

ANNEXES¹

¹ The texts in these annexes are unofficial translations commissioned by the Brookings-Bern Project on Internal Displacement for informational purposes only.

ANNEX 1

Colombian Constitutional Court, Decision T-025 of 2004¹

**Republic of Colombia
Constitutional Court
Third Review Chamber**

Decision No. T-025 of 2004

(...) *Tutela* action presented by Abel Antonio Jaramillo, Adela Polanía Montaña, Agripina María Nuñez and others against the Social Solidarity Network (*Red de Solidaridad Social*), the Administrative Department of the Presidency of the Republic (*Departamento Administrativo de la Presidencia de la República*), the Ministry of Public Finance (*Ministerio de Hacienda y Crédito Público*), the Ministry of Social Protection (*Ministerio de la Protección Social*), the Ministry of Agriculture, the Ministry of Education, the National Institute for Urban Reform (*INURBE*), the Colombian Institute for Agrarian Reform (*INCORA*), the National Learning Service (*SENA*), and others.

Manuel José Cepeda Espinosa, J.

Bogotá, D.C., 22 January, 2004

The Third Review Chamber of the Constitutional Court, composed of Justices Manuel José Cepeda Espinosa, Jaime Córdoba Triviño and Rodrigo Escobar Gil, exercising its constitutional and legal powers, has adopted the following

¹ This text is an unofficial translation commissioned by the Brookings-Bern Project on Internal Displacement for informational purposes only.

JUDGMENT

BACKGROUND FACTS

108 dossiers were accumulated to dossier No. T-653010, which correspond to a similar number of *tutela* actions filed by 1150 family groups, all of them belonging to the internally displaced population, with an average of 4 persons per family, and primarily composed of women providers, elderly persons and minors, as well as a number of indigenous persons. (...)

Given the large number of dossiers which have been accumulated for decision in the present proceedings, and the fact that the *tutela* actions under review refer to common problems with regard to the assistance provided by different authorities to internally displaced persons, a brief summary of the facts and elements that gave rise to these *tutela* actions is presented in the following pages. The details of each case are to be found in Annex 1 of this decision.

The plaintiffs are currently located in (...) departmental capitals and municipalities (...). They are persons who became victims of forced internal displacement because of events that took place, on average, over one and a half years ago; most of them received some type of emergency humanitarian aid during the three months that followed their displacement, but such aid did not reach everyone and it was neither always timely nor complete.

The plaintiffs filed *tutela* actions against (...) several municipal and departmental administrations, considering that such authorities were not complying with their mission of protecting the displaced population, and because of the lack of an effective response to their petitions in the fields of housing, access to productive projects, healthcare, education and humanitarian aid.

Some of the plaintiffs have not yet received humanitarian aid, in spite of being registered in the Central Registry for the Displaced Population (*Registro Único de Población Desplazada*). In many cases, a long period has gone by (between six months and two years) without receiving any type of aid from the Social Solidarity Network (*Red de Solidaridad Social*), nor from the other entities in charge of assisting the displaced population.

Most of the plaintiffs have not received adequate guidance in order to obtain access to the programs for assisting displaced persons (...). Displaced persons are frequently forced to undergo an institutional pilgrimage, without receiving an effective response.

An important group of plaintiffs filed requests to gain access to housing aid, and to obtain the starting capital or the necessary training to undertake a productive project, but months after filing their requests, they have not received a substantial response to their petitions. On several occasions, the entities only responded after the *tutela* lawsuit had been filed. In other cases, responses are limited to informing them that there are insufficient budgetary allocations to attend their requests, and that in addition, their requests shall be attended in accordance with the order established by the entity, without clarifying for how long they will have to wait. Waiting periods have been extended for up to two years. Responses (...) are given in a unified format that describes, in general terms, the components of aid for displaced persons, but they very seldom respond in a substantial manner to the displaced persons' requests. Given the lack of adequate guidance, many of the plaintiffs requested aid for housing or productive projects without following the formal procedures, for which reason the aid was denied, thus leading them to begin the procedure all over again. (...)

The different requests filed by the plaintiffs with the entities in charge of assisting the displaced population have been responded through one of the following answers, invoked as justifications to deny the benefits that they were seeking:

1.) That the entity before which the petition has been filed has no powers to grant the requested aid, because it is solely in charge of some aspect of coordination;

2.) That there are insufficient funds in the budget to attend the request;

3.) That emergency humanitarian aid is only granted for three months, and in exceptional cases it can be renewed for up to another three months, but that after such imperative term, it is impossible to renew the aid, regardless of the displaced person's factual situation;

4.) That the requested aid may not be granted because the person is not included in the Central Registry for the Displaced Population;

5.) That the entity in charge of attending the request is undergoing liquidation procedures;

6.) That there is a mistake in the request, or that the petitioner has not yet presented him/herself as a candidate to obtain housing aid;

7.) That the housing aid program is suspended on account of insufficient budgetary allocations;

8.) That requests will be responded strictly in their order of presentation, provided that there are sufficient funds in the budget;

9.) That the housing aid policy was modified by the government and transformed into a credit policy for social welfare housing, and a new request must be filed with the entities in charge of approving the credits;

10.) That the only way of gaining access to aid for economic re-establishment is by presenting a productive project, even though other forms of re-establishment have been created by the relevant legislation.

For the above reasons, the plaintiffs filed *tutela* lawsuits with one or more of the following petitions:

1.) That their requests should be responded in a substantial manner, and within clear and specific periods;

2.) That governmental aid for economic stabilization, housing, relocation, productive projects and access to education for their children should actually materialize;

3.) That the lands that displaced persons held in possession or in property and were abandoned should be protected;

4.) That they should receive, or continue receiving emergency humanitarian aid;

5.) That they should be recognized as displaced persons and obtain the benefits arising from such condition;

6.) That a food security program should be adopted;

7.) That the prescribed medicines should be provided;

8.) That one of the persons registered as part of a family group should be unaffiliated from it and allowed to continue receiving humanitarian aid as [the head of] another family group;

9.) That the budgetary allocations needed to solve the situation of the displaced population should be made, and that the programs to aid displaced persons should become effective;

10.) That the Ministry of Public Finance should disburse the funds required to implement the housing and productive projects programs;

11.) That internally displaced persons should be able to receive training for the development of productive projects;

12.) That the legal representative of the Social Solidarity Network should be warned that whenever he fails to comply with his responsibilities towards displaced persons, he incurs in disciplinary misconduct;

13.) That the Municipal Committees for comprehensive assistance to displaced persons should be established;

14.) That the provision of healthcare services, denied since the moment of adoption of Memorandum 00042 of 2002—which conditioned the provision of such aid to the fact that the health problems to be attended be inherent to displacement—should be re-established;

15.) That the territorial entities, within the limits of their budgets, should contribute to the housing aid plans for the displaced population.

2. The decisions under review

(...) Most of the judges whose decisions are under review refused to grant the *tutela* actions filed by the plaintiffs, for one or more of the following reasons:

1. In regards to petitioners' legal standing to file *tutela* actions, judges denied granting the *tutela* (i) because plaintiffs' associations have no legal standing to file *tutela* actions for the protection of the rights of the displaced population; (ii) because the plaintiff was not a lawyer with the power to represent the displaced population by filing the lawsuit; (iii) because the person who filed the *tutela* lawsuit did not prove that he/she was the legal representative of an association of displaced population.

2. Non-admissibility of the *tutela* action was invoked by the judges to refuse granting the *tutela*: (i) because (...) a different action should be filed [*acción de cumplimiento*]; (ii) because the *tutela* action was not created as a mechanism to alter the order of State institutions, in regards to the internal distribution of their jurisdiction and functions; (iii) because the petition should have been previously addressed to the Social Solidarity Network (...); (iv) because housing is a second generation right which may not be protected by means of *tutela* actions; (v) because the plaintiff's registration as a displaced person had already been recognized, and instructions had been given to register the corresponding family group and to request the benefits to which they were entitled; (vi) because *tutela* actions cannot become means to vary the order in which benefits are granted, given that this would violate the rights of the displaced persons who have not filed *tutela* lawsuits and are waiting for their turn, which must be respected.

3. Judges invoked deficiencies in the evidentiary requirements fulfilled by the plaintiffs to refuse to grant the *tutela*: (i) because they did not prove, in a concrete manner, the violation of fundamental rights by an arbitrary conduct of the authorities; (ii) because it was not proven that the relevant entity had failed to comply with its responsibilities without a justified cause; (iii) because the plaintiff did not demonstrate any act attributable to the respondent; (iv) because the plaintiff's situation did not fit the definition of "internally displaced person"; (v) because the plaintiff did not prove that his/her fundamental rights had been violated by the respondent entities; (vi) because there was no proof of sufficient links between the right to housing and a fundamental right.

4. Judges denied the *tutela* invoking an absence of violation of rights: (i) because the plaintiff filed an individual project format with the respondent entity, and not a formal petition, thus failing to comply with the requirements of Article 5 of the Administrative Code (*Código Contencioso Administrativo*); (ii) because having failed to request access to housing aid, no violation of his/her rights could be invoked; (iii) because displaced persons have already been granted the minimum aid established in the law; (iv) because the facts that caused the displacement happened two or four years before, and not on a recent date; (v) because the Social Solidarity Network acted in accordance with the legislation in force for the protection of displaced persons; (vi) because the Social Solidarity Network cannot protect persons outside of its sphere of jurisdiction; (vii) because a very short time had elapsed (less than a month) since the plaintiff's registration as a displaced person, making it

impossible to conclude that the entities in charge of granting emergency humanitarian aid had failed to comply with their responsibility; (viii) because the Network's tardiness in responding was justified by an excess of work, and because it could not give a substantial response approving the project because it was not within its jurisdiction to do so; (iv) because the mere condition of internal displacement does not grant persons an automatic right to subsidies; (x) because INURBE's refusal did not preclude the presentation of future requests for aid, given that the plaintiffs had been classified as eligible persons; (xi) because the plaintiffs had already been registered as potential recipients of housing subsidies and sustainability projects, and it was only necessary to wait for the finalization of the procedures; (xii) because the plaintiff did not prove that he had taken the necessary steps to obtain a housing subsidy or support for a productive project.

5. Judges denied the *tutela* invoking the alleged existence of an abuse in the exercise of procedural rights²: (i) because the displaced person had already received the requested aid as part of another family group which had filed a *tutela* lawsuit in order to obtain it; (ii) because another *tutela* lawsuit filed by the plaintiffs on account of the same facts and against the same respondents was pending review by the Constitutional Court.

6. Judges denied the *tutela* invoking the limitations on the possible orders that may be issued through *tutela* proceedings to protect displaced persons: (i) because it was necessary to wait for the State entities to have enough resources to facilitate housing subsidies, in accordance with the number of requests filed to obtain such benefit; (ii) because there are other displaced persons who have not even received first-level humanitarian aid; (iii) because even though there is a lack of coordination between the relevant entities, the Social Solidarity Network may not carry out functions which have been assigned to other authorities; (iv) because it is not possible to order, through *tutela* proceedings, that the relevant authorities comply with education, housing, food or work programs, nor to disburse money to provide the Social Solidarity Network with resources; (v) because budget limitations may not be overcome through *tutela* proceedings; (vi) because *tutela* judges cannot decide about public expenditure, nor become co-administrators of the Executive's activities or policies; (vii) because *tutela* proceedings cannot be used to alter the legal order of assignation of subsidies, without the relevant administrative acts

² "Temeridad"

adopted by the INURBE; (viii) because *tutela* judges cannot order public authorities to carry out acts for which they lack the necessary resources.

Some of the judges granted the *tutela* actions for the protection of the rights of the displaced population, holding—among other reasons—that in a Social State grounded on the rule of law (*Estado Social de Derecho*) it is necessary to arrive at a final solution to the problem of displacement, and because the omissions of the Social Solidarity Network and other entities in charge of assisting the displaced population reveal a violation of the constitutional safeguards to which the plaintiffs are entitled.

(...)

III. CONSIDERATIONS AND LEGAL GROUNDS FOR THE DECISION.

(...) 2. Legal issues to be solved; summary of the arguments and the decision.

(...) this Chamber considers that the case under review poses several complex constitutional legal issues, related to the contents, scope and limitations of the State policy for assisting the displaced population, due—*inter alia*—to (i) the serious situation of vulnerability that affects the displaced population; (ii) the problems that internally displaced persons have to face because of the way that their requests are being attended by the respondent authorities; (iii) the excessively long period of time that has gone by without receiving the legally established aid; (iv) the very high number of *tutela* lawsuits filed by displaced persons to obtain the effective aid to which they are entitled, and the fact that many entities have transformed the filing of a *tutela* lawsuit into a part of the ordinary procedure that has to be followed to obtain the requested aid; (v) the fact that the situation that needs to be solved through the present *tutela* proceedings affects the entire displaced population, wherever they may be currently located, and regardless of whether they have resorted to the *tutela* action in order to obtain effective protection of their rights; (vi) the fact that most of the problems posed have taken place repetitively since the creation of the policy for assisting the displaced population; and (vii) the fact that some of the problems faced by displaced persons are going to be examined for the first time by the Court.

2.1. Legal issues.

1. Is the *tutela* action an appropriate channel to examine the actions and omissions of public authorities in regards to the comprehensive assistance of the displaced population, so as to determine whether problems in the design, implementation, evaluation and follow-up of the corresponding State policy contribute, in a constitutionally relevant way, to the violation of displaced persons' fundamental constitutional rights?

2. Are the rights of the displaced population to a minimum subsistence income and to receive a prompt answer to their petitions violated (...) when such access is conditioned by the authorities themselves (i) to the existence of resources which have not been allocated by the State; (ii) to the redesign of the instrument that determines the form, scope and procedure for access to aid; (iii) to the definition of which entity will be in charge of providing aid (...)?

3. Were the rights of petition, work, minimum subsistence income, dignified housing, healthcare and access to education of the plaintiffs in this case violated, given that the entities in charge of providing the legally established aid (i) failed to respond in a substantial, concrete and precise manner about the aid that is being requested; or (ii) refused to grant the requested aid (a) because of the lack of sufficient funds or resources in the budget to attend the requests; (b) because of failure to comply with the legal requirements to access such aid; (c) because of the existence of a list of requests which must be attended previously; (d) because of the lack of jurisdiction of the entity before which requests are presented; (e) because of a change in the requirements and conditions defined by the Legislator to have access to the requested aid; (f) because the entity before which the request is presented is currently undergoing liquidation procedures?

In order to resolve these issues, the Chamber will start by summarizing its doctrine on the rights of the displaced population, with a threefold objective: (i) to recall the main constitutional rights of persons in a situation of forced internal displacement (section 5.1.), indicating the Guiding Principles on Forced Internal Displacement which are pertinent for their interpretation; (ii) to highlight the gravity of the situation of the displaced population and the persistence of the violations of their rights, which have led to the presentation of *tutela* lawsuits (section 5.2.); and (iii) to clarify the type of orders which have been issued by the Court up to this date to protect the rights of the displaced population (section 5.3.). Secondly, the Court will examine the State response to the phenomenon of

internal displacement (section 6.1.), the results of that policy (section 6.2.) and the most salient problems of the existing public policy and its different components (section 6.3.). Thirdly, the Court shall analyze the insufficiency of available resources and its impact upon the implementation of the public policy (section 6.3.2.). Fourth, the Court shall verify whether such actions and omissions amount to an unconstitutional state of affairs (section 7). Fifth, the Court shall indicate the authorities' constitutional duties in regards to human rights obligations with a positive content, even in regards to rights such as life and security (section 8). Sixth, the Court shall determine the minimum levels of protection that must be guaranteed to the displaced population, even after a redefinition of priorities on account of the insufficiency of resources or of the deficiencies in institutional capacity (section 9). Finally, the Court shall impart orders regarding the actions that must be adopted by the different authorities to protect the rights of the displaced population (section 10).

(...) In addition, given that many of the *tutela* lawsuits which have been accumulated in the present proceedings were filed by associations of displaced persons, the Chamber must previously determine whether such associations of displaced persons have legal standing to file *tutela* actions on behalf of their associates, even though the latter have not given them specific powers to do so and their representative does not have the status of judicial attorney (section 3).

It is also necessary to examine the alleged existence of abuse in the exercise of procedural rights³ in the presentation of some of the *tutela* actions accumulated to the present proceedings, in two factual hypotheses: (1) whenever *tutela* actions that were presented individually had already been filed by an association of displaced persons, on account of the same facts and against the same entities; and (2) whenever *tutela* actions were presented by one of the members of a family group, who became separated from such group in order to form his/her own family group and requests, through a *tutela* lawsuit, access to any of the types of aid to which displaced persons are entitled, even though the family group with which he/she was initially registered had already obtained a similar aid (section 4).

³ “*Temeridad*”

2.2. Summary of the arguments and the decision.

In deciding on the *tutela* actions under review, the Third Review Chamber of the Court concludes that, given the conditions of extreme vulnerability of the displaced population, as well as the repeated omission by the different authorities in charge of their assistance to grant timely and effective protection, the rights of the plaintiffs in the present proceedings—and of the displaced population in general—to a dignified life, personal integrity, equality, petition, work, health, social security, education, minimum subsistence income and special protection for elderly persons, women providers and children, have all been violated (sections 5 and 6). These violations have been taking place in a massive, protracted and reiterative manner, and they are not attributable to a single authority, but are rather derived from a structural problem that affects the entire assistance policy designed by the State, as well as its different components, on account of the insufficiency of the resources allocated to finance such policy, and the precarious institutional capacity to implement it (section 6.3.). This situation gives rise to an unconstitutional state of affairs, which shall be formally declared in this judgment (section 7 and paragraph 1 of the final decision).

Even though in 2003 the number of new displaced persons decreased, and that the authorities have identified the urgency of adequately attending the situation of the displaced population, designed a policy for its protection and developed multiple instruments for its execution, the actions which have effectively been adopted by the authorities to guarantee the rights of the displaced population (section 6.1. and 6.2.) and the resources which have effectively been allocated to protect these rights (section 6.3.2.), are not in accordance with the provisions of Law 387 of 1997, which developed the constitutional rights of displaced persons (...).

Indeed, even though social expenditure and expenditure for assisting the marginalized population are regarded as priority types of expenditure, and even though there exists a State policy for assisting the displaced population, the authorities in charge of securing the sufficiency of these resources have omitted, in a repetitive manner, to adopt the necessary corrective measures so as to ensure that the level of protection defined by the Legislator and developed by the Executive is effectively attained.

Said violation is not attributable to a single entity; rather, all of the national and territorial authorities that hold diverse responsibilities in assisting the displaced population have allowed it to continue by their

actions or omissions and in some cases, they have allowed the violation of the fundamental rights of displaced persons to become worse.

The formal declaration of an unconstitutional state of affairs (section 7) entails, as a consequence, that the national and territorial entities in charge of assisting the displaced population must adjust their activities in such a way that they are able to achieve harmony between the commitments they have acquired to comply with constitutional and legal mandates, and the resources allocated to secure the effective enjoyment of displaced persons' rights. This decision respects the priorities fixed by the Legislator and the Executive, as well as the expertise of the responsible national and territorial authorities, which have defined the level of their own commitments, but it also demands that they adopt, as soon as possible, the corrective measures required to solve such unconstitutional state of affairs (...).

[The] minimum level of protection that must be guaranteed in an effective and timely manner (...) implies (i) that the essential nucleus of the constitutional fundamental rights of displaced persons may not be threatened in any case, and (ii) that the State must satisfy its minimum positive duties in relation to the rights to life, dignity, integrity -physical, psychological and moral-, family unity, the provision of urgent and basic health care, the protection from discriminatory practices based on the condition of displacement, and the right to education of displaced children under fifteen years of age.

In regards to the provision of support for the socio-economic stabilization of persons in conditions of displacement, the State's minimum duty is that of identifying, in a precise manner and with the full participation of the interested person, the specific circumstances of his or her individual and family situation, his or her immediate place of origin, and the alternatives of dignified subsistence available to him or her, with the aim of defining that person's concrete possibilities of undertaking a reasonable project for individual economic stabilization, or of participating in a productive manner in a collective project, for the purpose of generating income which may allow him or her, and any dependent displaced relatives, an autonomous livelihood.

Finally, in regards to the right to return and re-establishment, authorities' minimum duty is that of (i) not imposing coercive measures to force persons to return to their places of origin or to re-establish themselves elsewhere, (ii) not preventing displaced persons from returning

to their habitual place of residence or re-establishing themselves elsewhere; (iii) providing the necessary information about the security conditions that exist at the place where they will return, and about the responsibilities that the State shall assume in the fields of security and socio-economic assistance in order to guarantee a safe and dignified return; (iv) refraining from promoting return or re-establishment whenever such decisions imply exposing displaced persons to a risk for their lives or personal integrity, and (v) providing the support required to secure that return is carried out in safe conditions, and that those who return are able to generate income which can provide them autonomous livelihoods.

The Court shall grant the National Council for Comprehensive Assistance to the Population Displaced by Violence a period of two months to define the level of resources which will be effectively destined to fulfill the obligations assumed by the State, regardless of the duty to protect, in a timely and efficient manner, the aforementioned minimum rights. In case it is necessary to re-define priorities and modify any aspects of the State's policy in order to comply with this mandate, said Council shall be granted a term of one year for that purpose (...).

In order to protect the rights of the plaintiffs, the Court shall also order the issuance of substantial, complete and timely responses to the requests for assistance that gave rise to the present lawsuit (...).

3. The legal standing of displaced persons' associations to file *tutela* lawsuits for the protection of their members' rights.

(...) Given the conditions of extreme vulnerability of the displaced population, not just because of the fact of displacement in itself, but also because in most of the cases they are persons to whom the Constitution grants special protection—such as women providers, minors, ethnic minorities and elderly persons—, imposing a requirement of filing *tutela* actions for the protection of their rights, either directly or through lawyers, is excessively burdensome for them.

For this reason, the associations of displaced persons, which have been created for the purpose of supporting the displaced population in the defense of its rights, can procure *ex officio* the rights of displaced persons⁴. However, in order to avoid distortions of the *tutela* action through this means, as well as the promotion of collective *tutela* lawsuits without their

⁴ “*Agente oficioso*”

members' consent or the use of this instrument to disregard the rules that proscribe abuse in the exercise of procedural rights⁵, such possibility must be exercised under conditions which simultaneously guarantee access to justice by the displaced population and prevent possible abuses. Therefore, such organizations shall have *ius standi* to file *tutela* actions on behalf of their members, under the following conditions: (1) that it is their legal representative who does so, duly proving their existence and representation during the *tutela* proceedings; (2) that the names of the members of the association in favor of which the *tutela* action is filed are duly individualized, through a list or a written document; and (3) that the evidence contained in the process does not allow inference of the fact that the displaced person does not want a *tutela* action to be filed on his or her behalf. (...)

Therefore, the judges whose decisions are under review should not have refused to consider and give due course to the *tutela* actions filed by these associations on behalf of the displaced persons, on the grounds of excessively formal interpretations that disregard the informal nature of the *tutela* action and the lack of protection that affects thousands of Colombians, without examining in each concrete case whether these three requirements had been complied with. (...)

5. The constitutional case-law related to the violation of the rights of the displaced population. Orders issued to protect its constitutional rights, and persistence of the patterns of violation of such rights.

(...) Since 1997, when the Court dealt with the extremely serious situation of displaced persons in Colombia for the first time, 17 judgments have been adopted by the Court to protect one or more of the following rights: (i) on 3 occasions, to protect the displaced population from acts of discrimination; (ii) on 5 occasions, to protect life and personal integrity; (iii) on 6 occasions, to guarantee effective access to health care services; (iv) on 5 occasions, to protect the right to a minimum subsistence income⁶, securing access to programs for economic re-establishment; (v) on 2 occasions, to protect the right to housing; (vi) in one case, to protect freedom of movement; (vii) on 9 occasions to guarantee access to the right to education; (viii) in 3 cases to protect the rights of children; (ix) in 2 cases to protect the right to choose their place of residence; (x) in 2 opportunities to protect the right to free development of their personality;

⁵ “*Temeridad*”

⁶ “*Mínimo vital*”

(xi) on 3 occasions to protect the right to work; (xii) in 3 cases to secure access to emergency humanitarian aid; (xiii) in 3 cases to protect the right of petition, related to requests for access to any of the programs for assisting the displaced population; and (xiv) on 7 occasions to prevent the use of the requirement of being registered as a displaced person as an obstacle for access to aid programs.

In spite of the importance of the Court's case-law on forced displacement, this section does not have the purpose of making an exhaustive review of the Court's doctrine on the issue, but rather, firstly, to determine the scope of the rights of the displaced population which have been protected by this Court, bearing in mind both the constitutional and legal framework, and the interpretation of the scope of said rights that was summarized in the 1998 international document entitled "Guiding Principles on Forced Internal Displacement"⁷. (...) In the second place, the purpose of this section is to identify the type of issues which have been resolved by the Court, and to determine the type of orders which have been issued up to this date to address the problem. (...)

5.2. Seriousness of the phenomenon of internal displacement, on account of the constitutional rights which are violated and the frequency of such violations.

The problem of forced internal displacement in Colombia, whose current dynamics began in the eighties decade, affects large masses of the population. The situation is so worrying, that on different occasions the Constitutional Court has described it as (a) "a problem of humanity that must be jointly addressed by all persons, starting, logically, by State officers"⁸; (b) "a true state of social emergency", "a national tragedy (...)" and "a serious danger for the Colombian political society"⁹; and, more recently, as (c) an "unconstitutional state of affairs", which "runs counter to the rationality that underlies constitutionalism", in causing an "evident tension between the pretense of political organization and the prolific declaration of values, principles and rights contained in the Fundamental

⁷ United Nations, Document E/CN.4/1998/53/Add.2, February 11, 1998. Report by the Special Representative of the UN Secretary-General on Internal Displacements, Francis Deng.

⁸ Colombian Constitutional Court, Decision T-227 of 1997, per Justice Alejandro Martínez Caballero (...).

⁹ The three expressions were used in Colombian Constitutional Court, Decision SU-1150 of 2000, per Justice Eduardo Cifuentes Muñoz.

Text, and the daily, tragic verification of the exclusion of millions of Colombians from this agreement”¹⁰.

This Court has also underscored that, because of the circumstances that surround internal displacement, those people who are forced to “suddenly abandon their place of residence and their habitual economic activities, having to migrate to another place within the frontiers of the national territory”¹¹ so as to flee from the violence generated by the internal armed conflict and the systematic violation of human rights or international humanitarian law—largely women providers, children and elderly persons—, are exposed to a much higher level of vulnerability, which implies a serious, massive and systematic violation of their fundamental rights¹² and, therefore, merits granting special attention by the authorities (...). In that sense, the Court has pointed out “the need to balance the State’s political agenda towards the solution of internal displacement, and the duty to grant it priority over several different topics within the public agenda”¹³ (...).

Among the fundamental constitutional rights which are threatened or violated by situations of forced displacement, this Court’s case-law has pointed out the following:

1. The right to life in dignified conditions, given (i) the sub-human conditions associated to their mobilization and their stay at their provisional place of arrival, and (ii) the frequent risks that directly threaten their survival. The Guiding Principles on Forced Internal Displacement which contribute to the interpretation of this right in the context of forced internal displacement are Principles 1, 8, 10 and 13, which refer, *inter alia*, to protection against genocide, summary executions and practices that violate international humanitarian law which might place the life of the displaced population at risk.

2. The rights of children, women providers, persons with disabilities and elderly persons, and other specially protected groups, “on account of

¹⁰ The three expressions were used in Colombian Constitutional Court, Decision T-215 of 2002, per Justice Jaime Córdoba Triviño.

¹¹ Colombian Constitutional Court, Decision T-1346 of 2001, per Justice Rodrigo Escobar Gil. (...)

¹² See, among others, Colombian Constitutional Court, Decision T-419 of 2003, SU-1150 of 2000.

¹³ Colombian Constitutional Court, Decision T-215 of 2002, per Justice Jaime Córdoba Triviño.

the precarious conditions that must be faced by those who are forced to displace themselves”¹⁴. The interpretation of these rights must be carried out in accordance with the content of Principles 2, 4 and 9, on special protection for certain groups of displaced persons.

3. The right to choose their place of residence, insofar as, in order to escape from the risk that threatens their life and personal integrity, displaced persons are forced to flee their habitual place of residence and work¹⁵. Principles 5, 6, 7, 14 and 15 contribute to the interpretation of this right, in particular to determine the practices which are forbidden by international law because they entail a coercion towards the displacement of persons, or their confinement in places which they cannot leave freely.

4. The rights to freely develop their personalities, to freedom of expression and association, “given the climate of intimidation that precedes displacements”¹⁶, and the consequences borne by such migrations over the materialization of the affected persons’ life projects, which must necessarily adapt to their new circumstances of dispossession. Principles 1 and 8 are pertinent for the interpretation of these rights in the context of forced internal displacement.

5. Given the features of displacement, the economic, social and cultural rights of those who suffer it are strongly affected¹⁷. The minimum scope of these rights has been interpreted in accordance with Principles 3, 18, 19, and 23 through 27, which refer to the conditions to secure dignified living standards, and access to education, healthcare, work, among other rights.

6. In no few cases, displacement entails a separation of the affected families, thus violating their members’ right to family unity¹⁸ and to comprehensive protection of the family¹⁹. Principles 16 and 17 are aimed,

¹⁴ See, for example, Colombian Constitutional Court, Decision sT-215 of 2002, per Justice Jaime Córdoba Triviño (...), T-419 of 2003, per Justice Alfredo Beltrán Sierra (...).

¹⁵ See, for example, Colombian Constitutional Court, Decision T-227 of 1997, per justice Alejandro Martínez Caballero (...).

¹⁶ Colombian Constitutional Court, Decision SU-1150 of 2000

¹⁷ See, for example, Colombian Constitutional Court, Decision T-098 of 2002, per Justice Marco Gerardo Monroy Cabra (...).

¹⁸ Colombian Constitutional Court, Decision SU-1150 of 2000

¹⁹ Colombian Constitutional Court, Decision T-1635 of 2000.

among other purposes, at determining the scope of the right to family reunification.

7. The right to health, in connection with the right to life, not only because displaced persons' access to essential healthcare services is substantially hampered by the fact of displacement, but because the deplorable living conditions they are forced to accept bear a very high potential to undermine their state of health, or aggravate their pre-existing illnesses, wounds or ailments²⁰. Principles 1, 2 and 19 determine the scope of this right in the context of forced internal displacement.

8. The right to personal integrity²¹, which is threatened both by the risks that threaten the health of displaced persons, and by the high risk of attacks to which they are exposed because of their condition of dispossession²². Guiding Principles 5, 6 and 11 refer to this right.

9. The right to personal security²³, given that displacement entails specific, individual, concrete, present, important, serious, clear, distinguishable, exceptional and disproportionate risks to several fundamental rights of the affected persons. Guiding Principles 8, 10, 12, 13 and 15 are pertinent for interpreting the scope of this right in the context of forced internal displacement.

10. Freedom of movement across the national territory²⁴ and the right to remain in the place chosen to live²⁵, given that the very definition of forced displacement presupposes the non-voluntary nature of the migration to another geographical location so as to establish a new place of residence therein. Principles 1, 2, 6, 7 and 14 are relevant for interpreting the scope of these rights in regards to the displaced population.

²⁰ (...) Colombian Constitutional Court, Decision T-645 of 2003, per justice Alfredo Beltrán Sierra (...).

²¹ Colombian Constitutional Court, Decisions T-1635 of 2000, T-327 of 2001 and T-1346 of 2001.

²² See, for example, Colombian Constitutional Court, Decision T-327 of 2001, per justice Marco Gerardo Monroy Cabra.

²³ See, for example, Colombian Constitutional Court, Decision T-258 of 2001, per Justice Eduardo Montealegre Lynett, (...) T-795 of 2003, per Justice Clara Inés Vargas Hernández (...).

²⁴ Colombian Constitutional Court, Decisions T-1635 of 2000, T-327 of 2001, T-1346 of 2001 and T-268 of 2003.

²⁵ (...) Colombian Constitutional Court, Decision T-227 of 1997 (...)

11. The right to work²⁶ and the freedom to choose a profession or occupation, especially in the case of agricultural workers who are forced to migrate to the cities and, consequently, abandon their habitual activities. Principles 1 through 3, 18, 21, 24 and 25 are relevant for the interpretation of these rights, given that they establish criteria to secure the means for obtaining adequate livelihoods and protecting their property or possessions.

12. The right to a minimum level of nourishment²⁷, which is disregarded in a large number of cases on account of the levels of extreme poverty experienced by numerous displaced persons, which prevent them from satisfying their most essential biological needs and therefore bear an impact upon the adequate enjoyment of their remaining fundamental rights, in particular upon the rights to life, personal integrity and health. This is particularly serious when those affected are children. Principles 1 through 3, 18 and 24 through 27 are pertinent for interpreting the scope of this right, since they refer to the adequate living standards that must be secured for the displaced population, and to humanitarian assistance.

13. The right to education, in particular that of minors who suffer forced displacements and are thereby forced to interrupt their educational process²⁸. In regards to this right, Principles 13 and 23 are relevant.

14. The right to dignified housing²⁹, given that persons in conditions of displacement have to abandon their own homes or habitual places of residence, and undergo inappropriate lodging conditions at the places where they are displaced to, whenever they are able to obtain them and are not forced to live outdoors. In regards to this right, Principles 18 and 21 establish minimum criteria which must be secured to the displaced population so as to provide them basic housing and lodging conditions.

15. The right to peace³⁰, whose essential nucleus includes the personal guarantee not to suffer, insofar as possible, the effects of war, especially

²⁶ See, for example, Colombian Constitutional Court, Decision T-669 of 2003, per Justice Marco Gerardo Monroy Cabra (...)

²⁷ (...) Colombian Constitutional Court, Decision T-098 of 2002 (...)

²⁸ Colombian Constitutional Court, Decision T-215 of 2002, per Justice Jaime Córdoba Triviño.

²⁹ See, for example, Colombian Constitutional Court, Decision T-602 of 2003, per Justice Jaime Araujo Rentería. (...)

³⁰ See, for example, Colombian Constitutional Court, Decision T-721 of 2003, per justice Alvaro Tafur Galvis (...).

when conflict disregards the limits set by international humanitarian law, in particular the prohibition of attacking the civilian population³¹. Principles 6, 7, 11, 13 and 21 are pertinent to interpret this right, given that they prohibit disregarding the rules of international humanitarian law that protect non-combatants.

16. The right to legal personality, because on account of the displacement, the loss of identity documents poses obstacles to the registration of these persons as displaced individuals, as well as access to the different types of aid, and the identification of the legal guardians of minors who are separated from their families³². The scope of this right in the context of forced internal displacement is expressly regulated in Guiding Principle 20.

17. The right to equality³³, given that (i) even though the only circumstance which differentiates the displaced population from the remaining inhabitants of Colombian territory is precisely their situation of displacement, by virtue of this condition they are exposed to the aforementioned violations of their fundamental rights, as well as discrimination, and (ii) in no few cases, displacement is produced because of the affected person's affiliation to a specific group of the community, to which a given orientation in regards to the actors of the armed conflict is attributed, or because of their political opinion, all of which are differentiation factors proscribed by article 13 of the Constitution. This does not exclude, as it has already been said, the adoption of affirmative action measures in favor of persons in conditions of displacement, which is in fact one of the main obligations of the State, as recognized by constitutional case-law³⁴. The scope of this right has been defined by Principles 1 through 4, 6, 9 and 22, which prohibit discrimination of the displaced population, recommend the adoption of affirmative measures in favor of special groups within the displaced population, and highlight the importance of securing equal treatment for displaced persons.

