Colombian Constitutional Court, Decision T-025 of 2004

Republic of Colombia

Constitutional Court

Third Review Chamber

Decision No. T-025 of 2004

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

Manuel José Cepeda Espinosa, J.

Bogotá, D.C., 22 January, 2004

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

JUDGMENT

I. BACKGROUND

1. FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. That a food security program should be adopted;

7. That the prescribed medicines should be provided;

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

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

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

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

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

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

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

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

2. The decisions under review

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

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

2. Non-admissibility of the *tutela* action was invoked by the judges to refuse granting the *tutela*: (i) because (…) a different action should be filed [*acción de cumplimiento*]; (ii) because the *tutela* action was not created as a mechanism to alter the order of State institutions, in regards to the internal distribution of their jurisdiction and functions; (iii) because the petition should have been previously addressed to the Social Solidarity Network (…); (iv) because housing is a

second generation right which may not be protected by means of *tutela* actions; (v) because the plaintiff's registration as a displaced person had already been recognized, and instructions had been given to register the corresponding family group and to request the benefits to which they were entitled; (vi) because *tutela* actions cannot become means to vary the order in which benefits are granted, given that this would violate the rights of the displaced persons who have not filed *tutela* lawsuits and are waiting for their turn, which must be respected.

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

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

persons an automatic right to subsidies; (x) because INURBE's refusal did not preclude the presentation of future requests for aid, given that the plaintiffs had been classified as eligible persons; (xi) because the plaintiffs had already been registered as potential recipients of housing subsidies and sustainability projects, and it was only necessary to wait for the finalization of the procedures; (xii) because the plaintiff did not prove that he had taken the necessary steps to obtain a housing subsidy or support for a productive project.

5. Judges denied the *tutela* invoking the alleged existence of an abuse in the exercise of procedural rights[1]: (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 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

[1] "*Temeridad*"

(*Estado Social de Derecho*) it is necessary to arrive at a final solution to the problem of displacement, and because the omissions of the Social Solidarity Network and other entities in charge of assisting the displaced population reveal a violation of the constitutional safeguards to which the plaintiffs are entitled.

(…)

III. CONSIDERATIONS AND LEGAL GROUNDS FOR THE DECISION.

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

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

2.1. Legal issues.

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

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

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

In order to resolve these issues, the Chamber will start by summarizing its doctrine on the rights of the displaced population, with a threefold objective: (i) to recall the main constitutional rights of persons in a situation of forced internal displacement (section 5.1.), indicating the Guiding Principles on Forced Internal Displacement which are pertinent for their interpretation; (ii) to highlight the gravity of the situation of the displaced population and the persistence of the violations of their rights, which have led to the presentation of *tutela* lawsuits (section 5.2.); and (iii) to clarify the type of orders which have been issued by the Court up to this date to protect the rights of the displaced population (section 5.3.). Secondly, the Court will examine the State response to the phenomenon of internal displacement (section 6.1.), the results of that policy (section 6.2.) and the most salient problems of the existing public policy and its different components (section 6.3.). Thirdly, the Court shall analyze the insufficiency of available resources and its impact upon the implementation of the public policy (section 6.3.2.). Fourth, the Court shall verify whether such actions and omissions amount to an unconstitutional state of affairs (section 7). Fifth, the Court shall indicate the authorities' constitutional duties in regards to human rights obligations with a positive content, even in regards to rights such as life and

security (section 8). Sixth, the Court shall determine the minimum levels of protection that must be guaranteed to the displaced population, even after a redefinition of priorities on account of the insufficiency of resources or of the deficiencies in institutional capacity (section 9). Finally, the Court shall impart orders regarding the actions that must be adopted by the different authorities to protect the rights of the displaced population (section 10).

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

It is also necessary to examine the alleged existence of abuse in the exercise of procedural rights[2] 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).

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

[2] "*Temeridad*"

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

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

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

Said violation is not attributable to a single entity; rather, all of the national and territorial authorities that hold diverse responsibilities in assisting the displaced population have allowed it to continue by their actions or omissions and in some cases, they have allowed the violation of the fundamental rights of displaced persons to become worse.

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

of the responsible national and territorial authorities, which have defined the level of their own commitments, but it also demands that they adopt, as soon as possible, the corrective measures required to solve such unconstitutional state of affairs (…).

