

## **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 UNCONSTITUTIONAL 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<sup>1</sup>.

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 sections of the same report is inconsistent, or it varies from one bi-

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<sup>1</sup> 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.

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 13<sup>th</sup>, 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<sup>2</sup>. 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 entity with the Constitutional Court, information is provided on the adoption of isolated measures, such

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<sup>2</sup> 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 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.*”

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 officers”—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 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<sup>3</sup>; (2) to periodically update the relevant calculations in accordance with the evolution of the phenomenon

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<sup>3</sup> 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 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.*”

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<sup>4</sup>; (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<sup>5</sup>; (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<sup>6</sup>; and (5) bearing in mind that 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

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<sup>4</sup> 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.*”

<sup>5</sup> 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.*”

<sup>6</sup> 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 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.*”

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<sup>7</sup>.

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.

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

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<sup>7</sup> 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.*”

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<sup>8</sup>, and that the amount of budgetary resources required for that purpose during the 2005 fiscal year<sup>9</sup> was calculated in ColP\$413,650<sup>10</sup> 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% (ColP\$2.9 billion) for the Nation, and 25%<sup>11</sup> (ColP\$990 thousand million) for the territorial entities<sup>12</sup>.*

*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:*

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<sup>8</sup> Colombian “Billions” are equivalent to Trillions

<sup>9</sup> 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.

<sup>10</sup> This estimate was based on 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.

<sup>11</sup> This percentage includes the components of health, education, housing, and emergency humanitarian assistance.

<sup>12</sup> 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.

**Table 2: National Timetable**

	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>Total</b>
<i>Attention of the population that was displaced by December, 2004</i>	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
<b>Total</b>	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*

*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.<sup>13</sup>

7.2. In this sense, the flaws in the reports presented by *Acción Social* and the Ministry of National Defense are particularly alarming. The 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.**

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<sup>13</sup> See section 10 of Annex 4.

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, Cauca, 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 at 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 concreteness and brevity 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 concreteness and brevity 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