On account of the multiplicity of constitutional rights which are affected by displacement, and in attention to the aforementioned circumstances of special weakness, vulnerability and defenselessness that

³¹ Colombian Constitutional Court, Decision C-328 of 2000, per justice Eduardo Cifuentes Muñoz.

³² (...)Colombian Constitutional Court, Decision T-215 of 2002 (...).

³³ Colombian Constitutional Court, Decision T-268 of 2003, per justice Marco Gerardo Monroy Cabra.

³⁴ See, for example, Colombian Constitutional Court, Decision T-602 of 2003 (...).

surround displaced persons, constitutional case-law has underlined that these persons have, in general terms, the right to receive an urgent preferential treatment by the State (...).

(...) the State duty at hand finds its ultimate justification, according to constitutional case-law, in the State's inability to comply with its basic duty of preserving the minimum public order conditions to prevent the forced displacement of persons and guarantee the personal security of the members of society. (...)

Furthermore, the scope of the measures that authorities are bound to adopt is determined in accordance [with] three basic parameters, which were clarified in decision T-268 of 2003, as follows: (i) the principle of favorability in the interpretation of the provisions that protect the displaced population, (ii) the Guiding Principles on Forced Internal Displacement, and (iii) the principle of prevalence of substantial law in the context of a Social State grounded in the Rule of Law (*Estado Social de Derecho*) (...).

5.3. The orders issued to protect the rights of the displaced population.

The Court has decided on 17 occasions about the rights of the displaced population. Its judgments have been primarily aimed at (i) correcting negligent or discriminatory actions³⁵ and omissions by the authorities in charge of assisting the displaced population³⁶; (ii) indicating institutional responsibilities in assisting the displaced population³⁷; (iii) clarifying the constitutional rights of the displaced population³⁸; (iv) establishing criteria for the interpretation of the legal provisions that regulate the aid for this population, in such a way that its rights are effectively guaranteed³⁹; (v) rejecting the authorities' unjustified tardiness

³⁵ See, for example, Colombian Constitutional Court, Decision T-227 of 1997, per Justice Alejandro Martínez Caballero (...)

³⁶ See, for example, Colombian Constitutional Court, Decision T-1635 of 2000, per Justice José Gregorio Hernández Galindo.

³⁷ See, for example, Colombian Constitutional Court, Decisions SU-1150 of 2000, per Justice Eduardo Cifuentes Muñoz; T-258 of 2001, per Justice Eduardo Montealegre Lynett (...).

³⁸ See, for example, Colombian Constitutional Court, Decision T-268 of 2003, per Justice Marco Gerardo Monroy Cabra (...).

³⁹ See, for example, Colombian Constitutional Court, Decision T-098 of 2002, per Justice Marco Gerardo Monroy Cabra (...)

or omission in assisting those who are affected by forced displacement⁴⁰; (vi) exacting the development of adequate policies and programs to address this phenomenon⁴¹; (vii) clarifying the elements which give rise to the condition of displacement⁴²; (viii) pointing out the obstacles that prevent the provision of adequate assistance to the displaced population, and which enhance or aggravate the violation of their rights⁴³; (ix) indicating flaws or omissions in the policies and programs designed to assist the displaced population⁴⁴; and (x) granting effective protection to the displaced population, particularly in cases of persons who are especially protected by the Constitution such as children, women providers, elderly persons and ethnic minorities⁴⁵.

In order to guarantee the effective protection of the displaced population, the Court has ordered (i) the different authorities that participate in the protection of the displaced population, to include the plaintiffs in the existing programs and policies within brief terms that range from 48 hours to 3 months after the notification of the judgment⁴⁶; (ii) the President of the Republic, to coordinate with the different ministries and entities in charge of assisting the displaced population, the actions which are required to secure, within a maximum period of 30 days, a final solution for the problems faced by the plaintiffs⁴⁷; (iii) to carry out, within a period of 48 hours, all the actions which are needed to transfer the plaintiff to a place where his life and integrity are not in danger⁴⁸; (iv) the Social Solidarity Network, to include the plaintiff within the Single

⁴⁰ See, for example, Colombian Constitutional Court, Decision T-790 of 2003, per Justice Marco Gerardo Monroy Cabra (...)

⁴¹ See, for example, Colombian Constitutional Court, Decision SU-1150 of 2000, per Justice Eduardo Cifuentes Muñoz (...)

⁴² See, for example, Colombian Constitutional Court, Decision T-227 of 1997, per Justice Alejandro Martínez Caballero (...)

⁴³ See, for example, Colombian Constitutional Court, Decision T-419 of 2003, per Justice Alfredo Beltrán Sierra (...) and T-645 of 2003, per Justice Alfredo Beltrán Sierra (...).

⁴⁴ See, for example, Colombian Constitutional Court, Decision T-602 of 2003, per Justice Jaime Araújo Rentería (...)

⁴⁵ See, for example, Colombian Constitutional Court, Decision T-215 of 2002, per Justice Jaime Córdoba Triviño (...).

⁴⁶ See, *inter alia*, Colombian Constitutional Court, Decisions T-215 of 2002, per Justice Jaime Córdoba Triviño; SU-1150 of 2000, per Justice Eduardo Cifuentes Muñoz; T-327 of 2001 and T-098 of 2002, per Justice Marco Gerardo Monroy Cabra.

⁴⁷ See, for example, Colombian Constitutional Court, Decisions SU-1150 of 2000, per Justice Eduardo Cifuentes Muñoz, and T-1635 of 2000, per Justice José Gregorio Hernández Galindo.

⁴⁸ Colombian Constitutional Court, Decision T-258 of 2001, per Justice Eduardo Montealegre Lynett.

Registration System of Displaced Population; (v) the constitution of a Municipal Committee for the Comprehensive Assistance to the Displaced Population in a term of 10 days, in order for that Committee to establish, within a maximum term of 20 days, a program for the relocation and stabilization of the plaintiffs⁴⁹; (vi) the Social Solidarity Network to coordinate with the Institute of Family Welfare the inclusion of the underage plaintiffs within the programs that exist in said entity, and to process in a preferential and quick manner, with the corresponding entity, their request for a family housing subsidy⁵⁰; (vii) the Social Solidarity Network to grant the requested Emergency Humanitarian Aid⁵¹; (viii) the National Director of the Social Solidarity Network to include the plaintiffs within a productive project, articulated with a food security program⁵²; (ix) the Social Solidarity Network to carry out, within a 48 hour term, the actions required to provide the comprehensive healthcare required by the plaintiff, through the corresponding entities⁵³; (x) the Social Solidarity Network to provide, within a term of 48 hours, the necessary counseling to the plaintiff on the different alternatives of economic consolidation open to her⁵⁴; (xi) the Social Solidarity Network to provide effective assistance and counseling to the plaintiff⁵⁵; (xii) the Public Ombudsman's Office (*Defensoría del Pueblo*) to design and impart courses on the promotion of human rights and respect for the rights of the displaced population to different authorities, in order to increase their sensitivity to this problem⁵⁶; (xiii) the National Government to regulate within a reasonable period Law 715 of 2001 in regards to the transfer and relocation of threatened teachers⁵⁷; (xiv) the Public Ombudsman's Office, to oversee the

⁴⁹ Colombian Constitutional Court, Decision T-1346 of 2001, per Justice Rodrigo Escobar Gil.

⁵⁰ Colombian Constitutional Court, Decision T-268 of 2003, per Justice Marco Gerardo Monroy Cabra

⁵¹ Colombian Constitutional Court, Decision T-419 of 2003, per Justice Alfredo Beltrán Sierra

⁵² Colombian Constitutional Court, Decision T-602 of 2003, per Justice Jaime Araujo Rentería

⁵³ Colombian Constitutional Court, Decision T-645 of 2003, per Justice Alfredo Beltrán Sierra

⁵⁴ Colombian Constitutional Court, Decision T-669 of 2003, per Justice Marco Gerardo Monroy Cabra.

⁵⁵ Colombian Constitutional Court, Decision T-721 of 2003, per Justice Alvaro Tafur Galvis.

⁵⁶ Colombian Constitutional Court, Decision T-227 of 1998, per Justice Alejandro Martínez Caballero.

⁵⁷ Colombian Constitutional Court, Decision T-795 of 2003, per Justice Clara Inés Vargas Hernández

dissemination and promotion of the rights of the displaced population⁵⁸; (xv) the Nation's General Controller (*Procurador General de la Nación*) to oversee compliance with the orders issued in the corresponding judgment⁵⁹; and (xvi) the Public Ombudsman's Office, to instruct the displaced population on its constitutional rights and duties⁶⁰.

The foregoing description of the violated rights, and of the *tutela* judge's response in cases that involve several family groups -which have on occasions been repeated up to nine times and which merited, for their extreme gravity, the intervention of this Court-, goes to prove that the pattern of violation of the rights of the displaced population has persisted over time, lacking the adoption of appropriate solutions to correct said violations by the competent authorities, in such a way that the concrete solutions ordered by the Court to address the violations identified in the judgments adopted up to this date, have failed to contribute to prevent the repetition of violations by the authorities which have been sued through *tutela* actions. Moreover, the situation of violation of the rights of the displaced population has even become worse, on account of the requirement posed [to displaced persons] by certain public officials, in the sense of filing *tutela* actions as a prior condition for the authorities in charge of their protection to comply with their duties.

6. Identification of the State actions or omissions that comprise violations of the constitutional rights of displaced persons.

The public policies for assisting the displaced population have failed to counter the serious deterioration of displaced persons' conditions of vulnerability, they have not secured the effective enjoyment of their constitutional rights, nor contributed to surmount the conditions that cause the violation of said rights. According to a recent study⁶¹, said persons' basic living conditions are far from satisfying the nationally and internationally recognized rights. 92% of the displaced population has unsatisfied basic needs (UBN), and 80% is in conditions of extreme

⁵⁸ Colombian Constitutional Court, Decision T-1635 of 2000, per Justice José Gregorio Hernández Galindo

⁵⁹ Colombian Constitutional Court, Decision T-1635 of 2000, per Justice José Gregorio Hernández Galindo

⁶⁰ Colombian Constitutional Court, Decision T-721 of 2003, per Justice Alvaro Tafur Galvis.

⁶¹ United Nations, World Food Programme, "*Vulnerabilidad a la Inseguridad Alimentaria de la Población desplazada por la violencia en Colombia, informe de 2003*".

poverty. Likewise, 63.5% of the displaced population has inadequate housing, and 49% lacks access to appropriate public utilities.

In regards to the nutritional situation of the displaced population, it was concluded that the “calories gap”⁶² of displaced households adds up to 57%, that is to say, they only consume 43% of the levels recommended by the World Food Program. Likewise, the study found that 23% of the displaced children under six years of age are below the minimum nutritional standards. In turn, the aforementioned nutritional insufficiencies translate into states of malnutrition which bring as consequences, *inter alia*, inadequacies in the size/weight and weight/age ratios, deficits in school attention, a predisposition to respiratory infections and diarrhea, eyesight reductions, and increases in child morbidity.

In regards to the level of access to education of the displaced population in schooling age, it was observed that 25% of the children between 6 and 9 years of age do not attend an educational institution, whereas this proportion for people between 10 and 25 years of age rises to 54%. Lastly, in regards to the health of the victims of forced displacement, mortality rates for the general displaced population are six times higher than the national average.

The serious situation of the displaced population has not been caused by the State, but by the internal conflict, and in particular, by the actions of irregular armed groups. However, by virtue of Article 2 of the Constitution, the State has the duty to protect the population affected by this phenomenon, and in this way it is bound to adopt a response to such situation.

Therefore the Court, in analyzing the public policies for assisting the displaced population, shall determine whether the State, through actions or omissions in the design, implementation, follow-up or evaluation of said policies, has contributed in a constitutionally significant manner to the violation of the fundamental rights of displaced persons. This Chamber shall base its observations on (i) several documents that analyze and evaluate of the policy for assisting the displaced population and its different programs, which have been incorporated into the present proceedings by governmental entities, human rights organizations and international organizations, and (ii) the answers to the questionnaire

⁶² The nutritional gap measures a person’s nutritional deficiencies in relation to the recommended amounts of nutrients.

formulated by the Third Review Chamber of the Court, which are summarized in Annex 2. (...)

Above all, the Chamber notes that over the last years some State entities, including the Social Solidarity Network, have made considerable efforts to mitigate the problems of the displaced population, and they have achieved important advances. (...) Between 1998 and 2003, the number of displaced persons who received emergency humanitarian assistance or some type of aid for socio-economic reestablishment increased considerably. Likewise, during 2003 a reduction in the number of newly displaced persons in the country was recorded. (...)

For the purpose of this analysis, the Court shall summarize (i) the State response to the phenomenon, (ii) the results of such policy, and (iii) its most salient problems. The detailed assessment of each aspect may be found in Annex 5 of this judgment.

6.1. The State response to the phenomenon of forced displacement.

The Court confirms that the public policy on forced displacement actually exists. A number of laws, decrees, CONPES documents, resolutions, memorandums, agreements and Presidential Directives comprise an institutional response aimed at addressing the problems of the displaced population, and regulate, in a concrete manner, both the assistance to the displaced population in its different components, and the type of behavior required from the different public entities and officials. The Court shall make a brief summary of the contents of such policy in accordance with the following elements: (i) the definition of the problem, (ii) the objectives and goals which have been established, (iii) the means created to achieve the goals, and (iv) the persons or bodies through which governmental entities must participate in the development of these policies.

6.1.1. In regards to the definition of the problem, several State documents contain a general description of the issue. CONPES Document No. 2804 of 1995 made a general description of the socio-economic, political and psycho-social consequences of the phenomenon of forced displacement in Colombia. Likewise, CONPES Document No. 3057 of 1999 defined, also in a general manner, the magnitude and features of forced displacement. In addition, both Law 387 of 1997 and Decree 2569

of 2000 define the condition of “displaced person”⁶³, and establish a single registration system, which reflects the magnitude of the problem in quantitative terms because it is administered through a database designed to include all of the persons who receive some sort of assistance. Finally, Law 387 of 1997 establishes the principles and the rights of displaced persons, which provide the grounds to interpret the legal provisions regarding State duties towards the displaced population⁶⁴.

6.1.2. In regards to the goals of the policies, Law 387 of 1997 and Decree 173 of 1998 point out the objectives of the National Plan for Comprehensive Assistance to the Displaced Population⁶⁵. In turn, both Law 387 of 1997 and Decree 2569 of 2000 indicate the basic goals pursued through each one of the components of the assistance system. Lastly, Decree 173 [of 1998] establishes strategies for the execution of each one of the components, which include the actions, programs and projects that must be developed by State entities. Such goals are different throughout each one of the three stages in which the State policy has been legally structured: humanitarian aid, socio-economic stabilization and return or re-establishment.

6.1.3. These provisions also define the means to achieve the goals stated therein, and point out, at least in general terms, the entities which are responsible for their implementation, and the requirements, procedures and conditions for the provision of said services.

The functions that form part of the system of assistance to the displaced population in its different levels and components are assigned, on the one hand, to the entities that form part of SNAIPD, and on the other hand, to territorial entities. (...) the coordination of SNAIPD, which was formerly assigned to the Ministry of the Interior, became a responsibility of the Social Solidarity Network⁶⁶. Furthermore, the Law assigned the National Council for Comprehensive Assistance to the Population Displaced by Violence the function of “securing the budgetary appropriations for the programs placed under the responsibility of the entities in charge of the functioning of the National Comprehensive Assistance System for the Displaced Population”⁶⁷ *inter alia*. The main

⁶³ (...) Article 1 of Law 387 of 1997 (...), Article 2 of Decree 2569 of 2000.

⁶⁴ Article 2, Law 387 of 1997.

⁶⁵ Article 10 of Law 387 of 1997, and Article 1-1 of Decree 173 of 1998. See also Article 4 of Law 387 of 1997, which indicates the objectives of SNAIPD.

⁶⁶ Article 1, Decree 2569 of 2000.

⁶⁷ Article 6, Law 387 of 1997.

Ministries with direct responsibilities in this field have a seat in such Council.

Emergency Humanitarian Aid must be provided by the Social Solidarity Network, either directly, or through agreements with non-governmental organizations (NGOs), private entities and international organizations. Access to such component is restricted to three months, exceptionally renewable for another three-month period. (...) the amount of resources assigned to this component depends on budget availability.

On the other hand, the execution of socio-economic stabilization programs⁶⁸ depends on budget availability⁶⁹, even though State entities may receive aid by humanitarian organizations, both national and international in nature. Conversely, the goods and services included in this component must be provided by several authorities, whether part of the National Government or of the territorial entities. Thus, in regards to housing solutions for the displaced population, Decree 951 of 2001 establishes the requirements and procedures to have access to housing subsidies, and it sets out the functions and responsibilities of the entities that intervene in the provision of this component of the assistance package (INURBE, for example). The programs for the generation of productive projects and access to work training programs are regulated in a general manner in Decree 2569 of 2000. Lastly, Decree 2007 of 2001 regulates the program for land access and tenure by displaced population, the implementation of which is a responsibility of territorial entities, the former INCORA and the public deeds registration offices, *inter alia*.

6.1.4. Finally, in regards to the persons or the private or international organizations that must participate in the design and implementation of the policy for assisting the displaced population, the pertinent legal provisions establish the following: First, the design and execution of the policies must be carried out with the participation of the displaced communities⁷⁰. Second, State entities may enter into arrangements with NGOs⁷¹. Third, such provisions establish that the State may request aid from international

⁶⁸ Article 25, Decree 2569 of 2000. See also Articles 26-28 of the same decree and Article 17 of Law 387 of 1997.

⁶⁹ Article 25, Decree 2569 of 2000.

⁷⁰ Paragraph 3, Number 1 of Article 1 of Decree 173 of 1998.

⁷¹ See, for example, the rules contained in Law 387 of 1997 and Decree 2569 of 2000, and Presidential Directive No. 7 of 2001.

organizations⁷². Lastly, the presidential directives hold that the State must promote a higher commitment of the civil society⁷³.

6.2. The results of the public policy for the attention of the displaced population.

Although the public policy for assisting the displaced population has been developed in normative terms since the year 1997, according to the reports that form part of these proceedings, its results have not managed to counter the situation of violation of the constitutional rights of most of the displaced population. Such results can be assessed according to (i) the data on the coverage of each one of the components of the assistance package, and (ii) the level of satisfaction of the displaced population.

6.2.1. According to the Joint Technical Unit—*Unidad Técnica Conjunta*⁷⁴-, the advances in the formulation of the policies have not translated into the generation of concrete results. (...)

This is recognized by the studies made by the Social Solidarity Network itself—a national public entity, ascribed to the Administrative Department of the Presidency of the Republic⁷⁵. According to data produced by the Social Solidarity Network, “61 per cent of the displaced population did not receive any help by the Government during the period between January 2000 and June 2001”. Likewise, “only 30% of the persons who were displaced individually or in small groups received governmental assistance during the first eleven months of the current Government”⁷⁶.

The levels of coverage of all the components of the policy are insufficient. Emergency humanitarian aid, which is—as it has been mentioned—the component which has recorded the best results, had between 1998 and 2002 a coverage of 43% of the displaced households recorded by the Social Solidarity Network, 25% of the families reported

⁷² For example, Article 23 of Decree 2569 of 2000.

⁷³ See, for example, the recommendations of Presidential Directive No. 6 of 2001.

⁷⁴ The Joint Technical Unit is composed by technicians who represent the Social Solidarity Network and UNHCR. Its tasks include counseling the entities that implement the policies for the attention of the displaced population, evaluating the policy’s results, and identifying its problems.

⁷⁵ Law 368 of 1997.

⁷⁶ Social Solidarity Network, *Población y territorios afectados: Demanda de atención al Estado Colombiano*, at: www.red.gov.co, cited by International Crisis Group, *La Crisis Humanitaria en Colombia*. Informe de America Latina No. 4, July 9, 2003, p. 19.

by CODHES⁷⁷, and it has achieved 36% of the level set as a goal in the Strategic Plan⁷⁸. If the focus is placed solely on the cases of individual displacement, the figures are even worse. In this case, coverage rises to 33% of the displaced persons recorded by the Social Solidarity Network, and 15.32% of those recorded by CODHES.

The results of the projects for self-generated income are lower still. In regards to the displaced population registered by the Social Solidarity Network, coverage is 19.5%. Likewise, when compared to the goals of the “Strategic Plan”, it is 31.6%⁷⁹. On the other hand, if assistance is placed not on the results of coverage, but on the level of success of the socio-economic stabilization programs to which some displaced persons have had access, it may be verified that, except for the work training programs, the reports presented to this Court regard these results as less than insufficient. The work training projects have obtained high results, but their coverage has been low, given that State action has focused mostly on productive projects.

In the rest of the components, the results are lower still. For example, the Joint Technical Unit estimates that during the 1998-2002 period, the housing programs have only achieved 11.4% of the goals they had stated, and that 3.7% of the potential demand has been satisfied. It also indicates that the housing solutions which have been built do not comply with the minimum conditions of access to public utilities, location, and quality of the materials or space distribution.

6.2.2. On the other hand, there is a high degree of dissatisfaction with the results of the policies. Firstly, the documents analyzed by the Court evince a broad and generalized discontent by the public and private organizations that evaluate the institutional response. Secondly, the same may be said of the displaced communities, as proven by the presentation of a very high number of *tutela* lawsuits, through which said persons try to gain access to the institutional offer, which is unreachable through the ordinary State programs.

⁷⁷ CODHES is one of the country’s main NGOs in the field of advocacy of displaced persons’ rights.

⁷⁸ Between 1998 and 2002, the Social Solidarity Network provided emergency humanitarian aid to 69,054 households, which represents 36% of the 194,000 families set as a goal in the Strategic Plan.

⁷⁹ As compared to 100,000 households suggested in the Strategic Plan, these projects’ coverage reached 31,623 homes.

6.3. The most salient problems of the policy for assistance to the displaced population.

This Chamber notes that the low results of the State response, because of which it has not been possible to provide comprehensive protection to the rights of the displaced population, may be explained by two main problems. (i) The precariousness of the institutional capacity to implement the policy, and (ii) the insufficient appropriation of funds. Such problems are summarized in the following segments. For a more detailed analysis of the problems of the public policy for assisting the displaced population, please refer to Section 2 of Annex 5 of this judgment.

6.3.1. Problems in the institutional capacity to protect the displaced population.

(...) This assessment will focus on (i) the design and regulatory development of the public policy to respond to forced displacement; (ii) the implementation of the policy; and (iii) the follow-up and evaluation of the activities carried out in implementation of the policy. (...)

6.3.1.1. In regards to the design and regulatory development of the policy, the following problems have been found.

(i) There does not exist an updated plan of action for the operation of SNAIPD, which can allow it to take a comprehensive look at the policy.

(ii) No specific goals or indicators have been established, which can allow for a verification of whether the purposes of the policy have been fulfilled or not. There are no clear priorities or indicators.

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

they stimulate the inaction of the entities that form part of SNAIPD and the territorial entities.

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

(v) Many of the policies to assist the displaced population have lacked sufficient development. This is particularly the case in regards to the following aspects, according to the reports presented to the Court: (a) the participation of the displaced population in the design and execution of the policies has not been regulated. No efficient mechanisms aimed at fostering real intervention by the displaced population have been designed. (b) The displaced population lacks timely and complete information about its rights, the institutional offer, the procedures and requirements to gain access to it, and the institutions in charge of its provision. (c) The procurement and administration of the resources provided by the international community are managed in a fragmented and disorderly way. (d) There is no comprehensive or concrete development of the policies to raise the awareness of civil society about the magnitude of the phenomenon, and to involve the business sector in programs for its resolution. (e) There has not been any comprehensive development of programs or projects aimed at training the public officials. Especially at the territorial level, public officials are not adequately informed about their functions and responsibilities, the features of the phenomenon of displacement, nor about the necessities of the displaced population. They are not trained either in dealing with persons in conditions of displacement. (f) The policies to facilitate access to the institutional offer by the weakest displaced groups—such as women providers, children or ethnic groups—have not been regulated⁸⁰. There are no special programs to respond to the specificity of the problems that affect said groups.

(vi) the design of emergency humanitarian aid, which emphasizes the time factor, has turned out to be too rigid to assist the displaced population effectively. The three-month time limit does not respond to the reality of

⁸⁰ See, for example, numbers 1-6 and 1-8 of Article 1 of Decree 173 of 1998.

the continuous violation of their rights, in such a way that the renewal of this aid over time does not depend on the objective conditions of that population's needs, but on the simple passage of time.

(vii) The distribution of functions in regards to urban productive projects is unclear, given that the IFI⁸¹ is undergoing a merger. The same may be said of the land distribution programs, because the INCORA⁸² is in liquidation. The evidence tends to indicate that at the moment, there are no entities that include within their functions the components related to land distribution and productive projects at the urban level.

6.3.1.2. In regards to the implementation of the policy for assisting the displaced population, (...) it is still centered in the formulation stage (...) and there exists an excessively broad gap between the issuance of legal provisions and the drafting of documents, on the one hand, and practical results, on the other. Implementation problems may be grouped in accordance with the following criteria:

(i) As regards the level of implementation of the policies for assisting the displaced population, the Court notes an insufficiency of concrete actions by the entities who have been assigned functions in this field. Many of the entities that form part of SNAIPD have not yet created special programs for the displaced population, even though the latter were defined as necessary. In turn, some of the territorial entities have failed to appropriate the necessary human or financial resources to comply with their obligations, and they have not yet established territorial committees. This is proven in regards to almost all of the components of the assistance package: (a) prevention mechanisms, i.e. the Early Warning System and Decree 2007—with regard to the freeze-up of transactions over rural land in areas with displacement risk-, have not been applied in a comprehensive manner, and they have been unable to prevent the phenomenon. (b) Information systems do not include all of the aid received by the registered population, nor the immovable properties abandoned on account of the displacement. (c) Emergency humanitarian aid is provided in a delayed manner, and with very low coverage levels. (d) As to the education of the displaced population in schooling age, the scarcity of school seats in some places is added to the lack of programs that can facilitate support in books, materials and minimum elements required by the different institutions,

⁸¹ IFI stands for “Institute of Industrial Foment” – *Instituto de Fomento Industrial*.

⁸² INCORA stands for “Colombian Institute for Agrarian Reform” – *Instituto Colombiano de Reforma Agraria*.

which stimulates school drop-out. (e) Socio-economic stabilization programs and land/housing distribution programs are made available to a minimum number of displaced persons. In the few cases in which credit facilities are granted, the responsible entities fail to provide the necessary counseling and advice. (f) As to the component on return processes, the economic re-activation programs have not been applied, and the elements which can allow the communities that try to return to their places of origin to survive autonomously have not been provided. The mechanisms to protect the property or possession of land by displaced persons have not been implemented either.

(ii) With regard to the adequacy and effective pertinence of the different components of the policy, the Chamber notes that, in certain cases, the means used to achieve the aims of the policy are not appropriate, as indicated by the reports presented to the Court: (a) In the field of socio-economic stabilization of displaced persons, the requirements and conditions to gain access to capital are not coherent with the economic reality of displaced persons. For example, in order to have access to some of the offered programs, the displaced population must prove that they own a house or land in which to develop the project. Likewise, the technical evaluation criteria for the productive projects submitted for financing do not match the conditions and skills of displaced persons. In addition, the establishment of maximum levels of finance for productive options excludes the possibility of taking into account the socio-demographic and economic specificities of each project. (b) In regards to health care, access by the displaced population to health services has been obstructed by the procedures required to have access to the service, on the one hand, and those required for the entities in charge of providing the service to be able to charge it to the FOSYGA⁸³, on the other. (c) The requirements and conditions to have access to housing loans do not match the economic necessities of displaced households. The requirements of savings periods, personal and commercial references, and other conditions, are in many cases impossible to meet by the displaced population. Such demands are discriminatory, and constitute entry barriers for access to this type of aid. (d) As to education, requiring displaced households to pay a minimum payable amount so that displaced persons in schooling age can gain access to educational positions have been an often insurmountable barrier for these minors' registration in the system.

⁸³ FOSYGA stands for "Solidarity and Guarantee Fund", *Fondo de Solidaridad y Garantía*.

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

(iv) The implementation of the policy, in some of its components, has been excessively inflexible, for example, in the field of contracts, which precludes a prompt institutional response to the problem, that responds to the situation of emergency of the displaced population.

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

to actively participate in the implementation of said solutions. In turn, this has made access by the displaced population to income generation programs extremely difficult.

6.3.1.3. With regard to the follow-up and evaluation of the policy, the following observations are pertinent:

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

(ii) there do not exist systems to evaluate the policy.⁸⁴ The policy does not include a system designed to detect mistakes or obstacles in its design and implementation, needless to say one that allows an adequate and timely correction of such failures. There are no systems or indicators for the verification, follow-up and evaluation of results, either at the national or territorial levels.

6.3.1.4. In conclusion, the Court considers that the State's response has serious deficiencies in regards to its institutional capacity, which cross-cut all of the levels and components of the policy, and therefore prevent, in a systematic manner, the comprehensive protection of the rights of the

⁸⁴ The existence of these instruments is, to say the least, very difficult, if it is taken into account that there are no precise objectives, clear goals, terms for the achievement of such goals nor specific responsibilities in regards to their materialization.

displaced population. The *tutela* judge cannot solve each one of these problems, which corresponds to both the National Government and territorial entities, and to Congress, within their respective margins of jurisdiction. Nevertheless, the above does not prevent the Court, in verifying the existence of a situation of violation of fundamental rights in concrete cases, from adopting corrections aimed at ensuring the effective enjoyment of the rights of displaced persons, as it will do in this judgment, nor from identifying remedies to overcome these structural flaws, which involve several State entities and organs.

6.3.2. Insufficient appropriation of resources for the implementation of the policies to assist the displaced population.

(...) The central government has destined financial resources which fail to meet the requirements of the policy, and many territorial entities have failed to destine their own resources to attend to the different programs, even though the CONPES Documents⁸⁵ established the level of resources required to secure the fundamental rights of the victims of displacement. The insufficiency of resources has affected most of the components of the policy, and it has caused the entities that form part of SNAIPD to be unable to advance concrete actions which are adequate to materialize the objectives set forth in the policy. It is for this reason that the level of implementation of the policies is insufficient *vis-á-vis* the necessities of the displaced population, and that the degrees of coverage of its different components are so low.

Even though there was a significant increase in the resources destined to assist the displaced population between 1999 and 2002, the absolute level of the amounts included in the budget is still insufficient, and way below the levels required to (a) satisfy the demand of displaced persons, (b) protect the fundamental rights of the victims of this phenomenon, and (c) effectively develop and implement the policies established in the Law and developed by the Executive through regulations and CONPES documents. In addition, this Chamber verifies that for the year 2003, the amount of resources expressly and specifically appropriated for the execution of said policies was reduced. For example, in 2002 103.491 million pesos were assigned within the Nation's General Budget for the "displaced population", whereas in 2003 such amount was of 70,783

⁸⁵ CONPES documents are adopted by the National Council on Economic and Social Policy, and they contain such Council's guidelines on specific aspects of such policy.

million, thus undergoing a 32% reduction in the funds appropriated for that purpose⁸⁶.

However, Law 387 of 1997 states in several provisions that the policy to assist the displaced population is not only a priority matter⁸⁷, but that the provision of the aid included therein to protect the rights of the displaced population is not conditioned to the availability of resources. (...)

On the contrary, in regards to financial restrictions, article 6 of Law 387 of 1997 states that the National Council for Comprehensive Assistance to the Population Displaced by Violence is in charge, *inter alia*, not of seeking or promoting but of “*securing the budgetary appropriation of the [funds for the] programs entrusted to the entities in charge of the operation of the National Comprehensive Assistance System for the Displaced Population.*” (...)

Likewise, article 22 of Law 387 of 1997 states that the National Fund for the Comprehensive Assistance of the Population Displaced by Violence has the purpose of “financing and/or co-financing programs for the prevention of displacement, emergency humanitarian aid, return, socio-economic stabilization and consolidation, and installation and operation of the National Information Network”. Likewise, article 25 states that “the National Government shall carry out the corresponding budgetary adjustments and transfers within the General Budget of the Nation, in order to assign the Fund the resources which are required to fulfill its objectives”.

Nevertheless, articles 16, 17, 20, 21, 22, 25, 26 and 27 of Decree 2569 of 2000, in regulating Law 387 of 1997, conditioned access to emergency humanitarian aid and to socio-economic stabilization programs to the availability of resources in the budget. (...) In this way, Law 387 of 1997 established a level of comprehensive protection for internally displaced persons, and ordered to secure the resources required to fulfill such comprehensive assistance, but the Decree at hand conditioned the legal mandates to the availability of resources. The Chamber considers that a regulatory decree may not be granted the legal effect of modifying legislation, nor of disregarding the constitutional provisions that order the

⁸⁶ (...) See section 1.1. of Annex 4 of this judgment. (...)

⁸⁷ In this sense, it is important to recall Colombian Constitutional Court, Decision SU-1150 of 2000 (per Justice Eduardo Cifuentes Muñoz)

authorities to effectively protect the rights of all the inhabitants of the national territory. (...) Therefore, the legal provisions that will guide this Chamber in ensuring the harmonization of the comprehensive protection duty assumed in Law 387 of 1997 and the resources that must be appropriated for that purpose, shall be mainly the constitutional ones, as developed by Congress.

These provisions include the ones that develop the constitutional principle of legality of public expenditure (articles 6, 113, 345, 346 and 347 of the Constitution). According to this principle, ‘there may be no [public expenditure] which has not been established in the public expenses budget or which has not been approved by Congress, the departmental assemblies or municipal councils, nor can any chapter be included within the appropriations law that does not correspond to a judicially recognized credit, an expense ordered in accordance with a pre-existing law, an expense proposed by the Government to finance the functioning of the branches of public power, the payment of external debt, or to comply with the National Development Plan’⁸⁸.

Within the General Budget of the Nation, the National Government and Congress have assigned, for assisting the displaced population, a level of resources which, in spite of having increased until the year 2002, is significantly lower than what is required to comply with the mandates of Law 387 of 1997, according to the aforementioned CONPES documents.

CONPES Document 3057 of 1999 recommended that a total of 360 million dollars should be appropriated for years 2000, 2001 and 2002, without including the assignation of lands and housing. On the other hand, CONPES Document 3115 of 2001 recommended the appropriation of 145 thousand million pesos for 2001, and 161 thousand million pesos for 2002. However, according to the figures submitted by the Social Solidarity Network and UNHCR, “the resources appropriated by the National Government for the attention to forced displacement (...) added up (between January 1999 and June 2002) to 126.582 million”—an amount that is quite inferior to the one required by the aforementioned documents. In addition, the Court verifies that the resources included within the General Budget of the Nation to assist the “displaced population” in 2003

⁸⁸ Colombian Constitutional Court, Decision C-428 of 2002, per Justice Rodrigo Escobar Gil. See also Colombian Constitutional Court, Decisions C-553 of 1993, per Justice Eduardo Cifuentes Muñoz, and C-685 of 1995, per Justice Alejandro Martínez Caballero.

decreased by 32% when compared to the resources appropriated for the previous year.