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

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

Finally, in regards to the right to return and re-establishment, authorities' minimum duty is that of (i) not imposing coercive measures to force persons to return to their places of origin or to re-establish themselves elsewhere, (ii) not preventing displaced persons from returning to their habitual place of residence or re-establishing themselves elsewhere; (iii) providing the necessary information about the security conditions that exist at the place where they will return, and about the responsibilities that the State shall assume in the fields of security and socio-economic assistance in order to guarantee a safe and dignified return; (iv) refraining from promoting return or re-establishment whenever such decisions imply exposing displaced persons to a risk for their lives or personal integrity, and (v) providing the support required to secure that return is carried out in safe conditions, and that those who return are able to generate income which can provide them autonomous livelihoods.

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

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

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

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

For this reason, the associations of displaced persons, which have been created for the purpose of supporting the displaced population in the defense of its rights, can procure *ex officio* the rights of displaced persons[3]. However, in order to avoid distortions of the *tutela* action through this means, as well as the promotion of collective *tutela* lawsuits without their members' consent or the use of this instrument to disregard the rules that proscribe abuse in the exercise of procedural rights[4], 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

[3] "*Agente oficioso*"
[4] "*Temeridad*"

or a written document; and (3) that the evidence contained in the process does not allow inference of the fact that the displaced person does not want a *tutela* action to be filed on his or her behalf. (…)

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

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

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

[5] "*Mínimo vital*"

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"[6]. (…) 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"[7]; (b) "a true state of social emergency", "a national tragedy (…)" and "a serious danger for the Colombian political society"[8]; 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 Text, and the daily, tragic verification of the exclusion of millions of Colombians from this agreement"[9].

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"[10] 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,

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[6] 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.
[7] Colombian Constitutional Court, Decision T-227 of 1997, per Justice Alejandro Martínez Caballero (…).
[8] The three expressions were used in Colombian Constitutional Court, Decision SU-1150 of 2000, per Justice Eduardo Cifuentes Muñoz.
[9] The three expressions were used in Colombian Constitutional Court, Decision T-215 of 2002, per Justice Jaime Córdoba Triviño.
[10] Colombian Constitutional Court, Decision T-1346 of 2001, per Justice Rodrigo Escobar Gil. (…)

which implies a serious, massive and systematic violation of their fundamental rights[11] 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"[12] (…).

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 the precarious conditions that must be faced by those who are forced to displace themselves"[13]. The interpretation of these rights must be carried out in accordance with the content of Principles 2, 4 and 9, on special protection for certain groups of displaced persons.

3. The right to choose their place of residence, insofar as, in order to escape from the risk that threatens their life and personal integrity, displaced persons are forced to flee their habitual place of residence and work[14]. 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.

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[11] See, among others, Colombian Constitutional Court, Decision T-419 of 2003, SU-1150 of 2000.
[12] Colombian Constitutional Court, Decision T-215 of 2002, per Justice Jaime Córdoba Triviño.
[13] 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 (…).
[14] See, for example, Colombian Constitutional Court, Decision T-227 of 1997, per justice Alejandro Martínez Caballero (…).

4. The rights to freely develop their personalities, to freedom of expression and association, "given the climate of intimidation that precedes displacements"[15], and the consequences borne by such migrations over the materialization of the affected persons' life projects, which must necessarily adapt to their new circumstances of dispossession. Principles 1 and 8 are pertinent for the interpretation of these rights in the context of forced internal displacement.

5. Given the features of displacement, the economic, social and cultural rights of those who suffer it are strongly affected[16]. The minimum scope of these rights has been interpreted in accordance with Principles 3, 18, 19, and 23 through 27, which refer to the conditions to secure dignified living standards, and access to education, healthcare, work, among other rights.

6. In no few cases, displacement entails a separation of the affected families, thus violating their members' right to family unity[17] and to comprehensive protection of the family[18]. Principles 16 and 17 are aimed, among other purposes, at determining the scope of the right to family reunification.

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

8. The right to personal integrity[20], which is threatened both by the risks that threaten the health of displaced persons, and by the high risk of attacks to which they are exposed because of their condition of dispossession[21]. Guiding Principles 5, 6 and 11 refer to this right.

