarian aid is provided in a delayed manner, and with very low coverage levels. (d) As to the education of the displaced population in schooling age, the scarcity of school seats in some places is added to the lack of programs that can facilitate support in books, materials and minimum elements required by the different institutions,

[81] IFI stands for "Institute of Industrial Foment" – *Instituto de Fomento Industrial.*
[82] INCORA stands for "Colombian Institute for Agrarian Reform" – *Instituto Colombiano de Reforma Agraria*.

which stimulates school drop-out. (e) Socio-economic stabilization programs and land/housing distribution programs are made available to a minimum number of displaced persons. In the few cases in which credit facilities are granted, the responsible entities fail to provide the necessary counseling and advice. (f) As to the component on return processes, the economic re-activation programs have not been applied, and the elements which can allow the communities that try to return to their places of origin to survive autonomously have not been provided. The mechanisms to protect the property or possession of land by displaced persons have not been implemented either.

(ii) With regard to the adequacy and effective pertinence of the different components of the policy, the Chamber notes that, in certain cases, the means used to achieve the aims of the policy are not appropriate, as indicated by the reports presented to the Court: (a) In the field of socio-economic stabilization of displaced persons, the requirements and conditions to gain access to capital are not coherent with the economic reality of displaced persons. For example, in order to have access to some of the offered programs, the displaced population must prove that they own a house or land in which to develop the project. Likewise, the technical evaluation criteria for the productive projects submitted for financing do not match the conditions and skills of displaced persons. In addition, the establishment of maximum levels of finance for productive options excludes the possibility of taking into account the socio-demographic and economic specificities of each project. (b) In regards to health care, access by the displaced population to health services has been obstructed by the procedures required to have access to the service, on the one hand, and those required for the entities in charge of providing the service to be able to charge it to the FOSYGA[83], on the other. (c) The requirements and conditions to have access to housing loans do not match the economic necessities of displaced households. The requirements of savings periods, personal and commercial references, and other conditions, are in many cases impossible to meet by the displaced population. Such demands are discriminatory, and constitute entry barriers for access to this type of aid. (d) As to education, requiring displaced households to pay a minimum payable amount so that displaced persons in schooling age can gain access to educational positions have been an often insurmountable barrier for these minors' registration in the system.

[83] FOSYGA stands for "Solidarity and Guarantee Fund", *Fondo de Solidaridad y Garantía.*

(iii) With regard to the implementation and continuity of the policy, given that there are no mechanisms to follow-up the conduct of affairs by the different entities that form part of SNAIPD, nor fixed periods to evaluate the achievement of the objectives set for each component of the assistance package for the displaced population, it is not possible to evaluate the timeliness of the responsible entities in the execution of the programs. Nevertheless, it is possible to observe some deficiencies in the implementation of the policies, in regards to their times of execution. For example, the disbursement of the funds required to begin productive projects is delayed, and it is not made in accordance with the productive cycles of the businesses that actually manage to have access to credit aid. In addition, the provision of aid and services throughout the different stages of the process of assisting the displaced population is carried out in a discontinuous and delayed manner. (…) Hence the provision of emergency humanitarian aid can take up to six months, whereas the waiting periods to gain access to socio-economic stabilization programs and housing solutions are even more delayed (two years). In this sense, the transition period between the provision of emergency humanitarian aid and the socio-economic stabilization aid is excessively long, which forces the displaced population to bear highly precarious living conditions.

(iv) The implementation of the policy, in some of its components, has been excessively inflexible, for example, in the field of contracts, which precludes a prompt institutional response to the problem, that responds to the situation of emergency of the displaced population.

(v) Finally, certain tools used to implement the policy have generated negative effects upon the materialization of its objectives: (a) in the case of healthcare, the adoption of Memorandum 042 of 2002 which, in spite of having been designed to avoid double payments and to reincorporate part of the displaced population to the social security health system, generated over time a barrier in access to health services. (b) In regards to emergency humanitarian aid, it is noted that the domiciliary visit requirements imposed for the provision of said service have contributed to delay its provision. (c) In the housing acquisition subsidy programs, the lack of adequate information about the areas which are apt for the construction of housing have generated re-locations in marginal neighborhoods that lack basic public utilities, or in high-risk areas. (d) Agrarian credit lines have been developed in such a way that the responsibility of paying the debt is not assumed by displaced persons, but by organizations that “incorporate” the displaced population into productive projects, which generates a disincentive for these organizations

to actively participate in the implementation of said solutions. In turn, this has made access by the displaced population to income generation programs extremely difficult.

6.3.1.3. With regard to the follow-up and evaluation of the policy, the following observations are pertinent:

(i) As regards information systems, (a) the problem of sub-registration persists, particularly in cases of minor displacements, or individual ones, in which the affected persons do not resort to the Network to request their inscription. This weakness prevents an adequate estimation of the future effort that will be necessary to design the policies on return and devolution of property or reparation of damages caused to the displaced population; it is an obstacle to the exercise of control over the aid provided by other agencies; and it hampers the evaluation of the impact of the aid provided. (b) The single registration system does not include the aid that is not provided by the Social Solidarity Network, which excludes the follow-up of the provision of the education, healthcare and housing services from registration. (c) Registration systems are not sensitive to the identification of the specific needs of the displaced persons that belong to highly vulnerable groups, such as women providers and ethnic groups. (d) Registration systems do not include information about the lands that were abandoned by the displaced persons. (e) The available information on each displaced person is not aimed at identifying their possibilities of autonomous income generation in the receiving areas, which undermines the implementation of socio-economic stabilization policies.

(ii) there do not exist systems to evaluate the policy.[84] The policy does not include a system designed to detect mistakes or obstacles in its design and implementation, needless to say one that allows an adequate and timely correction of such failures. There are no systems or indicators for the verification, follow-up and evaluation of results, either at the national or territorial levels.

6.3.1.4. In conclusion, the Court considers that the State's response has serious deficiencies in regards to its institutional capacity, which cross-cut all of the levels and components of the policy, and therefore prevent, in a systematic manner, the comprehensive protection of the rights of the

[84] The existence of these instruments is, to say the least, very difficult, if it is taken into account that there are no precise objectives, clear goals, terms for the achievement of such goals nor specific responsibilities in regards to their materialization.

displaced population. The *tutela* judge cannot solve each one of these problems, which corresponds to both the National Government and territorial entities, and to Congress, within their respective margins of jurisdiction. Nevertheless, the above does not prevent the Court, in verifying the existence of a situation of violation of fundamental rights in concrete cases, from adopting corrections aimed at ensuring the effective enjoyment of the rights of displaced persons, as it will do in this judgment, nor from identifying remedies to overcome these structural flaws, which involve several State entities and organs.

6.3.2. Insufficient appropriation of resources for the implementation of the policies to assist the displaced population.

(…) The central government has destined financial resources which fail to meet the requirements of the policy, and many territorial entities have failed to destine their own resources to attend to the different programs, even though the CONPES Documents[85] established the level of resources required to secure the fundamental rights of the victims of displacement. The insufficiency of resources has affected most of the components of the policy, and it has caused the entities that form part of SNAIPD to be unable to advance concrete actions which are adequate to materialize the objectives set forth in the policy. It is for this reason that the level of implementation of the policies is insufficient *vis-á-vis* the necessities of the displaced population, and that the degrees of coverage of its different components are so low.

Even though there was a significant increase in the resources destined to assist the displaced population between 1999 and 2002, the absolute level of the amounts included in the budget is still insufficient, and way below the levels required to (a) satisfy the demand of displaced persons, (b) protect the fundamental rights of the victims of this phenomenon, and (c) effectively develop and implement the policies established in the Law and developed by the Executive through regulations and CONPES documents. In addition, this Chamber verifies that for the year 2003, the amount of resources expressly and specifically appropriated for the execution of said policies was reduced. For example, in 2002 103.491 million pesos were assigned within the Nation's General Budget for the "displaced population", whereas in 2003 such amount was of 70,783

[85] CONPES documents are adopted by the National Council on Economic and Social Policy, and they contain such Council's guidelines on specific aspects of such policy.

million, thus undergoing a 32% reduction in the funds appropriated for that purpose[86].

However, Law 387 of 1997 states in several provisions that the policy to assist the displaced population is not only a priority matter[87], but that the provision of the aid included therein to protect the rights of the displaced population is not conditioned to the availability of resources. (…)

On the contrary, in regards to financial restrictions, article 6 of Law 387 of 1997 states that the National Council for Comprehensive Assistance to the Population Displaced by Violence is in charge, *inter alia*, not of seeking or promoting but of *"securing the budgetary appropriation of the [funds for the] programs entrusted to the entities in charge of the operation of the National Comprehensive Assistance System for the Displaced Population."* (…)

Likewise, article 22 of Law 387 of 1997 states that the National Fund for the Comprehensive Assistance of the Population Displaced by Violence has the purpose of "financing and/or co-financing programs for the prevention of displacement, emergency humanitarian aid, return, socio-economic stabilization and consolidation, and installation and operation of the National Information Network". Likewise, article 25 states that "the National Government shall carry out the corresponding budgetary adjustments and transfers within the General Budget of the Nation, in order to assign the Fund the resources which are required to fulfill its objectives".

Nevertheless, articles 16, 17, 20, 21, 22, 25, 26 and 27 of Decree 2569 of 2000, in regulating Law 387 of 1997, conditioned access to emergency humanitarian aid and to socio-economic stabilization programs to the availability of resources in the budget. (…) In this way, Law 387 of 1997 established a level of comprehensive protection for internally displaced persons, and ordered to secure the resources required to fulfill such comprehensive assistance, but the Decree at hand conditioned the legal mandates to the availability of resources. The Chamber considers that a regulatory decree may not be granted the legal effect of modifying legislation, nor of disregarding the constitutional provisions that order the

[86] (…) See section 1.1. of Annex 4 of this judgment. (…)

[87] In this sense, it is important to recall Colombian Constitutional Court, Decision SU-1150 of 2000 (per Justice Eduardo Cifuentes Muñoz)

authorities to effectively protect the rights of all the inhabitants of the national territory. (…) Therefore, the legal provisions that will guide this Chamber in ensuring the harmonization of the comprehensive protection duty assumed in Law 387 of 1997 and the resources that must be appropriated for that purpose, shall be mainly the constitutional ones, as developed by Congress.

These provisions include the ones that develop the constitutional principle of legality of public expenditure (articles 6, 113, 345, 346 and 347 of the Constitution). According to this principle, 'there may be no [public expenditure] which has not been established in the public expenses budget or which has not been approved by Congress, the departmental assemblies or municipal councils, nor can any chapter be included within the appropriations law that does not correspond to a judicially recognized credit, an expense ordered in accordance with a pre-existing law, an expense proposed by the Government to finance the functioning of the branches of public power, the payment of external debt, or to comply with the National Development Plan'[88].

Within the General Budget of the Nation, the National Government and Congress have assigned, for assisting the displaced population, a level of resources which, in spite of having increased until the year 2002, is significantly lower than what is required to comply with the mandates of Law 387 of 1997, according to the aforementioned CONPES documents.

CONPES Document 3057 of 1999 recommended that a total of 360 million dollars should be appropriated for years 2000, 2001 and 2002, without including the assignation of lands and housing. On the other hand, CONPES Document 3115 of 2001 recommended the appropriation of 145 thousand million pesos for 2001, and 161 thousand million pesos for 2002. However, according to the figures submitted by the Social Solidarity Network and UNHCR, "the resources appropriated by the National Government for the attention to forced displacement (…) added up (between January 1999 and June 2002) to 126.582 million"—an amount that is quite inferior to the one required by the aforementioned documents. In addition, the Court verifies that the resources included within the General Budget of the Nation to assist the "displaced population" in 2003

[88] Colombian Constitutional Court, Decision C-428 of 2002, per Justice Rodrigo Escobar Gil. See also Colombian Constitutional Court, Decisions C-553 of 1993, per Justice Eduardo Cifuentes Muñoz, and C-685 of 1995, per Justice Alejandro Martínez Caballero.

decreased by 32% when compared to the resources appropriated for the previous year.

(…) The fact that the annual budget laws have limited the appropriation of resources for the assistance of the displaced population is an indicator of the fiscal and macro-economic reality of the country. However, this does not mean that the budget laws can modify the scope of Law 387 of 1997, for the following reasons. First, whereas annual budget laws include, in a general way, all of the chapters and appropriations that are to be spent within a fiscal year, Law 387 of 1997 establishes specific legal provisions on the public policy for assisting the displaced population. Therefore, budgetary laws lack the material specificity required for them to be considered as a modification of the legal mandates concerning assistance to the victims of displacement and legally recognized rights. (…) Second, constitutional case-law has established that annual budget laws contain authorizations, and not orders, for the materialization of certain expenditures. In turn, Law 387 of 1997 contains an order directed to certain authorities, in the sense of "guaranteeing" the procurement of the resources that may be necessary to comply with the mandates on assisting the displaced population. Consequently, the distribution of resources made in the General Budget may not be taken as a legal statement that modifies the orders included in Law 387 of 1997.

On the other hand, the resources destined by private persons, NGOs, and the international community to assisting the displaced population do not compensate the insufficient appropriation of funds by the State. In addition, no mechanisms have been established to cover the long-term imbalances that may arise whenever the resources from said sources are less than what has been budgeted, or fail to arrive on time.

From the constitutional point of view, it is imperative to appropriate the budget that is necessary for the full materialization of the fundamental rights of displaced persons. The State's constitutional obligation to secure adequate protection for those who are experiencing undignified living conditions by virtue of forced internal displacement may not be indefinitely postponed. (…) This Court's case-law has reiterated the priority that must be given to the appropriation of resources to assist this population and thus solve the social and humanitarian crisis generated by this phenomenon.

(…) the National Council for Comprehensive Assistance to the Population Displaced by Violence (…), composed of the different public

officials who have responsibilities regarding the assistance of the displaced population, including the Ministry of Public Finance (…) has the responsibility of calculating the dimensions of the budgetary efforts required to secure the effectiveness of the protection designed by the Legislator through Law 387 of 1997.

Nonetheless, this has not happened, and thus the Constitution has been disregarded, as well as the mandates of Congress and the contents of the development policies adopted by the Executive itself.

In order to correct this situation, it is necessary for the different national and territorial entities in charge of assisting the displaced population to fully comply with their constitutional and legal duties, and to adopt, in a reasonable term and within their spheres of jurisdiction, the necessary corrective measures to secure sufficient budgetary appropriations. (…)

This does not mean that, in the present case, the *tutela* judge is ordering an expense not included in the budget, or modifying the budgetary programming defined by the Legislator. Nor is it the case that new priorities are being defined, or that the policy designed by the Legislator and developed by the Executive is being modified. On the contrary, the Court, bearing in mind the legal instruments that develop the policy for assisting the displaced population, as well as the design of the policy and the commitments assumed by the different entities, is resorting to the constitutional principle of harmonious collaboration between the different branches of public power, in order to secure compliance with the duty of effective protection of the rights of all residents in the national territory. This is within the jurisdiction of constitutional judges in a Social State grounded on the rule of law, in regards to rights that impose duties with a clearly positive dimension, as it will now be explained.

The Court concludes that the State's response has not produced, as a result, the effective enjoyment of constitutional rights by all internally displaced persons. (…)

7. Verification of an unconstitutional state of affairs in the situation of the displaced population.

(…) Whenever a repeated and constant violation of fundamental rights is verified, which affects a multitude of persons, and whose solution requires the intervention of different entities to address problems o a

structural nature, this Court has declared the existence of an unconstitutional state of affairs, and has ordered the adoption of remedies that benefit not only those who have resorted to the *tutela* action in order to obtain protection of their rights, but also other persons who share the same situation but have not filed *tutela* lawsuits[89].

The factors evaluated by the Court in order to determine whether an unconstitutional state of affairs exists include the following: (i) a massive and generalized violation of several constitutional rights, which affects a significant number of people[90]; (ii) a protracted omission by the authorities in complying with their obligations to secure rights[91]; (iii) the adoption of unconstitutional practices, such as the incorporation of the *tutela* action as part of the procedure to secure the violated rights[92]; (iv) failure to adopt the legislative, administrative or budgetary measures required to prevent the violation of rights[93]; (v) the existence of a social problem whose resolution requires the intervention of several entities, demands the adoption of a complex and coordinated set of actions, and exacts a level of resources that implies an important additional budgetary effort[94]; (vi) if all the persons affected by the same problem were to resort to the *tutela* action in order to obtain the protection of their rights, a higher judicial congestion would be produced[95].

(…) The Court has declared the existence of an unconstitutional state of affairs on seven occasions. The first time, it did so because of the failure of two municipalities to affiliate the teachers under their responsibility to the National Fund for Teachers' Work Benefits (*Fondo*

[89] See, among others, Colombian Constitutional Court, Decisions T-068 of 1998, per Justice Alejandro Martínez Caballero; T-153 of 1998, per Justice Eduardo Cifuentes Muñoz; SU-250 of 1998, per Justice Alejandro Martínez Caballero; T-590 of 1998, per Justice Alejandro Martínez Caballero; T-606 of 1998, per Justice José Gregorio Hernández Galindo; SU-090 of 2000, per Justice Eduardo Cifuentes Muñoz; T-847 of 2000, per Justice Carlos Gaviria Díaz; T-1695 of 2000, per Justice Martha Victoria Sáchica Méndez.

[90] For example, in Colombian Constitutional Court, Decision SU-559 of 1997, per Justice Eduardo Cifuentes Muñoz (…).

[91] For example, in Colombian Constitutional Court, Decision T-153 of 1998, per Justice Eduardo Cifuentes Muñoz (…).

[92] For example, in Colombian Constitutional Court, Decision T-068 of 1998, per Justice Alejandro Martínez Caballero (…).

[93] For example, in Colombian Constitutional Court, Decision T-1695 of 2000, per Justice Marta Victoria Sáchica Méndez (…).

[94] For example, in Colombian Constitutional Court, Decision T-068 of 1998, per Justice Alejandro Martínez Caballero (…).

[95] (…)Colombian Constitutional Court, Decision T-068 of 1998 (…).

Nacional de Prestaciones Sociales del Magisterio), even though the legal discounts for pensions and work benefits had been made[96]. After this decision, the Court has declared unconstitutional states of affairs on six more occasions: 1) because of the situation of continuous violation of the rights of the accused and processed individuals who were detained in the country's different prisons[97]; 2) because of the lack of a social security healthcare system for detained accused individuals and sentenced prisoners[98]; 3) because of the habitual tardiness in the payment of pensions, for a long period of time, in the departments of Bolívar[99] and 4) Chocó[100]; 5) because of the omissions in the protection of the lives of human rights activists[101]; and 6) in view of the failure to summon a merit-based competition for the designation of notary publics[102].

(…) The Court has consequently ordered, among other things and in accordance with each specific case, (i) to design and implement the policies, plans and programs required to secure in an adequate manner the fundamental rights whose effective enjoyment depends on the resolution of the unconstitutional state of affairs; (ii) to appropriate the funds required to secure the effectiveness of such rights; (iii) to modify the practices, organizational and procedural flaws that violate the Constitution; (iv) to amend the legal framework whose failures have contributed to the unconstitutional state of affairs; and (v) to carry out the administrative, budgetary or contracting procedures which are necessary to overcome the violation of rights.

In the case at hand, even though the Court has underlined the seriousness of the humanitarian crisis caused by forced displacement since 1997, when it adopted its first judgment on the matter, and although it has mentioned in some of its decisions that this phenomenon could constitute

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[96] Colombian Constitutional Court, Decision SU-559 of 1997, per Justice Eduardo Cifuentes Muñoz.
[97] Colombian Constitutional Court, Decision, T-153 of 1998, per Justice Eduardo Cifuentes Muñoz.
[98] Colombian Constitutional Court, Decisions T-606 and T-607 of 1998, per Justice José Gregorio Hernández Galindo.
[99] Colombian Constitutional Court, Decision T-525 of 1999, per Justice Carlos Gaviria Díaz.
[100] Colombian Constitutional Court, Decision SU-090 of 2000, per Justice Alejandro Martínez Caballero.
[101] Colombian Constitutional Court, Decision T-590 of 1998, per Justice Alejandro Martínez Caballero (…).
[102] Colombian Constitutional Court, Decisions SU-250 of 1998, per Justice Alejandro Martínez Caballero; T-1695 of 2000, per Justice Marta Victoria Sáchica Méndez.

an unconstitutional state of affairs, until this date, such state has not been formally declared. Consequently, no orders have been issued in order to overcome it.

(…) Several elements confirm the existence of an unconstitutional state of affairs in regards to the situation of the internally displaced population.

In the first place, the gravity of the situation of violation of constitutional rights faced by the displaced population was expressly recognized by the Legislator itself, in defining the condition of displacement, and highlighting the massive violation of several rights. Indeed, paragraph 1 of Article 1 of Law 387 of 1997 states:

"Article 1. Displaced persons. A displaced person is any person who has been forced to migrate within the national territory, abandoning his/her habitual place of residence or economic activities, because his/her life, physical integrity, personal security or freedoms have been violated or are directly threatened, on account of any of the following situations: the internal armed conflict, internal disturbances and tensions, generalized violence, massive violations of human rights, violations of international humanitarian law, or any other circumstances arising from the foregoing situations which can alter, or drastically alter public order".

In second place, another element that confirms the existence of an unconstitutional state of affairs in the field of forced displacement, is the high volume of *tutela* actions filed by displaced persons in order to obtain the different types of aid or an increase therein[103], as well as the verification, made in some policy analysis documents, of the fact that the filing of *tutela* actions has been incorporated into the administrative procedures, as a prior condition for obtaining aid[104].

[103] This high volume may be proven by the number of *tutela* actions filed by displaced persons which have been reviewed by the Constitutional Court until this date, by the number of dossiers accumulated to the present proceedings which are representative of the type of problems faced by the displaced population across the entire country, and by the total number of *tutela* lawsuits filed by displaced persons against the Social Solidarity Network from 1999 to present, which, according to the Court's information system, is more than 1200.

[104] Such is the case of the assignation of housing subsidies by the INURBE, because the resources which have been distributed correspond exclusively to those who filed *tutela* lawsuits. See Annex 5 on the observations to the corresponding public policy.

In addition to the above, even though there has been an evolution in the policy, it has also been proven that many of the problems addressed by the Court are rather old, and that in regards to them, authorities are still failing to adopt the necessary corrections (see section 6 of this judgment).

(…) In the third place, the dossiers which have been accumulated in the present *tutela* proceedings confirm such unconstitutional state of affairs, and indicate that the violation of rights affects a large part of the displaced population in several places of the national territory, and that the authorities have failed to adopt the required solutions (see the foregoing sections of this judgment). (…) This situation has worsened the conditions of vulnerability of this population, and the mass violation of its rights (see section 6 and Annex 5 of this Judgment).

Fourth, the continuous violation of said rights is not attributable to one single entity. Indeed, as noted above, several State entities, by action or omission, have allowed the continuation of the violation of the fundamental rights of displaced persons, in particular the national and local entities in charge of securing the availability of resources to ensure that the different components of the assistance policy benefit the displaced population under conditions of equality (…).

Fifth, the violation of the rights of displaced persons is due to the structural factors indicated in Section 6 of this judgment, which include a lack of harmony between the contents of legal provisions and the means to materialize them—an aspect that gains special dimensions when the focus is placed on the insufficiency of resources, as compared to the evolution of the problem of displacement, and when the magnitude of the problem is evaluated *vis-à-vis* the institutional capacity to address it in a timely and effective manner (…).

In conclusion, the Court shall formally declare the existence of an unconstitutional state of affairs in regards to the living conditions of the internally displaced population, and it shall adopt the corresponding judicial remedies, with due respect for the spheres of jurisdiction and the expertise of the authorities in charge of implementing the pertinent policies and executing the relevant legislation. Therefore, both the national and the territorial authorities, within their spheres of jurisdiction, shall adopt the corrective measures necessary to overcome such state of affairs.

8. The Social State grounded on the rule of law and the constitutional duties of the authorities in regards to the positive obligations imposed by human rights. The constitutional requirement of harmony between the objectives of the policy to assist the displaced population and the economic and administrative means required to materialize them in an effective and timely manner.

After verifying the existence of an unconstitutional state of affairs and adopting the decision of formally declaring it, the Chamber must determine which is the appropriate judicial remedy, bearing in mind the magnitude of the violation of rights, the number of persons who cannot enjoy them and the goals that the State must reasonably achieve in order to comply with its protective duties.

For this purpose, it is necessary to delimit the sphere of jurisdiction of the *tutela* judge in complying with his/her function of ensuring the effective—not theoretical—enjoyment of fundamental rights. In this sense, it is pertinent to recall the implications of the principle of a Social State grounded on the rule of law, so as to identify the role of the constitutional judge (8.1.), to identify the scope of the positive dimension of the duties imposed by social rights and of the right to life and basic liberties (8.2.), and to define the specific duties of authorities when the effective enjoyment of the fundamental rights of an identifiable group of persons—such as the displaced population—depends on the destination of scarce resources and on the development of higher institutional efforts (8.3.).

8.1. As this Court has reiteratively pointed out, the fact that Colombia is a Social State grounded on the rule of law "grants a meaning, a character and specific objectives to the State organization as a whole, which is consequently binding upon the authorities, who must guide their activities towards the achievement of the specific goals that are distinctive of such a system: the promotion of dignified living conditions for all persons, and the resolution of the real inequalities that are present in society, in order to implant a fair system"[105].

The historic origins of this model and its developments, confirm that unless the real limitations and inequalities faced by man in everyday life are effectively countered through positive and focalized actions by the

[105] Colombian Constitutional Court, Decision T-772 of 2003, per Justice Manuel José Cepeda Espinosa.

authorities, human freedom and equality shall not cease to be abstract utopias. (…)

The above implies that authorities are bound—through the means that they consider appropriate—to correct the visible social inequalities, to facilitate the inclusion and participation of the weak, marginalized and vulnerable sectors or the population in the economic and social life of the nation, and to stimulate a progressive improvement of the material living conditions of the most disadvantaged sectors of society. (…)

The foregoing statements entail two types of duties for the State. On the one hand, it must adopt and implement positive policies, programs or measures to achieve a real equality of conditions and opportunities between the members of society, and in doing so, to comply with its constitutional duties of progressive satisfaction of the basic economic, social and cultural rights of the population—applying what constitutional case-law has designated as the "eradication of present injustices clause"-[106]. And, on the other hand, it must abstain from developing, promoting or executing policies, programs or measures which are markedly retrogressive in regards to economic, social and cultural rights, which can lead in a clear and direct manner to aggravate the situation of injustice, exclusion or marginalization that should be corrected—which does not prevent the State from advancing gradually and progressively towards the full enjoyment of such rights.[107]

In that sense, this Court has also underscored that the adoption of measures in favor of marginalized groups is not a merely discretional function of the Legislator, but a clear mandate of action, aimed at transforming the material conditions that give rise to, or perpetuate, social exclusion and injustice. Although this State duty needs to be developed by the legislation and is linked to the corresponding budgetary appropriations, it may not be indefinitely postponed within the State agenda. (…)

On the other hand, within a Social State grounded on the Rule of Law, the aforementioned duties of the authorities are not restricted to the so-

[106] Colombian Constitutional Court, Decision SU-225 of 1997, per Justice Eduardo Cifuentes Muñoz. (…) This doctrine has been reiterated, inter alia, in Colombian Constitutional Court, Decisions T-177 of 1999, per Justice Carlos Gaviria Díaz; T-840 of 1999, per Justice Eduardo Cifuentes Muñoz; T-772 of 2003, per Justice Manuel José Cepeda Espinosa.