(...) The fact that the annual budget laws have limited the appropriation of resources for the assistance of the displaced population is an indicator of the fiscal and macro-economic reality of the country. However, this does not mean that the budget laws can modify the scope of Law 387 of 1997, for the following reasons. First, whereas annual budget laws include, in a general way, all of the chapters and appropriations that are to be spent within a fiscal year, Law 387 of 1997 establishes specific legal provisions on the public policy for assisting the displaced population. Therefore, budgetary laws lack the material specificity required for them to be considered as a modification of the legal mandates concerning assistance to the victims of displacement and legally recognized rights. (...) Second, constitutional case-law has established that annual budget laws contain authorizations, and not orders, for the materialization of certain expenditures. In turn, Law 387 of 1997 contains an order directed to certain authorities, in the sense of “guaranteeing” the procurement of the resources that may be necessary to comply with the mandates on assisting the displaced population. Consequently, the distribution of resources made in the General Budget may not be taken as a legal statement that modifies the orders included in Law 387 of 1997.

On the other hand, the resources destined by private persons, NGOs, and the international community to assisting the displaced population do not compensate the insufficient appropriation of funds by the State. In addition, no mechanisms have been established to cover the long-term imbalances that may arise whenever the resources from said sources are less than what has been budgeted, or fail to arrive on time.

From the constitutional point of view, it is imperative to appropriate the budget that is necessary for the full materialization of the fundamental rights of displaced persons. The State’s constitutional obligation to secure adequate protection for those who are experiencing undignified living conditions by virtue of forced internal displacement may not be indefinitely postponed. (...) This Court’s case-law has reiterated the priority that must be given to the appropriation of resources to assist this population and thus solve the social and humanitarian crisis generated by this phenomenon.

(...) the National Council for Comprehensive Assistance to the Population Displaced by Violence (...), composed of the different public

officials who have responsibilities regarding the assistance of the displaced population, including the Ministry of Public Finance (...) has the responsibility of calculating the dimensions of the budgetary efforts required to secure the effectiveness of the protection designed by the Legislator through Law 387 of 1997.

Nonetheless, this has not happened, and thus the Constitution has been disregarded, as well as the mandates of Congress and the contents of the development policies adopted by the Executive itself.

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

This does not mean that, in the present case, the *tutela* judge is ordering an expense not included in the budget, or modifying the budgetary programming defined by the Legislator. Nor is it the case that new priorities are being defined, or that the policy designed by the Legislator and developed by the Executive is being modified. On the contrary, the Court, bearing in mind the legal instruments that develop the policy for assisting the displaced population, as well as the design of the policy and the commitments assumed by the different entities, is resorting to the constitutional principle of harmonious collaboration between the different branches of public power, in order to secure compliance with the duty of effective protection of the rights of all residents in the national territory. This is within the jurisdiction of constitutional judges in a Social State grounded on the rule of law, in regards to rights that impose duties with a clearly positive dimension, as it will now be explained.

The Court concludes that the State's response has not produced, as a result, the effective enjoyment of constitutional rights by all internally displaced persons. (...)

7. Verification of an unconstitutional state of affairs in the situation of the displaced population.

(...) Whenever a repeated and constant violation of fundamental rights is verified, which affects a multitude of persons, and whose solution requires the intervention of different entities to address problems o a

structural nature, this Court has declared the existence of an unconstitutional state of affairs, and has ordered the adoption of remedies that benefit not only those who have resorted to the *tutela* action in order to obtain protection of their rights, but also other persons who share the same situation but have not filed *tutela* lawsuits⁸⁹.

The factors evaluated by the Court in order to determine whether an unconstitutional state of affairs exists include the following: (i) a massive and generalized violation of several constitutional rights, which affects a significant number of people⁹⁰; (ii) a protracted omission by the authorities in complying with their obligations to secure rights⁹¹; (iii) the adoption of unconstitutional practices, such as the incorporation of the *tutela* action as part of the procedure to secure the violated rights⁹²; (iv) failure to adopt the legislative, administrative or budgetary measures required to prevent the violation of rights⁹³; (v) the existence of a social problem whose resolution requires the intervention of several entities, demands the adoption of a complex and coordinated set of actions, and exacts a level of resources that implies an important additional budgetary effort⁹⁴; (vi) if all the persons affected by the same problem were to resort to the *tutela* action in order to obtain the protection of their rights, a higher judicial congestion would be produced⁹⁵.

(...) The Court has declared the existence of an unconstitutional state of affairs on seven occasions. The first time, it did so because of the failure of two municipalities to affiliate the teachers under their responsibility to the National Fund for Teachers' Work Benefits (*Fondo*

⁸⁹ See, among others, Colombian Constitutional Court, Decisions T-068 of 1998, per Justice Alejandro Martínez Caballero; T-153 of 1998, per Justice Eduardo Cifuentes Muñoz; SU-250 of 1998, per Justice Alejandro Martínez Caballero; T-590 of 1998, per Justice Alejandro Martínez Caballero; T-606 of 1998, per Justice José Gregorio Hernández Galindo; SU-090 of 2000, per Justice Eduardo Cifuentes Muñoz; T-847 of 2000, per Justice Carlos Gaviria Díaz; T-1695 of 2000, per Justice Martha Victoria Sáchica Méndez.

⁹⁰ For example, in Colombian Constitutional Court, Decision SU-559 of 1997, per Justice Eduardo Cifuentes Muñoz (...).

⁹¹ For example, in Colombian Constitutional Court, Decision T-153 of 1998, per Justice Eduardo Cifuentes Muñoz (...).

⁹² For example, in Colombian Constitutional Court, Decision T-068 of 1998, per Justice Alejandro Martínez Caballero (...).

⁹³ For example, in Colombian Constitutional Court, Decision T-1695 of 2000, per Justice Marta Victoria Sáchica Méndez (...).

⁹⁴ For example, in Colombian Constitutional Court, Decision T-068 of 1998, per Justice Alejandro Martínez Caballero (...).

⁹⁵ (...)Colombian Constitutional Court, Decision T-068 of 1998 (...).

Nacional de Prestaciones Sociales del Magisterio), even though the legal discounts for pensions and work benefits had been made⁹⁶. After this decision, the Court has declared unconstitutional states of affairs on six more occasions: 1) because of the situation of continuous violation of the rights of the accused and processed individuals who were detained in the country's different prisons⁹⁷; 2) because of the lack of a social security healthcare system for detained accused individuals and sentenced prisoners⁹⁸; 3) because of the habitual tardiness in the payment of pensions, for a long period of time, in the departments of Bolívar⁹⁹ and 4) Chocó¹⁰⁰; 5) because of the omissions in the protection of the lives of human rights activists¹⁰¹; and 6) in view of the failure to summon a merit-based competition for the designation of notary publics¹⁰².

(...) The Court has consequently ordered, among other things and in accordance with each specific case, (i) to design and implement the policies, plans and programs required to secure in an adequate manner the fundamental rights whose effective enjoyment depends on the resolution of the unconstitutional state of affairs; (ii) to appropriate the funds required to secure the effectiveness of such rights; (iii) to modify the practices, organizational and procedural flaws that violate the Constitution; (iv) to amend the legal framework whose failures have contributed to the unconstitutional state of affairs; and (v) to carry out the administrative, budgetary or contracting procedures which are necessary to overcome the violation of rights.

In the case at hand, even though the Court has underlined the seriousness of the humanitarian crisis caused by forced displacement since 1997, when it adopted its first judgment on the matter, and although it has mentioned in some of its decisions that this phenomenon could constitute

⁹⁶ Colombian Constitutional Court, Decision SU-559 of 1997, per Justice Eduardo Cifuentes Muñoz.

⁹⁷ Colombian Constitutional Court, Decision, T-153 of 1998, per Justice Eduardo Cifuentes Muñoz.

⁹⁸ Colombian Constitutional Court, Decisions T-606 and T-607 of 1998, per Justice José Gregorio Hernández Galindo.

⁹⁹ Colombian Constitutional Court, Decision T-525 of 1999, per Justice Carlos Gaviria Díaz.

¹⁰⁰ Colombian Constitutional Court, Decision SU-090 of 2000, per Justice Alejandro Martínez Caballero.

¹⁰¹ Colombian Constitutional Court, Decision T-590 of 1998, per Justice Alejandro Martínez Caballero (...).

¹⁰² Colombian Constitutional Court, Decisions SU-250 of 1998, per Justice Alejandro Martínez Caballero; T-1695 of 2000, per Justice Marta Victoria SÁCHICA Méndez.

an unconstitutional state of affairs, until this date, such state has not been formally declared. Consequently, no orders have been issued in order to overcome it.

(...) Several elements confirm the existence of an unconstitutional state of affairs in regards to the situation of the internally displaced population.

In the first place, the gravity of the situation of violation of constitutional rights faced by the displaced population was expressly recognized by the Legislator itself, in defining the condition of displacement, and highlighting the massive violation of several rights. Indeed, paragraph 1 of Article 1 of Law 387 of 1997 states:

“Article 1. Displaced persons. A displaced person is any person who has been forced to migrate within the national territory, abandoning his/her habitual place of residence or economic activities, because his/her life, physical integrity, personal security or freedoms have been violated or are directly threatened, on account of any of the following situations: the internal armed conflict, internal disturbances and tensions, generalized violence, massive violations of human rights, violations of international humanitarian law, or any other circumstances arising from the foregoing situations which can alter, or drastically alter public order”.

In second place, another element that confirms the existence of an unconstitutional state of affairs in the field of forced displacement, is the high volume of *tutela* actions filed by displaced persons in order to obtain the different types of aid or an increase therein¹⁰³, as well as the verification, made in some policy analysis documents, of the fact that the filing of *tutela* actions has been incorporated into the administrative procedures, as a prior condition for obtaining aid¹⁰⁴.

¹⁰³ This high volume may be proven by the number of *tutela* actions filed by displaced persons which have been reviewed by the Constitutional Court until this date, by the number of dossiers accumulated to the present proceedings which are representative of the type of problems faced by the displaced population across the entire country, and by the total number of *tutela* lawsuits filed by displaced persons against the Social Solidarity Network from 1999 to present, which, according to the Court's information system, is more than 1200.

¹⁰⁴ Such is the case of the assignation of housing subsidies by the INURBE, because the resources which have been distributed correspond exclusively to those who filed *tutela* lawsuits. See Annex 5 on the observations to the corresponding public policy.

In addition to the above, even though there has been an evolution in the policy, it has also been proven that many of the problems addressed by the Court are rather old, and that in regards to them, authorities are still failing to adopt the necessary corrections (see section 6 of this judgment).

(...) In the third place, the dossiers which have been accumulated in the present *tutela* proceedings confirm such unconstitutional state of affairs, and indicate that the violation of rights affects a large part of the displaced population in several places of the national territory, and that the authorities have failed to adopt the required solutions (see the foregoing sections of this judgment). (...) This situation has worsened the conditions of vulnerability of this population, and the mass violation of its rights (see section 6 and Annex 5 of this Judgment).

Fourth, the continuous violation of said rights is not attributable to one single entity. Indeed, as noted above, several State entities, by action or omission, have allowed the continuation of the violation of the fundamental rights of displaced persons, in particular the national and local entities in charge of securing the availability of resources to ensure that the different components of the assistance policy benefit the displaced population under conditions of equality (...).

Fifth, the violation of the rights of displaced persons is due to the structural factors indicated in Section 6 of this judgment, which include a lack of harmony between the contents of legal provisions and the means to materialize them—an aspect that gains special dimensions when the focus is placed on the insufficiency of resources, as compared to the evolution of the problem of displacement, and when the magnitude of the problem is evaluated *vis-à-vis* the institutional capacity to address it in a timely and effective manner (...).

In conclusion, the Court shall formally declare the existence of an unconstitutional state of affairs in regards to the living conditions of the internally displaced population, and it shall adopt the corresponding judicial remedies, with due respect for the spheres of jurisdiction and the expertise of the authorities in charge of implementing the pertinent policies and executing the relevant legislation. Therefore, both the national and the territorial authorities, within their spheres of jurisdiction, shall adopt the corrective measures necessary to overcome such state of affairs.

8. The Social State grounded on the rule of law and the constitutional duties of the authorities in regards to the positive obligations imposed by human rights. The constitutional requirement of harmony between the objectives of the policy to assist the displaced population and the economic and administrative means required to materialize them in an effective and timely manner.

After verifying the existence of an unconstitutional state of affairs and adopting the decision of formally declaring it, the Chamber must determine which is the appropriate judicial remedy, bearing in mind the magnitude of the violation of rights, the number of persons who cannot enjoy them and the goals that the State must reasonably achieve in order to comply with its protective duties.

For this purpose, it is necessary to delimit the sphere of jurisdiction of the *tutela* judge in complying with his/her function of ensuring the effective—not theoretical—enjoyment of fundamental rights. In this sense, it is pertinent to recall the implications of the principle of a Social State grounded on the rule of law, so as to identify the role of the constitutional judge (8.1.), to identify the scope of the positive dimension of the duties imposed by social rights and of the right to life and basic liberties (8.2.), and to define the specific duties of authorities when the effective enjoyment of the fundamental rights of an identifiable group of persons—such as the displaced population—depends on the destination of scarce resources and on the development of higher institutional efforts (8.3.).

8.1. As this Court has reiteratively pointed out, the fact that Colombia is a Social State grounded on the rule of law “grants a meaning, a character and specific objectives to the State organization as a whole, which is consequently binding upon the authorities, who must guide their activities towards the achievement of the specific goals that are distinctive of such a system: the promotion of dignified living conditions for all persons, and the resolution of the real inequalities that are present in society, in order to implant a fair system”¹⁰⁵.

The historic origins of this model and its developments, confirm that unless the real limitations and inequalities faced by man in everyday life are effectively countered through positive and focalized actions by the

¹⁰⁵ Colombian Constitutional Court, Decision T-772 of 2003, per Justice Manuel José Cepeda Espinosa.

authorities, human freedom and equality shall not cease to be abstract utopias. (...)

The above implies that authorities are bound—through the means that they consider appropriate—to correct the visible social inequalities, to facilitate the inclusion and participation of the weak, marginalized and vulnerable sectors or the population in the economic and social life of the nation, and to stimulate a progressive improvement of the material living conditions of the most disadvantaged sectors of society. (...)

The foregoing statements entail two types of duties for the State. On the one hand, it must adopt and implement positive policies, programs or measures to achieve a real equality of conditions and opportunities between the members of society, and in doing so, to comply with its constitutional duties of progressive satisfaction of the basic economic, social and cultural rights of the population—applying what constitutional case-law has designated as the “eradication of present injustices clause”-¹⁰⁶. And, on the other hand, it must abstain from developing, promoting or executing policies, programs or measures which are markedly retrogressive in regards to economic, social and cultural rights, which can lead in a clear and direct manner to aggravate the situation of injustice, exclusion or marginalization that should be corrected—which does not prevent the State from advancing gradually and progressively towards the full enjoyment of such rights.¹⁰⁷

In that sense, this Court has also underscored that the adoption of measures in favor of marginalized groups is not a merely discretionary function of the Legislator, but a clear mandate of action, aimed at transforming the material conditions that give rise to, or perpetuate, social exclusion and injustice. Although this State duty needs to be developed by the legislation and is linked to the corresponding budgetary appropriations, it may not be indefinitely postponed within the State agenda. (...)

On the other hand, within a Social State grounded on the Rule of Law, the aforementioned duties of the authorities are not restricted to the so-

¹⁰⁶ Colombian Constitutional Court, Decision SU-225 of 1997, per Justice Eduardo Cifuentes Muñoz. (...) This doctrine has been reiterated, inter alia, in Colombian Constitutional Court, Decisions T-177 of 1999, per Justice Carlos Gaviria Díaz; T-840 of 1999, per Justice Eduardo Cifuentes Muñoz; T-772 of 2003, per Justice Manuel José Cepeda Espinosa.

¹⁰⁷ See, in this sense, Colombian Constitutional Court, Decision C-671 of 2002, per Justice Eduardo Montealegre Lynett.

called “second generation” rights. On the contrary, under certain circumstances the effective enjoyment of the right to life in dignified conditions and other basic freedoms may well depend on the adoption of positive actions by the authorities, aimed at guaranteeing the positive duties imposed by such rights and liberties. Said positive actions, whenever directed to respond to the needs of many persons, can be progressively developed so as to secure the effectiveness of the programmatic and positive obligations imposed by a constitutional right, provided that the minimum levels of satisfaction have been ensured for all.

8.2. As highlighted by the Court in decision T-595 of 2002¹⁰⁸, the fact that a given right has a markedly programmatic dimension does not mean that it is not enforceable, or that it can be eternally disregarded:

“(…) As the years go by, if the responsible authorities have not adopted effective measures that secure advances in the materialization of the positive obligations imposed upon them by constitutional rights, they are gradually incurring in a violation that grows more serious over the course of time. (...) Taking rights seriously demands, in addition, taking progressiveness seriously, as pointed out by the competent international organizations. In the first place, progressiveness refers to the effective enjoyment of a right, and therefore it does not justify the exclusion of certain groups of society from its enjoyment. Insofar as certain social groups, given their physical, cultural or socioeconomic conditions, can only fully enjoy the positive content protected by a given right if the State adopts policies that imply public expenditure and require administrative measures, the progressive nature of these positive obligations prevents the State from being totally indifferent to the needs of such groups, because this would imply perpetuating their situation of marginalization, which is incompatible with the fundamental principles on which participative democracies are based. In the second place, the progressiveness of certain positive obligations imposed by a right makes it necessary for the State to incorporate, within its policies, programs and plans, resources and measures aimed at advancing in a gradual manner in the achievement of the goals set by the State itself for the purpose of allowing all inhabitants to effectively enjoy their rights. In the third place, the State can—through its corresponding entities—define the scope of the commitments it acquires with its citizens with the aim of materializing said objective, and it can also determine the rhythm at which it will advance in the

¹⁰⁸ Colombian Constitutional Court, Decision T-595 of 2002, per Justice Manuel José Cepeda Espinosa.

achievement of such commitments. However, these publicly adopted decisions must be serious, for which reason they must be based on a rational decision-making process that structures a public policy which can be implemented, in such a way that the democratically acquired commitments are not mere promises lacking all potential of being materialized. Thus, when such commitments have been enshrined in the legislation and they constitute measures which are indispensable to achieve the effective enjoyment of fundamental rights, interested parties may demand, by judicial means, compliance with the corresponding positive obligations”.

When the State fails to adopt measures in regards to the marginalization of certain members of society, without a constitutionally acceptable justification, and when it is proven that this failure violates a fundamental constitutional right, the judge’s function will be “not to replace the organs of public power which have incurred in the failure, but to order compliance with the duties of the State”.

In the case of the displaced population, in order to ensure the effective enjoyment of its fundamental rights, the State’s response must comprise positive actions, which highlights the positive obligations which—together with an obligation of defense against the arbitrary—are imposed by all of the rights whose violation has led the Court to declare an unconstitutional state of affairs.

(...) Although many of the components of such policy have a markedly programmatic dimension, even though they correspond to the positive obligations imposed by the violated fundamental rights of the displaced population, and even though their materialization depends on the availability of resources, this does not mean that the State can, without limitations, adopt measures that represent, in fact, a retrogression in some of the aspects of the legally designed and institutionalized policy, which is still the same in paper.

In the present case, through insufficient budgetary allocations and through the omission in the correction of the most salient flaws in institutional capacity, (...) the progressive advance in the satisfaction of the rights of the displaced population has not only been delayed, but it has deteriorated over time in certain aspects which have already been mentioned, in spite of the achievements made in the reduction of the rhythm at which the phenomenon has been growing. This translates into a failure to comply with the formally defined levels of protection (...) by the

competent legislative and executive authorities, and it counters the facts that (i) social expenditure, and expenditure for assisting the marginalized population, is regarded as a priority; (ii) there exists a State policy to provide comprehensive assistance to the displaced population; (iii) that policy was discussed and approved by Congress, which granted it a normative nature through a law of the Republic that dates back to 1997; (iv) there exists a regulatory framework which has developed—although not in their entirety—the components of the policy; (v) national and territorial authorities have undertaken commitments towards the displaced population, which are indefinitely postponed on account of the lack of sufficient resources and other types of flaws in the institutional capacity of the responsible entities; and (vi) there exist official documents which have quantified the financial effort required to enforce the displacement policy, and such documents have been approved by the CONPES.

8.3. Such retrogression is, *prima facie*, contrary to the constitutional mandate of ensuring the effective enjoyment of the rights of all displaced persons. Therefore, the foremost duty of the relevant authorities is to prevent such practical retrogression in any aspects of the level of protection of the rights of all displaced persons wherever it has taken place, even if such retrogression is a result of the evolution of the problem, and of factors that were beyond the will of the responsible public officials. The gravity, magnitude and general complexity of a problem do not justify, in themselves, the fact that the level of protection given to certain rights does not correspond to constitutional mandates, all the more if these mandates have been developed by a law approved by Congress and they have been regulated by the Executive. Neither is it constitutionally admissible for the scope of such protection to be reduced in practice, without acknowledging such reduction or adopting the pertinent corrections in a timely and adequate way. On the other hand, the constitutional judge may not disregard the features of the real context in which a violation of fundamental rights has been verified, so as to prevent the orders issued to protect them from being innocuous or unattainable. However, the constitutional judge must see to it that the maximum level of protection afforded by the rules in force is achieved, and demand a resolution of the differences between the legally defined duties and the ones complied with in fact, so as to achieve a real enjoyment of the constitutional rights of all the affected persons, in this case by the displaced population.

8.3.1. From the above it may be deduced that the progressive character of certain rights, and the positive obligations imposed by a right, demand

that the authorities be reasonable in the design and articulation of the public policies that concern such rights, so that said policies are transparent, serious and coherent (...). Transparency requires that the positive obligations which will be legally secured, as well as the identity of those responsible for complying with the legal mandates, be made public. Seriousness requires that whenever a policy is incorporated into a legal instrument, such as a law or a decree, the legal (not political or rhetoric) force of such instrument is respected, and therefore, that the scope of the recognized rights is defined, and the content of the corresponding State obligations is pointed out. Coherency is aimed at ensuring harmony between the “promises” of the State, on the one hand, and the economic resources and institutional capacity to comply with such promises, on the other, all the more if the promises have been translated into legal provisions. Coherence demands that, whenever the State creates a specific right, that imposes a positive obligation, through a law, it must see to it that it will have the necessary resources to ensure its effective enjoyment, and the institutional capacity to attend the demand for services generated by the creation of said specific right.

Whenever the authorities who have knowledge about the features of a social problem adopt legal instruments or promote their adoption by Congress, and such legal instruments are not just aimed at incorporating any public policy but are rather aimed at ensuring the effective enjoyment of constitutional fundamental rights, *tutela* judges are empowered to order respect for the minimum rationality criteria mentioned above. This may imply ensuring coherence between the legal mandates included in the provisions adopted by the competent entities, and the resources which are required to comply with such mandates.

Under certain circumstances it may be impossible to achieve such coherence, even in the mid-term. If it is proven that such is the situation, it is necessary to adjust the promises to the real possibilities, which could entail the adoption of a measure that restricts the scope of the previously established protection. However, such measure must comply with strict requirements, in particular, it must ensure the minimum levels of satisfaction of the right which is being limited, and it may not disregard the priority areas that bear the highest impact upon the population.

8.3.2. The Chamber notes that, in accordance to this Court’s case-law, “the mandate of progressiveness implies that once a certain level of protection has been achieved, the Legislator’s broad margin of configuration in the field of social rights is restricted, at least in one

aspect: any retrogression from the level of protection already achieved must be presumed unconstitutional on principle, for which reason it is subject to strict judicial review.¹⁰⁹ In order for it to be constitutional, authorities must prove that there are imperative reasons that make such retrogression necessary in the development of a social right that imposes positive obligations”¹¹⁰.

International law has amply accepted the criterion of strict judicial review of any measure that amounts to a retrogression in the levels of protection which have already been achieved in the field of social rights.

The effective enjoyment of rights with a strong positive-duty content—such as social rights—depends on the creation and preservation, by the State, of the conditions for such enjoyment, and on the adoption of policies aimed at their progressive realization. States have a broad margin of discretion in this regard. However, the obligations undertaken through the ratification of the International Covenant on Economic, Social and Cultural Rights (ICESCR) give rise to certain minimum requirements, enshrined in General Observation No. 1¹¹¹, adopted by the Committee in charge of interpreting said International Covenant. These are: (i) the elaboration and periodic updating of a diagnose of the conditions in which such rights are exercised and enjoyed by the population; (ii) the design of public policies aimed at progressively achieving the full realization of said rights, which must include specific goals to measure advances within stated time periods; (iii) the periodic dissemination of the results achieved and all corrective or complementary measures, in order for all interested parties and social actors—including NGOs—to participate in the evaluation of the pertinent public policies, and to identify the flaws, difficulties or circumstances that preclude the full realization of the rights, in order to allow for a review or the elaboration of new, more appropriate, public policies.

The second minimum requirement—design and implementation of public policies which are conducive to the progressive realization of said right—comprises several elements which must be underscored, following General Comment No. 3 adopted by the ICESCR Committee. First, the

¹⁰⁹ In this sense, see *inter alia* Colombian Constitutional Court, Decisions C-251 of 1997 (section 8), SU-624 of 1999, C-1165 of 2000 and C-1489 of 2000.

¹¹⁰ Colombian Constitutional Court, Decision C-671 of 2002, per Justice Eduardo Montealegre Lynett.

¹¹¹ Adopted during its third period of sessions, E/1989/22 (1989).

State must “adopt measures”, and therefore, the lack of a state response to the non-realization of said rights is not admissible. Second, such measures must include “all appropriate means, including particularly the adoption of legislative measures”, which does not mean that those means are exhausted in the promulgation of legal provisions. The State has the responsibility of identifying which are the appropriate administrative, financial, educational, social, etc. means in each case, and of justifying that they are, in reality, the appropriate ones in view of the circumstances. Third, “in terms of political and economic systems the Covenant is neutral”. Fourth, the purpose of such measures is that of “achieving progressively the full realization of the rights recognized”, which implies that there is flexibility on account of the limitations of the real world, but also that the measures must be targeted at advancing, not at retrogressing, making “full use of the maximum available resources”. Fifth, “any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources” (...). Sixth, the margin of flexibility allowed to States does not exonerate them from the obligation to “ensure the satisfaction of, at the very least, minimum essential levels of each of the rights”, levels which must be regarded as “a matter of priority” and demand that “every effort has been made to use all resources that are at its disposition”.

Thus, for example, in the field of the right to health, the Committee on Economic, Social and Cultural Rights of the United Nations, as authorized interpreter of the Covenant on this matter, (...) has pointed out the conditions for the adoption of measures that can amount to a retrogression. In particular, (...) on May 11, 2000, the Committee adopted General Comment No. 14, on “the right to the highest attainable standard of health (art. 12 of the International Covenant on Economic, Social and Cultural Rights)”, and it pointed out that whenever there exist resource limitations which undermine the full enjoyment of the right to health, in order to be able to adopt measures that reduce the scope of the existing protection, the State must prove that such measures are necessary and that “they have been introduced after the most careful consideration of all alternatives” (par. 32).

The Committee underscores, in General Comment 14, that progressiveness does not deprive State obligations of their content, for which reason in spite of resource limitations, the Government is still bound, at least in (...) four aspects (...).

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

9. The minimum levels of satisfaction of the constitutional rights of displaced persons.

In section 5, the Court has summarized some of the rights that appertain to internally displaced persons, in accordance with the constitutional and international provisions that are binding for Colombia, as well as the interpretation criteria compiled in the Guiding Principles document.

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

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

In order to define the minimum level of satisfaction of the constitutional rights of displaced persons, a distinction must be drawn between (a) respect for the essential nucleus of the fundamental constitutional rights of displaced persons, and (b) the satisfaction, by the authorities, of certain positive duties, derived from the rights constitutionally and internationally recognized to displaced persons.

In regards to the first aspect, it is clear that the authorities may not, in any case, act in such a way as to end up disregarding, violating or threatening the essential nucleus of the constitutional fundamental rights of internally displaced persons—just like they cannot act in such a way as to affect the essential nucleus of the rights of any person within the Colombian territory. (...)

In regards to the second aspect, the Chamber notes that most of the rights recognized by the international provisions and the Constitution to displaced persons bind the authorities, because of the very circumstances of displaced persons, to comply with clear obligations of a positive nature, which will necessarily entail public expenditure. (...) In the Court's view, the rights with a markedly positive-duty imposing content that form part of the minimum levels that must always be secured to the displaced population, are those that have a close connection with the preservation of life under elementary conditions of dignity as distinct and autonomous human beings (...). It is there, in the preservation of the most basic conditions that permit a dignified survival, where a clear limit must be drawn between the State obligations towards the displaced population of imperative and urgent compliance, and those which, even though they must be fulfilled, do not have the same priority—which does not mean that the State is exempt from the duty of exhausting, to the maximum possible level, its institutional capacity to secure the full enjoyment of all the rights of displaced persons (...).

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

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

On the grounds of this criterion, and of the international obligations acquired by Colombia in the field of human rights and international humanitarian law, as well as the compilation of criteria for the interpretation and application of measures to assist the displaced population which is contained in the Guiding Principles, the Chamber considers that the following minimum rights fit this definition, and therefore, comprise the minimum positive obligations that must always be satisfied by the State:

1. The right to life, in the sense of article 11 of the Constitution and Principle 10.

2. The rights to dignity and to physical, psychological and moral integrity (articles 1 and 12 of the Constitution), as clarified in Principle 11.

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

4. The right to a basic subsistence, as an expression of the fundamental right to a minimum subsistence income¹¹² and clarified in Principle 18, which means that “competent authorities shall provide internally displaced persons with and ensure safe access to: (a) essential food and potable water; (b) Basic shelter and housing; (c) appropriate clothing; and (d) essential medical services and sanitation”. Authorities must also make special efforts to secure the full participation of displaced women in the planning and distribution of these basic supplies. This right must also be read in the light of Principles 24 through 27 (...), given that it is through the provision of humanitarian assistance that the authorities satisfy this minimum duty in regards to the dignified subsistence of displaced persons. (...)

¹¹² “*Mínimo Vital.*”

In this sense, and in regards to emergency humanitarian aid, the Court must point out that the duration of the minimum State obligation to provide emergency humanitarian aid is, on principle, the one established in the law: three months, renewable for up to another three months for certain types of persons. The Chamber considers that this term, established by the Legislator, is not manifestly unreasonable, if it is borne in mind that (a) it sets a clear rule on the grounds of which displaced persons can carry out short-term planning and adopt autonomous self-organization decisions which can allow them to have access to reasonable possibilities of autonomous subsistence, without being hastened by the burden of immediate subsistence needs; and (b) it grants the State an equally reasonable term to design the specific programs required to satisfy its obligations in the field of aid for the socio-economic stabilization of displaced persons (...).

(...) the Court must also point out that there are two types of displaced persons that, because of their particular conditions, have a minimum right to receive emergency humanitarian aid for a period of time which is longer than the legally established one: such is the case of (a) persons in situations of extraordinary urgency, and (b) persons who are not in a condition to assume their own self-sufficiency through a stabilization or socio-economic re-establishment project, such as children without guardians and elderly persons who, because of their old age or their health conditions, are not fit to generate income; or women providers who must devote their entire time and efforts to take care of infant children or elderly persons under their responsibility. In these two types of situation, it is justified for the State to continue providing the humanitarian aid required for the dignified subsistence of the affected persons, until the moment in which the circumstances at hand have been overcome (...). The Court notes that, even though the State cannot abruptly suspend humanitarian aid to those who are not capable of self-sufficiency, people cannot expect to live indefinitely off that aid, either.

5. The right to health (article 49 of the Constitution), whenever the provision of the corresponding healthcare service is urgent and indispensable to preserve the life and integrity of the person, in cases of illness or wounds that threaten them directly, or to prevent contagious or infectious diseases, in accordance with Principle 19. On the other hand, in

the case of children, article 44 shall apply¹¹³, and in cases of infants under one year of age, article 50 of the Constitution shall apply¹¹⁴.

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

7. For the case of displaced children, the right to basic education until fifteen years of age (article 67, paragraph 3, of the Constitution). The Chamber clarifies that, even though Principle 23 establishes the State duty to provide basic primary education to the displaced population, the scope of the international obligation described therein is broadened by article 67 of the Constitution, by virtue of which education shall be mandatory between five and fifteen years of age, and it must comprise at least one pre-school year and nine years of basic education. (...) the State is bound, at the minimum to secure the provision of a school seat for each displaced child within the age of mandatory education, in a public educational institution. That is to say, the State's minimum duty in regards to the education of displaced children is to secure their access to education, through the provision of the seats that are necessary in public or private entities of the area¹¹⁵.

8. In regards to the provision of support for self-sufficiency (article 16 of the Constitution) by way of the socio-economic stabilization of persons in conditions of displacement—a State obligation established in Law 387 of 1998 and which can be deduced from a joint reading of the Guiding Principles, in particular Principles 1, 3, 4, 11 and 18-, the Court considers that the State's minimum duty is that of identifying, with the full participation of the interested person, the specific circumstances of his/her individual and family situation, immediate place of origin, particular

¹¹³ Article 44 of the Constitution protects children's fundamental right to health.

¹¹⁴ Article 50 of the Constitution establishes that children under one year of age shall have the right to free and mandatory healthcare in all public institutions.

¹¹⁵ This was the order issued by the Court in Decision T-215 of 2002 to the respondent Municipal Education Secretariat: to secure access to the educational system by the plaintiff children, using the available places in the schools of the area. This preferential treatment for displaced children is justified, not only because education is one of their fundamental rights—as happens with all the other children in the national territory-, but because of their especially vulnerable conditions they receive reinforced constitutional protection, which means, in the educational field, that if at least their basic education is not secured, the effects of displacement upon their personal autonomy and the exercise of their rights will be worsened.

needs, skills and knowledge, and the possible alternatives for dignified and autonomous subsistence to which he/she can have access in the short and mid term, in order to define his/her concrete possibilities of undertaking a reasonable individual economic stabilization project, of participating in a productive manner in a collective project, or entering the work market, as well as to use the information provided by the displaced population in order to identify income-generation alternatives for displaced persons.

It is important to note that this minimum right of displaced persons does not bind the authorities to provide, in an immediate manner, the material support required to begin the productive projects which are formulated, or to secure access to the work market on the grounds of the individual evaluation at hand; even though such support must necessarily materialize through the programs and projects designed and implemented by the authorities for the purpose, the minimum and immediately enforceable duty imposed by this right upon the State is that of gathering the information which can allow it to provide the necessary attention and consideration to the specific conditions of each displaced person or family, identifying with the highest possible accuracy and diligence their personal capacities, so as to extract from such evaluation solid conclusions that can facilitate the creation of stabilization opportunities that respond to the real conditions of each displaced persons, and which can, in turn, be incorporated into the national or territorial development plans.

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

individual or collective return of displaced persons to their places of origin, or their re-establishment at another geographical location, must be preceded by an assessment of the public order conditions at the place to which they will return, the conclusions of which must be communicated to the interested parties before the act of return or re-establishment.

10. The orders

This Court has issued two types of orders, depending on the magnitude of the problem that generates the violation of the rights protected through *tutela* proceedings. It has issued simple execution orders, generally referred to abstentions or actions that may be carried out by one authority without the participation of others. It has also issued complex orders, which require complex execution procedures, involve several authorities and require coordinated actions.

