

# **Between promise and fulfilment:**

**An assessment of the discrepancy between the Colombian legal framework on internal displacement and the realization of rights**

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## **Abstract**

This dissertation addresses the discrepancy between the Colombian national legislation for Internally Displaced Persons (IDPs) and the actual realization of rights. Colombia possesses one of the world's most advanced IDP laws, covering all stages of displacement, and the authorities have developed a complex set of institutions responsible to enforce the law. However, the implementation of the legislation has proven highly complicated. The Colombian government has been able to achieve important improvements in providing emergency humanitarian assistance to the IDP population, but significantly less in terms of prevention, resettlement and return. This thesis argues that the challenge of internal displacement in Colombia is perceived by the IDP regime as a technical rather than a political problem, which detaches the displacement from its structural and underlying causes and complicates prevention and resettlement.

The causes of the failure of complying with the IDP law are highly complex and must be analysed in relation to political, historical and cultural structures in the Colombian society. The ownership of territory is vital in terms of power and extensive income generating activities, which imply strong interests in access to land, and complicating the prevention of displacement and protection of abandoned land. The relationship between the land owning elite and policy-makers on the one hand and the poor, rural and displaced population on the other hand is characterized by mutual distrust due to historical patterns of oppression and exploitation. The political structures are analysed in light of the current government's discourse on the political situation, which argues that there is no longer a conflict going on in Colombia, but rather isolated terrorist acts. The government claims to have achieved a complete demobilization of the right-wing paramilitary groups, in spite of continued denouncements from displaced persons demonstrating the existence of these groups. In light of James Ferguson's thesis of how a development intervention is depoliticized by focusing on technical solutions, is it here argued that the underlying political causes of internal displacement in Colombia are largely overlooked because of the focus on concrete and measurable solutions.

Liisa Malkki's theoretical concepts of depoliticizing and dehistoricizing are applied to show how the emphasis on humanitarian assistance portrays the displaced population as a 'universalized mass of victims' unable to voice their claims. This further contributes to illustrate how displacement becomes detached from its political and historical context, and hence renders it impossible to grasp the underlying causes of displacement. Anthony Giddens' theory of structuration contributes to explain how these structures limit the possibilities for manoeuvrability, but simultaneously how the same structures may enable a level of power and choice. The actors are furthermore perceived to be capable of influencing the structures, as it is the actors themselves how have defined these structures. Through legal mechanisms ensured by the 1991 constitutional reform and increased organization within the displaced population, the IDPs have improved their possibility to voice their claims and create spaces for communicating with the authorities. This thesis argues that small improvements are made because of an increased space for agency among the displaced population, but that the implementation of crucial sections of the IDP law are still highly complicated because of the emphasis on technical measures which removes the focus away from the underlying political causes of displacement.



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## Acronyms

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AS	Acción Social – Presidential Agency for Social Action and International Cooperation (La Agencia Presidencial para la Acción Social y la Cooperación Internacional)
AUC	United Self-Defense Forces of Colombia (Autodefensas Unidas de Colombia)
CoC	Congress of the Republic of Colombia
CCJ	Colombian Commission of Jurists (Comisión Colombiana de Juristas)
CND	National Coordination of the Displaced (Coordinación nacional de Desplazados)
CODHES	Consultancy for Human Rights and Displacement (La Consultoría para los Derechos Humanos y el Desplazamiento)
CONPES	National Council for Economic and Social Policy (Consejo Nacional de Planificación Económica y Social)
CSPD	Control Commission of Public Policies on Internal Displacement
DP	Office of the Human Rights Ombudsman (Defensoría del Pueblo)
ELN	Army of National Liberation (Ejército de Liberación Nacional)
FARC	Armed Revolutionary Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia)
GoC	Government of the Republic of Colombia
HDR	Human Development Report
ICRC	The International Committee of the Red Cross
IDMC	Internal Displacement Monitoring Centre
IDP	Internally Displaced Person

INCORA	Colombian Institute for Agrarian Reform (Instituto Colombiano para la Reforma Agraria)
IOM	International Organization for Migration
NGO	Non Governmental Organization
NRC	Norwegian Refugee Council
OHCHR	United Nations Office of the High Commissioner for Human Rights
ONIC	National Organization for Indigenous Colombians (Organización Nacional de Indigenas Colombianas)
RUPD	Sole Register for the Displaced Population (Registro Unico de la Población Desplazada)
SAT	Early Warning System (Sistema de Alerta Temprana)
SISDHES	Information System of Forced Displacement and Human Rights (Sistema de Información sobre Desplazamiento Forzado y Derechos Humanos)
SNAIPD	National System of Attention to People Displaced by Violence (Sistema Nacional de Atención Integral a la Población Desplazada por la Violencia)
UAO	Office of Attention and Orientation (Unidad de Atención y Orientación)
UNDP	United Nations Development Programs
UNHCR	United Nations High Commissioner for Refugees