[107] See, in this sense, Colombian Constitutional Court, Decision C-671 of 2002, per Justice Eduardo Montealegre Lynett.

called "second generation" rights. On the contrary, under certain circumstances the effective enjoyment of the right to life in dignified conditions and other basic freedoms may well depend on the adoption of positive actions by the authorities, aimed at guaranteeing the positive duties imposed by such rights and liberties. Said positive actions, whenever directed to respond to the needs of many persons, can be progressively developed so as to secure the effectiveness of the programmatic and positive obligations imposed by a constitutional right, provided that the minimum levels of satisfaction have been ensured for all.

8.2. As highlighted by the Court in decision T-595 of 2002[108], the fact that a given right has a markedly programmatic dimension does not mean that it is not enforceable, or that it can be eternally disregarded:

"(…) As the years go by, if the responsible authorities have not adopted effective measures that secure advances in the materialization of the positive obligations imposed upon them by constitutional rights, they are gradually incurring in a violation that grows more serious over the course of time. (…) Taking rights seriously demands, in addition, taking progressiveness seriously, as pointed out by the competent international organizations. In the first place, progressiveness refers to the effective enjoyment of a right, and therefore it does not justify the exclusion of certain groups of society from its enjoyment. Insofar as certain social groups, given their physical, cultural or socioeconomic conditions, can only fully enjoy the positive content protected by a given right if the State adopts policies that imply public expenditure and require administrative measures, the progressive nature of these positive obligations prevents the State from being totally indifferent to the needs of such groups, because this would imply perpetuating their situation of marginalization, which is incompatible with the fundamental principles on which participative democracies are based. In the second place, the progressiveness of certain positive obligations imposed by a right makes it necessary for the State to incorporate, within its policies, programs and plans, resources and measures aimed at advancing in a gradual manner in the achievement of the goals set by the State itself for the purpose of allowing all inhabitants to effectively enjoy their rights. In the third place, the State can—through its corresponding entities—define the scope of the commitments it acquires with its citizens with the aim of materializing said objective, and it can also determine the rhythm at which it will advance in the

[108] Colombian Constitutional Court, Decision T-595 of 2002, per Justice Manuel José Cepeda Espinosa.

achievement of such commitments. However, these publicly adopted decisions must be serious, for which reason they must be based on a rational decision-making process that structures a public policy which can be implemented, in such a way that the democratically acquired commitments are not mere promises lacking all potential of being materialized. Thus, when such commitments have been enshrined in the legislation and they constitute measures which are indispensable to achieve the effective enjoyment of fundamental rights, interested parties may demand, by judicial means, compliance with the corresponding positive obligations".

When the State fails to adopt measures in regards to the marginalization of certain members of society, without a constitutionally acceptable justification, and when it is proven that this failure violates a fundamental constitutional right, the judge's function will be "not to replace the organs of public power which have incurred in the failure, but to order compliance with the duties of the State".

In the case of the displaced population, in order to ensure the effective enjoyment of its fundamental rights, the State's response must comprise positive actions, which highlights the positive obligations which—together with an obligation of defense against the arbitrary—are imposed by all of the rights whose violation has led the Court to declare an unconstitutional state of affairs.

(…) Although many of the components of such policy have a markedly programmatic dimension, even though they correspond to the positive obligations imposed by the violated fundamental rights of the displaced population, and even though their materialization depends on the availability of resources, this does not mean that the State can, without limitations, adopt measures that represent, in fact, a retrogression in some of the aspects of the legally designed and institutionalized policy, which is still the same in paper.

In the present case, through insufficient budgetary allocations and through the omission in the correction of the most salient flaws in institutional capacity, (…) the progressive advance in the satisfaction of the rights of the displaced population has not only been delayed, but it has deteriorated over time in certain aspects which have already been mentioned, in spite of the achievements made in the reduction of the rhythm at which the phenomenon has been growing. This translates into a failure to comply with the formally defined levels of protection (…) by the

competent legislative and executive authorities, and it counters the facts that (i) social expenditure, and expenditure for assisting the marginalized population, is regarded as a priority; (ii) there exists a State policy to provide comprehensive assistance to the displaced population; (iii) that policy was discussed and approved by Congress, which granted it a normative nature through a law of the Republic that dates back to 1997; (iv) there exists a regulatory framework which has developed—although not in their entirety—the components of the policy; (v) national and territorial authorities have undertaken commitments towards the displaced population, which are indefinitely postponed on account of the lack of sufficient resources and other types of flaws in the institutional capacity of the responsible entities; and (vi) there exist official documents which have quantified the financial effort required to enforce the displacement policy, and such documents have been approved by the CONPES.

8.3. Such retrogression is, prima facie, contrary to the constitutional mandate of ensuring the effective enjoyment of the rights of all displaced persons. Therefore, the foremost duty of the relevant authorities is to prevent such practical retrogression in any aspects of the level of protection of the rights of all displaced persons wherever it has taken place, even if such retrogression is a result of the evolution of the problem, and of factors that were beyond the will of the responsible public officials. The gravity, magnitude and general complexity of a problem do not justify, in themselves, the fact that the level of protection given to certain rights does not correspond to constitutional mandates, all the more if these mandates have been developed by a law approved by Congress and they have been regulated by the Executive. Neither is it constitutionally admissible for the scope of such protection to be reduced in practice, without acknowledging such reduction or adopting the pertinent corrections in a timely and adequate way. On the other hand, the constitutional judge may not disregard the features of the real context in which a violation of fundamental rights has been verified, so as to prevent the orders issued to protect them from being innocuous or unattainable. However, the constitutional judge must see to it that the maximum level of protection afforded by the rules in force is achieved, and demand a resolution of the differences between the legally defined duties and the ones complied with in fact, so as to achieve a real enjoyment of the constitutional rights of all the affected persons, in this case by the displaced population.

8.3.1. From the above it may be deduced that the progressive character of certain rights, and the positive obligations imposed by a right, demand

that the authorities be reasonable in the design and articulation of the public policies that concern such rights, so that said policies are transparent, serious and coherent (…). Transparency requires that the positive obligations which will be legally secured, as well as the identity of those responsible for complying with the legal mandates, be made public. Seriousness requires that whenever a policy is incorporated into a legal instrument, such as a law or a decree, the legal (not political or rhetoric) force of such instrument is respected, and therefore, that the scope of the recognized rights is defined, and the content of the corresponding State obligations is pointed out. Coherency is aimed at ensuring harmony between the "promises" of the State, on the one hand, and the economic resources and institutional capacity to comply with such promises, on the other, all the more if the promises have been translated into legal provisions. Coherence demands that, whenever the State creates a specific right, that imposes a positive obligation, through a law, it must see to it that it will have the necessary resources to ensure its effective enjoyment, and the institutional capacity to attend the demand for services generated by the creation of said specific right.

Whenever the authorities who have knowledge about the features of a social problem adopt legal instruments or promote their adoption by Congress, and such legal instruments are not just aimed at incorporating any public policy but are rather aimed at ensuring the effective enjoyment of constitutional fundamental rights, *tutela* judges are empowered to order respect for the minimum rationality criteria mentioned above. This may imply ensuring coherence between the legal mandates included in the provisions adopted by the competent entities, and the resources which are required to comply with such mandates.

Under certain circumstances it may be impossible to achieve such coherence, even in the mid-term. If it is proven that such is the situation, it is necessary to adjust the promises to the real possibilities, which could entail the adoption of a measure that restricts the scope of the previously established protection. However, such measure must comply with strict requirements, in particular, it must ensure the minimum levels of satisfaction of the right which is being limited, and it may not disregard the priority areas that bear the highest impact upon the population.

8.3.2. The Chamber notes that, in accordance to this Court's case-law, "the mandate of progressiveness implies that once a certain level of protection has been achieved, the Legislator's broad margin of configuration in the field of social rights is restricted, at least in one

aspect: any retrogression from the level of protection already achieved must be presumed unconstitutional on principle, for which reason it is subject to strict judicial review.[109] In order for it to be constitutional, authorities must prove that there are imperative reasons that make such retrogression necessary in the development of a social right that imposes positive obligations"[110].

International law has amply accepted the criterion of strict judicial review of any measure that amounts to a retrogression in the levels of protection which have already been achieved in the field of social rights.

The effective enjoyment of rights with a strong positive-duty content—such as social rights—depends on the creation and preservation, by the State, of the conditions for such enjoyment, and on the adoption of policies aimed at their progressive realization. States have a broad margin of discretion in this regard. However, the obligations undertaken through the ratification of the International Covenant on Economic, Social and Cultural Rights (ICESCR) give rise to certain minimum requirements, enshrined in General Observation No. 1[111], adopted by the Committee in charge of interpreting said International Covenant. These are: (i) the elaboration and periodic updating of a diagnose of the conditions in which such rights are exercised and enjoyed by the population; (ii) the design of public policies aimed at progressively achieving the full realization of said rights, which must include specific goals to measure advances within stated time periods; (iii) the periodic dissemination of the results achieved and all corrective or complementary measures, in order for all interested parties and social actors—including NGOs—to participate in the evaluation of the pertinent public policies, and to identify the flaws, difficulties or circumstances that preclude the full realization of the rights, in order to allow for a review or the elaboration of new, more appropriate, public policies.

The second minimum requirement—design and implementation of public policies which are conducive to the progressive realization of said right—comprises several elements which must be underscored, following General Comment No. 3 adopted by the ICESCR Committee. First, the

[109] In this sense, see *inter alia* Colombian Constitutional Court, Decisions C-251 of 1997 (section 8), SU-624 of 1999, C-1165 of 2000 and C-1489 of 2000.
[110] Colombian Constitutional Court, Decision C-671 of 2002, per Justice Eduardo Montealegre Lynett.
[111] Adopted during its third period of sessions, E/1989/22 (1989).

State must "adopt measures", and therefore, the lack of a state response to the non-realization of said rights is not admissible. Second, such measures must include "all appropriate means, including particularly the adoption of legislative measures", which does not mean that those means are exhausted in the promulgation of legal provisions. The State has the responsibility of identifying which are the appropriate administrative, financial, educational, social, etc. means in each case, and of justifying that they are, in reality, the appropriate ones in view of the circumstances. Third, "in terms of political and economic systems the Covenant is neutral". Fourth, the purpose of such measures is that of "achieving progressively the full realization of the rights recognized", which implies that there is flexibility on account of the limitations of the real world, but also that the measures must be targeted at advancing, not at retrogressing, making "full use of the maximum available resources". Fifth, "any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources" (…). Sixth, the margin of flexibility allowed to States does not exonerate them from the obligation to "ensure the satisfaction of, at the very least, minimum essential levels of each of the rights", levels which must be regarded as "a matter of priority" and demand that "every effort has been made to use all resources that are at its disposition".

Thus, for example, in the field of the right to health, the Committee on Economic, Social and Cultural Rights of the United Nations, as authorized interpreter of the Covenant on this matter, (…) has pointed out the conditions for the adoption of measures that can amount to a retrogression. In particular, (…) on May 11, 2000, the Committee adopted General Comment No. 14, on "the right to the highest attainable standard of health (art. 12 of the International Covenant on Economic, Social and Cultural Rights)", and it pointed out that whenever there exist resource limitations which undermine the full enjoyment of the right to health, in order to be able to adopt measures that reduce the scope of the existing protection, the State must prove that such measures are necessary and that "they have been introduced after the most careful consideration of all alternatives" (par. 32).

The Committee underscores, in General Comment 14, that progressiveness does not deprive State obligations of their content, for which reason in spite of resource limitations, the Government is still bound, at least in (…) four aspects (…).

These four conditions may be applied to all rights with a markedly positive-duty imposing dimension, because of the specific conditions of their bearers, and may be summarized in the following parameters. First, the prohibition of discrimination (for example, an insufficiency of resources may not be invoked to exclude ethnic minorities or the supporters of political rivals from State protection); second, the necessity of the measure, which requires a careful study of alternative measures, which must be unattainable or insufficient (for example, if other sources of finance have been explored and exhausted); third, a condition of future advance towards the full realization of the rights, in such a way that the reduction of the scope of protection is an unavoidable step to return, after overcoming the difficulties which led to the transitory measure, to the route of progressiveness in order to achieve the highest degree of satisfaction of the right (…); and fourth, a prohibition of disregarding certain minimum levels of satisfaction of the right, because measures cannot have the effect of violating the basic nucleus of protection which can ensure the dignified subsistence of human beings, nor can they begin by the priority areas which bear the highest impact upon the population. The Court shall now define those minimum levels.

9. The minimum levels of satisfaction of the constitutional rights of displaced persons.

In section 5, the Court has summarized some of the rights that appertain to internally displaced persons, in accordance with the constitutional and international provisions that are binding for Colombia, as well as the interpretation criteria compiled in the Guiding Principles document.

However, given the current dimension of the problem of displacement in Colombia, as well as the limited nature of the resources available to the State to comply with this goal, it must be accepted that at the moment of designing and implementing a given public policy for the protection of the displaced population, the competent authorities must carry out a balancing exercise, and establish priority areas in which timely and effective assistance shall be provided to these persons. Therefore, it will not always be possible to satisfy, in a simultaneous manner and to the maximum possible level, the positive obligations imposed by all the constitutional rights of the entire displaced population, given the material restrictions at hand and the real dimensions of the evolution of the phenomenon of displacement.

Notwithstanding the above, the Court highlights that there exist certain minimum rights of the displaced population, which must be satisfied under all circumstances by the authorities, given that the dignified subsistence of the people in this situation depends on it. (…)

In order to define the minimum level of satisfaction of the constitutional rights of displaced persons, a distinction must be drawn between (a) respect for the essential nucleus of the fundamental constitutional rights of displaced persons, and (b) the satisfaction, by the authorities, of certain positive duties, derived from the rights constitutionally and internationally recognized to displaced persons.

In regards to the first aspect, it is clear that the authorities may not, in any case, act in such a way as to end up disregarding, violating or threatening the essential nucleus of the constitutional fundamental rights of internally displaced persons—just like they cannot act in such a way as to affect the essential nucleus of the rights of any person within the Colombian territory. (…)

In regards to the second aspect, the Chamber notes that most of the rights recognized by the international provisions and the Constitution to displaced persons bind the authorities, because of the very circumstances of displaced persons, to comply with clear obligations of a positive nature, which will necessarily entail public expenditure. (…) In the Court's view, the rights with a markedly positive-duty imposing content that form part of the minimum levels that must always be secured to the displaced population, are those that have a close connection with the preservation of life under elementary conditions of dignity as distinct and autonomous human beings (…). It is there, in the preservation of the most basic conditions that permit a dignified survival, where a clear limit must be drawn between the State obligations towards the displaced population of imperative and urgent compliance, and those which, even though they must be fulfilled, do not have the same priority—which does not mean that the State is exempt from the duty of exhausting, to the maximum possible level, its institutional capacity to secure the full enjoyment of all the rights of displaced persons (…).

When a group of persons, which has been defined—and is definable—by the State for a long time, is unable to enjoy its fundamental rights because of an unconstitutional state of affairs, the competent authorities may not admit the fact that those persons die, nor that they continue living under conditions which are evidently harmful to their human dignity, to

such a degree that their stable physical subsistence is at serious risk, and that they lack the minimum opportunities to act as distinct and autonomous human beings.

On the grounds of this criterion, and of the international obligations acquired by Colombia in the field of human rights and international humanitarian law, as well as the compilation of criteria for the interpretation and application of measures to assist the displaced population which is contained in the Guiding Principles, the Chamber considers that the following minimum rights fit this definition, and therefore, comprise the minimum positive obligations that must always be satisfied by the State:

1. The right to life, in the sense of article 11 of the Constitution and Principle 10.

2. The rights to dignity and to physical, psychological and moral integrity (articles 1 and 12 of the Constitution), as clarified in Principle 11.

3. The right to a family and to family unity, enshrined in articles 42 and 44 of the Constitution, and clarified for these cases in Principle 17, especially—although not exclusively—in cases of families that include persons who are specially protected by the Constitution—children, elderly persons, persons with disabilities or women providers-, who have the right to be reunited with their families.

4. The right to a basic subsistence, as an expression of the fundamental right to a minimum subsistence income[112] and clarified in Principle 18, which means that "competent authorities shall provide internally displaced persons with and ensure safe access to: (a) essential food and potable water; (b) Basic shelter and housing; (c) appropriate clothing; and (d) essential medical services and sanitation". Authorities must also make special efforts to secure the full participation of displaced women in the planning and distribution of these basic supplies. This right must also be read in the light of Principles 24 through 27 (…), given that it is through the provision of humanitarian assistance that the authorities satisfy this minimum duty in regards to the dignified subsistence of displaced persons. (…)

[112] "*Mínimo Vital.*"

In this sense, and in regards to emergency humanitarian aid, the Court must point out that the duration of the minimum State obligation to provide emergency humanitarian aid is, on principle, the one established in the law: three months, renewable for up to another three months for certain types of persons. The Chamber considers that this term, established by the Legislator, is not manifestly unreasonable, if it is borne in mind that (a) it sets a clear rule on the grounds of which displaced persons can carry out short-term planning and adopt autonomous self-organization decisions which can allow them to have access to reasonable possibilities of autonomous subsistence, without being hastened by the burden of immediate subsistence needs; and (b) it grants the State an equally reasonable term to design the specific programs required to satisfy its obligations in the field of aid for the socio-economic stabilization of displaced persons (…).

(…) the Court must also point out that there are two types of displaced persons that, because of their particular conditions, have a minimum right to receive emergency humanitarian aid for a period of time which is longer than the legally established one: such is the case of (a) persons in situations of extraordinary urgency, and (b) persons who are not in a condition to assume their own self-sufficiency through a stabilization or socio-economic re-establishment project, such as children without guardians and elderly persons who, because of their old age or their health conditions, are not fit to generate income; or women providers who must devote their entire time and efforts to take care of infant children or elderly persons under their responsibility. In these two types of situation, it is justified for the State to continue providing the humanitarian aid required for the dignified subsistence of the affected persons, until the moment in which the circumstances at hand have been overcome (…). The Court notes that, even though the State cannot abruptly suspend humanitarian aid to those who are not capable of self-sufficiency, people cannot expect to live indefinitely off that aid, either.

5. The right to health (article 49 of the Constitution), whenever the provision of the corresponding healthcare service is urgent and indispensable to preserve the life and integrity of the person, in cases of illness or wounds that threaten them directly, or to prevent contagious or infectious diseases, in accordance with Principle 19. On the other hand, in

the case of children, article 44 shall apply[113], and in cases of infants under one year of age, article 50 of the Constitution shall apply[114].

6. The right to protection (article 13 of the Constitution) from discriminatory practices based on the condition of displacement, in particular when such practices affect the exercise of the rights enunciated in Principle 22.

7. For the case of displaced children, the right to basic education until fifteen years of age (article 67, paragraph 3, of the Constitution). The Chamber clarifies that, even though Principle 23 establishes the State duty to provide basic primary education to the displaced population, the scope of the international obligation described therein is broadened by article 67 of the Constitution, by virtue of which education shall be mandatory between five and fifteen years of age, and it must comprise at least one pre-school year and nine years of basic education. (…) the State is bound, at the minimum to secure the provision of a school seat for each displaced child within the age of mandatory education, in a public educational institution. That is to say, the State's minimum duty in regards to the education of displaced children is to secure their access to education, through the provision of the seats that are necessary in public or private entities of the area[115].

8. In regards to the provision of support for self-sufficiency (article 16 of the Constitution) by way of the socio-economic stabilization of persons in conditions of displacement—a State obligation established in Law 387 of 1998 and which can be deduced from a joint reading of the Guiding Principles, in particular Principles 1, 3, 4, 11 and 18-, the Court considers that the State's minimum duty is that of identifying, with the full participation of the interested person, the specific circumstances of his/her individual and family situation, immediate place of origin, particular

[113] Article 44 of the Constitution protects children's fundamental right to health.

[114] Article 50 of the Constitution establishes that children under one year of age shall have the right to free and mandatory healthcare in all public institutions.

[115] This was the order issued by the Court in Decision T-215 of 2002 to the respondent Municipal Education Secretariat: to secure access to the educational system by the plaintiff children, using the available places in the schools of the area. This preferential treatment for displaced children is justified, not only because education is one of their fundamental rights—as happens with all the other children in the national territory-, but because of their especially vulnerable conditions they receive reinforced constitutional protection, which means, in the educational field, that if at least their basic education is not secured, the effects of displacement upon their personal autonomy and the exercise of their rights will be worsened.

needs, skills and knowledge, and the possible alternatives for dignified and autonomous subsistence to which he/she can have access in the short and mid term, in order to define his/her concrete possibilities of undertaking a reasonable individual economic stabilization project, of participating in a productive manner in a collective project, or entering the work market, as well as to use the information provided by the displaced population in order to identify income-generation alternatives for displaced persons.

It is important to note that this minimum right of displaced persons does not bind the authorities to provide, in an immediate manner, the material support required to begin the productive projects which are formulated, or to secure access to the work market on the grounds of the individual evaluation at hand; even though such support must necessarily materialize through the programs and projects designed and implemented by the authorities for the purpose, the minimum and immediately enforceable duty imposed by this right upon the State is that of gathering the information which can allow it to provide the necessary attention and consideration to the specific conditions of each displaced person or family, identifying with the highest possible accuracy and diligence their personal capacities, so as to extract from such evaluation solid conclusions that can facilitate the creation of stabilization opportunities that respond to the real conditions of each displaced persons, and which can, in turn, be incorporated into the national or territorial development plans.

9. Finally, in regards to the right to return and re-establishment, authorities are in the obligations of (i) abstaining from applying coercive measures to force persons to return to their places of origin, or to re-establish themselves elsewhere; (ii) not preventing displaced persons from returning to their habitual place of residence, or from re-establishing themselves in another part of the territory, although it must be noted that whenever there exist public order conditions which make it possible to foresee a risk for the security of the displaced person or his/her family at their places of return or re-establishment, authorities must warn in a clear, precise and timely manner about this risk to those who inform them about their purpose of returning or moving elsewhere; (iii) providing the necessary information about the security conditions at the place of return, as well as about the State's commitment in the fields of security and socio-economic assistance to secure a safe and dignified return; (iv) abstaining from promoting return or re-establishment, whenever such decision implies exposing displaced persons to a risk for their lives or personal integrity, because of the conditions of the route and of the place of destination, for which reason every State decision to promote the

individual or collective return of displaced persons to their places of origin, or their re-establishment at another geographical location, must be preceded by an assessment of the public order conditions at the place to which they will return, the conclusions of which must be communicated to the interested parties before the act of return or re-establishment.

10. The orders

This Court has issued two types of orders, depending on the magnitude of the problem that generates the violation of the rights protected through *tutela* proceedings. It has issued simple execution orders, generally referred to abstentions or actions that may be carried out by one authority without the participation of others. It has also issued complex orders, which require complex execution procedures, involve several authorities and require coordinated actions.

In the present case, Review Chamber No. 3 shall impart two types of orders. A number of complex execution orders, related to the unconstitutional state of affairs, and aimed at securing the rights of the entire displaced population, regardless of whether or not they have resorted to the *tutela* action to protect their rights. The purpose of these orders is to make the entities in charge of assisting the displaced population establish, within a reasonable period, and within the scope of their jurisdiction, the corrections which are required to overcome the problems of lack of resources in the budget and precarious institutional capacity to implement the State policy to assist the displaced population.

The simple orders which shall also be issued in this process are aimed at responding to the concrete requests made by the plaintiffs in the present *tutela* proceedings, and they are compatible with the Constitutional Court's case law on the protection of the rights of the displaced population.

10.1. Orders aimed at overcoming the unconstitutional state of affairs

(…) These orders are aimed at the adoption of decisions which can make it possible to overcome both the insufficiency of resources and the flaws in the institutional capacity. This does not mean that, by way of *tutela* proceedings, the judge is ordering expenditures outside of the budget, or modifying the budget programming defined by the Legislator. Neither is the judge delineating a policy, defining new priorities, or modifying the policy designed by the Legislator and developed by the

Executive. The Court, bearing in mind the legal instruments that develop the policy for assisting the displaced population, the design of such policy and the commitments assumed by the different entities, is resorting to the constitutional principle of harmonious collaboration between the different branches of power, to ensure compliance with the duty of effective protection of the rights of all residents in national territory, and a serious, transparent and effective realization of the commitments defined for purposes of such protection.

10.1.1. For these reasons, and given that the National Council for Comprehensive Assistance to the Population Displaced by Violence is the body in charge of formulating the policy and securing the budgetary allocations for the programs to assist the displaced population, and that such Council includes the main national authorities with responsibilities in the field, the Chamber shall communicate the unconstitutional state of affairs to the Council, in order for it to determine the way in which the insufficiency of resources and the flaws in institutional capacity can be overcome.

Consequently, the Court will order that no later than March 31, 2004, this body must define the dimension of the budgetary effort that is required to attend the commitments defined in the policy, and establish the way in which the Nation, territorial entities and international cooperation shall contribute to said effort. This implies that such body and its members, complying with their duty of effective protection of the rights of the displaced population, must determine the mechanisms to procure such resources, adopt the necessary decisions and establish practicable alternatives to overcome any possible obstacles to be met.

(…) it is fundamental for the Minister of Public Finance and the Director of the National Planning Department to participate in the fulfillment of this objective, in order for them to contribute to the achievement of the budgetary goals required by the policy for assisting the displaced population. Therefore, this judgment will be especially communicated to the aforementioned public officials, so that within the sphere of their jurisdiction they adopt the decisions which are conducive to overcome the unconstitutional state of affairs. The procurement of such resources shall be made within one year after the communication of the present judgment, and should it not be possible, the rules stated in this judgment must be applied.

Bearing in mind that one of the factors which has generated a shortage of resources is the low commitment of the territorial entities in the destination of appropriate resources to assist the displaced population, (…) it is necessary for such entities to adopt decisions that secure a higher commitment, as ordered by article 7 of Law 387 of 1997, which establishes that territorial authorities shall summon the Committees for Assistance to the Displaced Population. Said summoning is mandatory in the municipalities that face situations of forced displacement (…). The national government, through the Ministry of the Interior, must promote their creation. The relevant territorial authorities must determine the level of resources they will destine to assisting the displaced population, and they shall define the priority programs and assistance components that they will assume. In order to achieve adequate coordination between the national and territorial authorities, (…) it is necessary for such decisions to be adopted within a short period, and for the National Council to be informed of the adopted decisions, no later than May 31, 2004, in order for such commitments to be borne in mind by that body.