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[15] Colombian Constitutional Court, Decision SU-1150 of 2000
[16] See, for example, Colombian Constitutional Court, Decision T-098 of 2002, per Justice Marco Gerardo Monroy Cabra (…).
[17] Colombian Constitutional Court, Decision SU-1150 of 2000
[18] Colombian Constitutional Court, Decision T-1635 of 2000.
[19] (…) Colombian Constitutional Court, Decision T-645 of 2003, per justice Alfredo Beltrán Sierra (…).
[20] Colombian Constitutional Court, Decisions T-1635 of 2000, T-327 of 2001 and T-1346 of 2001.
[21] See, for example, Colombian Constitutional Court, Decision T-327 of 2001, per justice Marco Gerardo Monroy Cabra.

9. The right to personal security[22], given that displacement entails specific, individual, concrete, present, important, serious, clear, distinguishable, exceptional and disproportionate risks to several fundamental rights of the affected persons. Guiding Principles 8, 10, 12, 13 and 15 are pertinent for interpreting the scope of this right in the context of forced internal displacement.

10. Freedom of movement across the national territory[23] and the right to remain in the place chosen to live[24], 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.

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

12. The right to a minimum level of nourishment[26], 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.

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[22] 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 (…).
[23] Colombian Constitutional Court, Decisions T-1635 of 2000, T-327 of 2001, T-1346 of 2001 and T-268 of 2003.
[24] (…) Colombian Constitutional Court, Decision T-227 of 1997 (…)
[25] See, for example, Colombian Constitutional Court, Decision T-669 of 2003, per Justice Marco Gerardo Monroy Cabra (…)
[26] (…) Colombian Constitutional Court, Decision T-098 of 2002 (…)

13. The right to education, in particular that of minors who suffer forced displacements and are thereby forced to interrupt their educational process[27]. In regards to this right, Principles 13 and 23 are relevant.

14. The right to dignified housing[28], given that persons in conditions of displacement have to abandon their own homes or habitual places of residence, and undergo inappropriate lodging conditions at the places where they are displaced to, whenever they are able to obtain them and are not forced to live outdoors. In regards to this right, Principles 18 and 21 establish minimum criteria which must be secured to the displaced population so as to provide them basic housing and lodging conditions.

15. The right to peace[29], whose essential nucleus includes the personal guarantee not to suffer, insofar as possible, the effects of war, especially when conflict disregards the limits set by international humanitarian law, in particular the prohibition of attacking the civilian population[30]. Principles 6, 7, 11, 13 and 21 are pertinent to interpret this right, given that they prohibit disregarding the rules of international humanitarian law that protect non-combatants.

16. The right to legal personality, because on account of the displacement, the loss of identity documents poses obstacles to the registration of these persons as displaced individuals, as well as access to the different types of aid, and the identification of the legal guardians of minors who are separated from their families[31]. The scope of this right in the context of forced internal displacement is expressly regulated in Guiding Principle 20.

17. The right to equality[32], 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

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[27] Colombian Constitutional Court, Decision T-215 of 2002, per Justice Jaime Córdoba Triviño.
[28] See, for example, Colombian Constitutional Court, Decision T-602 of 2003, per Justice Jaime Araujo Rentería. (…)
[29] See, for example, Colombian Constitutional Court, Decision T-721 of 2003, per justice Alvaro Tafur Galvis (…).
[30] Colombian Constitutional Court, Decision C-328 of 2000, per justice Eduardo Cifuentes Muñoz.
[31] (…)Colombian Constitutional Court, Decision T-215 of 2002 (…).
[32] Colombian Constitutional Court, Decision T-268 of 2003, per justice Marco Gerardo Monroy Cabra.

community, to which a given orientation in regards to the actors of the armed conflict is attributed, or because of their political opinion, all of which are differentiation factors proscribed by article 13 of the Constitution. This does not exclude, as it has already been said, the adoption of affirmative action measures in favor of persons in conditions of displacement, which is in fact one of the main obligations of the State, as recognized by constitutional case-law[33]. 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 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*) (…).

[33] See, for example, Colombian Constitutional Court, Decision T-602 of 2003 (…).