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# 1 Introduction

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This dissertation seeks to explore the discrepancy between Colombia's national legislation on forced internal displacement and the actual implementation of this law. The laws seek to secure the displaced population their rights in all stages of displacement. Millions of internally displaced persons (IDPs) in Colombia are still far from realizing their basic rights and achieving a decent standard of living. Every day the larger cities receive hundreds of forcibly displaced persons who have been victims of armed attacks on their villages or personal death threats. The urban reality which confronts the IDPs is often cruel and inhospitable, and huge challenges have to be dealt with. Dwellings are highly limited and the majority of the displaced persons are obliged to settle in the growing slum areas surrounding basically all Colombian cities. The constructions are simple, and many are located on illegal, occupied ground, which make the IDPs vulnerable to constant threats of eviction. The educational level among IDPs arriving from rural areas is generally low, and as jobs are scarce, the displaced are forced into the informal economy. The ongoing armed conflict complicates the return to the places of origin, and the government has not shown much will to locate new areas for resettlement. Hence, Colombian IDPs are caught in limbo between their homes from which they were forced to flee and the uncertainty of return. The IDPs are to a large degree left to find strategies to cope with the reality as displaced, and struggle for the realization of their rights.

Why is this so when the national government has shown political ability to incorporate in national law one of the most comprehensive IDP legislations in the world? Which social and political structures can be identified as constrains for a genuine improvement of the situation of the forced migrants, and their access to rights as IDPs? Which mechanisms

are created and strategies developed that allow the actors to influence the structures and possibly change their conditions? These are the main questions explored in this thesis.

## **1.1 Research Objectives and Research Questions**

The main aim of this thesis is to explore the discrepancy between the comprehensive Colombian IDP legislation and what is actually implemented. The Colombian IDP legislation has been described as ‘a sophisticated legal framework’ (UNHCR 2007b: 2) and is said to be ‘the most comprehensive structure in the world for IDPs’ (Fagen et al. 2003:16). However, according to a number of international and national actors working on the Colombian IDP challenges, there is a serious gap between the Colombian legal framework for IDPs and the actual law enforcement on the ground (see e.g. CODHES 2006b; IDMC 2006; Kälin 2006b; OHCHR 1999; OHCHR 2007). The most palpable indicator of the gap between law and implementation is the Colombian Constitutional Court’s ruling in 2004, which concluded that the government had failed to enforce the IDP law, to the extent that it amounted to an unconstitutional state of affairs (CC 2004).

It has now been more than a decade since the IDP law was passed in the Colombian Congress and incorporated into national law. Though the legislation covers all stages of displacement, including prevention from being forcibly removed from one’s home, the numbers of Colombian IDPs have seen a continuous rise since the 1990s. Millions of internally displaced are living in poor conditions in the urban area without access to their rights, and few have been subjects to successful resettlement. Given the objective of studying the discrepancy between law and reality, I have chosen to include key actors to represent what can be termed ‘the IDP system’: the Colombian state, the international community, civil society and the displaced people themselves. The aim is to identify what roles the different actors have, and to which extent the IDPs themselves are able to influence the process of realizing their rights. Furthermore, the agency of these actors will be analyzed in relation to social structures which constrain and enable their actions. These structures will be viewed both in a historical perspective and in light of recent

developments in Colombia, and are considered to be constantly negotiated and reproduced by the actors. In order to explore these issues, I have chosen to include two research questions.

**1) What are reasons for the discrepancy between the Colombian IDP law and the realization of IDP rights?**

- Which components of the IDP law are not being implemented?
- Which *structural* constrains may be identified as obstructions to a realization of the IDP rights?
- Which components within the IDP regime are hindering an efficient implementation of the legislation?

This research question is included in order to explore the main issue of this thesis: the gap between law and reality. The aim of the differentiation between the two sub-questions is firstly to illustrate how overreaching historical, cultural and political structures may constrain efficient law enforcement, and secondly which tangible and material elements are hindering realization of rights. The concept ‘IDP regime’ will be used throughout the thesis, and is based on the more widely used ‘refugee regime’ (Van Hear (1998:342) in Horst 2006). IDP regime will in this thesis be applied to describe the national and international body of law, norms, policies and practices which are constructed to address challenges of internal displacement. When referring to ‘the Colombian IDP regime’, as in section 5.5, this obviously excludes the international components of the IDP regime.

**2) What possibilities do the displaced themselves have to actively work for a change and influence the IDP system?**

The concept ‘IDP system’ should in this thesis be understood as the formal and informal network of actors which are related to the internal displacement in Colombia, including state institutions such as the government, Congress and Courts, the civil society, the international community, the media, and the IDPs themselves. This concept also includes

the norms, legal framework and social structures influencing the dynamics and developments of the system. What differentiates it from the *IDP regime* is primarily the inclusion of the IDPs themselves. Employing this term enables an exploration of the interplay between the different actors, how they influence each other, and how actions are both determined by the structures, but also contribute to renegotiation and change of the same structures. The IDP system should be understood in light of Anthony Giddens *structuration theory*, which will be further elaborated in chapter 3.