On the other hand, given the importance of international cooperation as a mechanism to complement the resources allocated by the Nation and territorial entities to assist the displaced population, the Minister of Foreign Affairs, within the sphere of her jurisdiction, shall define a strategy to promote this policy so it receives priority attention by the international community.

If the National Council for Comprehensive Assistance to the Population Displaced by Violence concludes, after establishing the dimension of the required budgetary effort and evaluating the mechanisms to procure such resources, that it is not possible to comply with the commitments assumed in the State policy, as defined in Law 387 of 1997 and its regulatory decrees, as well as the CONPES documents, in application of the principles of transparency and efficiency it may re-define such commitments, in such a way that there is coherence between the legal obligations defined by the competent authorities through democratic procedures, on the one hand, and the resources effectively allocated to comply with such obligations. Such re-definition must be carried out publicly, offering sufficient participation opportunities to the representatives of associations of displaced persons, and expressing the specific reasons that justify such a decision, provided that all displaced persons are secured effective enjoyment of the rights indicated in section 9 of this judgment. This re-definition does not necessarily have to lead to a reduction of the scope of the rights of the displaced persons. However,

should this be unavoidable, after exhausting all reasonable alternatives, such decisions must comply with the conditions established in section 8 of this judgment, that is, they may not be discriminatory, they must be necessary, temporary and conditioned to a future return to the path of progressive advance in the rights, once the conditions that led to their adoption have disappeared. And in any case, the State must guarantee the effective enjoyment of the minimum levels which allow for the exercise of the right to life under conditions of dignity as distinct and autonomous human beings.

In addition, given that the other factor that contributes to the unconstitutional state of affairs in the field of forced internal displacement is the existence of flaws in the institutional capacity to implement the policy for assisting the displaced population, (…) the National Council for Comprehensive Assistance to the Population Displaced by Violence shall be ordered to adopt, within the three months after the communication of the present judgment, a program of action, with a precise schedule, aimed at correcting the failures in institutional capacity (…).

10.1.2. Throughout the present proceedings, it has become evident that a large part of the displaced population is not being secured the minimum level of protection that must always be satisfied. Tardiness in attending the requests of displaced persons, and the excessively long time it takes for the State to provide emergency humanitarian aid, as well as the low coverage of the different programs and the insufficient information and orientation provided to displaced persons, underscore this violation and the urgency of adopting the necessary corrections. Therefore, the National Council for Comprehensive Assistance to the Population Displaced by Violence, in a maximum period of 6 months after the communication of the present judgment, must conclude the actions aimed at securing the effective enjoyment, by all displaced persons, of the minimum levels of protection of their rights which were referred to in section 9 of this judgment.

(…) in adopting the decisions related to overcoming the unconstitutional state of affairs, the organizations that represent the displaced population must be afforded the opportunity to participate in an effective manner. This implies, at the very least, to have prior knowledge of the projected decisions, to receive the opportunity of making observations, and that any observations in regard to the decision projects must be duly valued, so that there is an answer in regards to every observation—which does not imply that decisions must be agreed upon.

10.1.3. Through the study of the dossiers, the Court verified that several authorities and entities in charge of assisting the displaced population have incorporated the filing of *tutela* actions as a prior requirement to have access to the benefits defined in Law 387 of 1997. Such practice runs against article 2 of the Constitution, and (…) the *tutela* judge can warn the authorities not to repeat the actions or omissions that generate violations of rights. Therefore, in the present case, the different authorities will be warned not to incur again in such practice, which is manifestly opposed to the duties of any administrative authority (…).

Thus, whenever the different authorities receive a petition from a displaced person, in which the protection of any of his/her rights is being requested, the relevant authority shall 1) incorporate the person in the list of displaced petitioners, 2) inform the displaced person, within a period of 15 days, the maximum term within which the request shall be responded, 3) inform, within a period of 15 days, whether the request complies with the requirements to be processed, and in case it doesn't, indicate clearly how it can be corrected so he/she can have access to the aid programs; 4) if the request complies with the requirements, but there are no budgetary allocations available, the authority shall advance the necessary procedures to obtain the resources, and determine the priorities and the order in which they shall be resolved; 5) if the request complies with the requirements and there are enough available funds in the budget, the authority shall inform about when the benefit will become effective, and the procedure that must be followed in order to receive it effectively. In any case, authorities must abstain from demanding a *tutela* judgment in order to comply with their legal duties and respect the fundamental rights of displaced persons. This same procedure must be carried out in regards to the petitions filed by all the plaintiffs within the present *tutela* procedure, particularly for the requests for access to the aid established in the housing and socio-economic reestablishment programs.

10.1.4. Another frequent complaint against the policy for assisting displaced persons (…) is that the authorities in charge of their assistance frequently fail to guarantee that these persons receive a dignified treatment which is respectful of their rights (…). Indeed, from the dossiers it may be deduced that some administrative officials force displaced persons to undergo an eternal institutional pilgrimage and unnecessary procedures, they fail to provide them with complete and timely information about their rights, or they simply ignore their requests. This problem is fueled by the fact that the persons who become displaced by violence ignore the rights derived from such condition. Therefore, the Social Solidarity Network

shall be ordered to instruct the persons in charge of assisting displaced persons to inform them in an immediate, clear, and precise manner about the rights that purport to secure them dignified treatment by the authorities, and to verify that this actually happens. Such rights have been developed by the law and they comprise a Charter of Basic Rights of any person who has become a victim of forced internal displacement. Hence every displaced person shall be informed that:

1. He/she has the right to be registered as a displaced person, alone or with his/her family group.
2. He/she maintains all of his/her fundamental rights, and the fact of displacement has not led him/her to lose any of his/her constitutional rights, but on the contrary, she/he has become a subject of special State protection;
3. He/she has the right to receive humanitarian aid as soon as the displacement takes place and for a period of 3 months, renewable for up to 3 more months, and such aid includes, at the very least, (a) essential foodstuffs and drinking water, (b) basic shelter and housing, (c) adequate clothing, and (d) essential medical and sanitary services.
4. He/she has the right to receive a document that proves his/her inscription with a health service provider, so as to secure effective access to healthcare services.
5. He/she has the right to return, in conditions of security, to his/her place of origin, and may not be forced to return or re-locate him/herself in any specific part of the national territory;
6. He/she has the right to have the specific circumstances of his/her personal and family situation identified, with his/her full participation, so as to define—insofar as he/she hasn't returned to the place of origin—how he/she can work in order to generate income which can allow him/her to live in a dignified and autonomous manner.
7. He/she has the right, if younger than 15 years of age, to have access to a seat in an educational institution.
8. These rights must be immediately respected by the competent administrative authorities, which may not establish, as a condition to grant said benefits, the filing of *tutela* actions—even though displaced persons remain free to do so;

9. As a victim of a crime, he/she has all of the rights recognized by the Constitution and the legislation on account of such condition, so as to secure that justice is made, the truth of the facts is revealed, and reparation is obtained from the authors of the crime.

(…)

10.2. The orders required to respond to the requests of the plaintiffs in the present proceedings.

As it was stated in the "Background" section of this judgment, the *tutela* actions under review were filed because of the lack of institutional response to the requests for provision of the aid established in the housing and socio-economic reestablishment programs, as well as to have access to healthcare services, education, or for the provision of emergency humanitarian aid, or for the registration of the plaintiffs as displaced persons in the Single Registration System. Through *tutela* actions, plaintiffs were demanding a substantial and timely response to their requests, which can translate into the materialization of that aid.

(…) given that even those plaintiffs who filed joint *tutela* actions have different situations, it is not possible to order, in a general manner, that the requested aids be provided, but rather it is necessary to examine each case separately to determine whether there has been a violation of their rights.

In any case, the Chamber reiterates that the *tutela* action may not be used to alter the order in which the requested aid is to be provided, nor to disregard the rights of other displaced persons who did not resort to the *tutela* action and who are, under equal conditions, awaiting a response by the relevant entity.

10.2.1. Consequently, the Chamber shall order the authorities responsible of answering the requests for aid with regard to access to any of the programs for economic stabilization—temporary jobs, productive projects, training, food security, etc.—and housing, that within the month after the notification of this judgment, if they have not yet done so, they must give substantial responses to the requests of the plaintiffs. (…) This order follows the Court's case-law on the matter, in cases similar to the ones that gave rise to the present *tutela* proceedings, in particular decisions T-721 of 2003, per Justice Alvaro Tafur Galvis and T-602 of 2003, per Justice Jaime Araujo Rentería, on the right to housing; T-669 of 2003, per Justice Marco Gerardo Monroy Cabra, on protection of the rights to petition, work and access to the different alternatives for economic

consolidation; T-419 of 2003, per Justice Alfredo Beltrán Sierra, on housing and economic stabilization.

10.2.2. As it was done by the Court in decision T-215 of 2002, per Justice Jaime Córdoba Triviño, with regard to the way in which the requests for inscription in the Single Registration System of Displaced Population must be answered, in the present judgment the Social Solidarity Network shall be ordered to advance, through the different sectional offices of the areas where the plaintiffs are located, an evaluation of the situation of the petitioners within a term no longer than 8 days, counted from the moment of notification of this sentence, to determine whether they comply with the objective conditions of displacement and, should that be the case, give them immediate access to the aid established for their protection.

10.2.3. Likewise, with regard to the requests for provision of emergency humanitarian aid, the Social Solidarity Network must carry out the proceedings required to effectively grant, within a term no longer than 8 days starting at the moment of notification of the present judgment, the humanitarian aid requested by the petitioners—should it have not done so by then. With regard to the requests for renewal of emergency humanitarian aid, the Social Solidarity Network must start, within the 8 days following the notification of this judgment, the case by case evaluation of the situation of the plaintiffs, in order to determine whether they are in objective conditions of extraordinary urgency, which signal that these persons are not in a condition to assume their self-sufficiency through a socio-economic stabilization or re-establishment project, and that it is justified to continue providing them humanitarian aid, regardless of the fact that the three month period and its renewal for up to another three months have gone by. Should the conditions of extraordinary urgency or incapacity to access the economic stabilization programs be verified, the Social Solidarity Network must grant preferential application to the Constitution, and continue providing such aid for as long as said conditions persist.

10.2.4. In the case of the request for effective access to the social security health system and the provision of medicines, bearing in mind the orders issued by this Court in its case-law -in particular in decisions T-419 and T-645 of 2003, per Justice Alfredo Beltrán Sierra, and T-790 of 2003, per Justice Jaime Córdoba Triviño-, the Social Solidarity Network and the Health Secretariats of the territorial entities where the plaintiffs are located shall be ordered to carry out in a coordinated manner, within the

maximum term of 15 days from the moment of notification of this judgment and should they have not done so already, all the necessary actions to secure effective access by the plaintiffs to the health care system, and to guarantee the provision of the medicines they require for their treatment.

10.2.5. In the case of requests for effective access to the educational system by minors under 15 years of age, bearing in mind what this Court has ordered in its case-law -in particular in decisions T-268 of 2003, per Justice Marco Gerardo Monroy Cabra, and T-215 of 2002, per Justice Jaime Córdoba Triviño-, the Social Solidarity Network and the Education Secretariats of the territorial entities where the plaintiffs are located shall be ordered to carry out, within the maximum term of one month after the notification of the present judgment, all the actions which are necessary to guarantee effective access by the plaintiffs to the educational system.

10.2.6. With regard to the requests for protection of the land, property and possessions left abandoned by displaced persons, the Court shall order the Social Solidarity Network, as coordinator of the policy for assisting the displaced population and administrator of the Central Registry of the Displaced Population, to include as part of the information required from displaced persons, the one referring to the rural lands that they possess or own, clarifying the type of rights they bear and the basic features of the property, so that on the grounds of that information, the protective procedures and mechanisms established in Decree 2007 of 2001 for said assets can be applied.

10.2.7. With regard to the requests for the establishment of territorial committees for the creation of special economic stabilization, housing or food security programs, the Court shall not impart a specific order in this sense, because there is no constitutional right to have a body like that established for said purpose. However, the general orders aimed at overcoming the unconstitutional state of affairs cover that request, given that each territorial entity, within the scope of the legal provisions in force, is to determine the way in which it shall comply with its duty to protect the displaced population, which can include the establishment of such committees.

10.2.8. As regards the request of declaring that the omissions incurred in by the Director of the Social Solidarity Network amount to disciplinary misbehavior, the Court shall also abstain from imparting an order in this sense, because there does not exist a generic right to the imposition of a

sanction on account of the actions or omissions of the public officials that were invested, by Law 387 of 1997, with a central coordinating function within the institutional response to a problem with the magnitude and complexity of forced displacement. The determination of whether a disciplinary misbehavior took place corresponds to the General Controller's Office (*Procuraduría General de la Nación*) (…).

10.2.9. As to the requests in the sense that one of the persons registered as part of a family group be separated from that group so that she can continue receiving humanitarian aid as part of another family group, the Chamber, bearing in mind the special protection for women providers—as stated in Section 3 of this judgment—shall grant the *tutela*.

Even though (…) the terms for compliance with *tutela* orders start at the moment of notification of the judgment, nothing prevents the Director of the Social Solidarity Network and the other officials responsible for the policy to assist the displaced population who are notified of the present judgment from expediting compliance with its orders, in order to secure within the shortest possible period the rights of the displaced population.

In order to ensure compliance with these orders by the different authorities, the present judgment shall be communicated to the Public Ombudsman and the General Controller of the Nation (*Procurador General de la Nación*), so that they can, within their spheres of jurisdiction, carry out a follow-up of the implementation of the present judgment, and oversee the activities of the authorities.

IV. DECISION

On the grounds of the foregoing reasons, Review Chamber Number Three of the Constitutional Court, imparting justice in the name of the people and by mandate of the Constitution,

DECIDES

FIRST.- To Declare the existence of an unconstitutional state of affairs in the situation of the displaced population, due to the lack of coherence between the seriousness of the violation of the rights recognized in the Constitution and developed by the legislation, on the one hand, and the volume of resources effectively destined to secure effective enjoyment of said rights and the institutional capacity to implement the corresponding constitutional and legal mandates, on the other hand.

SECOND.- To communicate, through the General Secretariat of the Court, such unconstitutional state of affairs to the National Council for Comprehensive Assistance to the Population Displaced by Violence, so that it can verify, within its sphere of jurisdiction and complying with its constitutional and legal duties, the magnitude of said lack of coherence, and design and implement a plan of action to overcome it, granting special priority to humanitarian aid, within the terms indicated as follows:

a. No later than March 31, 2004, the National Council for Comprehensive Assistance to the Population Displaced by Violence shall (i) clarify the current situation of the displaced population included in the Single Registration System, establishing its number, location, necessities and rights according to the corresponding stage of the policy; (ii) determine the dimension of the budgetary effort it is necessary to undertake in order to comply with the public policy aimed at protecting the fundamental rights of displaced persons; (iii) define the percentage of participation in the allocation of resources that corresponds to the Nation, the territorial entities and international cooperation; (iv) establish the mechanism to procure such resources, and (v) establish a contingency plan in case the resources that should be provided by the territorial entities and the international cooperation are not provided in time or in the scheduled amount, in order for such gaps to be compensated through other finance mechanisms.

b. Within the term of one year after the communication of the present judgment, the Director of the Social Solidarity Network, the Ministers of Public Finance and of the Interior and Justice, as well as the Director of the National Planning Department and the other members of the National Council for Comprehensive Assistance to the Population Displaced by Violence, shall make all necessary efforts to secure that the budgetary target they have established is achieved. If, during the course of that year or before, it becomes evident that it will not be possible to allocate the established amount of resources, they must (i) redefine the priorities of said policy, and (ii) design the modifications it will be necessary to introduce to the state policy for the of the displaced population. In any case, for the adoption of these decisions, the effective enjoyment of the minimum levels on which the exercise of the right to life in conditions of dignity must be secured, as pointed out in section 9 of this judgment.

c. Afford the organizations that represent the displaced population opportunities to participate in an effective manner in the adoption of the decisions to be made in order to overcome the unconstitutional state of

affairs, and inform them on a monthly basis about the advances made therein.

THIRD.- To communicate, through the general secretariat of the Court, the unconstitutional state of affairs to the Minister of the Interior and Justice, so that he promotes that the governors and mayors (…) adopt the decisions required to ensure that there exists coherence between the constitutionally and legally defined obligations of assisting the displaced population under the responsibility of the corresponding territorial entity, and the resources that it must allocate to effectively protect their constitutional rights. In the adoption of such decisions, they shall afford sufficient opportunities of effective participation to the organizations that represent the interests of the displaced population. The decisions adopted shall be communicated to the National Council no later than March 31, 2004.

FOURTH.- To order the National Council for the Comprehensive Assistance to the Population Displaced by Violence to adopt, within the three months following the communication of this judgment, a program of action, with a precise schedule, aimed at correcting the flaws in institutional capacity, at least with regard to the ones indicated in the reports that were incorporated to the present process and summarized in Section 6 and Annex 5 of this judgment.

FIFTH.- To order the National Council for Comprehensive Assistance to the Population Displaced by Violence to conclude, within a maximum term of 6 months since the moment of the communication of the present judgment, all actions aimed at securing the effective enjoyment, by all displaced persons, of the minimum levels of protection of their rights which were referred in Section 9 of this judgment.

SIXTH.- To communicate, through the General Secretariat of the Court, the present judgment to the Minister of Public Finance and the Director of the National Planning Department, for all pertinent purposes within their jurisdiction.

SEVENTH.- To communicate, through the General Secretariat of the Court, the present judgment to the Minister of Foreign Affairs, for all pertinent purposes within her jurisdiction.

EIGHTH.- To warn all national and territorial authorities responsible for assisting the displaced population in each one of its components, that

in the future they must abstain from incorporating the presentation of *tutela* lawsuits as a requirement to have access to any of the benefits defined in the law. Such public officials must respond requests in a timely and effective manner, in the terms of Order Ten of this judgment.

NINTH.- To communicate the present judgment to the Director of the Social Solidarity Network for all pertinent purposes within his jurisdiction, and to **ORDER** him to instruct the officials in charge of assisting displaced persons that they are to inform them in an immediate, clear and precise manner about the Charter of Basic Rights of all persons who have been victims of forced internal displacement, referred in section 10.1.4. of this judgment, and to establish mechanisms to oversee effective compliance therewith.

TENTH.- In regards to the specific orders for granting the aid established in the housing and socioeconomic reestablishment programs, the Social Solidarity Network, INURBE or whichever institution replaces it, FIDUIFI or whichever institution replaces it, INCORA or whichever institution replaces it, as well as the entities in charge of these programs at the departmental and municipal level, must give substantial, clear and precise responses to the petitions filed by the plaintiffs in the present proceedings, bearing in mind the following criteria:

1) incorporating the request within the list of displaced petitioners;

2) Informing petitioners, within a period of 15 days, about the maximum term in which the request shall be responded;

3) Informing petitioners, within a period of 15 days, on whether the request fulfills the requirements to be processed, and should it not fulfill them, indicating clearly how they can correct them in order to gain access to the aid programs;

4) If the request complies with all the requirements, but there are no available funds in the budget, carrying out the necessary procedures to obtain the resources, establishing priorities and the order in which they will be solved;

5) If the request complies with the requirements and there are enough available funds in the budget, informing the petitioners about when the benefit will become effective and the procedure that will be followed in order for him/her to effectively receive it;

6) In any case, they must abstain from demanding a *tutela* judgment in order to comply with their legal duties and respect the fundamental rights of displaced persons.

ELEVENTH.- To order the Social Solidarity Network to carry out, through the different regional offices of the areas where the plaintiffs are located, an assessment of the situation of the plaintiffs within a term of 8 days after the notification of this judgment, in order to determine whether they fulfill the objective conditions of displacement, and should that be the case, to give them immediate access to the aid legally established for their protection (…).

TWELFTH.- To order the Social Solidarity Network to carry out, in regards to all the persons included in the Single Registration System of Displaced Persons, all the necessary activities to achieve, in a term no longer than 8 days after the notification of the present judgment, the effective provision—if it hasn't yet been made—of the requested humanitarian aid, to provide adequate guidance about access to the other programs for assisting the displaced population, and in case they have presented any other request to have access to health care services, medicines, education for their young children, access to economic stabilization or housing programs, to respond them in accordance with orders Nos. Ten through Fourteen of this judgment (…).

THIRTEENTH.- To order the Social Solidarity Network and the Health Secretariats of the territorial entities where the plaintiffs are located, to carry out in a coordinated manner, within the maximum term of 15 days after the notification of the present judgment and should they have not done so by then, all the necessary actions to secure effective access by the plaintiffs to the healthcare system, and to guarantee the provision of the medicines they require for their treatment.

FOURTEENTH.- To order the Social Solidarity Network and the Education Secretariats of the territorial entities where the plaintiffs are located to carry out in a coordinated manner, within the maximum term of one month after the notification of the present decision, all the actions required to guarantee effective access to the educational system by those plaintiffs who have requested it.

FIFTEENTH.- To order the Social Solidarity Network, in regards to the plaintiff in process No. T-703130, who is registered as a displaced person, to examine, within the 5 days following the notification of this

judgment and should it not have happened yet, whether in accordance with Section 9 of this judgment, the plaintiff is in conditions of extreme urgency or incapacity to assume his own self-sufficiency, which would justify the preferential application of the Constitution to protect his rights, and to continue providing such aid insofar as the conditions at hand persist.

(…) **SEVENTEENTH.- To order** the Social Solidarity Network, within the 5 days following the notification of the present judgment, to separate the plaintiff in process No. T-686751 from the family group in which she was registered, and register her with a new group with her as female provider, and to provide, within the following 8 days, the emergency humanitarian aid to which she is entitled, as well as proper guidance on access to the other programs for assisting the displaced population.

EIGHTEENTH.- To communicate the present decision to the Public Ombudsman, so that directly or through his delegate, he can carry out a follow up of the way in which the above-issued orders are complied with, and if he considers it pertinent, to inform the public opinion about the advances and difficulties encountered. (…)

ANNEX 2

Colombian Constitutional Court, Award 176 of 2005

Republic of Colombia
Constitutional Court
Third Review Chamber

Award n°176 of 2005

-Orders issued by the Court-

"The Third Review Chamber of the Constitutional Court (…)

DECIDES:

First.- To **ORDER** (…) the Minister of Public Finance, the Director of the Presidential Agency for Social Action and International Cooperation (*Acción Social*), and the Director of the National Planning Department, to submit to this Court and to the *Procurador General de la Nación*, the Public Ombudsman and the *Contralor General de la República*, no later than December 1st, 2005, a timetable in which they point out the rhythm and the mechanisms at which the resources calculated by the National Planning Department as necessary for the implementation of the public policy for assisting the displaced population, aimed at overcoming the unconstitutional state of affairs declared in decision T-025 of 2004, shall be destined. Such timetable shall include, at least, the following elements:

1. The total amount of money that will be assigned for the purpose of executing the policy for assisting the displaced population, broken up in accordance with the following criteria:

(a) by fiscal years;

(b) establishing the proportion of funds that will come from the international community, territorial entities, the Nation or other sources;

(c) individualizing the persons or bodies responsible for the procurement of the resources and for their execution

(d) indicating the resources that shall be included in the budget of each entity that is responsible at the national level for the execution of the policy to assist the displaced population.

(e) in accordance with the component of the policy for assisting the displaced population to which the funds shall be destined, expressly indicating the entities that are responsible for their execution.

(f) distinguishing between the resources destined to the general programs for the vulnerable population, and those aimed at the displaced population.

2. The moment, as well as the rhythm at which advances will be made until the achievement of the objectives established in the estimation made by the National Planning Department, must be reasonable, but sustained and progressive, in the terms of the present Award.

Second.- To **WARN** (…) the Director of the National Planning Department, that the estimate to be calculated by that entity must be updated, in such a way as to periodically include the displaced persons who have been included in the registration system each fiscal year. The new calculations must be communicated in a timely manner to the Minister of Public Finance, the Director of the Presidential Agency for Social Action and International Cooperation—*Acción Social*. They shall also be communicated to the displaced population and to the general public through the means that the National Planning Department deems appropriate. They must also be communicated to this Court and to the *Procurador General de la Nación*, the Public Ombudsman, and the *Contralor General de la República*.

Third.- To **WARN** the public entities or bodies responsible for the policy to assist the displaced population that they must provide, in a timely manner, all the information requested by the Minister of Public Finance, the Director of the Presidential Agency for Social Action and International Cooperation—*Acción Social*, or the Director or the National Planning Department, for purposes of compliance with the first order issued herewith.

Fourth.- To **ORDER** (…) the Ministry of Public Finance to submit to this Court, on the date in which the General Budget of the Nation for each fiscal year is approved, and until the moment at which the level of

resources estimated by the National Planning Department as necessary to implement the policy to assist the displaced population has been attained, a report pointing out the amount of funds included in the Expenditure Budget which is going to be destined to assisting the displaced population, broken down into sections, executing accounts and their corresponding descriptive concepts. The report shall indicate how those appropriations are consistent with the time table described in the first order of this Award. A copy of the report will also be sent to the *Procuraduría General de la Nación*, the Public Ombudsman and the *Contraloría General de la República*.

Fifth.- To **ORDER** the Minister of Public Finance and the Director of the Presidential Agency for Social Action and International Cooperation—*Acción Social* (or whomever may replace them) to submit to this Court, no later than one month after the finalization of each fiscal year (including the 2005 fiscal year), and until the moment at which the level of resources estimated by the National Planning Department as necessary to implement the policy to assist the displaced population has been attained, a report in which they indicate, for the corresponding fiscal year:

1. The amount of resources that each entity or body at the national level has executed for assisting of the displaced population;

2. Whether the corresponding entity or body has effectively given priority to the execution of the resources related to assisting the displaced population;

3. The precise manner in which the resources appropriated in each section of the General Budget of the Nation comply with the time table described in section 5.4.4.1. of this Award.

A copy of this report must also be sent to the *Procuraduría General de la Nación*, the Public Ombudsman and the *Contraloría General de la República*.

Sixth.- To **REQUEST** (…) [the] *Contralor General de la República* to carry out, within the sphere of his jurisdiction, a follow-up of the orders issued in decision T-025 of 2004 and in the present Award, related to the budgetary effort required to implement the policies for assisting the displaced population in order to solve the unconstitutional state of affairs.

Seventh.- To **WARN** the territorial entities that they must take into account the constitutional priority granted to public expenditure for the benefit of the displaced population within the overall social public expenditure, as well as article 58 of Law 921 of 2004, at the moment of responding to the requirements of the Ministry of Public Finance, the National Planning Department or the Presidential Agency for Social Action and International Cooperation—*Acción Social*, for purposes of complying with decision T-025 of 2004 and the present Award.

Eight.- To **COMMUNICATE** the contents of the present Award to the President of the Republic for purposes of information, in order for him to adopt the decisions he considers pertinent.