In the present case, Review Chamber No. 3 shall impart two types of orders. A number of complex execution orders, related to the unconstitutional state of affairs, and aimed at securing the rights of the entire displaced population, regardless of whether or not they have resorted to the *tutela* action to protect their rights. The purpose of these orders is to make the entities in charge of assisting the displaced population establish, within a reasonable period, and within the scope of their jurisdiction, the corrections which are required to overcome the problems of lack of resources in the budget and precarious institutional capacity to implement the State policy to assist the displaced population.

The simple orders which shall also be issued in this process are aimed at responding to the concrete requests made by the plaintiffs in the present *tutela* proceedings, and they are compatible with the Constitutional Court's case law on the protection of the rights of the displaced population.

10.1. Orders aimed at overcoming the unconstitutional state of affairs

(...) These orders are aimed at the adoption of decisions which can make it possible to overcome both the insufficiency of resources and the flaws in the institutional capacity. This does not mean that, by way of *tutela* proceedings, the judge is ordering expenditures outside of the budget, or modifying the budget programming defined by the Legislator. Neither is the judge delineating a policy, defining new priorities, or modifying the policy designed by the Legislator and developed by the

Executive. The Court, bearing in mind the legal instruments that develop the policy for assisting the displaced population, the design of such policy and the commitments assumed by the different entities, is resorting to the constitutional principle of harmonious collaboration between the different branches of power, to ensure compliance with the duty of effective protection of the rights of all residents in national territory, and a serious, transparent and effective realization of the commitments defined for purposes of such protection.

10.1.1. For these reasons, and given that the National Council for Comprehensive Assistance to the Population Displaced by Violence is the body in charge of formulating the policy and securing the budgetary allocations for the programs to assist the displaced population, and that such Council includes the main national authorities with responsibilities in the field, the Chamber shall communicate the unconstitutional state of affairs to the Council, in order for it to determine the way in which the insufficiency of resources and the flaws in institutional capacity can be overcome.

Consequently, the Court will order that no later than March 31, 2004, this body must define the dimension of the budgetary effort that is required to attend the commitments defined in the policy, and establish the way in which the Nation, territorial entities and international cooperation shall contribute to said effort. This implies that such body and its members, complying with their duty of effective protection of the rights of the displaced population, must determine the mechanisms to procure such resources, adopt the necessary decisions and establish practicable alternatives to overcome any possible obstacles to be met.

(...) it is fundamental for the Minister of Public Finance and the Director of the National Planning Department to participate in the fulfillment of this objective, in order for them to contribute to the achievement of the budgetary goals required by the policy for assisting the displaced population. Therefore, this judgment will be especially communicated to the aforementioned public officials, so that within the sphere of their jurisdiction they adopt the decisions which are conducive to overcome the unconstitutional state of affairs. The procurement of such resources shall be made within one year after the communication of the present judgment, and should it not be possible, the rules stated in this judgment must be applied.

Bearing in mind that one of the factors which has generated a shortage of resources is the low commitment of the territorial entities in the destination of appropriate resources to assist the displaced population, (...) it is necessary for such entities to adopt decisions that secure a higher commitment, as ordered by article 7 of Law 387 of 1997, which establishes that territorial authorities shall summon the Committees for Assistance to the Displaced Population. Said summoning is mandatory in the municipalities that face situations of forced displacement (...). The national government, through the Ministry of the Interior, must promote their creation. The relevant territorial authorities must determine the level of resources they will destine to assisting the displaced population, and they shall define the priority programs and assistance components that they will assume. In order to achieve adequate coordination between the national and territorial authorities, (...) it is necessary for such decisions to be adopted within a short period, and for the National Council to be informed of the adopted decisions, no later than May 31, 2004, in order for such commitments to be borne in mind by that body.

On the other hand, given the importance of international cooperation as a mechanism to complement the resources allocated by the Nation and territorial entities to assist the displaced population, the Minister of Foreign Affairs, within the sphere of her jurisdiction, shall define a strategy to promote this policy so it receives priority attention by the international community.

If the National Council for Comprehensive Assistance to the Population Displaced by Violence concludes, after establishing the dimension of the required budgetary effort and evaluating the mechanisms to procure such resources, that it is not possible to comply with the commitments assumed in the State policy, as defined in Law 387 of 1997 and its regulatory decrees, as well as the CONPES documents, in application of the principles of transparency and efficiency it may re-define such commitments, in such a way that there is coherence between the legal obligations defined by the competent authorities through democratic procedures, on the one hand, and the resources effectively allocated to comply with such obligations. Such re-definition must be carried out publicly, offering sufficient participation opportunities to the representatives of associations of displaced persons, and expressing the specific reasons that justify such a decision, provided that all displaced persons are secured effective enjoyment of the rights indicated in section 9 of this judgment. This re-definition does not necessarily have to lead to a reduction of the scope of the rights of the displaced persons. However,

should this be unavoidable, after exhausting all reasonable alternatives, such decisions must comply with the conditions established in section 8 of this judgment, that is, they may not be discriminatory, they must be necessary, temporary and conditioned to a future return to the path of progressive advance in the rights, once the conditions that led to their adoption have disappeared. And in any case, the State must guarantee the effective enjoyment of the minimum levels which allow for the exercise of the right to life under conditions of dignity as distinct and autonomous human beings.

In addition, given that the other factor that contributes to the unconstitutional state of affairs in the field of forced internal displacement is the existence of flaws in the institutional capacity to implement the policy for assisting the displaced population, (...) the National Council for Comprehensive Assistance to the Population Displaced by Violence shall be ordered to adopt, within the three months after the communication of the present judgment, a program of action, with a precise schedule, aimed at correcting the failures in institutional capacity (...).

10.1.2. Throughout the present proceedings, it has become evident that a large part of the displaced population is not being secured the minimum level of protection that must always be satisfied. Tardiness in attending the requests of displaced persons, and the excessively long time it takes for the State to provide emergency humanitarian aid, as well as the low coverage of the different programs and the insufficient information and orientation provided to displaced persons, underscore this violation and the urgency of adopting the necessary corrections. Therefore, the National Council for Comprehensive Assistance to the Population Displaced by Violence, in a maximum period of 6 months after the communication of the present judgment, must conclude the actions aimed at securing the effective enjoyment, by all displaced persons, of the minimum levels of protection of their rights which were referred to in section 9 of this judgment.

(...) in adopting the decisions related to overcoming the unconstitutional state of affairs, the organizations that represent the displaced population must be afforded the opportunity to participate in an effective manner. This implies, at the very least, to have prior knowledge of the projected decisions, to receive the opportunity of making observations, and that any observations in regard to the decision projects must be duly valued, so that there is an answer in regards to every observation—which does not imply that decisions must be agreed upon.

10.1.3. Through the study of the dossiers, the Court verified that several authorities and entities in charge of assisting the displaced population have incorporated the filing of *tutela* actions as a prior requirement to have access to the benefits defined in Law 387 of 1997. Such practice runs against article 2 of the Constitution, and (...) the *tutela* judge can warn the authorities not to repeat the actions or omissions that generate violations of rights. Therefore, in the present case, the different authorities will be warned not to incur again in such practice, which is manifestly opposed to the duties of any administrative authority (...).

Thus, whenever the different authorities receive a petition from a displaced person, in which the protection of any of his/her rights is being requested, the relevant authority shall 1) incorporate the person in the list of displaced petitioners, 2) inform the displaced person, within a period of 15 days, the maximum term within which the request shall be responded, 3) inform, within a period of 15 days, whether the request complies with the requirements to be processed, and in case it doesn't, indicate clearly how it can be corrected so he/she can have access to the aid programs; 4) if the request complies with the requirements, but there are no budgetary allocations available, the authority shall advance the necessary procedures to obtain the resources, and determine the priorities and the order in which they shall be resolved; 5) if the request complies with the requirements and there are enough available funds in the budget, the authority shall inform about when the benefit will become effective, and the procedure that must be followed in order to receive it effectively. In any case, authorities must abstain from demanding a *tutela* judgment in order to comply with their legal duties and respect the fundamental rights of displaced persons. This same procedure must be carried out in regards to the petitions filed by all the plaintiffs within the present *tutela* procedure, particularly for the requests for access to the aid established in the housing and socio-economic reestablishment programs.

10.1.4. Another frequent complaint against the policy for assisting displaced persons (...) is that the authorities in charge of their assistance frequently fail to guarantee that these persons receive a dignified treatment which is respectful of their rights (...). Indeed, from the dossiers it may be deduced that some administrative officials force displaced persons to undergo an eternal institutional pilgrimage and unnecessary procedures, they fail to provide them with complete and timely information about their rights, or they simply ignore their requests. This problem is fueled by the fact that the persons who become displaced by violence ignore the rights derived from such condition. Therefore, the Social Solidarity Network

shall be ordered to instruct the persons in charge of assisting displaced persons to inform them in an immediate, clear, and precise manner about the rights that purport to secure them dignified treatment by the authorities, and to verify that this actually happens. Such rights have been developed by the law and they comprise a Charter of Basic Rights of any person who has become a victim of forced internal displacement. Hence every displaced person shall be informed that:

1. He/she has the right to be registered as a displaced person, alone or with his/her family group.
2. He/she maintains all of his/her fundamental rights, and the fact of displacement has not led him/her to lose any of his/her constitutional rights, but on the contrary, she/he has become a subject of special State protection;
3. He/she has the right to receive humanitarian aid as soon as the displacement takes place and for a period of 3 months, renewable for up to 3 more months, and such aid includes, at the very least, (a) essential foodstuffs and drinking water, (b) basic shelter and housing, (c) adequate clothing, and (d) essential medical and sanitary services.
4. He/she has the right to receive a document that proves his/her inscription with a health service provider, so as to secure effective access to healthcare services.
5. He/she has the right to return, in conditions of security, to his/her place of origin, and may not be forced to return or re-locate him/herself in any specific part of the national territory;
6. He/she has the right to have the specific circumstances of his/her personal and family situation identified, with his/her full participation, so as to define—insofar as he/she hasn't returned to the place of origin—how he/she can work in order to generate income which can allow him/her to live in a dignified and autonomous manner.
7. He/she has the right, if younger than 15 years of age, to have access to a seat in an educational institution.
8. These rights must be immediately respected by the competent administrative authorities, which may not establish, as a condition to grant said benefits, the filing of *tutela* actions—even though displaced persons remain free to do so;

9. As a victim of a crime, he/she has all of the rights recognized by the Constitution and the legislation on account of such condition, so as to secure that justice is made, the truth of the facts is revealed, and reparation is obtained from the authors of the crime.

(...)

10.2. The orders required to respond to the requests of the plaintiffs in the present proceedings.

As it was stated in the “Background” section of this judgment, the *tutela* actions under review were filed because of the lack of institutional response to the requests for provision of the aid established in the housing and socio-economic reestablishment programs, as well as to have access to healthcare services, education, or for the provision of emergency humanitarian aid, or for the registration of the plaintiffs as displaced persons in the Single Registration System. Through *tutela* actions, plaintiffs were demanding a substantial and timely response to their requests, which can translate into the materialization of that aid.

(...) given that even those plaintiffs who filed joint *tutela* actions have different situations, it is not possible to order, in a general manner, that the requested aids be provided, but rather it is necessary to examine each case separately to determine whether there has been a violation of their rights.

In any case, the Chamber reiterates that the *tutela* action may not be used to alter the order in which the requested aid is to be provided, nor to disregard the rights of other displaced persons who did not resort to the *tutela* action and who are, under equal conditions, awaiting a response by the relevant entity.

10.2.1. Consequently, the Chamber shall order the authorities responsible of answering the requests for aid with regard to access to any of the programs for economic stabilization—temporary jobs, productive projects, training, food security, etc.—and housing, that within the month after the notification of this judgment, if they have not yet done so, they must give substantial responses to the requests of the plaintiffs. (...) This order follows the Court’s case-law on the matter, in cases similar to the ones that gave rise to the present *tutela* proceedings, in particular decisions T-721 of 2003, per Justice Alvaro Tafur Galvis and T-602 of 2003, per Justice Jaime Araujo Rentería, on the right to housing; T-669 of 2003, per Justice Marco Gerardo Monroy Cabra, on protection of the rights to petition, work and access to the different alternatives for economic

consolidation; T-419 of 2003, per Justice Alfredo Beltrán Sierra, on housing and economic stabilization.

10.2.2. As it was done by the Court in decision T-215 of 2002, per Justice Jaime Córdoba Triviño, with regard to the way in which the requests for inscription in the Single Registration System of Displaced Population must be answered, in the present judgment the Social Solidarity Network shall be ordered to advance, through the different sectional offices of the areas where the plaintiffs are located, an evaluation of the situation of the petitioners within a term no longer than 8 days, counted from the moment of notification of this sentence, to determine whether they comply with the objective conditions of displacement and, should that be the case, give them immediate access to the aid established for their protection.

10.2.3. Likewise, with regard to the requests for provision of emergency humanitarian aid, the Social Solidarity Network must carry out the proceedings required to effectively grant, within a term no longer than 8 days starting at the moment of notification of the present judgment, the humanitarian aid requested by the petitioners—should it have not done so by then. With regard to the requests for renewal of emergency humanitarian aid, the Social Solidarity Network must start, within the 8 days following the notification of this judgment, the case by case evaluation of the situation of the plaintiffs, in order to determine whether they are in objective conditions of extraordinary urgency, which signal that these persons are not in a condition to assume their self-sufficiency through a socio-economic stabilization or re-establishment project, and that it is justified to continue providing them humanitarian aid, regardless of the fact that the three month period and its renewal for up to another three months have gone by. Should the conditions of extraordinary urgency or incapacity to access the economic stabilization programs be verified, the Social Solidarity Network must grant preferential application to the Constitution, and continue providing such aid for as long as said conditions persist.

10.2.4. In the case of the request for effective access to the social security health system and the provision of medicines, bearing in mind the orders issued by this Court in its case-law -in particular in decisions T-419 and T-645 of 2003, per Justice Alfredo Beltrán Sierra, and T-790 of 2003, per Justice Jaime Córdoba Triviño-, the Social Solidarity Network and the Health Secretariats of the territorial entities where the plaintiffs are located shall be ordered to carry out in a coordinated manner, within the

maximum term of 15 days from the moment of notification of this judgment and should they have not done so already, all the necessary actions to secure effective access by the plaintiffs to the health care system, and to guarantee the provision of the medicines they require for their treatment.

10.2.5. In the case of requests for effective access to the educational system by minors under 15 years of age, bearing in mind what this Court has ordered in its case-law -in particular in decisions T-268 of 2003, per Justice Marco Gerardo Monroy Cabra, and T-215 of 2002, per Justice Jaime Córdoba Triviño-, the Social Solidarity Network and the Education Secretariats of the territorial entities where the plaintiffs are located shall be ordered to carry out, within the maximum term of one month after the notification of the present judgment, all the actions which are necessary to guarantee effective access by the plaintiffs to the educational system.

10.2.6. With regard to the requests for protection of the land, property and possessions left abandoned by displaced persons, the Court shall order the Social Solidarity Network, as coordinator of the policy for assisting the displaced population and administrator of the Central Registry of the Displaced Population, to include as part of the information required from displaced persons, the one referring to the rural lands that they possess or own, clarifying the type of rights they bear and the basic features of the property, so that on the grounds of that information, the protective procedures and mechanisms established in Decree 2007 of 2001 for said assets can be applied.

10.2.7. With regard to the requests for the establishment of territorial committees for the creation of special economic stabilization, housing or food security programs, the Court shall not impart a specific order in this sense, because there is no constitutional right to have a body like that established for said purpose. However, the general orders aimed at overcoming the unconstitutional state of affairs cover that request, given that each territorial entity, within the scope of the legal provisions in force, is to determine the way in which it shall comply with its duty to protect the displaced population, which can include the establishment of such committees.

10.2.8. As regards the request of declaring that the omissions incurred in by the Director of the Social Solidarity Network amount to disciplinary misbehavior, the Court shall also abstain from imparting an order in this sense, because there does not exist a generic right to the imposition of a

sanction on account of the actions or omissions of the public officials that were invested, by Law 387 of 1997, with a central coordinating function within the institutional response to a problem with the magnitude and complexity of forced displacement. The determination of whether a disciplinary misbehavior took place corresponds to the General Controller's Office (*Procuraduría General de la Nación*) (...).

10.2.9. As to the requests in the sense that one of the persons registered as part of a family group be separated from that group so that she can continue receiving humanitarian aid as part of another family group, the Chamber, bearing in mind the special protection for women providers—as stated in Section 3 of this judgment—shall grant the *tutela*.

Even though (...) the terms for compliance with *tutela* orders start at the moment of notification of the judgment, nothing prevents the Director of the Social Solidarity Network and the other officials responsible for the policy to assist the displaced population who are notified of the present judgment from expediting compliance with its orders, in order to secure within the shortest possible period the rights of the displaced population.

In order to ensure compliance with these orders by the different authorities, the present judgment shall be communicated to the Public Ombudsman and the General Controller of the Nation (*Procurador General de la Nación*), so that they can, within their spheres of jurisdiction, carry out a follow-up of the implementation of the present judgment, and oversee the activities of the authorities.

IV. DECISION

On the grounds of the foregoing reasons, Review Chamber Number Three of the Constitutional Court, imparting justice in the name of the people and by mandate of the Constitution,

DECIDES

FIRST.- To Declare the existence of an unconstitutional state of affairs in the situation of the displaced population, due to the lack of coherence between the seriousness of the violation of the rights recognized in the Constitution and developed by the legislation, on the one hand, and the volume of resources effectively destined to secure effective enjoyment of said rights and the institutional capacity to implement the corresponding constitutional and legal mandates, on the other hand.

SECOND.- To communicate, through the General Secretariat of the Court, such unconstitutional state of affairs to the National Council for Comprehensive Assistance to the Population Displaced by Violence, so that it can verify, within its sphere of jurisdiction and complying with its constitutional and legal duties, the magnitude of said lack of coherence, and design and implement a plan of action to overcome it, granting special priority to humanitarian aid, within the terms indicated as follows:

a. No later than March 31, 2004, the National Council for Comprehensive Assistance to the Population Displaced by Violence shall (i) clarify the current situation of the displaced population included in the Single Registration System, establishing its number, location, necessities and rights according to the corresponding stage of the policy; (ii) determine the dimension of the budgetary effort it is necessary to undertake in order to comply with the public policy aimed at protecting the fundamental rights of displaced persons; (iii) define the percentage of participation in the allocation of resources that corresponds to the Nation, the territorial entities and international cooperation; (iv) establish the mechanism to procure such resources, and (v) establish a contingency plan in case the resources that should be provided by the territorial entities and the international cooperation are not provided in time or in the scheduled amount, in order for such gaps to be compensated through other finance mechanisms.

b. Within the term of one year after the communication of the present judgment, the Director of the Social Solidarity Network, the Ministers of Public Finance and of the Interior and Justice, as well as the Director of the National Planning Department and the other members of the National Council for Comprehensive Assistance to the Population Displaced by Violence, shall make all necessary efforts to secure that the budgetary target they have established is achieved. If, during the course of that year or before, it becomes evident that it will not be possible to allocate the established amount of resources, they must (i) redefine the priorities of said policy, and (ii) design the modifications it will be necessary to introduce to the state policy for the of the displaced population. In any case, for the adoption of these decisions, the effective enjoyment of the minimum levels on which the exercise of the right to life in conditions of dignity must be secured, as pointed out in section 9 of this judgment.

c. Afford the organizations that represent the displaced population opportunities to participate in an effective manner in the adoption of the decisions to be made in order to overcome the unconstitutional state of

affairs, and inform them on a monthly basis about the advances made therein.

THIRD.- To communicate, through the general secretariat of the Court, the unconstitutional state of affairs to the Minister of the Interior and Justice, so that he promotes that the governors and mayors (...) adopt the decisions required to ensure that there exists coherence between the constitutionally and legally defined obligations of assisting the displaced population under the responsibility of the corresponding territorial entity, and the resources that it must allocate to effectively protect their constitutional rights. In the adoption of such decisions, they shall afford sufficient opportunities of effective participation to the organizations that represent the interests of the displaced population. The decisions adopted shall be communicated to the National Council no later than March 31, 2004.

FOURTH.- To order the National Council for the Comprehensive Assistance to the Population Displaced by Violence to adopt, within the three months following the communication of this judgment, a program of action, with a precise schedule, aimed at correcting the flaws in institutional capacity, at least with regard to the ones indicated in the reports that were incorporated to the present process and summarized in Section 6 and Annex 5 of this judgment.

FIFTH.- To order the National Council for Comprehensive Assistance to the Population Displaced by Violence to conclude, within a maximum term of 6 months since the moment of the communication of the present judgment, all actions aimed at securing the effective enjoyment, by all displaced persons, of the minimum levels of protection of their rights which were referred in Section 9 of this judgment.

SIXTH.- To communicate, through the General Secretariat of the Court, the present judgment to the Minister of Public Finance and the Director of the National Planning Department, for all pertinent purposes within their jurisdiction.

SEVENTH.- To communicate, through the General Secretariat of the Court, the present judgment to the Minister of Foreign Affairs, for all pertinent purposes within her jurisdiction.

EIGHTH.- To warn all national and territorial authorities responsible for assisting the displaced population in each one of its components, that

in the future they must abstain from incorporating the presentation of *tutela* lawsuits as a requirement to have access to any of the benefits defined in the law. Such public officials must respond requests in a timely and effective manner, in the terms of Order Ten of this judgment.

NINTH.- To communicate the present judgment to the Director of the Social Solidarity Network for all pertinent purposes within his jurisdiction, and to **ORDER** him to instruct the officials in charge of assisting displaced persons that they are to inform them in an immediate, clear and precise manner about the Charter of Basic Rights of all persons who have been victims of forced internal displacement, referred in section 10.1.4. of this judgment, and to establish mechanisms to oversee effective compliance therewith.

TENTH.- In regards to the specific orders for granting the aid established in the housing and socioeconomic reestablishment programs, the Social Solidarity Network, INURBE or whichever institution replaces it, FIDUIFI or whichever institution replaces it, INCORA or whichever institution replaces it, as well as the entities in charge of these programs at the departmental and municipal level, must give substantial, clear and precise responses to the petitions filed by the plaintiffs in the present proceedings, bearing in mind the following criteria:

- 1) incorporating the request within the list of displaced petitioners;
- 2) Informing petitioners, within a period of 15 days, about the maximum term in which the request shall be responded;
- 3) Informing petitioners, within a period of 15 days, on whether the request fulfills the requirements to be processed, and should it not fulfill them, indicating clearly how they can correct them in order to gain access to the aid programs;
- 4) If the request complies with all the requirements, but there are no available funds in the budget, carrying out the necessary procedures to obtain the resources, establishing priorities and the order in which they will be solved;
- 5) If the request complies with the requirements and there are enough available funds in the budget, informing the petitioners about when the benefit will become effective and the procedure that will be followed in order for him/her to effectively receive it;

6) In any case, they must abstain from demanding a *tutela* judgment in order to comply with their legal duties and respect the fundamental rights of displaced persons.

ELEVENTH.- To order the Social Solidarity Network to carry out, through the different regional offices of the areas where the plaintiffs are located, an assessment of the situation of the plaintiffs within a term of 8 days after the notification of this judgment, in order to determine whether they fulfill the objective conditions of displacement, and should that be the case, to give them immediate access to the aid legally established for their protection (...).

TWELFTH.- To order the Social Solidarity Network to carry out, in regards to all the persons included in the Single Registration System of Displaced Persons, all the necessary activities to achieve, in a term no longer than 8 days after the notification of the present judgment, the effective provision—if it hasn't yet been made—of the requested humanitarian aid, to provide adequate guidance about access to the other programs for assisting the displaced population, and in case they have presented any other request to have access to health care services, medicines, education for their young children, access to economic stabilization or housing programs, to respond them in accordance with orders Nos. Ten through Fourteen of this judgment (...).

THIRTEENTH.- To order the Social Solidarity Network and the Health Secretariats of the territorial entities where the plaintiffs are located, to carry out in a coordinated manner, within the maximum term of 15 days after the notification of the present judgment and should they have not done so by then, all the necessary actions to secure effective access by the plaintiffs to the healthcare system, and to guarantee the provision of the medicines they require for their treatment.

FOURTEENTH.- To order the Social Solidarity Network and the Education Secretariats of the territorial entities where the plaintiffs are located to carry out in a coordinated manner, within the maximum term of one month after the notification of the present decision, all the actions required to guarantee effective access to the educational system by those plaintiffs who have requested it.

FIFTEENTH.- To order the Social Solidarity Network, in regards to the plaintiff in process No. T-703130, who is registered as a displaced person, to examine, within the 5 days following the notification of this

judgment and should it not have happened yet, whether in accordance with Section 9 of this judgment, the plaintiff is in conditions of extreme urgency or incapacity to assume his own self-sufficiency, which would justify the preferential application of the Constitution to protect his rights, and to continue providing such aid insofar as the conditions at hand persist.

(...) **SEVENTEENTH.- To order** the Social Solidarity Network, within the 5 days following the notification of the present judgment, to separate the plaintiff in process No. T-686751 from the family group in which she was registered, and register her with a new group with her as female provider, and to provide, within the following 8 days, the emergency humanitarian aid to which she is entitled, as well as proper guidance on access to the other programs for assisting the displaced population.

EIGHTEENTH.- To communicate the present decision to the Public Ombudsman, so that directly or through his delegate, he can carry out a follow up of the way in which the above-issued orders are complied with, and if he considers it pertinent, to inform the public opinion about the advances and difficulties encountered. (...)

ANNEX 2

Colombian Constitutional Court, Award 176 of 2005

**Republic of Colombia
Constitutional Court
Third Review Chamber**

Award n° 176 of 2005

-Orders issued by the Court-

“The Third Review Chamber of the Constitutional Court (...)

DECIDES:

First.- To **ORDER** (...) the Minister of Public Finance, the Director of the Presidential Agency for Social Action and International Cooperation (*Acción Social*), and the Director of the National Planning Department, to submit to this Court and to the *Procurador General de la Nación*, the Public Ombudsman and the *Contralor General de la República*, no later than December 1st, 2005, a timetable in which they point out the rhythm and the mechanisms at which the resources calculated by the National Planning Department as necessary for the implementation of the public policy for assisting the displaced population, aimed at overcoming the unconstitutional state of affairs declared in decision T-025 of 2004, shall be destined. Such timetable shall include, at least, the following elements:

1. The total amount of money that will be assigned for the purpose of executing the policy for assisting the displaced population, broken up in accordance with the following criteria:

- (a) by fiscal years;
- (b) establishing the proportion of funds that will come from the international community, territorial entities, the Nation or other sources;

(c) individualizing the persons or bodies responsible for the procurement of the resources and for their execution

(d) indicating the resources that shall be included in the budget of each entity that is responsible at the national level for the execution of the policy to assist the displaced population.

(e) in accordance with the component of the policy for assisting the displaced population to which the funds shall be destined, expressly indicating the entities that are responsible for their execution.

(f) distinguishing between the resources destined to the general programs for the vulnerable population, and those aimed at the displaced population.

2. The moment, as well as the rhythm at which advances will be made until the achievement of the objectives established in the estimation made by the National Planning Department, must be reasonable, but sustained and progressive, in the terms of the present Award.

Second.- To **WARN** (...) the Director of the National Planning Department, that the estimate to be calculated by that entity must be updated, in such a way as to periodically include the displaced persons who have been included in the registration system each fiscal year. The new calculations must be communicated in a timely manner to the Minister of Public Finance, the Director of the Presidential Agency for Social Action and International Cooperation—*Acción Social*. They shall also be communicated to the displaced population and to the general public through the means that the National Planning Department deems appropriate. They must also be communicated to this Court and to the *Procurador General de la Nación*, the Public Ombudsman, and the *Contralor General de la República*.

Third.- To **WARN** the public entities or bodies responsible for the policy to assist the displaced population that they must provide, in a timely manner, all the information requested by the Minister of Public Finance, the Director of the Presidential Agency for Social Action and International Cooperation—*Acción Social*, or the Director or the National Planning Department, for purposes of compliance with the first order issued herewith.

Fourth.- To **ORDER** (...) the Ministry of Public Finance to submit to this Court, on the date in which the General Budget of the Nation for each fiscal year is approved, and until the moment at which the level of

resources estimated by the National Planning Department as necessary to implement the policy to assist the displaced population has been attained, a report pointing out the amount of funds included in the Expenditure Budget which is going to be destined to assisting the displaced population, broken down into sections, executing accounts and their corresponding descriptive concepts. The report shall indicate how those appropriations are consistent with the time table described in the first order of this Award. A copy of the report will also be sent to the *Procuraduría General de la Nación*, the Public Ombudsman and the *Contraloría General de la República*.

Fifth.- To **ORDER** the Minister of Public Finance and the Director of the Presidential Agency for Social Action and International Cooperation—*Acción Social* (or whomever may replace them) to submit to this Court, no later than one month after the finalization of each fiscal year (including the 2005 fiscal year), and until the moment at which the level of resources estimated by the National Planning Department as necessary to implement the policy to assist the displaced population has been attained, a report in which they indicate, for the corresponding fiscal year:

1. The amount of resources that each entity or body at the national level has executed for assisting of the displaced population;
2. Whether the corresponding entity or body has effectively given priority to the execution of the resources related to assisting the displaced population;
3. The precise manner in which the resources appropriated in each section of the General Budget of the Nation comply with the time table described in section 5.4.4.1. of this Award.

A copy of this report must also be sent to the *Procuraduría General de la Nación*, the Public Ombudsman and the *Contraloría General de la República*.

Sixth.- To **REQUEST** (...) [the] *Contralor General de la República* to carry out, within the sphere of his jurisdiction, a follow-up of the orders issued in decision T-025 of 2004 and in the present Award, related to the budgetary effort required to implement the policies for assisting the displaced population in order to solve the unconstitutional state of affairs.

Seventh.- To **WARN** the territorial entities that they must take into account the constitutional priority granted to public expenditure for the benefit of the displaced population within the overall social public expenditure, as well as article 58 of Law 921 of 2004, at the moment of responding to the requirements of the Ministry of Public Finance, the National Planning Department or the Presidential Agency for Social Action and International Cooperation—*Acción Social*, for purposes of complying with decision T-025 of 2004 and the present Award.

Eight.- To **COMMUNICATE** the contents of the present Award to the President of the Republic for purposes of information, in order for him to adopt the decisions he considers pertinent.

(...)"

ANNEX 3

Colombian Constitutional Court, Award 177 of 2005

**Republic of Colombia
Constitutional Court
Third Review Chamber**

Award n° 177 of 2005

-Orders issued by the Court-

“The Third Review Chamber of the Constitutional Court (...)

DECIDES:

First.- To **DECLARE** that, in spite of the advances made until the moment, the unconstitutional state of affairs in the situation of the displaced population which was declared in decision T-025 of 2004 has not yet been overcome, and that it is necessary to advance in an accelerated and sustained manner *“in the correction of the inconsistency between the seriousness of the affectation of the constitutionally recognized and legally developed rights, on the one hand, and the volume of resources which is effectively destined at the territorial level to secure the effective enjoyment of such rights, and the territorial institutional capacity to implement the corresponding constitutional and legal mandates, on the other”*.

Second.- To **ORDER** the Minister of the Interior and Justice, within the sphere of his jurisdiction, in accordance with his expertise and on the grounds of the higher or lower level of response to the needs of the displaced population that actually exists in each entity, to design, implement and promptly apply a strategy for the promotion and coordination of the national and territorial efforts, which can effectively lead to the assumption of higher budgetary and administrative efforts by the territorial entities for assisting the displaced population and the effective guarantee of their rights, for which purpose he must carry out the following actions, within the terms pointed out below:

1. To carry out, within the term of one month starting on the moment this Award is communicated, an evaluation of the current situation of territorial entities' commitment to assisting the displaced population, in such a way that it is possible to know, in regards to each one of the territorial entities, (i) the current situation of the displaced population located in every municipality and department, and the existing risks of increases in displacement, (ii) the evolution of the budget that was assigned and effectively spent by the different territorial entities for the specific assistance of the displaced population, not of the vulnerable population in general, (iii) the assistance infrastructure and coordinating mechanisms which are in place in each territorial entity; (iv) the specificities of the displaced population located in each territorial entity, with special attention to indigenous peoples and Afro-Colombian population, and to peasants who are unable to provide for their own subsistence, (v) the assistance priorities at the territorial level, which may be different in each entity, (vi) the factors which have borne a negative impact upon the effective budgetary and administrative commitment of each territorial entity, as well as the mechanisms applied to introduce corrective measures, and (vii) the evolution of the results which have been achieved in order to bridge the gap between that which has been promised and that which has been effectively attained to advance, in each territorial entity, in the resolution of the unconstitutional state of affairs. These assessments must be based on indicators that are to be compatible with those designed by the other entities that were issued orders in the two other Awards adopted by the Court on this same date. A second evaluation must be carried out within six (6) months, counted from the moment this Award is communicated; and a third evaluation is to be carried out twelve (12) months after the communication of the present Award.

2. Design, implement and promptly apply, within the maximum term of two months, counted from the moment this Award is communicated, a strategy to coordinate the budgetary and administrative efforts at the national and territorial levels, which can allow it to know (i) what is the situation of the displaced population at the territorial level; (ii) what is the amount of local resources that each territorial entity has available to assist the displaced population; (iii) what is the displaced population's demand for assistance at the territorial level and what are the assistance priorities in each entity; (iv) what is the offer of services at the local level; (v) what infrastructure is available at the territorial level to adequately safeguard the rights of the displaced population; (vi) what is the dimension of the territorial efforts already undertaken, and the difference between them and

what is actually required; (vii) the manner in which the national and territorial efforts complement each other; and (viii) which coordination mechanisms tend to produce the expected results, and which ones don't.

3. Design, implement and promptly apply, within a maximum term of two months counted from the moment this Award is communicated, a strategy to promote higher budgetary and administrative efforts at the territorial and national levels for assisting the displaced population, which includes (i) results indicators that can make it possible to determine whether advances are being made or not in the resolution of the unconstitutional state of affairs; and (ii) positive and negative stimuli for those entities that advance, lag behind or incur in retrogressions.

4. Design, within the maximum term of two months counted from the moment this Award is communicated, specific goals at the short, medium and long term for the promotion and coordination strategies, and establish a time table which makes it possible to permanently follow up the actions that are carried out.

5. Design, within the maximum term of two months counted from the moment this Award is communicated, a periodical evaluation mechanism which makes it possible to introduce the necessary adjustments to the designed strategy, in such a way that corrective measures can be adopted whenever retrogressions or delays take place in the defined goals.

6. Design and implement, within the maximum term of two months counted from the moment this Award is communicated, specific inter-institutional coordination mechanisms and instruments between the national level and the territorial entities, which can ensure the deployment of an adequate and timely complementary action, in such a way that the effective enjoyment of the displaced population's rights is guaranteed.

7. Make a periodical dissemination of adequate, comprehensible and accessible information for the displaced population about the way in which the territorial entities are working on the improvement of the assistance to the displaced population, as well as on the advances made, the difficulties they have encountered and the corrective measures adopted to secure the effective enjoyment of the displaced population's rights at the territorial level.

8. Adopt and promptly apply, within the maximum term of two months counted from the moment this Award is communicated, a strategy

to guarantee the timely and effective participation of the organizations of displaced population at the territorial level, in the different coordinating bodies, as well as in the process of design and implementation of the promotion and coordination strategies undertaken to comply with the orders issued in decision number three of judgment T-025 of 2004.