The reason for including this research question is to shed a light on the *agency* of the IDPs. This is necessary in order to explain whether and how the displaced population is able to voice their opinion and contribute to genuine change and improve their situations. This is done by identifying the legal mechanisms created for the displaced to reach through in the complex bureaucracy, but also how social structures are renegotiated in order to achieve an improved position for claiming their rights.

## **1.2 Internally Displaced Persons**

Internally displaced persons (IDPs) have been forced to flee from their homes because their lives were in danger, but have unlike refugees not crossed an internationally recognized border. Therefore, IDPs are not protected by the 1951 UN Refugee Convention and its 1967 protocol, nor by any other international body. Since IDPs remain in their national territory, the government is the main responsible entity when it comes to providing security, protection and the well-being of the displaced. However, the national authorities are often directly or indirectly also the perpetrators, and thus unwilling or unable to live up to their obligations towards their citizens. The principle of territorial sovereignty is highly complicated in relation to IDP protection (Brun 2005; Mooney 2004). Discussions on the usefulness and consequences of a separate category for IDPs – different from that of refugees or other victims of human rights violation – have been going on among academics and practitioners since internal displacement

became prominent on the international agenda. The question of how to address internal displacement and who is responsible when the state is unable or unwilling to react adequately is also an issue of dispute. I will in the following explain how the category IDP emerged, which definitions are applied, and give a brief account of the debates on labelling and responsibility.

Until the late 1980's internal displacement remained a neglected topic on the international agenda. In the aftermath of the Cold War the number of armed conflicts between states decreased, whereas an increasing amount of internal conflicts emerged. Together with an increasingly restrictive migration control, massive internal displacement was caused in a number of countries worldwide (Brun 2005). Though the global IDP population counts twice the size of the global refugee population, IDPs still receive far less international attention than refugees (IDMC 2006; Kälin 2004). In a report from April 2008, the Internal Displacement Monitoring Centre (IDMC) establishes that the number of IDPs worldwide is steadily increasing, and has now passed the 26 million mark (IDMC 2008b).

In 1992, the UN responded to the increasing humanitarian crisis and the lack of attention to internal displacement by appointing Francis M. Deng to be the first United Nations Secretary-General's Representative on Internally Displaced Persons. The main tasks for the Representative were to develop a normative framework, support the construction of efficient institutional frameworks on the international, regional and national level, encourage research on the topic, and conduct country missions. In 1998, the normative framework of the Guiding Principles of Internal Displacement was published (OHCHR 2008). The Principles give a relatively broad definition of who is to be considered an IDP, outline their rights and the responsibility of the state to seek prevention of displacement, offer protection and assistance when the displacement has occurred, and secure reintegration or resettlement. Though the Principles are not legally binding, they have acquired moral authority and serve as a basis for dialogue between governments and assisting agencies (Cohen 1998; Saha 2000; Vincent 2000). The Guiding Principles describes IDPs as

persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State.

(OHCHR 1998:5)

In the Colombian Law 387 on forced internal displacement, an IDP is defined as follows:

A displaced person is any person who has been forced to migrate within the national territory, abandoning his place of residence or customary economic activities, because his life, physical integrity, personal freedom or safety have been violated or are directly threatened as a result of any of the following situations: internal armed conflict, civil tension and disturbances, general violence, massive Human Rights violations, infringement of International Humanitarian Law, or other circumstances arising from the foregoing situations that drastically disturb or could drastically disturb the public order.

(Congress of the Republic of Colombia, CoC 1997: Law 387, Art. 1)

These two definitions share much of the same components, since Colombian authorities were assisted by the international community, including the UN, when drafting Law 387. The Colombian law does not comprise displacement by natural disasters, but the large majority of IDPs in Colombia are forced to flee as a consequence of violations of human rights or structural power abuse<sup>1</sup>. The 1951 UN definition of a *refugee* shows how this group differs from internal migrants, given that a refugee is identified as a person who:

(...) owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

(UN 1951: Art. 1)

According to these definitions, the main difference between IDPs and refugees is that refugees have crossed an international recognized border, whereas IDPs remain in their country of origin. Though understanding the differentiation between the two groups is

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<sup>1</sup> A more in-depth discussion of the reasons for flight will be presented in Chapter 2.

considered crucial to address problems specific to IDPs, it is – as will be pointed out in the coming sections – not necessary a clear-cut and unproblematic line to draw.

### *1.2.1 Labelling and categorization: IDPs as a separate group?*

The situation for refugees and IDPs are often found to encompass the same fundamental elements, such as the sense of unfamiliarity in the host community and lack of integration and access to labour and education. It has therefore been argued that the two groups should be treated equally and by the same institutional framework, and have access to the same fundamental rights (e.g. Borton et al. 2005). The debate was fuelled in 2000 by the US ambassador to the UN Richard Holbrooke, when arguing that the only distinctions between the refugees and IDPs are bureaucratic and legal, and that the differentiation is negatively affecting millions of IDPs. Holbrooke asserted that the protection regime for IDPs was weak and ineffective, because the responsibility was not unambiguously located within the international community, as is the case for refugees (Holbrooke 2000).