(…)"

ANNEX 3

Colombian Constitutional Court, Award 177 of 2005

Republic of Colombia
Constitutional Court
Third Review Chamber

Award n° 177 of 2005

-Orders issued by the Court-

"The Third Review Chamber of the Constitutional Court (…)

DECIDES:

First.- To **DECLARE** that, in spite of the advances made until the moment, the unconstitutional state of affairs in the situation of the displaced population which was declared in decision T-025 of 2004 has not yet been overcome, and that it is necessary to advance in an accelerated and sustained manner *"in the correction of the inconsistency between the seriousness of the affectation of the constitutionally recognized and legally developed rights, on the one hand, and the volume of resources which is effectively destined at the territorial level to secure the effective enjoyment of such rights, and the territorial institutional capacity to implement the corresponding constitutional and legal mandates, on the other"*.

Second.- To **ORDER** the Minister of the Interior and Justice, within the sphere of his jurisdiction, in accordance with his expertise and on the grounds of the higher or lower level of response to the needs of the displaced population that actually exists in each entity, to design, implement and promptly apply a strategy for the promotion and coordination of the national and territorial efforts, which can effectively lead to the assumption of higher budgetary and administrative efforts by the territorial entities for assisting the displaced population and the effective guarantee of their rights, for which purpose he must carry out the following actions, within the terms pointed out below:

1. To carry out, within the term of one month starting on the moment this Award is communicated, an evaluation of the current situation of territorial entities' commitment to assisting the displaced population, in such a way that it is possible to know, in regards to each one of the territorial entities, (i) the current situation of the displaced population located in every municipality and department, and the existing risks of increases in displacement, (ii) the evolution of the budget that was assigned and effectively spent by the different territorial entities for the specific assistance of the displaced population, not of the vulnerable population in general, (iii) the assistance infrastructure and coordinating mechanisms which are in place in each territorial entity; (iv) the specificities of the displaced population located in each territorial entity, with special attention to indigenous peoples and Afro-Colombian population, and to peasants who are unable to provide for their own subsistence, (v) the assistance priorities at the territorial level, which may be different in each entity, (vi) the factors which have borne a negative impact upon the effective budgetary and administrative commitment of each territorial entity, as well as the mechanisms applied to introduce corrective measures, and (vii) the evolution of the results which have been achieved in order to bridge the gap between that which has been promised and that which has been effectively attained to advance, in each territorial entity, in the resolution of the unconstitutional state of affairs. These assessments must be based on indicators that are to be compatible with those designed by the other entities that were issued orders in the two other Awards adopted by the Court on this same date. A second evaluation must be carried out within six (6) months, counted from the moment this Award is communicated; and a third evaluation is to be carried out twelve (12) months after the communication of the present Award.

2. Design, implement and promptly apply, within the maximum term of two months, counted from the moment this Award is communicated, a strategy to coordinate the budgetary and administrative efforts at the national and territorial levels, which can allow it to know (i) what is the situation of the displaced population at the territorial level; (ii) what is the amount of local resources that each territorial entity has available to assist the displaced population; (iii) what is the displaced population's demand for assistance at the territorial level and what are the assistance priorities in each entity; (iv) what is the offer of services at the local level; (v) what infrastructure is available at the territorial level to adequately safeguard the rights of the displaced population; (vi) what is the dimension of the territorial efforts already undertaken, and the difference between them and

what is actually required; (vii) the manner in which the national and territorial efforts complement each other; and (viii) which coordination mechanisms tend to produce the expected results, and which ones don't.

3. Design, implement and promptly apply, within a maximum term of two months counted from the moment this Award is communicated, a strategy to promote higher budgetary and administrative efforts at the territorial and national levels for assisting the displaced population, which includes (i) results indicators that can make it possible to determine whether advances are being made or not in the resolution of the unconstitutional state of affairs; and (ii) positive and negative stimuli for those entities that advance, lag behind or incur in retrogressions.

4. Design, within the maximum term of two months counted from the moment this Award is communicated, specific goals at the short, medium and long term for the promotion and coordination strategies, and establish a time table which makes it possible to permanently follow up the actions that are carried out.

5. Design, within the maximum term of two months counted from the moment this Award is communicated, a periodical evaluation mechanism which makes it possible to introduce the necessary adjustments to the designed strategy, in such a way that corrective measures can be adopted whenever retrogressions or delays take place in the defined goals.

6. Design and implement, within the maximum term of two months counted from the moment this Award is communicated, specific inter-institutional coordination mechanisms and instruments between the national level and the territorial entities, which can ensure the deployment of an adequate and timely complementary action, in such a way that the effective enjoyment of the displaced population's rights is guaranteed.

7. Make a periodical dissemination of adequate, comprehensible and accessible information for the displaced population about the way in which the territorial entities are working on the improvement of the assistance to the displaced population, as well as on the advances made, the difficulties they have encountered and the corrective measures adopted to secure the effective enjoyment of the displaced population's rights at the territorial level.

8. Adopt and promptly apply, within the maximum term of two months counted from the moment this Award is communicated, a strategy

to guarantee the timely and effective participation of the organizations of displaced population at the territorial level, in the different coordinating bodies, as well as in the process of design and implementation of the promotion and coordination strategies undertaken to comply with the orders issued in decision number three of judgment T-025 of 2004.

9. Submit monthly reports to the Constitutional Court, the *Procuraduría General de la Nación* and the Public Ombudsman, and the human rights and displaced population organizations that took part in the information hearing held on June 29, 2005, about the advances made in this process. The *Procuraduría General de la Nación* and the Public Ombudsman, within the sphere of their jurisdiction, shall inform the Constitutional Court about their conclusions on the way in which the orders issued in this Award have been fulfilled.

Third.- COMMUNICATE the content of the present Award to the President of the Republic, in order for him to adopt the decisions."

ANNEX 4

Colombian Constitutional Court, Award 178 of 2005

Republic of Colombia
Constitutional Court
Third Review Chamber

Award n° 178 of 2005

-Orders issued by the Court-

"The Third Review Chamber of the Constitutional Court (…)

DECIDES:

First.- To **DECLARE** that in spite of the advances made as of this date, the unconstitutional state of affairs in the situation of the displaced population declared in decision T-025 of 2004 has not been overcome yet, and that it is still necessary to continue advancing in the correction of the discordance between the seriousness of the affectation of the constitutionally recognized and legally developed rights, on the one hand, and the volume of resources effectively destined to secure said rights' effective enjoyment and the institutional capacity to implement the corresponding constitutional and legal mandates, on the other.

Second.- To **ORDER** the Director of the Social Solidarity Network to design, implement and promptly apply, within a term of three months counted from the moment this Award is communicated, all the procedures and corrective measures that are necessary to overcome the problems indicated in paragraph 1.4. of this Award's Annex, related to the "Evaluation of compliance with the order contained in number 2(a)(i) of the decision adopted in judgment T-025 of 2004", so that within the maximum term of one (1) year, counted from the moment this Award is communicated, the process of characterizing the internally displaced population has finalized. For that purpose, the Director of the Social

Solidarity Network must carry out the nine actions described in Consideration 11 of this Award.

Third.- To **ORDER** the National Council for Comprehensive Assistance to the Population Displaced by Violence, to design, implement and promptly apply, within a term of three months counted from the moment this Award is communicated, all of the procedures and corrective measures that are necessary to overcome the problems indicated in paragraph 2.4. of this Award's Annex, related to the "Evaluation of compliance with the order contained in number 2(c) of the decision adopted in judgment T-025 of 2004", so that within the maximum term of six (6) months, counted from the moment this Award is communicated, such difficulties have been effectively overcome at both the national and the territorial levels, and the necessary conditions are established to secure the effective enjoyment of the displaced population's right to participation. For said purpose, it must carry out the nine actions described in Consideration 11 of this Award.

Fourth.- To **ORDER** the National Council for Comprehensive Assistance to the Population Displaced by Violence to establish and promptly set in motion, within a term of three months counted from the moment this Award is communicated, a coordinated program of action for the resolution of the institutional capacity problems indicated in paragraph 3.6. of this Award's Annex, related to the "Evaluation of compliance with the order contained in number 4 of the decision adopted in judgment T-025 of 2004", so that within the maximum term of six (6) months, counted from the moment this Award is communicated, such institutional capacity problems have been effectively overcome. For this purpose, the National Council for Comprehensive Assistance to the Population Displaced by Violence must carry out the nine actions described in Consideration 11 of this Award.

Fifth.- To **ORDER** the Ministers of the Interior and Justice and of National Defense, as well as the Director of the Presidential Program for Human Rights and International Humanitarian Law, to adopt, within a term of three months counted from the moment this Award is communicated, all the corrective measures that are necessary to overcome the problems indicated in paragraphs 4.7.11 and 4.7.12 of this Award's Annex, related to the "Evaluation of the measures adopted to protect the right to life", so that within the maximum term of six (6) months, counted from the moment this Award is communicated, the necessary corrective measures have been adopted and applied, the necessary conditions have

been established to secure the effective enjoyment of the displaced population's right to life. For this purpose, the Ministers of the Interior and Justice and of National Defense, and the Director of the Presidential Program for Human Rights and International Humanitarian Law must carry out the nine actions described in Consideration 11 of this Award.

Sixth.- To **ORDER** the Minister of Social Protection and the Director of the Colombian Institute of Family Welfare to design and promptly apply, within a term of three months counted from the moment this Award is communicated, the corrective measures necessary to solve the problems indicated in paragraph 4.8.13 of this Award's Annex, related to the "Evaluation of the measures adopted to protect the rights to dignity and to physical, psychological and moral integrity, to a family and to family unity", so that within the maximum term of six (6) months, counted from the moment this Award is communicated, the necessary conditions have been established to secure the effective enjoyment of the displaced population's rights to dignity and to physical, psychological and moral integrity, to a family and to family unity. For that purpose, the Minister of Social Protection and the Director of the Colombian Institute of Family Welfare must carry out the nine actions described in Consideration 11 of this Award.

Seventh.- To **ORDER** the Director of the Social Solidarity Network to design, adopt and promptly apply, within the maximum term of three (3) months counted from the moment this Award is communicated, the corrective measures that are necessary to overcome the problems indicated in paragraph 4.9.14 of the Annex to this Award, related to the "Evaluation of the measures adopted to protect the right to minimum subsistence", so that within the maximum term of six (6) months, counted from the moment this Award is communicated, the necessary conditions have been established to secure the effective enjoyment of the displaced population's right to a minimum subsistence. To comply with the above, the Director of the Social Solidarity Network must carry out the nine actions described in Consideration 11 of this Award.

Eighth.- To **ORDER** the Minister of Environment, Housing and Territorial Development, and the Director of the Social Solidarity Network, to design and promptly apply, within the maximum term of three months, counted from the moment this Award is communicated, adequate instruments to correct the problems indicated in paragraph 4.10.11 of this Award's Annex, related to the "Evaluation of the measures adopted to protect the right to basic shelter and housing", so that within the maximum

term of one year, counted from the moment this Award is communicated, such problems have been overcome, in such a way that the necessary conditions are established to secure the effective enjoyment of the displaced population's right to basic shelter and housing. In order to comply with the above, the Minister of Environment, Housing and Territorial Development and the Director of the Social Solidarity Network must carry out the nine actions described in Consideration 11 of this Award.

Ninth.- To **ORDER** the Minister of Agriculture to design and promptly apply, within the maximum term of three months counted from the moment this Award is communicated, adequate instruments to correct the problems indicated in paragraph 4.10.11 of this Award's Annex, related to the "Evaluation of the measures adopted for the protection of the right to basic shelter and housing" and in paragraph 4.14.10. of the Annex, related to the "Evaluation of the measures adopted to provide support for self-sufficiency and economic stabilization", so that within the maximum term of six months counted from the moment this Award is communicated, such problems have been overcome and said Ministry's actions have been effectively oriented, and the necessary conditions are established to guarantee the effective enjoyment of the displaced population's rights to basic shelter and housing and to the provision of support for self-sufficiency and economic stabilization. In order to comply with the above, the Minister of Agriculture must carry out the nine actions described in consideration 11 of this Award. The Minister of Agriculture must submit to the Constitutional Court, the *Procuraduría General de la Nación* and the Public Ombudsman, as well as the human rights and displaced population organizations that took part in the June, 29 public hearing and to UNHCR, monthly advance reports.

Tenth.- To **ORDER** the Ministry of Social Protection to design and implement, within the term of three months counted from the communication of the present Award, the corrective measures that are necessary to guarantee that within the maximum term of one year, counted from the communication of the present Award, displaced persons enjoy their right to have access to healthcare services, and the problems indicated in paragraph 4.11.12 of this Award's Annex—related to the "Evaluation of the measures adopted to secure the right to health"—have been overcome, so that within the maximum term of one (1) year counted from the moment this Award is communicated, the necessary conditions have been established to guarantee the effective enjoyment of the displaced population's right to have access to healthcare services. To

comply with the above, the Minister of Social Protection must carry out the nine actions described in consideration 11 of this Award.

Eleventh.- To **ORDER** the Director of the Social Solidarity Network to implement and promptly apply, within the maximum term of three months from the moment this Award is communicated, a program of action to overcome the problems indicated in paragraph 4.12.9. of this Award's Annex, related to the "Evaluation of the measures adopted to protect the displaced population from discriminatory practices", so that within the maximum term of six (6) months, counted from the moment this Award is communicated, the necessary conditions have been established to guarantee the effective enjoyment of the displaced population's right to be protected from discriminatory practices. To comply with the above, the Director of the Social Solidarity Network must carry out the nine actions described in Consideration 11 of this Award.

Twelfth.- To **ORDER** the Minister of National Education to design, implement and promptly apply, within a term of three months counted from the moment this Award is communicated, the corrective measures that are necessary to overcome the problems indicated in paragraph 4.13.12. of this Award's Annex, related to the "Evaluation of the measures adopted to guarantee the right to education", so that within the maximum term of one year counted from the moment this Award is communicated, the necessary conditions have been established to guarantee the effective enjoyment of the displaced population's right to access to education. To comply with the above, the Minister of National Education must carry out the nine actions described in Consideration 11 of this Award.

Thirteenth.- To **ORDER** the Director of the Social Solidarity Network and the Director of the National Learning Service (SENA) to design, implement and promptly apply, within the maximum term of three months counted from the moment this Award is communicated, adequate instruments to correct the problems indicated in paragraph 4.14.10. of this Award, related to the "Evaluation of the measures adopted to provide support for self-sufficiency and economic stabilization", so that within the maximum term of one year, counted from the moment this Award is communicated, such problems have been overcome and the necessary conditions have been established to guarantee the effective enjoyment of the displaced population's right to self-sufficiency and economic stabilization. For this purpose, the Director of the Social Solidarity Network and the Director of the National Learning Service must carry out the nine actions described in Consideration 11 of this Award.

Fourteenth.- To **ORDER** the Director of the Social Solidarity Network to design, implement and promptly apply, within a maximum term of three months counted from the moment this Award is communicated, a coordinated program of action to overcome the problems indicated in paragraph 4.15.12 of this Award's Annex, related to the "Evaluation of the measures adopted to guarantee the right to return and reestablishment", so that within the maximum term of six months counted from the moment this Award is communicated, returns and reestablishments can be carried out in conditions that are compatible with full respect for the Guiding Principles on Internal Displacement adopted in the framework of the United Nations Organization, that develop constitutional rights. For said purpose, the Director of the Social Solidarity Network and the Minister of National Defense must carry out the nine actions described in Consideration 11 of this Award.

Fifteenth.- To **ORDER** the Director of the Social Solidarity Network to present a report, within the maximum term of one month counted from the moment this Award is communicated, indicating the actions and measures that have been adopted, as well as the results effectively attainted to guarantee compliance with the order issued in number 8 of the decision adopted in judgment T-025 of 2004, in the sense of warning "all national and territorial authorities responsible for assisting the displaced population in each one of its components, that in the future they must abstain from incorporating the presentation of *tutela* lawsuits as a requirement to have access to any of the benefits defined in the law". Likewise, to ORDER the Director of the Social Solidarity Network to design, implement and promptly apply, within a term of three months counted from the moment this Award is communicated, the corrective measures necessary to overcome the problems indicated in Section 5 of this Award's Annex, related to the "Evaluation of compliance with the order issued in number eight of the decision adopted in judgment T-025 of 2004", so that within the maximum term of six months, counted from the moment this Award is communicated, said problems have been corrected. For that purpose, the Director of the Social Solidarity Network must carry out the nine actions described in Consideration 11 of this Award.

Sixteenth.- To **ORDER** the Director of the Social Solidarity Network, within the maximum term of three months counted from the moment this Award is communicated, to broaden the dissemination of the Charter or Basic Rights of Displaced Persons, so that even those who cannot read can know about such Charter, in order to guarantee compliance with number nine of the decision adopted in judgment T-025 of 2004. For that purpose,

he must carry out the nine actions described in Consideration 11 of this Award.

Seventeenth.- To **COMMUNICATE** the content of the present Award to the President of the Republic for his information, in order for him to adopt the decisions he considers pertinent."

ANNEX 5

Colombian Constitutional Court, Award 218 of 2006

Republic of Colombia
Constitutional Court
Third Review Chamber

Award n° 218 of 2006
-Orders issued by the Court-

Re.: Decision T-025 of 2004 and Awards (*Autos*) 176, 177 and 178 of 2005.

Verification of the measures adopted to overcome the unconstitutional state of affairs declared in decision T-025 of 2004 in relation to the problem of internal displacement.

MANUEL JOSÉ CEPEDA ESPINOSA, J.

Bogotá, D.C., August 11, 2006

The Third Review Chamber of the Constitutional Court, composed of Justices Manuel José Cepeda Espinosa, Jaime Córdoba Triviño and Rodrigo Escobar Gil, in exercise of its constitutional and legal powers, has adopted the present Award (*Auto*) for the purpose of verifying whether it has been proven that the orders issued in Decision T-025 of 2004 and Awards (*Autos*) 176, 177 and 178 of 2005 have been complied with, in such a way that accelerated and sustained advances have been achieved to overcome the unconstitutional state of affairs in relation to the problem of internal displacement.

I. BACKGROUND AND STRUCTURE OF THE PRESENT ORDER.

1. In accordance with Article 27 of Decree 2591 of 1991, the Constitutional Court "shall keep its jurisdiction until the right is fully re-established, or the causes of the threat have been eliminated".

2. In decision T-025 of 2004, the Constitutional Court declared the existence of an unconstitutional state of affairs in the field of internal displacement in the country, and issued a number of complex orders, directed to several authorities of the national and territorial levels, aimed at overcoming such situation.

3. On August 29, 2005, the Third Review Chamber of the Constitutional Court adopted Awards (*Autos*) 176, 177 and 178 of 2005, in which it reviewed the degree of compliance given to the orders issued in decision T-025 of 2004 to protect the minimum levels of satisfaction of the internally displaced population's rights, and it issued a number of orders aimed at achieving accelerated and sustained advances towards overcoming such state of affairs, by the entities in charge of assisting the displaced population, within a reasonable period.

4. Given that several months have gone by since the adoption of said Awards 176, 177 and 178, that many of the terms granted therein by the Court for compliance with the orders issued thereby have expired, and that the longest term granted in such Awards is soon to expire—that is, one year after their communication, which was made on September 13, 2005-, it is necessary for the Chamber to determine whether the entities that form part of SNAIPD and the other entities that received such orders have proven that they are advancing, or whether, on the contrary, delays or retrogressions have taken place in the adoption of the measures and actions required to overcome the unconstitutional state of affairs in the field of forced displacement.

5. The present Award is adopted on the grounds of the different reports sent to the Court by the entities that form part of SNAIPD and by other authorities who received orders in Awards 176, 177 and 178 of 2005. The Court analyzed a total of eighty-two reports, with their annexes, submitted by thirteen entities. Such reports, which were presented on a monthly and bi-monthly basis, add up to a total of approximately twenty thousand pages, including the extensive annexes that were attached thereto. Likewise, the Court has based its decision upon public and notorious

information about facts related to the phenomenon of displacement which have taken place in the country over the past months.

6. The purpose of the present order is not to directly evaluate the public policy for assisting the displaced population—a matter which is within the jurisdiction of different organs of public power, in accordance with the distribution of functions made in the Constitution and the Law-, but that of assessing the reports presented to the Constitutional Court by the recipients of the orders issued in decision T-025 of 2004 and Awards 176, 177 and 178 of 2005, so as to determine (i) whether such entities have properly proven that they have overcome the unconstitutional state of affairs in the field of internal displacement, or that they have advanced significantly in the protection of the rights of the displaced population, and (ii) whether the Court has been provided with serious, precise and depurated information to establish the level of compliance given to the orders issued in the aforementioned judicial decisions.

7. On the grounds of the verification that will be carried out in the present Award, and also of the Annexes hereto that contain the reports which have been received, the Court shall proceed to make the pertinent observations, require the clarifications that may be called for, and adopt the decisions which are relevant and necessary to secure the materialization of the purpose of overcoming the unconstitutional state of affairs in the field of internal displacement in a coherent, serious, specific, sustained and efficient manner, in accordance with the applicable constitutional provisions.

II. GENERAL ASSESSMENT OF THE SITUATION OF THE NCONSTITUTIONAL STATE OF AFFAIRS IN THE FIELD OF INTERNAL DISPLACEMENT.

1. The central question that the Court must answer in the present Award is the following: Have the entities that form part of SNAIPD proven, through the reports they have submitted to the Constitutional Court, that the unconstitutional state of affairs in the field of internal displacement has been overcome, or that they have advanced in an accelerated and sustained manner towards its resolution, through the effective and gradual adoption of the measures ordered in decision T-025 of 2004 and Awards 176, 177 and 178 of 2005?

2. Based on a careful analysis of the lengthy reports submitted by the entities that form part of SNAIPD, the Constitutional Court concludes that

until this date, although the Court has been informed about certain important advances in critical areas of the policy for the attention of the displaced population, it has not been proven that the unconstitutional state of affairs declared in decision T-025 of 2004 has been overcome, nor that accelerated and sustained advances are being made towards its resolution. The lack of information to prove the resolution of this unconstitutional state of affairs, in spite of the judicial orders aimed at overcoming it, is an indicator of the persistence of this serious humanitarian crisis, which counters several mandates of the Constitution and of International Law, summarized in the 1998 Guiding Principles on Forced Internal Displacement[1].

3. In sum, the authorities that form part of SNAIPD have failed to prove to the Court, in a satisfactory manner, that they have adopted the measures required to solve the aforementioned unconstitutional state of affairs, even though—as it was required in Awards 176, 177 and 178 of 2005—they had the burden of proving compliance with their obligations in this field, through the submission of periodical reports to the Constitutional Court. The lengthy reports received by this Court, which in some cases add up to several hundred pages with their Annexes—and that, in total, amount to approximately twenty thousand pages-, fail to provide proper evidence of compliance with the orders issued in decision T-025 of 2004 and the subsequent Awards. The Court has identified advances in the elaboration of some reports, but in global terms, after analyzing the ones received every month or every two months since October 2005, it is clear that they continue to be deficient.

4. Indeed, most of the reports received by the Constitutional Court have several problems, among which the following are noteworthy: (i) they contain a high amount of information that is irrelevant to determine compliance with the orders issued in the aforementioned decisions; (ii) their length is, by all means, excessive, which makes it difficult to identify the specific measures effectively adopted by the corresponding entities in regards to forced displacement, and in some cases would seem to disguise the scarce compliance given to the orders issued in the Judgment and ensuing decisions, through the presentation of high amounts of hardly pertinent data; (iii) they are inconsistent, both in themselves and over time—that is to say, the information provided to the Court in different

[1] United Nations, Doc E/CN.4/1998/53/Add.2, February 11, 1998. Report by the Special Representative of the United Nations Secretary General for the issue of Internal Displacements of Persons, Francis Deng.

sections of the same report is inconsistent, or it varies from one bi-monthly report to the next one, which reveals failures in their elaboration and presentation, as well as inconsistencies and flaws in the policy for assisting the displaced population; (iv) in no few cases, the different sections of one and the same report contain identical paragraphs, even literal copies of previous reports, which proves that the process of reporting advances in the compliance of the 2005 Orders to the Court became a mechanical and formal procedure.

The foregoing flaws, which are not the only ones identified by the Court but the most prominent ones, prove that, save for some exceptions—namely, the reports submitted by the Ministry of Agriculture, the Colombian Institute of Family Welfare (*Instituto Colombiano de Bienestar Familiar—ICBF*), the National Learning Service (*Servicio Nacional de Aprendizaje—SENA*) and the Ministry of Education-, the reports presented to the Court are inappropriate and not pertinent. In conclusion, they do not afford proper evidence of compliance with the orders issued in decision T-025 of 2004 and its ensuing decisions, and needless to say, they are far from proving that accelerated and sustained advances have been made in the resolution of the unconstitutional state of affairs in the situation of the displaced population, as required by this Chamber in Awards 176, 177 and 178 of 2005.

5. In spite of the existence of said problems, the Constitutional Court has carefully analyzed all of the information contained in the aforementioned reports. On those grounds, the Court concludes that although it has been informed of specific advances in certain concrete areas of the policy for assisting the displaced population, it has not been proven that the fundamental constitutional rights of the population in conditions of forced displacement have ceased to be violated in a systematic and massive way, nor that the measures adopted by the national and territorial entities in charge of assisting the population that becomes victim of forced displacement have been sufficient or pertinent to overcome the unconstitutional state of affairs in this field, or to advance in a sustained and accelerated manner towards its resolution. For such reason, it is necessary to adopt urgent and immediate corrections, so as to guarantee that advances are made in the resolution of said unconstitutional state of affairs.

6. On the grounds of the foregoing conclusion, the Constitutional Court must now determine whether the relevant public entities have provided any explanation for having failed to prove that they have

advanced adequately in the adoption of measures that can lead to overcoming the unconstitutional state of affairs declared in decision T-025 of 2004. The answer is negative: the reports examined by the Court, far from admitting that it has not been possible to advance adequately or providing solid explanations for such fact, inform about mere purposes, future actions, or plans and programs which have not received any development whatsoever—presented as if they were advances-, or about partial compliance with the legal and constitutional obligations of SNAIPD entities within their diverse spheres of jurisdiction.

7. In the same sense, the Court wonders whether, given the evident delay in the proof of compliance with the orders issued in Awards 176, 177 and 178 to adopt the measures leading to a resolution of the unconstitutional state of affairs, and given the expiry of many of the terms granted for that purpose, such entities have requested a time extension. The answer is, once again, negative.

8. Therefore, in the present decision no new extension periods will be granted to comply with the mandates issued in the aforementioned Awards, but rather—regardless of what was ordered in Awards 176, 177 and 178 of 2005, as well as in decision T-025 of 2004—the Court will point out the areas in which the evaluated reports indicate the existence of the most significant delays, warning the relevant authorities that, within the remaining period of time, they are in the constitutional obligation of not only adopting the pertinent corrections, but presenting the corresponding report to the Court, in accordance with the specifications pointed out below. Said period, which is actually the longest one granted in Awards 176, 177 and 178 of 2005, expires on September 13th, 2006—in this sense, the Court clarifies that even though the different entities that received orders in Awards 176, 177 and 178 of 2005 were granted terms of different length to comply therewith, for the purposes of proving compliance with said orders, the Court shall take into account the longest term conferred therein, namely, one year-.