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

The Court has decided on 17 occasions about the rights of the displaced population. Its judgments have been primarily aimed at (i) correcting negligent or discriminatory actions[34] and omissions by the authorities in charge of assisting the displaced population[35]; (ii) indicating institutional responsibilities in assisting the displaced population[36]; (iii) clarifying the constitutional rights of the displaced population[37]; (iv) establishing criteria for the interpretation of the legal provisions that regulate the aid for this population, in such a way that its rights are effectively guaranteed[38]; (v) rejecting the authorities' unjustified tardiness or omission in assisting those who are affected by forced displacement[39]; (vi) exacting the development of adequate policies and programs to address this phenomenon[40]; (vii) clarifying the elements which give rise to the condition of displacement[41]; (viii) pointing out the obstacles that prevent the provision of adequate assistance to the displaced population, and which enhance or aggravate the violation of their rights[42]; (ix) indicating flaws or omissions in the policies and programs designed to assist the displaced population[43]; and (x) granting effective protection to the displaced population, particularly in cases of persons who are especially protected by the Constitution such as children, women providers, elderly persons and ethnic minorities[44].

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[34] See, for example, Colombian Constitutional Court, Decision T-227 of 1997, per Justice Alejandro Martínez Caballero (…)

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

[36] 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 (…).

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

[38] See, for example, Colombian Constitutional Court, Decision T-098 of 2002, per Justice Marco Gerardo Monroy Cabra (…)

[39] See, for example, Colombian Constitutional Court, Decision T-790 of 2003, per Justice Marco Gerardo Monroy Cabra (…)

[40] See, for example, Colombian Constitutional Court, Decision SU-1150 of 2000, per Justice Eduardo Cifuentes Muñoz (…)

[41] See, for example, Colombian Constitutional Court, Decision T-227 of 1997, per Justice Alejandro Martínez Caballero (…)

[42] 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 (…).

[43] See, for example, Colombian Constitutional Court, Decision T-602 of 2003, per Justice Jaime Araújo Rentería (…)

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

In order to guarantee the effective protection of the displaced population, the Court has ordered (i) the different authorities that participate in the protection of the displaced population, to include the plaintiffs in the existing programs and policies within brief terms that range from 48 hours to 3 months after the notification of the judgment[45]; (ii) the President of the Republic, to coordinate with the different ministries and entities in charge of assisting the displaced population, the actions which are required to secure, within a maximum period of 30 days, a final solution for the problems faced by the plaintiffs[46]; (iii) to carry out, within a period of 48 hours, all the actions which are needed to transfer the plaintiff to a place where his life and integrity are not in danger[47]; (iv) the Social Solidarity Network, to include the plaintiff within the Single Registration System of Displaced Population; (v) the constitution of a Municipal Committee for the Comprehensive Assistance to the Displaced Population in a term of 10 days, in order for that Committee to establish, within a maximum term of 20 days, a program for the relocation and stabilization of the plaintiffs[48]; (vi) the Social Solidarity Network to coordinate with the Institute of Family Welfare the inclusion of the underage plaintiffs within the programs that exist in said entity, and to process in a preferential and quick manner, with the corresponding entity, their request for a family housing subsidy[49]; (vii) the Social Solidarity Network to grant the requested Emergency Humanitarian Aid[50]; (viii) the National Director of the Social Solidarity Network to include the plaintiffs within a productive project, articulated with a food security program[51]; (ix) the Social Solidarity Network to carry out, within a 48 hour term, the actions required to provide the comprehensive healthcare required by the plaintiff, through the corresponding entities[52]; (x) the Social Solidarity Network to provide, within a term of 48 hours, the necessary counseling to the plaintiff on the different alternatives of economic consolidation open to her[53]; (xi) the Social Solidarity Network to provide effective assistance and counseling to the plaintiff[54]; (xii) the

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[45] 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.
[46] 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.
[47] Colombian Constitutional Court, Decision T-258 of 2001, per Justice Eduardo Montealegre Lynett.
[48] Colombian Constitutional Court, Decision T-1346 of 2001, per Justice Rodrigo Escobar Gil.
[49] Colombian Constitutional Court, Decision T-268 of 2003, per Justice Marco Gerardo Monroy Cabra
[50] Colombian Constitutional Court, Decision T-419 of 2003, per Justice Alfredo Beltrán Sierra
[51] Colombian Constitutional Court, Decision T-602 of 2003, per Justice Jaime Araujo Rentería
[52] Colombian Constitutional Court, Decision T-645 of 2003, per Justice Alfredo Beltrán Sierra
[53] Colombian Constitutional Court, Decision T-669 of 2003, per Justice Marco Gerardo Monroy Cabra.
[54] Colombian Constitutional Court, Decision T-721 of 2003, per Justice Alvaro Tafur Galvis.