9. Submit monthly reports to the Constitutional Court, the *Procuraduría General de la Nación* and the Public Ombudsman, and the human rights and displaced population organizations that took part in the information hearing held on June 29, 2005, about the advances made in this process. The *Procuraduría General de la Nación* and the Public Ombudsman, within the sphere of their jurisdiction, shall inform the Constitutional Court about their conclusions on the way in which the orders issued in this Award have been fulfilled.

Third.- COMMUNICATE the content of the present Award to the President of the Republic, in order for him to adopt the decisions.”

ANNEX 4

Colombian Constitutional Court, Award 178 of 2005

**Republic of Colombia
Constitutional Court
Third Review Chamber**

Award n° 178 of 2005

-Orders issued by the Court-

“The Third Review Chamber of the Constitutional Court (...)

DECIDES:

First.- To **DECLARE** that in spite of the advances made as of this date, the unconstitutional state of affairs in the situation of the displaced population declared in decision T-025 of 2004 has not been overcome yet, and that it is still necessary to continue advancing in the correction of the discordance between the seriousness of the affectation of the constitutionally recognized and legally developed rights, on the one hand, and the volume of resources effectively destined to secure said rights’ effective enjoyment and the institutional capacity to implement the corresponding constitutional and legal mandates, on the other.

Second.- To **ORDER** the Director of the Social Solidarity Network to design, implement and promptly apply, within a term of three months counted from the moment this Award is communicated, all the procedures and corrective measures that are necessary to overcome the problems indicated in paragraph 1.4. of this Award’s Annex, related to the “Evaluation of compliance with the order contained in number 2(a)(i) of the decision adopted in judgment T-025 of 2004”, so that within the maximum term of one (1) year, counted from the moment this Award is communicated, the process of characterizing the internally displaced population has finalized. For that purpose, the Director of the Social

Solidarity Network must carry out the nine actions described in Consideration 11 of this Award.

Third.- To **ORDER** the National Council for Comprehensive Assistance to the Population Displaced by Violence, to design, implement and promptly apply, within a term of three months counted from the moment this Award is communicated, all of the procedures and corrective measures that are necessary to overcome the problems indicated in paragraph 2.4. of this Award's Annex, related to the "Evaluation of compliance with the order contained in number 2(c) of the decision adopted in judgment T-025 of 2004", so that within the maximum term of six (6) months, counted from the moment this Award is communicated, such difficulties have been effectively overcome at both the national and the territorial levels, and the necessary conditions are established to secure the effective enjoyment of the displaced population's right to participation. For said purpose, it must carry out the nine actions described in Consideration 11 of this Award.

Fourth.- To **ORDER** the National Council for Comprehensive Assistance to the Population Displaced by Violence to establish and promptly set in motion, within a term of three months counted from the moment this Award is communicated, a coordinated program of action for the resolution of the institutional capacity problems indicated in paragraph 3.6. of this Award's Annex, related to the "Evaluation of compliance with the order contained in number 4 of the decision adopted in judgment T-025 of 2004", so that within the maximum term of six (6) months, counted from the moment this Award is communicated, such institutional capacity problems have been effectively overcome. For this purpose, the National Council for Comprehensive Assistance to the Population Displaced by Violence must carry out the nine actions described in Consideration 11 of this Award.

Fifth.- To **ORDER** the Ministers of the Interior and Justice and of National Defense, as well as the Director of the Presidential Program for Human Rights and International Humanitarian Law, to adopt, within a term of three months counted from the moment this Award is communicated, all the corrective measures that are necessary to overcome the problems indicated in paragraphs 4.7.11 and 4.7.12 of this Award's Annex, related to the "Evaluation of the measures adopted to protect the right to life", so that within the maximum term of six (6) months, counted from the moment this Award is communicated, the necessary corrective measures have been adopted and applied, the necessary conditions have

been established to secure the effective enjoyment of the displaced population's right to life. For this purpose, the Ministers of the Interior and Justice and of National Defense, and the Director of the Presidential Program for Human Rights and International Humanitarian Law must carry out the nine actions described in Consideration 11 of this Award.

Sixth.- To **ORDER** the Minister of Social Protection and the Director of the Colombian Institute of Family Welfare to design and promptly apply, within a term of three months counted from the moment this Award is communicated, the corrective measures necessary to solve the problems indicated in paragraph 4.8.13 of this Award's Annex, related to the "Evaluation of the measures adopted to protect the rights to dignity and to physical, psychological and moral integrity, to a family and to family unity", so that within the maximum term of six (6) months, counted from the moment this Award is communicated, the necessary conditions have been established to secure the effective enjoyment of the displaced population's rights to dignity and to physical, psychological and moral integrity, to a family and to family unity. For that purpose, the Minister of Social Protection and the Director of the Colombian Institute of Family Welfare must carry out the nine actions described in Consideration 11 of this Award.

Seventh.- To **ORDER** the Director of the Social Solidarity Network to design, adopt and promptly apply, within the maximum term of three (3) months counted from the moment this Award is communicated, the corrective measures that are necessary to overcome the problems indicated in paragraph 4.9.14 of the Annex to this Award, related to the "Evaluation of the measures adopted to protect the right to minimum subsistence", so that within the maximum term of six (6) months, counted from the moment this Award is communicated, the necessary conditions have been established to secure the effective enjoyment of the displaced population's right to a minimum subsistence. To comply with the above, the Director of the Social Solidarity Network must carry out the nine actions described in Consideration 11 of this Award.

Eighth.- To **ORDER** the Minister of Environment, Housing and Territorial Development, and the Director of the Social Solidarity Network, to design and promptly apply, within the maximum term of three months, counted from the moment this Award is communicated, adequate instruments to correct the problems indicated in paragraph 4.10.11 of this Award's Annex, related to the "Evaluation of the measures adopted to protect the right to basic shelter and housing", so that within the maximum

term of one year, counted from the moment this Award is communicated, such problems have been overcome, in such a way that the necessary conditions are established to secure the effective enjoyment of the displaced population's right to basic shelter and housing. In order to comply with the above, the Minister of Environment, Housing and Territorial Development and the Director of the Social Solidarity Network must carry out the nine actions described in Consideration 11 of this Award.

Ninth.- To **ORDER** the Minister of Agriculture to design and promptly apply, within the maximum term of three months counted from the moment this Award is communicated, adequate instruments to correct the problems indicated in paragraph 4.10.11 of this Award's Annex, related to the "Evaluation of the measures adopted for the protection of the right to basic shelter and housing" and in paragraph 4.14.10. of the Annex, related to the "Evaluation of the measures adopted to provide support for self-sufficiency and economic stabilization", so that within the maximum term of six months counted from the moment this Award is communicated, such problems have been overcome and said Ministry's actions have been effectively oriented, and the necessary conditions are established to guarantee the effective enjoyment of the displaced population's rights to basic shelter and housing and to the provision of support for self-sufficiency and economic stabilization. In order to comply with the above, the Minister of Agriculture must carry out the nine actions described in consideration 11 of this Award. The Minister of Agriculture must submit to the Constitutional Court, the *Procuraduría General de la Nación* and the Public Ombudsman, as well as the human rights and displaced population organizations that took part in the June, 29 public hearing and to UNHCR, monthly advance reports.

Tenth.- To **ORDER** the Ministry of Social Protection to design and implement, within the term of three months counted from the communication of the present Award, the corrective measures that are necessary to guarantee that within the maximum term of one year, counted from the communication of the present Award, displaced persons enjoy their right to have access to healthcare services, and the problems indicated in paragraph 4.11.12 of this Award's Annex—related to the "Evaluation of the measures adopted to secure the right to health"—have been overcome, so that within the maximum term of one (1) year counted from the moment this Award is communicated, the necessary conditions have been established to guarantee the effective enjoyment of the displaced population's right to have access to healthcare services. To

comply with the above, the Minister of Social Protection must carry out the nine actions described in consideration 11 of this Award.

Eleventh.- To **ORDER** the Director of the Social Solidarity Network to implement and promptly apply, within the maximum term of three months from the moment this Award is communicated, a program of action to overcome the problems indicated in paragraph 4.12.9. of this Award's Annex, related to the "Evaluation of the measures adopted to protect the displaced population from discriminatory practices", so that within the maximum term of six (6) months, counted from the moment this Award is communicated, the necessary conditions have been established to guarantee the effective enjoyment of the displaced population's right to be protected from discriminatory practices. To comply with the above, the Director of the Social Solidarity Network must carry out the nine actions described in Consideration 11 of this Award.

Twelfth.- To **ORDER** the Minister of National Education to design, implement and promptly apply, within a term of three months counted from the moment this Award is communicated, the corrective measures that are necessary to overcome the problems indicated in paragraph 4.13.12. of this Award's Annex, related to the "Evaluation of the measures adopted to guarantee the right to education", so that within the maximum term of one year counted from the moment this Award is communicated, the necessary conditions have been established to guarantee the effective enjoyment of the displaced population's right to access to education. To comply with the above, the Minister of National Education must carry out the nine actions described in Consideration 11 of this Award.

Thirteenth.- To **ORDER** the Director of the Social Solidarity Network and the Director of the National Learning Service (SENA) to design, implement and promptly apply, within the maximum term of three months counted from the moment this Award is communicated, adequate instruments to correct the problems indicated in paragraph 4.14.10. of this Award, related to the "Evaluation of the measures adopted to provide support for self-sufficiency and economic stabilization", so that within the maximum term of one year, counted from the moment this Award is communicated, such problems have been overcome and the necessary conditions have been established to guarantee the effective enjoyment of the displaced population's right to self-sufficiency and economic stabilization. For this purpose, the Director of the Social Solidarity Network and the Director of the National Learning Service must carry out the nine actions described in Consideration 11 of this Award.

Fourteenth.- To **ORDER** the Director of the Social Solidarity Network to design, implement and promptly apply, within a maximum term of three months counted from the moment this Award is communicated, a coordinated program of action to overcome the problems indicated in paragraph 4.15.12 of this Award's Annex, related to the "Evaluation of the measures adopted to guarantee the right to return and reestablishment", so that within the maximum term of six months counted from the moment this Award is communicated, returns and reestablishments can be carried out in conditions that are compatible with full respect for the Guiding Principles on Internal Displacement adopted in the framework of the United Nations Organization, that develop constitutional rights. For said purpose, the Director of the Social Solidarity Network and the Minister of National Defense must carry out the nine actions described in Consideration 11 of this Award.

Fifteenth.- To **ORDER** the Director of the Social Solidarity Network to present a report, within the maximum term of one month counted from the moment this Award is communicated, indicating the actions and measures that have been adopted, as well as the results effectively attained to guarantee compliance with the order issued in number 8 of the decision adopted in judgment T-025 of 2004, in the sense of warning "all national and territorial authorities responsible for assisting the displaced population in each one of its components, that in the future they must abstain from incorporating the presentation of *tutela* lawsuits as a requirement to have access to any of the benefits defined in the law". Likewise, to **ORDER** the Director of the Social Solidarity Network to design, implement and promptly apply, within a term of three months counted from the moment this Award is communicated, the corrective measures necessary to overcome the problems indicated in Section 5 of this Award's Annex, related to the "Evaluation of compliance with the order issued in number eight of the decision adopted in judgment T-025 of 2004", so that within the maximum term of six months, counted from the moment this Award is communicated, said problems have been corrected. For that purpose, the Director of the Social Solidarity Network must carry out the nine actions described in Consideration 11 of this Award.

Sixteenth.- To **ORDER** the Director of the Social Solidarity Network, within the maximum term of three months counted from the moment this Award is communicated, to broaden the dissemination of the Charter or Basic Rights of Displaced Persons, so that even those who cannot read can know about such Charter, in order to guarantee compliance with number nine of the decision adopted in judgment T-025 of 2004. For that purpose,

he must carry out the nine actions described in Consideration 11 of this Award.

Seventeenth.- To **COMMUNICATE** the content of the present Award to the President of the Republic for his information, in order for him to adopt the decisions he considers pertinent.”

ANNEX 5

Colombian Constitutional Court, Award 218 of 2006

**Republic of Colombia
Constitutional Court
Third Review Chamber**

**Award n° 218 of 2006
-Orders issued by the Court-**

**Re.: Decision T-025 of 2004 and Awards
(Autos) 176, 177 and 178 of 2005.**

Verification of the measures adopted to overcome the unconstitutional state of affairs declared in decision T-025 of 2004 in relation to the problem of internal displacement.

MANUEL JOSÉ CEPEDA ESPINOSA, J.

Bogotá, D.C., August 11, 2006

The Third Review Chamber of the Constitutional Court, composed of Justices Manuel José Cepeda Espinosa, Jaime Córdoba Triviño and Rodrigo Escobar Gil, in exercise of its constitutional and legal powers, has adopted the present Award (*Auto*) for the purpose of verifying whether it has been proven that the orders issued in Decision T-025 of 2004 and Awards (*Autos*) 176, 177 and 178 of 2005 have been complied with, in such a way that accelerated and sustained advances have been achieved to overcome the unconstitutional state of affairs in relation to the problem of internal displacement.

I. BACKGROUND AND STRUCTURE OF THE PRESENT ORDER.

1. In accordance with Article 27 of Decree 2591 of 1991, the Constitutional Court “shall keep its jurisdiction until the right is fully re-established, or the causes of the threat have been eliminated”.

2. In decision T-025 of 2004, the Constitutional Court declared the existence of an unconstitutional state of affairs in the field of internal displacement in the country, and issued a number of complex orders, directed to several authorities of the national and territorial levels, aimed at overcoming such situation.

3. On August 29, 2005, the Third Review Chamber of the Constitutional Court adopted Awards (*Autos*) 176, 177 and 178 of 2005, in which it reviewed the degree of compliance given to the orders issued in decision T-025 of 2004 to protect the minimum levels of satisfaction of the internally displaced population’s rights, and it issued a number of orders aimed at achieving accelerated and sustained advances towards overcoming such state of affairs, by the entities in charge of assisting the displaced population, within a reasonable period.

4. Given that several months have gone by since the adoption of said Awards 176, 177 and 178, that many of the terms granted therein by the Court for compliance with the orders issued thereby have expired, and that the longest term granted in such Awards is soon to expire—that is, one year after their communication, which was made on September 13, 2005-, it is necessary for the Chamber to determine whether the entities that form part of SNAIPD and the other entities that received such orders have proven that they are advancing, or whether, on the contrary, delays or retrogressions have taken place in the adoption of the measures and actions required to overcome the unconstitutional state of affairs in the field of forced displacement.

5. The present Award is adopted on the grounds of the different reports sent to the Court by the entities that form part of SNAIPD and by other authorities who received orders in Awards 176, 177 and 178 of 2005. The Court analyzed a total of eighty-two reports, with their annexes, submitted by thirteen entities. Such reports, which were presented on a monthly and bi-monthly basis, add up to a total of approximately twenty thousand pages, including the extensive annexes that were attached thereto. Likewise, the Court has based its decision upon public and notorious

information about facts related to the phenomenon of displacement which have taken place in the country over the past months.

6. The purpose of the present order is not to directly evaluate the public policy for assisting the displaced population—a matter which is within the jurisdiction of different organs of public power, in accordance with the distribution of functions made in the Constitution and the Law-, but that of assessing the reports presented to the Constitutional Court by the recipients of the orders issued in decision T-025 of 2004 and Awards 176, 177 and 178 of 2005, so as to determine (i) whether such entities have properly proven that they have overcome the unconstitutional state of affairs in the field of internal displacement, or that they have advanced significantly in the protection of the rights of the displaced population, and (ii) whether the Court has been provided with serious, precise and deputed information to establish the level of compliance given to the orders issued in the aforementioned judicial decisions.

7. On the grounds of the verification that will be carried out in the present Award, and also of the Annexes hereto that contain the reports which have been received, the Court shall proceed to make the pertinent observations, require the clarifications that may be called for, and adopt the decisions which are relevant and necessary to secure the materialization of the purpose of overcoming the unconstitutional state of affairs in the field of internal displacement in a coherent, serious, specific, sustained and efficient manner, in accordance with the applicable constitutional provisions.

II. GENERAL ASSESSMENT OF THE SITUATION OF THE UNCONSTITUTIONAL STATE OF AFFAIRS IN THE FIELD OF INTERNAL DISPLACEMENT.

1. The central question that the Court must answer in the present Award is the following: Have the entities that form part of SNAIPD proven, through the reports they have submitted to the Constitutional Court, that the unconstitutional state of affairs in the field of internal displacement has been overcome, or that they have advanced in an accelerated and sustained manner towards its resolution, through the effective and gradual adoption of the measures ordered in decision T-025 of 2004 and Awards 176, 177 and 178 of 2005?

2. Based on a careful analysis of the lengthy reports submitted by the entities that form part of SNAIPD, the Constitutional Court concludes that

until this date, although the Court has been informed about certain important advances in critical areas of the policy for the attention of the displaced population, it has not been proven that the unconstitutional state of affairs declared in decision T-025 of 2004 has been overcome, nor that accelerated and sustained advances are being made towards its resolution. The lack of information to prove the resolution of this unconstitutional state of affairs, in spite of the judicial orders aimed at overcoming it, is an indicator of the persistence of this serious humanitarian crisis, which counters several mandates of the Constitution and of International Law, summarized in the 1998 Guiding Principles on Forced Internal Displacement¹.

3. In sum, the authorities that form part of SNAIPD have failed to prove to the Court, in a satisfactory manner, that they have adopted the measures required to solve the aforementioned unconstitutional state of affairs, even though—as it was required in Awards 176, 177 and 178 of 2005—they had the burden of proving compliance with their obligations in this field, through the submission of periodical reports to the Constitutional Court. The lengthy reports received by this Court, which in some cases add up to several hundred pages with their Annexes—and that, in total, amount to approximately twenty thousand pages—, fail to provide proper evidence of compliance with the orders issued in decision T-025 of 2004 and the subsequent Awards. The Court has identified advances in the elaboration of some reports, but in global terms, after analyzing the ones received every month or every two months since October 2005, it is clear that they continue to be deficient.

4. Indeed, most of the reports received by the Constitutional Court have several problems, among which the following are noteworthy: (i) they contain a high amount of information that is irrelevant to determine compliance with the orders issued in the aforementioned decisions; (ii) their length is, by all means, excessive, which makes it difficult to identify the specific measures effectively adopted by the corresponding entities in regards to forced displacement, and in some cases would seem to disguise the scarce compliance given to the orders issued in the Judgment and ensuing decisions, through the presentation of high amounts of hardly pertinent data; (iii) they are inconsistent, both in themselves and over time—that is to say, the information provided to the Court in different

¹ United Nations, Doc E/CN.4/1998/53/Add.2, February 11, 1998. Report by the Special Representative of the United Nations Secretary General for the issue of Internal Displacements of Persons, Francis Deng.

sections of the same report is inconsistent, or it varies from one bi-monthly report to the next one, which reveals failures in their elaboration and presentation, as well as inconsistencies and flaws in the policy for assisting the displaced population; (iv) in no few cases, the different sections of one and the same report contain identical paragraphs, even literal copies of previous reports, which proves that the process of reporting advances in the compliance of the 2005 Orders to the Court became a mechanical and formal procedure.

The foregoing flaws, which are not the only ones identified by the Court but the most prominent ones, prove that, save for some exceptions—namely, the reports submitted by the Ministry of Agriculture, the Colombian Institute of Family Welfare (*Instituto Colombiano de Bienestar Familiar—ICBF*), the National Learning Service (*Servicio Nacional de Aprendizaje—SENA*) and the Ministry of Education-, the reports presented to the Court are inappropriate and not pertinent. In conclusion, they do not afford proper evidence of compliance with the orders issued in decision T-025 of 2004 and its ensuing decisions, and needless to say, they are far from proving that accelerated and sustained advances have been made in the resolution of the unconstitutional state of affairs in the situation of the displaced population, as required by this Chamber in Awards 176, 177 and 178 of 2005.

5. In spite of the existence of said problems, the Constitutional Court has carefully analyzed all of the information contained in the aforementioned reports. On those grounds, the Court concludes that although it has been informed of specific advances in certain concrete areas of the policy for assisting the displaced population, it has not been proven that the fundamental constitutional rights of the population in conditions of forced displacement have ceased to be violated in a systematic and massive way, nor that the measures adopted by the national and territorial entities in charge of assisting the population that becomes victim of forced displacement have been sufficient or pertinent to overcome the unconstitutional state of affairs in this field, or to advance in a sustained and accelerated manner towards its resolution. For such reason, it is necessary to adopt urgent and immediate corrections, so as to guarantee that advances are made in the resolution of said unconstitutional state of affairs.

6. On the grounds of the foregoing conclusion, the Constitutional Court must now determine whether the relevant public entities have provided any explanation for having failed to prove that they have

advanced adequately in the adoption of measures that can lead to overcoming the unconstitutional state of affairs declared in decision T-025 of 2004. The answer is negative: the reports examined by the Court, far from admitting that it has not been possible to advance adequately or providing solid explanations for such fact, inform about mere purposes, future actions, or plans and programs which have not received any development whatsoever—presented as if they were advances-, or about partial compliance with the legal and constitutional obligations of SNAIPD entities within their diverse spheres of jurisdiction.

7. In the same sense, the Court wonders whether, given the evident delay in the proof of compliance with the orders issued in Awards 176, 177 and 178 to adopt the measures leading to a resolution of the unconstitutional state of affairs, and given the expiry of many of the terms granted for that purpose, such entities have requested a time extension. The answer is, once again, negative.

8. Therefore, in the present decision no new extension periods will be granted to comply with the mandates issued in the aforementioned Awards, but rather—regardless of what was ordered in Awards 176, 177 and 178 of 2005, as well as in decision T-025 of 2004—the Court will point out the areas in which the evaluated reports indicate the existence of the most significant delays, warning the relevant authorities that, within the remaining period of time, they are in the constitutional obligation of not only adopting the pertinent corrections, but presenting the corresponding report to the Court, in accordance with the specifications pointed out below. Said period, which is actually the longest one granted in Awards 176, 177 and 178 of 2005, expires on September 13th, 2006—in this sense, the Court clarifies that even though the different entities that received orders in Awards 176, 177 and 178 of 2005 were granted terms of different length to comply therewith, for the purposes of proving compliance with said orders, the Court shall take into account the longest term conferred therein, namely, one year-.

III. AREAS OF THE POLICY FOR THE ASSISTANCE OF THE DISPLACED POPULATION IN WHICH THE MOST SERIOUS PROBLEMS AND THE MOST SIGNIFICANT DELAYS HAVE BEEN IDENTIFIED.

The Constitutional Court attaches particular concern to the fact that the reports—presented by the entities that form part of SNAIPD and the remaining entities that received orders in decision T-025 of 2004 and

Awards 176, 177 and 178 of 2005—are not only far from being adequate to prove the resolution of the unconstitutional state of affairs or the adoption of measures tending towards such resolution, but they also allow inference of serious setbacks in ten critical areas of the policy for assisting the displaced population. Therefore, this Chamber shall impart specific mandates in the present decision, aimed not only at overcoming the setbacks or problematic situations which have been identified therein, but also at making the relevant entities inform in a clear, transparent and concise manner about the adoption of measures that tend towards their resolution. These ten critical areas are the following:

(1) the general coordination of the system for assisting the displaced population;

(2) the activities of registration and characterization of the country's displaced population;

(3) the budgetary aspect of the policy for assisting the displaced population, both in its formulation and in its material execution process;

(4) the general absence of significant results indicators, based on the criterion of “effective enjoyment of rights” of the displaced population throughout all of the policy's components, in spite of some entities' advances in this regard;

(5) the lack of specificity in the policy for assisting the displaced population, in its different manifestations;

(6) the lack of protection of indigenous and Afro-Colombian groups, who have been particularly affected by internal displacement over the last months;

(7) the scant security of the displaced population's processes of return to their lands;

(8) the lack of differences in the assistance received by recently displaced persons, as compared to those who were displaced before the adoption of decision T-025 of 2004 and Awards 176, 177 and 178 of 2005;

(9) the Ministry of the Interior and Justice's deficient coordination of the activities carried out by the territorial entities; and

(10) the absence of a preventive approach within the public policy for assisting the displaced population, particularly during the military and security operations carried out by the State.

1. Lack of coordination of the system for the attention of the displaced population and fragmentation of the attention policy.

Since decision T-025/04, the Constitutional Court has detected a visible general lack of coordination of the policy for assisting the displaced population. The lack of coordination fosters, in turn, a fragmentation of this policy, and hampers its consistent and effective implementation, as well as the adoption of a general perspective which can make it possible to evaluate its results, adopt the pertinent corrections and facilitate its gradual, albeit accelerated development over time.

According to Decree 250 of 2005, the obligation of coordinating the system corresponds to *Acción Social*; however, there is no indication in the reports submitted to the Court by this entity about its compliance with the role of coordinating the system. At the same time, a clear order was issued to CNAIPD in Award 178 of 2005, aimed at overcoming the flaws in the overall institutional capacity of the system for assisting the displaced population². In order to comply with this order, CNAIPD was to

² The order issued in this sense to the Council was: “*Fourth.- TO ORDER the National Council for Comprehensive Assistance to the Population Displaced by Violence, within a three (3) month term, counted from the communication of this ruling, to promptly establish and implement a coordinated action program for overcoming the deficiencies in institutional capacity indicated in paragraph 3.6 of the Appendix to this ruling, regarding the “Evaluation of compliance with the order contained in number four of the operative part of Decision T-025 of 2004,” so that within a maximum term of six (6) months, counted from the communication of this ruling, those deficiencies in institutional capacity have in fact been overcome. To that end, the National Council for Comprehensive Assistance to the Population Displaced by Violence shall promote the nine actions described in recital 11 of this ruling.*” The deficiencies identified in ruling 178/05 in the institutional capacity of the system for assistance to the displaced population were as follows: “3.6 The Office of the Procurador General de la Nación, the Office of the Ombudsman, organizations for the displaced, and UNHCR indicate the following as deficiencies that have still not been overcome: (i) lack of a strategy and a contingency plan that ensures sufficient allocation of resources for the implementation of assistance policies; (ii) lack of training for responsible officials; (iii) difficulties establishing the program coverage level for each institution in the system; (iv) the low level of commitment of the territorial entities; (v) lack of follow-up and evaluation indicators that allow, among other things, measurement of effective enjoyment of rights; (vi) lack of clarity in the definition of institutional competencies; (vii) lack of appropriate coordination instruments for the Solidarity Network; (viii) lack of precision in the

adopt a coordinated program of action, with a series of common result indicators, for purposes of overcoming the institutional flaws identified therein within a maximum term of six months. Even though the term granted to CNAIPD in Award 178/05 to adopt such coordinated program of action has expired, said Council has not adequately proven that it has complied with the mandate issued therein. In the different reports filed by this entity with the Constitutional Court, information is provided on the adoption of isolated measures, such as (a) the promulgation of Agreements on the topic of the participation of the displaced population or the response to its petitions, as well as on the adoption of “mechanisms to define responsibilities in the execution of the institutional programs for the displaced population and the permanent plan for the education, training and preparation of public officials”—some of which, it has been informed, have not been published because of the Electoral Guarantees Law-, (b) the creation of territorial support boards (*mesas territoriales*) for the organizations of displaced populations, (c) the evaluation of the reports presented by the National Board for the Strengthening of the Organizations of Displaced Population, (d) the generation of guidelines for the entities that form part of SNAIPD on different aspects of their jurisdiction, or (e) the generation of reports and recommendations on the budgetary aspects of the policy for assisting the displaced population, *inter alia*.

For the Constitutional Court, even though these activities may be important in themselves, they do not make up for the absence of a central coordinating entity which can ensure the harmonious and coordinated development and execution of the public policy at hand, as it has been established in the applicable regulations, through the adoption and implementation of a general program of action for the different entities that form part of SNAIPD—including the design and application of a coherent and effective set of results indicators. Likewise, the reports presented by *Acción Social* fail to prove that this entity has properly fulfilled its obligations as system coordinator. On the other hand, even

establishment of terms to meet the objectives set forth in the National Action Plan; (ix) lack of sufficient and appropriately trained personnel to assist the displaced population; (x) lack of effective mechanisms for the entire displaced population to fully understand, in a timely manner, the content of their rights and the policies, as well as the requirements and procedures to access the various institutional programs; (xi) lack of mechanisms to connect civil society with support to programs for assistance to the displaced population; (xii) absence of adequate training processes for officials who assist the displaced population; and, (xiii) lack of appropriate mechanisms to overcome the low coverage and deficiencies in the housing and economic stabilization programs.”

though some of the reports presented to the Court by CNAIPD announce that a coordinated program shall be adopted to overcome the flaws in the institutional capacity, and inform about some concrete actions aimed at eventually developing such program, the latter has not yet been formulated, although the six-month term conferred for that purpose expired in 2006, and the ensuing reports have failed to provide any explanations to justify the delay.

Having verified, on the grounds of the reports presented to the Court, the apparent persistence of a lack of effective coordination of the system by *Acción Social*, as well as a delay in compliance with the order issued to CNAIPD and the expiry of the term within which it should have been fulfilled, the Court must highlight that the absence of a central coordinating entity for the execution of the public policy for assisting the displaced population brings, as a direct consequence, a fragmentation and lack of harmony of its different components, all of which generates a negative impact upon the protection of the fundamental rights of the persons who have been displaced by violence. It is therefore imperative, within the remaining period of time before the expiry of the one-year term—counted from the moment of communication of Award 178/05-, for *Acción Social* to adopt the corrective measures which can enable it to comply with its system coordination tasks, and for CNAIPD to comply with the orders issued in this field.

2. Problems in the fields of registration and characterization of the displaced population.

2.1. The problem of under-registration is a flaw which had already been pointed out in this Court's preceding decisions. For the Court it is clear that there is a marked difference between the real dimensions of the phenomenon of internal displacement and the figures included in the Single Registration System of Displaced Population, and that no adequate information has been provided to prove that said difference has been solved. The existence of non-governmental systems for the registration of the displaced population, whose figures surpass by far those included in the Single Registration System, as well as the recognition by the Director of *Acción Social*—in public speeches and presentations—of figures that are close to three million displaced persons, indicate, at the very least, that the official registration system significantly sub-dimensions this serious national problem; this is a flaw which has also been pointed out emphatically by the *Procuraduría General de la Nación* and the organizations of displaced population. As a consequence, the entire public

policy for assisting internal displacement is formulated on the grounds of assumptions that do not match the real dimensions of the problem that is purportedly being addressed.

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

The Court understands that under-registration is due, in many cases, to the displaced population’s unwillingness to become registered as such in the official registration system—for different reasons, including fear, reticence towards the authorities and the lack of information on the existence of such system-. However, this does not excuse the inaction of the governmental entity responsible for measuring this alarming national reality in the most precise possible terms. It is not acceptable for a governmental entity such as *Acción Social* to shield itself behind reasons such as the ones presented in response to the report filed by the General Procurator’s Office in order to exonerate itself from its duty of measuring internal displacement in its real dimensions:

“With regard to your statement on under-registration and the deficiencies in information, we inform you that Acción Social has the technical instruments and procedures to measure the phenomenon of displacement and present the figures that reflect its evolution, on the grounds of the information reported by each person on her condition at the moment of giving her declaration as a displaced individual. Even though it is true that the figures of the Single Registration System of Displaced Population do not coincide with those presented by other sources, this is based on the fact that the Registration System has the purpose of registering each household and person who requests to be recognized as such, as well as that of facilitating access by each person to the attention offered by the Colombian State.

On the other hand, the phenomenon of under-registration is the phenomenon of the displaced population's abstinence from giving a declaration before the Public Ministry (sic), it is presented basically because the population has no information on its rights, it has mistrust towards the State officials and institutions, it desires anonymity because of the situation of displacement, or it fears placing its personal and household security at risk. Under-registration is therefore appreciable since the year 1997 (with the adoption of Law 387) onwards, before that date it is not possible to obtain a measurement, given that the legal framework in force does not establish such function. In this sense, neither the former Solidarity Network nor the current Acción Social can invest upon themselves powers which have not been previously established by the Law, insofar as they would be trespassing the limits of the exercise of their functions, as stated by article 6 of the Constitution”.

On the contrary, the Court considers that one of *Acción Social*'s main obligations in regards to the registration of the displaced population, by virtue of Decree 250 of 2005, is that of solving the problems of (i) discrepancies between the different official and non-governmental systems to measure displacement, and (ii) lack of registration of the effectively displaced population within the official measuring system. Insofar as the authorities lack complete and truthful information on the dimensions of the problem they purport to address, their actions shall be designed and formulated on the grounds of mistaken estimates, and therefore they will not have full effectiveness in countering the humanitarian crisis generated by displacement.

In addition, the Court notes that in the course of the last six months there has been a higher number of complaints, filed both informally before this Court and through *tutela* lawsuits presented at the different locations where the phenomenon of displacement has taken place, in relation to the existence of higher obstacles and reticence or refusal by the public officials in charge of registration to include recent cases of forced displacement within the system, thus leaving individuals and families who require immediate assistance, because of their lack of protection, excluded from the assistance system. The Court has also been informed about the repeated refusal to register second displacements, intra-provincial or intra-urban displacements, and displacements caused by police or military operations in which no humanitarian components or humanitarian contingency plans have been included, as well as the requests for

registration made after one year has gone by since the displacement. These situations have taken place in relation to cases of displacement which have been publicly known, such as the cases of the Nariño, Cauca, Antioquia, Chocó, Putumayo and Caquetá departments, *inter alia*.

In sum, *Acción Social* is still under the duty of proving to the Constitutional Court that it has adopted the measures required to solve the problems in the field of registration of the displaced population which have been pointed out in this section, given that up to this date, the reports presented by said entity are far from being adequate for this purpose.

2.2. With regard to the process of characterization of the displaced population included in the Single Registration System, the Court notes that the reports presented to it indicate a significant delay in the fulfillment of *Acción Social's* obligations in this field.

The contents of the order issued in Award 178 of 2005 in relation to the characterization process were clear and expressed in unequivocal terms: it was intended that within a peremptory term of three months, the Director of the Social Solidarity Network—now *Acción Social*—should have adopted the measures required to effectively finalize the characterization process in the term of one year, that is to say, by September, 2006. Indeed, such public official was in the duty of designing, implementing and promptly applying, within a period of three months, the procedures and corrections required to overcome the different problems that were pointed out, with similar clarity, in Award 178/05, “so that within the maximum term of one (1) year, counted from the communication of the present Award, the process of characterizing the population displaced by violence has been finalized”. The Court shall determine, therefore, whether (i) it was effectively proven that, within a three month period (that is to say, until December 13, 2005) *Acción Social* not only designed but promptly implemented the procedures and corrections required to solve the problems indicated in Award 178/05, and (ii) given the development of *Acción Social's* activities up to this date with regard to the process of characterization of the displaced population, it is likely or feasible for such process to have been completed by September, 2006.

From the outset the Court notes that *Acción Social* did not prove that it had complied with the order issued in Award 178/05, where it was stated that within a three-month term—that is to say, until December 13, 2005—it should have adopted the measures required to complete the process of

characterizing the displaced population in a maximum term of one year. However, it was not until the first semester of 2006 that *Acción Social* informed about the adoption of a National Characterization Plan which is, at the moment, in its first phases of application and has a significant delay in its implementation, as recognized by *Acción Social* itself. In that sense, it is clear that by the moment when the one-year term granted by the Court expires—on September 13, 2006—, the process of characterization of the displaced population will not have been completed.