III. AREAS OF THE POLICY FOR THE ASSISTANCE OF THE DISPLACED POPULATION IN WHICH THE MOST SERIOUS PROBLEMS AND THE MOST SIGNIFICANT DELAYS HAVE BEEN IDENTIFIED.

The Constitutional Court attaches particular concern to the fact that the reports—presented by the entities that form part of SNAIPD and the remaining entities that received orders in decision T-025 of 2004 and

Awards 176, 177 and 178 of 2005—are not only far from being adequate to prove the resolution of the unconstitutional state of affairs or the adoption of measures tending towards such resolution, but they also allow inference of serious setbacks in ten critical areas of the policy for assisting the displaced population. Therefore, this Chamber shall impart specific mandates in the present decision, aimed not only at overcoming the setbacks or problematic situations which have been identified therein, but also at making the relevant entities inform in a clear, transparent and concise manner about the adoption of measures that tend towards their resolution. These ten critical areas are the following:

(1) the general coordination of the system for assisting the displaced population;

(2) the activities of registration and characterization of the country's displaced population;

(3) the budgetary aspect of the policy for assisting the displaced population, both in its formulation and in its material execution process;

(4) the general absence of significant results indicators, based on the criterion of "effective enjoyment of rights" of the displaced population throughout all of the policy's components, in spite of some entities' advances in this regard;

(5) the lack of specificity in the policy for assisting the displaced population, in its different manifestations;

(6) the lack of protection of indigenous and Afro-Colombian groups, who have been particularly affected by internal displacement over the last months;

(7) the scant security of the displaced population's processes of return to their lands;

(8) the lack of differences in the assistance received by recently displaced persons, as compared to those who were displaced before the adoption of decision T-025 of 2004 and Awards 176, 177 and 178 of 2005;

(9) the Ministry of the Interior and Justice's deficient coordination of the activities carried out by the territorial entities; and

(10) the absence of a preventive approach within the public policy for assisting the displaced population, particularly during the military and security operations carried out by the State.

1. Lack of coordination of the system for the attention of the displaced population and fragmentation of the attention policy.

Since decision T-025/04, the Constitutional Court has detected a visible general lack of coordination of the policy for assisting the displaced population. The lack of coordination fosters, in turn, a fragmentation of this policy, and hampers its consistent and effective implementation, as well as the adoption of a general perspective which can make it possible to evaluate its results, adopt the pertinent corrections and facilitate its gradual, albeit accelerated development over time.

According to Decree 250 of 2005, the obligation of coordinating the system corresponds to *Acción Social*; however, there is no indication in the reports submitted to the Court by this entity about its compliance with the role of coordinating the system. At the same time, a clear order was issued to CNAIPD in Award 178 of 2005, aimed at overcoming the flaws in the overall institutional capacity of the system for assisting the displaced population[2]. In order to comply with this order, CNAIPD was to

[2] The order issued in this sense to the Council was: *"Fourth.- TO ORDER the National Council for Comprehensive Assistance to the Population Displaced by Violence, within a three (3) month term, counted from the communication of this ruling, to promptly establish and implement a coordinated action program for overcoming the deficiencies in institutional capacity indicated in paragraph 3.6 of the Appendix to this ruling, regarding the "Evaluation of compliance with the order contained in number four of the operative part of Decision T-025 of 2004," so that within a maximum term of six (6) months, counted from the communication of this ruling, those deficiencies in institutional capacity have in fact been overcome. To that end, the National Council for Comprehensive Assistance to the Population Displaced by Violence shall promote the nine actions described in recital 11 of this ruling."* The deficiencies identified in *ruling* 178/05 in the institutional capacity of the system for assistance to the displaced population were as follows: "*3.6 The Office of the* Procurador General de la Nación, *the Office of the Ombudsman, organizations for the displaced, and UNHCR indicate the following as deficiencies that have still not been overcome: (i) lack of a strategy and a contingency plan that ensures sufficient allocation of resources for the implementation of assistance policies; (ii) lack of training for responsible officials; (iii) difficulties establishing the program coverage level for each institution in the system; (iv) the low level of commitment of the territorial entities; (v) lack of follow-up and evaluation indicators that allow, among other things, measurement of effective enjoyment of rights; (vi) lack of clarity in the definition of institutional competencies; (vii) lack of appropriate coordination instruments for the Solidarity Network; (viii) lack of precision in the*

adopt a coordinated program of action, with a series of common result indicators, for purposes of overcoming the institutional flaws identified therein within a maximum term of six months. Even though the term granted to CNAIPD in Award 178/05 to adopt such coordinated program of action has expired, said Council has not adequately proven that it has complied with the mandate issued therein. In the different reports filed by this entity with the Constitutional Court, information is provided on the adoption of isolated measures, such as (a) the promulgation of Agreements on the topic of the participation of the displaced population or the response to its petitions, as well as on the adoption of "mechanisms to define responsibilities in the execution of the institutional programs for the displaced population and the permanent plan for the education, training and preparation of public officials"—some of which, it has been informed, have not been published because of the Electoral Guarantees Law-, (b) the creation of territorial support boards (*mesas territoriales*) for the organizations of displaced populations, (c) the evaluation of the reports presented by the National Board for the Strengthening of the Organizations of Displaced Population, (d) the generation of guidelines for the entities that form part of SNAIPD on different aspects of their jurisdiction, or (e) the generation of reports and recommendations on the budgetary aspects of the policy for assisting the displaced population, *inter alia.*

For the Constitutional Court, even though these activities may be important in themselves, they do not make up for the absence of a central coordinating entity which can ensure the harmonious and coordinated development and execution of the public policy at hand, as it has been established in the applicable regulations, through the adoption and implementation of a general program of action for the different entities that form part of SNAIPD—including the design and application of a coherent and effective set of results indicators. Likewise, the reports presented by *Acción Social* fail to prove that this entity has properly fulfilled its obligations as system coordinator. On the other hand, even

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establishment of terms to meet the objectives set forth in the National Action Plan; (ix) lack of sufficient and appropriately trained personnel to assist the displaced population; (x) lack of effective mechanisms for the entire displaced population to fully understand, in a timely manner, the content of their rights and the policies, as well as the requirements and procedures to access the various institutional programs; (xi) lack of mechanisms to connect civil society with support to programs for assistance to the displaced population; (xii) absence of adequate training processes for officials who assist the displaced population; and, (xiii) lack of appropriate mechanisms to overcome the low coverage and deficiencies in the housing and economic stabilization programs."

though some of the reports presented to the Court by CNAIPD announce that a coordinated program shall be adopted to overcome the flaws in the institutional capacity, and inform about some concrete actions aimed at eventually developing such program, the latter has not yet been formulated, although the six-month term conferred for that purpose expired in 2006, and the ensuing reports have failed to provide any explanations to justify the delay.

Having verified, on the grounds of the reports presented to the Court, the apparent persistence of a lack of effective coordination of the system by *Acción Social*, as well as a delay in compliance with the order issued to CNAIPD and the expiry of the term within which it should have been fulfilled, the Court must highlight that the absence of a central coordinating entity for the execution of the public policy for assisting the displaced population brings, as a direct consequence, a fragmentation and lack of harmony of its different components, all of which generates a negative impact upon the protection of the fundamental rights of the persons who have been displaced by violence. It is therefore imperative, within the remaining period of time before the expiry of the one-year term—counted from the moment of communication of Award 178/05-, for *Acción Social* to adopt the corrective measures which can enable it to comply with its system coordination tasks, and for CNAIPD to comply with the orders issued in this field.

2. Problems in the fields of registration and characterization of the displaced population.

2.1. The problem of under-registration is a flaw which had already been pointed out in this Court's preceding decisions. For the Court it is clear that there is a marked difference between the real dimensions of the phenomenon of internal displacement and the figures included in the Single Registration System of Displaced Population, and that no adequate information has been provided to prove that said difference has been solved. The existence of non-governmental systems for the registration of the displaced population, whose figures surpass by far those included in the Single Registration System, as well as the recognition by the Director of *Acción Social*—in public speeches and presentations—of figures that are close to three million displaced persons, indicate, at the very least, that the official registration system significantly sub-dimensions this serious national problem; this is a flaw which has also been pointed out emphatically by the *Procuraduría General de la Nación* and the organizations of displaced population. As a consequence, the entire public

policy for assisting internal displacement is formulated on the grounds of assumptions that do not match the real dimensions of the problem that is purportedly being addressed.

Even though *Acción Social* informed, in its first reports, that a system for the "estimation of contrasted sources" was being implemented for purposes of measuring under-registration and implementing the appropriate corrections, the last reports received by the Court are silent on the matter. In other words, almost one year has gone by after the Court indicated, in the decisions adopted on August 29, 2005, that the problem of under-registration had to be addressed, and it has not yet been proven that the appropriate measures have been adopted to solve this serious flaw in the public policy. In this sphere, the responsibility corresponds to *Acción Social*, which is the governmental entity in charge of the registration of the displaced population and of proving the resolution of the problems in this field.

The Court understands that under-registration is due, in many cases, to the displaced population's unwillingness to become registered as such in the official registration system—for different reasons, including fear, reticence towards the authorities and the lack of information on the existence of such system-. However, this does not excuse the inaction of the governmental entity responsible for measuring this alarming national reality in the most precise possible terms. It is not acceptable for a governmental entity such as *Acción Social* to shield itself behind reasons such as the ones presented in response to the report filed by the General Procurator's Office in order to exonerate itself from its duty of measuring internal displacement in its real dimensions:

> *"With regard to your statement on under-registration and the deficiencies in information, we inform you that* Acción Social *has the technical instruments and procedures to measure the phenomenon of displacement and present the figures that reflect its evolution, on the grounds of the information reported by each person on her condition at the moment of giving her declaration as a displaced individual. Even though it is true that the figures of the Single Registration System of Displaced Population do not coincide with those presented by other sources, this is based on the fact that the Registration System has the purpose of registering each household and person who requests to be recognized as such, as well as that of facilitating access by each person to the attention offered by the Colombian State.*

> *On the other hand, the phenomenon of under-registration is the phenomenon of the displaced population's abstinence from giving a declaration before the Public Ministry* (sic), *it is presented basically because the population has no information on its rights, it has mistrust towards the State officials and institutions, it desires anonymity because of the situation of displacement, or it fears placing its personal and household security at risk. Under-registration is therefore appreciable since the year 1997 (with the adoption of Law 387) onwards, before that date it is not possible to obtain a measurement, given that the legal framework in force does not establish such function. In this sense, neither the former Solidarity Network nor the current* Acción Social *can invest upon themselves powers which have not been previously established by the Law, insofar as they would be trespassing the limits of the exercise of their functions, as stated by article 6 of the Constitution".*

On the contrary, the Court considers that one of *Acción Social*'s main obligations in regards to the registration of the displaced population, by virtue of Decree 250 of 2005, is that of solving the problems of (i) discrepancies between the different official and non-governmental systems to measure displacement, and (ii) lack of registration of the effectively displaced population within the official measuring system. Insofar as the authorities lack complete and truthful information on the dimensions of the problem they purport to address, their actions shall be designed and formulated on the grounds of mistaken estimates, and therefore they will not have full effectiveness in countering the humanitarian crisis generated by displacement.

In addition, the Court notes that in the course of the last six months there has been a higher number of complaints, filed both informally before this Court and through *tutela* lawsuits presented at the different locations where the phenomenon of displacement has taken place, in relation to the existence of higher obstacles and reticence or refusal by the public officials in charge of registration to include recent cases of forced displacement within the system, thus leaving individuals and families who require immediate assistance, because of their lack of protection, excluded from the assistance system. The Court has also been informed about the repeated refusal to register second displacements, intra-provincial or intra-urban displacements, and displacements caused by police or military operations in which no humanitarian components or humanitarian contingency plans have been included, as well as the requests for

registration made after one year has gone by since the displacement. These situations have taken place in relation to cases of displacement which have been publicly known, such as the cases of the Nariño, Cauca, Antioquia, Chocó, Putumayo and Caquetá departments, *inter alia*.

In sum, *Acción Social* is still under the duty of proving to the Constitutional Court that it has adopted the measures required to solve the problems in the field of registration of the displaced population which have been pointed out in this section, given that up to this date, the reports presented by said entity are far from being adequate for this purpose.

2.2. With regard to the process of characterization of the displaced population included in the Single Registration System, the Court notes that the reports presented to it indicate a significant delay in the fulfillment of *Acción Social*'s obligations in this field.

The contents of the order issued in Award 178 of 2005 in relation to the characterization process were clear and expressed in unequivocal terms: it was intended that within a peremptory term of three months, the Director of the Social Solidarity Network—now *Acción Social*—should have adopted the measures required to effectively finalize the characterization process in the term of one year, that is to say, by September, 2006. Indeed, such public official was in the duty of designing, implementing and promptly applying, within a period of three months, the procedures and corrections required to overcome the different problems that were pointed out, with similar clarity, in Award 178/05, "so that within the maximum term of one (1) year, counted from the communication of the present Award, the process of characterizing the population displaced by violence has been finalized". The Court shall determine, therefore, whether (i) it was effectively proven that, within a three month period (that is to say, until December 13, 2005) *Acción Social* not only designed but promptly implemented the procedures and corrections required to solve the problems indicated in Award 178/05, and (ii) given the development of *Acción Social*'s activities up to this date with regard to the process of characterization of the displaced population, it is likely or feasible for such process to have been completed by September, 2006.

From the outset the Court notes that *Acción Social* did not prove that it had complied with the order issued in Award 178/05, where it was stated that within a three-month term—that is to say, until December 13, 2005—it should have adopted the measures required to complete the process of

characterizing the displaced population in a maximum term of one year. However, it was not until the first semester of 2006 that *Acción Social* informed about the adoption of a National Characterization Plan which is, at the moment, in its first phases of application and has a significant delay in its implementation, as recognized by *Acción Social* itself. In that sense, it is clear that by the moment when the one-year term granted by the Court expires—on September 13, 2006-, the process of characterization of the displaced population will not have been completed.

What is more, the National Characterization Plan does not include the necessary instruments to secure that, once such characterization process has been finalized, the public policy for assisting the displaced population is focalized in accordance with the results of its application. That is to say, it would seem that the characterization process has been visualized by *Acción Social* as an end in itself, and not as a means to adapt the public policy for assisting the displaced population to the realities which have been observed during such characterization.

2.3. In this sense it is particularly relevant that CONPES Document 3400 includes a special chapter on the issue of the State's system of information on forced displacement. Such chapter states, in pertinent part, as follows:

> ***"VII. INFORMATION SYSTEMS, FOLLOW-UP AND EVALUATION OF THE POLICY TO ATTEND FORCED DISPLACEMENT.***
>
> *One of the most serious institutional failures in the design, application, follow-up and evaluation of the policy for the attention of the Displaced Population is the precariousness of its information systems. Even though the Colombian State has made important advances, through the Single Registration System, in the characterization and measurement of the magnitude of displacement, and SNAIPD entities are likewise advancing in the setting in motion of information systems, the following restrictions are still present,* inter alia*:*
>
> *(i) Not all the displaced population included in the Single Registration System has been characterized, given that up to this moment only the individual displacements and one third of the massive ones have been included in this activity;*

(ii) Some of SNAIPD entities still fail to differentiate, in their information systems, the displaced population from the rest of the population that benefits from their regular programs, which makes it impossible to know the state of the attention in each one of the components;

(iii) a significant proportion of the displaced population still lacks an identification document, which makes it impossible to cross-examine the information of the Single Registration System with SNAIPD entities' databases, and hampers the provision of attention through programs that require user identification;

(iv) it is not possible to contrast population information between expelling and receiving municipalities in order to promote the attention of the victims through compensation accounts. Such is the case of the subsidized [health] regime, in which the receiving municipalities are reticent to assist displaced persons, given that their affiliation and finance correspond to other municipalities;

(…) In response to the foregoing, it is urgent to provide the policy with better procedures and instruments for the generation and administration of information, as well as permanent and robust follow-up and evaluation mechanisms which can make it possible to overcome the aforementioned difficulties.

Generation and administration of information

One of the main objectives of the policy for the attention of the displaced population is that of solving the existing information problems. The purpose of this is to have timely and quality information in order to formulate better interventions, control their results and evaluate their impact upon the target population. Likewise, the objective is to provide the State with elements to respond swiftly to the magnitude and eventualities of the problem of forced displacement.

For those reasons, the following actions shall be carried out:

(i) The national government, through Acción Social*, shall define characterization protocols that include the definition of swifter standards and procedures to carry out this process, both at the level of the governmental entities, on the grounds of the Single Registration System, and at the level of non-public entities, through the Contrasted Sources Estimation System. This activity must be carried out in a term no longer than 6 months;*

(ii) The national governmental entities shall begin immediately, and conclude within a term no longer than 6 months, the implementation of registration procedures that differentiate the attention provided to the displaced population from [that which is provided to] the rest of the beneficiaries of their programs. For this purpose, Acción Social *shall provide technical support to SNAIPD entities, and it will identify the areas that require strengthening information systems, as well as the procedures required for that purpose.*

In order to attain this objective at the territorial level, Acción Social *will identify the legal and administrative mechanisms to guarantee the obligation of differentiating the displaced population within the offer of public benefits provided by departments and municipalities. The proposals referring to the aforementioned mechanisms shall be sent to the Constitutional Court before the adoption of the administrative decision that develops judgment T-025 in this aspect.*

(iii) In order to solve the identification problems that prevent the provision of adequate attention to the beneficiaries of some of the programs included in the State offer, the National Registrar shall be permanently included as part of CNAIPD, and within such council, he will be requested to review and improve the scope of the identification agreement it is currently developing with the United Nations (UNHCR). As a complement to this activity, Acción Social *will define a permanent coordination mechanism with the Registrar, in order to secure a better focalization of the identification program in the municipalities with the largest proportion of unidentified population, on the grounds of the information included in the Single Registration System.*

(iv) Finally, in order to solve the problems that prevent contrasting the population information between municipalities, Acción Social*, with the support of the National Planning Department and the COINFO Technical Committee, shall identify the areas that most urgently require crossing inter-municipal information, and propose actions to the pertinent entities. As a complement, a compensation account scheme shall be established to facilitate the attention of the displaced population.* Acción Social*, with the technical support of the National Planning Department, shall define a scheme that will be submitted for consideration by the CONPES (…)".*

The Chamber notes an important discrepancy between the content of this CONPES Document and that of the reports presented by *Acción Social* with regard to the issue of registration and characterization of the displaced population. The absence of actions in relation to the identification process of the displaced citizens who still lack a valid identification document, and are therefore unable to enter the system, is particularly significant.

2.4. The Court must underscore with the highest emphasis the critical importance of the process of registration and characterization of the forcibly displaced population for purposes of formulating and implementing a public policy aimed at effectively securing the constitutional rights of this segment of the population. It must reiterate that the very design of such public assistance policy, as well as its materialization, follow-up and evaluation, depend in their scope, timeliness and effectiveness, on the quality and precision of the information included in the official databases about the displaced population.

In this sense, all of the components of the public policy for assisting the displaced population depend, for their proper formulation and execution, on an adequate process of registration and characterization. Any delay or failure in the process of registration and characterization of the forcibly displaced population bears a direct impact upon the totality of the elements that comprise such public policy. Until the problems in the process of registration and characterization are solved, it will not be possible to advance in a reliable, accelerated, specific and sustained manner in the resolution of the diverse and complex problems that have given rise to the unconstitutional state of affairs declared in decision T-025 of 2004. Therefore, the issue of registration and characterization of the displaced population is placed as one of the foremost priorities, as recognized by the cited CONPES Document itself, and has strategic importance within the process as a whole—a priority which, judging from the reports submitted to the Court, has not been properly granted to it by *Acción Social*.

In this same sense, the Chamber emphasizes that the efforts to register and characterize the displaced population are a key element for the resolution of the unconstitutional state of affairs in the field of internal displacement, given that such state of affairs arises from the difference that exists between the real magnitude of the problem and the State and social responses to it, as established in decision T-025 of 2004.

3. Budgetary aspect of the policy for the attention of the displaced population.

Budgetary insufficiencies were identified in decision T-025 of 2004 as one of the main structural causes of the unconstitutional state of affairs that affects the displaced population. Since then, significant advances have been reported in the quantification of the resources required to finance policies in this field. The latest estimate made by the National Planning Department has evolved from 4.7 to 5.1 billion pesos to assist the population displaced until December 2005. The sources to obtain the missing resources were also globally identified. In addition, budgetary appropriations have been increased in order to fulfill the commitments derived from the policy on internal displacement and from the orders issued by the Court. The execution of these resources has also been increased in several entities. Nevertheless, by August, 2005, social investments focused on the displaced population and their full and timely finance continued to be deficient.

Consequently, in Award 176 of 2005, the Court issued a number of specific orders in the budgetary field. It specifically ordered the Minister of Public Finance, the Director of *Acción Social* and the Director of the National Planning Department: (1) to design a timetable in which they were to estimate the rhythm and the mechanisms to channel the resources calculated by the National Planning Department as necessary to materialize the public policy for attending to forced displacement, pointing out the requirements that such timetable was to fulfill[3]; (2) to periodically

[3] In this regard, the operative part of *ruling* 176 states: *"First.- TO ORDER, through the Office of the General Clerk of the Constitutional Court, that no later than December 1, 2005, the Minister of Finance and Public Credit, the Director of the Presidential Agency for Social Action and International Cooperation -- Acción Social, and the Director of the National Planning Department submit to this Court as well as to the* Procurador General de la Nación*, the Ombudsman, and the Comptroller General of the Republic, a schedule indicating the pace and mechanisms by which the resources considered by the National Planning Department as necessary for the implementation of the public policy of assistance to the displaced population, intended to overcome the state of unconstitutionality declared in Decision T-025 of 2004, shall be allocated. This schedule shall include, as a minimum: 1. The total amount of money that shall be allocated for the purpose of implementing the policy of assistance to the displaced population, broken down: (a) by fiscal years; (b) establishing the proportion of funds that comes from the international community, territorial entities, the Nation, or other sources; (c) identifying the people or organizations responsible for obtaining the resources and for their application; (d) indicating the resources that shall come from the budget of each national-level institution responsible for implementing the policy for assistance to the displaced population; (e) explicitly identifying which institutions are responsible for the*

update the relevant calculations in accordance with the evolution of the phenomenon of internal displacement in the country, for which purpose it warned the Director of the National Planning Department that it was his duty to carry out and communicate in a timely manner the pertinent updates in the calculations[4]; (3) to indicate, for each one of the relevant fiscal years, the specific details of the budgetary allocations that were effectively destined toward assisting the displaced population by the national entities[5]; (4) to submit reports to the Court, at the end of each fiscal year, indicating the precise manner in which the budget for assisting the displaced population had been executed[6]; and (5) bearing in mind that

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money's application, in accordance with the component of the policy for assistance to the displaced population to which it shall be allocated; (f) differentiating between the resources allocated to general programs for the vulnerable population and those directed to the displaced population. 2. The time, as well as the pace at which progress shall be made towards meeting the objectives determined in the National Planning Department's estimation, shall have to be reasonable, but steady and ongoing, in keeping with this ruling."

[4] The operative part stated: *"Second.- TO GIVE NOTICE, through the Office of the General Clerk of this Court, to the Director of the National Planning Department, that the estimate calculated by that institution shall have to be updated, so that the displaced persons registered each term are periodically added. The new calculations shall be communicated in a timely manner to the Ministry of Finance and Public Credit [and] the Director of the Presidential Agency for Social Action and International Cooperation–* Acción Social. *They shall also be communicated to the displaced population and the general public via the mechanisms that the National Department deems appropriate, in addition to being communicated to this Court and the* Procurador General de la Nación, *the Ombudsman, and the Comptroller General of the Republic."*

[5] The corresponding section of the operative part of *ruling* 176 of 2005 is the following: *"Fourth.- TO ORDER, through the Office of the General Clerk of this Court, that on the date on which the General Budget of the Nation for each fiscal year is approved, until the time when the level of resources considered by the National Planning Department [as necessary] for the implementation of the public policy of assistance to the displaced population is attained, the Minister of Finance and Public Credit shall send a report to this Court in which he indicates the amount included in the Expense Budget allocated to assistance to the displaced population, broken down by sections, implementation accounts, and their respective descriptive items. It shall indicate how said allocations are consistent with the schedule described in the first order of this ruling. A copy of the same shall also be sent to the Office of the* Procurador General de la Nación, *the Office of the Ombudsman, and the Office of the Comptroller General of the Republic."*

[6] The operative part sets forth the following in this point: *"Fifth.- TO ORDER, through the Office of the General Clerk of this Court, that no later than one month after each fiscal year ends (including the 2005 fiscal year), until the time when the level of resources considered by the National Planning Department [as necessary] for the implementation of the policy of assistance to the displaced population is attained, the Minister of Finance and Public Credit and the Director of the Presidential Agency for*

it had been proven during the proceedings that the territorial entities had displayed a lack of commitment towards the policy for assisting the displaced population, and taking into account the need of securing these entities' collaboration in the framework of the principles of coordination, convergence and subsidiarity (article 288 of the Constitution), the Chamber warned the territorial entities that they should take into account the constitutional priority of public expenditure for the satisfaction of the displaced population's needs, as well as the content of article 58 of Law 921 of 2004[7].

The Court verifies, in the first place, that the authorities to whom these orders were issued effectively submitted, within the established dates, reports on the budgetary aspect of the public policy for assisting the displaced population. Indeed, on December 1 a timetable was submitted by the three aforementioned authorities, including an estimation of the costs of assisting the displaced population, in accordance with the legally established components of the assistance policy; such timetable effectively pointed out the rhythms and mechanisms to procure the resources required for the implementation of said policy, within the 2005-2010 fiscal years. A report was also submitted to the Court by the Ministry of Public Finance, about the execution of the budget chapters corresponding to the displaced population during the 2005 fiscal year.