Public Ombudsman's Office (*Defensoría del Pueblo*) to design and impart courses on the promotion of human rights and respect for the rights of the displaced population to different authorities, in order to increase their sensitivity to this problem[55]; (xiii) the National Government to regulate within a reasonable period Law 715 of 2001 in regards to the transfer and relocation of threatened teachers[56]; (xiv) the Public Ombudsman's Office, to oversee the dissemination and promotion of the rights of the displaced population[57]; (xv) the Nation's General Controller (*Procurador General de la Nación*) to oversee compliance with the orders issued in the corresponding judgment[58]; and (xvi) the Public Ombudsman's Office, to instruct the displaced population on its constitutional rights and duties[59].

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 officers, 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

[55] Colombian Constitutional Court, Decision T-227 of 1998, per Justice Alejandro Martínez Caballero.
[56] Colombian Constitutional Court, Decision T-795 of 2003, per Justice Clara Inés Vargas Hernández
[57] Colombian Constitutional Court, Decision T-1635 of 2000, per Justice José Gregorio Hernández Galindo
[58] Colombian Constitutional Court, Decision T-1635 of 2000, per Justice José Gregorio Hernández Galindo
[59] Colombian Constitutional Court, Decision T-721 of 2003, per Justice Alvaro Tafur Galvis.

cause the violation of said rights. According to a recent study[60], 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 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"[61] 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

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

[61] The nutritional gap measures a person's nutritional deficiencies in relation to the recommended amounts of nutrients.

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 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 officers. 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"[62], and establish a single registration system, which reflects the magnitude of the problem in quantitative terms because it is administered through a database designed to include all of the persons who receive some sort of assistance. Finally, Law 387 of 1997 establishes the principles and the rights of displaced persons, which provide the grounds to interpret the legal provisions regarding State duties towards the displaced population[63].

6.1.2. In regards to the goals of the policies, Law 387 of 1997 and Decree 173 of 1998 point out the objectives of the National Plan for Comprehensive Assistance to the Displaced Population[64]. In turn, both Law 387 of 19997 and Decree 2569 of 2000 indicate the basic goals pursued through each one of the components of the assistance system. Lastly, Decree 173 [of 1998] establishes strategies for the execution of each one of the components, which include the actions, programs and projects that must be developed by State entities. Such goals are different throughout each one of the three stages in which the State policy has been legally structured: humanitarian aid, socio-economic stabilization and return or re-establishment.

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

The functions that form part of the system of assistance to the displaced population in its different levels and components are assigned, on the one hand, to the entities that form part of SNAIPD, and on the other hand, to territorial entities. (…) the coordination of SNAIPD, which was formerly assigned to the Ministry of the Interior, became a responsibility of the Social Solidarity Network[65]. 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

[62] (…) Article 1 of Law 387 of 1997 (…), Article 2 of Decree 2569 of 2000.
[63] Article 2, Law 387 of 1997.
[64] 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.
[65] Article 1, Decree 2569 of 2000.

functioning of the National Comprehensive Assistance System for the Displaced Population"[66] *inter alia*. The main Ministries with direct responsibilities in this field have a seat in such Council.

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

On the other hand, the execution of socio-economic stabilization programs[67] depends on budget availability[68], even though State entities may receive aid by humanitarian organizations, both national and international in nature. Conversely, the goods and services included in this component must be provided by several authorities, whether part of the National Government or of the territorial entities. Thus, in regards to housing solutions for the displaced population, Decree 951 of 2001 establishes the requirements and procedures to have access to housing subsidies, and it sets out the functions and responsibilities of the entities that intervene in the provision of this component of the assistance package (INURBE, for example). The programs for the generation of productive projects and access to work training programs are regulated in a general manner in Decree 2569 of 2000. Lastly, Decree 2007 of 2001 regulates the program for land access and tenure by displaced population, the implementation of which is a responsibility of territorial entities, the former INCORA and the public deeds registration offices, *inter alia*.

6.1.4. Finally, in regards to the persons or the private or international organizations that must participate in the design and implementation of the policy for assisting the displaced population, the pertinent legal provisions establish the following: First, the design and execution of the policies must be carried out with the participation of the displaced communities[69]. Second, State entities may enter into arrangements with NGOs[70]. Third, such provisions establish that the State

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[66] Article 6, Law 387 of 1997.
[67] Article 25, Decree 2569 of 2000. See also Articles 26-28 of the same decree and Article 17 of Law 387 of 1997.
[68] Article 25, Decree 2569 of 2000.
[69] Paragraph 3, Number 1 of Article 1 of Decree 173 of 1998.
[70] See, for example, the rules contained in Law 387 of 1997 and Decree 2569 of 2000, and Presidential Directive No. 7 of 2001.

may request aid from international organizations[71]. Lastly, the presidential directives hold that the State must promote a higher commitment of the civil society[72].

