



INTERNAL DISPLACEMENT AND THE CONSTRUCTION OF PEACE

Summary Report

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PONTIFICIA UNIVERSIDAD JAVERIANA

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THE BROOKINGS INSTITUTION –
UNIVERSITY OF BERN
PROJECT ON INTERNAL
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ABOUT THE PUBLICATION

The Brookings-Bern Project on Internal Displacement, the Swiss Federal Department of Foreign Affairs and the Pontificia Universidad Javeriana jointly organized a seminar on Displacement and Peacebuilding, held in Bogota, Colombia from 11-12 November 2008. The seminar brought together representatives of the Colombian government, IDP associations, civil society organizations, donor governments, UN agencies and academic researchers to explore the relationships between displacement and peacebuilding. This report was put together by Elizabeth Ferris, Co-Director of the Brookings-Bern Project on Internal Displacement.

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*The views expressed in this publication do not necessarily reflect
those of the Swiss Federal Department of Foreign Affairs.*

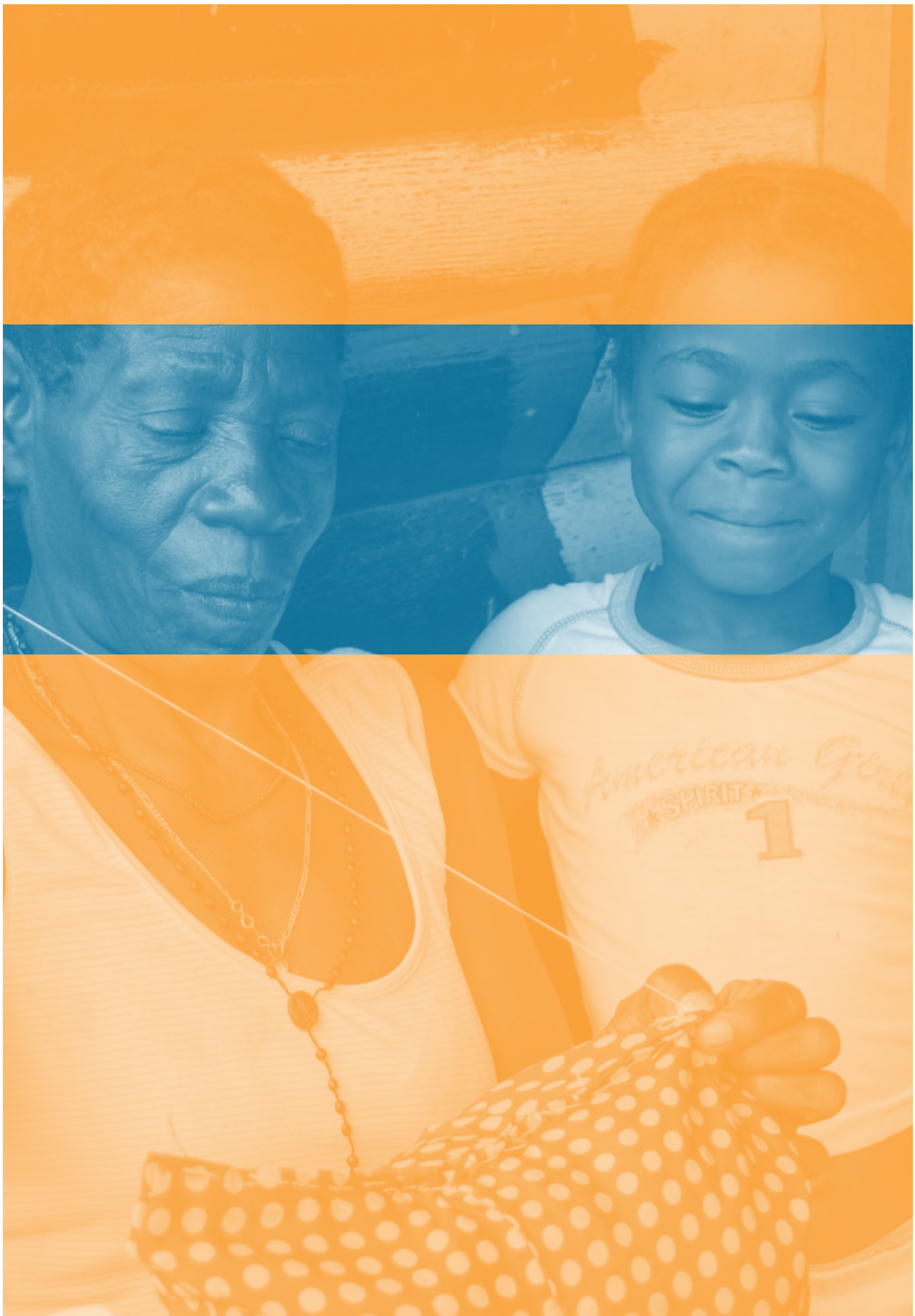


TABLE OF CONTENTS

INTRODUCTIONS

- v** Ambassador Thomas Greminger, Swiss Federal Department of Foreign Affairs
- vii** Professor Roberto Vidal, Pontificia Universidad Javeriana
- viii** Prof. Walter Kälin, Representative of the Secretary-General on the Human Rights of Internally Displaced Persons

1 SUMMARY OF PROCEEDINGS

16 ANNEX I: LIST OF PARTICIPANTS

ANNEX II: OPENING STATEMENTS

- 18** Ambassador Didier Pfirter, Ambassador of Switzerland to Colombia
- 21** Father Gabriel Izquierdo Maldonado, S.J., Pontificia Universidad Javeriana
- 27** Magistrate Nilson Pinilla, Constitutional Court of Colombia

ANNEX III: WORKING GROUP REPORTS

- 31** Working Group 1: Organization and Participation of Displaced Persons
- 34** Working Group 2: Transitional Justice and Internal Displacement
- 37** Working Group 3: Land, Internal Displacement, and Durable Solutions

41 ANNEX IV: INTERNAL DISPLACEMENT, TRANSITIONAL JUSTICE, AND PEACEBUILDING – LESSONS LEARNED

57 ANNEX V: INTERNAL DISPLACEMENT AND THE CONSTRUCTION OF PEACE IN COLOMBIA

91 ANNEX VI: CASE STUDIES OF DISPLACEMENT



INTRODUCTIONS

AMBASSADOR THOMAS GREMINGER

Swiss Federal Department of Foreign Affairs

The report *Internal Displacement and Peacebuilding in Colombia* offers a unique perspective on the relationship between internal displacement and peace and is itself the fruit of a dynamic and innovative cooperative venture between various actors: governments, multilateral organisations, academic institutions, civil society and representatives of internally displaced persons (IDPs).

The report is based on a fundamental commitment to respond adequately to the protection and assistance needs of displaced people and to seek durable solutions to resolve their displacement. And yet, over the last two decades, the number of IDPs has steadily increased; by the end of 2008, the total number of persons displaced within their own countries as a result of armed conflicts and violence amounted to roughly 26 million men, women, and children. The recent 10th Anniversary of the Guiding Principles on Internal Displacement provided an opportunity to reflect on positive developments affecting the lives of IDPs, but also to discuss the challenges of ensuring that the rights of millions of people forced to flee worldwide are upheld. In this regard, there is a growing consensus among the international community that IDPs' rights and durable solutions cannot be attained as long as lasting peace is not achieved. At the same time, issues related to internal displacement should be included in different phases of peace building processes in order to ensure durable peace.

Peace promotion and humanitarian action are at the core of Switzerland's foreign policy. Internally displaced persons represent one of the most vulnerable categories of civilians who suffer the consequences of war and one which governments must assist and protect. Since 2005, the Swiss Federal Department of Foreign Affairs has supported the *IDPs and Peace* initiative of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons and the Brookings-Bern Project on Internal Displacement. This initiative has developed "bridges" between peace building and humanitarian issues related to internal displacement in a coherent and efficient way. Field research and the subsequent publication of *Addressing Internal Displacement in Peace Process, Peace Agreements and Peace-Building (2007)* have been central for successful dissemination of the study's results both at the multilateral and bilateral levels.

Even in situations where negotiated solutions to armed conflicts seem to be particularly difficult or remote, the association between internal displacement and peace can enhance awareness and help to create more favourable conditions for future peace initiatives. The seminar *Desplazamiento Interno y la Construcción de Paz (Internal Displacement and Peacebuilding)*, that took place in Colombia in November 2008, provided the opportunity for a large number of local and international participants to discuss and define crucial issues such as transitional justice and displacement, the rights of IDPs, local peace initiatives, and durable solutions. The material presented in this report reflects current humanitarian aid and peace promotion topics which impact the lives of millions of Colombians who have been suffering for several decades the burden of a long internal armed conflict.

I hope that the ideas and questions raised in these pages will strengthen the implementation of the rights of Colombia's IDPs and that they would provide new and useful perspectives to future peace efforts.

A handwritten signature in blue ink, appearing to read 'T. Greminger', with a stylized flourish at the end.

Ambassador Thomas Greminger,
Head of Political Division IV, Human Security,
Swiss Federal Department of Foreign Affairs

PROFESSOR ROBERTO VIDAL

Pontificia Universidad Javeriana

It is an honor for me to associate the Pontificia Universidad Javeriana with the subject of this seminar: internal displacement and the construction of peace. For more than a decade, the university has been dedicated to researching and investigating these two topics, which are incredibly important for the future of our country.

The role of the university in society, in our minds, is ambitious: to investigate social, economic, political, and legal conditions that affect the lives of many people and to provide a space for analysis and dynamic reflection that will stimulate action. We hope that this seminar about internal displacement and peacebuilding will have concrete results that can be seen in the daily lives of the many internally displaced Colombians.

For us it has been a great pleasure to collaborate with The Brookings Institution and the Swiss Federal Department of Foreign Affairs on this project. Each institution has contributed from its own experiences. Working across three continents, we have shared in the design and the realization of the seminar. We hope to continue this collaboration in the future as there remains much to be done.



Roberto Vidal,
Faculty of Juridical Sciences
Pontificia Universidad Javeriana

PROFESSOR WALTER KÄLIN

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

I am pleased to present this report on Internal Displacement and Peacebuilding in Colombia. The relationship between peacebuilding and displacement is a global issue as I have emphasized in meetings with the UN's Peacebuilding Commission. Displacement and peacebuilding are interlinked. Peacebuilding is necessary to find durable solutions for those displaced by conflict. And without durable solutions for the displaced, stability and sustainable peace can hardly be achieved.

But the relationship between peacebuilding and displacement is an issue that is also relevant in the context of Colombia which has been suffering from violence for so long. Colombia, a country with a long-standing and large-scale displaced population, has been unable to implement durable solutions for most of the displaced. Unlike many countries where conflicts are brought to an end by peace agreements, the situation in Colombia is more complex and forced displacement continues. And yet it is possible to see that some processes of peacebuilding are underway – for example, through mechanisms of transitional justice, which include government and civil society organizations working on issues of reconciliation and reparations, historical memory and land. It is important that these processes take into consideration the particular needs and rights of internally displaced persons (IDPs).

Since taking up my mandate in 2004, I have engaged in dialogue with governments and other actors about complex displacement situations and have encouraged and supported their efforts to provide protection and durable solutions for IDPs. In 2006, I carried out a mission to Colombia and followed up that mission with a working visit in 2008. In my most recent visit, I found that Colombia continues to endure a serious displacement crisis, despite important steps taken by the authorities to meet the challenge. In particular, I highlighted the positive impact of the Constitutional Court and the Colombian government's significant increase in budgetary resources. But new cases of forced displacement are a cause for concern. I underlined that all human rights, including the right to reparations, must be respected for all victims of forced displacement regardless of the cause or agent of displacement.

There is much to be done in Colombia to find and implement durable solutions for Colombia's internally displaced persons. The way in which solutions are found will have an impact on processes of transitional justice and peacebuilding. As I presented to the Peacebuilding Commission earlier this year, successful return of IDPs to their homes and former places of habitual residence require at least the following conditions: that their safety during and after returning is guaranteed, that their property is restored and their houses are reconstructed, and that an environment that sustains return is created by the government and the international community.

I hope that this report will not only contribute to understanding the linkage between displacement and peacebuilding, but that it will inspire greater commitment to ensuring that solutions for Colombia's IDPs contribute to justice and peace in that country.

A handwritten signature in blue ink, appearing to read 'W. Kälin', with a horizontal line extending from the end of the signature.

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



SUMMARY OF PROCEEDINGS

OPENING REMARKS

The seminar opened with a welcome from Roberto Vidal, followed by introductory remarks by Father Izquierdo Maldonado of the Universidad Javeriana; Ambassador Didier Pfirter, Swiss Ambassador to Colombia; and Dr. Nilson Pinilla, Magistrate of the Constitutional Court.

Father Izquierdo Maldonado welcomed participants to the seminar, emphasizing that the subject of this seminar is particularly relevant because the two greatest challenges facing Colombia are protracted conflict and internal displacement. The first Representative of the Secretary-General for Internally Displaced Persons, Francis Deng, first visited the country fourteen years ago. Since then the number of IDPs in Colombia has continued to grow and the social conditions in which they live – poverty and exclusion – demand social solidarity. The displaced need to become more involved in the peace processes to help shape their own future and therefore IDPs should be in the center of all discussions. Given the magnitude of the problem, strategic alliances and coordinated efforts are essential.

Ambassador Pfirter began his remarks by noting that the Swiss government has been supporting work on the relationship between peace and displacement since 2005. This work has demonstrated the importance of addressing displacement in peace negotiations, peace agreements and peacebuilding. Ambassador Pfirter reminded the audience that the current seminar will concentrate on five fundamental areas: transitional justice, land and territories, durable solutions, the participation of displaced organizations, and the rights of internally displaced persons. The Guiding Principles on Internal Displacement were established ten years ago; and have since played a fundamental role in improving protection, assistance, return and reintegration of internally displaced persons, both globally and in Colombia.

Magistrate Nilson Pinilla emphasized the large gap between the reality facing displaced persons and the provisions made for them in the national legal system. This disparity led the Constitutional Court to adopt decision T-025, which found the current state of IDPs unconstitutional and mandated far-reaching action by the Colombian government to remedy the situation. However, it has been difficult for the government to meet its obligations. Magistrate Pinilla expressed particular concern about the “terrible indifference toward IDPs” and the need to put displacement issues in the center of national discussions. He also emphasized the particular protection needs of displaced women and children.

THE BROADER CONTEXT

Elizabeth Ferris, Co-Director of the Brookings-Bern Project on Internal Displacement then presented a comparative overview of how other countries have addressed the complex relationship between displacement and peacebuilding (Annex IV).

Recent research carried out by the Brookings-Bern Project on Internal Displacement demonstrates the close relationship between displacement solutions and successful peacebuilding. Peacebuilding is a complex process that aims to re-establish security and rule of law through reconstruction and economic rehabilitation, social reconciliation, and political transition to more accountable governance structures and institutions. The presence of displaced populations complicates this already difficult process, yet if IDP concerns are not taken seriously, it may jeopardize the sustainability of peace agreements. Quoting Representative Kälin, Ms. Ferris remarked, “If IDPs are not able to recover their land or property or otherwise find solutions allowing them to live decent lives and when they feel that they have suffered injustice, reconciliation becomes more difficult. If durable solutions are not found for IDPs, their potential for contributing to economic reconstruction and rehabilitation is limited and poverty reduction becomes more difficult.”¹ However, it should be kept in mind that resolution of such issues can be a positive force for political reconciliation, social development and economic growth.

Ms. Ferris then surveyed several case studies of implementation of durable solutions for IDPs. With respect to return, she noted that there are many cases where the presence of armed groups can create a serious obstacle, particularly when the armed groups were originally responsible for the displacement. The Representative of the Secretary-General on the Human Rights of Internally Displaced Persons has noted that in some cases, it is necessary to disarm these groups, integrate them into the post-conflict armed forces, or relocate them to other parts of the country to give returnees a sense of security.² Where impunity prevails, whether because of lack of political will or because of understaffing of law enforcement personnel, durable solutions for displaced persons are not possible. Such impunity may also create new tensions, thus endangering a fragile peace.³

Unfortunately, land and property disputes are common in post-conflict situations and make it more difficult for IDPs and returning refugees to find solutions. When the homes of the displaced are occupied by others, mechanisms are needed to resolve competing claims. If property disputes are not properly addressed, this tension can be a source of new or renewed conflict. Governments

¹ Walter Kälin, *The Great Lakes Protocol on Internally Displaced Persons: Responses and Challenges*, Brookings-Bern Project on Internal Displacement, September 27, 2008. http://www.brookings.edu/speeches/2007/0927_africa_kalin.aspx?rssid=idp

² RSG/E/CN.4/2006/71/Add.6 (Sudan), para. 44; A/HRC/4/38/Add.2 (Cote d’Ivoire), para. 56.

³ RSG, E/CN.4/2006/71/Add.7 (Georgia), paras. 35-36; E/CN.4/2006/71/Add.4 (Bosnia-Herzegovina, para. 35)

are responsible for developing such legal mechanisms. Ms. Ferris then traced some of the specific mechanisms which have been useful in other contexts in restitution of or compensation for property.

With respect to transitional justice, various mechanisms have been used in different post-conflict situations, such as reparations, truth telling, and Commissions on Truth and Reconciliation. However, few reparations programs have recognized the need to provide compensation to IDPs for pain and suffering.

IDP participation in peace processes takes place at different levels. While involvement of IDPs in formal peace negotiations has been rare, they have been more active participants in Track II and Track III processes. The inclusion of IDPs in the decision-making of assistance programs and durable solutions is essential.

Ms. Ferris concluded her remarks by reemphasizing that resolving displacement is inextricably linked with peacebuilding and transitional justice. Finding durable solutions for IDPs, resolving land and property disputes and ensuring the participation of displaced persons in political processes are essential not only to the affected individuals and communities, but to Colombian society as a whole.

DISPLACEMENT AND PEACEBUILDING IN COLOMBIA

Professor Roberto Vidal presented the findings of research on the relationship between displacement and peacebuilding in Colombia, carried out by a team of professors of Javeriana University. (See Annex V) The central thesis of the study is that in Colombia the processes of peacebuilding and responding to internal displacement have followed two different tracks.

He began by noting the permanent discussion in Colombia on the actual number of displaced persons, with differences in both methodologies and findings between the government and human rights groups. Professor Vidal asserted that one of the main causes of displacement is that in Colombia, as in most non-international conflicts, neither the state nor insurgent groups nor paramilitaries are able to respect the principle of distinguishing between combatants and the civilian population.

He characterized patterns of Colombian displacement as including both mass displacement as well as a constant influx of individual or family displacement, with the former receiving more attention and assistance than the latter. While all regions of the country have experienced displacement, most of the IDPs come from rural areas and find refuge in the cities. Reflecting the progressive urbanization of the conflict, intra-urban displacement has increased.

Following several unsuccessful efforts, the process of peace negotiations has been stalled. But the government has embarked on a process of peacebuilding which has included measures to demobilize paramilitaries. However, these moves have been generally greeted with suspicion by displaced groups. While producing an initial decrease in displacement, new displacements are again occurring. Since the beginning of the paramilitary demobilization process, a significant portion of state resources has been progressively shifted from responding to IDPs towards facilitating the integration of combatants. Analysis of the government's financial data reveals that while the government spends about 7.2 million pesos on each of the 8,390 demobilized combatants, only 655,000 pesos are spent for each of the 1.46 million IDPs.

The Law of Justice and Peace and the National Commission of Reparations and Reconciliation are expressions of an effort to implement transitional justice and peacebuilding, but these largely exclude IDPs. On the other hand, the National System of Assistance and Prevention of Displacement has evolved independently of these transitional justice mechanisms. Additionally, the involvement of the judicial system, particularly the Constitutional Court, has been noteworthy and essential in upholding the rights of IDPs.

Important processes and institutions where IDPs can exert some influence are found at the margins or parallel to formal peace processes. Some of these institutions are opposed and others are supported by the government. IDP communities and their representatives have developed a close relationship with the judicial system and the court often acts on claims brought by IDP communities.

Prof. Vidal remarked that the agenda of this meeting was set to focus on the particular concerns raised by IDPs, which is essential to peacebuilding. One of the issues that most affects IDPs is the resolution of land and property disputes. Conflicts over land are both a cause and an effect of displacement. The intense concentration of land ownership and the enormous variety of relationships of people to the land make this a complex issue. While some individuals have formal legal title to their land, others do not have the type of title which is protected by law. Colombia's institutions and laws pertaining to land are the product of complex historical processes which have developed since colonial times, but seem to be inappropriate to address the reality of internal armed conflict and, in particular, the issues related to forced displacement. The question of durable solutions is the most urgent and most difficult of the questions, given the fact that there is a lack of consensus on what the durable solution should be. The main obstacle to return is the lack of security in the rural areas from which people have been displaced. Durable solutions for many IDPs need to be found in the cities. Municipal authorities play a key role in this regard, especially in resolving problems between IDPs and host communities.

Governmental policies toward IDPs and in support of transitional justice are being pursued on parallel tracks and there is an unfortunate tendency for IDPs and other victims to be pitted against one another. Many IDPs have rejected the Law for Justice and Peace precisely because it does not

address displacement and seems to give preferential treatment to those who caused displacement rather than to the displaced themselves. At the same time, there have been enormous advances in the legal framework applicable to IDPs. The impact of the 2004 Constitutional Court decision, which found an unconstitutional state of affairs with respect to the government's policies toward IDPs, cannot be underestimated. The creation of the Comisión de Seguimiento has opened up spaces for discussion, as has the establishment of other mechanisms which bring together representatives of government with civil society and victims' representatives.

DEEPENING THE ANALYSIS

These introductory presentations were followed by working groups which explored the relationship between displacement and peacebuilding around the five themes of the seminar:

1. Land and territory
2. Transitional justice
3. Durable solutions
4. Participation of IDPs
5. Rights of IDPs

The reports of the working groups are presented in Annex III.

CIVIL SOCIETY PERSPECTIVES ON THE RELATIONSHIP BETWEEN PEACEBUILDING AND DISPLACEMENT

Marco Romero (CODHES) speaking for the Comisión de Seguimiento, discussed the need to move beyond seeing victims as just a problem for humanitarian agencies. Rather, when one community loses its rights, society as a whole suffers. It is necessary to recognize the rights of IDPs and to recapture the historical memory of what has happened. Today in Colombia, it is dangerous to be a leader of IDP associations; threats and assassinations are targeted towards those who speak out on behalf of the internally displaced. The Comisión de Seguimiento needs continued support of the international community at a time when the latter is under pressure to withdraw its engagement. Today what we see in Colombia is a partial peace process which has not brought about an end to the conflict. It is also important to recognize that some 90 percent of IDPs have left behind land and property; the magnitude of the resulting land usurpation is tremendous. Most IDPs are not aware of their rights and have received nothing in the way of reparations. Mr. Romero concluded with the suggestion that it would be useful to have a periodic evaluation of the government's progress in living up to the standards of the Guiding Principles on Internal Displacement.

Monseñor Hanau (Conferencia Episcopal Colombiana) agreed that there is a need for continuous monitoring of the application of the Guiding Principles to Colombia. A major question for the country is when will reconciliation begin? And among which actors will it be carried out? Even

though the conflict continues, reparations should begin immediately. A focus on the relationship between rights and peacebuilding is crucial. For example, a recent survey in Florencia demonstrated both the magnitude of the displacement and the importance of looking at the local level. Even when people have been displaced for a long time, they need to be recognized as victims. With respect to housing, for example, the Florencia survey (carried out by the Conferencia Episcopal Colombiana) showed that only 7 percent of IDPs are living in conditions of dignity. Another serious problem is that of impunity. Displacement can last years and the lack of judicial decisions which punish the perpetrators of displacement means that there is historic impunity even while displacement continues. But there is also the impunity of social acceptance. If we accept that the poor and the displaced cannot recover their lands, we are accepting impunity.

Sr. Quiroa, speaking on behalf of the Mesa Nacional de Desplazados, noted that some displaced communities are 22 years old and that these communities need support. The focus of the Mesa Nacional is to work on practical issues, such as documentation, which in itself is a contribution to peace.

Beatriz Mosquera (Consejo Comunitario del Rio Anchicayá) expressed concern at the great distance between the present situation and peace. Since 1995, her region on the Pacific Coast has lacked hope. All the various armed groups are active in the region. Even though national policies of demobilization have been created, demobilization does not seem to have occurred in the area. Rather her communities have seen more armed conflict and more displacement rather than peace. There are also more cases where people are ‘corralled’ and prevented from moving freely. Regarding the causes of the conflict, she noted that “*narcotráfico* is not part of our culture, but rather has been exported to the region as a result of the government’s policies.”

THE RSG RESPONDS

Walter Kälin, the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, expressed thanks to the organizers for convening this seminar. This is the first time that the themes of peacebuilding and internal displacement have been brought together in a discussion with a wide range of stakeholders – displaced communities, government, civil society. Civil society in particular plays a very important role in Colombia in promoting respect for the rights of IDPs and in highlighting the issue of internal displacement. In the follow-up of the T-025 decision, civil society organizations have developed indicators, together with the government, for measuring progress – a model which could be used in other countries. He also paid tribute to the Constitutional Court for the tremendous advances it has brought about with respect to IDP rights. According to the Guiding Principles, it is the responsibility of the national government to protect and assist IDPs, but if the government cannot fulfill its responsibility, it is up to other organs of the state. Finally, Professor Kälin paid tribute to Colombia’s many active IDP associations. Colombia

should be proud of this tradition, he noted, especially in comparison with other countries where IDPs have been less active in asserting their rights. He also expressed admiration for IDP leaders who continue to speak out even those they face threats and violence.

Professor Kälin explained that his mandate includes a provision to work with UN agencies to ensure that issues of internal displacement are mainstreamed in the UN system. In some of his travels to countries such as Nepal, South Sudan and Bosnia, he was keenly aware that the fact that unresolved internal displacement was contributing to the lack of sustainable peace. Peace is more than the absence of military activities and requires careful nurturing. In recognition of the difficulties in consolidating peace agreements, the UN decided to establish a Peacebuilding Commission to help countries that have emerged from armed conflicts to build sustainable peace. That such attention is needed is evident in the fact that about half of the countries that sign peace agreements lapse into violence within five years. Professor Kälin, together with the UN High Commissioner for Refugees, has spoken with the Peacebuilding Commission about the relationship between displacement and peacebuilding. Peace processes refer not only to official negotiations, but to everything that is done to help to engender a climate in which conflicts are ended and in which peacebuilding can occur.