What is more, the National Characterization Plan does not include the necessary instruments to secure that, once such characterization process has been finalized, the public policy for assisting the displaced population is focalized in accordance with the results of its application. That is to say, it would seem that the characterization process has been visualized by *Acción Social* as an end in itself, and not as a means to adapt the public policy for assisting the displaced population to the realities which have been observed during such characterization.

2.3. In this sense it is particularly relevant that CONPES Document 3400 includes a special chapter on the issue of the State's system of information on forced displacement. Such chapter states, in pertinent part, as follows:

“VII. INFORMATION SYSTEMS, FOLLOW-UP AND EVALUATION OF THE POLICY TO ATTEND FORCED DISPLACEMENT.

One of the most serious institutional failures in the design, application, follow-up and evaluation of the policy for the attention of the Displaced Population is the precariousness of its information systems. Even though the Colombian State has made important advances, through the Single Registration System, in the characterization and measurement of the magnitude of displacement, and SNAIPD entities are likewise advancing in the setting in motion of information systems, the following restrictions are still present, inter alia:

(i) Not all the displaced population included in the Single Registration System has been characterized, given that up to this moment only the individual displacements and one third of the massive ones have been included in this activity;

(ii) Some of SNAIPD entities still fail to differentiate, in their information systems, the displaced population from the rest of the population that benefits from their regular programs, which makes it impossible to know the state of the attention in each one of the components;

(iii) a significant proportion of the displaced population still lacks an identification document, which makes it impossible to cross-examine the information of the Single Registration System with SNAIPD entities' databases, and hampers the provision of attention through programs that require user identification;

(iv) it is not possible to contrast population information between expelling and receiving municipalities in order to promote the attention of the victims through compensation accounts. Such is the case of the subsidized [health] regime, in which the receiving municipalities are reticent to assist displaced persons, given that their affiliation and finance correspond to other municipalities;

(...) In response to the foregoing, it is urgent to provide the policy with better procedures and instruments for the generation and administration of information, as well as permanent and robust follow-up and evaluation mechanisms which can make it possible to overcome the aforementioned difficulties.

Generation and administration of information

One of the main objectives of the policy for the attention of the displaced population is that of solving the existing information problems. The purpose of this is to have timely and quality information in order to formulate better interventions, control their results and evaluate their impact upon the target population. Likewise, the objective is to provide the State with elements to respond swiftly to the magnitude and eventualities of the problem of forced displacement.

For those reasons, the following actions shall be carried out:

(i) The national government, through Acción Social, shall define characterization protocols that include the definition of swifter standards and procedures to carry out this process, both at the level of the governmental entities, on the grounds of the Single Registration System, and at the level of non-public entities, through the Contrasted Sources Estimation System. This activity must be carried out in a term no longer than 6 months;

(ii) The national governmental entities shall begin immediately, and conclude within a term no longer than 6 months, the implementation of registration procedures that differentiate the attention provided to the displaced population from [that which is provided to] the rest of the beneficiaries of their programs. For this purpose, Acción Social shall provide technical support to SNAIPD entities, and it will identify the areas that require strengthening information systems, as well as the procedures required for that purpose.

In order to attain this objective at the territorial level, Acción Social will identify the legal and administrative mechanisms to guarantee the obligation of differentiating the displaced population within the offer of public benefits provided by departments and municipalities. The proposals referring to the aforementioned mechanisms shall be sent to the Constitutional Court before the adoption of the administrative decision that develops judgment T-025 in this aspect.

(iii) In order to solve the identification problems that prevent the provision of adequate attention to the beneficiaries of some of the programs included in the State offer, the National Registrar shall be permanently included as part of CNAIPD, and within such council, he will be requested to review and improve the scope of the identification agreement it is currently developing with the United Nations (UNHCR). As a complement to this activity, Acción Social will define a permanent coordination mechanism with the Registrar, in order to secure a better focalization of the identification program in the municipalities with the largest proportion of unidentified population, on the grounds of the information included in the Single Registration System.

(iv) Finally, in order to solve the problems that prevent contrasting the population information between municipalities, Acción Social, with the support of the National Planning Department and the COINFO Technical Committee, shall identify the areas that most urgently require crossing inter-municipal information, and propose actions to the pertinent entities. As a complement, a compensation account scheme shall be established to facilitate the attention of the displaced population. Acción Social, with the technical support of the National Planning Department, shall define a scheme that will be submitted for consideration by the CONPES (...)”.

The Chamber notes an important discrepancy between the content of this CONPES Document and that of the reports presented by *Acción Social* with regard to the issue of registration and characterization of the displaced population. The absence of actions in relation to the identification process of the displaced citizens who still lack a valid identification document, and are therefore unable to enter the system, is particularly significant.

2.4. The Court must underscore with the highest emphasis the critical importance of the process of registration and characterization of the forcibly displaced population for purposes of formulating and implementing a public policy aimed at effectively securing the constitutional rights of this segment of the population. It must reiterate that the very design of such public assistance policy, as well as its materialization, follow-up and evaluation, depend in their scope, timeliness and effectiveness, on the quality and precision of the information included in the official databases about the displaced population.

In this sense, all of the components of the public policy for assisting the displaced population depend, for their proper formulation and execution, on an adequate process of registration and characterization. Any delay or failure in the process of registration and characterization of the forcibly displaced population bears a direct impact upon the totality of the elements that comprise such public policy. Until the problems in the process of registration and characterization are solved, it will not be possible to advance in a reliable, accelerated, specific and sustained manner in the resolution of the diverse and complex problems that have given rise to the unconstitutional state of affairs declared in decision T-025 of 2004. Therefore, the issue of registration and characterization of the displaced population is placed as one of the foremost priorities, as recognized by the cited CONPES Document itself, and has strategic importance within the process as a whole—a priority which, judging from the reports submitted to the Court, has not been properly granted to it by *Acción Social*.

In this same sense, the Chamber emphasizes that the efforts to register and characterize the displaced population are a key element for the resolution of the unconstitutional state of affairs in the field of internal displacement, given that such state of affairs arises from the difference that exists between the real magnitude of the problem and the State and social responses to it, as established in decision T-025 of 2004.

3. Budgetary aspect of the policy for the attention of the displaced population.

Budgetary insufficiencies were identified in decision T-025 of 2004 as one of the main structural causes of the unconstitutional state of affairs that affects the displaced population. Since then, significant advances have been reported in the quantification of the resources required to finance policies in this field. The latest estimate made by the National Planning Department has evolved from 4.7 to 5.1 billion pesos to assist the population displaced until December 2005. The sources to obtain the missing resources were also globally identified. In addition, budgetary appropriations have been increased in order to fulfill the commitments derived from the policy on internal displacement and from the orders issued by the Court. The execution of these resources has also been increased in several entities. Nevertheless, by August, 2005, social investments focused on the displaced population and their full and timely finance continued to be deficient.

Consequently, in Award 176 of 2005, the Court issued a number of specific orders in the budgetary field. It specifically ordered the Minister of Public Finance, the Director of *Acción Social* and the Director of the National Planning Department: (1) to design a timetable in which they were to estimate the rhythm and the mechanisms to channel the resources calculated by the National Planning Department as necessary to materialize the public policy for attending to forced displacement, pointing out the requirements that such timetable was to fulfill³; (2) to periodically

³ In this regard, the operative part of *ruling* 176 states: “*First.- TO ORDER, through the Office of the General Clerk of the Constitutional Court, that no later than December 1, 2005, the Minister of Finance and Public Credit, the Director of the Presidential Agency for Social Action and International Cooperation -- Acción Social, and the Director of the National Planning Department submit to this Court as well as to the Procurador General de la Nación, the Ombudsman, and the Comptroller General of the Republic, a schedule indicating the pace and mechanisms by which the resources considered by the National Planning Department as necessary for the implementation of the public policy of assistance to the displaced population, intended to overcome the state of unconstitutionality declared in Decision T-025 of 2004, shall be allocated. This schedule shall include, as a minimum: 1. The total amount of money that shall be allocated for the purpose of implementing the policy of assistance to the displaced population, broken down: (a) by fiscal years; (b) establishing the proportion of funds that comes from the international community, territorial entities, the Nation, or other sources; (c) identifying the people or organizations responsible for obtaining the resources and for their application; (d) indicating the resources that shall come from the budget of each national-level institution responsible for implementing the policy for assistance to the displaced population; (e) explicitly identifying which institutions are responsible for the*

update the relevant calculations in accordance with the evolution of the phenomenon of internal displacement in the country, for which purpose it warned the Director of the National Planning Department that it was his duty to carry out and communicate in a timely manner the pertinent updates in the calculations⁴; (3) to indicate, for each one of the relevant fiscal years, the specific details of the budgetary allocations that were effectively destined toward assisting the displaced population by the national entities⁵; (4) to submit reports to the Court, at the end of each fiscal year, indicating the precise manner in which the budget for assisting the displaced population had been executed⁶; and (5) bearing in mind that

money's application, in accordance with the component of the policy for assistance to the displaced population to which it shall be allocated; (f) differentiating between the resources allocated to general programs for the vulnerable population and those directed to the displaced population. 2. The time, as well as the pace at which progress shall be made towards meeting the objectives determined in the National Planning Department's estimation, shall have to be reasonable, but steady and ongoing, in keeping with this ruling."

⁴ The operative part stated: "*Second.- TO GIVE NOTICE, through the Office of the General Clerk of this Court, to the Director of the National Planning Department, that the estimate calculated by that institution shall have to be updated, so that the displaced persons registered each term are periodically added. The new calculations shall be communicated in a timely manner to the Ministry of Finance and Public Credit [and] the Director of the Presidential Agency for Social Action and International Cooperation–Acción Social. They shall also be communicated to the displaced population and the general public via the mechanisms that the National Department deems appropriate, in addition to being communicated to this Court and the Procurador General de la Nación, the Ombudsman, and the Comptroller General of the Republic."*

⁵ The corresponding section of the operative part of ruling 176 of 2005 is the following: "*Fourth.- TO ORDER, through the Office of the General Clerk of this Court, that on the date on which the General Budget of the Nation for each fiscal year is approved, until the time when the level of resources considered by the National Planning Department [as necessary] for the implementation of the public policy of assistance to the displaced population is attained, the Minister of Finance and Public Credit shall send a report to this Court in which he indicates the amount included in the Expense Budget allocated to assistance to the displaced population, broken down by sections, implementation accounts, and their respective descriptive items. It shall indicate how said allocations are consistent with the schedule described in the first order of this ruling. A copy of the same shall also be sent to the Office of the Procurador General de la Nación, the Office of the Ombudsman, and the Office of the Comptroller General of the Republic."*

⁶ The operative part sets forth the following in this point: "*Fifth.- TO ORDER, through the Office of the General Clerk of this Court, that no later than one month after each fiscal year ends (including the 2005 fiscal year), until the time when the level of resources considered by the National Planning Department [as necessary] for the implementation of the policy of assistance to the displaced population is attained, the Minister of Finance and Public Credit and the Director of the Presidential Agency for*

it had been proven during the proceedings that the territorial entities had displayed a lack of commitment towards the policy for assisting the displaced population, and taking into account the need of securing these entities' collaboration in the framework of the principles of coordination, convergence and subsidiarity (article 288 of the Constitution), the Chamber warned the territorial entities that they should take into account the constitutional priority of public expenditure for the satisfaction of the displaced population's needs, as well as the content of article 58 of Law 921 of 2004⁷.

The Court verifies, in the first place, that the authorities to whom these orders were issued effectively submitted, within the established dates, reports on the budgetary aspect of the public policy for assisting the displaced population. Indeed, on December 1 a timetable was submitted by the three aforementioned authorities, including an estimation of the costs of assisting the displaced population, in accordance with the legally established components of the assistance policy; such timetable effectively pointed out the rhythms and mechanisms to procure the resources required for the implementation of said policy, within the 2005-2010 fiscal years. A report was also submitted to the Court by the Ministry of Public Finance, about the execution of the budget chapters corresponding to the displaced population during the 2005 fiscal year.

Social Action and International Cooperation – Acción Social (or whomever acts in their stead) to send to this Court a report that indicates, for the corresponding term:

- 1. The amount of resources that each national-level institution or organization has applied to assistance to the displaced population;*
- 2. Whether the corresponding institution or organization has in fact given priority to the application of resources with regard to assistance to the displaced population;*
- 3. The exact manner in which the resources allocated in each section of the General Budget of the Nation comply with the schedule described in section 5.4.4.1 of this ruling.*

A copy of this report shall also be sent to the Office of the Procurador General de la Nación, the Office of the Ombudsman, and the Office of the Comptroller General of the Republic.”

⁷ The operative part stated: “*Seventh.- TO ADVISE the territorial entities so they take into consideration the constitutional priority that public spending allocated to the displaced population has in social public spending and Article 58 of Law 921 of 2004, when responding to the requirements of the Ministry of Finance and Public Credit, the National Planning Department, or the Presidential Agency for Social Action and International Cooperation – Acción Social for the purpose of complying with Decision T-025 of 2004 and this ruling.*”

Having examined such budgetary time table, as well as the estimates on the grounds of which it was formulated, in the light of the reports submitted by each one of SNAIPD entities to the Constitutional Court and the report on the budget execution of the 2005 fiscal year sent by the Ministry of Public Finance, the Court considers that the following observations are pertinent, in accordance with the indications of the *Procuraduría General de la Nación*:

3.1. In the first place, the estimation of the costs of implementing the policy for assisting the displaced population, as contained in the reports submitted to this Court, is problematic. Such estimate, which provides the ground for the calculations that justify the 2005-2010 budgetary timetable, is not adequately justified, given that:

(i) the reports presented after the adoption of Auto 176 of 2005 fail to explain how a specific figure on the costs of assisting each displaced household was obtained—that is to say, which were the factors that were taken into account in making the calculations; given the lack of clarity about such factors, it is necessary for the authorities who received the order to explain whether they maintained the same assumptions that they informed about before the adoption of Auto 176/05, or whether the latter were modified;

(ii) the estimate does not assess the specificities of the target population, given that it fails to take into account the results obtained up to this date from the process of characterization of the displaced population—the advances of which have not yet been incorporated within a new, updated calculation that responds to such specificities in each one of the assistance components. In that sense, the estimation of costs lacks the differential approach required by the Constitution; therefore, the authorities who received orders in Auto 176/05 must indicate whether the advances obtained up to this date in the characterization period have been included within said estimate;

(iii) it has not been proven that the calculation of costs has been updated in accordance with the evolution of the phenomenon of internal displacement; what is more, such calculation is based on a hypothesis of decreasing tendencies in the evolution of the phenomenon of internal displacement, whereas the observations made by the Procuraduría and other entities would indicate that such decreasing tendency has not been proven for the year 2006.

3.2. In second place, the reports have serious inconsistencies between (a) the formulation of the estimate of the public policy's implementation costs and the design of the 2005-2010 budgetary timetable, on the one hand, and (b) the formulation of the goals of assisting the displaced population by each one of SNAIPD entities, on the other hand. In other words, the reports fail to show a basic harmony between the amount of resources that the budget authorities have considered necessary for the implementation of the aforementioned public policy, and the actions that each one of the entities in charge of executing the public policy at hand regard as necessary to comply with their constitutional and legal obligations in the field. The differences between one and the other position, which are salient in some cases, can be observed after a simple reading of the goals established by each one of SNAIPD entities in their bi-monthly reports to the Constitutional Court. They have failed to provide a clear explanation for the reasons that underlie this discrepancy, even though it is evident for the Court that this is a product of the notorious lack of coordination of the System for assisting the displaced population, and the public policy that is materialized through such system. It has not been explained, either, how the budgetary calculations and the timetable for assisting the displaced population shall be updated on the grounds of the resolution of this inconsistency.

3.3. In third place, on the grounds of the reports submitted by SNAIPD entities and the 2005 budget execution report submitted by the Ministry of Public Finance, for the Court it is evident that the budgetary timetable for the 2005-2010 fiscal years included in CONPES Document 3400 has already been disregarded. Indeed, there are several cases of budgetary sub-execution—that is to say, of incomplete execution of the chapters assigned in the budget to each one of the assistance components-, as well as some examples of over-execution—as happened, for example, with the Emergency Humanitarian Aid component under the responsibility of *Acción Social*, which was eventually assigned more resources than the ones initially established-, or execution at rhythms and amounts that were different from the ones established in the budget—for example, accelerated execution of the chapters established in the budget for the entire fiscal year during the first months, as happened with the Ministry of Agriculture. These imbalances, which are tantamount to non-compliance with the budgetary timetable initially submitted to the Court, have not been accounted for or justified in a reasonable manner—which merits the provision of a coherent explanation by the authorities to whom orders were issued in Award 176/05. It has not been explained either how such

imbalances bear an impact upon the 2005-2010 budgetary timetable, whether the latter will have to be reformulated on the grounds of the material results of the budgetary execution carried out up to this date, or whether the imbalances that took place during the 2005 fiscal year will be corrected in 2006, and how so. There is no indication of how the remaining resources, or the ones additionally needed, will be administered in each one of these cases. For the Court, the existence of these inconsistencies, discrepancies and lack of clarity ultimately bears a negative impact upon the effective and orderly application of the public policy for assisting the displaced population, and therefore upon the effective enjoyment of the rights of the persons and families in conditions of forced displacement.

3.4. Fourth, there is no clarity in the reports as to the participation of the territorial entities in the financing scheme of the policy for assisting the displaced population. The report presented on December 1 provides the following explanation:

“Taking into account that the amount of resources required to assist the population that was forcibly displaced by December, 2004, was calculated in ColP\$4.7 billion⁸, and that the amount of budgetary resources required for that purpose during the 2005 fiscal year⁹ was calculated in ColP\$413,650¹⁰ million, and that resources were allocated for an amount of ColP\$1.3 billion for the 2005 and 2006 fiscal years, the Nation and the territorial entities must make an additional budgetary effort of around ColP\$3.97 billion (Annex 5).

Insofar as both the national and the territorial entities must prove their commitment towards the policy for the attention of the Forcibly Displaced Population in accordance with their constitutional and legal obligations, the proposed timetable establishes a participation percentage for both levels, which was calculated as follows: 75%

⁸ Colombian “Billions” are equivalent to Trillions

⁹ According to the figures of the Central Registry for the Displaced Population, 106,650 people were displaced in 2005 (with a cutoff date of October 31, 2005). According to DNP [National Planning Department] projections, it is calculated that as of December 2005 the total number of displaced persons for this year may be 126,671.

¹⁰ This estimate was based on the same assumptions that were reported to the Constitutional Court in the Information Hearing held on June 29, 2005, for estimate of \$4.5 trillion pesos.

Judicial Protection of Internally Displaced Persons

(ColP\$2.9 billion) for the Nation, and 25%¹¹ (ColP\$990 thousand million) for the territorial entities¹².

In accordance with the above, the rhythm of allocation of resources from the Nation’s General Budget for the attention of the forcibly displaced population shall be gradual during the 2007-2010 fiscal years. It is noteworthy that, because these are resources within the Nation’s General Budget, the Ministry of Public Finance and the National Planning Department will be responsible for including said resources in the annual budget project and preproject, respectively.

The timetable included in CONPES Document 3400 to provide for the needs of the displaced population is the following one:

Table 2: National Timetable

	2007	2008	2009	2010	Total
<i>Attention of the population that was displaced by December, 2004</i>	653.698. 385.089	653.698. 385.089	653.698. 385.089	653.698. 385.089	2.614.793.540.354
	130.280. 891.766	130.280. 891.766	111.669. 335.799		372.231.119.331
Total	783.979. 276.854	783.979. 276.854	756.367. 720.888	653.698. 385.089	2.987.024.659.685

Calculations: DNP-DJS-GEGAI

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

¹² In the Information Hearing held on June 29, 2005, in that Court, the DNP submitted a breakdown of the total estimate of \$4.5 trillion, indicating the participation percentage in the appropriation of resources to assist the Population Displaced by Violence in the following manner: 70% the Nation, 15% territorial entities, and 15% international cooperation. Nevertheless, these percentages have changed as during the estimate exercise, adjustments were made with more precise information in terms of the budget and displacement figures. The resources and efforts of international cooperation are not included in this exercise, given the difficulty of guaranteeing their availability with certainty.

The distribution of these resources according to the attention components and the executing entities, shall be based on the programming of the 2006 fiscal year, and in accordance with the orders issued by the Constitutional Court, it will be adjusted according to the evolution of the reality of the problem of displacement, whether to increase such estimate or to reduce it, as the necessities of displaced persons are provided for and in accordance with the information contained in SIGOB on the results of the policy, and the registrations included in the Single Registration System”

The timetable indicates that territorial entities shall contribute 25% of the resources required to implement said policy, starting on the 2007 fiscal year; however, there is no comparable indication for the 2006 fiscal year, nor for the already expired 2005 fiscal year. In this sense, the Court notes that the calculations of the resources that are to be applied in 2005 and 2006 do not include the participation of the territorial entities: from a general estimate of 5.1 billion pesos, distributed between the 2005 and 2010 fiscal years for assisting the population that was displaced by December, 2004, a total of 1.3 billion pesos—which were appropriated for 2005 and 2006 under the responsibility of the national entities—are deducted, and afterwards the remaining 3.97 billion are divided in 75% that correspond to the Nation, and 25% that correspond to the territorial entities for the 2007-2010 fiscal years. In this way, there is no explanation about why the territorial entities were not included within the budgetary calculations for the 2005 and 2006 fiscal years, nor about how the territorial budgetary efforts made during 2005 and 2006 had incidence upon the assistance policy and its different components.

In addition, on the grounds of the different reports presented by the Ministry of the Interior and Justice on the fulfillment of its duty to coordinate the territorial efforts for assisting displaced persons, the Court concludes that it has not been proven that there is an appropriate scheme to ensure that the budgetary chapters that correspond to the territorial entities are executed in the established manner and amounts. In this sense, the reports submitted to the Court would seem to indicate that the materialization of the assistance timetable presented to the Constitutional Court is threatened by the absence of a scheme to coordinate territorial entities' budgetary efforts.

3.5. Fifth, there was no concrete individualization of the persons and entities responsible for executing the resources included in the budgetary timetable and in the Nation's General Budget for the 2005 and 2006 fiscal

years, even though a clear mandate was issued in this sense. The report simply indicates which is the corresponding SNAIPD entity, but within such entities, there is no specification about which office or officer will be responsible for securing that such resources are executed in the manner and amounts established in the budget. This lack of concrete individualization of responsibilities directly affects the transparency of budgetary managements in relation to the policy for the attention to displacement.

3.6. The Court calls to mind that in the context of the unconstitutional state of affairs generated by the difference between the magnitude of the problem of forced displacement and the institutional response to solve it, the Court has identified a number of budgetary problems in Award 176/05, and a number of requirements to overcome them: (i) the need to clarify specific individual responsibilities, and the responsibilities of each entity, (ii) the need to indicate the sources and mechanisms to procure the necessary resources, and (iii) the need to ensure that the gradual effort to satisfy the rights of the displaced population is effectively made, “is not delayed through liquidations that are inferior to the budget for each fiscal year, is not diluted in the general budget chapters or programs for the vulnerable population, and is constant in order to achieve the established goals”.

As a consequence of the aforementioned problems, the Court concludes that it has not been proven that the budgetary problems at hand have been solved, after nearly one year since the corresponding orders were issued: (i) no concrete clarification of the specific individual responsibilities in each one of SNAIPD entities has been made, (ii) there is no clarity whatsoever about the role of territorial entities in the finance of the public policy to attend to forced displacement, and (iii) the levels of budgetary sub-execution and over-execution identified by the Court bear a direct impact upon the materialization of the gradual efforts established in the budgetary timetable submitted by the Ministry of Public Finance, the National Planning Department and *Acción Social*, and there is no proof of the existence of a tool to solve the resulting imbalances, nor a correction of the initial calculations.

4. Absence of reliable and significant results indicators.

One of the general orders issued in Awards 177 and 178 of 2005, both to the National Council for Comprehensive Assistance to the Population Displaced by Violence and to the entities that form part of SNAIPD, was

that of adopting results indicators “that take into account the effective enjoyment of the rights of the displaced population, and make it possible to determine the dimensions of the specific demand which has been attended, as well as the advances, retrogressions or delays of each program and assistance component”.

Each one of the reports submitted individually to the Court by SNAIPD entities contains a chapter on results indicators. However, the content of such chapters is far from appropriate, for the following reasons:

4.1. Until this date, there is no series of indicators that responds, on the grounds of the specificities of each component of the public policy, to homogeneous criteria in its design, application and validation. On the contrary, each one of the entities that form part of SNAIPD has generated its own set of indicators, in many cases modifying them throughout the different bi-monthly reports. In this way, the Court notes a complete lack of coordination in the design, application and validation of results, which again reveals, in turn, a serious problem of fragmentation of the public policy for assisting the displaced population, as well as a lack of definition of the objectives and goals to be achieved, according to the established priorities. The obligation of adopting indicators was also enshrined in Decree 250 of 2005, issued on February 7, 2005; non-compliance with this provision goes to prove, with higher clarity, that neither the National Plan nor the orders of the Court have been fulfilled as of this date.

4.2. The criteria to measure the results, presented as a list of indicators, have not been applied in such a way as to prove how the outcomes of the public policy have evolved, or whether such results indicate compliance with the orders issued in the judgment with regard to the effective enjoyment of displaced persons’ rights. This application should have been carried out, at the least, since the adoption of Judgment T-025 of 2004, in order to prove whether there had been advances or, on the contrary, delays or retrogressions in each one of the components of the policy.

4.3. It is not clear, in any of the cases, whether the result indicators are applicable or significant. In fact, apart from presenting the indicators as mere criteria of compliance with the goals set by each SNAIPD entity in the reports they have submitted to the Court, it does not seem clear that there exists an officer or entity in charge of applying said indicators, carrying out a follow-up of the policy’s implementation and orienting it in accordance with its results, introducing the pertinent corrections or modifications.

In this way, one of the main flaws which had already been identified by the Court still persists, and there is now a pressing need to adopt different sets of results indicators which, more than being mere enunciations of isolated elements or criteria that refer to certain goals, can serve as instruments to measure in a transparent, reliable and significant manner the effectiveness of the public policy for assisting the displaced population, both in relation to said policy as a whole and to each one of its components, based on the need to secure effective enjoyment of forcibly displaced persons' fundamental rights. There are, therefore, three (3) sets of results indicators whose adoption was ordered in Auto 178/05, and which are required to comply with this purpose, namely: (i) one set of results indicators that refers to the national coordination of all of the components of the public policy for assisting the displaced population, (ii) one set of indicators that refers to the coordination of the activities of the territorial entities in the development of all of the components of the policy for assisting the displaced population, and (iii) one specific set of indicators for each one of the components of the public policy under the responsibility of the entities that form part of SNAIPD within their spheres of jurisdiction—e.g. guarantee of minimum subsistence levels, support for self-sufficiency, housing, returns, lands, healthcare, education, etc..

4.4. Taking into account that the lack of a system of indicators makes it impossible to evaluate the results which have been effectively obtained, and therefore to determine whether each responsible entity has advanced at an adequate rhythm in the fulfillment of the orders issued, the Court decides that, if no sets of indicators that comply with these minimum requirements have been submitted by the time when the terms granted in Award 178/05 expire, the Court will explore the possibility of adopting indicators crafted by sources different from SNAIPD.

5. Lack of specificity in the diverse components of the attention policy.

5.1. As a result of the failures in the characterization of the displaced population and the lack of sensitivity that was present in the formulation of the policy in relation to the displaced persons who receive special constitutional protection for their fundamental rights—among other factors pointed out since Judgment T-025/04-, it has not been proven to the Court that the public policy for the attention to displacement has been formulated or applied with due regard for the specificity criterion, derived from the mandate of securing the rights of especially vulnerable persons. On the contrary, in the reports submitted to the Court there are some examples of programs or actions designed for the vulnerable population in

general, through which the efforts to assist the displaced population are still being channeled, which lack the required specificity in relation to displaced persons; such is the case of the program “Families in Action” (*Familias en Acción*), which absorbs part of the assistance provided to displaced persons.

5.2. Even though significant advances have been proven at a basic level of specificity, namely that of differentiating the assistance provided to the displaced population from the assistance provided to the rest of the vulnerable population, the specificity criterion is still absent from the reports at three different levels with equal constitutional importance: (a) in relation to the persons who are especially protected by the Constitution and form part of the displaced population—elderly persons, children, women providers-, (b) in relation to the regional variations in the phenomenon of displacement, and (c) in relation to displaced persons’ status as victims of the armed conflict.

5.3. Even though there are some exceptions, such as the case of the Colombian Institute of Family Welfare, it may be held that in general terms, the entities that form part of SNAIPD have disregarded the need to design and apply their assistance programs paying careful attention to the specificities of the population that they will assist, at these three levels.

5.3.1. In the first place, it is quite unsettling that the reports fail to prove that the assistance programs implemented by the different authorities that form part of the system pay special attention to the special needs of the elderly persons, children and women providers that form part of the target population. In effect, these persons—who are especially protected by the Constitution—are affected in a severe manner by the condition of displacement, given the magnitude of the risks to which they are exposed—for example, risks for their health and lives, of becoming victims of trafficking and prostitution networks, of being forcibly recruited by irregular armed groups, of malnutrition in the case of children or, in the case of women and girls, of having their sexual and reproductive rights violated. Even though all displaced individuals share, in general terms, a violation of their constitutional rights, these three groups of the population are different from the rest in the specificity of their vulnerabilities, their needs for protection and assistance, and their possibilities of reconstructing dignified life projects. That is the source of the need to adopt a differential and specific approach, which acknowledges that displacement bears different effects depending on age and gender.

These failures in terms of specificity aggravate the flaws in the result indicators, given that the measurement criteria submitted to the Court do not include any indicators that show the results obtained in relation to elderly persons, children and women providers.

5.3.2. In second place, as a consequence of the lack of coordination of the territorial efforts to attend forced displacement, the Court notes on the ground of the reports submitted to it, that the policy for assisting the displaced population disregards the regional variations and specificities of internal displacement, derived from the different territorial dynamics of the armed conflict. Although displacement is a humanitarian crisis that affects the entire country, it has regional and even local features which are directly related to the actors that generate it, its modalities, the affected groups of the population and the causes that fuel it. It is also pertinent to differentiate the situation of the municipalities that expel population from that of the municipalities that receive displaced population, some of which have a very high percentage of displaced persons in relation to their total population. This is why the Unified Comprehensive Plans (PIU) are so important; the reports fail to prove that these Plans have been adopted and implemented with the effectiveness and organization that were initially announced.

5.3.3. Finally, the Court does not consider that it has been proven that the design of the policy to assist displaced persons takes their condition of victims of the armed conflict into account—a condition that confers specific rights upon them, such as the rights to truth, justice, reparation and non-repetition. In the specific case of the victims of forced displacement, these rights are equally expressed in the protection of the property that they have left abandoned, particularly of their land—a protection component which has not been emphasized with sufficient strength by the entities that form part of SNAIPD.

6. Displacement of indigenous and Afro-Colombian groups.

6.1. The displacement of Colombian ethnic groups is an area in which the Court has detected one of the most worrying gaps in the assistance policy under review. It is clear from both the communications and reports presented to the Constitutional Court and public and notorious facts which are known to the public, that the country's indigenous and Afro-Colombian groups have borne a proportionately higher impact within the total group of victims of forced displacement in the course of the last year, and it has not been proven that the assistance policy includes a specific

element aimed at preventing the occurrence of displacements of these groups and assisting in an immediate and effective manner the specific needs of those which have already been displaced.

6.2. Forced displacement is particularly harmful for ethnic groups, who suffer in proportional terms the highest level of displacement in the country, as it has been reiteratively informed to the Court and declared by different analysts of the phenomenon. The impact of the conflict as such is expressed in harassments, murders, forced recruitment, combats in their territories, disappearance of leaders and traditional authorities, blockades, eviction orders, fumigations, etc., all of which comprises a complex causal framework for displacement. The displacement of indigenous and Afro-Colombian groups entails a serious violation of their specific constitutional rights, including their collective rights to cultural integrity and to territory. Moreover, indigenous and Afro-Colombian groups' relationship with their territory and its resources transforms forced displacement into a direct threat to the survival of their cultures.

6.3. For these reasons, the State is under the obligation of acting with a special degree of diligence in order to prevent and solve this problem; however, on the grounds of the reports submitted to the Court, a notorious gap is observable in this component of the policy to assist displacement. The inaction of the competent authorities is hence transformed into a factor that aggravates the effects of this humanitarian crisis.

7. Lack of security for the return processes

7.1. As the *Procuraduría General de la Nación* has informed on repeated occasions, the processes of return of the displaced population have been carried out without paying special attention to their security conditions, both during the physical mobilization of the population and during their permanence at the places of return. This gap is particularly serious, if it is borne in mind that it has a direct impact upon the exercise of the rights to life, personal integrity and security of the displaced population, and that in Auto 178/05 clear orders were issued to adopt, within a maximum terms of six (6) months, a program aimed at overcoming the institutional flaws in this field.¹³

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

¹³ See section 10 of Annex 4.

former, because the actions it reports in this field have been essentially restricted to the adoption and adjustment of a “Returns Protocol”, on whose practical application no conclusive information has been provided yet, and to the proposal of diagnoses on the effective enjoyment of the rights of the returned population, which have not yet been completely carried out. The latter, because the reports it has presented to the Court have been restricted to a description—at great documentary length—of general military operations, which include in some cases elements of companionship to the returned population but, in general terms, lack the specific approach required to protect the security of the displaced population that decides to return to its place of origin—as recognized by the reports themselves-.

8. Absence of differences between the attention received by recently displaced persons and by those who were displaced before the adoption of decision T-025 of 2004 and Awards 176, 177 and 178 of 2005.

On the grounds of the different communications which have been presented to the Constitutional Court, as well as notorious events which have been communicated to the public through the press, this Court verifies that the different entities that form part of SNAIPD have failed to prove that the assistance provided to the persons who have been displaced recently is qualitatively better than the one granted to those who became displaced before the adoption of Judgment T-025/04 and Awards 176, 177 and 178. In fact, the information available to this Court indicates that in many cases, these persons have been denied access to the most basic components of State assistance, such as immediate aid or emergency humanitarian aid.

In that sense, in order to prove that the public policy to assist the displaced population has advanced substantially, even in its most basic components, it is necessary for the entities that form part of SNAIPD, and *Acción Social* in particular, to present this Court, within the term that remains before the expiry of the one-year period granted in Award 178 of 2005, the information required to prove that, at least in relation to the component of guarantee of a minimum subsistence—through immediate aid and emergency humanitarian aid—the population that has become displaced in the course of the last months is assisted in an effective and timely manner, without suffering from the problems indicated in the aforementioned Award 178/05, or in case these problems do take place, that it happens to a lesser degree, and providing a solid explanation for it.

The Court underscores that the mass displacements of which it has had notice—through press information which grants them the nature of notorious events or letters sent by the displaced persons themselves—and in regards to which it requires the provision of clear information in this respect, include the ones that took place in the following municipalities: Nariño (Antioquia department), Argelia (Antioquia department), San Juan Nepomuceno (Bolívar department), Florencia (Caldas department), Samaná (Caldas department), Itsmina (Chocó department), Río Sucio (Chocó department), Ungía (Chocó department), Corregimiento de La Carra (Guaviare department), San José del Guaviare (Guaviare department), Vistahermosa (Meta department), Policarpa (Nariño department), Ricaurte (Nariño department), Iscuandé (Nariño department), Barbacoas-Altaquer (Nariño department), Orito (Putumayo department), Puerto Asís (Putumayo department), Hormiga (Putumayo department) and San Miguel (Putumayo department).