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*[73]-, the advances in the formulation of the policies have not translated into the generation of concrete results. (…)

This is recognized by the studies made by the Social Solidarity Network itself—a national public entity, ascribed to the Administrative Department of the Presidency of the Republic[74]. 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"[75].

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 by CODHES[76], and it has

[71] For example, Article 23 of Decree 2569 of 2000.
[72] See, for example, the recommendations of Presidential Directive No. 6 of 2001.
[73] 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.
[74] Law 368 of 1997.
[75] 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.
[76] CODHES is one of the country's main NGOs in the field of advocacy of displaced persons' rights.

achieved 36% of the level set as a goal in the Strategic Plan[77]. 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%[78]. On the other hand, if assistance is placed not on the results of coverage, but on the level of success of the socio-economic stabilization programs to which some displaced persons have had access, it may be verified that, except for the work training programs, the reports presented to this Court regard these results as less than insufficient. The work training projects have obtained high results, but their coverage has been low, given that State action has focused mostly on productive projects.

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

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

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[77] 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.

[78] 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 officers. Especially at the territorial level, public officers are not adequately informed about their functions and responsibilities, the features of the phenomenon of displacement, nor about the necessities of the displaced population. They are not trained either in dealing with persons in conditions of displacement. (f) The policies to facilitate access to the institutional offer by the weakest displaced groups—such as women providers, children or ethnic groups—have not been regulated[79]. There are no special programs to respond to the specificity of the problems that affect said groups.

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

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

(vii) The distribution of functions in regards to urban productive projects is unclear, given that the IFI[80] is undergoing a merger. The same may be said of the land distribution programs, because the INCORA[81] 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

[80] IFI stands for "Institute of Industrial Foment" – *Instituto de Fomento Industrial.*
[81] INCORA stands for "Colombian Institute for Agrarian Reform" – *Instituto Colombiano de Reforma Agraria*.

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

(ii) With regard to the adequacy and effective pertinence of the different components of the policy, the Chamber notes that, in certain cases, the means used to achieve the aims of the policy are not appropriate, as indicated by the reports presented to the Court: (a) In the field of socio-economic stabilization of displaced persons, the requirements and conditions to gain access to capital are not coherent with the economic reality of displaced persons. For example, in order to have access to some of the offered programs, the displaced population must prove that they own a house or land in which to develop the project. Likewise, the technical evaluation criteria for the productive projects submitted for financing do not match the conditions and skills of displaced persons. In addition, the establishment of maximum levels of finance for productive options excludes the possibility of taking into account the socio-demographic and economic specificities of each project. (b) In regards to health care, access by the displaced population to health services has been obstructed by the procedures required to have access to the service, on the one hand, and those required for the entities in charge of providing the service to be able to charge it to the FOSYGA[82], 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

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

educational positions have been an often insurmountable barrier for these minors' registration in the system.

(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.[83] 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.

[83] 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.

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

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

(…) The central government has destined financial resources which fail to meet the requirements of the policy, and many territorial entities have failed to destine their own resources to attend to the different programs, even though the CONPES Documents[84] 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

[84] 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.

policies was reduced. For example, in 2002 103.491 million pesos were assigned within the Nation's General Budget for the "displaced population", whereas in 2003 such amount was of 70,783 million, thus undergoing a 32% reduction in the funds appropriated for that purpose[85].

However, Law 387 of 1997 states in several provisions that the policy to assist the displaced population is not only a priority matter[86], 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

[85] (…) See section 1.1. of Annex 4 of this judgment. (…)
[86] In this sense, it is important to recall Colombian Constitutional Court, Decision SU-1150 of 2000 (per Justice Eduardo Cifuentes Muñoz)

disregarding the constitutional provisions that order the 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'[87].

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

[87] 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.

(…) 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 officers who have responsibilities regarding the

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

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

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

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

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

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

(…) Whenever a repeated and constant violation of fundamental rights is verified, which affects a multitude of persons, and whose solution requires the intervention of different entities to address problems o a structural nature, this Court has declared the existence of an

unconstitutional state of affairs, and has ordered the adoption of remedies that benefit not only those who have resorted to the *tutela* action in order to obtain protection of their rights, but also other persons who share the same situation but have not filed *tutela* lawsuits[88].