Social Action and International Cooperation – Acción Social (or whomever acts in their stead) to send to this Court a report that indicates, for the corresponding term:

1. *The amount of resources that each national-level institution or organization has applied to assistance to the displaced population;*
2. *Whether the corresponding institution or organization has in fact given priority to the application of resources with regard to assistance to the displaced population;*
3. *The exact manner in which the resources allocated in each section of the General Budget of the Nation comply with the schedule described in section 5.4.4.1 of this ruling.*

A copy of this report shall also be sent to the Office of the Procurador General de la Nación*, the Office of the Ombudsman, and the Office of the Comptroller General of the Republic."*

[7] The operative part stated: "*Seventh.- TO ADVISE the territorial entities so they take into consideration the constitutional priority that public spending allocated to the displaced population has in social public spending and Article 58 of Law 921 of 2004, when responding to the requirements of the Ministry of Finance and Public Credit, the National Planning Department, or the Presidential Agency for Social Action and International Cooperation* – Acción Social *for the purpose of complying with Decision T-025 of 2004 and this ruling."*

Having examined such budgetary time table, as well as the estimates on the grounds of which it was formulated, in the light of the reports submitted by each one of SNAIPD entities to the Constitutional Court and the report on the budget execution of the 2005 fiscal year sent by the Ministry of Public Finance, the Court considers that the following observations are pertinent, in accordance with the indications of the *Procuraduría General de la Nación:*

3.1. In the first place, the estimation of the costs of implementing the policy for assisting the displaced population, as contained in the reports submitted to this Court, is problematic. Such estimate, which provides the ground for the calculations that justify the 2005-2010 budgetary timetable, is not adequately justified, given that:

(i) the reports presented after the adoption of Auto 176 of 2005 fail to explain how a specific figure on the costs of assisting each displaced household was obtained—that is to say, which were the factors that were taken into account in making the calculations; given the lack of clarity about such factors, it is necessary for the authorities who received the order to explain whether they maintained the same assumptions that they informed about before the adoption of Auto 176/05, or whether the latter were modified;

(ii) the estimate does not assess the specificities of the target population, given that it fails to take into account the results obtained up to this date from the process of characterization of the displaced population—the advances of which have not yet been incorporated within a new, updated calculation that responds to such specificities in each one of the assistance components. In that sense, the estimation of costs lacks the differential approach required by the Constitution; therefore, the authorities who received orders in Auto 176/05 must indicate whether the advances obtained up to this date in the characterization period have been included within said estimate;

(iii) it has not been proven that the calculation of costs has been updated in accordance with the evolution of the phenomenon of internal displacement; what is more, such calculation is based on a hypothesis of decreasing tendencies in the evolution of the phenomenon of internal displacement, whereas the observations made by the Procuraduría and other entities would indicate that such decreasing tendency has not been proven for the year 2006.

3.2. In second place, the reports have serious inconsistencies between (a) the formulation of the estimate of the public policy's implementation costs and the design of the 2005-2010 budgetary timetable, on the one hand, and (b) the formulation of the goals of assisting the displaced population by each one of SNAIPD entities, on the other hand. In other words, the reports fail to show a basic harmony between the amount of resources that the budget authorities have considered necessary for the implementation of the aforementioned public policy, and the actions that each one of the entities in charge of executing the public policy at hand regard as necessary to comply with their constitutional and legal obligations in the field. The differences between one and the other position, which are salient in some cases, can be observed after a simple reading of the goals established by each one of SNAIPD entities in their bi-monthly reports to the Constitutional Court. They have failed to provide a clear explanation for the reasons that underlie this discrepancy, even though it is evident for the Court that this is a product of the notorious lack of coordination of the System for assisting the displaced population, and the public policy that is materialized through such system. It has not been explained, either, how the budgetary calculations and the timetable for assisting the displaced population shall be updated on the grounds of the resolution of this inconsistency.

3.3. In third place, on the grounds of the reports submitted by SNAIPD entities and the 2005 budget execution report submitted by the Ministry of Public Finance, for the Court it is evident that the budgetary timetable for the 2005-2010 fiscal years included in CONPES Document 3400 has already been disregarded. Indeed, there are several cases of budgetary sub-execution—that is to say, of incomplete execution of the chapters assigned in the budget to each one of the assistance components-, as well as some examples of over-execution—as happened, for example, with the Emergency Humanitarian Aid component under the responsibility of *Acción Social*, which was eventually assigned more resources than the ones initially established-, or execution at rhythms and amounts that were different from the ones established in the budget—for example, accelerated execution of the chapters established in the budget for the entire fiscal year during the first months, as happened with the Ministry of Agriculture. These imbalances, which are tantamount to non-compliance with the budgetary timetable initially submitted to the Court, have not been accounted for or justified in a reasonable manner—which merits the provision of a coherent explanation by the authorities to whom orders were issued in Award 176/05. It has not been explained either how such

imbalances bear an impact upon the 2005-2010 budgetary timetable, whether the latter will have to be reformulated on the grounds of the material results of the budgetary execution carried out up to this date, or whether the imbalances that took place during the 2005 fiscal year will be corrected in 2006, and how so. There is no indication of how the remaining resources, or the ones additionally needed, will be administered in each one of these cases. For the Court, the existence of these inconsistencies, discrepancies and lack of clarity ultimately bears a negative impact upon the effective and orderly application of the public policy for assisting the displaced population, and therefore upon the effective enjoyment of the rights of the persons and families in conditions of forced displacement.

3.4. Fourth, there is no clarity in the reports as to the participation of the territorial entities in the financing scheme of the policy for assisting the displaced population. The report presented on December 1 provides the following explanation:

> *"Taking into account that the amount of resources required to assist the population that was forcibly displaced by December, 2004, was calculated in ColP$4.7 billion*[8]*, and that the amount of budgetary resources required for that purpose during the 2005 fiscal year*[9] *was calculated in ColP$413,650*[10] *million, and that resources were allocated for an amount of ColP$1.3 billion for the 2005 and 2006 fiscal years, the Nation and the territorial entities must make an additional budgetary effort of around ColP$3.97 billion (Annex 5).*
>
> *Insofar as both the national and the territorial entities must prove their commitment towards the policy for the attention of the Forcibly Displaced Population in accordance with their constitutional and legal obligations, the proposed timetable establishes a participation percentage for both levels, which was calculated as follows: 75%*

[8] Colombian "Billions" are equivalent to Trillions

[9] According to the figures of the Central Registry for the Displaced Population, 106,650 people were displaced in 2005 (with a cutoff date of October 31, 2005). According to DNP [National Planning Department] projections, it is calculated that as of December 2005 the total number of displaced persons for this year may be 126,671.

[10] This estimate was base don the same assumptions that were reported to the Constitutional Court in the Information Hearing held on June 29, 2005, for estimate of $4.5 trillion pesos.

(ColP$2.9 billion) for the Nation, and 25%[11] (ColP$990 thousand million) for the territorial entities[12].

In accordance with the above, the rhythm of allocation of resources from the Nation's General Budget for the attention of the forcibly displaced population shall be gradual during the 2007-2010 fiscal years. It is noteworthy that, because these are resources within the Nation's General Budget, the Ministry of Public Finance and the National Planning Department will be responsible for including said resources in the annual budget project and preproject, respectively.

The timetable included in CONPES Document 3400 to provide for the needs of the displaced population is the following one:

Table 2: National Timetable

	2007	***2008***	***2009***	***2010***	***Total***
Attention of the population that was displaced by December, 2004	*653.698. 385.089*	*653.698. 385.089*	*653.698. 385.089*	*653.698. 385.089*	*2.614.793.540.354*
	130.280. 891.766	*130.280. 891.766*	*111.669. 335.799*		*372.231.119.331*
Total	*783.979. 276.854*	*783.979. 276.854*	*756.367. 720.888*	*653.698. 385.089*	*2.987.024.659.685*

Calculations: DNP-DJS-GEGAI

[11] This percentage includes the components of health, education, housing, and emergency humanitarian assistance.

[12] In the Information Hearing held on June 29, 2005, in that Court, the DNP submitted a breakdown of the total estimate of $4.5 trillion, indicating the participation percentage in the appropriation of resources to assist the Population Displaced by Violence in the following manner: 70% the Nation, 15% territorial entities, and 15% international cooperation. Nevertheless, these percentages have changed as during the estimate exercise, adjustments were made with more precise information in terms of the budget and displacement figures. The resources and efforts of international cooperation are not included in this exercise, given the difficulty of guaranteeing their availability with certainty.

The distribution of these resources according to the attention components and the executing entities, shall be based on the programming of the 2006 fiscal year, and in accordance with the orders issued by the Constitutional Court, it will be adjusted according to the evolution of the reality of the problem of displacement, whether to increase such estimate or to reduce it, as the necessities of displaced persons are provided for and in accordance with the information contained in SIGOB on the results of the policy, and the registrations included in the Single Registration System"

The timetable indicates that territorial entities shall contribute 25% of the resources required to implement said policy, starting on the 2007 fiscal year; however, there is no comparable indication for the 2006 fiscal year, nor for the already expired 2005 fiscal year. In this sense, the Court notes that the calculations of the resources that are to be applied in 2005 and 2006 do not include the participation of the territorial entities: from a general estimate of 5.1 billion pesos, distributed between the 2005 and 2010 fiscal years for assisting the population that was displaced by December, 2004, a total of 1.3 billion pesos—which were appropriated for 2005 and 2006 under the responsibility of the national entities—are deducted, and afterwards the remaining 3.97 billion are divided in 75% that correspond to the Nation, and 25% that correspond to the territorial entities for the 2007-2010 fiscal years. In this way, there is no explanation about why the territorial entities were not included within the budgetary calculations for the 2005 and 2006 fiscal years, nor about how the territorial budgetary efforts made during 2005 and 2006 had incidence upon the assistance policy and its different components.

In addition, on the grounds of the different reports presented by the Ministry of the Interior and Justice on the fulfillment of its duty to coordinate the territorial efforts for assisting displaced persons, the Court concludes that it has not been proven that there is an appropriate scheme to ensure that the budgetary chapters that correspond to the territorial entities are executed in the established manner and amounts. In this sense, the reports submitted to the Court would seem to indicate that the materialization of the assistance timetable presented to the Constitutional Court is threatened by the absence of a scheme to coordinate territorial entities' budgetary efforts.

3.5. Fifth, there was no concrete individualization of the persons and entities responsible for executing the resources included in the budgetary timetable and in the Nation's General Budget for the 2005 and 2006 fiscal

years, even though a clear mandate was issued in this sense. The report simply indicates which is the corresponding SNAIPD entity, but within such entities, there is no specification about which office or officer will be responsible for securing that such resources are executed in the manner and amounts established in the budget. This lack of concrete individualization of responsibilities directly affects the transparency of budgetary managements in relation to the policy for the attention to displacement.

3.6. The Court calls to mind that in the context of the unconstitutional state of affairs generated by the difference between the magnitude of the problem of forced displacement and the institutional response to solve it, the Court has identified a number of budgetary problems in Award 176/05, and a number of requirements to overcome them: (i) the need to clarify specific individual responsibilities, and the responsibilities of each entity, (ii) the need to indicate the sources and mechanisms to procure the necessary resources, and (iii) the need to ensure that the gradual effort to satisfy the rights of the displaced population is effectively made, "is not delayed through liquidations that are inferior to the budget for each fiscal year, is not diluted in the general budget chapters or programs for the vulnerable population, and is constant in order to achieve the established goals".

As a consequence of the aforementioned problems, the Court concludes that it has not been proven that the budgetary problems at hand have been solved, after nearly one year since the corresponding orders were issued: (i) no concrete clarification of the specific individual responsibilities in each one of SNAIPD entities has been made, (ii) there is no clarity whatsoever about the role of territorial entities in the finance of the public policy to attend to forced displacement, and (iii) the levels of budgetary sub-execution and over-execution identified by the Court bear a direct impact upon the materialization of the gradual efforts established in the budgetary timetable submitted by the Ministry of Public Finance, the National Planning Department and *Acción Social*, and there is no proof of the existence of a tool to solve the resulting imbalances, nor a correction of the initial calculations.

4. Absence of reliable and significant results indicators.

One of the general orders issued in Awards 177 and 178 of 2005, both to the National Council for Comprehensive Assistance to the Population Displaced by Violence and to the entities that form part of SNAIPD, was

that of adopting results indicators "that take into account the effective enjoyment of the rights of the displaced population, and make it possible to determine the dimensions of the specific demand which has been attended, as well as the advances, retrogressions or delays of each program and assistance component".

Each one of the reports submitted individually to the Court by SNAIPD entities contains a chapter on results indicators. However, the content of such chapters is far from appropriate, for the following reasons:

4.1. Until this date, there is no series of indicators that responds, on the grounds of the specificities of each component of the public policy, to homogeneous criteria in its design, application and validation. On the contrary, each one of the entities that form part of SNAIPD has generated its own set of indicators, in many cases modifying them throughout the different bi-monthly reports. In this way, the Court notes a complete lack of coordination in the design, application and validation of results, which again reveals, in turn, a serious problem of fragmentation of the public policy for assisting the displaced population, as well as a lack of definition of the objectives and goals to be achieved, according to the established priorities. The obligation of adopting indicators was also enshrined in Decree 250 of 2005, issued on February 7, 2005; non-compliance with this provision goes to prove, with higher clarity, that neither the National Plan nor the orders of the Court have been fulfilled as of this date.

4.2. The criteria to measure the results, presented as a list of indicators, have not been applied in such a way as to prove how the outcomes of the public policy have evolved, or whether such results indicate compliance with the orders issued in the judgment with regard to the effective enjoyment of displaced persons' rights. This application should have been carried out, at the least, since the adoption of Judgment T-025 of 2004, in order to prove whether there had been advances or, on the contrary, delays or retrogressions in each one of the components of the policy.

4.3. It is not clear, in any of the cases, whether the result indicators are applicable or significant. In fact, apart from presenting the indicators as mere criteria of compliance with the goals set by each SNAIPD entity in the reports they have submitted to the Court, it does not seem clear that there exists an officer or entity in charge of applying said indicators, carrying out a follow-up of the policy's implementation and orienting it in accordance with its results, introducing the pertinent corrections or modifications.

In this way, one of the main flaws which had already been identified by the Court still persists, and there is now a pressing need to adopt different sets of results indicators which, more than being mere enunciations of isolated elements or criteria that refer to certain goals, can serve as instruments to measure in a transparent, reliable and significant manner the effectiveness of the public policy for assisting the displaced population, both in relation to said policy as a whole and to each one of its components, based on the need to secure effective enjoyment of forcibly displaced persons' fundamental rights. There are, therefore, three (3) sets of results indicators whose adoption was ordered in Auto 178/05, and which are required to comply with this purpose, namely: (i) one set of results indicators that refers to the national coordination of all of the components of the public policy for assisting the displaced population, (ii) one set of indicators that refers to the coordination of the activities of the territorial entities in the development of all of the components of the policy for assisting the displaced population, and (iii) one specific set of indicators for each one of the components of the public policy under the responsibility of the entities that form part of SNAIPD within their spheres of jurisdiction—e.g. guarantee of minimum subsistence levels, support for self-sufficiency, housing, returns, lands, healthcare, education, etc..

4.4. Taking into account that the lack of a system of indicators makes it impossible to evaluate the results which have been effectively obtained, and therefore to determine whether each responsible entity has advanced at an adequate rhythm in the fulfillment of the orders issued, the Court decides that, if no sets of indicators that comply with these minimum requirements have been submitted by the time when the terms granted in Award 178/05 expire, the Court will explore the possibility of adopting indicators crafted by sources different from SNAIPD.

5. Lack of specificity in the diverse components of the attention policy.

5.1. As a result of the failures in the characterization of the displaced population and the lack of sensitivity that was present in the formulation of the policy in relation to the displaced persons who receive special constitutional protection for their fundamental rights—among other factors pointed out since Judgment T-025/04-, it has not been proven to the Court that the public policy for the attention to displacement has been formulated or applied with due regard for the specificity criterion, derived from the mandate of securing the rights of especially vulnerable persons. On the contrary, in the reports submitted to the Court there are some examples of programs or actions designed for the vulnerable population in

general, through which the efforts to assist the displaced population are still being channeled, which lack the required specificity in relation to displaced persons; such is the case of the program "Families in Action" (*Familias en Acción*), which absorbs part of the assistance provided to displaced persons.

5.2. Even though significant advances have been proven at a basic level of specificity, namely that of differentiating the assistance provided to the displaced population from the assistance provided to the rest of the vulnerable population, the specificity criterion is still absent from the reports at three different levels with equal constitutional importance: (a) in relation to the persons who are especially protected by the Constitution and form part of the displaced population—elderly persons, children, women providers-, (b) in relation to the regional variations in the phenomenon of displacement, and (c) in relation to displaced persons' status as victims of the armed conflict.

5.3. Even though there are some exceptions, such as the case of the Colombian Institute of Family Welfare, it may be held that in general terms, the entities that form part of SNAIPD have disregarded the need to design and apply their assistance programs paying careful attention to the specificities of the population that they will assist, at these three levels.

5.3.1. In the first place, it is quite unsettling that the reports fail to prove that the assistance programs implemented by the different authorities that form part of the system pay special attention to the special needs of the elderly persons, children and women providers that form part of the target population. In effect, these persons—who are especially protected by the Constitution—are affected in a severe manner by the condition of displacement, given the magnitude of the risks to which they are exposed—for example, risks for their health and lives, of becoming victims of trafficking and prostitution networks, of being forcibly recruited by irregular armed groups, of malnutrition in the case of children or, in the case of women and girls, of having their sexual and reproductive rights violated. Even though all displaced individuals share, in general terms, a violation of their constitutional rights, these three groups of the population are different from the rest in the specificity of their vulnerabilities, their needs for protection and assistance, and their possibilities of reconstructing dignified life projects. That is the source of the need to adopt a differential and specific approach, which acknowledges that displacement bears different effects depending on age and gender.

These failures in terms of specificity aggravate the flaws in the result indicators, given that the measurement criteria submitted to the Court do not include any indicators that show the results obtained in relation to elderly persons, children and women providers.

5.3.2. In second place, as a consequence of the lack of coordination of the territorial efforts to attend forced displacement, the Court notes on the ground of the reports submitted to it, that the policy for assisting the displaced population disregards the regional variations and specificities of internal displacement, derived from the different territorial dynamics of the armed conflict. Although displacement is a humanitarian crisis that affects the entire country, it has regional and even local features which are directly related to the actors that generate it, its modalities, the affected groups of the population and the causes that fuel it. It is also pertinent to differentiate the situation of the municipalities that expel population from that of the municipalities that receive displaced population, some of which have a very high percentage of displaced persons in relation to their total population. This is why the Unified Comprehensive Plans (PIU) are so important; the reports fail to prove that these Plans have been adopted and implemented with the effectiveness and organization that were initially announced.

5.3.3. Finally, the Court does not consider that it has been proven that the design of the policy to assist displaced persons takes their condition of victims of the armed conflict into account—a condition that confers specific rights upon them, such as the rights to truth, justice, reparation and non-repetition. In the specific case of the victims of forced displacement, these rights are equally expressed in the protection of the property that they have left abandoned, particularly of their land—a protection component which has not been emphasized with sufficient strength by the entities that form part of SNAIPD.

6. Displacement of indigenous and Afro-Colombian groups.

6.1. The displacement of Colombian ethnic groups is an area in which the Court has detected one of the most worrying gaps in the assistance policy under review. It is clear from both the communications and reports presented to the Constitutional Court and public and notorious facts which are known to the public, that the country's indigenous and Afro-Colombian groups have borne a proportionately higher impact within the total group of victims of forced displacement in the course of the last year, and it has not been proven that the assistance policy includes a specific

element aimed at preventing the occurrence of displacements of these groups and assisting in an immediate and effective manner the specific needs of those which have already been displaced.

6.2. Forced displacement is particularly harmful for ethnic groups, who suffer in proportional terms the highest level of displacement in the country, as it has been reiteratively informed to the Court and declared by different analysts of the phenomenon. The impact of the conflict as such is expressed in harassments, murders, forced recruitment, combats in their territories, disappearance of leaders and traditional authorities, blockades, eviction orders, fumigations, etc., all of which comprises a complex causal framework for displacement. The displacement of indigenous and Afro-Colombian groups entails a serious violation of their specific constitutional rights, including their collective rights to cultural integrity and to territory. Moreover, indigenous and Afro-Colombian groups' relationship with their territory and its resources transforms forced displacement into a direct threat to the survival of their cultures.

6.3. For these reasons, the State is under the obligation of acting with a special degree of diligence in order to prevent and solve this problem; however, on the grounds of the reports submitted to the Court, a notorious gap is observable in this component of the policy to assist displacement. The inaction of the competent authorities is hence transformed into a factor that aggravates the effects of this humanitarian crisis.

7. Lack of security for the return processes

7.1. As the *Procuraduría General de la Nación* has informed on repeated occasions, the processes of return of the displaced population have been carried out without paying special attention to their security conditions, both during the physical mobilization of the population and during their permanence at the places of return. This gap is particularly serious, if it is borne in mind that it has a direct impact upon the exercise of the rights to life, personal integrity and security of the displaced population, and that in Auto 178/05 clear orders were issued to adopt, within a maximum terms of six (6) months, a program aimed at overcoming the institutional flaws in this field.[13]

7.2. In this sense, the flaws in the reports presented by *Acción Social* and the Ministry of National Defense are particularly alarming. The

[13] See section 10 of Annex 4.

former, because the actions it reports in this field have been essentially restricted to the adoption and adjustment of a "Returns Protocol", on whose practical application no conclusive information has been provided yet, and to the proposal of diagnoses on the effective enjoyment of the rights of the returned population, which have not yet been completely carried out. The latter, because the reports it has presented to the Court have been restricted to a description—at great documentary length—of general military operations, which include in some cases elements of companionship to the returned population but, in general terms, lack the specific approach required to protect the security of the displaced population that decides to return to its place of origin—as recognized by the reports themselves-.

8. Absence of differences between the attention received by recently displaced persons and by those who were displaced before the adoption of decision T-025 of 2004 and Awards 176, 177 and 178 of 2005.

On the grounds of the different communications which have been presented to the Constitutional Court, as well as notorious events which have been communicated to the public through the press, this Court verifies that the different entities that form part of SNAIPD have failed to prove that the assistance provided to the persons who have been displaced recently is qualitatively better than the one granted to those who became displaced before the adoption of Judgment T-025/04 and Awards 176, 177 and 178. In fact, the information available to this Court indicates that in many cases, these persons have been denied access to the most basic components of State assistance, such as immediate aid or emergency humanitarian aid.

In that sense, in order to prove that the public policy to assist the displaced population has advanced substantially, even in its most basic components, it is necessary for the entities that form part of SNAIPD, and *Acción Social* in particular, to present this Court, within the term that remains before the expiry of the one-year period granted in Award 178 of 2005, the information required to prove that, at least in relation to the component of guarantee of a minimum subsistence—through immediate aid and emergency humanitarian aid—the population that has become displaced in the course of the last months is assisted in an effective and timely manner, without suffering from the problems indicated in the aforementioned Award 178/05, or in case these problems do take place, that it happens to a lesser degree, and providing a solid explanation for it.

The Court underscores that the mass displacements of which it has had notice—through press information which grants them the nature of notorious events or letters sent by the displaced persons themselves—and in regards to which it requires the provision of clear information in this respect, include the ones that took place in the following municipalities: Nariño (Antioquia department), Argelia (Antioquia department), San Juan Nepomuceno (Bolívar department), Florencia (Caldas department), Samaná (Caldas department), Itsmina (Chocó department), Río Sucio (Chocó department), Ungía (Chocó department), Corregimiento de La Carra (Guaviare department), San José del Guaviare (Guaviare department), Vistahermosa (Meta department), Policarpa (Nariño department), Ricaurte (Nariño department), Iscuandé (Nariño department), Barbacoas-Altaquer (Nariño department), Orito (Putumayo department), Puerto Asís (Putumayo department), Hormiga (Putumayo department) and San Miguel (Putumayo department).

9. Deficient coordination of the efforts of territorial entities by the Ministry of the Interior and Justice.

9.1. In decision T-025 of 2004, the Ministry of the Interior was ordered to promote "that the governors and mayors referred in Article 7 of Law 387 of 1997 adopt the decisions required to ensure that there is coherence between the constitutionally and legally defined obligations to assist the displaced population under the responsibility of the corresponding territorial entity, and the resources that they must destine to effectively protect their constitutional rights".

9.2. In Award 177 of 2005, the Constitutional Court issued concrete orders and granted reasonable terms for the Ministry of the Interior and Justice to design, implement and promptly apply a strategy for the promotion and coordination of national and territorial efforts, which could effectively lead to the assumption of a higher budgetary and administrative commitment by territorial entities to assisting the displaced population and the effective guarantee of their rights. However, the reports submitted to the Court fail to prove that the efforts of the Ministry of the Interior and Justice have included suitable actions to advance adequately in the fulfillment of this order.

9.3. According to the reports, the main flaws are present in the following areas: (a) the Ministry's interpretation of its own role as promoter and coordinator of the national and territorial efforts for the comprehensive assistance of the displaced population, which is restrictive

and disregards the central position that such Ministry must occupy in the coordination efforts, as ordered in Award 177/05; (b) in particular, the constant reference which has been made to the autonomy of territorial entities, as a factor that hampers the adequate coordination of the efforts undertaken by said authorities, disregarding the fact that this is a matter of national interest which, for that precise reason and in accordance with constitutional case law (decision C-579 of 2001) justifies a higher level of intervention by the central authorities; (c) the approach which has been given to the coordinating function under the responsibility of the Ministry, which has focused on the dispatch of communications and requests and the delivery of speeches and conferences, without actually advancing in concrete coordination actions which can fulfill the orders that were issued; (d) the scarce analysis of the information provided by the territorial entities in regards to their commitment to assisting the displaced population; and (e) the delay in the production of indicators which can allow for an evaluation of the advance of territorial entities in the resolution of the unconstitutional state of affairs, and of the effectiveness of the coordination activities carried out by the Ministry of the Interior and Justice.

9.4. Likewise, the Court notes that the information submitted by the Ministry of the Interior and Justice up to this moment is lengthy, confusing, in many cases irrelevant, disorganized, and on some occasions outdated and incomplete. Moreover, the Court notes that the information sent to the Ministry by the territorial entities has been directly re-sent to the Court, without said Ministry playing the role of analytical filter for such information as part of its coordinating role.

9.5. Until this date, the Court has not received the following documents:

- The first and second evaluations on the situation of the territorial entities' current commitment to assisting the displaced population, requested in provision number 2-1 of the decision adopted in Award 177/05. These evaluations should have been submitted on October 13, 2005 and March 13, 2006. After this term, in the reports submitted in the months of May, June and July, 2006, partial reports and follow-up matrixes have been presented, some of them with incomplete information, with an initial assessment of the situation in the departments of Putumayo, Nariño, Cauda, Valle del Cauca, Caldas, Quindío, Risaralda, Guainía, Casanare, Meta and Arauca.

- The strategies to coordinate and promote higher budgetary and administrative commitments by the territorial entities, with the information and features pointed out in numbers 2-2, 2-3, 2-4, 2-5 and 2-6 of the decision adopted in Award 177/05, in such a way that it is possible to identify the concrete goals in the short, medium and long terms, the timetable which has been adopted, the evaluation and follow-up indicators, the coordination and follow-up mechanisms and the concrete and effectively conducive measures adopted by the Ministry of the Interior and Justice to advance in the resolution of the unconstitutional state of affairs.

The foregoing flaws make it necessary for the Ministry of the Interior to solve, within the time that remains for the expiry of the one-year term granted in Auto 178 of 2005, the deficiencies in the information presented to this Court, and to prove that it has effectively adopted measures which are conducive to coordinate the territorial efforts for the resolution of the unconstitutional state of affairs in the field of assisting the displaced population.