The major relief agencies such as the International Committee of the Red Cross (ICRC) are sceptical towards the idea of separating out IDPs as a special group, because their main concern is to provide humanitarian assistance to those most in need independently of label or legal category. On the hand the UN and the Brookings-Bern Project on Internal Displacement advocate for a separate category for IDPs. They also suggest a collaborative approach between a broad range of UN entities and non-governmental organizations (NGOs) to address different challenges related to IDPs, depending on their expertise and mandates (Cohen 2007). The idea of classifying IDPs as a group different from both refugees and other victims of human rights violations is largely based upon the assertion that IDPs are often considered ‘the enemy’ by their own governments or armed groups within their national territory. IDPs often lack access to basic rights and the experience of becoming ‘outsiders’ in their own society (Cohen 2007). IDPs are by some even considered to be in more precarious need of assistance by the international

community, as there is often an ongoing armed conflict within their national territory (Raper 2003).

As Brun (2003) has pointed out, categorizing IDP as a separate group in society can however also give unintended consequences. At the local level, the label IDP may become different from that originally intended by the humanitarian regime, and lead to social exclusion and challenges of integration. The labelling of IDPs is also complicated because it tends to separate the needs of the displaced persons from their history, cultural context and host community (Stepputat and Sørensen 2001).

### *1.2.2 Whose responsibility?*

Extending the refugee regime to encompass IDPs is especially problematic because of the role of the state and the principle of territorial sovereignty. As noted above, the responsibility of prevention, protection and safe return lies first and foremost with the state, due to the fact that IDPs remain within the borders of their nation state. The doctrine of non-interference in the affairs of other nations as established in the UN Charter (1945: Art.2) is fundamental in international relations, and restrains the possibilities for the international community to act on behalf of IDPs. However, following the developments and changes of the concept of sovereignty, governments are now expected not only to provide their citizens of basic rights, but also to meet obligations from the international community (UN 2005). When the government itself is involved in the forced displacement, it is logically not likely to expect the response and assistance to IDPs to be effective (Barutciski 1998; Vincent 2000). In 2007 the so-called 'cluster approach' was introduced to address this by clarifying the responsibilities for IDPs to operational agencies and making the humanitarian response more effective and accountable. No *one* entity is assigned the responsibility for IDPs within the international community, but by building partnerships between different humanitarian organizations, the cluster approach is considered a cooperative response. It defines the division of labour

between the involved agencies, and can thus be a better partner for governments, local authorities and civil society (Cohen 2007; HR 2008).

Even though it is firmly recognized that imposing the Guiding Principles on any state facing internal displacement is impossible due to the principle of territorial sovereignty, many argue that the Guiding Principles fill a gap in the international humanitarian regime. The Principles should be applied by international agencies and NGOs to monitor and review IDP situations, and an eventual aim is for the affected governments to incorporate them in their legal framework (Kālin 2004). Critical voices have however argued that the Guiding Principles bring virtually nothing new into the already existing body of international human rights law, as the main issues are already covered by legally binding treaties. The IDPs should hence be treated as any other victim of human rights violations, which basically makes the IDP category redundant (see for example Hathaway 2007). Countering this idea, it is argued that when governments are themselves the causes of internal displacement – as is the fact in many cases of displacement – the responsibility can not and should not be left to the state to handle. When authorities lack the capacity, resources or will to address internal displacement, the responsibility should shift to the international community (Cohen 2007).

If we recognize the Guiding Principles as an important set of rights which distinguishes itself from international human rights law because of the nature of its target group, they become essential for addressing challenges related to internal displacement. The Principles are not considered to be legally binding, but rather formulated to serve as assistance to governments and other involved actors faced with challenges of internal displacement, and for the international community to be able to monitor the treatment of IDPs (Vincent 2000). In the Colombian case, IDPs are defined as a separate group among the numerous victims of the armed conflict and by law entitled to a number of rights. Law 387 addresses IDPs specifically, and covers all stages of displacement, much in line with the recommendation outlined in the Principles.

## **1.3 Outline of the thesis**

This dissertation consists of eight basic chapters, where Chapters 2-4 give background in terms of context, methodology and theory, and Chapters 5-7 present the main analytical part. Chapter 2 gives a brief overview of Colombian history, which is meant to give a context to the following discussions. The political history is included because of its relevancy for the analysis, and the background on IDPs in Colombia gives an insight to the current situation, causes of displacement and groups especially vulnerable to displacement. In Chapter 3 I present the theoretical framework applied in this thesis, consisting of three approaches. The structuration theory proposed by Anthony Giddens enables the assessment of how structures and actors are interlinked; the concepts of depoliticizing and dehistoricizing the IDP regime allows an analysis of the structures, and the rights-based approach shed a light to the agency of the internally displaced persons. The chapter closes with an attempt to bind the three theoretical approaches together to an analytical framework, explaining how this is operationalized in the thesis. Chapter 4 describes methodology employed by giving a brief introduction to qualitative methodology, the fieldwork experience and the concrete methods applied. The first part of the chapter seeks to explain how these methods are appropriate for exploring the research questions in light of the chosen theoretical framework. I continue by discussing some of the challenges met in the field in terms of ethical considerations, power relations, and access to informants. The chapter is concluded by presenting the process of analysis.