The relationship between peacebuilding and displacement rests on several arguments: 1) IDPs are often the main victims of conflicts, 2) IDPs often have specific needs, 3) without peace, there is no hope for durable solutions to displacement, and 4) without real solutions to displacement, there can be no durable peace. The links between peacebuilding and displacement are clear. The Framework for Durable Solutions emphasizes that durable solutions are a process rather than a fixed end-product. IDP involvement in peace processes does not have to take the form of IDPs sitting in formal negotiating sessions between governments and insurgent groups, but their voices need to be heard. With respect to peace agreements, there needs to be an acknowledgement that IDPs are victims and that impunity is an obstacle to peace. The issue of reparations and transitional justice needs to be considered from the perspective of victims. If land questions are not addressed, there can be no sustainable peace.

In the discussion following the presentations by civil society and Professor Kälin's remarks, participants raised a number of issues, including:

- ❖ The fact that armed groups continue to operate in Colombia.
- ❖ The need to look at the structural causes of displacement, particularly the development of megaprojects and the drug war
- ❖ The particular impact of the conflict on indigenous communities, given their deep historical and cultural attachment to the land

THE GOVERNMENT

Patricia Linares (Procuraduría General de la Nación) noted that peacebuilding requires both truth and reparation as well as an understanding of who the victims are. The question of the recognition of victims is not a rhetorical point, but rather an issue which raises questions of political and ethical responsibilities. The fact that the government does not recognize the existence of an internal armed conflict means that it does not see the need for the application of international humanitarian law. There are differences between transitional justice at the rhetorical level and transitional justice in practice. Recognition of an internal armed conflict would mean that we can move toward transitional justice through negotiations. The state has a responsibility toward IDPs. IDPs and the state should have a chance for dialogue on the question of the displaced as victims.

Armando Escobar (Acción Social) argued that IDPs are those displaced by the violence caused by insurgent groups, not those leaving in search of work. The government provides humanitarian assistance to IDPs and has greatly increased the budget devoted to this. After providing humanitarian assistance, the government implements programs to support socioeconomic stabilization.

Hernando Torre (Defensoría del Pueblo) noted that relating peacebuilding to displacement is a new approach as IDPs are usually considered solely in terms of humanitarian assistance. But the relationship between human rights and peace is very clear as expressed in a slogan in his office which says “human rights in order to live in peace.” There has been a tendency to look at IDPs as a problem for a specific group of people, rather than seeing it as a problem for the country as a whole. For example, because of displacement, a counter-agrarian reform seems to be taking place. The problem of displacement is a human rights issue in which state responsibility is recognized. The state has a responsibility not only to help people, but to punish those responsible for the displacement. We need to ask how effective the state has been in preventing displacement and sanctioning those responsible. The state has to understand that displacement is not a problem for a particular group, but for the whole society.

Patricia Buriticá (civil society representative on the Comisión Nacional de Reparación y Reconciliación) underlined that the heart of the conflict is the struggle over ownership and use of land. If Colombia could resolve this problem, the conflict would be resolved. Some 2-3 million hectares (5-7 million acres) have been taken. She then addressed the myth that IDPs do not want to return. In fact, they want to return but are unable to do so because they do not have work, and they are afraid. It is also a myth that the lands they left behind were the worst. . The government, on the other hand, maintains that all humanitarian assistance is restitution. We have to see other measures implemented in order to promote peace: the means of compensation should be seen as subsidiaries of restitution. There is also a need for the restoration of rights, recognition of collective territorial rights, and the use of different criteria depending on gender, age, ethnicity, and disability.

THE RSG RESPONSE

In his comments, Walter Kälin noted that there is a degree of consensus between government and civil society representatives. All acknowledge the need to move beyond humanitarian assistance in order to restore lives. The realities of the conflict are accepted, as is the need to build peace, the central role of land, and the need to restore the rights of IDPs. Recognition is needed that IDPs are victims and that at the same time IDPs have a right to be active participants in their own lives. These areas of consensus can bridge the gap between human rights and humanitarian issues on the one hand, and traditional security actors on the other hand. They can ultimately lead us to a new understanding of security – of human security – and the creation of an environment where all can live in dignity.

In the discussion, many points were raised, including: questions about the role of the military in providing humanitarian assistance, the essential role of social justice in peacebuilding, and concerns from IDP representatives about their treatment by government officials, the threats their leaders have received, and the massacres experienced by their communities.

“It seems like we are complaining, complaining, complaining a lot. But you have to understand, we don’t want to be here. We want to back in our own lands. People don’t listen to us, but people are dying. We don’t want to be killed or displaced. Please listen to us.” – IDP

Themes emerging from the seminar

Although the seminar was not structured to produce a consensus document, a number of common inter-connected themes emerged in the discussions.

- 1. Displacement and peacebuilding are connected.** Sustainable peace in Colombia cannot be achieved unless and until internally displaced persons find solutions. Without peace, there is no hope for an end to internal displacement. While the Colombian government has been progressively maintaining that the internal conflict is over, several participants, including representatives of IDP associations affirmed that violence is still occurring and that people are being displaced. Peacebuilding – even as new displacements are underway – is both a challenge and a necessity.
- 2. IDPs need to participate** in the processes which affect their lives. Participants stressed the importance of developing and implementing mechanisms to ensure the involvement of IDPs in transitional justice and peacebuilding, but also in decisions about humanitarian assistance and durable solutions. While the number and scope of Colombian IDP associations is impressive, participants stressed the fact that IDP communities have had a difficult history. There are over 100 national organizations of IDPs, but unity among them is often lacking. For example, many IDP associations are urban-based while much of the displacement

occurs in rural areas. Structural and representational problems among these associations are endemic. Securing the representation of women, both in IDP associations and in consultative mechanisms, is particularly important. Additionally, a large number of IDP associations are constantly victims of threats and several of their leaders have been murdered.

Participation of IDPs in peace processes can take many forms. As Monseñor Henao pointed out, both IDPs and their issues have historically been excluded from peace negotiations. The single exception was the Cuba conversation (2006-07) between the government and the ELN. While it is probably not realistic to have IDPs sitting at the negotiating table, their voices need to be heard and means need to be found to enable this to happen.

- 3. IDPs have been among the main victims** of the conflict in Colombia and should be recognized as such. They have often been under pressure from all sides to the conflict; it has often been very difficult for civilians to maintain neutrality in a conflict where the armed actors have systematically been urging them to participate in the hostilities. While IDPs are certainly not the only victims of the conflict, they have specific needs related to their loss of property, livelihoods, and communities.

Relations between IDPs and other victims' groups have sometimes been strained. The longer displacement continues, the more conflict there will be between different victims' groups and the more conflict there will be over the amount of reparations. The sheer number of displaced people – between 3 and 4 million – also represents a significant technical challenge to develop a viable reparations system which is able to include IDPs. Another challenge is the difficulty of establishing a reparations system in a situation where conflict and displacement are still occurring.

- 4. Land-related issues are central** to both sustainable peace and to ending displacement. Participants stressed that land is a complicated issue in Colombia, given the intense concentration of land ownership in the hands of a few and the wide variety of relationships of people to the land. Not only do conflicts over land have a long history in Colombia, but the conflicts themselves have changed patterns of land usage and productivity. Several participants mentioned the fact that in some regions of the country (Urabá, Llano Orientales, Pacific Coast), the conflict has produced a 'counter agrarian reform' (*contrareforma agraria*) which has increasingly concentrated the ownership of property.

There are different levels of problems with land, including:

- ❖ The absence of a properly functioning centralized land registry which results in the lack of accurate and current information.
- ❖ Inadequate systems for registering information and the institutional system of land registration, given the informality of many land transfers

- ❖ The enormous variety of land situations, reflecting different relationships between local and national governments; the impact of different crops and stages of cultivation, as well as the effects of changing patterns of land usage on gender relations and on different social/ethnic groups (e.g. indigenous, Afro-Colombians)
 - ❖ The different types of displacement occurring as a result of land disputes, including forced displacement by conflict, natural disasters, mega-development projects, cultivation of illicit drugs, etc.
 - ❖ The role of international cooperation and in particular the decreasing autonomy of international cooperation to work directly with affected communities.
5. While there was recognition that finding **durable solutions** for IDPs is the most urgent (and most difficult) task facing the Colombian government, there is no consensus on what the durable solutions should be. While most IDPs would like to return, many seem to have given up hope of doing so. Conditions in the countryside, particularly the lack of security, make large-scale returns impossible at the present time. IDPs do not want to return unless they are certain that they can obtain land and livelihoods. Several participants referred to the Report of the Comisión de Seguimiento a la Política sobre Desplazamiento Forzado which pointed to the lack of employment and housing as the most critical issues for the implementation of the T-025 ruling.
6. Durable solutions for IDPs affect and are affected by progress on **transitional justice**. Yet at the present time, policies toward IDPs and for transitional justice are being implemented on parallel tracks. The Law on Justice and Peace (Law 782 and 975) has led to policies of demobilization of paramilitaries and processes by which perpetrators can confess their crimes with a view toward eventual reconciliation. More broadly, governmental and “semi-governmental” institutions have been created to support transitional justice, including the Comisión Nacional de Reconciliación y Reparación and the Comisión de Seguimiento, which are largely disconnected from the processes to assist IDPs and support their economic stabilization. The Comisión de Seguimiento is an organization made up of various NGOs, the Catholic Church, academics and important personalities in national life. In some cases, IDPs are competing with other victims for attention. The perception is that in some cases perpetrators have been strengthened by the judicial and peace processes while the victims have been weakened and there is resentment at the imbalance between resources available to perpetrators of crimes and to IDPs as victims. At the same time, there is fear that demobilized paramilitaries are joining new armed groups which in turn can displace people.

The seminar’s working group on transitional justice outlined the agenda of IDP groups in the context of transitional justice to include:

- a. Truth: the need to recognize that IDPs are victims, to recognize conflicts over land as

- central to displacement, and to empower IDP groups as autonomous communities based on the principle of equality.
- b. Reparations: the need to determine reparations in accord with the harm suffered and the need for IDPs to participate in debates over reparations and restoration of land. Administrative means to determine reparations should be used and the issue of reparations could be linked with rural development.
 - c. Peacebuilding: at a time when Track I and even Track II peace processes are ‘blocked,’ the involvement of IDPs as part of a Track III peace process is crucial. It is fundamental to ‘prepare the field’ by having discussions on substantial issues related to the armed conflict in Colombia, including on displacement.
 - d. The necessary conditions for peace include:
 - i. A peace agreement to include both armed actors and civil society in negotiations
 - ii. An end to polarizing the conflict as between so-called “terrorist groups ” and the government
 - iii. International accompaniment
 - iv. Governmental will for peace at the local level
 - v. Structural problems and causes of the armed conflict to be addressed: socio-economic model, land, justice/impunity, etc. and displacement.
7. There have been enormous advances in **laws** related to IDPs. The impact of the Constitutional Court’s ruling that there is an unconstitutional state of affairs because of the government’s failure to address the needs of IDPs (T-025) has had a significant impact on the resources available to IDPs. However, it is essential that the follow-up work to Sentencia T-025 be continued and supported, perhaps through an annual report on the T-025 and the implementation of the Guiding Principles on Internal Displacement. Moreover, much more work is needed on the local level to translate these into reality and especially, to find durable solutions for IDPs.
8. **International cooperation** has an important role in both peacebuilding and resolving internal displacement.

CLOSING ACTIONS

On behalf of the Brookings-Bern Project on Internal Displacement, Elizabeth Ferris reported that the Project will publish a report from this meeting (in Spanish and English) and will organize a seminar in Washington to raise awareness about these themes. The Project will also seek ways of continuing its work in exploring the relationship between peacebuilding and displacement.

Pietro Lazzeri, speaking for the Swiss Federal Department of Foreign Affairs, insisted that this seminar should not be seen as an isolated event, but rather as part of a wider process. At a time when peace processes in Colombia are stalled, there is a need to discuss substantive themes, such as land and reparations, in order to be prepared for a time when progress can be made on the themes. If progress seems stalled on the level of official Track I negotiations, there are many good initiatives taking place at the local level, on the so-called Track III level. The Swiss Ministry will continue to work on the issue of transitional justice in Colombia and its relationship to displacement. Mr. Lazzeri closed by thanking the Brookings-Bern Project and the Universidad Javeriana for their collaboration in this process as well as the Swiss Embassy in Bogotá.

Roberto Vidal, of Javeriana University, closed the meeting by commenting that the meeting had met the university's expectations in providing a space for dialogue. He expressed thanks to all those who had organized the meeting and expressed the willingness of the university to continue to follow-up and monitor the implementation of the Guiding Principles on Internal Displacement.

ANNEXES

ANNEX I

LIST OF PARTICIPANTS

Name	Title/Organization
Diana Ángel	Peace Issues Assistant, Embassy of Switzerland
Ana María Arango	Acción Social
Magaly Belalcázar	Asociación de Mujeres Sembradoras de Vida y Libertad de Samaniego (Nariño)
Christophe Beney	International Committee of the Red Cross
Patricia Buriticá	National Commission on Reparation and Reconciliation
Valdemar Carneiro Leão Neto	Ambassador of Brazil to Colombia
Rafael Coicué	Asociación de Cabildos Indígenas del Norte del Cauca
Armando Escobar	Acción Social
Patrick Egloff	Assistant to the Representative of the Secretary-General
Elizabeth Ferris	Brookings-Bern Project on Internal Displacement
Edgar Forero	Acción Social
Irma García	Swiss Program for the Promotion of Peace in Colombia (SUIPPCOL)
Juan Felipe García	Pontificia Universidad Javeriana
Victor Henao	Pastoral Social
Gabriel Izquierdo	Pontificia Universidad Javeriana
Walter Kälin	Representative of the Secretary-General
Adriano Küpfer	Chief, Swiss Agency for Development and Cooperation
Andrea Lari	Refugees International
Pietro Lazzeri	Swiss Federal Department of Foreign Affairs
Patricia Linares	Attorney General of the Nation, Colombia
Absalón Machado	National Commission on Reparation and Reconciliation
Elsy Marulanda	SYNERGIA
Adriana Medina	Pontificia Universidad Javeriana
Luz Angela Bernal Medina	Swiss Agency for Development and Cooperation
Michael Meier	Diplomat, Embassy of Switzerland
Elisa Montaña	International Committee of the Red Cross
Barbara Pesche Monteiro	United Nations Development Programme
Bruno Moro	Resident Coordinator, United Nations
Beatriz Mosquera	Community Council of Río Anchicayá

ANNEX I: LIST OF PARTICIPANTS

Neris Obando	Cococauca
Flor Edilma Osorio	Pontificia Universidad Javeriana
Orlando Pantoja	Cococauca
Diego Pérez	Swiss Program for the Promotion of Peace in Colombia (SUIPPCOL)
Walquiria Pérez	SWISSAID
Irma Perilla	Swiss Program for the Promotion of Peace in Colombia (SUIPPCOL)
Bjorn Pettersson	Office of the UN High Commissioner for Human Rights
Didier Pfrter	Ambassador of Switzerland to Colombia
Francesco Quattrini	First Secretary, Embassy of Switzerland
Donaldo Quiroga	Association of Peasant Workers of Carare (ATCC)
Leydy Riasco	Organization of the Displaced, Community Council of López de Micay
Nimia Riascos	Women's Council of Buenaventura
Patricia Ríos	Counselor, Embassy of Chile
Erica Rodríguez	FUNDAP
Marco Romero	Consultancy for Human Rights and Displacement (CODHES)
Gimena Sanchez	Washington Office on Latin America
Gonzalo Sanchez	National Commission on Reparation and Reconciliation
Jürg Schiess	INTERTEAM
Judith Thimke	World Food Programme
María José Torres	UN Office for the Coordination of Humanitarian Affairs
Hernando Toro	Coordinator, Defensoría del Pueblo
Kristian Tronsson	Embassy of Switzerland
Jesús Emilio Tuberquia	Peace Community of San José de Apartadó
León Valencia	New Arco Iris Corporation
Víctor Velasco	International Solidarity
Roberto Vidal	Pontificia Universidad Javeriana
Marta Inés Villa	Region Corporation
Jean Noel Wetterland	United Nations High Commissioner for Refugees
Erin Williams	Brookings-Bern Project on Internal Displacement

ANNEX II

OPENING STATEMENTS

AMBASSADOR DIDIER PFIRTER

Ambassador of Switzerland to Colombia

Honorable Judge of the Constitutional Court, Mr. Nilson Pinilla,

Mr. Gabriel Izquierdo, Department of Legal Science of the Pontificia Universidad Javeriana,

Ladies and Gentlemen participating in representation of the authorities, the international community, and civil society,

It is my great pleasure to have the opportunity to give the opening remarks for this “Displacement and Peacebuilding” seminar. I would like to share with you some reflections on the subject that brings us together here.

The meeting that we are opening today is part of a joint project by three actors: the Swiss government, the Brookings-Bern Project on Internal Displacement, and the Pontificia Universidad Javeriana. Close cooperation among these three entities has enabled the realization of a study on internal displacement and peacebuilding in Colombia, as well as the convocation of this seminar.

The abundant participation in this event of national and international actors, among whom it is fitting to make special mention of the Representative of the United Nations Secretary-General on the Human Rights of Internally Displaced Persons, Professor Walter Kälin, will provide an opportunity to together discuss and analyze the phenomenon of displacement in Colombia, as well as in other relevant contexts.

The variety of participants, among whom are representatives of the various national and local authorities, civil society, academia, organizations of the displaced, international organizations and NGOs, is a particularly significant aspect. I am certain that tomorrow the presence of the Representative of the Secretary-General, who is in Colombia for the follow-up visit to his first mission in 2006, will enable a fluid and participatory discussion to be held.

Since 2005, the Swiss government has been supporting the research carried out by the Brookings-Bern Project on Internal Displacement and the Representative of the Secretary-General on the

relationship between internal displacement and peacebuilding. These studies emphasize the importance of including the internally displaced in peacebuilding, in its distinct phases: peace negotiations, peace agreements, and consolidation of peace. The numerous cases and contexts analyzed in more than 10 countries of Europe, Asia, Africa, and Latin America have shown that if the issues related to internal displacement are not considered during the aforementioned processes, achieving peace will be more difficult. And if achieved, the peace will be less sustainable and lasting. From this perspective, the displaced are not, as is sometimes thought, “a problem or an obstacle,” rather they are an active part of the solution to conflicts and of the “factors of peace.” This is an innovative approach that offers reconciliation between issues related to the promotion of peace and, on the other hand, humanitarian issues. After presenting this analysis on a multilateral level, it needs to be presented and discussed on a bilateral level.

The project in Colombia constitutes a pilot experience and we hope it will “open roads” beyond the national reality. With this objective, the labor of the next two days will focus on five fundamental areas related to displacement and peacebuilding:

1. Transitional Justice and Internal Displacement
2. Land and territory
3. Durable solutions, return, relocation
4. Organizations and participation of the displaced
5. Rights of the displaced population

I am sure that the vast knowledge of the Brookings-Bern Project on Internal Displacement and the research of the Universidad Javeriana, in addition to the direct experience of all the participants, will provide a wealth of opportunity for exchange and discussion.

Ladies and Gentlemen, exactly ten years ago, the *Guiding Principles on Internal Displacement* were established. This normative instrument has played and plays a fundamental role in improving the protection, assistance, return, and reintegration of the internally displaced. Despite the usefulness and value of the Guiding Principles, as well as the work of the various national and international actors to improve the condition of the displaced, the current situation of 26 million human beings, in more than 50 countries of the world, forced to leave their homes, continues to be critical.

In the case of Colombia, the Guiding Principles have had crucial importance for improving protection and humanitarian assistance to the displaced population, as well as for promoting their rights. Despite these advances, the needs of Colombians displaced by violence continue to be immense. Likewise, the responses of national and international actors to internal displacement represent a constant challenge, requiring resources, capabilities, and great dedication, as the process of verification and fulfillment of Constitutional Court Decision T-025 has shown since 2004.

Within this framework, it is appropriate to point out that Switzerland is carrying out humanitarian assistance and promotion of peace activities in Colombia in order to improve the situation of the Colombian population as a whole. The seminar that we are inaugurating today is precisely an additional effort to contribute to the search for concrete solutions for the thousands of Colombians who want and deserve a better future.

Before concluding, I would like to extend my thanks to the Pontificia Universidad Javeriana as well as to the Brookings-Bern Project on Internal Displacement for their availability and generous cooperation in the preparation of this event.

I wish you great success in your work and thank you for your kind attention.

Thank you very much.

MAGISTRATE NILSON PINILLA

Constitutional Court of Colombia*

CONSTITUTIONAL JUSTICE AND SOCIAL REALITY: FORCED DISPLACEMENT

The presentation synthesizes, in the first section, the most relevant constitutional jurisprudence with regard to the rights of the displaced, based on two judicial orders: Decision T-025 of 2004, issued in the venue for protection review, in which the Court declared a state of unconstitutionality with regard to the displaced population, and; Decision C-278 of 2007, issued in the venue for abstract control of constitutionality, which analyzed the significance and scope of the state obligation on the subject of humanitarian assistance to this social group.

In the second section, legal, jurisprudential, and budgetary advances with regard to the legal situation of the displaced are addressed, accompanied by some reflections and observations, closely following the studies carried out by academia concerning attention and assistance to these specially protected subjects.

I. Jurisprudence of the Constitutional Court on Forced Displacement

1. Decision T-025 of January 22, 2004⁴

- ❖ In Decision T-025 of 2004, the Court declared the existence of a “state of unconstitutionality” in the situation of the displaced population “due to the lack of concordance between the severity of the affectation of constitutionally recognized and legally developed rights on one hand, and the volume of resources actually allocated to ensure the effective enjoyment of those rights and the institutional capacity to implement the corresponding constitutional and legal mandates on the other.”

The need for protection of the displaced population’s rights led the Constitutional Court to consider on one hand the extreme conditions of vulnerability that confront that social group and the urgent need to protect it, and, on the other hand, the institutional and financial restrictions that the State faces with regard to meeting the needs of these people, in conjunction with the publicly recognized failures of a predesigned and executed public policy, which enabled the legal entity to select a gradual solution for the problems detected in the Decision and, at the same time, to require the prompt adoption of corrective measures to overcome this catastrophic state of unconstitutionality.

* Synthesis of the presentation made at the Universidad Javeriana by Nilson Pinilla, Constitutional Court Judge, on November 11, 2008, at the “Displacement and Peacebuilding” International Seminar.

⁴ Reporting Judge Manuel José Cepeda Espinosa.

The Court then issued what it called “**complex performance orders**,” directed at the entities responsible for assisting the displaced population, committing them to establish, within a reasonable term and in the areas of their competencies, the corrective measures necessary to overcome the problems of insufficient resources and institutional insecurity in order to execute the state policy of assistance to the displaced population.

The Court did not state in its orders the manner in which the Government should adopt corrective measures, nor did it attempt to question the solutions proposed for attending to the detected problems. On the other hand, applying the norms that regulate the protection act, which empower the constitutional judge to maintain jurisdiction until the violated right is completely reestablished (Art. 27 Decree 2591 of 1991, final clause⁵), it reserved the right to monitor the initiation of the agreed upon measures by requiring periodic reports on the advances achieved, the establishment of priorities and concrete goals, and schedules for meeting the fixed goals, indicating in some cases the persistence of errors and mistakes.

One of the most outstanding aspects of Decision T-025 of 2004 is the establishment of what is therein called the “*Bill of Basic Rights of Displaced Persons*,” which constitutes a legal guide for the State with regard to fulfillment of the orders that were issued by the Constitutional Court for the design and execution of public policy in that area.

The Court determined that the basic protection that must be guaranteed in a timely and effective manner to the displaced means that in no case can the essential nucleus of the fundamental constitutional rights of these people be threatened, and that the State must satisfy minimal provision of the following rights: life; dignity; physical, psychological, and moral integrity; family unit; health; protection against discriminatory practices based on the condition of displacement, and; education to 15 years of age in the case of displaced minors.

2. Decision C-278 of April 18, 2007⁶

Some citizens, also citing their status as displaced persons, filed a complaint of unconstitutionality against the paragraphs in Articles 15 and 18 of Law 387 of 1997, “*By means of which measures are adopted for the prevention of forced displacement, and for assistance, protection, socioeconomic consolidation and stabilization of persons internally displaced by violence in the Republic of Colombia.*”

The denounced norms established, respectively, the maximum term of three (3) months for emergency humanitarian assistance, extendable under exceptional circumstances for three (3) more

⁵ “In all cases, the judge shall establish the other consequences of the ruling for the specific case and shall maintain jurisdiction until the right is completely reestablished or the causes of the threat are completely eliminated.”

⁶ Reporting Judge Nilson Pinilla.

months, and; the obligation of the displaced to cooperate in the improvement, reestablishment, consolidation, and stabilization of their situation.

The Court concluded that the three-month term for emergency humanitarian assistance is dubious, but not necessarily contrary to the Political Constitution in terms of its connection and flexibility with regard to the characteristics inherent in the specific act, as well as before the possibility of additional collective assistance, for example, from the private sector or abroad, or if the corresponding official institutions meet their obligation in a comprehensive, rapid, and diligent manner.

Definitely unconstitutional, and so the Court declared, are the expressions “*maximum*” and “*under exceptional circumstances for another three (3) more,*” of the paragraph of Article 15 of Law 387 of 1997, as they rigidly communicate the term for provision of emergency humanitarian assistance to the displaced, hindering these people from being able to continue receiving assistance from the State for a longer period, while they manage to overcome their situation of vulnerability once and for all.

The remainder of the cited paragraph was declared enforceable, with the understanding that the emergency humanitarian assistance will be extendable until the affected person is in a position to assume self-sustenance.

The obligation to cooperate, set forth in the paragraph of Article 18 of Law 387 of 1997 was also declared unenforceable, as it was considered that it placed disproportionate responsibility on displaced persons, making them responsible for attaining their own reestablishment, as was attempted with several regulatory provisions.

Although it cannot mean that the displaced will take no part in their own improvement, the State cannot remove its primary obligation for guarantee, or forget that it is dealing with victims of human rights violations, and therefore, specially protected subjects who deserve to be treated with all the consideration that their unjust condition commands, among other reasons, to compensate for each uprooting [where] the State has been incapable of ensuring peaceful coexistence and effectiveness of the principles, rights, and obligations set forth in the Constitution, as well as safeguarding the effectiveness of a just order and protecting the legal rights of all those residing in Colombia.