9. Deficient coordination of the efforts of territorial entities by the Ministry of the Interior and Justice.

9.1. In decision T-025 of 2004, the Ministry of the Interior was ordered to promote “that the governors and mayors referred in Article 7 of Law 387 of 1997 adopt the decisions required to ensure that there is coherence between the constitutionally and legally defined obligations to assist the displaced population under the responsibility of the corresponding territorial entity, and the resources that they must destine to effectively protect their constitutional rights”.

9.2. In Award 177 of 2005, the Constitutional Court issued concrete orders and granted reasonable terms for the Ministry of the Interior and Justice to design, implement and promptly apply a strategy for the promotion and coordination of national and territorial efforts, which could effectively lead to the assumption of a higher budgetary and administrative commitment by territorial entities to assisting the displaced population and the effective guarantee of their rights. However, the reports submitted to the Court fail to prove that the efforts of the Ministry of the Interior and Justice have included suitable actions to advance adequately in the fulfillment of this order.

9.3. According to the reports, the main flaws are present in the following areas: (a) the Ministry’s interpretation of its own role as promoter and coordinator of the national and territorial efforts for the comprehensive assistance of the displaced population, which is restrictive

and disregards the central position that such Ministry must occupy in the coordination efforts, as ordered in Award 177/05; (b) in particular, the constant reference which has been made to the autonomy of territorial entities, as a factor that hampers the adequate coordination of the efforts undertaken by said authorities, disregarding the fact that this is a matter of national interest which, for that precise reason and in accordance with constitutional case law (decision C-579 of 2001) justifies a higher level of intervention by the central authorities; (c) the approach which has been given to the coordinating function under the responsibility of the Ministry, which has focused on the dispatch of communications and requests and the delivery of speeches and conferences, without actually advancing in concrete coordination actions which can fulfill the orders that were issued; (d) the scarce analysis of the information provided by the territorial entities in regards to their commitment to assisting the displaced population; and (e) the delay in the production of indicators which can allow for an evaluation of the advance of territorial entities in the resolution of the unconstitutional state of affairs, and of the effectiveness of the coordination activities carried out by the Ministry of the Interior and Justice.

9.4. Likewise, the Court notes that the information submitted by the Ministry of the Interior and Justice up to this moment is lengthy, confusing, in many cases irrelevant, disorganized, and on some occasions outdated and incomplete. Moreover, the Court notes that the information sent to the Ministry by the territorial entities has been directly re-sent to the Court, without said Ministry playing the role of analytical filter for such information as part of its coordinating role.

9.5. Until this date, the Court has not received the following documents:

- The first and second evaluations on the situation of the territorial entities' current commitment to assisting the displaced population, requested in provision number 2-1 of the decision adopted in Award 177/05. These evaluations should have been submitted on October 13, 2005 and March 13, 2006. After this term, in the reports submitted in the months of May, June and July, 2006, partial reports and follow-up matrixes have been presented, some of them with incomplete information, with an initial assessment of the situation in the departments of Putumayo, Nariño, Cauca, Valle del Cauca, Caldas, Quindío, Risaralda, Guainía, Casanare, Meta and Arauca.

- The strategies to coordinate and promote higher budgetary and administrative commitments by the territorial entities, with the information and features pointed out in numbers 2-2, 2-3, 2-4, 2-5 and 2-6 of the decision adopted in Award 177/05, in such a way that it is possible to identify the concrete goals in the short, medium and long terms, the timetable which has been adopted, the evaluation and follow-up indicators, the coordination and follow-up mechanisms and the concrete and effectively conducive measures adopted by the Ministry of the Interior and Justice to advance in the resolution of the unconstitutional state of affairs.

The foregoing flaws make it necessary for the Ministry of the Interior to solve, within the time that remains for the expiry of the one-year term granted in Auto 178 of 2005, the deficiencies in the information presented to this Court, and to prove that it has effectively adopted measures which are conducive to coordinate the territorial efforts for the resolution of the unconstitutional state of affairs in the field of assisting the displaced population.

10. Lack of a preventive approach within the public policy for the attention of the displaced population, in particular within the operations deployed by the Armed Forces which can generate displacements of population.

One of the main gaps detected by the Constitutional Court in the formulation and development of the public policy for assisting displacement is the absence of the preventive approach it must display as a central feature. Indeed, Judgment T-025 of 2004 emphasized the State obligation to prevent the factors that give rise to the internal displacement of the population, whereas the Guiding Principles on Internal Displacements to which repeated reference has been made indicate, in Principle 5, that “[a]ll authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons”.

The Court has recognized in its judgments that the legitimate presence of the Armed Forces across the entire national territory and the recovery of the monopoly of armed force are constitutional mandates whose application is a function of the Executive Branch of public power. It has also recognized that the improvement of the security conditions of the inhabitants is a factor that deters displacement. Therefore, the Court has

not made, nor will it make in this decision, any observations in this sense, and it respects the Executive power to define the policies that relate to public order.

Nonetheless, regardless of the aforementioned topic, some specific situations may take place, in which it can be anticipated that, because of such situations' peculiarities, the legitimate actions of the Armed Forces can generate, as an indirect effect, the displacement of persons.

On the grounds of the analysis of the different reports which have been submitted to this Court, it can be concluded that the preventive approach for these specific situations is absent from the documents presented to the Court. In these cases, the response to displacement is marked by an approach primarily aimed at palliating the consequences of internal displacement upon the enjoyment of the constitutional rights of those who are affected by it, through the provision of different assistance components under the responsibility of the different SNAIPD entities. However, the existence of State efforts aimed at preventing internal displacement in such specific situations is missing—that is to say, efforts aimed at attacking the specific causes that give rise to displacement in each particular case before displacement itself takes place. This does not mean that the Armed Forces should refrain from carrying out their actions in any place of the national territory, in accordance with the decisions that the Executive is empowered to adopt under presidential directives, in the field of preservation and re-establishment of public order.

One of the most worrying manifestations of the absence of a preventive approach takes place in the sphere of the operations legitimately carried out by the authorities, be it during the actions of the military and police forces and the State's security organs in addressing the criminal conduct of armed groups, or during the realization of processes of fumigation and eradication of illegal drug crops in places inhabited by persons who are forced to displace themselves elsewhere. This type of events has come about specifically in the departments of Nariño, Cauca, Putumayo, Chocó and Caquetá, of which the Court has been informed through publicly available information and through the information provided by the affected persons and some non-governmental entities.

The occurrence of these specific situations reveals that, at the moment of planning and executing military and security operations, the Colombian authorities have failed to include, as it can be appreciated in the reports submitted to the Court, a component for the prevention of internal

displacement, which foresees the possible generation of this type of consequences over the population of the area where they are carried out, anticipates—as far as possible—the consequences and magnitude of such displacement, and establishes concrete measures to attend the necessities of the persons who become displaced, for example through the provision of immediate and emergency aid with special promptness and care to the victims.

In this regard, no reports have been submitted to the Court about the preventive dimension of the policy on internal displacement, which are focused on these special situations.

On the other hand, and also in relation to the preventive component of the public policy for the attention to internal displacement, the Court notes that, according to the reports presented by the *Procuraduría General de la Nación*, the early warning system—which makes it possible to detect with some anticipation cases of potential displacement of the population—has not functioned properly up to this date. Such situation is explained, in part, by the lack of effective coordination of the system, and one of its salient features is the lack of harmonization between the activities of the early warning system, on the one hand, and the provision of protection and the other pertinent components of assistance, on the other. In this sense, it is necessary for the relevant authorities, specifically *Acción Social* and the Ministry of National Defense, to inform in full detail about the advances made in this area, the corrective actions they have undertaken to solve the malfunctions of the system, and the actions that tend to strengthen the component of coordination between the early warning system, the protection and provision of assistance to the population affected by violent events.

IV. MEASURES TO BE ADOPTED

On the grounds of the preceding considerations, the Third Review Chamber of the Constitutional Court, exercising its constitutional and legal powers, shall adopt in the present award the decisions and orders described in the following sections.

A. Orders related to the verification of the persistence of the unconstitutional state of affairs, the precariousness and disparity of the proven advances and the presentation of a new, common report on the advances achieved.

1. In the first place, it shall be declared that, as of the date in which this award is adopted, it has not been proven in the reports submitted to the Constitutional Court that the unconstitutional state of affairs in the field of internal displacement has been overcome, nor that accelerated and sustained advances have been made in the adoption and implementation of the decisions required to ensure the effective enjoyment of the rights of the forcibly displaced population.

2. It shall be declared that no reasons have been provided to justify the delay in the adoption and implementation of the measures required to overcome such unconstitutional state of affairs.

3. Given that it has not been proven that the actions developed by the entities that form part of SNAIPD are sufficient to overcome the unconstitutional state of affairs in the field of internal displacement, and that the reports, far from proving advances in the protection of displaced persons' rights, present information that does not respond in a specific and adequate manner to the requirements of this Chamber, the Constitutional Court:

3.1. Will warn that the submission of reports with the characteristics indicated in segment II-4 of this award shall be taken, in the future, as an indication of non-compliance with the orders issued in decision T-025 of 2004 and Awards 176, 177 and 178 of 2005.

3.2. Will order the devolution of the reports submitted by the entities that form part of SNAIPD, through the National Council for Comprehensive Assistance to the Population Displaced by Violence.

Even though some of the reports do not share the general flaws identified in the foregoing considerations—such as, for example, the reports presented by the Ministry of Agriculture, the Colombian Institute of Family Welfare, the Ministry of National Education and the National Learning Service-, those reports are anyhow visibly heterogeneous in their formulation and structure, for which reason they will be included in the set of reports to be returned in their totality, so that once the final reports are received, they have all been approved by CNAIPD within a common approach that allows for a concise, harmonized and articulated evaluation of the public policy for assisting the displaced population, on the grounds of reliable and significant indicators.

3.3. Will declare that, with regard to the common orders issued to the different entities that form part of SNAIPD in Award 178 of 2005, it has not been proven that the results indicators have been adequately formulated or applied, nor that as a result of their application, the necessary follow-up is carried out or the pertinent corrections are introduced to the different components of the public policy for assisting the displaced population.

3.4. Will order the entities that form part of SNAIPD to submit, within the term that remains for the expiry of the one-year term granted in Award 178 of 2005—which shall take place on September 13, 2006-, a common, concrete and transparent report, which provides significant elements to prove that the orders issued in decision T-025/04 and Autos 176, 177 and 178 of 2005 have been complied with, in accordance with the following specifications:

(a) the report to be presented must be endorsed and submitted exclusively by *Acción Social*, as the entity in charge of the central coordination of the public policy for assisting the displaced population.

(b) the report must contain indications on three central aspects: (i) the activities of national coordination of the public policy for assisting the displaced population, in relation to each one of the components it comprises; (ii) the coordination of the activities of the territorial entities in development of the different components of the public policy for assisting the displaced population that they are responsible for; and (iii) the activities carried out by the entities of SNAIPD within each one of the components of the public policy for assisting the displaced population.

In each aspect of the report, apart from what is pertinent for each component of the policy and the coordination, specific and concrete reference must be made to the advances made in the ten critical areas that, as it has been proven in the present award (Section III), evince the most significant delays within the public policy at hand; and regardless of the necessity to prove in the report the advances that have been made with regard to each one of the orders issued in Awards 176, 177 and 178 of 2005.

(c) The report must have as central axis the **application**, at least since the date in which decision T-025 of 2004 was adopted, of the three sets of results indicators whose adoption was ordered in Auto 178 of 2005, namely: (i) one set of results indicators that refers to the national

coordination of all the components of the public policy for assisting the displaced population, (ii) one series of indicators that refers to the coordination of the activities of territorial entities in the development of all of the components of the policy for assisting the displaced population, and (iii) one specific set of indicators for each one of the components of the public policy under the responsibility of the entities that form part of SNAIPD within their spheres of jurisdiction—e.g. guarantee of minimum subsistence income, support for self-sufficiency, housing, returns, lands, health care, education, specific prevention, etc.-.

The sets of result indicators to be presented to the Constitutional Court must not be restricted to a mere enunciation of the indicators at hand, but they must include the application of such indicators to the results of each one of the components of the public policy for assisting the displaced population in its different dimensions, at least since the date of adoption of decision T-025 of 2004, in such a way that it is possible for all interested parties to analyze, in a clear and transparent way, the results obtained in the task of securing the effective enjoyment of the rights of the persons displaced by violence, and that they also allow for an evaluation of the evolution of the results with regard to the situation that existed before decision T-025 of 2004.

(d) Given that the results indicators must refer to (i) each one of the components of the public policy for assisting the displaced population, (ii) the national coordination of said policy's implementation and (iii) the coordination of territorial entities in relation to their responsibilities within said policy, the corresponding sections of the report may not exceed twenty pages in length each. It is possible to include Annexes in each section, but such Annexes can only consist of (1) charts, tables or graphics that illustrate the application of the indicators included in the sets submitted to the Court, which can make it possible to measure the evolution of the results in the execution of the public policy at hand, and (2) duly approved documents containing the strategies, plans, programs and schedules formulated by the entities that form part of SNAIPD in order to materialize the different components of the aforementioned public policy.

(e) In the event that the different sections of the report fail to include the results indicators in accordance with the specifications described in this section, the Constitutional Court shall explore the possibility of adopting indicators provided by non-Governmental sources, in order to

evaluate compliance with the orders issued in judgment T-025/04 and Awards 176, 177 and 178 of 2005.

(f) Each part of the report, and each set of indicators, must include—it should be emphasized—a specific reference to the way in which the situation of the persons especially protected by the Constitution who are included within the displaced population has been assisted, namely: indigenous groups, Afro-Colombian groups, children, elderly persons and women heads of household.

(g) Each part of the report, and each set of indicators, must include a specific reference to the participation of the displaced population in the formulation and execution of the public policy at hand, with indication of the scope, coverage, representativity and effectiveness of such participation.

(h) Given the verification that it has not been proven that there has been qualitatively different assistance for recently displaced persons, as compared to those who became displaced before decision T-025 of 2004 and Awards 176, 177 and 178 of 2005, the reports must indicate, with particular care, how the quality of the assistance provided in each one of the components of the public policy for assisting the displaced population has evolved, and how the assistance received by the persons who have been displaced on recent dates is different from the state of affairs declared unconstitutional in decision T-025 of 2004.

(i) Copies of the report must be sent to the *Procuraduría General de la Nación*, the Public Ombudsman's Office, the *Contraloría General de la República*, the office in Colombia of the United Nations High Commissioner for Refugees—UNHCR, the different organizations of displaced population and human rights organizations that took part in the public hearing of June 29, and the Civil Society Commission for the Follow-up of Compliance with Decision T-025 of 2004 (*Comisión de la Sociedad Civil para el Seguimiento al Cumplimiento de la Sentencia T-025 de 2004*).

B. Orders related to the budgetary component of the public policy for the attention of the displaced population.

In accordance with the different observations made in the foregoing sections about the budgetary component of the policy for assisting the displaced population, the Ministry of Public Finance, the Director of the

National Planning Department and the Director of *Acción Social* shall be ordered to submit, on September 13 of this year, a report indicating how they have corrected the budgetary flaws and problems indicated in the corresponding section of this Award.

In such report they must point out, in particular, (i) how the schedule to allocate the resources for financing the public policy at hand has been corrected or modified, in accordance with the results of the 2005 and 2006 fiscal years, (ii) which adjustments have been made to ensure coherence between the funds allocated in the budget and the funds effectively spent, and to solve the differences that may exist, and (iii) how the issue of the policy for assisting the displaced population was included within the project for the 2007 General Budget of the Nation and the 2006-2010 Four-year Development Plan.

C. Orders related to the registration system and the process of characterization of the displaced population.

For the purpose of measuring compliance with the orders issued in decision T-025 of 2004 and Award 178 of 2005 in relation to the process of registration and characterization of the displaced population, the Director of *Acción Social* shall be ordered to submit to this Court, no later than September 13, 2006, a specific report which allows for an appreciation of the improvements made in the information included in the registration system, and which advances have been made in its operation, with special attention to the different flaws indicated in the considerations of this Award and in Auto 178 of 2006.

As part of this report, the Director of *Acción Social* must submit a set of indicators specifically related to the process of registration and characterization of the displaced population, which can make it possible to measure its evolution and the advances made in its development since the Adoption of Award 178 of 2005.

D. Orders related to the improvement of the attention to the victims of recent displacement, in particular with regard to the immediate aid and emergency humanitarian aid components.

In the present decision, the Chamber has verified that the reports fail to prove that the victims of recent displacement—especially those indicated in Section III-8 above—have received an attention which is qualitatively better than the one provided to those who became displaced before

decision T-025 of 2004 and Autos 176, 177 and 178 of 2005. Additionally, as proven by public and notorious information which has come to the knowledge of the Court, it is not clear whether they have received the most basic components of such an assistance scheme, such as the immediate aid or emergency humanitarian aid to which they are entitled.

In that sense, the Director of *Acción Social* shall be ordered to inform, specifically and in a separate document, how the different components of the scheme for assisting the displaced population have been provided to those who became victims of displacement after the date of the aforementioned Judgment and Awards, and in particular the victims of the notorious population displacements who are currently present in the municipalities of Nariño (Antioquia), Argelia (Antioquia), San Juan Nepomuceno (Bolívar), Florencia (Caldas), Samaná (Caldas), Itsmina (Chocó), Río Sucio (Chocó), Ungía (Chocó), Corregimiento de La Carra (Guaviare), San José del Guaviare (Guaviare), Vistahermosa (Meta), Policarpa (Nariño), Ricaurte (Nariño), Iscuandé (Nariño), Barbacoas-Altaquer (Nariño), Orito (Putumayo), Puerto Asís (Putumayo), Hormiga (Putumayo) and San Miguel (Putumayo).

E. Communication of the present decision to different governmental and non-governmental entities.

1. The Court will order that the content of the present decision be communicated to the President of the Republic so that, in exercise of his jurisdiction, he adopts the measures he considers pertinent in order to secure the effective enjoyment of the rights of displaced persons.

2. The Court will order that the content of the present decision be communicated to the General Secretary of the Presidency of the Republic, so that in application of the same concreteness and brevity criteria that guided the presentations made during the public hearing that took place in this Court on June 29, 2005, he informs the President of the Republic about the different problems identified by him in the reports submitted by SNAIPD entities to the Court, and makes the relevant recommendations to solve them.

3. The Court will order that the content of the present decision be communicated to the *Procuraduría General de la Nación*, the Public Ombudsman's Office, the *Contraloría General de la República*, the office in Colombia of the United Nations High Commissioner for Refugees—

UNHCR, the different organizations of displaced population that took part in the public hearing of June 29, 2005, and the Civil Society Commission for the Follow-up of Compliance with Decision T-025 of 2004, in order for them to be prepared to examine and validate the information submitted by the recipients of the orders issued herein on September 13, 2005.

V. DECISION

On the grounds of the foregoing considerations, Review Chamber Number Three of the Constitutional Court, imparting justice in the name of the people and by mandate of the Constitution,

DECIDES

First.- To **DECLARE** that, as of the date in which this award is adopted, it has not been proven in the reports submitted by the entities that form part of the National Comprehensive Assistance System for the Displaced Population (SNAIPD) that the unconstitutional state of affairs in the field of internal displacement has been overcome, nor that accelerated and sustained advances have been made in the adoption and implementation of the decisions required to ensure the effective enjoyment of the rights of the forcibly displaced population.

Second.- To **DECLARE** that the entities that form part of SNAIPD have failed to provide in their reports reasons to justify the delay in the adoption and implementation of the measures required to prove that such unconstitutional state of affairs has been overcome.

Third.- To **WARN** the entities that form part of SNAIPD that, in the future, the presentation of reports with the characteristics indicated in segment II-4 of this award shall be taken as an indication of non-compliance with the orders issued in decision T-025 of 2004 and Awards 176, 177 and 178 of 2005.

Fourth.- To **ORDER** the General Secretary of the Court to RETURN the reports presented to this Court with all of their Annexes, through the National Council for Comprehensive Assistance to the Population Displaced by Violence.

Fifth.- To **DECLARE** that, with regard to the common and specific orders issued to the different entities that form part of SNAIPD in Auto 178 of 2005, it has not been proven that the required results indicators

have been adequately formulated or applied, nor that as a result of their application, the necessary follow-up is carried out or the pertinent corrections are introduced to the different components of the public policy for the attention to internal displacement.

Sixth.- To **ORDER** the different entities that form part of SNAIPD to submit to this Court, within the time that remains for the expiry of the one-year term granted in Auto 178 of 2005—which shall take place on September 13, 2006—and through the National Council for Comprehensive Assistance to the Population Displaced by Violence (CNAIPD) a common, concrete and transparent report, endorsed by the Council and which may not exceed sixty pages, that provides significant elements to prove that the orders issued in decision T-025/04 and Autos 176, 177 and 178 of 2005 have been complied with, in accordance with the specifications indicated in section 3.4. of the present decision, which refer to the need for the reliable and significant results indicators not only to be designed but applied, at least since the date in which judgment T-025 of 2004 was adopted.

A copy of this common and brief report shall be simultaneously submitted to the entities and organizations mentioned in section 3.4.(i) of the present decision.

Seventh.- To **ORDER** the Ministry of Public Finance, the Director of the National Planning Department and the Director of *Acción Social* to submit, on September 13 of this year, a report indicating how they have corrected the budgetary flaws and problems indicated in sections III-3.1. through III-3.6. of this Award. In such report they must point out, in particular, (i) how the schedule to allocate the resources for financing the public policy at hand have been corrected or modified, in accordance with the results of the 2005 and 2006 fiscal years, (ii) which adjustments have been made to ensure coherence between the funds allocated in the budget and the funds effectively spent, and to solve the differences that may exist, and (iii) how the issue of the policy for assisting the displaced population was included within the project for the 2007 General Budget of the Nation and the 2006-2010 Four-year Development Plan.

Eighth.- To **ORDER** the Director of *Acción Social* to submit to this Court, no later than September 13, 2006, a specific report which allows for an appreciation of the improvements made in the information included in the registration system, and which advances have been made in its operation, with special attention to the different flaws indicated in the

considerations of this Award (sections III-2.1. through III-2.4.). As part of this report, the Director of Social Action must submit a set of indicators specifically related to the process of registration and characterization of the displaced population, which can make it possible to measure its evolution and the advances made in its development since the Adoption of Award 178 of 2005.

Ninth.- To **ORDER** the Director of *Acción Social* to inform, no later than September 13, 2006, specifically and through a report which is different from the common report to be presented within the same term by SNAIPD entities, how the different components of the scheme for assisting the displaced population have been provided to the victims of forced displacement who are currently present in the municipalities of Nariño (Antioquia), Argelia (Antioquia), San Juan Nepomuceno (Bolívar), Florencia (Caldas), Samaná (Caldas), Itsmina (Chocó), Río Sucio (Chocó), Ungía (Chocó), Corregimiento de La Carra (Guaviare), San José del Guaviare (Guaviare), Vistahermosa (Meta), Policarpa (Nariño), Ricaurte (Nariño), Iscuandé (Nariño), Barbacoas-Altaquer (Nariño), Orito (Putumayo), Puerto Asís (Putumayo), Hormiga (Putumayo) and San Miguel (Putumayo).

Tenth.- To **ORDER** the General Secretariat of the Court to communicate the content of the present decision to the President of the Republic so that, in exercise of his jurisdiction, he adopts the measures he considers pertinent in order to secure the effective enjoyment of the rights of displaced persons.

Eleventh.- To **ORDER** the General Secretariat of the Court to communicate the content of the present decision to the General Secretary of the Presidency of the Republic, so that in application of the same concreteness and brevity criteria that guided the presentations made during the public hearing that took place in this Court on June 29, 2005, he informs the President of the Republic about the different problems that identified by him in the reports submitted by SNAIPD entities to the Court, and makes the relevant recommendations to solve them.

Twelfth.- To **ORDER** the General Secretariat of the Court to communicate the content of the present decision to the *Procuraduría General de la Nación*, the Public Ombudsman's Office and the *Contraloría General de la República*, in order for them to adopt the decisions they consider necessary to examine and validate the information submitted by the recipients of the orders issued herein on September 13,

2005, for the purpose of ascertaining whether the orders issued in judgment T-025 of 2004 and Autos 176, 177 and 178 of 2005 are being complied with.

Thirteenth.- To **ORDER** the General Secretariat of the Court to communicate the content of the present decision to the Office in Colombia of the United Nations High Commissioner for Refugees—UNHCR, so that, should they consider it pertinent, they can provide the Court with criteria related to the protection of the rights of the displaced population and the way to appreciate their effective enjoyment.

Fourteenth.- To **ORDER** the General Secretariat of the Court to communicate the content of the present decision to the different organizations of displaced population and human rights organizations who took part in the June 29, 2005 public hearing, and to the Civil Society Commission for the Follow-up of Compliance with Decision T-025 of 2004.

MANUEL JOSE CEPEDA ESPINOSA

Justice

JAIME CÓRDOBA TRIVIÑO

Justice

RODRIGO ESCOBAR GIL

Justice

MARTHA VICTORIA SÁCHICA MENDEZ

General Secretary

ANNEX 6

Law 387 of 1997

Law 387 of 18 July 1997

By which measures are adopted for the prevention of forced displacement; assistance, protection, consolidation and socio-economic stabilization of persons internally displaced by violence in the Republic of Colombia.

THE CONGRESS OF COLOMBIA

DECREES:

TITLE I

DISPLACED PERSONS AND STATE RESPONSIBILITY

ARTICLE 1 Displaced Persons

A displaced person is any person who has been forced to migrate within the national territory, abandoning his or her habitual place of residence or economic activities, because his or her life, physical integrity, security, or personal freedom has been violated or directly threatened, as a result of any of the following situations: internal armed conflict, internal disturbances or tensions, generalized violence, massive violations of human rights, violations of international humanitarian law, or other circumstances resulting from the above situations that may disturb or is seriously disturbing public order.

Paragraph

The national government will regulate what is meant by the status of displaced person.

ARTICLE 2 Principles

The interpretation and application of this Law will be guided by the following principles:

1. Forcibly displaced persons have the right to request and receive international assistance, and this gives rise to a corresponding collective right of the international community to provide humanitarian assistance.
2. Forcibly displaced persons will enjoy the internationally recognized, fundamental civil rights.
3. A displaced person and/or forcibly displaced persons has the right not to be discriminated against for their social condition of displacement, or for reasons of race, religion, public opinion, place of origin, or physical disability.
4. The family of a forcibly displaced person shall benefit from the fundamental right to family reunification.
5. A forcibly displaced person has the right to avail him/herself of durable solutions to hi/her situation.
6. A forcibly displaced person has the right to return to his/her place of origin.
7. Colombians have the right not to be forcibly displaced.
8. A displaced person and/or forcibly displaced persons has/have the right not to have their freedom of movement subjected to restrictions additional to those established by law.
9. It is the State's duty to create conditions that facilitate co-existence, equity and social justice between Colombians.

ARTICLE 3 State Responsibility

It is the responsibility of the Colombian State to formulate policies and adopt measures to prevent forced displacement; assistance, protection, consolidation, and socio-economic stabilization of persons internally displaced by violence.

For the purposes of the above, the principles of the Colombian State will be upheld, namely, subsidiarity, complementarity, decentralization, and concurrence.

TITLE II

**THE NATIONAL COMPREHENSIVE ASSISTANCE SYSTEM
FOR THE DISPLACED POPULATION**

CHAPTER I

**Creation, Composition, and Objectives of the National
Comprehensive Assistance System for the Displaced Population**

ARTICLE 4 Creation

The National Comprehensive Assistance System for the Displaced Population is hereby created in order to achieve the following objectives:

1. To provide comprehensive assistance to the population displaced by violence so that they achieve reincorporation into Colombian society by either voluntary return or resettlement.
2. To neutralize and mitigate the effects of violent processes and dynamics which cause displacement, by strengthening comprehensive and sustainable development in areas of expulsion and reception, and by promoting and protecting Human Rights and International Humanitarian Law.
3. To combine public and private efforts for effective prevention and assistance in situations of forced displacement resulting from violence.

To ensure the timely and efficient management of all human, technical, administrative, and economic resources vital to the prevention of, and assistance to, situations arising from forced displacement as a result of violence.

Paragraph

In order to meet the above objectives, the National Comprehensive Assistance System for the Displaced Population will be complemented by the National Plan for Comprehensive Assistance to the Population Displaced by Violence.

ARTICLE 5 Composition

The System will be composed of all public, private, and community entities that carry out plans, programs, projects, and specific actions aimed at providing comprehensive assistance to the displaced population.

ARTICLE 6 The National Council for Comprehensive Assistance to the Population Displaced by Violence

The National Council for Comprehensive Assistance to the Population Displaced by Violence is hereby created as a consultative and advisory body, charged with formulating policy and ensuring budgetary allocations for the programs, which the entities responsible for the functioning of the National System will implement.

This National Council will be composed of:

- A delegate from the President's office, who will chair the Council
- The Presidential Advisor for Displaced Persons, or his/her delegate
- The Minister of the Interior
- The Minister of Finance and Public Credit
- The Minister of National Defense
- The Minister of Health
- The Minister of Agriculture and Rural Development
- The Minister of Economic Development
- The Director of the National Planning Department
- The National Ombudsman
- The Presidential Advisor for Human Rights, or his/her delegate
- The Presidential Advisor for Social Policy, or his/her delegate
- The Manager/Director of the Social Solidarity Network, or his/her delegate
- The High Commissioner for Peace, or their representative.

Paragraph 1

Cabinet Ministers who, in accordance with the current Article, make up the National Council may delegate their attendance to a Deputy-Minister or Secretary-General of their respective ministry. In the case of the Ministry of National Defense, this responsibility may be delegated to the Commander-General of the Armed Forces. In the case of the Director of the National Planning Department, they may delegate to the Deputy Director of the same department, and in the case of the Social Solidarity Network¹, they may delegate to the Assistant Director.

When the nature of displacement so warrants, other ministers, heads of administrative departments, or directors, presidents, or managers of national, decentralized bodies may be invited to the Council, as may representatives of the organizations of displaced persons.

Paragraph 2

The Director of the Ministry of the Interior's General Directorate of the Special Administrative Unit for Human Rights will serve as the National Council's Technical Secretary.

ARTICLE 7 Municipal, District, and Provincial Committees for Comprehensive Assistance to the Population Displaced by Violence

The National Government will promote the creation of municipal, district, and provincial committees to provide comprehensive assistance to the population displaced by violence. These committees will be charged with providing support to, and collaborating with, SNAIPD. The committees will be composed of:

- The Governor or Mayor, or is/her representative who will chair the committee
- The Brigade Commander or his/her delegate
- The Commander of the National Police in the corresponding jurisdiction, or his/her delegate

¹ Now *La Agencia Presidencial para la Acción Social*, The Presidential Agency for Social Action, pursuant to Decree 2467 of 2005

- The Director of the Sectional Health Service or the Head of the corresponding Health Unit, as the case may be
- The Regional Director, the Coordinator of the Area Centre, or the Agency Director in new departments of the Colombian Institute of Family Welfare
- A representative of the Colombian Red Cross
- A representative of Civil Defense
- A representative of the Churches
- Two representatives of the Displaced Population.

Paragraph 1

The Committee, at its sole discretion, may decide to convene representatives or delegates of other civic organizations, or relevant persons in the territory in question.

The Minister of the Interior or any other national level entity that is a member of the National Council may attend committee meetings for the purpose of coordinating the implementation of actions and/or providing technical support in any of the areas of intervention.

Paragraph 2

When displacement occurs in population centers, villages or hamlets where not all of the above members may be present, the committee may meet with the main political authority in the location: the Police Inspector or their representative, a representative of the Displaced Population, and/or a representative of the Churches, Armed Forces, and National Police.

Paragraph 3

In those municipalities or districts where displacement is a result of violence, mayors must convene emergency sessions of the municipal and district committees for Comprehensive Assistance to the Displaced Population. Failure to do so will be considered improper conduct.

ARTICLE 8 Preventive Actions by Municipal Committees

Municipal committees will carry out, among others, the following preventive actions:

1. Legal actions. Municipal committee members will provide guidance to communities that may be affected by an act of displacement, on the solution, by legal or institutional means, to the conflicts that can lead to this situation. Furthermore, they will analyze the viability of legal actions and will recommend or decide on the timely use of relevant constitutional or legal provisions, aimed at minimizing or eradicating the cause of persecution or violence.
2. Municipal committee members will attempt to prevent the onset of displacement, proposing alternative conflict resolution mechanisms.
3. Assistance actions. Municipal committee members will assess the unmet necessities of persons or communities which could eventually lead to forced displacement. Based on this assessment they shall undertake appropriate assistance measures.

CHAPTER II

National Plan for Comprehensive Assistance to the Population Displaced by Violence

SECTION 1

Design and Objectives of the National Plan for Comprehensive Assistance to the Population Displaced by Violence

ARTICLE 9 Design

The National Government will design the National Plan for Comprehensive Assistance to the Population Displaced by Violence. Once approved by Congress, this plan will be adopted by decree.

The public, private, and community entities that make up SNAIPD will participate in the drafting of this plan.

The measures and actions adopted in the National Plan will address the special characteristics and conditions prevailing in “expulsion areas” and “reception areas”.

Paragraph

The national government will design and implement the plan established in this article within six (6) months of the date on which this Law takes effect.

ARTICLE 10 Objectives

The National Plan will have the following objectives, among others, to:

1. Prepare assessments of the: a) causes and agents of displacement by violence, b) areas of the country where the principal population flows take place, c) reception areas, d) persons and communities who are victims of this situation, and e) social, economic, legal, and political consequences of displacement.
2. Design and adopt social, economic, legal, political, and security measures, aimed at preventing and overcoming the causes of forced displacement.
3. Adopt emergency humanitarian assistance measures for the displaced population in order to ensure their protection, and the conditions for their subsistence and adaptation to their new situation.
4. Create and apply mechanisms for providing legal assistance to the displaced population, in order to ensure that the facts are investigated, violated rights are restored, and affected property is protected.
5. Design and adopt measures guaranteeing the displaced population’s access to comprehensive urban and rural development plans, and programs and projects which provide for their own means of subsistence, such that their reincorporation into the social, productive, and cultural life of the country can take place without segregation or social stigmatization.
6. Adopt the measures necessary to enable the voluntary return of the displaced population to their place of origin, or their relocation to new settlement areas.

7. Provide special attention to women and children, particularly widows, female heads of household, and orphans.
8. Ensure special attention for displaced Afro-Colombian and indigenous communities, in accordance with their customs and traditions, favoring their return to their territories.
9. Undertake other actions deemed necessary by the National Council.

SECTION 2

National Information Network for Assistance to the Population Displaced by Violence

ARTICLE 11 Operation

The National Information Network for Assistance to the Population Displaced by Violence will be the instrument that guarantees that the National System receives rapid and effective national and regional information on violent conflicts, as well as the identification and assessment of the circumstances that gave rise to the forced displacement.

Furthermore, it will allow the National System to assess the magnitude of the problem, take measures for immediate assistance, draft plans for the consolidation and stabilization of displaced persons, and formulate alternative solutions for assisting the population displaced by violence. This network will include a special component for monitoring actions implemented pursuant to the National Plan.