Chapter 5 gives an overview of the Colombian IDP legislation, including the essential parts of law 387 from 1997 and how the authorities have built up a comprehensive set of institutions to address internal displacement. Lastly, I present an analysis of which parts of the law are considered relatively successfully implemented, and which stages of displacement are still far from being efficiently realized. Chapter 5 concludes that prevention, return and resettlement are the areas where Colombian authorities fail to comply with the IDP law. Chapter 6 gives an overview of the key actors within the IDP system: the Colombian state, the civil society and the internally displaced persons. The chapter is concluded with an attempt to show the relations between these different actors

and how this influences the lack of efficient implementation of the legislation. Chapter 7 is the main analytical chapter, where structural and concrete obstacles for implementing law 387 are presented. The second part of this chapter aims to demonstrate the positive developments in terms of IDP agency and legal mechanisms which are forcing the government to comply with the law. Chapter 8 aims to summarize and bind together the analysis made throughout the second part of the dissertation: Chapters 5-7. This last chapter is an attempt at reviewing the conclusions and more explicitly answering the research questions.

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## 2 Background

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Colombia has historically been marked by political violence with brutal consequences for the civil population. After the secession from Spain in the early 19<sup>th</sup> century and the independence leader Simón Bolívar's failure to unify Latin America to one republic, the violent struggles between the two traditional political parties, the Conservatives and the Liberals, marked the history. Today, Colombia is associated with cocaine smuggling, guerrilla warfare, violence and internal conflict. The history and current political situation, including narcotics, armed groups and violence, are crucial to take into consideration in order to gain further insight into the IDP situation and the reasons for the gap between legislation and reality.

In this chapter, I present an introduction to the Colombian history, with an emphasis on the newer political developments. It is vital to have a certain insight to the history and political context in order to understand how massive internal displacement may occur, who should be considered responsible, and what could be done to relieve the situation. Furthermore, a brief overview of the Colombian IDP situation is provided. The number of IDPs in Colombia is highly disputed, and the different estimates will be presented in this chapter. The causes of displacement are extremely complex, and different researchers, civil society representatives and authorities provide varying explanations. The chapter closes with a brief overview of the causes of forced migration and shows who the victims of forced displacement generally are.



*The Republic of Colombia (CIA 2001)*

## 2.1 Colombia: A brief historical overview

The current political and social situation in Colombia is characterized by a protracted internal conflict counting a number of armed actors, including paramilitaries, guerrillas, and the national army. The conflict has been going on for nearly half a century, making civilians targets for brutal violence and forcing people to abandon their homes. Cocaine production and trafficking are fuelling the conflict, and a weak and limited state administration has not proved able to control the situation (Zuluaga 2003). Colombia's history has been marked by both flux and stagnation. After the independence from Spain in 1810, the Colombian state emerged as an independent republic, but the country continued to be ruled by a powerful oligarchy mostly Spanish of descent. The new state was from the very start characterized by weak institutions and lack of territorial consolidation. Large areas of Colombia still remain outside the control of the authorities. The ruling oligarchy took advantage of the weak institutional structures, and found no interest in trying to strengthen the central power (Palacios and Safford 2002; UNDP 2003).

The two major political parties, the Liberals and the Conservatives, were formed by the landowning elites in the 1840s. The fight for power has been constant, a struggle which culminated in the period *la Violencia* ('the Violence'), lasting from approximately 1948 to 1958. Broad segments of the population, especially peasants, were involved in systematic brutality against their adversaries. *La Violencia* ended with a power sharing system between the two parties, the so-called *Frente Nacional* period (National Front). This brought relative peace to the country, but simultaneously repressed all political activity which remained outside their scope. *Frente Nacional* represented a continuation of the hegemony of the political and economic elites. During the 1960's, various guerrilla groups were created, representing a conscious effort to retrieve politics and oppose the ruling elite. FARC (Fuerzas Armadas Revolucionarias de Colombia - Revolutionary Armed Forces of Colombia), which is said to be the largest and best organized guerrilla in Latin America today, was initiated by peasants, while ELN (Ejercito de Liberación Nacional – The National Liberation Army) was organized by students and intellectuals

inspired by the Cuban revolution. These are the two remaining guerrilla groups in Colombia today. Partly due to a weak Colombian state, paramilitary organizations emerged as the right-wing counterinsurgency, aiming to fight back the guerrillas and protect rich landowners and drug lords. In 1995, the paramilitaries formed the umbrella organization AUC (Autodefensas Unidas de Colombia - United Self-defence Forces of Colombia). The cocaine production was fundamentally important for financing the paramilitaries, and has later on become economically crucial for the guerrilla groups as well (IDMC 2006; Sanín Gutierrez 2006; Tickner 2007; UCDP 2007; UN 2004b).