III. Advances and Reflections on the Legal Situation of the Displaced

1. On the Concept of the Displaced

Constitutional jurisprudence has expressed, in this case, that the right to claim constitutional guarantees arises from the *de facto* situation in which the displaced find themselves and not from the registration or certification that the competent public authority issues for that purpose.⁷ For the

⁷ T-563 of 2005 (May 26), Reporting Judge Marco Gerardo Monroy Cabra.

Court, the Registry constitutes a technical tool that allows the identification of the beneficiaries of assistance and facilitates the design of public policies, but at no time is it what determines that an individual has acquired the condition of displaced, as this is a factual condition.⁸

In addition, the statement on the acts leading to displacement must be analyzed bearing in mind the specific conditions of the displaced, which in most cases are difficult to verify, and as a result they are protected by the presumption of good faith, which transfers to the competent officials the burden of proof to refute, if appropriate, the causes expressed by the affected party.⁹

According to some specialized studies,¹⁰ despite the described jurisprudential advances, the legal definition of displaced, set forth in Law 387 of 1997, is problematic, as upon establishing an association between forced displacement and political violence, it becomes difficult to consider the civilian population separately from the opposed parties, since the element that connects them with the armed political conflict is taken into account to stigmatize them as potential enemies of society and the State, or of some faction.

Likewise, it is said that the legal definition limits forced displacement to migrations produced by actions or events that threaten the stability and existence of the State, leaving aside phenomena such as the exile imposed by irregular forces, rural poverty, fear, and the search for a better way of life, among others, that also cause this phenomenon.

2. The Recognition of Rights

The Court has expressed that the protection of the human rights of the displaced is based on the principle of solidarity and, as it is a problem for all of mankind, it must be addressed by everyone, especially by all the State officials.¹¹

A criticism made of Law 387 of 1997 is that it seems to infer that the rights of the displaced should not be treated strictly as such, because its regulations use the term “*benefits*” over “*rights*,” which tempts governmental authorities to use discretion with regard to the compulsoriness, timeliness, duration, and scope of the assistance set forth by law.

With the purpose of reaching acceptable levels of effectiveness in the recognition of the rights of the displaced, the Court, in coordination with the authorities involved in assistance to the displaced, agreed to establish what has been called the “**realization of rights index**,”¹² which is a methodology

⁸ T-1346 of 2001 (December 12), Reporting Judge Rodrigo Escobar Gil.

⁹ T-1076 of 2005 (October 21), Reporting Judge Jaime Córdoba Triviño.

¹⁰ Cf., among others, VIDAL LÓPEZ, Roberto Carlos, “Derecho Global y Desplazamiento Interno” [Global Law and Internal Displacement]. Ed. Pontificia Universidad Javeriana. Bogotá, 2007.

¹¹ T-227 of 1997 (May 5), Reporting Judge Alejandro Martínez Caballero.

¹² T-602 of 2003 (July 23), Reporting Judge Jaime Araújo Rentería.

used to determine when displaced families or households have reached a degree of reestablishment that will allow them to no longer be considered displaced.¹³

3. Assistance to the Displaced

The Court has held that assistance to the displaced must be comprehensive, immediate, and efficient; priority treatment,¹⁴ health care must be immediate, provision of housing must be preferential and rapid, and the education of minors must be free; all of which is based on the situation of defenselessness in which those who were forced to leave everything are found.

The State, therefore, is obligated to rapidly employ effective measures so that constitutional rights and the **United Nations' Guiding Principles on Internal Displacement** are a reality.¹⁵

It has also advised that assistance to the displaced population must be based on affirmative action and different approaches sensitive to gender, age, ethnicity, disability, and sexual indemnity. Thus, these positive measures must be aimed at meeting the needs of the marginalized groups and the most vulnerable people, such as children, women, senior citizens, and the disabled.¹⁶

According to the aforementioned Universidad Javeriana study,¹⁷ despite its worthy objectives, the model for assistance to the displaced set forth in Law 387 of 2007 is not designed to resolve the conditions of vulnerability of the affected communities, insofar as those communities have been framed within the “*historic poor*.”

4. The Situation of Displaced Women and Children

According to the reports filed with the Court, 8% of displaced women have been raped by actors in the conflict and by third parties, in individual and collective acts, often followed by torture, forced prostitution, and sexual slavery, with cases of mutilation, impalement, and frequently, murder.

Likewise, displaced children and teenagers face a situation of extreme vulnerability that is summed up by critical malnutrition, crowding, dropping out of school, and susceptibility to illness, intra-family violence, and high levels of post-traumatic stress, as a result of forced displacement.

¹³ Cf. SERRANO LÓPEZ, Miguel et al., “Evaluando el impacto de intervenciones sobre el Desplazamiento Forzado Interno” [Evaluating the Impact of Intervention on Forced Internal Displacement]. Miguel Serrano López Ed. Bogotá, 2007.

¹⁴ Cf. Decisions T-985 of 2003; T-240 and T-813 of 2004; T-1144 of 2005; T-086 of 2006; T-136 of 2007, among others.

¹⁵ T-098 of 2002 (February 14), Reporting Judge Marco Gerardo Monroy Cabra.

¹⁶ T-602 of 2003 (July 23), Reporting Judge Jaime Araújo Rentería.

¹⁷ VIDAL LÓPEZ, Roberto Carlos, op. cit.

The study warns of the need to implement programs aimed at psycho-social recovery; it emphasizes school, games, and sports to achieve this recovery and calls attention to the disappearance of the guidance department in public education and its negative consequences for the displaced population and educational community in general.

It concludes that 54% of the total displaced population registered in the Single Registry of the Displaced Population corresponds to children and teenagers, and that 90 of every 100 minors live in conditions of poverty, 70 of these in a situation of indigence.

Forced recruitment of these minors constitutes another fundamental problem that faces Colombian society and is an additional cause of forced displacement, as the parents prefer to flee rather than allow their children to be connected with the war.

In Decision 092 of April 14, 2008, also issued by the Court of Review made up of Judges Manuel José Cepeda Espinosa, as reporting judge, Jaime Córdoba Triviño, and Rodrigo Escobar Gil, the Court ordered the Office of the Prosecutor to investigate those cases and within a six-month period to provide an account of the proceedings. It also ordered protection of the victims' personal integrity and guarantee of the right to recompose their lives, and ordered Social Action [Acción Social] to create 13 programs for displaced women.

The results in this area will remain under the evaluation of the entire Constitutional Court, now and in the future, in order that **JUSTICE** be increasingly incorporated into the **SOCIAL REALITY**.

FATHER GABRIEL IZQUIERDO MALDONADO

Pontificia Universidad Javeriana

INTRODUCTORY REMARKS

Instituto Pensar – Universidad Javeriana

1. Displaced and Dispossessed Persons Two enormous problems of Colombia will be addressed in this event. First, internal displacement, which is the largest social problem and the expression of a terrible humanitarian crisis being experienced in our country. Second, the challenge of peacebuilding. Fourteen years ago we met in this same university, with Mr. Francis Deng, United Nations Representative on Displacement, attending, in order to hold a seminar similar to this one. After these years of meetings, analysis, and proposals, the country's scenarios have varied considerably; nevertheless, the crisis of the displaced persists and continues to expand.

We easily agree on the number of 3,000,000 victims of displacement in the last 12 years. After a peak of 400,000 displaced persons in 2002, we went down to an average of 200,000 displaced persons per year until 2006. In the last two years, the annual average has again risen to 300,000 victims, despite the proclaimed successes of the official policy of “Democratic Security.” Although the numbers do not convey the entirety of the problem, they are important indicators. In addition to the numbers, academic studies, and discussions on the issue, we want to call attention to the displaced people, the individuals, the faces, the human groups, to be able to contemplate them, as they must be the heart of this seminar.

We have heard hundreds of stories of anguish from families in flight. We know that although they did not live in ideal conditions, they have lost as much or as little as they had. They have lost everything: their lifelong territory, their houses (before displacement, 70% had their own home). Their tranquility and social and cultural identity have disappeared. They have become beings that must hide, camouflage themselves, as their presence often generates suspicion, disgust, rejection. They are a responsibility for the government, the municipalities, and the cities.

In Bogota, for example, in the neighborhoods in which they are concentrated, 80% live in extreme poverty; 75% lack work; 77% of the children and young people of school age lack schools; 87% do not have housing, and; 80% do not have adequate food. We again emphasize that we must look behind these numbers [at] the stories and faces of the people who lack the minimum security to live humanly. Their families become a human drama: the children in that situation become a high-risk and vulnerable population since 70% of their homes have only the mother as head of household and sole provider.

In such conditions, the children stay alone most of the time and become the object of all types of abuse, including sexual abuse. The fact of being young in these human environs is equivalent to existing in a high-risk state. We hide our faces in horror upon hearing about the so-called “false positives” that are nothing more than a systematic crime against humanity. At this time some 900 cases are being examined in the courts in which the young people from these environs are recruited by soldiers or their allies to then be murdered and presented as trophies and guerrilla casualties. In this way, soldiers are promoted in their careers and “informants” receive financial compensation. The formation of gangs, drug use, and potential criminal professions, along with a shortage of employment, complete the picture that torments young people living in displacement.

If we have expounded on this analysis at length, it is because we want to show that for us this is the true objective of the seminar: the people, the displaced persons who suffer and whose situation we must accompany and assist them to overcome.

The second Colombian problem that we will address in this meeting is peacebuilding; obviously, in conjunction with the drama of displacement. This is an enormous task, as it goes beyond the difficult and nearly impossible negotiations with the armed groups, into the policies of the current government. Peacebuilding and overcoming the violence in Colombia has to do in large part with how we treat the displaced. We must help to make them visible in the media, in front of the National Congress that remains almost empty in discussions about them and above all the victims of the armed conflict. They must continue to be present in the courts so that justice is established and oversight is exercised with regard to the government.

Peacebuilding has to see and touch the social violence in order to be able to overcome the fact that 45% of the population lives in poverty, 18% lives in indigence, and 2,300,000 people are unemployed. It has to reverse the economic policies of the government to promote the distribution of income and overcome the inequality and exclusion of which we are champions on our continent. This is the panorama that must be confronted in order to set processes and paths of change.

2. We want to carry out this task from the university. The Javeriana is pleased to welcome everyone. But more than a physical space, our university tries to be a human space of intellection, commitment, and support to the displaced. Although analysis and debate are important, the humanistic approach of the Javeriana invites us to create in-depth processes, to articulate courses of action and learning in the field of the work, to find paths of participation and transformation for the situation of the displaced. These exercises will enlighten us [and allow us] to strengthen peacebuilding processes. We hope that the university space also serves as a motivating force and facilitator for other universities and study centers, in order to continue the academic work on these problems, that it helps to bring together the international community and instigates the review of the goals and agreements of this seminar for the future.

3. Attendance of the displaced at this meeting We point out the participation of displaced persons in this academic event as something very important and special. We greet them with respect and highlight that they are the heart of this exercise. We recall that with their stories, potential, and hopes, they are the core without whose organization and participation there will be no better outlook in Colombia's humanitarian crisis.

4. Important allies in this process Our seminar is important because of the many participants that not only contribute their knowledge but are actors in possible alliances that may be made with the displaced and between the institutions themselves to achieve concrete goals that impact the wellbeing of the displaced, in the exercise of their rights and in peacebuilding. It would be interesting to establish indicators and courses of processes here that can be evaluated.

We emphasize the attendance of the Swiss Government, which we admire for its ongoing participation in the Colombian peace processes, its commitment to human rights, and its cooperation in overcoming our humanitarian problems. We point out the attendance of the Brookings-Bern Institute; we know about its academic quality and its possible contacts with the new government of the United States. Although it seems important to us that cooperation with this country now places greater emphasis on social investment in Colombia (which affects the displaced), it is necessary to look further than the figures invested, the ways and methods of investment must be reviewed so that resources effectively reach the popular actors to whom they are directed. We believe that, to date, the social results of the generous contributions of the Americans have not been satisfactory.

We celebrate the attendance of NGOs, which have been effective actors in the leadership of Colombian civil society, with their timely studies, with actions and strategies with regard to the courts, the government, and Congress, to achieve important concrete advances with the displaced. Their work in strengthening networks and organizations of the displaced, and their contributions in the formation and preparation of these, have been extraordinary. The attendance of the government, the Presidential Agency for Social Action [Acción Social de la Presidencia], the Office of the Attorney General, the Office of the Prosecutor, the Office of the Ombudsman, and the Commission for Reparation and Reconciliation is also noted. More than an enumeration of greetings, these actors and institutions are mentioned to highlight the many attendees that must ally themselves with the displaced for the exercise of their rights and peacebuilding.

5. Conclusions Finally, we would like to indicate that our insistence on situating the displaced at the heart of this seminar and on the need for action is not the result of a naïve activism. We think that from academia and especially in countries like ours, the insistence on actors and on action must become important, academic elements of reflection and analysis, and effective policies of transformation stemming from direct work with the displaced.

In this regard, we would like to cite the example of a highly conflicted region of our country, Putumayo, which experiences many of the problems that are the general subject of this meeting. Until recently, 80% of the country's coca production was grown there and the strategies of fumigation and military repression were tested there; it has been an area of guerrilla and paramilitary violence with all its complexities; it is the territory of displaced persons in the country and in Ecuador. It is part of the Amazon and a place of environmental destruction. Many development "strategies" have been put into practice there, aimed at creating new production. It is a space of international cooperation with the United States in the social arena. In the last eight years, they some \$400,000,000,000 have been invested there; it has been the subject of multiple studies, fora, and meetings. After eight years, we can state that the effective results on the communities of the area have been almost non-existent. Reflecting on this situation and working with the peasants of the place, we have learned basic things that we want to point out here – these processes have been carried out without sufficiently taking the inhabitants of the place into account. If they are in fact the motor of the transformation, we understand that any project that is not seriously adopted by them is condemned to fail. And being adopted means more than that after two meetings they accept specific resources. We do not believe in any change that does not stem from their **true participation, with everything that implies.**

Experience shows us that if there are no productive organizations, of power, of alliances, it is very complicated, almost impossible, for displaced persons and popular sectors to be able to transform their situation of exclusion in a splintered and fragmented manner. This applies in a special way to the displaced, whose social networks have been destroyed. Fragmentation into individualities, without organization or networks, leaves these sectors in a state of economic and political vulnerability. More serious work must be done on the subject of technology and on the generation of production lines so that the projects of peasants and displaced persons can be competitive. It is imperative to improve traditional methods of production when they are inefficient. It is necessary that they comprehensively understand policy as generation and management of power, and establish multiple alliances, beginning with the state itself, with other economic and political actors, and with civil society organizations. The regional elements that can create and develop synergies between the networks of displaced families and their allies cannot be left aside. All of these alliances must be established on a foundation of equality. Finally, there are the decisions of the displaced with regard to the opportunities they find, which will help them to be themselves in their new situations.

We hope that these reflections help to present an outlook that gives meaning to the work that we are proposing and further our accompaniment of our fellow countrymen.

ANNEX III

WORKING GROUP REPORTS

WORKING GROUP 1

ORGANIZATION AND PARTICIPATION OF DISPLACED PERSONS

The discussion of the working group entitled “Organization and Participation of the Displaced Population” was structured as follows: In the first part, an attempt was made to identify the structural problems that hinder the effective participation of victims of forced displacement. In the second part, the group hoped to propose several measures in order to overcome the previously articulated obstacles.

What problems or obstacles hinder participation?

- ❖ Organization is challenged in a context of persecution, due to the conflict that still prevails and that is manifest everywhere the displaced arrive.
- ❖ Organizations are exhausted by outstanding efforts that have minimal results.
- ❖ Displaced persons have the will to organize and participate; this is manifested in strategies other than those that are constitutionally known. There is *de facto* political participation, the result of empowering communities to make decisions, which is often more effective than political participation, and interaction with different organizations, understood as the effort to speak in traditional political scenarios such as Congress, which is often less effective and involves adopting a risky position. *Political participation in non-institutional language.*
- ❖ The challenge is to communicate and connect the two spaces for political participation. To make the different forms of participation possible, both institutional and non-institutional.
- ❖ It is necessary to act strategically with regard to displaced persons’ manners of participation and the risks to their safety that these involve. To think about methods of “strategic resistance” with the participation of international agents that help in diverse ways to consolidate methods of resistance and assist in minimizing safety risks. The State’s image as the only actor is changed in these forms of participation; the context is one of national and international political actors.
- ❖ Displacement to the cities and other contexts creates new values and ways of behaving for displaced persons. In this regard, values such as the solidarity experienced in the countryside are replaced by individuality and resourcefulness. In these forced changes, the most vulnerable groups – children, the elderly, and women – suffer the most.
- ❖ Displaced women are often “used” (advantage is taken of the discourse) to create and establish organizations that annul the participation of women. There is manipulation of the various

interests of organizations that have resources, in order to achieve specific goals. Displacement has become a business about how to attain a greater “slice” of the international resources for assistance to the displaced population. The materialization of human rights is a must – the discourse and wording are in place – but they don’t really impact the victims. The victims know about human rights and have a lot to say; although they are not attorneys, they are capable of contributing.

- ❖ In the cases of resistance by displaced communities, peace communities, or autonomous regional peasant organizations, it is often necessary to negotiate directly with the actors in the conflict, many times without the authorizations required and running great risks. In this regard there are examples of both successes and failures. Accompaniment by the international community has been a key aspect in several cases.
- ❖ Structural violence where there are economic interests such as the cultivation of the African palm, mining, disputes over control of land, and lack of State presence influence the decisions of the displaced about whether to stay, return, or organize. If there are guarantees in the regions, a large majority of the population returns.
- ❖ There are no clear programs that provide structural solutions. The State used the designation of “displaced” simply to provide common assistance. It is all the same to the victims if they are called displaced, dispossessed, expelled; what is important are the sustainable and lasting plans and projects that allow a substantial improvement in the living conditions of the communities.
- ❖ Rights and laws do not permeate the daily contexts of the victims. Poverty remains.
- ❖ It is necessary to organize the populations, to unite them in order to prevent expulsion.
- ❖ The armed actors seek to polarize the populations in order to break them apart and displace them. The community that is united as a bloc meets resistance with dialogue, it becomes an agent that can make demands and has a voice.
- ❖ Temporary programs that serve as immediate assistance, but not mid-term, hinder full reintegration into civilian life. This reintegration must take place where they live. There is a lack of effective public policy in this environment.

Proposals to make Organization, Participation, and Peace Possible

- ❖ With the jurisprudential advance of Decision T 025-04 and other legal instruments such as Law 119 of 2008 or Rulings 177, 178, and 116, which promote participation and organization, the relevant question is how to make the State comply. There are interesting tools in these instruments to promote participation at the regional and municipal levels, which have not been internalized at the national level. Therefore, when guarantees and conditions for participation are defined, it is necessary to specify what they consist of; the vague concepts of the law need to be filled with content. Community organizations must be given the tools to promote organization, but it is necessary to work for a culture in the public officials in the various institutions that promote participation.

- ❖ The materialization of rights must be expressed as clear assumptions with defined goals and specific strategies for fulfillment. Each territorial and national entity must show how it will materially allow and promote participation.
- ❖ The State is ambivalent. On one hand it invites participation, and on the other it does not recognize different social organizations. The need and the duty to participate must be made visible in accompaniment of communities.
- ❖ Assistance and the components of public policy are centered on matters related to subsistence in the areas of housing, productive projects, etc. Nevertheless, there is a deficiency in the cases of adaptation and reestablishment. There should be a specific component of public policy for integration, reorganization, adaptation, and coexistence of the displaced population in its places of return or resettlement.
- ❖ In the strategic alliances formed by the associations of the displaced, the creation of real, effective public policies must be sought, which are related to all the facets of the context, such as the topic of land.
- ❖ An essential component is the promotion of groups and organizations of displaced persons that can build strength and effectiveness through association with one another. The financing agencies and international organizations must believe more in the capability of the agency and the execution of the organizations of the displaced themselves. No one knows the priority issues better than those who have lived through the phenomenon of displacement.
- ❖ Work must be done on the consolidation of a unit, to confront a system that has defects.
- ❖ It must guarantee the participation of displaced persons and women in decision making. Participation must represent the voice of the displaced, not of people who talk about displacement. To open the possibility that participation be pluralist, under the principle of equality, without gender discrimination.
- ❖ Direct participation of the victims in the institutional decision-making spaces must be facilitated. This representation must be balanced and meaningful with regard to the number of institutions that participate in instances of decision making, and with regard to the number of men and women that represent the displaced.
- ❖ There must be oversight of the institutional programs and mechanisms, exercised by the displaced themselves, as well as control over the resources allocated to assist the displaced population.
- ❖ Effective indicators must be designed to measure the effectiveness of the restitution of rights, the real benefit and enjoyment that the displaced have of their rights, and not elevated indicators taking merely quantitative criteria into account, such as the number of people assisted.
- ❖ It is important to promote spaces for exchanges of experiences among displaced communities about what their own processes of organization and participation have been like.
- ❖ There must be direct communication work between the international organizations that provide resources and the social organizations that implement them. Bureaucracy and intermediation must be eliminated.

WORKING GROUP 2

TRANSITIONAL JUSTICE AND INTERNAL DISPLACEMENT

1. Participation of the Displaced Population as Victims within the Framework of the Justice and Peace Law

1.1 Analysis

- ❖ From the beginning, the displaced population was not very motivated to participate in the Justice and Peace Law at the beginning.
- ❖ It should address the claims of the displaced population; however, the strategy does not have sufficient scope.
- ❖ The “legal trap” is that the claims of the vulnerable populations are reduced to recognition of minimal rights prescribed by the State. That seems to imply the absence of establishment of citizenship and participation in the consolidation of durable solutions.

1.2 Advantages

- ❖ Constitutional Court Decision C370/06 may place victims on the path to effective enjoyment of rights.
- ❖ The Justice and Peace Law has made the consolidation of a national victims movement possible.
- ❖ The context of the application of the Justice and Peace Law has made it clear that it is necessary to define specific rights differentiating between the periods of conflict: ongoing conflict – transition process – post-conflict.

1.3 Disadvantages

- ❖ The extradition of the paramilitary leadership generated mistrust and pessimism with regard to fulfillment of the victims’ rights provided for by law.
- ❖ The administrative path does not have sufficient tools to restore or give land to the displaced population.
- ❖ Victims do not have seats on the National Commission; there is only government representation and victims’ representatives.
- ❖ The Justice and Peace Law only includes victims of paramilitarism, leaving victims of the State on the outside.
- ❖ The displaced population fears participating in the process of implementing the law as there is a belief on the part of the displaced population that conditions between the victims and demobilized persons are unequal.
- ❖ In the opinion of some of the working group participants, the Justice and Peace Law is a mechanism that seems to protect the displaced population, but is a strategy to legitimize the political elite.

2. Political Agenda of the Displaced Population in a Context of Transitional Justice and Rights

2.1 Truth

- ❖ It is necessary to legally recognize the displaced as victims.
- ❖ It must be acknowledged that one of the structural causes of the armed conflict is the use and ownership of land.
- ❖ The central government has battered the processes of local community autonomy, even using the law as a mechanism of co-optation.
- ❖ This confrontation with the local autonomies has become a systematic violation of the rights of the most vulnerable local communities.
- ❖ The population that is the victim of armed conflict generally lives in conditions of poverty, and has specific gender, ethnic, and class characteristics.
- ❖ A transition is only possible if there is transformation of the political structure that excludes and victimizes these marginal populations.

2.2 Justice

- ❖ There must be equality in the legal resources that are assigned to the victim communities.
- ❖ Effective demobilization of the illegal armed groups is an indispensable condition for the exercise of justice.
- ❖ Establishing the agenda cannot be exclusively the government's right.

2.3 Reparation

- ❖ In a transitional justice process, reparation must be according to the harm experienced; the notion of minimum living wage is not appropriate.
- ❖ The displaced must participate in the reparation project.
- ❖ Reparation must be the final scenario after the consolidation of the truth and justice processes.
- ❖ Reparation must be considered from the viewpoint of effective enjoyment of rights.
- ❖ It is necessary to strengthen public policies that consolidate democratic rural and urban development.

3. Grass-roots Peacebuilding (Track III)

3.1 Experiences

- ❖ Samaniego (Nariño) Peace Agreement:
 - In the previous mayor's administration, the community movement allowed talks to be held with the ELN, the FARC and paramilitary groups came to some agreements, including the reduction of violence.

- In the new mayor's administration (negotiated with armed actors) the fall of the local peace agreement process is appearing.
- This has led to the excessive militarization of Samaniego.
- Violence and murders have tripled (it can be said that there are five deaths every Saturday, as a means of communicating the presence of the paramilitary groups to the population).
- Currently, guerrilla groups such as the ELN have demonstrated their intentions by taking up the local peace agreements again; nevertheless, the population prefers to keep its distance from the proposal due to fear of paramilitary reprisals.

3.2 Advantages

- ❖ An agreement enables the war to abate.
- ❖ It promotes participation and adaptation of rights.

3.3 Disadvantages

- ❖ There is no government will to receive the claims of the peace movements.

3.4 Conditions Necessary for Peace

- ❖ A peace agreement must include armed actors, the state, and civil society in the negotiation.
- ❖ The discussions cannot be polarized (terrorists and pro-government people) – this may lead to stigmatization and exclusion; a calm environment for discussion must be fostered.
- ❖ Accompaniment by the international community is called for in the peace processes.
- ❖ The will of the government is needed for peace agreements.
- ❖ Perceptions of terrorism having to do with peace talks must be broken.