10. Lack of a preventive approach within the public policy for the attention of the displaced population, in particular within the operations deployed by the Armed Forces which can generate displacements of population.

One of the main gaps detected by the Constitutional Court in the formulation and development of the public policy for assisting displacement is the absence of the preventive approach it must display as a central feature. Indeed, Judgment T-025 of 2004 emphasized the State obligation to prevent the factors that give rise to the internal displacement of the population, whereas the Guiding Principles on Internal Displacements to which repeated reference has been made indicate, in Principle 5, that *"[a]ll authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons"*.

The Court has recognized in its judgments that the legitimate presence of the Armed Forces across the entire national territory and the recovery of the monopoly of armed force are constitutional mandates whose application is a function of the Executive Branch of public power. It has also recognized that the improvement of the security conditions of the inhabitants is a factor that deters displacement. Therefore, the Court has

not made, nor will it make in this decision, any observations in this sense, and it respects the Executive power to define the policies that relate to public order.

Nonetheless, regardless of the aforementioned topic, some specific situations may take place, in which it can be anticipated that, because of such situations' peculiarities, the legitimate actions of the Armed Forces can generate, as an indirect effect, the displacement of persons.

On the grounds of the analysis of the different reports which have been submitted to this Court, it can be concluded that the preventive approach for these specific situations is absent from the documents presented to the Court. In these cases, the response to displacement is marked by an approach primarily aimed at palliating the consequences of internal displacement upon the enjoyment of the constitutional rights of those who are affected by it, through the provision of different assistance components under the responsibility of the different SNAIPD entities. However, the existence of State efforts aimed a preventing internal displacement in such specific situations is missing—that is to say, efforts aimed at attacking the specific causes that give rise to displacement in each particular case before displacement itself takes place. This does not mean that the Armed Forces should refrain from carrying out their actions in any place of the national territory, in accordance with the decisions that the Executive is empowered to adopt under presidential directives, in the field of preservation and re-establishment of public order.

One of the most worrying manifestations of the absence of a preventive approach takes place in the sphere of the operations legitimately carried out by the authorities, be it during the actions of the military and police forces and the State's security organs in addressing the criminal conduct of armed groups, or during the realization of processes of fumigation and eradication illegal drug crops in places inhabited by persons who are forced to displace themselves elsewhere. This type of events has come about specifically in the departments of Nariño, Cauca, Putumayo, Chocó and Caquetá, of which the Court has been informed through publicly available information and through the information provided by the affected persons and some non-governmental entities.

The occurrence of these specific situations reveals that, at the moment of planning and executing military and security operations, the Colombian authorities have failed to include, as it can be appreciated in the reports submitted to the Court, a component for the prevention of internal

displacement, which foresees the possible generation of this type of consequences over the population of the area where they are carried out, anticipates—as far as possible—the consequences and magnitude of such displacement, and establishes concrete measures to attend the necessities of the persons who become displaced, for example through the provision of immediate and emergency aid with special promptness and care to the victims.

In this regard, no reports have been submitted to the Court about the preventive dimension of the policy on internal displacement, which are focused on these special situations.

On the other hand, and also in relation to the preventive component of the public policy for the attention to internal displacement, the Court notes that, according to the reports presented by the *Procuraduría General de la Nación*, the early warning system—which makes it possible to detect with some anticipation cases of potential displacement of the population—has not functioned properly up to this date. Such situation is explained, in part, by the lack of effective coordination of the system, and one of its salient features is the lack of harmonization between the activities of the early warning system, on the one hand, and the provision of protection and the other pertinent components of assistance, on the other. In this sense, it is necessary for the relevant authorities, specifically *Acción Social* and the Ministry of National Defense, to inform in full detail about the advances made in this area, the corrective actions they have undertaken to solve the malfunctions of the system, and the actions that tend to strengthen the component of coordination between the early warning system, the protection and provision of assistance to the population affected by violent events.

IV. MEASURES TO BE ADOPTED

On the grounds of the preceding considerations, the Third Review Chamber of the Constitutional Court, exercising its constitutional and legal powers, shall adopt in the present award the decisions and orders described in the following sections.

A. Orders related to the verification of the persistence of the unconstitutional state of affairs, the precariousness and disparity of the proven advances and the presentation of a new, common report on the advances achieved.

1. In the first place, it shall be declared that, as of the date in which this award is adopted, it has not been proven in the reports submitted to the Constitutional Court that the unconstitutional state of affairs in the field of internal displacement has been overcome, nor that accelerated and sustained advances have been made in the adoption and implementation of the decisions required to ensure the effective enjoyment of the rights of the forcibly displaced population.

2. It shall be declared that no reasons have been provided to justify the delay in the adoption and implementation of the measures required to overcome such unconstitutional state of affairs.

3. Given that it has not been proven that the actions developed by the entities that form part of SNAIPD are sufficient to overcome the unconstitutional state of affairs in the field of internal displacement, and that the reports, far from proving advances in the protection of displaced persons' rights, present information that does not respond in a specific and adequate manner to the requirements of this Chamber, the Constitutional Court:

3.1. Will warn that the submission of reports with the characteristics indicated in segment II-4 of this award shall be taken, in the future, as an indication of non-compliance with the orders issued in decision T-025 of 2004 and Awards 176, 177 and 178 of 2005.

3.2. Will order the devolution of the reports submitted by the entities that form part of SNAIPD, through the National Council for Comprehensive Assistance to the Population Displaced by Violence.

Even though some of the reports do not share the general flaws identified in the foregoing considerations—such as, for example, the reports presented by the Ministry of Agriculture, the Colombian Institute of Family Welfare, the Ministry of National Education and the National Learning Service-, those reports are anyhow visibly heterogeneous in their formulation and structure, for which reason they will be included in the set of reports to be returned in their totality, so that once the final reports are received, they have all been approved by CNAIPD within a common approach that allows for a concise, harmonized and articulated evaluation of the public policy for assisting the displaced population, on the grounds of reliable and significant indicators.

3.3. Will declare that, with regard to the common orders issued to the different entities that form part of SNAIPD in Award 178 of 2005, it has not been proven that the results indicators have been adequately formulated or applied, nor that as a result of their application, the necessary follow-up is carried out or the pertinent corrections are introduced to the different components of the public policy for assisting the displaced population.

3.4. Will order the entities that form part of SNAIPD to submit, within the term that remains for the expiry of the one-year term granted in Award 178 of 2005—which shall take place on September 13, 2006-, a common, concrete and transparent report, which provides significant elements to prove that the orders issued in decision T-025/04 and Autos 176, 177 and 178 of 2005 have been complied with, in accordance with the following specifications:

(a) the report to be presented must be endorsed and submitted exclusively by *Acción Social*, as the entity in charge of the central coordination of the public policy for assisting the displaced population.

(b) the report must contain indications on three central aspects: (i) the activities of national coordination of the public policy for assisting the displaced population, in relation to each one of the components it comprises; (ii) the coordination of the activities of the territorial entities in development of the different components of the public policy for assisting the displaced population that they are responsible for; and (iii) the activities carried out by the entities of SNAIPD within each one of the components of the public policy for assisting the displaced population.

In each aspect of the report, apart from what is pertinent for each component of the policy and the coordination, specific and concrete reference must be made to the advances made in the ten critical areas that, as it has been proven in the present award (Section III), evince the most significant delays within the public policy at hand; and regardless of the necessity to prove in the report the advances that have been made with regard to each one of the orders issued in Awards 176, 177 and 178 of 2005.

(c) The report must have as central axis the **application**, at least since the date in which decision T-025 of 2004 was adopted, of the three sets of results indicators whose adoption was ordered in Auto 178 of 2005, namely: (i) one set of results indicators that refers to the national

coordination of all the components of the public policy for assisting the displaced population, (ii) one series of indicators that refers to the coordination of the activities of territorial entities in the development of all of the components of the policy for assisting the displaced population, and (iii) one specific set of indicators for each one of the components of the public policy under the responsibility of the entities that form part of SNAIPD within their spheres of jurisdiction—e.g. guarantee of minimum subsistence income, support for self-sufficiency, housing, returns, lands, health care, education, specific prevention, etc.-.

The sets of result indicators to be presented to the Constitutional Court must not be restricted to a mere enunciation of the indicators at hand, but they must include the application of such indicators to the results of each one of the components of the public policy for assisting the displaced population in its different dimensions, at least since the date of adoption of decision T-025 of 2004, in such a way that it is possible for all interested parties to analyze, in a clear and transparent way, the results obtained in the task of securing the effective enjoyment of the rights of the persons displaced by violence, and that they also allow for an evaluation of the evolution of the results with regard to the situation that existed before decision T-025 of 2004.

(d) Given that the results indicators must refer to (i) each one of the components of the public policy for assisting the displaced population, (ii) the national coordination of said policy's implementation and (iii) the coordination of territorial entities in relation to their responsibilities within said policy, the corresponding sections of the report may not exceed twenty pages in length each. It is possible to include Annexes in each section, but such Annexes can only consist of (1) charts, tables or graphics that illustrate the application of the indicators included in the sets submitted to the Court, which can make it possible to measure the evolution of the results in the execution of the public policy at hand, and (2) duly approved documents containing the strategies, plans, programs and schedules formulated by the entities that form part of SNAIPD in order to materialize the different components of the aforementioned public policy.

(e) In the event that the different sections of the report fail to include the results indicators in accordance with the specifications described in this section, the Constitutional Court shall explore the possibility of adopting indicators provided by non-Governmental sources, in order to

evaluate compliance with the orders issued in judgment T-025/04 and Awards 176, 177 and 178 of 2005.

(f) Each part of the report, and each set of indicators, must include—it should be emphasized—a specific reference to the way in which the situation of the persons especially protected by the Constitution who are included within the displaced population has been assisted, namely: indigenous groups, Afro-Colombian groups, children, elderly persons and women heads of household.

(g) Each part of the report, and each set of indicators, must include a specific reference to the participation of the displaced population in the formulation and execution of the public policy at hand, with indication of the scope, coverage, representativity and effectiveness of such participation.

(h) Given the verification that it has not been proven that there has been qualitatively different assistance for recently displaced persons, as compared to those who became displaced before decision T-025 of 2004 and Awards 176, 177 and 178 of 2005, the reports must indicate, with particular care, how the quality of the assistance provided in each one of the components of the public policy for assisting the displaced population has evolved, and how the assistance received by the persons who have been displaced on recent dates is different from the state of affairs declared unconstitutional in decision T-025 of 2004.

(i) Copies of the report must be sent to the *Procuraduría General de la Nación*, the Public Ombudsman's Office, the *Contraloría General de la República*, the office in Colombia of the United Nations High Commissioner for Refugees—UNHCR, the different organizations of displaced population and human rights organizations that took part in the public hearing of June 29, and the Civil Society Commission for the Follow-up of Compliance with Decision T-025 of 2004 (*Comisión de la Sociedad Civil para el Seguimiento al Cumplimiento de la Sentencia T-025 de 2004*).

B. Orders related to the budgetary component of the public policy for the attention of the displaced population.

In accordance with the different observations made in the foregoing sections about the budgetary component of the policy for assisting the displaced population, the Ministry of Public Finance, the Director of the

National Planning Department and the Director of *Acción Social* shall be ordered to submit, on September 13 of this year, a report indicating how they have corrected the budgetary flaws and problems indicated in the corresponding section of this Award.

In such report they must point out, in particular, (i) how the schedule to allocate the resources for financing the public policy at hand has been corrected or modified, in accordance with the results of the 2005 and 2006 fiscal years, (ii) which adjustments have been made to ensure coherence between the funds allocated in the budget and the funds effectively spent, and to solve the differences that may exist, and (iii) how the issue of the policy for assisting the displaced population was included within the project for the 2007 General Budget of the Nation and the 2006-2010 Four-year Development Plan.

C. Orders related to the registration system and the process of characterization of the displaced population.

For the purpose of measuring compliance with the orders issued in decision T-025 of 2004 and Award 178 of 2005 in relation to the process of registration and characterization of the displaced population, the Director of *Acción Social* shall be ordered to submit to this Court, no later than September 13, 2006, a specific report which allows for an appreciation of the improvements made in the information included in the registration system, and which advances have been made in its operation, with special attention to the different flaws indicated in the considerations of this Award and in Auto 178 of 2006.

As part of this report, the Director of *Acción Social* must submit a set of indicators specifically related to the process of registration and characterization of the displaced population, which can make it possible to measure its evolution and the advances made in its development since the Adoption of Award 178 of 2005.

D. Orders related to the improvement of the attention to the victims of recent displacement, in particular with regard to the immediate aid and emergency humanitarian aid components.

In the present decision, the Chamber has verified that the reports fail to prove that the victims of recent displacement—especially those indicated in Section III-8 above—have received an attention which is qualitatively better than the one provided to those who became displaced before

decision T-025 of 2004 and Autos 176, 177 and 178 of 2005. Additionally, as proven by public and notorious information which has come to the knowledge of the Court, it is not clear whether they have received the most basic components of such an assistance scheme, such as the immediate aid or emergency humanitarian aid to which they are entitled.

In that sense, the Director of *Acción Social* shall be ordered to inform, specifically and in a separate document, how the different components of the scheme for assisting the displaced population have been provided to those who became victims of displacement after the date of the aforementioned Judgment and Awards, and in particular the victims of the notorious population displacements who are currently present in the municipalities of Nariño (Antioquia), Argelia (Antioquia), San Juan Nepomuceno (Bolívar), Florencia (Caldas), Samaná (Caldas), Itsmina (Chocó), Río Sucio (Chocó), Ungía (Chocó), Corregimiento de La Carra (Guaviare), San José del Guaviare (Guaviare), Vistahermosa (Meta), Policarpa (Nariño), Ricaurte (Nariño), Iscuandé (Nariño), Barbacoas-Altaquer (Nariño), Orito (Putumayo), Puerto Asís (Putumayo), Hormiga (Putumayo) and San Miguel (Putumayo).

E. Communication of the present decision to different governmental and non-governmental entities.

1. The Court will order that the content of the present decision be communicated to the President of the Republic so that, in exercise of his jurisdiction, he adopts the measures he considers pertinent in order to secure the effective enjoyment of the rights of displaced persons.

2. The Court will order that the content of the present decision be communicated to the General Secretary of the Presidency of the Republic, so that in application of the same concretion and briefness criteria that guided the presentations made during the public hearing that took place in this Court on June 29, 2005, he informs the President of the Republic about the different problems identified by him in the reports submitted by SNAIPD entities to the Court, and makes the relevant recommendations to solve them.

3. The Court will order that the content of the present decision be communicated to the *Procuraduría General de la Nación*, the Public Ombudsman's Office, the *Contraloría General de la República*, the office in Colombia of the United Nations High Commissioner for Refugees—

UNHCR, the different organizations of displaced population that took part in the public hearing of June 29, 2005, and the Civil Society Commission for the Follow-up of Compliance with Decision T-025 of 2004, in order for them to be prepared to examine and validate the information submitted by the recipients of the orders issued herein on September 13, 2005.

V. DECISION

On the grounds of the foregoing considerations, Review Chamber Number Three of the Constitutional Court, imparting justice in the name of the people and by mandate of the Constitution,

DECIDES

First.- To **DECLARE** that**,** as of the date in which this award is adopted, it has not been proven in the reports submitted by the entities that form part of the National Comprehensive Assistance System for the Displaced Population (SNAIPD) that the unconstitutional state of affairs in the field of internal displacement has been overcome, nor that accelerated and sustained advances have been made in the adoption and implementation of the decisions required to ensure the effective enjoyment of the rights of the forcibly displaced population.

Second.- To **DECLARE** that the entities that form part of SNAIPD have failed to provide in their reports reasons to justify the delay in the adoption and implementation of the measures required to prove that such unconstitutional state of affairs has been overcome.

Third.- To **WARN** the entities that form part of SNAIPD that, in the future, the presentation of reports with the characteristics indicated in segment II-4 of this award shall be taken as an indication of non-compliance with the orders issued in decision T-025 of 2004 and Awards 176, 177 and 178 of 2005.

Fourth.- To **ORDER** the General Secretary of the Court to RETURN the reports presented to this Court with all of their Annexes, through the National Council for Comprehensive Assistance to the Population Displaced by Violence.

Fifth.- To **DECLARE** that, with regard to the common and specific orders issued to the different entities that form part of SNAIPD in Auto 178 of 2005, it has not been proven that the required results indicators

have been adequately formulated or applied, nor that as a result of their application, the necessary follow-up is carried out or the pertinent corrections are introduced to the different components of the public policy for the attention to internal displacement.

Sixth.- To **ORDER** the different entities that form part of SNAIPD to submit to this Court, within the time that remains for the expiry of the one-year term granted in Auto 178 of 2005—which shall take place on September 13, 2006—and through the National Council for Comprehensive Assistance to the Population Displaced by Violence (CNAIPD) a common, concrete and transparent report, endorsed by the Council and which may not exceed sixty pages, that provides significant elements to prove that the orders issued in decision T-025/04 and Autos 176, 177 and 178 of 2005 have been complied with, in accordance with the specifications indicated in section 3.4. of the present decision, which refer to the need for the reliable and significant results indicators not only to be designed but applied, at least since the date in which judgment T-025 of 2004 was adopted.

A copy of this common and brief report shall be simultaneously submitted to the entities and organizations mentioned in section 3.4.(i) of the present decision.

Seventh.- To **ORDER** the Ministry of Public Finance, the Director of the National Planning Department and the Director of *Acción Social* to submit, on September 13 of this year, a report indicating how they have corrected the budgetary flaws and problems indicated in sections III-3.1. through III-3.6. of this Award. In such report they must point out, in particular, (i) how the schedule to allocate the resources for financing the public policy at hand have been corrected or modified, in accordance with the results of the 2005 and 2006 fiscal years, (ii) which adjustments have been made to ensure coherence between the funds allocated in the budget and the funds effectively spent, and to solve the differences that may exist, and (iii) how the issue of the policy for assisting the displaced population was included within the project for the 2007 General Budget of the Nation and the 2006-2010 Four-year Development Plan.

Eighth.- To **ORDER** the Director of *Acción Social* to submit to this Court, no later than September 13, 2006, a specific report which allows for an appreciation of the improvements made in the information included in the registration system, and which advances have been made in its operation, with special attention to the different flaws indicated in the

considerations of this Award (sections III-2.1. through III-2.4.). As part of this report, the Director of Social Action must submit a set of indicators specifically related to the process of registration and characterization of the displaced population, which can make it possible to measure its evolution and the advances made in its development since the Adoption of Award 178 of 2005.

Ninth.- To **ORDER** the Director of *Acción Social* to inform, no later than September 13, 2006, specifically and through a report which is different from the common report to be presented within the same term by SNAIPD entities, how the different components of the scheme for assisting the displaced population have been provided to the victims of forced displacement who are currently present in the municipalities of Nariño (Antioquia), Argelia (Antioquia), San Juan Nepomuceno (Bolívar), Florencia (Caldas), Samaná (Caldas), Itsmina (Chocó), Río Sucio (Chocó), Ungía (Chocó), Corregimiento de La Carra (Guaviare), San José del Guaviare (Guaviare), Vistahermosa (Meta), Policarpa (Nariño), Ricaurte (Nariño), Iscuandé (Nariño), Barbacoas-Altaquer (Nariño), Orito (Putumayo), Puerto Asís (Putumayo), Hormiga (Putumayo) and San Miguel (Putumayo).

Tenth.- To **ORDER** the General Secretariat of the Court to communicate the content of the present decision to the President of the Republic so that, in exercise of his jurisdiction, he adopts the measures he considers pertinent in order to secure the effective enjoyment of the rights of displaced persons.

Eleventh.- To **ORDER** the General Secretariat of the Court to communicate the content of the present decision to the General Secretary of the Presidency of the Republic, so that in application of the same concretion and briefness criteria that guided the presentations made during the public hearing that took place in this Court on June 29, 2005, he informs the President of the Republic about the different problems that identified by him in the reports submitted by SNAIPD entities to the Court, and makes the relevant recommendations to solve them.

Twelfth.- To **ORDER** the General Secretariat of the Court to communicate the content of the present decision to the *Procuraduría General de la Nación*, the Public Ombudsman's Office and the *Contraloría General de la República*, in order for them to adopt the decisions they consider necessary to examine and validate the information submitted by the recipients of the orders issued herein on September 13,

2005, for the purpose of ascertaining whether the orders issued in judgment T-025 of 2004 and Autos 176, 177 and 178 of 2005 are being complied with.

Thirteenth.- To **ORDER** the General Secretariat of the Court to communicate the content of the present decision to the Office in Colombia of the United Nations High Commissioner for Refugees—UNHCR, so that, should they consider it pertinent, they can provide the Court with criteria related to the protection of the rights of the displaced population and the way to appreciate their effective enjoyment.

Fourteenth.- To **ORDER** the General Secretariat of the Court to communicate the content of the present decision to the different organizations of displaced population and human rights organizations who took part in the June 29, 2005 public hearing, and to the Civil Society Commission for the Follow-up of Compliance with Decision T-025 of 2004.

MANUEL JOSE CEPEDA ESPINOSA

Justice

JAIME CÓRDOBA TRIVIÑO

Justice

RODRIGO ESCOBAR GIL

Justice

MARTHA VICTORIA SÁCHICA MENDEZ

General Secretary

ANNEX 6

Law 387 of 1997

Law 387 of 18 July 1997
By which measures are adopted for the prevention of forced displacement; assistance, protection, consolidation and socio-economic stabilization of persons internally displaced by violence in the Republic of Colombia.

THE CONGRESS OF COLOMBIA

DECREES:

TITLE I

DISPLACED PERSONS AND STATE RESPONSIBILITY

ARTICLE 1 Displaced Persons

A displaced person is any person who has been forced to migrate within the national territory, abandoning his or her habitual place of residence or economic activities, because his or her life, physical integrity, security, or personal freedom has been violated or directly threatened, as a result of any of the following situations: internal armed conflict, internal disturbances or tensions, generalized violence, massive violations of human rights, violations of international humanitarian law, or other circumstances resulting from the above situations that may disturb or is seriously disturbing public order.

Paragraph

The national government will regulate what is meant by the status of displaced person.

ARTICLE 2 Principles

The interpretation and application of this Law will be guided by the following principles:

1. Forcibly displaced persons have the right to request and receive international assistance, and this gives rise to a corresponding collective right of the international community to provide humanitarian assistance.
2. Forcibly displaced persons will enjoy the internationally recognized, fundamental civil rights.
3. A displaced person and/or forcibly displaced persons has the right not to be discriminated against for their social condition of displacement, or for reasons of race, religion, public opinion, place of origin, or physical disability.
4. The family of a forcibly displaced person shall benefit from the fundamental right to family reunification.
5. A forcibly displaced person has the right to avail him/herself of durable solutions to hi/her situation.
6. A forcibly displaced person has the right to return to his/her place of origin.
7. Colombians have the right not to be forcibly displaced.
8. A displaced person and/or forcibly displaced persons has/have the right not to have their freedom of movement subjected to restrictions additional to those established by law.
9. It is the State's duty to create conditions that facilitate co-existence, equity and social justice between Colombians.

ARTICLE 3 State Responsibility

It is the responsibility of the Colombian State to formulate policies and adopt measures to prevent forced displacement; assistance, protection, consolidation, and socio-economic stabilization of persons internally displaced by violence.

For the purposes of the above, the principles of the Colombian State will be upheld, namely, subsidiarity, complementarity, decentralization, and concurrence.

TITLE II

THE NATIONAL COMPREHENSIVE ASSISTANCE SYSTEM FOR THE DISPLACED POPULATION

CHAPTER I

Creation, Composition, and Objectives of the National Comprehensive Assistance System for the Displaced Population

ARTICLE 4 Creation

The National Comprehensive Assistance System for the Displaced Population is hereby created in order to achieve the following objectives:

1. To provide comprehensive assistance to the population displaced by violence so that they achieve reincorporation into Colombian society by either voluntary return or resettlement.
2. To neutralize and mitigate the effects of violent processes and dynamics which cause displacement, by strengthening comprehensive and sustainable development in areas of expulsion and reception, and by promoting and protecting Human Rights and International Humanitarian Law.
3. To combine public and private efforts for effective prevention and assistance in situations of forced displacement resulting from violence.

To ensure the timely and efficient management of all human, technical, administrative, and economic resources vital to the prevention of, and assistance to, situations arising from forced displacement as a result of violence.

Paragraph

In order to meet the above objectives, the National Comprehensive Assistance System for the Displaced Population will be complemented by the National Plan for Comprehensive Assistance to the Population Displaced by Violence.

ARTICLE 5 Composition

The System will be composed of all public, private, and community entities that carry out plans, programs, projects, and specific actions aimed at providing comprehensive assistance to the displaced population.

ARTICLE 6 The National Council for Comprehensive Assistance to the Population Displaced by Violence

The National Council for Comprehensive Assistance to the Population Displaced by Violence is hereby created as a consultative and advisory body, charged with formulating policy and ensuring budgetary allocations for the programs, which the entities responsible for the functioning of the National System will implement.

This National Council will be composed of:

- A delegate from the President's office, who will chair the Council
- The Presidential Advisor for Displaced Persons, or his/her delegate
- The Minister of the Interior
- The Minister of Finance and Public Credit
- The Minister of National Defense
- The Minister of Health
- The Minister of Agriculture and Rural Development
- The Minister of Economic Development
- The Director of the National Planning Department
- The National Ombudsman
- The Presidential Advisor for Human Rights, or his/her delegate
- The Presidential Advisor for Social Policy, or his/her delegate
- The Manager/Director of the Social Solidarity Network, or his/her delegate
- The High Commissioner for Peace, or their representative.

Paragraph 1

Cabinet Ministers who, in accordance with the current Article, make up the National Council may delegate their attendance to a Deputy-Minister or Secretary-General of their respective ministry. In the case of the Ministry of National Defense, this responsibility may be delegated to the Commander-General of the Armed Forces. In the case of the Director of the National Planning Department, they may delegate to the Deputy Director of the same department, and in the case of the Social Solidarity Network[1], they may delegate to the Assistant Director.

When the nature of displacement so warrants, other ministers, heads of administrative departments, or directors, presidents, or managers of national, decentralized bodies may be invited to the Council, as may representatives of the organizations of displaced persons.

Paragraph 2

The Director of the Ministry of the Interior's General Directorate of the Special Administrative Unit for Human Rights will serve as the National Council's Technical Secretary.

ARTICLE 7 Municipal, District, and Provincial Committees for Comprehensive Assistance to the Population Displaced by Violence

The National Government will promote the creation of municipal, district, and provincial committees to provide comprehensive assistance to the population displaced by violence. These committees will be charged with providing support to, and collaborating with, SNAIPD. The committees will be composed of:

- The Governor or Mayor, or is/her representative who will chair the committee
- The Brigade Commander or his/her delegate
- The Commander of the National Police in the corresponding jurisdiction, or his/her delegate

[1] Now *La Agencia Presidencial para la Acción Social*, The Presidential Agency for Social Action, pursuant to Decree 2467 of 2005

- The Director of the Sectional Health Service or the Head of the corresponding Health Unit, as the case may be
- The Regional Director, the Coordinator of the Area Centre, or the Agency Director in new departments of the Colombian Institute of Family Welfare
- A representative of the Colombian Red Cross
- A representative of Civil Defense
- A representative of the Churches
- Two representatives of the Displaced Population.