After a failure of the government to come to peace agreements with FARC in 2002, presidential elections led Álvaro Uribe Vélez to the power on a 'get tough' platform, determined to fight 'outlaws' on both the political left and right wing. One of the main political issues during Uribe's election campaign both in 2002 and the 2006 re-election was the emphasis on security measures through the large-scale Democratic Security Policy. Essentially, this program is based on the aim to recuperate territory dominated by illegal armed groups. To achieve this, the authorities have decided to increase the number of troops of the state security forces, in addition to involve the civil society by a network of informants and peasant soldiers. The Uribe administration has been accused of violating international humanitarian law by including the civilians in such an informant network. The current administration is emphasizing military means to consolidate the Colombian territory and achieve peace. This strategy is largely supported by the US administration, which contributes with large-scale military and economic support in order to fight the insurgency groups and combat illicit cocaine production (Arnson 2007b; García-Peña 2007).

The government has initiated negotiations with the paramilitaries and achieved significant demobilization of the AUC. This process has been applauded by many, but criticized by others. Close ties between the paramilitaries and several state officers, among them the President himself, have been investigated (Arnson 2007a), thus implying that the authorities were doing 'peace negotiations with themselves' (Mason 2003; Sanín Gutierrez 2006). The disclosure of connections between state officers and paramilitaries

has escalated throughout 2008, making the media and general public label the scandal ‘parapolitica’. According to the Colombian weekly *Semana*, (26 April 2008) 68 members of Congress were under investigation and 31 arrested only in April 2008.

During October and November 2007 dialogues with the FARC guerrilla were nearly established in cooperation with the Venezuelan president Hugo Chávez. However, the dialogues were cancelled in late November partly due to disagreements between the presidents of the two countries (El Espectador 2007). Throughout the first months of 2008, the political situation has been marked by a continuance of the military strategy against the insurgency groups. The government has most likely achieved a slight weakening of FARC through attacks and by killing central leaders of the guerrilla organization. Furthermore, a few hostages have been released by the guerrilla in this period. Nonetheless, the conflict has escalated further, armed attacks on civilians continue, and more people are being displaced daily.

Colombia is a country of instability and stagnation, and although the country is said to be the oldest democracy in Latin America, the inhabitants have hardly ever witnessed peace or well-functioning institutions. The level of education has seen a steady increase during the last decades, but Colombia still faces severe challenges: half the population find themselves below the poverty line (AS 2006), while more than 20 percent of the population lives in extreme poverty (ECLAC 2006). The severely unequal land distribution is still the heart of social problems, and there has never been any genuine attempt to achieve a more egalitarian system (IDMC 2006). One of the most serious consequences of the instability in Colombia is the forced internal displacement.

## **2.2 IDPs in Colombia**

Having one of the largest IDP populations in the world (IDMC 2006; 2007c), the situation in Colombia is said to be the worst humanitarian crisis in the Western hemisphere (UN 2004a). The numbers of displaced persons in Colombia is an issue of

great dispute, and varies largely depending on who provides the numbers (see figure 1 and 2). The Colombian government estimates that around 2 million persons have been forced to flee within the country between 1995 and 2007 (AS 2007b). This calculation includes only those displaced within the last 12 years, and it excludes persons displaced due to fumigation caused in eradication of the illicit cocaine plantations and intra urban displacement. Contradicting the government, the Consultancy of Displacement and Human Rights (CODHES) estimates that more than 4 million Colombians have been forced to migrate from their homes and should be considered IDPs. CODHES started the registration of internally displaced persons in 1985, and is thus including people who were forced to flee within the ten-years period before the government started its official registration (CODHES 2006b). A recent report from IDMC now estimates that close to 4 million Colombians are seeking refuge within their own country, which to a large extent supports the CODHES figures (IDMC 2008b).