WORKING GROUP 3

LAND, INTERNAL DISPLACEMENT, AND DURABLE SOLUTIONS

- ❖ The participants agreed to point out that land disputes are at the root of forced displacement problems in Colombia and that they are very complex, at least in three aspects:
 - a. These disputes have very deep historical roots that go back to the European land colonization processes and consistently extend throughout the entire history of the Republic.
 - b. The dispute for control of land and territory is one of the essential reasons for the internal armed conflict.
 - c. Among the more than 70% of the population which is urban, there is no clear awareness of the existence, development, and effects of the land disputes in Colombia and their intimate relationship with the armed conflict and forced displacement.
- ❖ It is advisable for the analysis to make a distinction between land and territory. The consideration of land has to do with an economic and legal interpretation as a factor of production. Along these lines there are many political and armed conflicts regarding the dispute for the appropriation of land for the purpose of obtaining economic yields from appreciation or for its direct exploitation. On the other hand, there is the notion of territory, which refers to a political, cultural, and historical idea of space. There are political and armed confrontations in which the territorial control of space is disputed in Colombia; these may or may not include control of the land.
- ❖ There are diverse and conflicting concepts about land and territory between the traditional and ancestral inhabitants of the space (indigenous groups, African descendants, Raizales, settlers) and those who interpret the spaces as one more resource of the economic system that should be incorporated into modern capitalist development projects. This confrontation results in the economic appropriation of land and territory, which produces the displacement of the traditional populations and their world-views about the space.
- ❖ Internal displacement is produced as a result of various forms of expulsion: by industrial farming, drug trafficking, development of energy projects, mining, etc. In all cases, the uprooting is achieved via appropriation of territory using high levels of armed force.
- ❖ A number of problem areas were identified with respect to the subject of land:
 - a. The informality of transactions and precariousness of the land rights of wide sectors of the population, which undeniably weaken possibilities for legal protection.
 - b. The official land information records are incomplete, they are not sufficiently updated, or they have been military targets of the armed actors who destroy or alter them. Registry or cadastral information is insufficient and imprecise at the central, regional, and local levels.
 - c. From the agricultural institution point of view, at the level of the legal system with regard to the subject of land, the Colombian State is not sufficiently “equipped” to confront the subject of displacement.

- d. Different perspectives must be incorporated for analysis, evaluation, and intervention with regard to land and territory. The following were mentioned:
 - Different dynamics in different regions.
 - Differences between traditional or ancestral social groups such as the indigenous, *Raizales*, and African descendants with regard to settlers and occupants.
 - Gender and age of the inhabitants.
 - The status of the titling processes whether dealing with national land or land for which the rights have been acquired and even recognized.
 - Within these variables, the processes of migration and forced displacement, whether domestic or cross-border, are essential, as are the processes of repopulation, resettlement, and return.
- e. The motive for displacement from rural property and from urban property is increasingly relevant.
- ❖ Peace initiatives were identified in the area of land and territory. These initiatives have repercussions on forced displacement since:
 - a. The land agenda must be part of any armed conflict negotiation process.
 - b. The initiatives of the local communities on the subject of land must be considered within the negotiations and agreements.
 - c. Initiatives for recognition and consolidation of land rights must be furthered immediately and in the short-term so that the legal system may protect them.
 - d. The relationship that the economic model introduces and the armed conflict between the rural and urban areas must be considered, in order for the solutions to be complementary and not exclusionary or isolating in one environment or the other.
 - e. The social organizations that participate in the discussions must strengthen themselves.
 - f. Academia must contribute to providing durable solutions to the land disputes.
 - g. The international community may provide technical cooperation in this environment. In particular: support for modernization of the cadastral information system, proposals for new legislative models, promotion of methods for resolution of agricultural disputes.

3a: Durable Solutions for Internal Displacement

- ❖ Durable solutions for forced displacement must address several areas:
 - a. Educational opportunities for the displaced and especially the acquisition of skills to work in urban environments or new rural environments.
 - b. Comprehensive health care.
 - c. Reestablishment and restoration because of damages and losses suffered due to displacement.
 - d. Redistribution of income so that the displaced population surpasses the indigence and poverty line.
 - e. Provision of housing.

The attendees agreed to point out that the last two areas have received less attention, in spite of the pressure exerted by the Constitutional Court.

- ❖ The category of displacement must have a transitory rather than structural nature, so that durable solutions lead to effectively overcoming the displacement situation.
- ❖ An important change in the area of durable solutions has been noted since the intervention of the Constitutional Court, especially since the process for Decision T-025 of 2004 was organized, via which the State has been prompted to propose and execute effective solutions.
- ❖ Durable solutions involve the formulation of a series of questions that must be answered:
 - a. How can displacement be prevented?
 - b. How is the displacement process going to end?
 - c. What solutions does the displaced population desire?
 - d. How is it possible to support communities of displaced persons?



Alta Hutoeshima

Recebo mi cuerpo y lo
apelo

Reconozco y acepto Errores

Me acepto Como Soy

Como mis propias decisiones

Acepto Mis Errores

Confío en mis Capacidades

Soy Orgullosa de mis Logros

Confío en mí y en los demás

Respeto a mí y a los demás

Como dificultades aunque

no miedo

Siento amado y aceptado

Capaz de dar y Recibir

Confío y a mis seres

Queridos

Me acepto Como Soy

Como y me o

al cual con

Bajo Hutoeshima

No me gusta mi cuerpo

Tengo dificultad para

Cumplir responsabilidades

Siento q' no valgo nada

Dependo de los demás

Me cuesta asumir respo

sabilidades

Me percibo como incapaz

No puedo conseguir lo que

quiero

Me incomoda q' triunfe

los demás

Con y renuncio estar

mantenido

Me doy presiónar fa

cilmente

Me siento Rechazado

No me gusta expresar

sentimientos

Siento q' mis amigos no

me quieren

No me gusta asumir Roles

que no me gustan

Me acepto Como Soy

Como y me o

al cual con

ANNEX IV

INTERNAL DISPLACEMENT, TRANSITIONAL JUSTICE, AND PEACEBUILDING – LESSONS LEARNED

STATEMENT BY ELIZABETH FERRIS BROOKINGS-BERN PROJECT ON INTERNAL DISPLACEMENT

I am delighted to be here and am looking forward to learning from you about the relationship between internal displacement in Colombia and peacebuilding. Colombia is, of course, a unique case with a particular constellation of political, economic and social factors. For example, in comparison with many other countries, displacement in Colombia has occurred over a long period of time and the scale of displacement is quite large. But every country is unique and the relationship between displacement and peacebuilding is an issue in all countries where people have been displaced by conflict.

In order to provide a context for our discussions, I have been asked to briefly review some of the lessons we have learned in our research on displacement, peacebuilding and transitional justice. In particular, I will try to bring experiences from other parts of the world on the central issues to be discussed at this workshop:

- ❖ Durable solutions, return and relocation
- ❖ Land and territory
- ❖ Transitional justice and internal displacement
- ❖ Participation and IDP organizations

The fifth theme – the rights of internally displaced persons – is not treated as a separate issue in this presentation as it is the basis for all of the others. As citizens (or habitual residents), IDPs have all of the basic rights of citizens of their country. Based on existing international human rights instruments, the Guiding Principles on Internal Displacement enumerate the rights which are particularly relevant to those who are displaced.

INTERNAL DISPLACEMENT AND PEACEBUILDING

Last year the Brookings-Bern Project on Internal Displacement conducted research into the relationship between internal displacement, peace processes, peace agreements and peace building

by commissioning case studies on Colombia, Georgia, Sri Lanka and Sudan. In addition, we reviewed additional peace processes and agreements in Bosnia, Burundi, Cambodia, El Salvador, Guatemala, Liberia, Macedonia, Mali, Mozambique, Nepal, Rwanda, and Sierra Leone. This was supplemented by mission reports of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons (RSG) and his predecessor and further research into key areas of property restitution and compensation, and other types of reparation programs, including Truth and Reconciliation Commissions.¹⁸

Our study found that there is a close relationship between finding solutions for displaced persons and peacebuilding and noted that peacebuilding itself is a complex process involving: re-establishing security and law and order; reconstruction and economic rehabilitation; reconciliation and social rehabilitation; and political transition to creating more accountable governance structures and institutions. If IDP concerns in these areas are not taken seriously, it may jeopardize the sustainability of peace in the country. “If IDPs are not able to recover their land or property or otherwise find solutions allowing them to live decent lives and when they feel that they have suffered injustice, reconciliation becomes more difficult. If durable solutions are not found for IDPs, their potential for contributing to economic reconstruction and rehabilitation is limited and poverty reduction becomes more difficult.”¹⁹ On the other hand, resolution of such issues can be a positive force for political reconciliation, social development and economic stability.

There has been a tendency to view conflict, peace agreements and peacebuilding as a linear process. In other words, conflict is resolved through a negotiated peace agreement which is followed by a process of consolidating the peace. And yet the reality is more complicated – not only in Colombia, but in many countries. Conflicts may persist in some parts of the country, while in other parts, peacebuilding is well underway. Peacebuilding may take place during a conflict; for example, in Angola refugees were trained in human rights in the hope that they would contribute to the restoration of democratic institutions after the conflict ended. But the refugees were able to use their skills to contribute to the process of negotiating a peace agreement.

DURABLE SOLUTIONS

Let me remind you of what the Guiding Principles on Internal Displacement say about solutions to internal displacement: “Competent authorities have the primary duty and responsibility of the national authorities to establish conditions, as well as provide the means, which allow internally

¹⁸ See “Addressing Internal Displacement in Peace Processes, Peace Agreements and Peace-Building,” Washington, DC: Brookings-Bern Project on Internal Displacement, September 2007.

¹⁹ Walter Kälin, *The Great Lakes Protocol on Internally Displaced Persons: Responses and Challenges*, Brookings-Bern Project on Internal Displacement, September 27, 2008. http://www.brookings.edu/speeches/2007/0927_africa_kalin.aspx?rssid=idp

displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavor to facilitate the reintegration of returned or resettled internally displaced persons. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.”²⁰

National authorities have the primary duty and responsibility to create conditions for IDPs to find solutions; the solutions available to IDPs are: return to their community of origin, integration in the place to which they have been displaced, or resettlement in another part of the country. It is important to stress that IDPs have the right to decide on which durable solution they want and a decision, for example, to integrate in the community to which they have been displaced does not preclude their right to return to their community of origin if conditions warrant.²¹ Moreover, in order for a decision on solutions to be voluntary, IDPs need to have a genuine choice between alternatives. For example, in Iraq today, there are reports of internally displaced persons returning to their communities not because they think it is safe and the best possible solution, but because their resources are running out and they perceive that they can no longer survive where they are.²² In these circumstances, the decision to return is not a voluntary one.

Most national authorities expect internally displaced persons to return to their homes when conditions permit, but there are almost always cases where not everyone wishes to return. Under the Guiding Principles (principle 15), IDPs have the right to seek safety elsewhere.

With respect to return – the option desired by most governments and probably most IDPs as well – it is the responsibility of governments to create conditions conducive to voluntary return in safety and dignity. In particular, they are responsible for:

- ❖ Establishing security and rule of law
- ❖ Developing means for resolving conflicts over property

Without security in their place of origin, IDPs cannot return. If they choose not to return, they still need security in their area of settlement – whether it is where they are presently living or in another part of the country. Over and over again, in situations as diverse as Iraq, Sierra Leone, and Nepal the principal impediment to finding solutions for IDPs is security.

There are many cases where the presence of armed groups can create a serious obstacle to return, particularly when the armed groups were responsible for the displacement. In other contexts, the

²⁰ United Nations, *Guiding Principles on Internal Displacement*, New York: OCHA, 1998, principle 28.

²¹ RSG, E/CN.4/2006/71/Add.7 (Georgia), para. 56

²² “Conflicting reports on Iraqi return numbers”, UNHCR, December 7, 2007. <http://www.unhcr.org/cgi-bin/texis/vtx/iraq?page=news&id=47597e434>

RSG has noted that in these cases, it is necessary to either disarm these groups, to integrate them into the post-conflict armed forces, or relocate them to other parts of the country to give returnees a sense of security.²³ Where impunity prevails, whether because of lack of political will to hold those responsible for crimes accountable or because of understaffing of law enforcement personnel, durable solutions for displaced persons are not possible and such impunity may create new tensions, endangering a fragile peace as in Georgia and Bosnia and Herzegovina.²⁴

Our study also found that often the safety of returning IDPs can be threatened by criminal elements among the local population or by returning combatants who have been demobilized but have not successfully reintegrated into civilian life.²⁵

LAND AND PROPERTY DISPUTES

The Guiding Principles specify that “no one shall be arbitrarily deprived of property and possessions” and that “property left behind should be protected against destruction and arbitrary and illegal appropriation, occupation or use.”²⁶ Principle 29 goes on to state that: “competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.”

Unfortunately land and property disputes are common in post-conflict situations and make it more difficult for IDPs and returning refugees to find solutions. When their homes are occupied by others, mechanisms are needed to resolve property disputes; otherwise, this can be a source of new or renewed conflict. Governments are responsible for developing such legal mechanisms.

Property restitution

The literature on property restitution indicates that there are no completely satisfactory models, but there is a consensus on successful steps to be taken.²⁷ These include:

1. Establishing a legal basis for restitution claims. Whether through peace agreements or national laws, a legal basis for property restitution for displaced persons should be put in

²³ RSG/E/CN.4/2006/71/Add.6 (Sudan), para. 44; A/HRC/4/38/Add.2 (Cote d’Ivoire), para. 56.

²⁴ RSG, E/CN.4/2006/71/Add.7 (Georgia), paras. 35-36; E/CN.4/2006/71/Add.4 (Bosnia-Herzegovina), para. 35)

²⁵ “Addressing Internal Displacement in Peace Processes Peace Agreements and Peace-Building”, *op. cit.* p. 34.

²⁶ *Guiding Principles on Internal Displacement, op. cit.* principle 21

²⁷ This section was researched and largely drafted by Jacqueline Geis, Brookings-Bern Project on Internal Displacement. In addition, the work of Rhodri Williams is gratefully acknowledged.

place. These provisions should complement rather than contradict or entirely bypass the broader domestic legal framework.²⁸ They should also provide enforcement mechanisms.

- ❖ In Bosnia, the 1995 Dayton Peace Accords included the rights to return and property restitution in Annex 7: “All refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them.”²⁹
- ❖ Similarly the Georgia agreement states that “Returnees shall, upon return, get back movable and immovable properties they left behind and should be helped to do so, or to receive whenever possible and appropriate compensation for their lost properties if return of property appears not feasible.”³⁰
- ❖ In Tajikistan, the 1997 General Agreement on the Establishment of Peace and National Reconciliation in Tajikistan and the related Protocol on Refugees codified the property restitution rights of displaced persons.³¹

In addition, peace agreements in Mozambique, Guatemala and the Great Lakes Pact all provide for the establishment of legal mechanisms to adjudicate property claims. The Guatemalan peace agreement in particular has a provision to eliminate discrimination against women in access to land and housing.³²

2. Repealing laws that are contrary to internationally recognized housing and property restitution rights. In the Czech Republic, Bosnia, Kosovo, and South Africa, property laws that were discriminatory or otherwise not compliant with international standards were repealed.³³ These repeals provide room for the development of new property restitution laws based on international standards and ensure that old property laws do not conflict the newly created laws.
3. Determining the geographic and temporal scope. Since these mechanisms are set up in response to conflicts or natural disasters that caused displacement and dispossession, clear jurisdictional

²⁸ Rhodri Williams, “Study on Remedies for Violation of Rights to Housing, Land, and Property,” in *Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges*, ASIL, forthcoming publication, pg. 23.

²⁹ Ibid. 20.

³⁰ Georgia, *Quadrupartite Agreement on Voluntary Return of Refugees and Displaced Persons*, 4 April 1994. <http://www.reliefweb.int/rw/rwb.nsf/db900SID/MHII-65AA7P?OpenDocument>

³¹ Luise Druke, “Housing and Property Restitution for Returnees in Tajikistan in the 1990s,” in *Refugee Survey Quarterly*. Vol. 19, No. 3, 2000, 118.

³² General Peace Agreement for Mozambique, protocol III, 4 October 1992; Guatemala, Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict, 17 June 1994; Pact on Security, Stability and Development in the Great Lakes Region, 2006.

³³ *Handbook on Housing and Property Restitution for Refugees and Displaced Persons*, Food and Agriculture Organization of the United Nations. March, 2007, pg. 88. <ftp://ftp.fao.org/docrep/fao/010/a1131e/a1131e00.pdf>

rules regarding the time period and geographic area for which claims can be filed must be put in place to prevent the mechanisms from being overwhelmed with unrelated claims.

- ❖ In Bosnia, property restitution laws covered the entire period in which displacement could have taken place, meaning not only during the formal timeframe of the war, but also the period of documented civil unrest prior to the war.
- ❖ In Turkey, the Compensation Law limits claims both temporally and geographically. The law addresses violations that occurred in the southeastern provinces, where the conflict in the early 1990s led to large-scale displacement.

4. Creating a special administrative restitution mechanism. There seems to be agreement that judicial mechanisms are too cumbersome to address housing and property claims in a timely manner and that dedicated administrative mechanisms are more effective at mass property claims processing. Administrative mechanisms tend to process claims faster; have more procedural flexibility; and decrease the evidentiary burdens for the claimants. Context and capacity should determine whether these administrative mechanisms need to be constructed at the national or local levels.

- ❖ In South Africa, a 1994 law provided for remedies for tens of thousands of non-whites whose land had been confiscated during the Apartheid era. The law created a special Land Claims Court, served by an administrative commission, to rule on claims. When the Claims Court proved too slow at processing claims, the bulk of remaining claims were processed by the administrative central and regional Land Claims Commissions. The Commissions were able to increase the pace of claims processing.
- ❖ In Bosnia, the Dayton Peace Accords created a quasi-international body, the Commission for Real Property Claims (CRPC) to resolve restitution and compensation claims. But the CRPC lacked the local investigative capacity necessary to address the over 200,000 claims it received. As a result, the restitution process was decentralized to ad hoc local administrative bodies monitored by international actors.
- ❖ In Kosovo, the Housing and Property Directorate (HPD) and the Housing and Property Claims Commission (HPCC) had exclusive jurisdiction for property claims. Ad hoc and run by international actors, the HPD and the HPCC applied the restitution and compensation regulations that were set by the UN Special Representative of the Secretary General (SRSG) in Kosovo.³⁴

5. Determining who can apply for restitution. Legal restitution frameworks should specify who can lay claim to property in addition to formal property owners. South Africa has set important benchmarks in this area by extending the right to lay claim to distant legal heirs and enabling tribes to submit collective land claims.

³⁴ Examples taken from Rhodri Williams, “Study on Remedies for Violation of Rights to Housing, Land, and Property,” op. cit. pg 24-25.

6. Creating safeguards to ensure that claims processes are equitable. States should undertake public information campaigns to ensure that all possible parties to claims processes are aware of their rights and the processes available to compensate them for the violation of those rights. Some examples of these safeguards are to:
- ❖ *Require adjudicators to establish relevant restitution facts ex officio.*
 - ❖ *Require mandatory referral of misaddressed claims.*
 - ❖ *Extend restitution programs to cover both violations of property rights and housing rights.*
 - ❖ *Vet the residential situations of public officials.*
 - ❖ *Provide information to the public about claims procedures and progress.*
 - ❖ *Provide legal aid to claimants.*
7. Filling gaps by relying on ordinary law. Instead of creating special restitution regulations for each possible issue that may arise during restitution proceedings, Bosnia set a provision stating that all issues unregulated by the special procedures were to be handled in accordance with the ordinary rules of administrative procedure.

Property Compensation

The Pinheiro Principles state that compensation should only be provided when restitution “is not factually possible or when the injured party knowingly and voluntarily accepts compensation in lieu of restitution, or when the terms of a negotiated peace settlement provide for a combination of restitution and compensation.”³⁵ In practice, restitution measures have been used more frequently than other remedies such as compensation or alternate land provisions.³⁶ This said, several countries and the ICC have implemented compensation mechanisms.

1. Kuwait: The UN Compensation Commission created several individual claim categories. Category “C” claims are individual claims for damages up to US\$100,000 each. Category “C” claims can be made for twenty-one different types of losses, including those relating to departure from Kuwait or Iraq; personal injury; mental pain and anguish; loss of personal property; loss of bank accounts, stocks and other securities; loss of income; loss of real property; and individual business losses. The Commission received approximately 420,000 category “C” claims submitted by eighty-five Governments and eight offices of three international organizations, seeking a total of approximately US\$9 billion in compensation. Category “C” claims are given priority in both processing and payment.³⁷

³⁵ *Handbook on Housing and Property Restitution for Refugees and Displaced Persons*, op. cit. pg.109.

Also see, *The Pinheiro Principles: United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons*, Centre on Housing Rights and Evictions, 2005.

³⁶ Williams, in *Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges*, ASIL, forthcoming publication, pg. 28.

³⁷ “Claims Processing”, United Nations Compensation Commission, <http://www2.unog.ch/uncc/clmsproc.htm>

2. Turkey: The Turkish Compensation Law of 2004 provides for either monetary or in-kind compensation for the property losses. Compensation is provided for three types of damage: (i) loss of immovable and moveable properties, animals, trees and agricultural products; (ii) physical injuries, disabilities and death; (iii) access to property which has been restricted or hindered due to measures taken in the framework of the ‘fight against terrorism’.
3. Lebanon: Lebanon established the High Relief Commission (HRC) to compensate property owners for damages resulting from displacement during the July/August 2006 conflict with Israel. The process starts when structural damage assessments are provided to the HRC. Compensation checks for the amount appropriate for the damage level are then provided by HRC to individual beneficiaries and then distributed among villages.³⁸
4. Northern Cyprus: The Immovable Property Commission can provide monetary compensation, restitution, or property exchange. Applicants who are paid compensation lost their property rights in return. As of December 2007, the Commission has provided monetary compensation to 18 applicants; in two cases Greek Cypriots have agreed to exchange Northern Cypriot property with southern Cypriot property of comparable value; and three cases provided restitution (although it is unclear whether the Greek Cypriots will be able to return).
5. Peru: In its August 2003 final report, the Truth and Reconciliation Commission (Comisión de la Verdad y Reconciliación, CVR) recommended compensation for IDPs who have lost their land. However, the Ombudsman’s Office noted in early 2007 that only 3,000 of over 150,000 cases have been presented to the compensation council (High-Level Multisectoral Commission).³⁹
6. ICC: The Rome Statute of the International Criminal Court established that the Court “may order reparations, to individual victims or as a collective award, and it may ask the awards to be implemented through the Trust Fund for Victims. These reparation awards to victims may be based on applications made directly by victims or on the Court’s own initiative.”⁴⁰ The Statute also provides measures for victims to apply to the Trust Fund during an ICC prosecution as well as before or in the absence of a prosecution as long as the crimes are under the Court’s jurisdiction.
7. The international community can be supportive by offering technical expertise, funding and support for such a process, as the Organization for Security and Cooperation in Europe (OSCE) did in Bosnia and as the International Organization for Migration (IOM) has done

³⁸ http://lebanon-support.org/resources/UNDP_MoM26October2007_26112007.pdf, pg. 7.

³⁹ “Peru: Compensation pending for victims of forced displacement”, Internal Displacement Monitoring Center, June 8, 2007. [http://www.internal-displacement.org/8025708F004CE90B/\(httpCountrySummaries\)/7289D9CB5A20EEF9C12572F30039A05F?OpenDocument&count=10000](http://www.internal-displacement.org/8025708F004CE90B/(httpCountrySummaries)/7289D9CB5A20EEF9C12572F30039A05F?OpenDocument&count=10000)

⁴⁰ <http://www.icc-cpi.int/vtf.html>

in a number of countries. Civil society groups, particularly legal aid organizations and NGOs can provide support by assisting individual IDPs with the claims process. For example, the Southern Sudan Law Society provides advice and assistance to returning IDPs in support of their efforts to recover their land and property and the Norwegian Refugee Council supports, Information Counseling and Legal Assistance (ICLA) offices which are specialized in legal advice. Nevertheless it is governments which are responsible for establishing such mechanisms as instruments of law while civil society organizations can support the process.

TRANSITIONAL JUSTICE

According to the International Center for Transitional Justice (ICTJ), transitional justice is a response to systematic or widespread violations of human rights which seeks recognition for the victims and the promotion of possibilities for peace, reconciliation and democracy.⁴¹ Governments have implemented a number of initiatives to bring about transitional justice, including: criminal prosecutions of those responsible for human rights violations; truth commissions to investigate and report on key periods of recent past abuse; reparations programs which may include both material and symbolic benefits to the victims; security system reform; and memorialization efforts. The ICTJ goes on to note the interrelatedness of these measures: “without any truth-telling or reparation efforts, for example, punishing a small number of perpetrators can be viewed as a form of political revenge. Truth-telling, in isolation from efforts to punish abusers and to make institutional reforms, can be viewed as nothing more than words. Reparations that are not linked to prosecutions or truth-telling may be perceived as ‘blood money’ – an attempt to buy the silence or acquiescence of victims.”⁴²

With respect to internal displacement, there are few reparations programs that have recognized the need to provide compensation to IDPs for pain and suffering.

1. Peru: The reparations program proposed by the Peruvian Truth and Reconciliation Commission recommended the development of symbolic reparations and compensation programs providing for the economic support, education, and health of the victims of forced displacement. As noted above, these recommendations have not systematically realized. Some analysts now fear that general poverty eradication programs and development projects may be presented to IDPs as reparations.⁴³

⁴¹ <http://www.ictj.org/en/tj/> Aukerman, Miriam J. 2002. Extraordinary Evil, Ordinary Crime: A Framework for Understanding Transitional Justice. *Harvard Human Rights Journal* 15:39-98 Rausch, Colette, ed. 2006. *Combating Serious Crimes in Postconflict Societies: A Handbook for Policymakers and Practitioners*. Washington, D.C.: United States Institute of Peace Press.

⁴² <http://www.ictj.org/en/tj/>, p. 2; see also *Rule-of-Law tools for Post-Conflict States: Reparation Programmes*, United Nations, 2008. pp. 33-34. [http://www.reliefweb.int/rw/lib.nsf/db900sid/PANA-7DDHAY/\\$file/ohchr_apr2008.pdf?openelement](http://www.reliefweb.int/rw/lib.nsf/db900sid/PANA-7DDHAY/$file/ohchr_apr2008.pdf?openelement)

⁴³ “Peru: Compensation pending for victims of forced displacement”, *op. cit.*

2. Turkey: The European Court of Human Rights has provided compensation to displaced persons for pain and suffering in several cases between 2001 and 2005. The Compensation Law, however, precludes compensation for pain and suffering.⁴⁴
3. Kuwait: Category “A” is another of the UN Compensation Commission’s individual claims categories. Category “A” claims are those submitted by individuals who had to depart from Kuwait or Iraq between Iraq’s invasion of Kuwait on 2 August 1990 and the cease-fire in March 1991. Compensation for successful claims in this category was set by the Governing Council at the fixed sum of US\$2,500 for individual claimants and US\$5,000 for families. The Commission received approximately 920,000 category “A” claims.⁴⁵

Addressing Displacement in Truth and Reconciliation Commissions

Only a few of the many Truth and Reconciliation Commissions (TRCs) have addressed reparations for displacement.