The factors evaluated by the Court in order to determine whether an unconstitutional state of affairs exists include the following: (i) a massive and generalized violation of several constitutional rights, which affects a significant number of people[89]; (ii) a protracted omission by the authorities in complying with their obligations to secure rights[90]; (iii) the adoption of unconstitutional practices, such as the incorporation of the *tutela* action as part of the procedure to secure the violated rights[91]; (iv) failure to adopt the legislative, administrative or budgetary measures required to prevent the violation of rights[92]; (v) the existence of a social problem whose resolution requires the intervention of several entities, demands the adoption of a complex and coordinated set of actions, and exacts a level of resources that implies an important additional budgetary effort[93]; (vi) if all the persons affected by the same problem were to resort to the *tutela* action in order to obtain the protection of their rights, a higher judicial congestion would be produced[94].

(…) 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 Nacional de Prestaciones Sociales del Magisterio*), even though the legal discounts for pensions and work benefits had been made[95]. After this decision, the Court has declared unconstitutional

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[88] 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.

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

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

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

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

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

[94] (…)Colombian Constitutional Court, Decision T-068 of 1998 (…).

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

states of affairs on six more occasions: 1) because of the situation of continuous violation of the rights of the accused and processed individuals who were detained in the country's different prisons[96]; 2) because of the lack of a social security healthcare system for detained accused individuals and sentenced prisoners[97]; 3) because of the habitual tardiness in the payment of pensions, for a long period of time, in the departments of Bolívar[98] and 4) Chocó[99]; 5) because of the omissions in the protection of the lives of human rights activists[100]; and 6) in view of the failure to summon a merit-based competition for the designation of notary publics[101].

(…) 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 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

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[96] Colombian Constitutional Court, Decision, T-153 of 1998, per Justice Eduardo Cifuentes Muñoz.
[97] Colombian Constitutional Court, Decisions T-606 and T-607 of 1998, per Justice José Gregorio Hernández Galindo.
[98] Colombian Constitutional Court, Decision T-525 of 1999, per Justice Carlos Gaviria Díaz.
[99] Colombian Constitutional Court, Decision SU-090 of 2000, per Justice Alejandro Martínez Caballero.
[100] Colombian Constitutional Court, Decision T-590 of 1998, per Justice Alejandro Martínez Caballero (…).
[101] Colombian Constitutional Court, Decisions SU-250 of 1998, per Justice Alejandro Martínez Caballero; T-1695 of 2000, per Justice Marta Victoria Sáchica Méndez.

of displacement, and highlighting the massive violation of several rights. Indeed, paragraph 1 of Article 1 of Law 387 of 1997 states:

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

In second place, another element that confirms the existence of an unconstitutional state of affairs in the field of forced displacement, is the high volume of *tutela* actions filed by displaced persons in order to obtain the different types of aid or an increase therein[102], as well as the verification, made in some policy analysis documents, of the fact that the filing of *tutela* actions has been incorporated into the administrative procedures, as a prior condition for obtaining aid[103].

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

[102] 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.

[103] 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.

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"[104].

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 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. (…)

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

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"-[105]. 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.[106]

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

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

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[105] 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.

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

8.2. As highlighted by the Court in decision T-595 of 2002[107], 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 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".

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

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 officers. 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.[108] In order for it to be

[108] 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.

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"[109].

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

The effective enjoyment of rights with a strong positive-duty content—such as social rights—depends on the creation and preservation, by the State, of the conditions for such enjoyment, and on the adoption of policies aimed at their progressive realization. States have a broad margin of discretion in this regard. However, the obligations undertaken through the ratification of the International Covenant on Economic, Social and Cultural Rights (ICESCR) give rise to certain minimum requirements, enshrined in General Observation No. 1[110], 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 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

[109] Colombian Constitutional Court, Decision C-671 of 2002, per Justice Eduardo Montealegre Lynett.
[110] Adopted during its third period of sessions, E/1989/22 (1989).

each case, and of justifying that they are, in reality, the appropriate ones in view of the circumstances. Third, “in terms of political and economic systems the Covenant is neutral”. Fourth, the purpose of such measures is that of “achieving progressively the full realization of the rights recognized”, which implies that there is flexibility on account of the limitations of the real world, but also that the measures must be targeted at advancing, not at retrogressing, making “full use of the maximum available resources”. Fifth, “any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources” (…). Sixth, the margin of flexibility allowed to States does not exonerate them from the obligation to “ensure the satisfaction of, at the very least, minimum essential levels of each of the rights”, levels which must be regarded as “a matter of priority” and demand that “every effort has been made to use all resources that are at its disposition”.