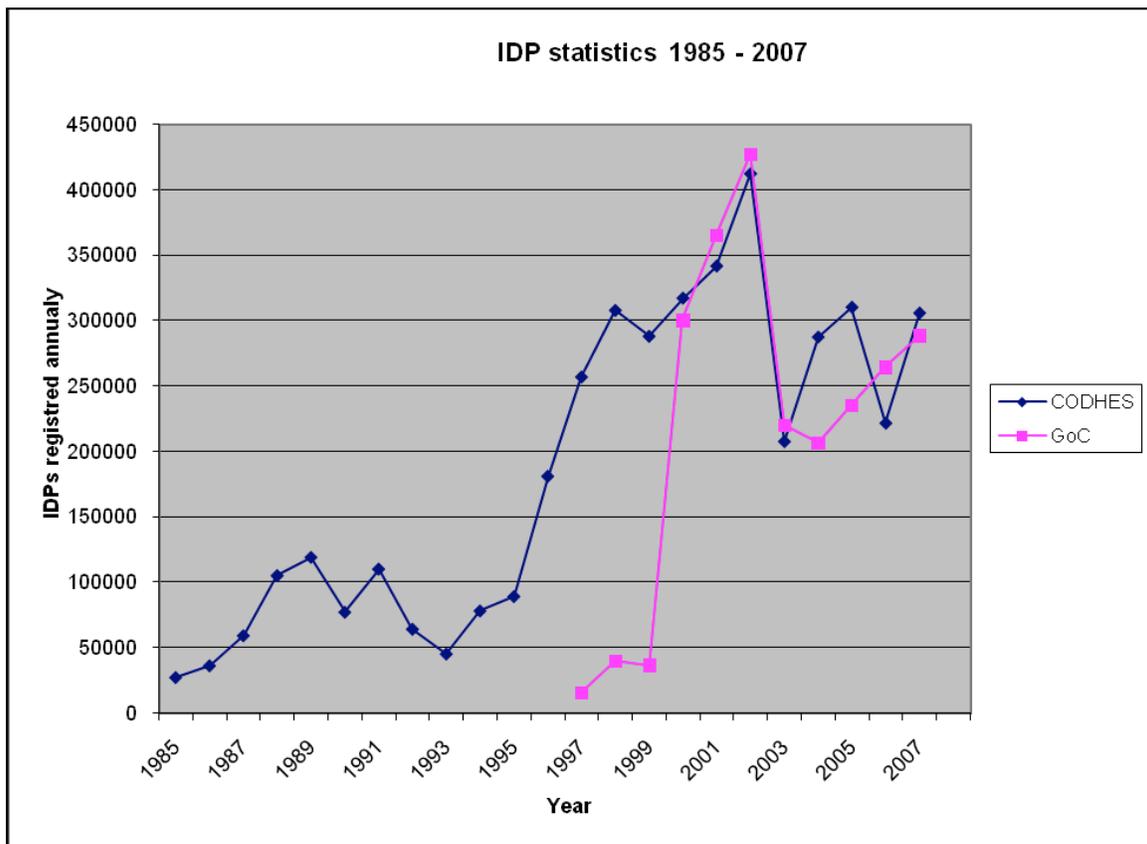
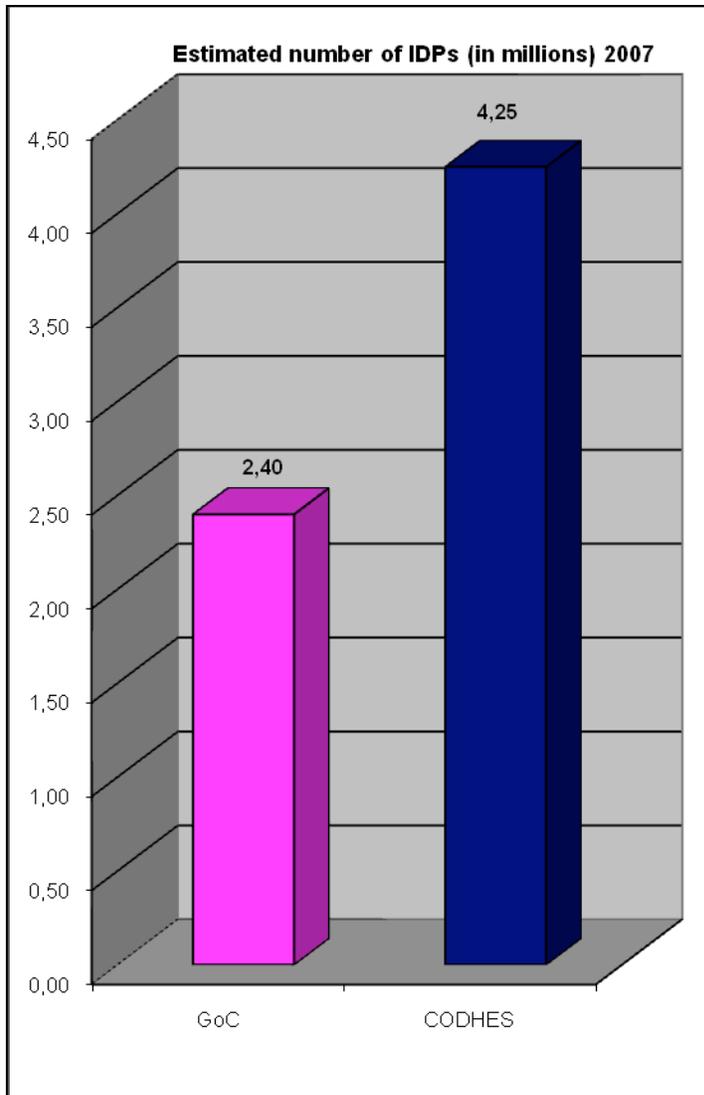


Figure 1: Based on data from CODHES (2007) and Acción Social/GoC (AS 2008a)



*Figure 2: The estimates of the total IDP population in Colombia vary significantly according to different sources. Based on statistics from CODHES (2007) and Acción Social/ GoC (2008a).*

In the late 1980's while internal displacement emerged as an issue on the international agenda, Colombian authorities still did not recognize the increasing problems of forced migration within their territory. The Colombian government has continuously refused to have any responsibility for the armed conflict and its violent consequences, and as the displacement was considered to be an outcome of violence from illegal armed groups, IDPs were not regarded as the responsibility of the state. However, during the 1990's, pressure from the international community, national NGOs and the Catholic Church

forced the government, led by President Samper, to take action and acknowledge the seriousness of the situation. In 1997, the Colombian Congress passed Law 387, which included all stages of displacement: prevention, humanitarian aid, assistance to achieve economic stability, access to basic services and resettlement. Law 387 is largely based on the above mentioned UN Guiding Principles on Internal Displacement. The formulation and passage of the law gave juridical basis to subsequent national action on behalf on internal displacement, and the National Plan for Integral Attention of Displaced Persons (SNAIPD) now constitutes the institutional framework for IDP protection. Later on, the legislation has been incorporated into the Colombian Constitution (Fagen et al. 2003; IDMC 2007c; Obregón and Stavropoulou 1998). The development of the legal framework and its different components and actors will be further elaborated in chapter 5.