1. Guatemala: The Guatemalan Commission for Historical Clarification (Comisión de Esclarecimiento Histórico (CEH)) was criticized as a structurally weak body, but it was perhaps one of the more successful TRCs in terms of integrating the perspectives of displaced persons. “CEH investigators hiked into remote areas of the country to interview thousands of civilians who were displaced by the war. Although the CEH was unable to interview all those who wished to give testimony, many of the formerly displaced persons who testified indicated that they found the experience to be an affirming one. The Commission concluded that the murder and forced displacement of thousands of Mayan civilians during the Guatemalan civil war was genocide, and deemed the Guatemalan state and its paramilitaries responsible for 93 percent of the atrocities committed during the war.”⁴⁶
2. East Timor: As part of its work, the Commission for Reception, Truth and Reconciliation (CAVR) in East Timor held a hearing on forced displacement and famine in July 2003. In addition to several experts, approximately 10 victims spoke at the hearing about their personal experiences during the conflict. CAVR personnel also contacted displaced persons and provided them with information about conditions in East Timor, with the aim of

⁴⁴ See *Overcoming a legacy of mistrust: towards reconciliation between the State and the displaced*, Turkish Economic and Social Studies Foundation, Norwegian Refugee Council and Internal Displacement Monitoring Centre, June 1, 2006. [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/BAB842B0CF42E64BC1257180003550FD/\\$file/Turkey%20report_1.06.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/BAB842B0CF42E64BC1257180003550FD/$file/Turkey%20report_1.06.pdf)

⁴⁵ “Claims Processing”, *op. cit.*

⁴⁶ “Reconciliation and forced migration”, Forced Migration Online, Accessed on November 4, 2008. <http://www.forcedmigration.org/guides/fmo044/fmo044-4.htm>

encouraging an orderly return to their homeland.⁴⁷ While the CAVR final report does discuss emergency reparations for the victims of human rights violations, the listing of reparations beneficiaries does not specifically include displaced persons.⁴⁸

3. Peru: The Peruvian Truth and Reconciliation Commission did address displacement and recommended giving symbolic reparations as well as various services, including education and health for the victims of forced displacement. Few of the Commission's compensation recommendations have been fully implemented.⁴⁹
4. Liberia: The current Liberian Truth and Reconciliation Commission recognizes the vast internal and external displacement caused by the conflict in the 1980s and 1990s in the preamble of its mandate. Commission hearings and discussions are still underway.

PARTICIPATION OF IDPS AND IDP ORGANIZATIONS

Like all citizens, IDPs have a right to participate in the political processes of their countries, including to organize associations and to participate in electoral processes. For those displaced by conflict, they also have an interest in participating in peace processes to resolve the conflict and to ensure that solutions to their displacement are implemented. Moreover, governments and humanitarian agencies alike are becoming increasingly aware of the need to consult with IDPs, to involve them in program planning to ensure that their needs are addressed.⁵⁰

Participation in political processes

The process of peacebuilding requires the establishment of a functioning, legitimate government; in many post-conflict situations, this includes a referendum on a new constitution, elections and activities to ensure a free and open political environment. In post-conflict situations, political participation can effectively contribute to peace, reconstruction, and long-term development. As a 2007 report from our project states: protecting the civil and political rights of displaced people – the right to vote, to freedom of assembly and association, and of expression – allows displaced

⁴⁷ Dominique Le Touze, Derrick Silove and Anthony Zwi, *Can there be healing without justice? Lessons from the Commission for Reception, Truth and Reconciliation in East Timor*, *Intervention* 2005, Volume 3, Number 3, Page 192 - 202 http://www.interventionjournal.com/downloads/33pdf/192_202_Touze.pdf

⁴⁸ “*Acolhimento* and victim support”, Commission for Reception, Truth and Reconciliation, 2005. <http://www.ictj.org/static/Timor.CAVR.English/10-Acolhimento-and-Victim-Support.pdf>, para 174.

⁴⁹ <http://www.ohchr.org/Documents/Publications/ReparationsProgrammes.pdf>

⁵⁰ See for example, *Moving beyond rhetoric: Consulting with IDPs*, Brookings-Bern project on Internal Displacement, October 2008.

persons to play an active role in shaping their own future and that of their nation.”⁵¹ In fact, IDP participation in political processes is often much lower than that of the non-displaced population. The Organization for Security and Cooperation in Europe (OSCE) has identified six specific obstacles to IDP enfranchisement: lack of documentation; discriminatory practices; obsolete and restrictive residence requirements; inadequate voting arrangements; lack of timely, adequate and clear information; and insecurity and acts of intimidation.”⁵²

The Guiding Principles assert that IDPs have “the right to associate freely and participate equally in community affairs and the right to vote and to participate in governmental and public affairs.”⁵³ States are obliged to “take effective measures to ensure that all persons entitled to vote are able to exercise that right.”⁵⁴ This includes the obligation to issue or replace documentation⁵⁵ (such as passports, identification cards or birth certificates) necessary for voter registration, without imposing unreasonable conditions as for example the return to one’s home or place of habitual residence.⁵⁶ Such measures may also include arrangements for absentee-voting.⁵⁷ Thus, for example, in Iraq, IDPs may indicate whether they wish to vote in their communities of origin or in the communities where they are presently residing.

Freedom of expression, assembly and association are necessary pre-conditions to effectively make use of one’s political rights. States are therefore obliged to take positive measures to overcome difficulties, such as obstacles to the freedom of movement for IDPs living in camps,⁵⁸ which prevent persons from exercising their rights effectively.⁵⁹

Although there is no systematic research, there is a perception that IDPs are less likely to participate in politics than those who have not been displaced – in part because of the bureaucratic obstacles

⁵¹ *Addressing Internal Displacement in Peace Processes, Peace Agreements and Peace-Building*. The Brookings Institution. 2007. Available at <http://www.brookings.edu/reports/2007/09peaceprocesses.aspx>. p. 36. Also see: Walter Kälin, “Keynote address: political rights of persons displaced by conflict,” Colloquium at the International Organization for Migration, 13 June 2006.

⁵² A. Ghimire, “Enfranchising IDPs in Nepal,” *Forced Migration Review*, vol. 28, 2007, p. 48.

⁵³ *Guiding Principles on Internal Displacement*, *op. cit.* principle 22.

⁵⁴ Human Rights Committee, *General Comment No. 25 (Art. 25), The right to participate in public affairs, voting rights and the right of equal access to public service*, UN Doc. CCPR/C/Rev.1/Add. 7, 12 July 1996, para. 11.

⁵⁵ See Guatemalan Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict, II. Guarantees for the resettlement of uprooted groups, para. 7, which states, that lack of personal documentation hinders IDPs in the enjoyment of their civil and political rights.

⁵⁶ *Guiding Principles on Internal Displacement*, *op. cit.* principle 20.

⁵⁷ *IASC Operational Guidelines on Human Rights and Natural Disasters*, Inter-Agency Standing Committee, 2005. Guideline D.5.1.

⁵⁸ *Guiding Principles on Internal Displacement*, *op. cit.* Art. 12 ICCPR and Principle 14

⁵⁹ Human Rights Committee, *General Comment No. 25 (Art. 25), The right to participate in public affairs, voting rights and the right of equal access to public service*, UN Doc. CCPR/C/Rev.1/Add. 7, 12 July 1996, para. 12.

in doing so, but also because they may perceive that political decisions are not relevant to their situations. And yet when IDPs do not participate in existing democratic processes, political leaders are less likely to take their concerns seriously. This can lead to a vicious cycle; IDPs don't participate because they don't see politics as relevant. Because they do not vote in large numbers, politicians don't feel that they need to address their specific concerns.

IDPs and peace negotiations

The Brookings-Bern study *Addressing Internal Displacement in Peace Processes, Peace Agreements, and Peacebuilding* outlines both the opportunities of and obstacles to IDP participation in “track one,” “track two,” and “track three” levels of peace negotiations. Major obstacles to “track one” participation are 1) the high-level and exclusive nature of the process, 2) specific characteristics of the IDP population, such as marginalized social position or education level, and 3) disadvantages derived from the state of displacement, for example a lack of cohesion and difficulty mobilizing.⁶⁰ Even where they have been involved in track one and two processes, IDPs still face difficulties participating effectively. IDP participation in “track two” negotiations has occurred mostly through joining broader coalitions, such as women's associations. While “track three” or grassroots initiatives are important, it is rare that they impact peace negotiations at the national level.⁶¹

Despite the many obstacles to IDP participation in peace processes, there are a few positive examples. For example, the peace process in Guatemala in the 1980s illustrates the positive effects of direct participation by forced migrants. The “Comisiones Permanentes” (Permanent Commissions) served as a vehicle for direct negotiation between refugees and the government of Guatemala. This helped to ensure that solutions took into account refugees' concerns and made the peace process more durable.⁶² Similarly, in Mali, conflict-affected civilians played an active role in peacemaking. After years of unsuccessful government efforts to negotiate peace, traditional decision-making activities and community meetings which were facilitated by Northern civil society leaders resulted in localized ceasefire agreements and ultimately, in an end to the violence and space for national reconciliation.⁶³

⁶⁰ *Addressing Internal Displacement in Peace Processes, Peace Agreements, and Peacebuilding*, The Brookings-Bern Project on Internal Displacement, September 2007, pg. 20.

⁶¹ *Ibid.*, 21-24.

⁶² P. Worby, *Lessons learned from UNHCR's involvement in the Guatemala refugee repatriation and reintegration programme (1987-1999)*, Sponsored by UNHCR's Regional Bureau for the Americas and the Evaluation and Policy Analysis Unit (December 1999); *Addressing Internal Displacement in Peace Processes, Peace Agreements and Peace-Building*, Brookings-Bern Project on Internal Displacement, September, 2007.

⁶³ C. Barnes, “Democratizing peacemaking processes: strategies and dilemmas for public participation,” *Owning the process: public participation in peacemaking* (*Accord* issue 13, 2002); K. Lode, “Mali's peace process: context, analysis and evaluation,” *Owning the process: public participation in peacemaking* (*Accord* issue 13, 2002).

In Angola, the international organization, Centre for Common Ground (CCG) found IDP participation to be a crucial aspect of peacebuilding even during conflict. CCG facilitated a variety of programs including theatre, dialogue workshops, radio and television programs, and conflict management training with the aim of building local conflict management capacity and IDP demands for peace.⁶⁴ An example of one such program can be found in the box below.

IDP Participation in decision-making on assistance programs and solutions

As with any efforts to extend the protection of IDPs, it is important that governments and others consult with IDPs during the development of legal protection frameworks, and include provisions for IDP participation in programs of return or resettlement. Often at the behest of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons (RSG), certain governments have begun to undertake participatory activities with IDPs, or have created plans with provisions for doing so.

The government of Turkey, for example, developed the “Van Provincial Action Plan for Responding to IDP Needs,” which includes detailed mechanisms for engaging with stakeholders, including IDPs, to consider their views and priorities.⁶⁵ The Plan of Action also includes provisions for including IDPs and NGOs in planning and monitoring, and utilizing their skills to transform IDPs “from passive recipients of assistance and services into active citizens involved in decision making processes.” This is a positive example of a civic benefit to IDPs and the Turkish state. In line with the Framework for National Responsibility, the Plan of Action includes provisions for strengthening the participation of women, and for sharing information about the Plan with displaced communities. However, despite the comprehensive planning document, there are indications that Turkish NGOs have been disappointed with the scope of their role.⁶⁶

Both Uganda and Angola have adopted national policies for IDPs which contain provisions regarding their participation in resettlement and other relevant processes.

The Angolan Norms on Resettlement of the Internally Displaced Populations, for example, requires that the provincial government ensure the active participation of displaced populations in the resettlement or return process. The norms, however, do not elaborate on how such participation is to be facilitated and whether displaced populations will be able to participate in all, or only some,

⁶⁴ S. Utterwulge, “Conflict Management in Complex Humanitarian Situations: Peacemaking and Peacebuilding Work among Angolan IDPs,” *Journal of Refugee Studies* vol. 17, no. 2 (Oxford University 2004): 222-242.

⁶⁵ Government of Turkey, *Van Provincial Action Plan for Responding to IDP Needs*. Drafted by the Governorate of Van with the technical assistance of the United Nations Development Program (UNDP, 2006).

⁶⁶ Internal Displacement Monitoring Centre (IDMC) and the Norwegian Refugee Council (NRC), “The engagement of Turkish NGOs: Recommendations on how to improve the dialogue and develop partnerships between NGOs and authorities on IDP issues,” (October 2006).

aspects of resettlement and return. The Ugandan policy is more detailed in its provisions inviting the participation of IDPs. Section 2.3.1(iii) requires the Human Rights Promotion and Protection Sub Committee to work in collaboration with IDP representatives to find ways to promote respect for and protect the human rights of IDPs. Section 2.4(v) states that representatives of displaced women shall be consulted and may be invited to participate in meetings of the District Disaster Management Committees.⁶⁷

In Georgia, a consultation process in the form of roundtables led by the IDP Women's Network was also undertaken during the development of the country's national policy. However, it is unclear to what degree these roundtables were able to influence the national policy.

Resolving displacement is inextricably linked with peacebuilding and transitional justice. Finding durable solutions for IDPs, resolving land and property disputes and ensuring the participation of displaced persons in political processes are essential not only to the affected individuals and communities, but to the society at large. They are part and parcel of efforts to create stable and peaceful societies after conflicts have been brought to an end. Even when conflicts are on-going, there are still opportunities to engage in peacebuilding initiatives. By focusing on upholding the rights of internally displaced persons, concrete steps can be taken towards establishing both justice and peace.

⁶⁷ Jessica Wyndham, "A Developing Trend: Laws and Policies on Internal Displacement." *Human Rights Brief* (Winter 2006). [http://reliefweb.int/rw/lib.nsf/db900sid/JFRN-6Y2TC7/\\$file/brookings-idp-jan2007.pdf?openelement](http://reliefweb.int/rw/lib.nsf/db900sid/JFRN-6Y2TC7/$file/brookings-idp-jan2007.pdf?openelement)



ANNEX V

INTERNAL DISPLACEMENT AND THE CONSTRUCTION OF PEACE IN COLOMBIA

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CONTEXT

This is a joint project of the Swiss Federal Department of Foreign Affairs, the Brookings-Bern Project on Internal Displacement, and the Pontificia Universidad Javeriana in Bogotá, Colombia. In previous studies carried out by the Brookings-Bern Project on Internal Displacement and the Representative of the United Nations Secretary-General on the Human Rights of Internally Displaced Persons (RSG), Prof. Walter Kälin, emphasis was placed on the importance of including the internally displaced in peacebuilding processes.⁶⁸ It was held that when the problems of displaced persons are not sufficiently considered in peacebuilding processes, peace will not be sustainable.

The studies furthered by the RSG include a tradition of analysis of peacebuilding processes on various levels or paths: one in which States carry out negotiations with armed groups, a second in which non-governmental organizations carry out peacebuilding activities, and a third in which communities develop their own initiatives. In addition, the studies recognize three phases in all negotiations: negotiation, peacebuilding, and the consolidation of peace itself after the conflict.

Inclusion of the problems related to internal displacement and consideration of the needs of the displaced population, in each of the phases and levels, benefit all of the actors involved and people affected, and facilitate the transition to peace. Regardless of the development of negotiations that are currently taking place in Colombia between the State and armed groups, the proposed model allows the significance of the multiple peacebuilding and conflict transformation initiatives taking place in civil society to be visualized and acknowledged.

⁶⁸ Brookings-Bern Project on Internal Displacement, “Internal Displacement in Peace Negotiations, Peace Agreements and Peace-Building,” Brookings Institution: Washington, DC, 2007. See also: Walter Kälin, “Durable Solutions for Internally Displaced Persons: An Essential Dimension of Peacebuilding,” presented to the Lessons Learned Working Group of the Peacebuilding Commission, March 13, 2007.

The analysis presented below first addresses the processes/situations that are increasingly producing displacement in Colombia, and the problems facing already displaced persons. Second, it analyses the political subjectivity of the displaced population, its organizations, and the mechanisms that the displaced have used to formulate their petitions.

These considerations are framed by two independent institutional developments. On one hand there is the National System for Assistance to the Displaced Population, which has had a strong dynamic produced by the dynamic relationship between the Government branches, particularly the administration, the judicial branch, and the monitoring organizations. On the other hand, there are the peace processes that President Álvaro Uribe's administration has advanced with the paramilitary groups, and marginally with other armed groups⁶⁹. The resulting developments have led to building a justice system that must account for fulfillment of the rights of the displaced as victims of the armed conflict. Finally, as opposed to active institutional intervention, the document highlights the autonomous initiatives via which at-risk communities and displaced communities have managed processes of survival and preservation of their own rights.

The concerns of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons regarding facilitation and stimulation of participation of the displaced population in peacebuilding activities are set forth in this context. These activities must be understood within the various levels and phases in which they take place, of which the Colombian case is an example.

This study uses the RSG proposal on the Internally Displaced and Peace Processes as a theoretical foundation. Its preparation was based on the review of institutional documents from agencies of the Colombian State, civil society, and the international community. When necessary, context is explained based on the academic literature. The information on the positions and strategies of the actors involved was confirmed through interviews held with members of the agencies and organizations.

Armed Conflict in Colombia and Internal Displacement

According to the last population census, carried out in 2005, Colombia has 41,242,948 people, of which 25% are rural inhabitants and 75% are urban inhabitants.⁷⁰ As of September 2008, the

⁶⁹ The negotiations advanced by President Álvaro Uribe's administration contribute to the dynamic of military confrontation and periodic policy negotiations that the Colombian State has held with armed groups operating outside the law throughout the history of the Republic. (Cf. Valencia, Hernando, *Cartas de Batalla. Un Historia del Constitucionalismo Colombiano* [Battle Letters: A History of Colombian Constitutionalism], Bogotá: El Áncora, 1988.)

⁷⁰ Republic of Colombia, National Administrative Department of Statistics (DANE, by its Spanish acronym), "Boletín. Censo General 2005 Colombia" [Bulletin: Colombia 2005 General Census], June 10, 2008, <http://www.dane.gov.co/index.php?option=com_content&task=section&id=63&Itemid=711>.

Colombian State acknowledges a figure of 2,703,550⁷¹ people who have been displaced since 1997, the year in which the state registry began. Questions regarding change of residence were included in the 2005 census, as a result of which the government announced that the [actual] number of displaced persons would be less than that in the aforementioned registries.⁷² Thus the debate regarding this figure is ongoing. Along with Sudan and Iraq, Colombia has one of the largest contemporary displacement crises.

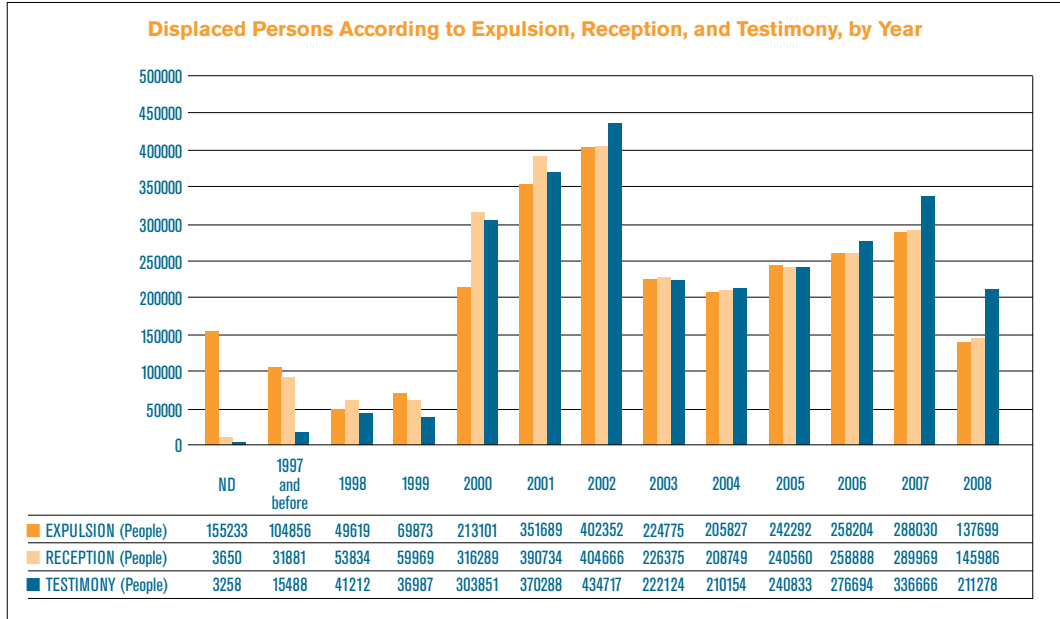


Figure 1 - Republic of Colombia, Presidential Agency for Social Action (Acción Social) and International Cooperation, Department of Assistance to the Displaced Population, Single Registry of the Displaced Population (RUPD) “General Tabulation of Displaced Population, Source SIPOD,” Cutoff Date: September 30, 2008.

A fundamental element of the Colombian conflict has to do with the regional diversity of the country, which has its roots in geography, but also in the configuration of what María Teresa Uribe has called diverse “historic communities,” which have varied social, economic, cultural, and ethnic

⁷¹ Cf. Republic of Colombia, Presidential Agency for Social Action and International Cooperation, Department of Assistance to the Displaced Population, Single Registry of Displaced Population (RUPD, by its Spanish acronym) “GENERAL TABULATION OF DISPLACED POPULATION Source: SIPOD,” Cutoff Date: September 30, 2008, <<http://www.accionsocial.gov.co/Estadisticas/publicacion%20sept%2030%20de%202008.htm>>.

⁷² “And although it did not reveal the figure, the Department of Statistics indicates that the current number of displaced persons, which according to the United Nations (UN) exceeds two million people, is less.” “The census has a question about the reason for their change of residence in the last five years; all those that were displaced, the reason for their displacement was very low in the case of protecting their lives,” added Rojas. (Rojas)

dynamics.⁷³ This makes it difficult to create a generalized description of the conflict for the entire country; it is more appropriate to talk about an intersection of several conflicts characterized by their long-term nature. Along with the recurrence of armed confrontation, Colombia has an equally long-term institutional tradition that is expressed in the production of a complex and sophisticated legal system that generally covers all areas of social activity, including armed conflict.

The following are among the fundamental elements necessary for understanding the internal displacement crisis that has been reference and established since the 1990s:

- a. The constancy of insurgent movements of the left, with various nuances, directions, and methods, that originated in the 1960s and 1970s. The FARC,⁷⁴ the ELN,⁷⁵ and some other smaller autonomous or dissenting groups from these larger groups still remain from a multitude of insurgent groups. (United Nations Development Programme)⁷⁶
- b. The progressive growth and political and military consolidation of a large and diverse collection of paramilitary groups created by large rural landowners and groups of drug traffickers, themselves large rural landowners. The paramilitary groups have fought the insurgent groups, and have relationships with the Colombian State law enforcement that have varied from concerted action to mere tolerance to some cases of open confrontation.
- c. The Colombian State, which developed a counterinsurgency with its law enforcement over these decades, and since the 1990s has identified the confrontation with the guerrilla with a struggle for control of the cultivation and commercialization of drugs in the country. Under this interpretation, it has received additional support from the United States, since 1998, to finance drug enforcement activities, and that assistance has progressively extended to anti-terrorism activities.⁷⁷

For the purposes of this research, it is significant that one of the central characteristics of the conflict in Colombia, as in the majority of contemporary non-international conflicts, is that the State and the insurgent and paramilitary groups allege the impossibility of respecting the principle of distinction between the civilian population and combatants. Reciprocally blaming each other, the practice

⁷³ Uribe de Hincapié, M. T. (1987) *Poderes y regiones: problemas en la constitución de la nación colombiana 1810-1850* [Powers and Regions: Problems in the Constitution of the Colombian Nation 1810-1850], Medellín, Universidad de Antioquia.

⁷⁴ *Fuerzas Armadas Revolucionarias de Colombia - Ejército del Pueblo* [Armed Revolutionary Forces of Colombia - People's Army]: a guerrilla group that operates principally in Colombia.

⁷⁵ *Ejército de Liberación Nacional (Colombia)* [National Liberation Army]: a guerrilla organization of Colombia.

⁷⁶ "The political and geographic marginalization of the guerrilla is due to a reason more important than those already suggested (police control of cities, cannibalism of the left, lack of political vision, etc.). The fundamental explanation is this – conditions did not and do not exist in Colombia for the armed insurgency to be successful." (United Nations Development Programme, 30)

⁷⁷ Cf. Republic of Colombia, National Planning Department, Justice and Security Directorate, "Balance del Plan Colombia 199-2005" [Plan Colombia Balance Sheet 199-2005] [sic], September 2006.

of including the civilian population identified as sympathizer, collaborator, or non-uniformed combatant of the adversary as a target of attack is generalized. Disregard for this humanitarian principle of protection of the civilian population is reflected in the generalized practice of attack, retaliation, intimidation, and assassination of civilians, in various manners such as deprivation of freedom through kidnapping, extrajudicial executions, or forced disappearances. Along with a high number of civilian casualties from the conflict, a process of mass population displacement has been created.

Displacement has been produced by the eruption of confrontation between armed actors in the conflict, but above all by the deliberate acts of intimidation and attacks on the civilian population, the purpose of which has been to gain political and/or economic control of disputed territories.⁷⁸ The internal displacement that is reported as a constant of the forced migration accompanying the many Colombian armed conflicts⁷⁹ has received the State's attention since the 1990s. Internal displacement in Colombia has been characterized as follows:

1. Regarding the number of people, there have been so many mass displacements of all of the inhabitants of municipalities, and there is also an ongoing flow of individual or familial displacement (drop by drop). Due to their impact on the public order and social dynamic of the places of reception, mass displacements have had greater visibility and assistance from the State, while individual or familial displacements have received less assistance and the people frequently do not register in the official databases and do not receive assistance.