Paragraph 1

The Committee, at its sole discretion, may decide to convene representatives or delegates of other civic organizations, or relevant persons in the territory in question.

The Minister of the Interior or any other national level entity that is a member of the National Council may attend committee meetings for the purpose of coordinating the implementation of actions and/or providing technical support in any of the areas of intervention.

Paragraph 2

When displacement occurs in population centers, villages or hamlets where not all of the above members may be present, the committee may meet with the main political authority in the location: the Police Inspector or their representative, a representative of the Displaced Population, and/or a representative of the Churches, Armed Forces, and National Police.

Paragraph 3

In those municipalities or districts where displacement is a result of violence, mayors must convene emergency sessions of the municipal and district committees for Comprehensive Assistance to the Displaced Population. Failure to do so will be considered improper conduct.

ARTICLE 8 Preventive Actions by Municipal Committees

Municipal committees will carry out, among others, the following preventive actions:

1. Legal actions. Municipal committee members will provide guidance to communities that may be affected by an act of displacement, on the solution, by legal or institutional means, to the conflicts that can lead to this situation. Furthermore, they will analyze the viability of legal actions and will recommend or decide on the timely use of relevant constitutional or legal provisions, aimed at minimizing or eradicating the cause of persecution or violence.
2. Municipal committee members will attempt to prevent the onset of displacement, proposing alternative conflict resolution mechanisms.
3. Assistance actions. Municipal committee members will assess the unmet necessities of persons or communities which could eventually lead to forced displacement. Based on this assessment they shall undertake appropriate assistance measures.

CHAPTER II

National Plan for Comprehensive Assistance to the Population Displaced by Violence

SECTION 1

Design and Objectives of the National Plan for Comprehensive Assistance to the Population Displaced by Violence

ARTICLE 9 Design

The National Government will design the National Plan for Comprehensive Assistance to the Population Displaced by Violence. Once approved by Congress, this plan will be adopted by decree.

The public, private, and community entities that make up SNAIPD will participate in the drafting of this plan.

The measures and actions adopted in the National Plan will address the special characteristics and conditions prevailing in “expulsion areas” and “reception areas”.

Paragraph

The national government will design and implement the plan established in this article within six (6) months of the date on which this Law takes effect.

ARTICLE 10 Objectives

The National Plan will have the following objectives, among others, to:

1. Prepare assessments of the: a) causes and agents of displacement by violence, b) areas of the country where the principal population flows take place, c) reception areas, d) persons and communities who are victims of this situation, and e) social, economic, legal, and political consequences of displacement.
2. Design and adopt social, economic, legal, political, and security measures, aimed at preventing and overcoming the causes of forced displacement.
3. Adopt emergency humanitarian assistance measures for the displaced population in order to ensure their protection, and the conditions for their subsistence and adaptation to their new situation.
4. Create and apply mechanisms for providing legal assistance to the displaced population, in order to ensure that the facts are investigated, violated rights are restored, and affected property is protected.
5. Design and adopt measures guaranteeing the displaced population’s access to comprehensive urban and rural development plans, and programs and projects which provide for their own means of subsistence, such that their reincorporation into the social, productive, and cultural life of the country can take place without segregation or social stigmatization.
6. Adopt the measures necessary to enable the voluntary return of the displaced population to their place of origin, or their relocation to new settlement areas.

7. Provide special attention to women and children, particularly widows, female heads of household, and orphans.
8. Ensure special attention for displaced Afro-Colombian and indigenous communities, in accordance with their customs and traditions, favoring their return to their territories.
9. Undertake other actions deemed necessary by the National Council.

SECTION 2

National Information Network for Assistance to the Population Displaced by Violence

ARTICLE 11 Operation

The National Information Network for Assistance to the Population Displaced by Violence will be the instrument that guarantees that the National System receives rapid and effective national and regional information on violent conflicts, as well as the identification and assessment of the circumstances that gave rise to the forced displacement.

Furthermore, it will allow the National System to assess the magnitude of the problem, take measures for immediate assistance, draft plans for the consolidation and stabilization of displaced persons, and formulate alternative solutions for assisting the population displaced by violence. This network will include a special component for monitoring actions implemented pursuant to the National Plan.

ARTICLE 12 Local Information Centers

The Presidential Advisory Council on Displaced Persons and the Ministry of the Interior's General Directorate of the Special Administrative Unit for Human Rights, in coordination with provincial and municipal governments, the *personerías municipales*[2] regional and sectional offices of the Ombudsman, the Colombian Red Cross, the Catholic Church, and organizations of displaced persons, will decide on the location of the local information centers in municipalities affected by displacement.

[2] *Personerías municipales* are the municipal-level representatives of the Public Ministry (which includes the functions of both Procurator General and Ombudsman).

ARTICLE 13 Observatory of Internal Displacement Caused by Violence

The National Government will create a Observatory of Internal Displacement Caused by Violence, which will produce biannual reports on the magnitude and trends relating to displacement, as well as the results of State policies in favor of the displaced population. This Observatory will strengthen the National Information Network and will include recognized experts and academics.

SECTION 3

PREVENTION

ARTICLE 14 Prevention

In order to prevent forced displacement caused by violence, the national government will adopt, among others, the following measures:

1. Encourage the establishment of working groups on the prevention and prediction of risks that may lead to displacement.
2. Promote citizen and community activities which, foster peaceful coexistence and action by the Public Forces[3] to curtail disturbances.
3. Undertake action to avoid arbitrary or discriminatory acts, and to mitigate risks to life, physical integrity, and property of displaced persons.
4. Design and implement a plan for disseminating international humanitarian law.
5. Advise provincial and municipal authorities responsible for development plans, to incorporate prevention and assistance programs in these plans.

Paragraph

The Ministry of the Interior's General Directorate of the Special Administrative Unit for Human Rights will coordinate with municipal and/or provincial authorities in convening Security Councils, when well-

[3] *Fuerzas Públicas*, the Public Forces, includes both the armed forces and police

founded reasons exist for believing that forced displacement will take place.

SECTION 4

EMERGENCY HUMANITARIAN ASSISTANCE

ARTICLE 15 Emergency Humanitarian Assistance

Once displacement has occurred, the national government will take immediate action aimed at guaranteeing emergency humanitarian assistance for rescuing, assisting, and protecting displaced persons, and addressing in conditions of dignity their needs in terms of food, hygiene, supplies, cooking, medical and psychological attention, emergency transport, and transitional shelter.

In all cases of displacement, civilian and military authorities located in reception areas will guarantee the unhindered passage of humanitarian aid, the national and international accompaniment of displaced persons, and the establishment of temporary or permanent offices for defending and protecting human rights and for complying with the norms of International Humanitarian Law.

As long as the emergency persists, authorities will foster the creation of inter-institutional teams composed of state and governmental entities at the national, provincial, and municipal levels, in order to protect displaced persons and their property. The Public Ministry**'s** office and the Office of the *Procurador General de la Nación* will investigate the offences that led to the displacement.

Paragraph

The right to emergency humanitarian assistance will exist for a period of three (3) months, renewable in exceptional cases for an additional three (3) months.

SECTION 5

RETURN

ARTICLE 16 Return

The national government will support displaced persons who wish to return to their places of origin, in accordance with the provisions established in this Law on the matters of protection, consolidation, and socio-economic stabilization.

SECTION 6

CONSOLIDATION AND SOCIO-ECONOMIC STABILIZATION

ARTICLE 17 Consolidation and Socio-economic Stabilization

The national government will promote medium and long-term actions and measures aimed at creating sustainable economic and social conditions for the displaced population who voluntarily return or resettle in other rural or urban areas.

These measures will allow direct access by displaced persons to the government's social programs, particularly programs related to:

1. Income-generating projects.
2. The National System for Agrarian Reform and Rural Development.
3. Support for micro-enterprises.
4. Training and social organization.
5. Social assistance in health, education, rural and urban housing, as well as for children, women, and the elderly.
6. Urban and rural employment plans of the Social Solidarity Network[4].

[4] Now *La Agencia Presidencial para la Acción Social*, The Presidential Agency for Social Action, pursuant to Decree 2467 of 2005

SECTION 7

CESSATION OF THE STATUS OF FORCIBLY DISPLACED PERSON

ARTICLE 18 Cessation of Status of Forcibly Displaced Person

Status as a person forcibly displaced by violence will cease when consolidation and socio-economic stabilization have been achieved, whether in the place of origin or in resettlement areas.

Paragraph

The Displaced Person will cooperate in improving, re-establishing, consolidating, and stabilizing his/her situation.

SECTION 8

INSTITUTIONS

ARTICLE 19 Institutions

Institutions involved in providing comprehensive assistance to the population displaced by violence, will adopt at an internal level and within their operating staff and administrative structure, guidelines that allow them to assist the displaced population in a timely and effective manner, within the coordination framework of the National Comprehensive Assistance System for the Displaced Population.

Institutions with responsibilities for providing comprehensive assistance to the displaced population will adopt the following measures, among others:

1. The Colombian Institute for Agrarian Reform (INCORA)[5] will adopt special programs and procedures for the transfer, adjudication, and titling of land in areas of expulsion and reception of the population affected by forced displacement. INCORA will also establish special lines of credit, with preference given to displaced persons.

   INCORA will keep a register of rural land abandoned by persons displaced by the violence, and will inform the relevant authorities

[5] INCORA is now *El Instituto Colombiano de Desarrollo Rural (INCODER, the Colombian Institute of Rural Development)* pursuant to decree 1300 of 2003

so that any sale or transfer of the property titles of these assets is blocked when these transactions are against the will of the rightful owners.

In the context of the return and relocation of persons displaced by violence, the national Government will give these persons priority to peasant reserve areas and/or to rural properties that were seized and forfeited pursuant to judicial or administrative rulings.

The Agricultural Institute of Agrarian Reform will establish a program that will make it possible to receive land from displaced persons in exchange for the adjudication of other land with similar characteristics in other parts of the country.

The Agricultural Guarantees Fund will provide loan guarantees to cover 100% of loans made to displaced persons for income-generating projects.

2. The Ministry of Agriculture and Rural Development, through the Directorate for Social Development and the Office for Rural Women, will design and implement programs for assistance, consolidation and socio-economic stabilization of the displaced population.
3. The Institute for Industrial Development, through the Propyme[6] and Finurbano[7] programs, will provide special lines of credit with regard to grace periods, interest rates, collateral, and payment periods, with the aim of developing micro-enterprises and income-generating projects presented by the beneficiaries of this Law.
4. The General System for Social Security will implement streamlined mechanisms to enable displaced persons to access comprehensive medical, surgical, dental, psychological, hospital, and rehabilitation services, in accordance with Law 100 of 1993.
5. The Social Solidarity Network will give priority to the needs of displaced communities and will assist the victims of displacement, linking them to programs.
6. The National Directorate for Women's Equality will give preference in its programs to women displaced by violence, especially widows and female heads of household.

[6] A program for small and medium-sized enterprises
[7] Urban financing

7. The Colombian Institute of Family Welfare will give preference in its programs to nursing children, minors (especially orphans), and family groups, linking them to social assistance projects for families and communities in settlement areas of displaced persons.
8. The National System for Co-Financing will give preferential treatment to the territorial entities that request co-financing for various projects aimed at addressing the needs of the population affected by forced displacement.
9. Territorial entities will undertake special education assistance programs for the population displaced by violence, and will have access to resources available from FIS[8] subsidy programs, targeted at enabling children to attend and remain in the basic [primary] education system.
10. The National Education Ministry and the provincial, municipal and district Education Secretariats will adopt special education programs for victims of forced displacement. These programs may be in primary and specialized secondary education, and may be carried out over shorter and more varied time periods than conventional programs, in order to ensure their rapid effect on the rehabilitation, and social and productive integration of the victims of internal displacement caused by violence.
11. The National Learning Service (SENA) will give priority to, and facilitate the access of, displaced young people and adults to its education and technical training programs.
12. The Ombudsman's office will design and implement dissemination and promotion programs on standards of international humanitarian law. Government bodies at the national, provincial**,** and municipal levels will be included in these programs, as will non-governmental organizations and displaced persons' organizations.
13. The National Television Commission will design and implement awareness-raising campaigns on the prevention of forced displacement, to be aired on national television channels.
14. The National Institute for Urban Reform (INURBE) will develop special housing programs to address the needs of the population displaced by violence.

[8] FIS, the *Fondo de Inversion Social,* the Social Investment Fund

ARTICLE 20 Public Ministry[9]

It is the responsibility of the Public Ministry and its regional and sectional offices, to safeguard and promote human rights and international humanitarian law of victims of forced displacement. Furthermore, it is their responsibility to ensure strict compliance with the obligations assigned to each institution within SNAIPD. Municipal authorities must immediately inform the corresponding representative of the Public Ministry's office, of displacement or events that may lead to displacement.

CHAPTER III

NATIONAL FUND FOR COMPREHENSIVE ASSISTANCE FOR THE POPULATION DISPLACED BY VIOLENCE

ARTICLE 21 Creation and Nature of the Fund

The National Fund for Comprehensive Assistance for the Population Displaced by Violence is hereby created. It will function as a special account to be administered by the Interior Ministry, without legal personality, but rather as a separate accounts system.

Paragraph

The President's Advisory Council for Displaced Persons will coordinate the disbursement of the resources of this fund.

ARTICLE 22 Objective

The purpose of the National Fund for Comprehensive Assistance for the Population Displaced by Violence is to finance and/or co-finance programs for preventing displacement, as well as emergency humanitarian assistance, return, and socio-economic stabilization and consolidation, in addition to the establishment and operation of the National Information Network.

Paragraph

The National Fund's participation in financing and/or co-financing the programs mentioned above, does not release national, provincial, district,

[9] The *Ministerio Público,* Public Ministry, is made up of the offices of the Procurator General and the Ombudsman

or municipal entities and institutions involved in providing comprehensive assistance to the displaced population, from their obligation to manage the resources needed to implement actions under their responsibility.

ARTICLE 23 Resources

Resources for the National Fund for Comprehensive Assistance for the Population Displaced by Violence will be composed of the following:

1. Resources allocated in the national budget.
2. Donations in cash made directly to the fund, after their incorporation in the national budget, as well as donations in kind incorporated in the same manner.
3. Credit resources contracted by the State in order to meet the fund's objectives and functions, after incorporation in the national budget.
4. Cash contributions from international cooperation, after incorporation in the national budget.
5. Other assets, rights, and resources, adjudicated in favor of, or acquired by, the National Fund for Comprehensive Assistance for the Population Displaced by Violence.

ARTICLE 24 Management

Management of the National Fund for Comprehensive Assistance of the Population Displaced by Violence will fall under the responsibility of the Director-General of the Ministry of the Interior's General Directorate of the Special Administrative Unit for Human Rights. The Director-General will exercise spending authority by virtue of delegation by the Ministry of the Interior.

ARTICLE 25 Regulations

Within three (3) months of the date on which this Law enters into force, the national Government will regulate the organization and functioning of the Fund, its objectives and functions, and its appropriations and operations system with regard to budgeting and the capital needed for its operations. Furthermore, the national Government will make the necessary budget adjustments and transfers within the national budget, in order to provide to the Fund with the finance needed to meet its objectives.

TITLE III

LEGAL PROTECTION FRAMEWORK

ARTICLE 26 Definition of the Military Situation[10] of Displaced Persons

Persons who were obliged to resolve their military situation but were unable to do so because of reasons related to their forced displacement, may present themselves to any military district to resolve such situation, within one year of the date on which they were displaced, and in so doing, will not be considered at fault.

ARTICLE 27 Interruption of Possession

Interruption of possession or abandonment of real or personal property brought about by a situation of violence that forcibly displaced the possessor, will not interrupt his or her right to title acquired by possession.

The possessor, whose exercise of this right is interrupted, will report the facts of displacement to the *personería municipal*[11], Ombudsman, Agrarian Procurator, or any entity of the Public Ministry's office, so that they may initiate the pertinent judicial or administrative actions.

ARTICLE 28 Judicial or Administrative Processes to Which a Displaced Person is Party

In judicial or administrative processes to which a displaced person is party, the corresponding authorities will assess, in accordance with the circumstances of the case, the changes in domicile, commissions, transfers, and other procedures needed to guarantee the speed and effectiveness of the processes involved, without detriment to third party rights.

[10] This refers to the obligation to give national service

[11] *Personerías municipales* are the municipal-level representatives of the Public Ministry (which includes the functions of both Procurator General and Ombudsman).

TITLE IV

OTHER PROVISIONS

ARTICLE 29 Protection of Displaced Persons

The Interior Ministry's General Directorate of the Special Administrative Unit for Human Rights will provide protection to persons displaced by violence, when there are well-founded reasons to fear for their security. This protection will be provided within the parameters established by the National Plan for Comprehensive Assistance to the Displaced Population.

The assessment of the security situation of displaced persons will be carried out in close collaboration with the Public Ministry[12], the Catholic Church, and non-governmental organizations that conduct activities in the expulsion areas.

ARTICLE 30 Support for Displaced Persons' Organizations

The national government will provide the necessary guarantees for displaced persons' organizations and non-governmental entities that carry out actions in favor of human rights and internally displaced persons.

ARTICLE 31 Reports to Congress

In order to evaluate the implementation of the National Plan for Comprehensive Assistance to the Population Displaced by Violence, the national government will present Congress with a report on the implementation of the plan as well as on corrective measures and proposed future actions. This report will be presented annually by 16 March each year.

ARTICLE 32 Benefits Enshrined in this Law

Colombian persons, who find themselves in the circumstances described in Article 1 of this Law, will have the right to receive the

[12] The *Ministerio Público*, Public Ministry, is made up of the offices of the Procurator General and the Ombudsman

benefits enshrined in the same, provided they meet the following requirements:

1. They have presented a statement of these facts to the Procurator General's office, the Ombudsman' office, a municipal or district *personería*[13] or any judicial office, in accordance with the reception procedure established by each entity, and
2. They have presented for registration a copy of the statement of facts established above, to the Ministry of the Interior's General Directorate of the Special Administrative Unit for Human Rights, or to the office designated by the Directorate at a provincial, district, or municipal level.

Paragraph

When it is established that the facts declared by a person alleging the status of displaced person are not true, this person will lose all the benefits granted by this Law and criminal sanctions may apply.

ARTICLE 33

Pursuant to the provisions of Article 87 of the Constitution, the beneficiaries of the current Law, non-governmental organizations, and official entities charged with the defense or promotion of human rights may instigate legal proceedings to demand judicial enforcement[14] for the full enjoyment of the rights enshrined in the current Law in favor of displaced persons.

Until Article 87 of the Constitution is introduced, writs of mandamus will be processed in accordance with the procedural and jurisdictional competence provisions established in Decree Number 2591 of 1991 on the writ of protection.[15]

[13] *Personerías* are the municipal or district-level representatives of the Public Ministry (which includes the functions of both Procurator General and Ombudsman).
[14] *Acción de cumplimiento*, the closest Anglo law equivalent is a writ of mandamus.
[15] *Tutela,* A constitutional action for immediate legal protection of human rights, a kind of writ of injunction.

ARTICLE 34 Entry into Force

This law will enter into force upon its publication.

THE PRESIDENT OF THE SENATE OF THE REPUBLIC, LUIS FERNANDO LONDOÑO CAPURRO,

THE SECRETARY-GENERAL OF THE SENATE OF THE REPUBLIC, PEDRO PUMAREJO VEGA,

THE PRESIDENT OF THE HOUSE OF REPRESENTATIVES, GIOVANNI LAMBOGLIA MAZZILLI,

THE SECRETARY-GENERAL OF THE HOUSE OF REPRESENTATIVES, DIEGO VIVAS TAFUR.

REPUBLIC OF COLOMBIA— NATIONAL GOVERNMENT

Published and executed

Signed in Ibagué, 18 July, 1997

ERNESTO SAMPER PIZANO

THE MINISTER OF THE INTERIOR, CARLOS HOLMES TRUJILLO GARCÍA,

THE MINISTER OF FINANCE AND PUBLIC CREDIT, JOSÉ ANTONIO OCAMPO GAVIRIA,

THE MINISTER OF NATIONAL DEFENSE, GILBERTO ECHEVARRÍA MEJÍA.

ANNEX 7

UN Guiding Principles on Internal Displacement

INTRODUCTION: SCOPE AND PURPOSE

1. These Guiding Principles address the specific needs of internally displaced persons worldwide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration.

2. For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border.

3. These Principles reflect and are consistent with international human rights law and international humanitarian law. They provide guidance to:

(a) The Representative of the Secretary-General on internally displaced persons in carrying out his mandate;

(b) States when faced with the phenomenon of internal displacement;

(c) All other authorities, groups and persons in their relations with internally displaced persons; and

(d) Intergovernmental and non-governmental organizations when addressing internal displacement.

4. These Guiding Principles should be disseminated and applied as widely as possible.

SECTION I - GENERAL PRINCIPLES

Principle 1

1. Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.

2. These Principles are without prejudice to individual criminal responsibility under international law, in particular relating to genocide, crimes against humanity and war crimes.

Principle 2

1. These Principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction. The observance of these Principles shall not affect the legal status of any authorities, groups or persons involved.

2. These Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law. In particular, these Principles are without prejudice to the right to seek and enjoy asylum in other countries.

Principle 3

1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.

2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.

Principle 4

1. These Principles shall be applied without discrimination of any kind, such as race, color, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.

2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.

SECTION II - PRINCIPLES RELATING TO PROTECTION FROM DISPLACEMENT

Principle 5

All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.

Principle 6

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.

2. The prohibition of arbitrary displacement includes displacement:

(a) When it is based on policies of apartheid, “ethnic cleansing” or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;

(b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;

(c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;

(d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and

(e) When it is used as a collective punishment

3. Displacement shall last no longer than required by the circumstances.

Principle 7

1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.

2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.

3. If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with:

(a) A specific decision shall be taken by a State authority empowered by law to order such measures;

(b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;

(c) The free and informed consent of those to be displaced shall be sought;

(d) The authorities concerned shall endeavor to involve those affected, particularly women, in the planning and management of their relocation;

(e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and

(f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected

Principle 8

Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

Principle 9

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

SECTION III - PRINCIPLES RELATING TO PROTECTION DURING DISPLACEMENT

Principle 10

1. Every human being has the inherent right to life which shall be protected by law. No one shall be arbitrarily deprived of his or her life. Internally displaced persons shall be protected in particular against:

(a) Genocide;

(b) Murder;

(c) Summary or arbitrary executions; and

(d) Enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

2. Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against:

(a) Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted;

(b) Starvation as a method of combat;

(c) Their use to shield military objectives from attack or to shield, favor or impede military operations;

(d) Attacks against their camps or settlements; and

(e) The use of anti-personnel landmines

Principle 11

1. Every human being has the right to dignity and physical, mental and moral integrity.

2. Internally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against:

(a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault;

(b) Slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation, or forced labor of children; and

(c) Acts of violence intended to spread terror among internally displaced persons.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

Principle 12

1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.

2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances.

3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.

4. In no case shall internally displaced persons be taken hostage.

Principle 13

1. In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities.

2. Internally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement. In particular any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances.

Principle 14

1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.

2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

Principle 15

Internally displaced persons have:

(a) The right to seek safety in another part of the country;
(b) The right to leave their country;
(c) The right to seek asylum in another country; and
(d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

Principle 16

1. All internally displaced persons have the right to know the fate and whereabouts of missing relatives.

2. The authorities concerned shall endeavor to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international organizations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any result.

3. The authorities concerned shall endeavor to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation, and facilitate the return of those remains to the next of kin or dispose of them respectfully.

4. Grave sites of internally displaced persons should be protected and respected in all circumstances. Internally displaced persons should have the right of access to the grave sites of their deceased relatives.

Principle 17

1. Every human being has the right to respect of his or her family life.

2. To give effect to this right for internally displaced persons, family members who wish to remain together shall be allowed to do so.

3. Families which are separated by displacement should be reunited as quickly as possible. All appropriate steps shall be taken to expedite the reunion of such families, particularly when children are involved. The responsible authorities shall facilitate inquiries made by family members and encourage and cooperate with the work of humanitarian organizations engaged in the task of family reunification.

4. Members of internally displaced families whose personal liberty has been restricted by internment or confinement in camps shall have the right to remain together.

Principle 18

1. All internally displaced persons have the right to an adequate standard of living.

2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:

(a) Essential food and potable water;

(b) Basic shelter and housing;

(c) Appropriate clothing; and

(d) Essential medical services and sanitation.

3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

Principle 19

1. All wounded and sick internally displaced persons as well as those with disabilities shall receive to the fullest extent practicable and with the least possible delay, the medical care and assistance they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services.

2. Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counseling for victims of sexual and other abuses.

3. Special attention should also be given to the prevention of contagious and infectious diseases, including AIDS, among internally displaced persons.

Principle 20

1. Every human being has the right to recognition everywhere as a person before the law.

2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.

3. Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.

Principle 21

1. No one shall be arbitrarily deprived of property and possessions.

2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:

(a) Pillage;

(b) Direct or indiscriminate attacks or other acts of violence;

(c) Being used to shield military operations or objectives;

(d) Being made the object of reprisal; and

(e) Being destroyed or appropriated as a form of collective punishment.

3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

Principle 22

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:

(a) The rights to freedom of thought, conscience, religion or belief, opinion and expression;

(b) The right to seek freely opportunities for employment and to participate in economic activities;

(c) The right to associate freely and participate equally in community affairs;

(d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right; and

(e) The right to communicate in a language they understand.

Principle 23

1. Every human being has the right to education.

2. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion.

3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programs.

4. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

SECTION IV - PRINCIPLES RELATING TO HUMANITARIAN ASSISTANCE

Principle 24

1. All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.

2. Humanitarian assistance to internally displaced persons shall not be diverted, in particular for political or military reasons.

Principle 25

1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.

2. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State’s internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.

3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.

Principle 26

Persons engaged in humanitarian assistance, their transports and supplies shall be respected and protected. They shall not be the object of attack or other acts of violence.

Principle 27

1. International humanitarian organizations and other appropriate actors when providing assistance should give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard. In so doing, these organizations and actors should respect relevant international standards and codes of conduct.

2. The preceding paragraph is without prejudice to the protection responsibilities of international organizations mandated for this purpose, whose services may be offered or requested by States.

SECTION V - PRINCIPLES RELATING TO RETURN, RESETTLEMENT AND REINTEGRATION

Principle 28

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavor to facilitate the reintegration of returned or resettled internally displaced persons.

2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

Principle 29

1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.

2. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall

provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

Principle 30

All authorities concerned shall grant and facilitate for international humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.

ANNEX 8

Additional References

Chapter 2: Design and Implementation of the Orders Issued in Decision T-025 of 2004: An Assessment of the Process

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