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

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

These four conditions may be applied to all rights with a markedly positive-duty imposing dimension, because of the specific conditions of their bearers, and may be summarized in the following parameters. First, the prohibition of discrimination (for example, an insufficiency of

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

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

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

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

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

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

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

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

When a group of persons, which has been defined—and is definable—by the State for a long time, is unable to enjoy its fundamental rights because of an unconstitutional state of affairs, the competent authorities may not admit the fact that those persons die, nor that they continue living under conditions which are evidently harmful to their human dignity, to such a degree that their stable physical subsistence is at serious risk, and that they lack the minimum opportunities to act as distinct and autonomous human beings.

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

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

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

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

4. The right to a basic subsistence, as an expression of the fundamental right to a minimum subsistence income[111] and clarified in Principle 18, which means that "competent authorities shall provide internally displaced persons with and ensure safe access to: (a) essential food and potable water; (b) Basic shelter and housing; (c) appropriate clothing; and (d) essential medical services and sanitation". Authorities must also make special efforts to secure the full participation of displaced women in the planning and distribution of these basic supplies. This right must also be read in the light of Principles 24 through 27 (…), given that it is through the provision of humanitarian assistance that the authorities satisfy this minimum duty in regards to the dignified subsistence of displaced persons. (…)

In this sense, and in regards to emergency humanitarian aid, the Court must point out that the duration of the minimum State obligation to provide emergency humanitarian aid is, on principle, the one established in the law: three months, renewable for up to another three months for certain types of persons. The Chamber considers that this term, established by the Legislator, is not manifestly unreasonable, if it is borne in mind that (a) it sets a clear rule on the grounds of

[111] "*Mínimo Vital.*"

which displaced persons can carry out short-term planning and adopt autonomous self-organization decisions which can allow them to have access to reasonable possibilities of autonomous subsistence, without being hastened by the burden of immediate subsistence needs; and (b) it grants the State an equally reasonable term to design the specific programs required to satisfy its obligations in the field of aid for the socio-economic stabilization of displaced persons (…).

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

5. The right to health (article 49 of the Constitution), whenever the provision of the corresponding healthcare service is urgent and indispensable to preserve the life and integrity of the person, in cases of illness or wounds that threaten them directly, or to prevent contagious or infectious diseases, in accordance with Principle 19. On the other hand, in the case of children, article 44 shall apply[112], and in cases of infants under one year of age, article 50 of the Constitution shall apply[113].

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

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

7. For the case of displaced children, the right to basic education until fifteen years of age (article 67, paragraph 3, of the Constitution). The Chamber clarifies that, even though Principle 23 establishes the State duty to provide basic primary education to the displaced population, the scope of the international obligation described therein is broadened by article 67 of the Constitution, by virtue of which education shall be mandatory between five and fifteen years of age, and it must comprise at least one pre-school year and nine years of basic education. (…) the State is bound, at the minimum to secure the provision of a school seat for each displaced child within the age of mandatory education, in a public educational institution. That is to say, the State's minimum duty in regards to the education of displaced children is to secure their access to education, through the provision of the seats that are necessary in public or private entities of the area[114].

8. In regards to the provision of support for self-sufficiency (article 16 of the Constitution) by way of the socio-economic stabilization of persons in conditions of displacement—a State obligation established in Law 387 of 1998 and which can be deduced from a joint reading of the Guiding Principles, in particular Principles 1, 3, 4, 11 and 18-, the Court considers that the State's minimum duty is that of identifying, with the full participation of the interested person, the specific circumstances of his/her individual and family situation, immediate place of origin, particular needs, skills and knowledge, and the possible alternatives for dignified and autonomous subsistence to which he/she can have access in the short and mid term, in order to define his/her concrete possibilities of undertaking a reasonable individual economic stabilization project, of participating in a productive manner in a collective project, or entering

[114] 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.

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 officers, 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 officers 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 officers 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 officers 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 officers 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 officers 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. (…)