⁷⁸ Norwegian Refugee Council, *Colombia: government "peace process" cements injustice for IDPs*, Bogotá: Norwegian Refugee Council, 2006, <[http://www.internaldisplacement.org/idmc/website/countries.nsf/\(httpCountries\)/CB6FF99A94F70AED802570A7004CEC41?OpenDocument&count=1000](http://www.internaldisplacement.org/idmc/website/countries.nsf/(httpCountries)/CB6FF99A94F70AED802570A7004CEC41?OpenDocument&count=1000)>. A World Bank study states, "According to data from the Consultancy for Human Rights and Displacement (CODHES, by its Spanish acronym) it is estimated that approximately four million hectares of land have been abandoned by displaced persons; this figure is three times greater than the amount redistributed by the government through agrarian reform since 1961. In this way, displacement has generated considerable agrarian counter-reforms and it will likely contribute to significant consolidation of unproductive land in certain areas. High inequality in land ownership is a factor that appreciably increases the number of displaced persons, a situation that produces great human suffering. Furthermore, since the land abandoned by the displaced is not usually used by those who occupy it, productivity is considerably reduced.

Land was the principal means of subsistence for a large percentage (60%) of displaced families in their place of origin. Therefore, these people suffer more and longer when they must leave their homes than those who earn their living in another manner, since agricultural experience is not very useful in the urban or peri-urban environments they reach. The number of displaced persons was considerably higher in 2001/2002 than in 1999/2000. Most left their homes due to specific threats and were families headed by women or agricultural workers. Many fewer were able to find work in their new destination, which indicates an increase in the "seriousness" of the displacement. In this regard, the assistance that is provided to displaced persons through governmental, religious, non-governmental (NGO), and other organizations now reaches two thirds of the surveyed homes, in comparison to less than half in the past." (Deininger and Lavandez, 2)

⁷⁹ Throughout the 20th century and particularly since the partisan violence that began in 1948, ongoing flows of violence-forced migrations have been recorded; these migrants have been called various names: victims of violence, country to city migrants, disaster victims. Cf. Vidal, Roberto, *Derecho global y Desplazamiento Interno* [Universal Rights and Internal Displacement], Bogotá: Pontificia Universidad Javeriana, 2008.

An important effect of the paramilitary demobilization process has been the significant decrease in displacements, particularly of collective or mass displacements, while individual displacements remain the same or have increased.⁸⁰

2. Forced displacement of the population in Colombia today originates in all the regions of the country, but there is special prevalence in twelve sub-regions. Most of the displaced are from rural areas and have municipal seats and cities as their destination.⁸¹
3. Due to the progressive urbanization of the Colombian armed conflict, the process of intra-urban displacement has intensified from one area to another within the same city, under the pressure of urban cells of the illegal armed groups.⁸²

The Peace Processes in Colombia

The permanence of the Colombian internal armed conflict has been accompanied by initiatives of negotiation and pacification advanced by the Colombian State at different times. Referencing only the peace processes of the last twenty years, it is necessary to mention perhaps the most successful one, which took place in the 1980s and culminated in the demobilization and transformation of the April 19 Movement, the Workers' Revolutionary Party, and the Quintín Lame into political parties. This process led to the National Constituent Assembly of 1991 in which members of the demobilized groups actively participated. Along with successful processes such as this one, there were many others that failed, such as the negotiations of the State with the FARC, with whom talks were held in Mexico and in a demilitarized zone in Colombian territory, that ended without results in 1998.⁸³ During Álvaro Uribe Vélez's first presidential term (2002-2006), and similar to previous administrations, military confrontation intensified with insurgent groups with the support of the United States' Andean Initiative, while a demobilization process began for paramilitary groups. The paramilitary group demobilization process, which the national Government has declared finished, has had significant results in that 30,944 combatants availed

⁸⁰ UNHCR, *Balance de la Política Pública para la Atención Integral al Desplazamiento Forzado en Colombia, Enero 2004-Abril 2007* [Public Policy Balance Sheet for Comprehensive Assistance to Forced Displacement in Colombia, January 2004-April 2007], Bogotá: UNHCR, 2007.

⁸¹ In the report from the first half of 2008, the Consultancy for Human Rights and Displacement reported that 76% of the displaced population in Colombia is concentrated in 50 cities and municipalities (of a total of 1,042 municipalities) of 19 departments (of a total of 32 departments). (CODHES) CODHES Report "Boletín informativo de la Consultoría para los derechos Humanos y el Desplazamiento" [Consultancy for Human Rights and Displacement Informational Bulletin] Number 74, September 25, 2008.

⁸² Cf. Atehortúa, Clara, "Narraciones sobre la experiencia del éxodo. El caso del Desplazamiento forzado en la comuna 13" [Narratives on the Exodus Experience: The Case of Forced Displacement in Commune 13], Conflict and Violence Interdisciplinary Group, affiliated with the Regional Studies Institute (INER, by its Spanish acronym) of the Universidad de Antioquia, 2007, and Jacobsen, Karen, "Tufts-IDMC Urban IDP Study," Feinstein International Center, April 2008.

⁸³ The displaced, their petitions and problems were the missing parties in the negotiations. In the Caguán process, for example, none of the 12 points of negotiation between the FARC and the Government considered displacement. Only the ELN, in its rapprochement with the Colombian government during the second Uribe administration, included population displacement among the topics of negotiation.

themselves of the process. This allowed the identification of those people and their incorporation into the national reintegration program.⁸⁴

Effects of the Demobilization Process on the Displaced

Organizations for the displaced view the demobilization process with mistrust and reserve. The effects of the demobilization process in mid-conflict have been summarized by Ana Teresa Bernal, civil society representative to the National Reconciliation Commission:

“We could say that in Colombia there is a mid-conflict post-conflict. I say this because of the situation in which the communities of regions where demobilizations have occurred find themselves. The following situations arise there:

- ❖ Fear of the consequences of demobilization. New monopolization of territory by other groups?
- ❖ Continued control of the groups in formal and informal areas of the economy (street sales, production projects, health, and education) as well as in politics and drug trafficking.
- ❖ Hope, but many concerns about the application of the Justice and Peace Law. The victims especially fear that its application will lead to impunity or more violence against them. For example, the widows of the Alto Naya massacre with whom I spoke recently could not conceive that their husbands’ murderers, who used chainsaws, torture, and all types of abuse, and were sentenced to 40 years, are going to be freed under Law 975. For them, reparation means that there should be justice.”⁸⁵

The demobilization processes had an effect of decreasing displacement in the short-term and then steadily increasing it again. Since the reintegration process began, State resources have been discernibly diverted from assistance to the displaced to the reintegration of combatants, a situation that produces the paradoxical result of encouraging the victimizer and punishing the victim. This argument has been used repeatedly by organizations for displaced persons and described in detail by the National Planning Department and the Office of the Attorney General of the Nation:

⁸⁴ Cf. Republic of Colombia, Presidency of the Republic, Office of the High Commissioner for Peace and Organization of American States’ Mission to Support the Peace Process in Colombia (MAPP-OAS), “Sexto Informe” [Sixth Report], Post-Demobilization Map of Criminal Activities.

⁸⁵ Bernal, Ana, “Reconciliación Reflexiones para la Comisión Nacional de Reparación y Reconciliación” [Reconciliation Reflections for the National Commission for Reparation and Reconciliation], Bogotá, March 5, 2006, Redepaz webpage <http://www.redepaz.org.co/article.php3?id_article=237>.

Resources allocated for humanitarian assistance to the demobilized vs. the displaced (2005)		
Area	Cost	Average per person
Humanitarian assistance for 8,390 demobilized persons	COP\$61 billion	COP\$7.2 billion
Humanitarian assistance for 1,146,746 displaced persons	COP\$752 billion	COP\$655,000 pesos per person COP\$3 million per displaced family

Table 1 - Attorney General of the Nation, National Planning, Table on “Resources allocated for humanitarian assistance to the demobilized vs. the displaced (2005).”⁸⁶

“Given its implications, I want to call attention to the following fact: the national Government has allocated approximately 61 billion pesos for humanitarian assistance to 8,390 individual demobilized people, that is, an average of COP\$7.2 billion pesos per demobilized person.⁸⁷ In the case of humanitarian assistance to a displaced population of 1,146,746, the National Planning Department budgeted 752,000,000 million pesos, that is, an average of COP\$655,000 pesos per person and approximately COP\$3 million pesos per displaced family. The comparison shows a substantial difference and disproportion that requires the immediate attention of the State.”⁸⁸

PROCESSES RELATED TO TRANSITIONAL JUSTICE AND PEACE

The policy of assistance to the population displaced by violence and the transitional justice processes in Colombia have two separate histories: they are applied by different institutions, they developed at different times, and they respond to different conceptual sequences. These policies have common ground, including protection, assistance, and design of durable solutions for the displaced population, but also the aim to control the phenomenon and direct it in contexts of change.

⁸⁶ Maya, Edgardo, Attorney General of the Nation, *Palabras del señor Procurador General de la Nación, doctor Edgardo José Maya Villazón. Presentación de los resultados de la primera fase del proyecto “Seguimiento y control preventivo a las políticas públicas en materia de desmovilización y reinserción”* [Remarks of the Attorney General of the Nation, Mr. Edgardo José Maya Villazón: Presentation of the Results of the First Phase of the Project “Preventive Follow-up and Monitoring of Public Policies on the Subjects of Demobilization and Reintegration,” Bogotá, June 15, 2006, webpage of the Attorney General of the Nation <http://www.procuraduria.gov.co/html/noticias_2006/noticias_216.htm>.

⁸⁷ Calculations made by the Attorney General of the Nation.

⁸⁸ Maya, Edgardo, Attorney General of the Nation, *Palabras del señor Procurador General de la Nación, doctor Edgardo José Maya Villazón. Presentación de los resultados de la primera fase del proyecto “Seguimiento y control preventivo a las políticas públicas en materia de desmovilización y reinserción”* [Remarks of the Attorney General of the Nation, Mr. Edgardo José Maya Villazón: Presentation of the Results of the First Phase of the Project “Preventive Follow-up and Monitoring of Public Policies on the Subjects of Demobilization and Reintegration,” Bogotá, June 15, 2006, webpage of the Attorney General of the Nation <http://www.procuraduria.gov.co/html/noticias_2006/noticias_216.htm>.

The policy on internal displacement by violence in Colombia was first. It goes back to the early 1990s, a period in which the internal armed conflict progressively worsened. More than a decade later, the language of transitional justice was imposed in Colombia, in order to make known the progressive internationalization of the processes of negotiation that the Colombian Government was carrying out with the illegal armed groups and particularly with the paramilitary groups that started forming in Colombia with great momentum in the late 1980s.

The first of these processes has the direct objective of regulating assistance to the internally displaced. In contrast, the second, while it has a primary objective of achieving the demobilization of illegal armed groups and attempts to protect victims' rights, is indirectly but significantly involved with internal displacement.

PROCESSES OF DEMOBILIZATION AND SEARCH FOR PEACE IN COLOMBIA

In a process of articulation and reform of the legislation issued in the 1990s, the Government of Uribe Vélez issued additional legislation expressly and principally aimed at the demobilization of paramilitary groups and marginally targeting the demobilization of guerrilla groups. With the latter, the principal strategy, based on expansion of the objectives of the North American assistance plan for the fight against drugs, has consisted of escalating the military confrontation, which has been viewed positively by domestic and foreign analysts, striking the guerrilla hard, militarily, including the capture and elimination of some of their principal leaders, the expulsion of guerrilla groups from some important regions, and particularly the release of kidnapped persons.

JUSTICE AND PEACE LAW

The legislation that allows peace processes to be carried out has existed in Colombia throughout its Republican history. The framework of principles issued during the 1990s is currently used. It was extended and used intensively during the peace talks with the FARC and amended, extended, and added to during the Uribe Vélez administrations as a framework for the negotiation with the AUC.⁸⁹

The principles allow the Colombian Government to advance peace talks and carry out negotiations with **“organized armed groups operating outside the law,”** defined under the terms of international

⁸⁹ The current legal structure for demobilization of illegal groups has as a first reference Law 418 of 1997, issued during the administration of Ernesto Samper Pizano, extended and revised during the administration of Andrés Pastrana via Decree 548 of 1999 and amended and extended during the administrations of Uribe Vélez via Laws 782 of 2002, 975 of 2005, and 1106 of 2006.

humanitarian law as “those who, under the direction of a responsible commander, exercise control over a part of the territory that allows them to carry out sustained and concerted military operations.”⁹⁰

In Law 975 of 2005, the conditions for groups with which political negotiation can be established were limited and they were simply specified: “Organized armed group operating outside the law means the guerrilla or self-defense group, or a significant and integral part of the same as blocs, fronts, or other modes of those same organizations, addressed in Law 782 of 2002.”⁹¹

Members of the organizations so defined may enter into negotiations with the Government and may receive benefits specific to political crimes, according to the type of acts they have committed (political crimes, related offenses, or felonies). This recognition initiates the rapprochements, talks, or peace agreements by means of **collective negotiation** and grants them a series of benefits such as the possibility to name representatives and spokespersons who are able to circulate freely throughout the territory or abroad,⁹² and the suspension of judicial proceedings that are being carried out against members of the group, among other measures.⁹³

⁹⁰ Article 8 of Law 418 of 1997, amended by Article 3 of Law 782 of 2002, corrected by Article 2 of Decree 1000 of 2003, extended until 2010 by Article 1 of Law 1106 of 2006.

⁹¹ Law 975 of 2005, Art. 1.

⁹² For example, in recent statements in Paris, January 21, 2008, President of Colombia Álvaro Uribe Vélez, during the second day of his tour through countries of the European Union, brought up the recognition of FARC political spokespersons and lifting of their arrest warrants in order to facilitate the road towards possible dialogue, should they wish to enter into a negotiation.

⁹³ Article 8 of Law 418 of 1997, amended by Article 3 of Law 782 of 2002, corrected by Article 2 of Decree 1000 of 2003: “PARAGRAPH Two: Once the process of dialogue, negotiation, or signing of agreements is initiated, and in order to facilitate progress of the same, the corresponding legal authorities shall suspend the arrest warrants that have been issued or are being issued against the representative members of the armed groups operating outside the law with whom they are furthering talks, negotiations, or peace agreements.

To that effect, the National Government shall notify the indicated authorities of the start, termination, or suspension of talks, negotiations, or signing of agreements, and it shall certify the participation of the individuals who act as spokespersons or representative members of those armed groups operating outside the law. The parties shall agree upon mechanisms of joint verification for agreements, talks, or rapprochements, and if deemed appropriate they shall be able to turn to national or international institutions or individuals to carry out that verification.

Likewise, arrest warrants issued against the spokespersons shall be suspended, once the talks, negotiations, or subscription of agreements has started, and for their duration.

In order to foster rapprochements, talks, or negotiations for peace, the President of the Republic, via written order, shall determine the location and manner of law enforcement action, under the assumption that the rights and liberties of the community are not to be violated, nor social conflicts or problems created.

The safety and integrity of everyone who participates in the peace processes, talks, negotiations, and agreements addressed in this law shall be guaranteed.

For the purposes of the provisions of this article, the National Government shall be able to agree with the spokespersons or representative members of the armed groups operating outside the law, with whom they are furthering talks, negotiations, or agreements, their temporary location or that of their members, in specific and defined areas of national or international territory, as considered appropriate. In the mentioned areas, the arrest warrants against them shall be suspended, until the Government so determines, or it declares that

When a peace process with a group is not moving forward, that is, collective negotiation is not being carried out, the State has offered certain benefits to people who abandon the activity of armed groups, in order to promote desertion, weaken the groups, and obtain strategic information for the State, among other reasons. This is an **individual demobilization** path.

Currently a collective demobilization process is moving forward with a wide sector of the paramilitary groups. Individual demobilization processes are simultaneously moving forward with members of the FARC⁹⁴ and the paramilitary groups that have not taken part in the collective negotiation processes.⁹⁵

The fundamental difference between the legal framework for demobilization set forth by Law 975 of 2005 and prior legislation is that the former responds to the new circumstances introduced by the ratification of the Rome Statute and Colombia's acceptance of the jurisdiction of the International Criminal Court, which required constitutional reforms making life imprisonment, the imprescriptibility of certain crimes, and complementarity of the ICC's international jurisdiction possible.

Under the prescriptions of the Rome Statute the concession of amnesties and pardons for crimes against humanity, genocide, and war crimes, is prohibited, although with regard to these latter, Colombia opposed a seven-year exclusion clause, which is about to expire. That prohibition required the introduction of radical changes in the negotiation methods that had been used until then based on the concession of extensive amnesties and pardons. Law 975 of 2005, in the midst of sharp controversy between sectors of civil society and the Government, finally produced a series of

the process has ended. Law enforcement shall guarantee the safety of the members of the armed groups operating outside the law, with whom talks, negotiations, or peace agreements are being furthered, when they are in the area, in transit to the area, or returning to their place of origin.

In no case shall these areas exist if they affect the normal and full operation of civil institutions.”

⁹⁴ “Cali, Valle, September 20, 2007. After an intelligence investigative proceeding carried out by specialized personnel from the National Police in Cali, with the participation of several members of the Cooperation Network, on August 23, 2007, the principal leaders of the FARC urban militias in the municipality of Florida (Valle) belonging to the “Gabriel Gálviz” mobile column that commits crimes in the mountainous area of the municipalities of Florida and Pradera in Valle and Miranda and in Cauca were captured. The arrests took place in the urban perimeter of the municipality of Florida, Valle, in fulfillment of arrest warrants issued by the Office of the Second Specialized Prosecutor of Cali, for the crimes of Terrorism, Insurrection, and Homicide. With the participation of the National Government's Office of the High Commissioner for Peace, the Office of the Specialized Justice and Peace Prosecutor, and the Unified Action Group for Personal Freedom (GAULA, by its Spanish acronym) of the Metropolitan Police, it was explained to the arrestees what benefits they and their terrorist structure would have upon subjection to the Justice and Peace Law. With regard to which, these leaders, with the coordination of the State agencies, held several strategic meetings.”

⁹⁵ This path of individual demobilization has been harshly criticized by political and social sectors that have warned that benefits will be granted to those who demobilize or simply avail themselves of the law, without requiring any cessation of the violent actions of the groups in return. That is, the benefit mechanisms for individual association do not generate any pressure in favor of group demobilization.

mechanisms that sought on one hand the demobilization of the paramilitary groups at the same time they tried to satisfy the international standards of truth, justice, and reparation that were defined in international human rights law and international criminal law. The Law was subjected to a review by the Constitutional Court, which found it to be enforceable and introduced significant mechanisms guaranteeing victims' rights (Decision C-370 of 2006).

For members of the armed groups that demobilized, Law 975 of 2005 prescribed a system of reduced alternative penalties on the condition of total demobilization and full confession of their crimes. The other fundamental pillar of the Law is a collection of mechanisms to guarantee the rights of the victims to truth, justice, reparation, and historical memory. The most important of these is the National Commission for Reparation and Reconciliation (CNRR, by its Spanish acronym).

NATIONAL COMMISSION FOR REPARATION AND RECONCILIATION

The National Commission for Reparation and Reconciliation (CNRR) was created by Law 975 of 2005 for an eight-year term, with mixed participation of the State, civil society organizations, victims' representatives, and members of the State monitoring agencies.⁹⁶ As the Commission itself stated in its Road Map, it is not a truth commission but its functions and composition are widely inspired by those institutions. Its general mandate has been interpreted as "closing wounds and building the foundation for sustainable peace in the future," which involves four fundamental functions: truth, justice, reparation, and guarantees of non-repetition. To that effect, the CNRR has organized in four areas: Reparation and Victim Assistance; Reconciliation; Disarmament, Demobilization, and Reintegration; Historical Memory.⁹⁷

The Historical Memory area has come to be called the "Historical Memory Committee," and it attempts to reconstruct the truth via academic instruments and establish collective responsibilities with regard to the events of the armed conflict in Colombia.⁹⁸ Thus it proposes the truth regarding what happened, but truth qualified by state acknowledgement of the same.

The advantages of this process undertaken by the CNRR are:

- ❖ It has made a space possible for procedures for the victims' rights to truth, justice, and reparation.
- ❖ It has made the petitions for victims' rights visible.

⁹⁶ When it was established, the National Commission for Reparation and Reconciliation was the subject of intense debates between various sectors of the displaced population. Organizations for the displaced population have remained outside the CNRR, concentrating their efforts on the monitoring mechanisms for Decision T-025 of 2004, opened by the Constitutional Court.

⁹⁷ Cf. National Commission for Reparation and Reconciliation, webpage <<http://www.cnrr.org.co/>>.

⁹⁸ National Commission for Reparation and Reconciliation, Historical Memory Area, "Plan Área de Memoria Histórica" [Historical Memory Area Plan], February 20, 2007, <<http://www.cnrr.org.co/index.html>>.

- ❖ In 2007 more than 70,000 accusations were filed with the Prosecutor's Office and it is predicted that the number will increase to 100,000 in 2008.
- ❖ The CNRR recently decided to accelerate the process of preparing the National Reparation Plan, with the purpose of establishing an administrative reparation strategy (that is, one that does not depend on legal decisions for its implementation) that will allow victims to receive full reparation with greater speed, as it is predicted that judicial proceedings will take more than three years to obtain convictions.
- ❖ The presentation of reports on specific and particularly relevant cases, as has been the case with the reconstruction and evaluation of the reparation mechanisms applied in Trujillo, Valle del Cauca, where the population was the target of a massacre.

The disadvantages of this process are:

- ❖ The Transitional Justice process is carried out while conflict is taking place, without having generated sufficient confidence in the victims.
- ❖ The communities and organizations feel that they do not have sufficient involvement in the development of the process.
- ❖ There is no explicit acceptance of the displaced as victims, although they are registered in the RUPD. Their application as such requires a different procedure.
- ❖ Administrative reparation has raised suspicions because it is thought that this is going to prioritize financial reparation and diminish the impact of truth and justice.

NATIONAL SYSTEM FOR ASSISTANCE AND DISPLACEMENT PREVENTION

Since the 1990s, a complex National System for Assistance and Displacement Prevention has developed in Colombia, completely independent from the peace processes. Its organizational focus is Law 387 of 1997, its many regulatory decrees, and the extensive case law.

Regarding the legal prescriptions and decrees, an institutional system of assistance, led by the Presidential Agency for Social Action [Acción Social] Advisory Board has been created. This coordinates the activities of the central State sector, which involves the majority of the Ministries, and also, through the Ministry of the Interior and Justice, coordinates the activities of the departmental and municipal administrations.

The Judicial Branch of the government has been involved from the beginning in the development of the System for Assistance to the Displaced Population, through its various agencies. In Colombia we currently have more than one hundred Constitutional Court decisions and secondary opinions from the State Council, the Supreme Court, and the Judiciary Council that directly and indirectly address internal displacement. Among them are very important constitutional decisions and from

early on, unifying case law decisions that have introduced fundamental elements for the protection of the displaced population's rights.

Of all the extensive normative panorama mentioned, Decision T-025 of 2004 should be emphasized. It declared the existence of a state of unconstitutionality in the area of internal displacement, and in the monitoring process for its fulfillment, it was important that the Court itself assumed the monitoring process for the decision, through extensive social and institutional dialogue, which has led to very important compliance measures. Perhaps most important have been the creation of spaces for the organizations for the displaced and non-governmental and international organizations to debate and propose their ideas on the displacement problem; the formulation of indicators for rights being upheld as mechanisms of evaluation for the achievements of the state response, and; the designation of independent institutions, of public and private membership, to support monitoring of the decision.

The complex process developed since Decision T-025 of 2004 has generated an intense and not always easy dialogue between the branches of the State on the subject of protection and upholding the rights of the displaced.

Now, as Saffon and Uprimny have indicated, it is very apparent and worrying that this system of assistance and protection for the internally displaced, in all its complexity, is in no way connected to the peace initiatives and specifically the developments of transitional justice previously described. On the contrary, the two systems mutually cancel and obscure each other.⁹⁹

The current parallel between the Justice and Peace Law and the System for Assistance to the Displaced Population processes originates in the problem that this study tackles: the disconnect between the treatment of internal displacement and the peace initiatives in Colombia. The peace negotiations between the Government and the armed groups have had enormous autonomy and confidentiality, which has not allowed the displaced population to participate in setting criteria or articulate their claims before the process. The result is that institutionally there are two clearly differentiated processes, in which causal relationships are only remotely established.

⁹⁹ Uprimny, Rodrigo and Maria Paula Saffon, "Desplazamiento forzado y justicia transicional en Colombia. Estudio sectorial" [Forced Displacement and Transitional Justice in Colombia: Sectoral Study], Bogotá, Dejusticia, August 30, 2006, <http://dejusticia.org/interna.php?id_tipo_publicacion=2&id_publicacion=184>.

DISPLACEMENT AGENDA IN THE PEACEBUILDING PROCESSES

Land, Property, and Restitution

Importance of land for the displaced population, particularly indigenous communities

There is a strong connection between the land and those who are displaced. Since the large majority of IDPs are from the peasant population, the land is part of their environment, their customs, and their identity. Therefore, their violent dispossession by the actors of armed conflict in the country involves a loss of cultural and social context, as well as the structures of production and subsistence on which approximately 60% of the displaced depended as a principle source of sustenance before becoming victims of displacement.

The areas from which most people are expelled by force are those that have a **strategic or economic value**, whether for their *geographic location* or for the *natural resources* that they possess. Value is given to the areas that are suitable for advancing infrastructure projects, areas desirable for carrying out illegal activities, areas with a wealth of minerals, fuel, flora and fauna, and in general, all that land that due to its location or features offers profit.¹⁰⁰

Thus, there is a close relationship between armed conflict and the land. The consolidation of land continues to be war booty, a synonym of power, political, economic, and social control that puts the conditions of permanence of the population that lives in those places at risk and has thereby caused an inordinate increase in the processes of expulsion and abandonment of territories.

The report of the Commission for Monitoring Public Policy on Forced Displacement indicates that the number of expropriated hectares varies between 1.2 million, according to Ibáñez, Moya, and Velásquez, and 10.0 million, according to the National Victims Movement.¹⁰¹ These figures are estimates made using the number of displaced and the number of hectares presumably abandoned by each family. (19) The situation is aggravated by the high consolidation of ownership of rural land in Colombia that means that approximately 0.06% of public and private owners possess 53.5% of the land registered by the Agustín Codazzi Geographic Institute (IGAC, by its Spanish acronym),¹⁰² which makes the conditions of rural resettlement of this population more difficult, and on the

¹⁰⁰ Bello, Martha, “*El desplazamiento forzado en Colombia: Acumulación de capital y exclusión social*” [Forced Displacement in Colombia: Accumulation of Capital and Social Exclusion], 2003, and Naranjo, Gloria “*Desplazamiento forzado en Colombia. Reinvencción de la identidad e implicaciones en las culturas locales y nacional*” [Forced Displacement in Colombia: Reinvention of Identity and Implications in Local and National Cultures], *Revista Electrónica de Geografía y Ciencias Sociales*, Universidad de Barcelona, No. 94, August 1, 2001.