ARTICLE 12 Local Information Centers

The Presidential Advisory Council on Displaced Persons and the Ministry of the Interior's General Directorate of the Special Administrative Unit for Human Rights, in coordination with provincial and municipal governments, the *personerías municipales*² regional and sectional offices of the Ombudsman, the Colombian Red Cross, the Catholic Church, and organizations of displaced persons, will decide on the location of the local information centers in municipalities affected by displacement.

² *Personerías municipales* are the municipal-level representatives of the Public Ministry (which includes the functions of both Procurator General and Ombudsman).

ARTICLE 13 Observatory of Internal Displacement Caused by Violence

The National Government will create a Observatory of Internal Displacement Caused by Violence, which will produce biannual reports on the magnitude and trends relating to displacement, as well as the results of State policies in favor of the displaced population. This Observatory will strengthen the National Information Network and will include recognized experts and academics.

SECTION 3

PREVENTION

ARTICLE 14 Prevention

In order to prevent forced displacement caused by violence, the national government will adopt, among others, the following measures:

1. Encourage the establishment of working groups on the prevention and prediction of risks that may lead to displacement.
2. Promote citizen and community activities which, foster peaceful coexistence and action by the Public Forces³ to curtail disturbances.
3. Undertake action to avoid arbitrary or discriminatory acts, and to mitigate risks to life, physical integrity, and property of displaced persons.
4. Design and implement a plan for disseminating international humanitarian law.
5. Advise provincial and municipal authorities responsible for development plans, to incorporate prevention and assistance programs in these plans.

Paragraph

The Ministry of the Interior's General Directorate of the Special Administrative Unit for Human Rights will coordinate with municipal and/or provincial authorities in convening Security Councils, when well-

³ *Fuerzas Públicas*, the Public Forces, includes both the armed forces and police

founded reasons exist for believing that forced displacement will take place.

SECTION 4

EMERGENCY HUMANITARIAN ASSISTANCE

ARTICLE 15 Emergency Humanitarian Assistance

Once displacement has occurred, the national government will take immediate action aimed at guaranteeing emergency humanitarian assistance for rescuing, assisting, and protecting displaced persons, and addressing in conditions of dignity their needs in terms of food, hygiene, supplies, cooking, medical and psychological attention, emergency transport, and transitional shelter.

In all cases of displacement, civilian and military authorities located in reception areas will guarantee the unhindered passage of humanitarian aid, the national and international accompaniment of displaced persons, and the establishment of temporary or permanent offices for defending and protecting human rights and for complying with the norms of International Humanitarian Law.

As long as the emergency persists, authorities will foster the creation of inter-institutional teams composed of state and governmental entities at the national, provincial, and municipal levels, in order to protect displaced persons and their property. The Public Ministry's office and the Office of the *Procurador General de la Nación* will investigate the offences that led to the displacement.

Paragraph

The right to emergency humanitarian assistance will exist for a period of three (3) months, renewable in exceptional cases for an additional three (3) months.

SECTION 5

RETURN

ARTICLE 16 Return

The national government will support displaced persons who wish to return to their places of origin, in accordance with the provisions established in this Law on the matters of protection, consolidation, and socio-economic stabilization.

SECTION 6

CONSOLIDATION AND SOCIO-ECONOMIC STABILIZATION

ARTICLE 17 Consolidation and Socio-economic Stabilization

The national government will promote medium and long-term actions and measures aimed at creating sustainable economic and social conditions for the displaced population who voluntarily return or resettle in other rural or urban areas.

These measures will allow direct access by displaced persons to the government's social programs, particularly programs related to:

1. Income-generating projects.
2. The National System for Agrarian Reform and Rural Development.
3. Support for micro-enterprises.
4. Training and social organization.
5. Social assistance in health, education, rural and urban housing, as well as for children, women, and the elderly.
6. Urban and rural employment plans of the Social Solidarity Network⁴.

⁴ Now *La Agencia Presidencial para la Acción Social*, The Presidential Agency for Social Action, pursuant to Decree 2467 of 2005

SECTION 7

CESSATION OF THE STATUS OF FORCIBLY DISPLACED PERSON

ARTICLE 18 Cessation of Status of Forcibly Displaced Person

Status as a person forcibly displaced by violence will cease when consolidation and socio-economic stabilization have been achieved, whether in the place of origin or in resettlement areas.

Paragraph

The Displaced Person will cooperate in improving, re-establishing, consolidating, and stabilizing his/her situation.

SECTION 8

INSTITUTIONS

ARTICLE 19 Institutions

Institutions involved in providing comprehensive assistance to the population displaced by violence, will adopt at an internal level and within their operating staff and administrative structure, guidelines that allow them to assist the displaced population in a timely and effective manner, within the coordination framework of the National Comprehensive Assistance System for the Displaced Population.

Institutions with responsibilities for providing comprehensive assistance to the displaced population will adopt the following measures, among others:

1. The Colombian Institute for Agrarian Reform (INCORA)⁵ will adopt special programs and procedures for the transfer, adjudication, and titling of land in areas of expulsion and reception of the population affected by forced displacement. INCORA will also establish special lines of credit, with preference given to displaced persons.

INCORA will keep a register of rural land abandoned by persons displaced by the violence, and will inform the relevant authorities

⁵ INCORA is now *El Instituto Colombiano de Desarrollo Rural (INCODER, the Colombian Institute of Rural Development)* pursuant to decree 1300 of 2003

so that any sale or transfer of the property titles of these assets is blocked when these transactions are against the will of the rightful owners.

In the context of the return and relocation of persons displaced by violence, the national Government will give these persons priority to peasant reserve areas and/or to rural properties that were seized and forfeited pursuant to judicial or administrative rulings.

The Agricultural Institute of Agrarian Reform will establish a program that will make it possible to receive land from displaced persons in exchange for the adjudication of other land with similar characteristics in other parts of the country.

The Agricultural Guarantees Fund will provide loan guarantees to cover 100% of loans made to displaced persons for income-generating projects.

2. The Ministry of Agriculture and Rural Development, through the Directorate for Social Development and the Office for Rural Women, will design and implement programs for assistance, consolidation and socio-economic stabilization of the displaced population.
3. The Institute for Industrial Development, through the Propyme⁶ and Finurbano⁷ programs, will provide special lines of credit with regard to grace periods, interest rates, collateral, and payment periods, with the aim of developing micro-enterprises and income-generating projects presented by the beneficiaries of this Law.
4. The General System for Social Security will implement streamlined mechanisms to enable displaced persons to access comprehensive medical, surgical, dental, psychological, hospital, and rehabilitation services, in accordance with Law 100 of 1993.
5. The Social Solidarity Network will give priority to the needs of displaced communities and will assist the victims of displacement, linking them to programs.
6. The National Directorate for Women's Equality will give preference in its programs to women displaced by violence, especially widows and female heads of household.

⁶ A program for small and medium-sized enterprises

⁷ Urban financing

7. The Colombian Institute of Family Welfare will give preference in its programs to nursing children, minors (especially orphans), and family groups, linking them to social assistance projects for families and communities in settlement areas of displaced persons.
8. The National System for Co-Financing will give preferential treatment to the territorial entities that request co-financing for various projects aimed at addressing the needs of the population affected by forced displacement.
9. Territorial entities will undertake special education assistance programs for the population displaced by violence, and will have access to resources available from FIS⁸ subsidy programs, targeted at enabling children to attend and remain in the basic [primary] education system.
10. The National Education Ministry and the provincial, municipal and district Education Secretariats will adopt special education programs for victims of forced displacement. These programs may be in primary and specialized secondary education, and may be carried out over shorter and more varied time periods than conventional programs, in order to ensure their rapid effect on the rehabilitation, and social and productive integration of the victims of internal displacement caused by violence.
11. The National Learning Service (SENA) will give priority to, and facilitate the access of, displaced young people and adults to its education and technical training programs.
12. The Ombudsman's office will design and implement dissemination and promotion programs on standards of international humanitarian law. Government bodies at the national, provincial, and municipal levels will be included in these programs, as will non-governmental organizations and displaced persons' organizations.
13. The National Television Commission will design and implement awareness-raising campaigns on the prevention of forced displacement, to be aired on national television channels.
14. The National Institute for Urban Reform (INURBE) will develop special housing programs to address the needs of the population displaced by violence.

⁸ FIS, the *Fondo de Inversión Social*, the Social Investment Fund

ARTICLE 20 Public Ministry⁹

It is the responsibility of the Public Ministry and its regional and sectional offices, to safeguard and promote human rights and international humanitarian law of victims of forced displacement. Furthermore, it is their responsibility to ensure strict compliance with the obligations assigned to each institution within SNAIPD. Municipal authorities must immediately inform the corresponding representative of the Public Ministry's office, of displacement or events that may lead to displacement.

CHAPTER III

NATIONAL FUND FOR COMPREHENSIVE ASSISTANCE FOR THE POPULATION DISPLACED BY VIOLENCE

ARTICLE 21 Creation and Nature of the Fund

The National Fund for Comprehensive Assistance for the Population Displaced by Violence is hereby created. It will function as a special account to be administered by the Interior Ministry, without legal personality, but rather as a separate accounts system.

Paragraph

The President's Advisory Council for Displaced Persons will coordinate the disbursement of the resources of this fund.

ARTICLE 22 Objective

The purpose of the National Fund for Comprehensive Assistance for the Population Displaced by Violence is to finance and/or co-finance programs for preventing displacement, as well as emergency humanitarian assistance, return, and socio-economic stabilization and consolidation, in addition to the establishment and operation of the National Information Network.

Paragraph

The National Fund's participation in financing and/or co-financing the programs mentioned above, does not release national, provincial, district,

⁹ The *Ministerio Público*, Public Ministry, is made up of the offices of the Procurator General and the Ombudsman

or municipal entities and institutions involved in providing comprehensive assistance to the displaced population, from their obligation to manage the resources needed to implement actions under their responsibility.

ARTICLE 23 Resources

Resources for the National Fund for Comprehensive Assistance for the Population Displaced by Violence will be composed of the following:

1. Resources allocated in the national budget.
2. Donations in cash made directly to the fund, after their incorporation in the national budget, as well as donations in kind incorporated in the same manner.
3. Credit resources contracted by the State in order to meet the fund's objectives and functions, after incorporation in the national budget.
4. Cash contributions from international cooperation, after incorporation in the national budget.
5. Other assets, rights, and resources, adjudicated in favor of, or acquired by, the National Fund for Comprehensive Assistance for the Population Displaced by Violence.

ARTICLE 24 Management

Management of the National Fund for Comprehensive Assistance of the Population Displaced by Violence will fall under the responsibility of the Director-General of the Ministry of the Interior's General Directorate of the Special Administrative Unit for Human Rights. The Director-General will exercise spending authority by virtue of delegation by the Ministry of the Interior.

ARTICLE 25 Regulations

Within three (3) months of the date on which this Law enters into force, the national Government will regulate the organization and functioning of the Fund, its objectives and functions, and its appropriations and operations system with regard to budgeting and the capital needed for its operations. Furthermore, the national Government will make the necessary budget adjustments and transfers within the national budget, in order to provide to the Fund with the finance needed to meet its objectives.

TITLE III

LEGAL PROTECTION FRAMEWORK

ARTICLE 26 Definition of the Military Situation¹⁰ of Displaced Persons

Persons who were obliged to resolve their military situation but were unable to do so because of reasons related to their forced displacement, may present themselves to any military district to resolve such situation, within one year of the date on which they were displaced, and in so doing, will not be considered at fault.

ARTICLE 27 Interruption of Possession

Interruption of possession or abandonment of real or personal property brought about by a situation of violence that forcibly displaced the possessor, will not interrupt his or her right to title acquired by possession.

The possessor, whose exercise of this right is interrupted, will report the facts of displacement to the *personería municipal*¹¹, Ombudsman, Agrarian Procurator, or any entity of the Public Ministry's office, so that they may initiate the pertinent judicial or administrative actions.

ARTICLE 28 Judicial or Administrative Processes to Which a Displaced Person is Party

In judicial or administrative processes to which a displaced person is party, the corresponding authorities will assess, in accordance with the circumstances of the case, the changes in domicile, commissions, transfers, and other procedures needed to guarantee the speed and effectiveness of the processes involved, without detriment to third party rights.

¹⁰ This refers to the obligation to give national service

¹¹ *Personerías municipales* are the municipal-level representatives of the Public Ministry (which includes the functions of both Procurator General and Ombudsman).

TITLE IV

OTHER PROVISIONS

ARTICLE 29 Protection of Displaced Persons

The Interior Ministry's General Directorate of the Special Administrative Unit for Human Rights will provide protection to persons displaced by violence, when there are well-founded reasons to fear for their security. This protection will be provided within the parameters established by the National Plan for Comprehensive Assistance to the Displaced Population.

The assessment of the security situation of displaced persons will be carried out in close collaboration with the Public Ministry¹², the Catholic Church, and non-governmental organizations that conduct activities in the expulsion areas.

ARTICLE 30 Support for Displaced Persons' Organizations

The national government will provide the necessary guarantees for displaced persons' organizations and non-governmental entities that carry out actions in favor of human rights and internally displaced persons.

ARTICLE 31 Reports to Congress

In order to evaluate the implementation of the National Plan for Comprehensive Assistance to the Population Displaced by Violence, the national government will present Congress with a report on the implementation of the plan as well as on corrective measures and proposed future actions. This report will be presented annually by 16 March each year.

ARTICLE 32 Benefits Enshrined in this Law

Colombian persons, who find themselves in the circumstances described in Article 1 of this Law, will have the right to receive the

¹² The *Ministerio Público*, Public Ministry, is made up of the offices of the Procurator General and the Ombudsman

benefits enshrined in the same, provided they meet the following requirements:

1. They have presented a statement of these facts to the Procurator General's office, the Ombudsman's office, a municipal or district *personería*¹³ or any judicial office, in accordance with the reception procedure established by each entity, and
2. They have presented for registration a copy of the statement of facts established above, to the Ministry of the Interior's General Directorate of the Special Administrative Unit for Human Rights, or to the office designated by the Directorate at a provincial, district, or municipal level.

Paragraph

When it is established that the facts declared by a person alleging the status of displaced person are not true, this person will lose all the benefits granted by this Law and criminal sanctions may apply.

ARTICLE 33

Pursuant to the provisions of Article 87 of the Constitution, the beneficiaries of the current Law, non-governmental organizations, and official entities charged with the defense or promotion of human rights may instigate legal proceedings to demand judicial enforcement¹⁴ for the full enjoyment of the rights enshrined in the current Law in favor of displaced persons.

Until Article 87 of the Constitution is introduced, writs of mandamus will be processed in accordance with the procedural and jurisdictional competence provisions established in Decree Number 2591 of 1991 on the writ of protection.¹⁵

¹³*Personerías* are the municipal or district-level representatives of the Public Ministry (which includes the functions of both Procurator General and Ombudsman).

¹⁴*Acción de cumplimiento*, the closest Anglo law equivalent is a writ of mandamus.

¹⁵*Tutela*, A constitutional action for immediate legal protection of human rights, a kind of writ of injunction.

ARTICLE 34 Entry into Force

This law will enter into force upon its publication.

THE PRESIDENT OF THE SENATE OF THE REPUBLIC, LUIS
FERNANDO LONDOÑO CAPURRO,

THE SECRETARY-GENERAL OF THE SENATE OF THE REPUBLIC,
PEDRO PUMAREJO VEGA,

THE PRESIDENT OF THE HOUSE OF REPRESENTATIVES,
GIOVANNI LAMBOGLIA MAZZILLI,

THE SECRETARY-GENERAL OF THE HOUSE OF
REPRESENTATIVES, DIEGO VIVAS TAFUR.

REPUBLIC OF COLOMBIA— NATIONAL GOVERNMENT

Published and executed

Signed in Ibagué, 18 July, 1997

ERNESTO SAMPER PIZANO

THE MINISTER OF THE INTERIOR, CARLOS HOLMES TRUJILLO
GARCÍA,

THE MINISTER OF FINANCE AND PUBLIC CREDIT, JOSÉ
ANTONIO OCAMPO GAVIRIA,

THE MINISTER OF NATIONAL DEFENSE, GILBERTO
ECHEVARRÍA MEJÍA.

ANNEX 7

UN Guiding Principles on Internal Displacement

INTRODUCTION: SCOPE AND PURPOSE

1. These Guiding Principles address the specific needs of internally displaced persons worldwide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration.

2. For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border.

3. These Principles reflect and are consistent with international human rights law and international humanitarian law. They provide guidance to:

- (a) The Representative of the Secretary-General on internally displaced persons in carrying out his mandate;
- (b) States when faced with the phenomenon of internal displacement;
- (c) All other authorities, groups and persons in their relations with internally displaced persons; and
- (d) Intergovernmental and non-governmental organizations when addressing internal displacement.

4. These Guiding Principles should be disseminated and applied as widely as possible.

SECTION I - GENERAL PRINCIPLES

Principle 1

1. Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.

2. These Principles are without prejudice to individual criminal responsibility under international law, in particular relating to genocide, crimes against humanity and war crimes.

Principle 2

1. These Principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction. The observance of these Principles shall not affect the legal status of any authorities, groups or persons involved.

2. These Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law. In particular, these Principles are without prejudice to the right to seek and enjoy asylum in other countries.

Principle 3

1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.

2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.

Principle 4

1. These Principles shall be applied without discrimination of any kind, such as race, color, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.

2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.

SECTION II - PRINCIPLES RELATING TO PROTECTION FROM DISPLACEMENT

Principle 5

All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.

Principle 6

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.

2. The prohibition of arbitrary displacement includes displacement:

- (a) When it is based on policies of apartheid, “ethnic cleansing” or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;
- (b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;
- (c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;
- (d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and
- (e) When it is used as a collective punishment

3. Displacement shall last no longer than required by the circumstances.

Principle 7

1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.

2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.

3. If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with:

- (a) A specific decision shall be taken by a State authority empowered by law to order such measures;
- (b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;
- (c) The free and informed consent of those to be displaced shall be sought;
- (d) The authorities concerned shall endeavor to involve those affected, particularly women, in the planning and management of their relocation;
- (e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and
- (f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected

Principle 8

Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

Principle 9

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

SECTION III - PRINCIPLES RELATING TO PROTECTION DURING DISPLACEMENT

Principle 10

1. Every human being has the inherent right to life which shall be protected by law. No one shall be arbitrarily deprived of his or her life. Internally displaced persons shall be protected in particular against:

- (a) Genocide;
- (b) Murder;
- (c) Summary or arbitrary executions; and
- (d) Enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

2. Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against:

- (a) Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted;
- (b) Starvation as a method of combat;
- (c) Their use to shield military objectives from attack or to shield, favor or impede military operations;
- (d) Attacks against their camps or settlements; and
- (e) The use of anti-personnel landmines

Principle 11

1. Every human being has the right to dignity and physical, mental and moral integrity.
2. Internally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against:
 - (a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault;
 - (b) Slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation, or forced labor of children; and
 - (c) Acts of violence intended to spread terror among internally displaced persons.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

Principle 12

1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.
2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances.
3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.
4. In no case shall internally displaced persons be taken hostage.

Principle 13

1. In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities.

2. Internally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement. In particular any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances.

Principle 14

1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.

2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

Principle 15

Internally displaced persons have:

- (a) The right to seek safety in another part of the country;
- (b) The right to leave their country;
- (c) The right to seek asylum in another country; and
- (d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

Principle 16

1. All internally displaced persons have the right to know the fate and whereabouts of missing relatives.

2. The authorities concerned shall endeavor to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international organizations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any result.

3. The authorities concerned shall endeavor to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation, and facilitate the return of those remains to the next of kin or dispose of them respectfully.

4. Grave sites of internally displaced persons should be protected and respected in all circumstances. Internally displaced persons should have the right of access to the grave sites of their deceased relatives.

Principle 17

1. Every human being has the right to respect of his or her family life.
2. To give effect to this right for internally displaced persons, family members who wish to remain together shall be allowed to do so.
3. Families which are separated by displacement should be reunited as quickly as possible. All appropriate steps shall be taken to expedite the reunion of such families, particularly when children are involved. The responsible authorities shall facilitate inquiries made by family members and encourage and cooperate with the work of humanitarian organizations engaged in the task of family reunification.
4. Members of internally displaced families whose personal liberty has been restricted by internment or confinement in camps shall have the right to remain together.

Principle 18

1. All internally displaced persons have the right to an adequate standard of living.
2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:
 - (a) Essential food and potable water;
 - (b) Basic shelter and housing;
 - (c) Appropriate clothing; and
 - (d) Essential medical services and sanitation.
3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

Principle 19

1. All wounded and sick internally displaced persons as well as those with disabilities shall receive to the fullest extent practicable and with the least possible delay, the medical care and assistance they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services.

2. Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counseling for victims of sexual and other abuses.

3. Special attention should also be given to the prevention of contagious and infectious diseases, including AIDS, among internally displaced persons.

Principle 20

1. Every human being has the right to recognition everywhere as a person before the law.

2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.

3. Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.

Principle 21

1. No one shall be arbitrarily deprived of property and possessions.

2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:

- (a) Pillage;
- (b) Direct or indiscriminate attacks or other acts of violence;
- (c) Being used to shield military operations or objectives;
- (d) Being made the object of reprisal; and
- (e) Being destroyed or appropriated as a form of collective punishment.

3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

Principle 22

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:

- (a) The rights to freedom of thought, conscience, religion or belief, opinion and expression;
- (b) The right to seek freely opportunities for employment and to participate in economic activities;
- (c) The right to associate freely and participate equally in community affairs;
- (d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right; and
- (e) The right to communicate in a language they understand.

Principle 23

1. Every human being has the right to education.

2. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion.

3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programs.

4. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

SECTION IV - PRINCIPLES RELATING TO HUMANITARIAN ASSISTANCE

Principle 24

1. All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.

2. Humanitarian assistance to internally displaced persons shall not be diverted, in particular for political or military reasons.

Principle 25

1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.

2. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.

3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.

Principle 26

Persons engaged in humanitarian assistance, their transports and supplies shall be respected and protected. They shall not be the object of attack or other acts of violence.

Principle 27

1. International humanitarian organizations and other appropriate actors when providing assistance should give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard. In so doing, these organizations and actors should respect relevant international standards and codes of conduct.

2. The preceding paragraph is without prejudice to the protection responsibilities of international organizations mandated for this purpose, whose services may be offered or requested by States.

SECTION V - PRINCIPLES RELATING TO RETURN, RESETTLEMENT AND REINTEGRATION

Principle 28

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavor to facilitate the reintegration of returned or resettled internally displaced persons.

2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

Principle 29

1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.

2. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall

provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

Principle 30

All authorities concerned shall grant and facilitate for international humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.

ANNEX 8

Additional References

Chapter 2: Design and Implementation of the Orders Issued in Decision T-025 of 2004: An Assessment of the Process

Contralor General de la Nación (Julio César Turbay Quintero). 2006. *Evaluation Report (Evaluación del Informe conjunto de cumplimiento de la sentencia T-025 de 2004 y sus Autos complementarios en relación con la atención estatal a la población desplazada por la Violencia)*.

Ministry of the Interior and Justice. 2005. *Reports* (submitted in compliance with the orders issued in Award 177 of 2005, in the months of September, October, November and December, 2005).

Social Solidarity Network. 2006. *Reports* (submitted in compliance with the orders issued in Award 218 of 2006, in the months of September and October).

Social Solidarity Network. 2007. Governmental report in response to the questions posed by the Constitutional Court during the public technical information hearing held on March 1, 2007, and delivered to the Court on March 15, 2007.

National Ombudsman's Office. 2006. *Evaluation Report*.

Procurador General de la Nación. 2006. *Surveillance Report*.

Chapter 3: Protection of the Internally Displaced by Constitutional Justice: The Role of the Constitutional Court in Colombia

Celis, Andrés. 2003. "La política pública de atención a la población desplazada y la necesidad de incorporar un enfoque de derechos en su formulación y ejecución," in: CODHES y OIM. *Destierros y Desarraigos*. Bogotá: CODHES, OIM.

_____. 2005. “Política Pública y Derecho. Reflexiones sobre el alcance de los fallos de la Corte Constitucional en materia de protección de los derechos de la población desplazada,” In, Martha Nubia Bello y Marta Inés Villa (comps). *El Desplazamiento en Colombia. Regiones, ciudades y políticas públicas.*, compiladoras.

Conferencia Episcopal Colombiana & CODHES. 2006. *Desafíos para Construir Nación. El país ante el desplazamiento, el conflicto armado y la crisis humanitaria.* Bogotá: Conferencia Episcopal Colombiana, CODHES.

Du Toit, André. 2000. “The Moral Foundations of the South African TRC: Truth as Acknowledgment and Justice as Recognition,” in Rotberg, Robert I. *Truth v. Justice.* Princeton University Press.

Ibáñez, Ana María, et. al. 2005. *Hacia una Política Preactiva para la Población Desplazada.* Bogotá: Universidad de los Andes & Conferencia Episcopal.

National Council for Economic and Social Policy (CONPES), *Document CONPES 3400 of 2005.*

United Nations High Commissioner for Refugees (UNHCR). 2004. *Balance de la política pública de prevención, protección y atención al desplazamiento interno forzado en Colombia Agosto 2002-Agosto 2004.* Bogotá: UNHCR.

Chapter 4: The Human Rights of the Victims of Forced Internal Displacement in View of the Progressivity of Economic, Social, and Cultural Rights

Abramovich, Victor. 2006. *Líneas de trabajo en derechos económicos, sociales y culturales: herramientas y aliados.* Manuscript.

Arango, Rodolfo. 2005. “John Rawls y los derechos constitucionales,” in Juan José Botero (ed.). *Con Rawls y contra Rawls. Una aproximación a la filosofía política contemporánea.* Bogotá: Universidad Nacional de Colombia, pp. 141-156.

_____. 2006. “La prohibición de retroceso en Colombia,” in: Christian Courtis (ed.). *Ni un paso atrás. La prohibición de regresividad en*

materia de derechos sociales. Buenos Aires: Del Puerto-CEDAL-CELS, pp. 153-172.

Bello, Martha. 2004. "El desplazamiento forzado en Colombia; acumulación de capital y exclusión social," in: Martha Bello (ed.). *Desplazamiento forzado. Dinámicas de guerra, exclusión y desarraigo*. Bogotá: UNHCR & Universidad Nacional de Colombia, pp. 19-30.

Bouley, Catherine. 2004. "Evaluación de la implementación de los principios rectores de los desplazamientos internos por parte del Estado Colombiano," Martha Bello (ed.). *Desplazamiento forzado. Dinámicas de guerra, exclusión y desarraigo*. Bogotá: UNHCR & Universidad Nacional de Colombia, pp. 367-387.

CODHES & Secretariado Nacional de Pastoral Social. *Desafíos para construir nación. El país antes el desplazamiento, el conflicto armado, y la crisis humanitaria 1995-2005*. Colombia, 2006.

Controller's Office. 2006. *Fifth Surveillance Report*, May 2006.

_____. 2006. *Sixth Surveillance Report*, October 2006.

Dasgupta, Partha. 1993. *An Inquiry into Well-Being and Destitution*. Oxford: Clarendon Press.

El Tiempo, November 10, 2006.

El Espectador, November 12, 2006.

Ibáñez Londoño, Ana María. 2006. *La estabilización económica de la población desplazada*. Working Papers FIP, Bogotá: Fundación Ideas para la Paz.

Long-term Plan for Afro-Colombian Communities (*Plan a Largo Plazo para Comunidades Afrocolombianas*), in: 2006-2010 National Development Plan.

Ministry of the Interior and Justice. October 2006. Directive of Comprehensive Assistance to Indigenous Communities Displaced or at Risk of Forced Disappearance (*Directriz de Atención Integral*

a Comunidades Indígenas Desplazadas o en Riesgo de Desplazamiento).

National Council for Comprehensive Assistance to the Population Displaced by Violence. 2005. Plan for Comprehensive Assistance to Vulnerable Populations and Populations at Risk of Forced Disappearance (*Plan de Atención Integral a Población vulnerable y en Riesgo de Desaparición*), approved by the *Consejo Nacional para Población Desplazada*, approved by Agreement 05 of 2005.

National Ombudsman's Office. 2006. *Evaluation Report*, October 2006.

Presidencia de la República. January 2005. National Comprehensive Assistance System for the Displaced Population (SNAIPD). <http://www.acnur.org.biblioteca/pdf/4849.pdf>.

Rawls, John. 1970. *Teoría de la Justicia*. México: Fondo de Cultura Económica (ed. 1978).

UNHCR. 2004. *Balance de la política pública de prevención, protección y atención al desplazamiento interno forzado en Colombia, agosto 2002-agosto 2004*. Bogotá: UNHCR.

UNHCR. 2006. *Publicaciones*, available at http://www.acnur.org/paginas/index.php?id_pag=4795 (consulted on 12 November 2006).

The Washington Post, February 17, 2007, page A28: *Scandal in Colombia raises Skepticism on Capitol Hill*, by Juan Forero.

Chapter 5: The Judicial Protection of Internally Displaced Persons in Colombia: National and Inter-American Perspectives

León, Juanita. 2005. *País de Plomo. Crónicas de Guerra*. Bogotá: Aguilar.

United Nations High Commissioner for Refugees. 2005. *Los desplazados internos. Preguntas y respuestas*. <http://www.acnur.org/pdf/3739>.

Chapter 6: The Guiding Principles on Internal Displacement

Abramovich, Victor. 2006. *Líneas de trabajo en derechos económicos, sociales y culturales: herramientas y aliados*. Manuscript.

- Arango, Rodolfo. 2005. “John Rawls y los derechos constitucionales”, in: Juan José Botero (ed.). *Con Rawls y contra Rawls. Una aproximación a la filosofía política contemporánea*. Bogotá: Universidad Nacional de Colombia, pp. 141-156.
- Arango, Rodolfo. 2006. “La prohibición de retroceso en Colombia”, en: Christian Courtis (ed.). *Ni un paso atrás. La prohibición de regresividad en materia de derechos sociales*. Buenos Aires: Del Puerto-CEDAL-CELS, pp. 153-172.
- Bello, Martha. 2004. “El desplazamiento forzado en Colombia: acumulación de capital y exclusión social”, en: Martha Bello (ed.). *Desplazamiento forzado. Dinámicas de guerra, exclusión y desarraigo*. Bogotá: UNHCR & Universidad Nacional de Colombia, pp. 19-30.
- Bouley, Catherine. 2004. “Evaluación de la implementación de los principios rectores de los desplazamientos internos por parte del Estado Colombiano”, en: Martha Bello (ed.). *Desplazamiento forzado. Dinámicas de guerra, exclusión y desarraigo*, Bogotá: UNHCR & Universidad Nacional de Colombia, pp. 367-387.
- Celis, Andrés. 2003. “La política pública de atención a la población desplazada y la necesidad de incorporar un enfoque de derechos en su formulación y ejecución”, in: CODHES & OIM. *Destierros y Desarraigos*. Bogotá: CODHES, OIM.
- Celis, Andrés. 2005. “Política Pública y Derecho. Reflexiones sobre el alcance de los fallos de la Corte Constitucional en materia de protección de los derechos de la población desplazada”, In, Martha Nubia Bello y Marta Inés Villa (comps.). *El Desplazamiento en Colombia. Regiones, ciudades y políticas públicas.*, compiladoras.
- CODHES & Secretariado Nacional de Pastoral Social. *Desafíos para construir nación. El país ante el desplazamiento, el conflicto armado y la crisis humanitaria 1995-2005*. Colombia, 2006.
- Conferencia Episcopal Colombiana & CODHES. 2006. *Desafíos para Construir Nación. El país ante el desplazamiento, el conflicto armado y la crisis humanitaria*. Bogotá: Conferencia Episcopal Colombiana, CODHES.

Controller's Office. 2006. *Fifth Surveillance Report*, May 2006.

Controller's Office. 2006. *Sixth Surveillance Report*, October 2006.

Dasgupta, Partha. 1993. *An Inquiry into Well-Being and Destitution*. Oxford: Clarendon Press.

Du Toit, André. 2000. "Los Fundamentos Morales de las Comisiones de Verdad. La Verdad como Reconocimiento y la Justicia como Reconocimiento. Principios de la Justicia Transicional en la Práctica de la Comisión de Verdad y Reconciliación (CVR) Sudafricana", in Rotberg, Robert I. *Truth v. Justice*. Princeton: Princeton University Press.

El Espectador November 12, 2006.

El Tiempo, November 10, 2006.

Ibáñez, Ana María et. al. 2005. *Hacia una Política Preactiva para la Población Desplazada*. Bogotá: Universidad de los Andes & Conferencia Episcopal.

Ibáñez Londoño, Ana María. 2006. *La estabilización económica de la población desplazada*. Working Papers FIP, Bogotá: Fundación Ideas para la Paz.

León, Juanita. *País de Plomo. Crónicas de Guerra*. Bogotá: Aguilar, 2005.

Long-term Plan for Afro-Colombian Communities (Plan a Largo Plazo para Comunidades Afrocolombianas), in: 2006-2010 National Development Plan.

Ministry of the Interior and Justice. October 2006. Directive of Comprehensive Assistance to Indigenous Communities Displaced or at Risk of Forced Disappearance (*Directriz de Atención Integral a Comunidades Indígenas Desplazadas o en Riesgo de Desplazamiento*).

_____. 2005. *Reports* (submitted in compliance with the orders issued in Award 177 of 2005, in the months of September, October, November and December).

National Council for Comprehensive Assistance to the Population Displaced by Violence. 2005.

_____. 2005. *Plan for Comprehensive Assistance to Vulnerable Populations and Populations at Risk of Forced Disappearance (Plan de Atención Integral a Población Vulnerable y en Riesgo de Desaparición)*, approved by Agreement 05 of 2005.

National Council for Economic and Social Policy (CONPES), *Document CONPES 3400 of 2005*.

National Ombudsman's Office. 2006. *Evaluation report*, October, 2006.

Presidencia de la República. January 2005. *National Comprehensive Assistance System for the Displaced Population (SNAIPD)*. <http://www.acnur.org/biblioteca/pdf/4849.pdf>.

Procurador General de la Nación. 2006. *Surveillance report*.

Rawls, John. 1970. *Teoría de la Justicia*. México: Fondo de Cultura Económica (ed. 1978).

Social Solidarity Network. 2006. *Reports* (submitted in compliance with the orders issued in Award 218 of 2006, in the months of September and October).

Social Solidarity Network. 2007. Governmental report in response to the questions posed by the Constitutional Court during the public technical information hearing held on March 1, 2007, and delivered to the Court on March 15, 2007.

UNHCR. 2004. *Report of the United Nations High Commission for Human Rights on Colombia*, E/CN.4/2004/13.

UNHCR. 2004. *Balance de la política pública de prevención, protección y atención al desplazamiento interno forzado en Colombia, agosto 2002 – agosto 2004*. Bogotá: UNHCR.

UNHCR. 2005. *Report to the Constitutional Court*, March, 2005.

UNHCR. 2006. *Publicaciones*, available at:
http://www.acnur.org/paginas/index.php?id_pag=4795 (consulted
on 12 November 2006)

UNHCR, 2007. *Los desplazados internos. Preguntas y respuestas* (see
www.ACNUR.org/pdf/3739).

The Washington Post, February 17, 2007, page A28: *Scandal in Colombia
Raises Skepticism on Capitol Hill*, by Juan Forero.