¹⁰¹ The difference in estimated values, as the Commission for Monitoring Public Policy on Forced Displacement points out, is particularly subject to the number used to carry out the calculation or sample and variables depending on the size of the land and percentage of families, among others.

¹⁰² Development Research Center (CID, by its Spanish acronym), “Bien-estar y macroeconomía 2002/2006 Crecimiento insuficiente, inequitativo e insostenible” [Well-being and the Macroeconomy 2002/2006 Insufficient, Inequitable, and Unsustainable Growth], Universidad Nacional de Colombia, Bogotá, 2006.

contrary, encourages them to head to urban centers in Colombia or bordering countries.¹⁰³ The study of the Commission for Monitoring Public Policy, quoting Fajardo and Ibáñez and Querubín, states that there was a greater degree of displacement in the departments where there was greater consolidation of land ownership according to the Gini index. This is attributed to the fact that land ownership is used as a means of production but also as a mechanism of political control over territories. (23)

The processes of armed expropriation of land place in question the **legal relationship** between the displaced and their land. They reveal the inability of the political/legal system to preserve land rights and the possibility that these may [not] be recognized, protected, and reestablished in the face of temporary displacement or imminent risk of the same.

Colombian law recognizes the rights of owners that hold property in accordance with the formalities established by law as well as those owners that use and inhabit land as the result of an informal act.¹⁰⁴ Nevertheless, the legal protection offered to all is considerable, as ownership rights are certain rights that have full systems of protection while those of possession are debated rights, with the potential to create ownership rights. When ownership and possession enter into conflict, the prevalence of the former over the latter becomes evident. In any case, rights are violated when the population is forcefully evicted or obligated to sell their rights for a price less than the real cost, through pressure or imminent risk of displacement.

The Colombian State has attempted to regulate this situation since 1995 by initiating a governmental policy intended to counteract the forced displacement phenomenon,¹⁰⁵ which, particularly in the area of land protection, led to the issuance of a series of laws¹⁰⁶ that established, among others, the institutional protection mechanisms to protect a territory with risk of displacement, in which

¹⁰³ Despite the precariousness of the resources with which the Agustín Codazzi Geographic Institute (IGAC) operates – this is the agency responsible for producing the official map and basic cartography for Colombia as well as preparing the national cadastre of real property – it is the primary source of information regarding titling and size of the rural area. Nevertheless, to this precariousness is added the internal armed conflict, the extensive and mountainous geography of the country, and the predominant trend of simple possession without property registration in a high percentage of rural land, which, in the midst of conflict is disadvantageous for the displaced population inasmuch as on one hand it promotes greater consolidation of land, and on the other hand, it allows it to be easily acquired by armed actors and/or interested sectors via apparently legal means in detriment to the assets of the displaced.

¹⁰⁴ An owner is whomever has a title duly recorded in the Public Instrument Registry Office, whether by public deed, judicial decision by which the property has been transferred, or adjudication decision issued by the public agency responsible in the case of uncultivated property.

¹⁰⁵ CONPES document 2804 of 1995.

¹⁰⁶ Among the general laws to counteract forced displacement, Law 387 of 1997 was issued on the subject of land; it establishes the responsibility of the State with regard to the development of policies and adoption of measures for the prevention of displacement. Also issued were decrees 2007 of 2001 and 250 of 2005, through which courses of collective and individual protection of the assets of the displaced were established. (Today these laws must be read in accordance with Law 1152 of 2007, the new Rural Development Statute.)

protection measures were promoted with regard to the sale of real property, seeking to prevent armed actors from forcing the displaced to sell them their land at prices lower than the real cost. Likewise, measures were adopted to safeguard the expectation of becoming owners through possession, recognizing the time spent away from the land due to displacement as if it had been a period of habitation on the territorial product of the dispossession. However, this became insufficient with the extension and worsening of the conflict, and with the passage of the years, the lack of resources, program coverage, policy planning and execution, sensitivity and perception on the part of the population. The displaced population has sought protection alternatives through legal recourse.¹⁰⁷

The Commission for Monitoring Public Policy on Forced Displacement¹⁰⁸ has done an exhaustive review of the public policies on restitution, access, and reparation of land taken from the displaced population, in which it concluded that the policies have varied from mere integration of the displaced population into general social policies of land access, and other measures designed to grant affirmative action within those policies, to provisions that timidly allow reparation operations to be carried out, in the sense of restoring lost assets and compensating losses. (29)

The actions of the State through the Colombian Institute for Rural Development (INCODER, by its Spanish acronym) and the Ministry of Agriculture, particularly on the adjudication of uncultivated land and land subject to extinction of ownership, has been minimal with regard to the magnitude of the dispossession, estimates of which were presented previously. The Monitoring Commission estimates that between 1994 and 2007 a maximum of 147,826 hectares were able to be adjudicated, benefitting the registration of 112,264 families. (35)

The controversy remains active and has had particularly intense stages such as the one that began with the entry into force of the new Rural Development Statute (Law 1152 of 2007) where the relationship between ownership and the displaced is again questioned. The Statute summarizes in a single body the legislative advances on the subject of land and establishes special measures for ownership protection, but in turn it favors the consolidation of land, especially through requirements to access subsidies for the purchase of land, the focus on technological development and investment plans set forth for the rural area, and the absence of specified procedures for restitution.

¹⁰⁷ Since 1994, the decisions of the Constitutional Court of Colombia have been relevant for the protection of the displaced, both administrative court decisions that tend to evaluate the deficiencies of policies and responsible agents, and decisions protecting specific rights such as education, health, work, and housing, among others, that further the promotion and respect of the constitutional rights of these citizens. See decisions: T-227 of 1997, SU-1150 of 2000, T-1635 of 2000, T-258 of 2001, T-327 of 2001, T-1346 of 2001, T-215 of 2002, T-268 of 2003, T-339 of 2003, T-419 of 2003, T-602 of 2003, T-645 of 2003, T-669 of 2003, T-721 of 2003, T-790 of 2003, T-795 of 2003, T-025 of 2004.

¹⁰⁸ This Commission emerged in 2005 as a result of Constitutional Court Decision T-025 of 2004, which reveals the real state of displacement in the country and the insufficiency of public policy on the matter, and the proposal of several sectors and individuals to monitor public policy on forced displacement using result indicators that would allow evaluation of the effectiveness of the rights of the displaced population.

Aggravated Situation of the Indigenous Population and the Afro-Colombian Communities

It is also important to bear in mind the **humanitarian, economic, and social repercussions** that arise for the displaced population from the loss of land. This is especially true with regard to special communities such as the *indigenous* and the *Afro-Colombian* communities that have been dispossessed of their land, the cultural significance of which differs from the economic value and is connected to their world view, traditions, and practices.¹⁰⁹ Data from the Colombian Office of the United Nations High Commissioner for Human Rights shows that the indigenous groups of the Paeces, Wayus, Chancuamos, Koguis, Guahíbos, and Awas have had to confront the impacts of internal armed conflict, particularly in the departments of Magdalena, Caquetá, Cauca, and Chocó, with difficulties primarily in the areas of food, mobility, and health.¹¹⁰ The situation is no different for some communities of African descent, especially those from the department of Chocó, which likewise have had to endure the scourge of displacement, reported representatives of their communities with regard to the dispossession of land, death, and torture of which they have been victims throughout the internal conflict.¹¹¹

Their word view assigns a special relevance to the land as a symbol of life. Its ownership is collective, and in that sense they reject all individual appropriation of it. Thus, it is apparent that in their tradition and culture, land is decisive, the environment and the habitat of the indigenous communities; it secures their existence and survival.¹¹²

For indigenous peoples, territory goes beyond the material and the physical. It is also what connects them to their past and their future; it is the basis of their belonging and identity, the source of their traditions and culture, and in all senses, the basis for their social organization and autonomy. So close is their relationship with the land that these communities are capable of dying for it in the fight to

¹⁰⁹ According to the Human Rights Information System (SISDO), “In spite of the trend for decrease in the rate of indigenous homicides, and in particular, those of their leaders and spiritual authorities, starting in 2003, the figures continue to be disconcerting. In the last three years there have been 519 violent deaths, and between 22,3699 [sic] and 30,000 indigenous persons have been displaced.”

¹¹⁰ Based on the information provided by the UNHCR in 2005, the percentage of displaced indigenous persons reached 8% of the two million inhabitants that it was estimated had suffered displacement in Colombia at that time. Today, however, the figures vary depending on the source. <<http://www.un.org/>>.

¹¹¹ The cases of Jiguamiandó and Curvaradó are among the most complex cases of displacement that the black communities of the country have suffered. Their leaders reported that they underwent approximately 16 continuous displacements, particularly due to lack of guaranteed safety and reestablishment programs. In the case of Cuenca del Río, Cacarica, in Bajo Atrato, approximately 700 families were displaced starting in 1997 as a result of the farming conflict. They were displaced from their land by seizures or illegal purchases; the displacement of approximately 4,000 people was reported, as well as the death and disappearance of approximately 85 people, according to information from the National Movement of Victims of State Crimes, <<http://www.etniasdecolombia.org>>.

¹¹² <<http://www.onic.org.co/pueblos.shtml>>.

free it, because the land also has a spiritual component that unbinds when they are separated from it.¹¹³

Therefore, the impact of displacement on these communities is very worrying. Studies carried out by the National Indigenous Organization of Colombia (ONIC, by its Spanish acronym) warn that fear has increased that 18 indigenous communities of Colombia will disappear due to the violence,¹¹⁴ both for lack of assistance and protection of their rights and traditions, and due to the violent acts of the armed groups that force them to leave the places they have settled, which in turn cause loss of territory, the death of some of their members, and deprivation of food, mobility, and recognition of their cultural identity. Thus, although the Political Constitution of Colombia sets forth that the State recognizes and protects the ethnic and cultural diversity of the Colombian nation (Art. 7), the equality and dignity of all the cultures that live in the country (Art. 70), the officialism of the languages and dialects of the ethnic groups (Art. 10), their political participation (Art. 171 and 176), the administrative and budgetary autonomy of their territorial entities (Art. 286), and their jurisdictional autonomy (Art. 246), these “special” rights are at risk due to lack of assistance, their forced recruitment into illegal groups, and difficulties regarding the application of Convention 169 of the International Labor Organization (ILO) to define the real participation of these communities with regard to prior consultation.¹¹⁵

What Are the Possibilities for Return to the Land?

Focusing on return to a territory also requires evaluating the reasons that led to the forced displacement of peasant, indigenous, and Afro-Colombian populations, and with that, establishing both the possible obstacles to and the conditions that are required for an effective and lasting return. Bearing in mind that the general reason for forced displacement in Colombia is related to internal armed conflict, the growing intensity of this conflict seems to limit return options. The consolidation of land and illegal activities such as drug trafficking, and the kidnapping and weapons trafficking that accompany it, make the possibility of return structurally difficult. Displacement is a strategy that allows the consolidation of land and with it the development of promising illegal crops in the territories where the displaced originate.

¹¹³ The Association of Indigenous Councils of Northern Cauca (ACIN, by its Spanish acronym), reports via a protest article entitled “La Madre Tierra se tiñe una vez más de sangre” [Mother Earth is Stained with Blood Once Again] on the situations of which they are victims in their process of liberating land, on the outskirts of the town of Santander de Quilichao. (Actualidad étnica, July 3, 2008.)

¹¹⁴ Through the ONIC document, presented to the national and international communities regarding the violations of the rights of the indigenous communities of Colombia, between January and May 2008, reference is made to the Guanano, Wiba, Sikuaní, Saliba, Maiben, Masiwuaré, Yamalero, Tsiripo, Yaruro, Amurua, Wipiwi, Eduria, Cofan, Carijona, Guyabero, Bora, Nukak Maku, and Siriano groups.

¹¹⁵ Two of the cases presented by the indigenous communities through the National Indigenous Organization of Colombia (ONIC) with regard to the consultation processes were the construction of the Animas-Nuquí (Chocó) road and the National Hydrocarbon Agency where socialization was intended to be used as a consultation process. <<http://www.onic.org.co>>.

To the extent that there are no state mechanisms capable of providing ongoing safety to the civilian population that inhabits rural areas, citizens are forced to abandon their places of origin in the face of threats, attacks, seizure of towns, armed confrontations, kidnappings, and other activities used by the armed actors of the conflict and by [sic] Any return measure must be framed within the conditions of safety, since real possibilities of return will never be viable if the displaced are not confident that the territory of return is safe.

The Commission for Monitoring Public Policy on Forced Displacement systematized the obstacles that face the land restitution policy. It states that there are real obstacles as far as the limitations that the State has for guaranteeing safety in rural areas and thereby offering conditions of dignity to the resettlements and returns. In contrast, it emphasizes that the legal problems do not just include the titling of uncultivated land, but that experience has shown that the displaced face legal disputes with other displaced persons, with holders and owners, and even with armed groups that remain in material control of property subjected to extinction of ownership.¹¹⁶ (36)

It likewise refers to legal obstacles in which the normative framework and the use that interested groups and armed actors make of it in exercising ownership over territory allows legalization of the dispossession of land rights. The Commission also warns that this trend is worsened by the legislative measures put forward by the National Government through the Ministry of Agriculture, as in the case of the reduction of the term for extraordinary prescription, which allows ownership obtained in bad faith or through the use of violence to be assured. (40-51)

Finally, it mentions the institutional obstacles, which refer to the limitations of the land information systems, as far as the enormous gaps in the cadastres and registry offices, (53) to which it should be added that those files have been the target of the armed actors, who have destroyed them.

What Conditions Will Be Necessary?

Finally, we must highlight that an important advance proposed by the Decision Verification Commission study is its orientation towards the incorporation of the policy of land restitution for the displaced within the environment of the obligations for truth, justice, and State reparation, overcoming with this the mere allusions to the need for general social agrarian reform policies. (62) The authors identify with certainty the dependence between transformations in the structure of land

¹¹⁶ The cases of the Carimagua property in the east of the country and Hacienda Nápoles, ownership of which was taken by the State in 1989 from Pablo Escobar, took place in 2008. Initially these properties were allocated for the resettlement of the displaced population, but later they were awarded to private sector businesses for their management. Cf. López, Cecilia, “Carimagua. Un Modelo Desplazador” [Carimagua: A Displacement Model], July 2008. Quevedo, Norbey and Hugo García, “La ruta de un predio para los desplazados que terminó en manos del sector privado. Rapiña por la hacienda de Pablo Escobar” [The Road of Property for the Displaced that Ended in the Hands of the Private Sector: Theft of Pablo Escobar’s Hacienda], *El Espectador*, June 28, 2008.

ownership and durable solutions to internal displacement, which should materialize in a National Asset Restitution Program (65) that guarantees access to land through reliable information systems, for which they propose a Truth and Land Restitution Commission. In addition, they propose institutional reform that will strengthen the cadastre system as a necessary foundation for any lost asset restitution program (73) and an exhaustive review of the legal system for land. (75)

DURABLE SOLUTIONS FOR THE DISPLACED POPULATION

The ultimate purpose of any public policy related to assistance for a vulnerable population is to guarantee the effective enjoyment of the rights of a population that has been the target of serious human rights violations that have caused its internal displacement and that as an effect of the same has been unjustly limited in the enjoyment of its basic rights, which justifies the existence of affirmative action intended to remedy the situation of vulnerability.

In the case of forced displacement, international law and local public policies have developed this proposal through the consolidation of a situation known as a *durable solution*, this being understood as the state in which an individual or group of people no longer have needs directly related to their displacement, to the extent that they obtain restitution or compensation for their lost property, as well as the creation of an environment that allows them to live under normal social and economic conditions in a sustainable manner, which is verified by effective enjoyment of their human rights. This process is carried out with the return to the place of origin, relocation in the place of reception, or resettlement in a place different from the place of expulsion and reception.¹¹⁷

The roots of conflict are related to the causes of forced displacement and to this extent the generation of durable solutions for the displaced population must become a central topic of discussion within the framework of a peacebuilding initiative.

THE DISPLACED POPULATION, CURRENT CONTEXTS OF ITS SITUATION, AND POSSIBLE SCENARIOS FOR ATTAINING DURABLE SOLUTIONS

The Displaced Population Does Not Wish to Return to its Place of Origin

In the current context of forced displacement in Colombia, the majority of the affected displaced population does not wish to return. This is due to various reasons. In addition to the absence of safe conditions needed for return, the displaced population does not wish to mobilize because the

¹¹⁷ Cf. Guiding Principles on Internal Displacement, Brookings-Bern Project on Internal Displacement and Georgetown University, “When Displacement Ends: A Framework for Durable Solutions,” 2006.

minimum conditions needed for subsistence are absent due to the precarious state of development in the country, the principal setting of forced displacement.

According to the National Verification Survey, carried out by the Commission for Monitoring Public Policy on Forced Displacement, during 2007¹¹⁸ the settlement and mobility preferences of this population broke down in the following manner:

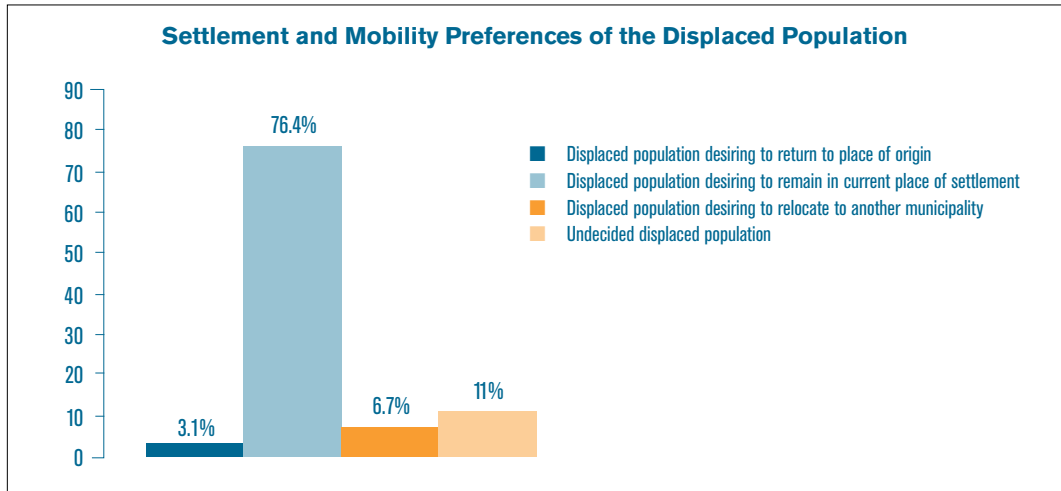


Figure 2

So, 3.1% of the displaced population would like to return to its place of origin, 76.4% would like to remain in its current place of settlement, 6.7% to relocate to another municipality, 2.7% to leave the country, and 11% stated it was undecided.

Considering the above, the creation of durable solutions should be restricted, in terms of the location of the recipients of the actions, to the places of resettlement, which make up 83.1% of the cases, a percentage that does not include those people seeking refuge outside the country or those who are still undecided, but are in fact in resettlement areas. Nevertheless, it is also necessary to consider the return cases that are generated by precarious conditions of access to essential goods and services in places where the displaced population settles, so that faced with impossibility of having a minimum subsistence level, they are forced to return to the setting from which they had to flee, putting their lives and personal integrity at risk.

Then, the coercion measures that affect the wishes of the displaced are of different natures, not only are there direct plans made for a person or group of people to return, but there are also administrative acts or omissions that limit access to basic services, such as repeated cases of exclusion from the

¹¹⁸ Commission for Monitoring Public Policy on Forced Displacement, VI Informe a la Corte Constitucional [IV Report to the Constitutional Court], Bogotá, June 2008.

Single Registry of the Displaced Population (RUPD) without cause, for reasons imputable to the Administration, and for non-compliance with requirements in order to be recorded in the Registry that are not contemplated by law or are disproportionate to the law.¹¹⁹

The Displaced Population Primarily Migrates to Urban Centers, and Therefore Its Resettlement and Social Integration Take Place There

Displacement and its dynamics involve a dramatic and definitive redistribution of the population. Therefore, public policies on the matter of development must address that dynamic, due to the very magnitude of forced displacement. Knowing the intent of the displaced population to remain in places other than those from where they migrated, it is essential to define the characteristics of those places, and therefore, the context in which actions for attaining durable solutions must be developed.

Although the process of expulsion has a higher rate in the rural area of the country, the authorities, associations, and infrastructures in the urban centers assume the obligation of comprehensive assistance, because most people are displaced there. While the highest rates of poverty and indigence are in the country, the fact that the dynamic of displacement uproots rural areas means that the indigence and poverty are moving to urban areas¹²⁰ where the supply of employment and services is scarce.

According to figures from the Social Action registration system, as of June 30, 2008, 48.5% of the displaced population was settled in 33 municipalities of the country, corresponding to the most significant urban centers. If Colombia has 1,120 municipalities, almost half of the displaced population is clumped in 2.94% of them, and they are in turn notably urban. The magnitude of this situation is such that, on average, each principal city of the country has received 37,890 displaced persons.

Cities such as Bogotá and Medellín, which according to the same statistics have the highest levels of displaced population reception in the country, are confronted with the demographic problem of a sudden population increase, aggravated by the fact that the new residents of the city are in a manifestly vulnerable situation. There is an immediate change in the public and private spaces of the urban centers, as well as in the social relationships displayed within the receiving community.

The appropriation of spaces is critical, bearing in mind the reduced possibilities that urban centers have for offering housing solutions, and it generates phenomena such as invasion neighborhoods and the overcrowding of individuals under inhumane conditions.

¹¹⁹ In Decision T-496 of 2007 the Constitutional Court collects cases of displaced persons that have faced difficulties registering in the Single Registry of the Displaced Population (RUPD) due to institutional acts or omissions.

¹²⁰ According to the population census carried out in 2005, 68.2% of those under the poverty line resided in the country.

In the same manner, public spaces intended to cover the needs of a previously calculated citizenry are not prepared to meet the needs of a new population flow with demands for education, health, food, and social welfare services, resulting in violation of human rights. The economic dynamic changes starting with increases in demand for goods and services, and finally, at the level of unemployment, when resources are scarce and there are no prevention and contingency plans for the mass reception of people subject to manifest vulnerability, created by high rates of dependency, low employment rates, and low provision of human capital.¹²¹

The process has direct effects on the public order situation of the receiving areas, where the violence that generated the forced displacement extends in that the armed and unarmed actors involved have well established networks to pursue and act against those that attempt to flee. This is also due to the processes of reception of the individuals by the host community, which resists integration and creates attitudes of rejection towards them with various degrees of violence, particularly because they are coming to compete for the employment, goods, and services of the most disadvantaged in the cities, because they foster begging in the face of lack of opportunity, and because it is feared that the rural internal conflict will be brought into urban areas with their arrival.

As a result, the displaced cannot carry out a complete social integration process, meaning an environment that allows sustainable access to normal social and economic conditions; rather there is segregation,¹²² self-isolation,¹²³ or in the best cases, assimilation¹²⁴ by the receiving community.

CURRENT PERSPECTIVES ON COMPREHENSIVE ASSISTANCE AND REPARATION FOR THE DISPLACED POPULATION

Coordination Measures in the Cities May Be the Key to Attaining Durable solutions

So, as seen previously, large cities are the places where the process of generating durable solutions would develop almost entirely, due to the dynamic of displacement and the difficulties in the return processes taking place due to the aforementioned problems.¹²⁵

¹²¹ National Planning Department, “La población desplazada en Colombia: examen de sus condiciones socioeconómicas y análisis de las políticas actuales” [The Displaced Population in Colombia: Examination of its Socioeconomic Conditions and Analysis of Current Policies], Bogotá, 2007, p. 47.

¹²² For example, the settlements of the displaced population in marginal neighborhoods of Ciudad Bolívar.

¹²³ The most marginalized displaced population, which occupies spaces unfit for human settlement, such as sewers, ditches, or garbage dumps.

¹²⁴ Assimilation can be observed in the simple act of buying from a displaced person who sells sweets at a stoplight; the displaced become part of the city’s scenery, but no attention is paid to their condition of vulnerability.

¹²⁵ Ana María Ibáñez and Andrea Velásquez, “La política pública para atender a la población desplazada: ¿Cuáles deben ser las funciones de las autoridades locales?” [Public Policy for Assistance to the Displaced Population: What Should the Functions of the Local Authorities Be?], Brookings-Bern Project on Internal Displacement, 2008.

The above creates several concerns with respect to the social integration process of the displaced population as it takes place and will take place in settlements that are primarily urban in nature, due to the acceleration of the country to city migratory process as a principal result, among other phenomena, of the displacement dynamic.

The largest cities of the country have incorporated the subject of forced displacement into their development plans, as it is a phenomenon that directly and dramatically affects the configuration of the territorial entities, and furthermore, they have developed their own public policy instruments, starting from their individual contexts.

In this regard, the Office of the Mayor of Bogotá has developed a coordination strategy with the national government, consisting not only of the generation of spaces so state programs may be efficiently provided to the displaced population,¹²⁶ but also of the creation of autonomous assistance plans that complement those national programs.

This is the case of Misión Bogotá, which seeks to create employment solutions; Metrovivienda, which awards additional subsidies for affordable housing, and; Bogotá sin Hambre, which is responsible for attending to the food and nutritional needs of children, the elderly, and handicapped persons. Although the goals of these programs include the entire vulnerable population of the district, they have a special impact on the displaced.

Likewise, in the case of Medellín, it is important to emphasize the agreements that it has entered into as a municipality in the area of financing income-generating projects for the displaced population within the framework of return or relocation processes, outside of those that Social Action, as coordinator of the system, has developed with the IOM and CHF, among others, with national repercussions.

The Displaced Population and Transitional Justice in Colombia

For a future peace process, it is possible to identify some of the principal requests that organizations for the displaced will make. The fundamental policy request is the transformation of the displaced population into a collective that shows **effective enjoyment of the violated rights**. In this regard, they ask for:

1. Compliance with Law 387 of 1997 and Decision T-025/2004

The displaced population does not believe that the National Government has the political will for full compliance with these regulations. Non-compliance, according to the displaced

¹²⁶ This is the case of the Assistance and Orientation Units (UAID).

population,¹²⁷ may be seen in:

- ❖ The permanence of the obstacles to being included in the Single Registry of the Displaced Population (RUPD), as there is an arbitrary interpretation by Social Action (National Government entity) deciding who should be considered as displaced. Reasons for non-inclusion are:
 - Displacements caused by the actions of the Regular Military Forces
 - Displacements caused by fumigation of illegal crops
 - Inclusion of the displaced person in intelligence lists prepared by the Regular Military Forces
 - Displacements caused by paramilitaries in regions where the National Government claims that those organizations have already been demobilized
- ❖ Humanitarian aid for those registered in the RUPD is not timely and is quite limited.
- ❖ Lack of coordination between the public agencies responsible for assistance to the displaced.
- ❖ The displaced population does not participate in the design of public policy for assistance to that population.
- ❖ There are no resources for socioeconomic stabilization.

2. Existence of a State safety policy that guarantees the neutrality of civilians

From the perspective of the displaced population, the safety policy requirement is specified as:

- ❖ Safety is linked to the creation of a territory of Peace, with the presence of accompaniment to ensure return in the short-term.
- ❖ The territories that request safety are those places from where they have been expelled, that is, if the family was working on their farm or in the country, it is there that they expect to return to work and not to the urban perimeter, and, if the family was expelled from the urban perimeter where their sustenance came from, that is where they expect to return and not to the rural perimeter.
- ❖ Safety means that the State disciplinary and criminal investigation institutions and entities will begin the corresponding investigations so that those who have committed human rights violations are investigated, processed, and sanctioned in an exemplary manner.
- ❖ Safety must be understood as social security, that is, as a unit that includes health, education, housing, and recreation.

¹²⁷ Taken from “Informe presentado al Señor Antonio Guterres Alto Comisionado de Naciones Unidas para los refugiados” [Report Presented to Mr. Antonio Guterres, United Nations High Commissioner for Refugees] by the Bogotá Working Group on Internal Displacement. In: Mesa de Trabajo de Bogotá [Bogota Working Group], Bulletin No. 20, July 2007.

3. Application of truth, justice, and reparation within the framework of the Justice and Peace Law

For the displaced population, the demobilization process for armed groups operating outside the law, which is carried out through the procedures prescribed in what is called the Justice and Peace Law (Law 975 of 2005), is a process that does not satisfactorily apply the principles of truth, justice, and reparation.

- ❖ Regarding the right to the TRUTH, displaced communities argue that in the processes there is no public recognition of:
 - The events surrounding the displacement situation
 - The causes of displacement
 - The material and intellectual authors
 - Vested interests at the local level where the displacement was perpetrated
 - Violations of Human Rights and International Humanitarian Law by the State
- ❖ Non-application of the right to JUSTICE is a direct result of the above; that non-application is manifested in:
 - Lack of legal guarantees for those that report the State's illegal actions
 - Impunity in sentencing of the crimes of public officials
 - Unfounded legal accusations regarding members of the community who attempt to report violations
- ❖ In terms of the right to REPARATION, the displaced community considers that it is still far from achieving standards in accordance with those that are set forth in the fifth section of the international Guiding Principles on Internal Displacement adopted by the United Nations Commission on Human Rights (E/CN.4/1998/53/Add.2* February 11, 1998). These are:
 - Economic reparation
 - Symbolic and public reparation
 - Recovery of the collective memory
 - Right to non-repetition of the acts
 - Safe return and return of property
 - Dignifying of the victims

WHAT PROCESSES ARE TAKING PLACE AND HOW CAN THEY BE USED?

Currently two types of processes can be recognized: that of the National Commission for Reparation and Reconciliation, described at the beginning of the document, and some initiatives for grass-roots peacebuilding.

Grass-roots Peacebuilding Initiatives¹²⁸

Grass-roots peacebuilding initiatives can be understood as organizational processes regarding various values, components of peace and democracy, which are generated and laid out by communities or jointly by communities and churches, in the common territory in which they reside. The following stand out as essential elements of grass-roots peace initiatives:

- ❖ Their procedural nature, which refers to collective building over time, not perfect but perfectible.
- ❖ Their organization around the constituent values of peace and democracy, such as defense of life, culture, territory, autonomy or self-determination, the rights to peace, social inclusion, and participation.
- ❖ Their origin and diffusion from the grass roots, embodied by communities, or by communities and churches, which, given their presence and historic accompaniment work in the communities, are part of the same.
- ❖ They are generated and laid out by communities settled in a common territory, that facilitates the emergence, perfectible consolidation, and diffusion of the processes, by expressing a setting of roots, traditions, identities, and shared past.
- ❖ They arise as an organized response and without recourse to weapons, the impact of the armed conflict, and/or various expressions of structural violence.

The models for these initiatives are:

- ❖ In 1980, the Nasa Project emerged in the reservations of Toribio, San Francisco, and Tacueyó of Northern Cauca.
- ❖ In 1982, in Medio Atrato, Chocó, the organizational process of communities of African descent emerged, based on their ethnic recognition, defense of their ancestral lands, their culture, and autonomy; this was known as the Comprehensive Peasant Association of Atrato (ACIA, by its Spanish acronym).
- ❖ In 1987, the first peasant involvement in civil resistance to the violence of armed conflict arose in Santander, Magdalena Medio; it was known as the Association of Peasant Workers of Carare (ATCC, by its Spanish acronym).
- ❖ In 1987, in the municipality and reservation of Jambaló, in Northern Cauca, local involvement known as Proyecto Global emerged, a product of the teachings of the Toribio Nasa Project.
- ❖ In 1994, the involvement in active neutrality of the Antioquia Indigenous Organization (OLA, by its Spanish acronym) was recorded as an expression of civil resistance to the armed conflict.
- ❖ In 1997, peasant involvement in the San José de Apartadó Peace Community emerged.
- ❖ In 1997, in Bajo Atrato, Chocó, involvement of the black community in civil resistance to the

¹²⁸ The following paragraph is taken from the experiences that the Swiss Program for the Promotion of Peace in Colombia (SUIPPCOL, by its Spanish acronym) has conceptualized. (Hernández Delgado, 2004).

armed conflict, known as the San Francisco de Asís Peace Community, emerged; today it is called Bajo Atrato Peace Communities.

- ❖ Also in 1997, involvement in civil resistance to the armed conflict arose in the displaced black communities of Cararica in the municipality of Riosucio, in the Chocó, known as Communities of Self-determination, Life, and Dignity (CAVIDA, by its Spanish acronym).
- ❖ In 1998, the emergence of grass-roots peace initiatives was recorded, with regard to participatory processes that would allow deepening of local democracy, this being the case of the Mogotes Constituent Municipal Assembly, in the department of Santander.
- ❖ In 1998, the process of La María, Piendamó, in Cauca, emerged, representing an indigenous proposal for dialogue between the different social sectors with a view to negotiation of the armed conflict.
- ❖ In 2001, the Tarso Constituent Municipal Assembly emerged in the Antioquian southwest.
- ❖ In November 2001, the indigenous process of the Caldonio Community Resistance became visible in Northern Cauca, as an organized response of the community to an incursion of the insurgency.
- ❖ In March 2001, the emergence of the involvement of the Pensilvania Living Community in the department of Caldas was recorded. The emphasis of this process was the generation of participatory processes with regard to local democracy and development.

The advantages of these types of processes are:

- ❖ They consolidate the population at risk of displacement as a policy subjectivity that has the ability to demand its rights before a relegated population of society on which exceptional and contingency measures are applied.
- ❖ They generate deepening processes for local democracy with policy projects that are autonomous and outside the sphere of armed actors of the conflict.
- ❖ They are a strong symbolic power due to their ability to resist in the midst of conflict.
- ❖ They have been able to exert influence on a local level against legal and illegal armed groups, constructing minimum standards for co-existence and accepting their condition of neutrality in the conflict.

The disadvantages of these types of processes are:

- ❖ The stigmatization that they suffer from all the armed actors of the conflict.¹²⁹

¹²⁹ By defending policies of territorial autonomy, these initiatives oppose the interests of the armed actors, who consider territorial control necessary for the consolidation of their power. The San José de Apartadó Community suffered from a case indicative of stigmatization. Below, the last evidence that community left on said stigmatization is quoted: “The national government, led by the Vice President, on June 17, in Apartadó, again made untrue statements and distorted reality, omitting the truth of the situation for the purpose of covering up and maintaining a normalcy of death that is being lived in Urabá.

“The Vice President made statements that are completely opposite the reality of the facts. He said that in La Holandita (San Josesito, community place) the leaders had the people restrained and oppressed; that

- ❖ The difficulty of access to resources to be able to sustain their processes of political autonomy.
- ❖ The difficulties of making this involvement seen at the national level.
- ❖ By resisting from the conflict areas, the populations are at constant risk and have a high degree of vulnerability.
- ❖ Their initiatives are excluded from the negotiation logic of the soldiers.

Considering all of the above, a possible strategy would be to **make peacebuilding models from grass-roots peace experiences visible through the National Commission for Reparation and Reconciliation.**

WHAT TYPE OF ASSOCIATIONS EXIST WITH REGARD TO THE DISPLACED POPULATION?¹³⁰

The activism of the displaced population has passed through several stages, characterized by the type of actions undertaken, their organizational level, and the impact of such organizations on public policies.

- ❖ A first stage, called “shock” by some – several of those interviewed acknowledged the centrality of the displaced persons movement that took place in Medellín, with regard to the communities that were victims of paramilitary pressure in Chocó, principally in Córdoba and Urabá against the guerrilla. It is the era of seizures, characterized by the use of de facto proceedings as a mechanism of pressure – seizure of the Social Solidarity Network offices, public offices, and international organizations. This strategy had its crowning moment with the seizure, lasting for several years, of the offices of the International Committee of the Red Cross mission in Bogotá, which ended with some State agreements with the displaced that were required by the Constitutional Court to be observed. (Celis, Manrique, Jaramillo)
- ❖ A second period is identified with the State action that made the organization of the displaced into legally constituted groups, with legal representation, that would allow the design of collective assistance programs, a condition for obtaining benefits from the state assistance

the region had changed with democratic security; that the people of the region were involved in the social investment programs, changing the reality of the area; that the armed actors were disappearing. He also said that in 2003 those same leaders of La Holandita did not allow anyone to enter San Josesito, they required people to hide; that not even a glass of water would be given to someone from outside; that in 15 years no mayor had been in San José.

“All of these false statements show that the truth is being hidden for the sole purpose of being able to justify our current situation. We are not surprised by these statements of the national government, which is accustomed to lying for the sole purpose of carrying out acts of terrorism and extermination.” (SAN JOSÉ DE APARTADÓ PEACE COMMUNITY)

¹³⁰ This section is an update of the report submitted by Roberto Vidal to the Brookings-Bern Project on Internal Displacement. (Vidal, 2006)

system. A number of organizations for the displaced were thereby formed throughout the country, by necessity, and they reflected very diverse nuances of the heterogeneous displaced population: regional groups, groups of victims of specific armed actors, party affiliations, places of resettlement, etc. (Manrique)

- ❖ A third period of progressive grouping of the organizations for the displaced, a quite complicated process due to the heterogeneity of the organizations. The national level associations for the displaced are configured in this manner. (Manrique) These national level organizations take on special relevance because they are the largest and most well-known. They are the ones that participate in the spaces provided for by law and are the strongest pressure group for the issue of Decision T-025/2004 by the Constitutional Court.

From 2006 to date, another two stages having to do with the organization of the displaced population seem to have consolidated:

- ❖ First, the constitution of the Commission for Monitoring Public Policy on Forced Displacement, which has the cooperation of a series of national level social organizations and individuals, committed to full and comprehensive application of Decision T-025 of 2004 and the process of building a Social State governed by the Rule of Law for all Colombians. It was established in November 2005, in development of the conclusions of the seminar on forced displacement convened jointly by the Universidad de los Andes, CODHES, Viva la Ciudadanía, and Confluencia por la Democracia. It is made up of former ombudsman and former Constitutional Court judge Eduardo Cifuentes Muñoz, national director of Pastoral Social Monsignor Héctor Fabio Henao, economist Luis Jorge Garay Salamanca, rector of the Universidad Jorge Tadeo Lozano José Fernando Isaza, chairman of the National Indigenous Organization of Colombia Luis Evelis Andrade, journalist and writer Patricia Lara, National University professor Orlando Fals Borda, representative of an Afro-Colombian organization Rosalba Castillo, chairman of the Viva la Ciudadanía corporation Pedro Santana, chairman of CODHES Marco Romero, and the director of the De Justicia corporation and former Constitutional Court judge Rodrigo Uprimny Yepes.

The Monitoring Commission is a civil society initiative that considers that although the principal responsibility for guaranteeing the rights of displaced persons falls on the State, it is necessary to contribute to the development of a culture of social responsibility that allows the traditional practices of discrimination to be overcome and in turn permits the development of principles of solidarity with all Colombians and Colombians who live in a situation of vulnerability caused by armed conflict. (Commission for Monitoring Public Policy on Forced Displacement, 2008)

This collective effort of civil society was intended to establish objective parameters for verifying compliance with the public policies regarding the displaced population, which implies a fundamental awareness about the condition of the subject of rights, a key element for participation of that population in peacebuilding processes.

- ❖ Second, the organizations for the displaced, given the non-compliance of the National Government with their petitions, seem to be returning to the first stage mentioned in this report. On July 31 of this year they attempted to take the 93rd Street Park in Bogotá, a place of recreation for elite groups. That action ended in a negotiation process with the local authorities who invited them to leave peacefully. This action was again carried out, as this report is being written, September 8, with notification that this time the authorities used force and the leader of the protest, Ricardo Jiménez, was arrested by the National Police.

A series of threats, assassinations, and disappearances of leaders of organizations for the displaced also appear to be in response to this second stage. “One of those threatened, Rigoberto Jiménez, a member of the General Coordinating Office for Displaced Persons and one of the organizers of the march that left from Flandes, Tolima, said that throughout the entire journey the leaders of the group were intimidated, and even after their march joined the one from Bogotá, several of their companions were directly threatened in the municipality of Soacha. He also reported that after the march the security measures for 15 leaders of the displaced in the country were withdrawn, himself among them.” (El Espectador, 2008)

WHAT IS THE RELATIONSHIP BETWEEN THE DISPLACED POPULATION AND GROUPS OF OTHER VICTIMS?

What can be verified is that the reparation process implemented by the State for the displaced precedes the process that has been implemented in terms of transitional justice starting with the promulgation of Law 975 of 2005.

Given that this law:

- ❖ Does not set forth a special procedure for the displaced population as victim (as explained above).
- ❖ Assigns the administration of resources to carry out the policy of assistance to the displaced population and the Victims’ Reparation Fund to Social Action, a governmental agency. (Art. 54 of Law 975 of 2005)

The relationship between displaced persons and other groups of victims now tends to respond to resource competition logic more than to political unity logic based on their general condition as victims.

In the opinion of this consultancy, the above is a direct effect of the disarticulation of the political agenda of the displaced population with the processes of transitional justice that are moving forward on Track I.¹³¹

¹³¹ For a more in-depth description of this disarticulation see Uprimny & Saffon, 2007.

HOW CAN THE DISPLACED POPULATION PARTICIPATE IN THE PEACE PROCESSES (TRACKS I – II – III)?

With regard to the transitional justice processes moving forward on Track I, the participation of the displaced population increasingly occupies a place of greater ANTAGONISM. Its constituent policy requests contradict public policy assumptions of the current government with regard to:

- ❖ Compliance with the standards of assistance to the displaced population
- ❖ Democratic Security¹³² Democratic Security Policy - explain
- ❖ Application of the rights to truth, justice, and reparation for victims

With regard to the work being carried out by the National Commission for Reparation and Reconciliation, which has a tripartite composition (Governmental – Civil Society – Victims), the displaced population can position itself as a strategic subject in the vindication of its rights to TRUTH, JUSTICE, and REPARATION, as the Commission is more open to accepting its thoughts and definitions with respect to these rights. The advantage of this strategy consists of taking advantage of the open national space and resources allocated at the national level. That is, it is a strategy tending towards strong visibility of the policy demands of the displaced population without encountering the social stigmatization that this population suffers when it presents itself as a direct antagonist to the national Government.

Another type of strategy consists of deepening the alliances between organizations for the displaced population and grass-roots peace initiatives. The advantage of this strategy consists of strengthening the displaced population as a politically autonomous community with full and effective enjoyment of rights. The difficulty in developing this strategy is that this type of process has been subjected to delegitimization and stigmatization by the National Government, which places the displaced population at risk.

The role of civil society organizations, including the UN, is to commit themselves to being the guarantors of the displaced population's participation in both processes, in the one led by the CNRR and in the grass-roots peace initiatives.

¹³² The policy of defense and democratic security prepared by the Presidency of the Republic and the Ministry of Defense in 2003 proposes recovering and maintaining state control of Colombian territory. In order to achieve this, numbers 88 and 89 of the democratic security policy set forth the need to gradually increase “state presence and authority of the institutions, beginning in those areas that are deemed strategic. Where necessary, the cycle of recovery of territorial control should begin with operations carried out by Law Enforcement units...” When this recovery phase is finished, it is expected that control of the area will be maintained using “units composed of regular soldiers, peasant soldiers, and National Police...” whose duties are to protect the civilian population and preserve conditions of safety. (Ministry of Defense of the Republic of Colombia)

ANNEX VI

CASE STUDIES OF DISPLACEMENT

CAUCA AND NARIÑO: RESISTING DISPLACEMENT

The departments of Cauca and Nariño are located in the southwest of Colombia and include craggy Andean territory as well as low coastal land on the Pacific Ocean. Since the centuries of Spanish colonization, mestizo populations have coexisted with indigenous and black groups.

The southwest of Colombia has historically been the setting of land disputes between groups of settlers (mostly mestizos) and indigenous groups that have defended and reclaimed the reservation territories of colonial origin. In the last decade, territorial conflicts between indigenous and black groups against new agro-industrial projects for biofuels and palm have increased, as have confrontations with groups of coca and poppy growers who seek to control trade routes from the Andes to the sea. The State armed forces and guerrilla and paramilitary armed groups intervene in these conflicts, making the traditional groups of the civilian population living in these territories the target of their attacks.

There is a long tradition of social organization by the indigenous groups in Cauca and Nariño, and since the 1990s, by the black population groups. In 1971, as a result of the indigenous mobilization, the Regional Indigenous Council of Cauca (CRIC) was created, in order to defend the autonomy of indigenous groups, recover their territory, expand the reservations, not pay taxes for use of the land, protect their culture and rights, and fight for ethnic education. In 1994, the Association of Indigenous Councils of Northern Cauca (ACIN) CXAB WALA KIWE (Territory of the Great People) was founded, located in the municipality of Santander de Quilichao, in the north of the department of Cauca. The ACIN brings together 16 indigenous councils and 14 reservations: Toribío, Tacueyó, San Francisco, Corinto, Miranda, Huellas Caloto, Toéz, Jambaló, Munchique los Tigres, Canoas, Delicias, Concepción, Guadualito, Cerro Tijeras, Pueblo Nuevo Ceral, Alto Naya, and the urban council of Santander de Quilichao in seven municipalities: Toribío, Caloto, Miranda, Corinto, Jambaló, Santander de Quilichao, and Suárez. (www.nasaacin.org)

In the last decade, and as a reaction to the same processes of expulsion from territories, attacks on the civilian population, and internal displacement, the Afro-Colombian communities of the Pacific from the departments of Cauca and Nariño have developed civil organization and resistance projects, as is the case of COCOCAUCA (Coordination of Community Councils and Grass-roots Organizations of the Black Population of the Caucan Pacific). These preach neutrality towards

the armed actors, whether they are governmental or operating outside the law, development of mechanisms of organization for the defense of territories, dialogue with the armed actors, and development of mechanisms for seeking the truth, justice, and reparation. They also implement activities in regional, national, and international networks.

Despite the material difficulties, adverse political climate, intensification of the armed conflict, and, in some cases, persecution by the armed actors, the community organizations in the region have been able to unify the people and the social groups and they have fought to maintain the unity of their communities and territories. The national and international visibility that they have attained has permitted them to continue working in the midst of increasingly adverse political conditions, as far as facing various actors that strategically align themselves in order to weaken the organizational capacities of the communities and further their dispossession.

In recent years, pressure from the guerrilla groups has intensified, in particular from the paramilitary groups, with their former designations and with their designations as “emerging groups,” for territorial control of the southwest of Colombia for the purpose of developing both industrial and illegal crops. On the other hand, the community organizations have been confronted by state policies for illegal crop eradication using aerial spraying (fumigation) that have affected the communities and generated internal displacement as well as international migration to neighboring countries. Most recently, indigenous organizations have led strong public confrontations with the departmental government of Cauca seeking the return of usurped territory, the titling of which has been recognized both by the Colombian State and by the Inter-American Court of Human Rights. They held massive indigenous marches to the capital for that purpose and continue their activism for the restoration of their rights.

The experiences described, on the part of the indigenous and Afro-descendant communities in both departments, provide significant examples of local community initiatives that, thanks to their abilities to organize and discuss, have known how to resist displacement and the violation of their rights.

URABÁ, RÍO ATRATO: DISPLACEMENT, PEACE COMMUNITIES, AND RETURN

The territory of Urabá is located in the west of Colombia. To the north, it borders on the Gulf of Urabá in the Atlantic Ocean, to the south with the mountains of Baudó, and to the west with the Pacific Ocean and the mountains of Darién on the border with Panama. This region, with a privileged strategic location, includes territories of the departments of Antioquia in the north and Chocó in the center and the south, and is known as the Bajo Atrato since the Atrato River runs through it from south to north, flowing into the Atlantic Ocean in the Antioquian area.

The communities of northern Bajo Atrato, in the Antioquian area, are made up of settlers from Antioquia and the center of the Atlantic coast who have traditionally carried out ranching, mining, and industrial agriculture projects. The communities of southern Bajo Atrato are principally Afro-descendent and indigenous communities, from an earlier colonization, whose settlements are based on traditional, ecological use of the territory, based on permanent movement by the rivers. (Meza)

Between 1965 and 1985, the dominant economic activity in the area was logging in which the local communities participated, and which included the participation of several Colombian businesses that obtained licenses for exploitation of the timber in territories that had been occupied by traditional indigenous and Afro-Colombian groups and were considered to be unowned land and therefore uncultivated State land. With the exhaustion of the timber resources and the recovery of the ethnic territories by the Afro-descendents and indigenous peoples, the logging industry came to an end and only one company now survives. The spaces opened by the logging industry began to be filled by immigrants from Antioquia and the Atlantic coast looking for territory for ranching. At the end of the 1990s, the conflict between the traditional communities and the new settlers accelerated.

The strategic importance and natural and mining resources of the region have determined the presence of guerrilla groups and particularly the FARC, the EPL, and, to a lesser extent, the ELN, since the 1970s. The EPL entered into a negotiation process in the 1990s; not so the FARC, which has maintained constant military pressure on the region. At the beginning of the 1990s, the consolidation of the Peasant Self-Defense Forces of Córdoba and Urabá (ACCU), which formed the United Self-Defense Forces of Colombia (AUC) in 1997, began to confront the insurgent groups for control of the region. Starting in 1996, the paramilitary groups launched a series of incursions in Río Atrato in order to evict the guerrilla. The communities paid the highest price for the war: threats, murders, massacres, and mass displacements affected thousands of civilians.

The military pressure on the population and the generation of displacement were rapidly associated with feasibility studies that announced construction in the region of a new inter-oceanic canal destined to replace the Panama Canal and with the development of agro-industrial, mining, and electrical interconnection projects, and roads such as the Pan-American, planned to connect the entire continent.

In the midst of the military confrontation between the armed actors and the political and economic pressures on the territories, community organizations were formed – the Peace Communities – led by peasants, supported in their activities by the Diocese of Apartadó, and accompanied by various national and international actors. The cornerstone idea of the Peace Communities project was promotion of the “humanization of the war” by creating “neutral zones” to which the displaced communities could return and live in peace. That complex strategy has involved a high level of collective organization and subscribing to neutrality agreements with regard to armed actors of the conflict, in defense of the integrity of community members, maintaining political control, and protecting their territory.

Since 1994, the indigenous and peasant communities of Urabá have appealed to this proposal, which was the precursor for the creation in 1997 of the San José de Apartadó Peace Communities and the La Balsita Community of Life and Work [Vida y Trabajo] in Dabeiba. To the south, in the Chocó area of Urabá, the Cacarica Communities of Self-Determination, Life, and Dignity [Autodeterminación, Vida y Dignidad] and the San Francisco de Asís, Natividad de María, and Nuestra Señora del Carmen Peace Communities were founded. In the same year, the Punta de Piedra (Villarraga) Peace Communities were created in Turbo and Necoclí.

Some of the largest internal mass displacements in the history of the country took place in 1997 when 48 communities from Bajo Atrato (approximately 10,000 people from Río Cacarica and Riosucio) were displaced and sought refuge in Turbo and Pavarandó. It is also worth recalling that the incursions of the paramilitary groups (and in some cases the complicity and support of law enforcement) caused more than 400 deaths and 300 disappearances. The communities were organized during the displacement process and declared themselves the Communities of Self-Determination, Life, and Dignity (Cacarica) and San Francisco de Asís Peace Communities (Riosucio).

The communities displaced from the banks of the Cacarica and Atrato rivers, which were respectively confined to the Turbo coliseum for four years and in Pavarandó for nearly two years, came to a return agreement with the Colombian government after, at the same time, having talked and negotiated with all the armed actors. Before returning and once they returned to their territories, the communities of Cacarica and Riosucio played a decisive role in obtaining land titles, housing construction, community development, respect for their rights, and the search for the truth, justice, and reparation.

The aforementioned examples illustrate a very important civil society community movement that seeks, through dialogue with all the protagonists of the armed conflict, to protect its members and recover individual and collective rights. The actions of the Peace Communities have had an appreciable degree of effectiveness with regard to the armed actors, who despite their commitments, have not stopped harassing the organizations, threatening and murdering their members as means of pressure to achieve their dissolution. The Colombian state, for its part, has called for abandonment of the peace community agreements, stating that it is not possible for a civil society group to declare neutrality with regard to legitimate State law enforcement.

The experience of the Urabá Peace Communities, despite all their difficulties and limitations, remains to date a significant model for the defense of the rights of the civilian population and the displaced in particular. This initiative also constitutes an example of very important local peace promotion in the recent history of the Colombian armed conflict.



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