### *2.2.1 Who are the displaced in Colombia?*

Within the displaced population of nearly 4 million persons, a number of groups may be identified, from different ethnicities and spheres of society. The great majority of the IDPs are *campesinos*, poor peasants from rural areas, with a relatively low degree of education and limited modes of income. The more than 80 different groups of indigenous people are also highly exposed to the risk of displacement, and according to the UNHCR (2005) these groups are now in danger of disappearing due to the armed conflict. While the indigenous people constitute only 2 to 3 percent of the entire Colombian population, they are estimated to make up 8 percent of the displaced. The communities composed by descendants of African slaves, commonly referred to as Afro-Colombians, also constitute a disproportional share of the IDPs. While they represent merely 11 percent of the overall Colombian population, they amount to 18 percent of the internally displaced. More than 70 percent of the displaced are women, and nearly half the IDP population are children under the age of 18 (Fagen et al. 2003). Additionally, dissident voices, such as journalists or students, have long been targets for political violence, and have at many instances been forced to flee their homes in order to escape threats, avoid harassment, and protect their families.

### *2.2.2 Causes of displacement*

Generally, the forced displacement in Colombia has been explained by the severe and extensive political violence. However, this is an extremely complex phenomenon, with multiple factors related to social, economic and political conflicts in the country. In the first phases of the conflict, forced displacement is assumed to have been mainly unintended side effect of confrontations between armed groups. At later stages however, displacement has been explained as a deliberate way of seizing agricultural land from peasants, small farmers and indigenous people. Armed actors are seeking to consolidate and control their territory in order to establish cocaine production or illegal arms trafficking. (Forero 2003; Ibáñez and Moya 2007; IDMC 2006).

As Ibáñez and Vélez (2008) points out, it is far too simplistic to explain the forced displacement in Colombia as a random side effect of the clashes between armed groups. They emphasize the idea of illicit armed actors using attacks on civilians as a deliberate strategy not only to seize and control land, but also to weaken the enemy. What complicates the Colombian conflict and violence even more, however, is that the government itself must be considered a perpetrator. The state is responsible not only directly through the army's attacks on and assassinations of civilians, but also by its number of politicians closely related to armed, illicit groups. Moreover, the political elite and decision makers are themselves most often powerful land owners, with no interest in redistribution of land. The current IDP situation in Colombia must be analysed in the context of a historical development, seeing the violence of the armed conflict as continuation of expansion of the land owning elites, and thus a political and structural problem. This will be further discussed in the next chapters.

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## 3 Theoretical framework

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So far, I have showed how the current political situation in Colombia could be seen in a historical light, and why and how millions of Colombians have been forced to flee within their own country. This chapter will present the theoretical framework within which the main arguments of the thesis are embedded. The framework consists of three theoretical approaches. The debates on the relative significance of social structures and agency had a breakthrough in the early 1980s by Antony Giddens' *structuration theory*, where he argues for a reconciliation of the two analytical levels. In the Colombian IDP setting, the juridical and social structures may be both enabling and constraining for the involved actors, and there are essential differences of interest of renegotiation and changing the structures. I argue that the political, and traditionally landowning, elite have interests in conserving the structures so as to maintain status quo. This is conducted by creating an image of a depoliticized and dehistoricized situation, which supposed remedy is humanitarian assistance and access to basic services. The theorizing of the *depoliticizing* of humanitarian catastrophes contributes to shed a light on the Colombian internal displacement. The governmental discourse and rejection of an armed conflict, and the implementing agents' focus on quantifiable and concrete measures, rather than seeking structural change and addressing the underlying causes of displacement illustrate how the IDP situation is stripped from political meaning and historical background. It is in this context interesting to address the actor-oriented perspective: how do the displaced and their organizations manoeuvre within the political landscape? Which juridical and political mechanisms exist for the IDPs to approach the realization of their fundamental rights? The *rights-based approach* is applied to assess the agents' possibilities when attempting to go beyond these structures, and to emphasize the importance of viewing their situation through the glasses of basic human rights and their rights as IDPs according to Colombian national law.

### 3.1 Structure and Agency

Throughout the 20<sup>th</sup> century the development discourse was dominated by the ‘grand theories’ of modernization and dependency, which main indicator for development has been economic growth. In the 1980’s the notions of neo-liberalism became dominate, reinforcing the focus of economic factors and the confidence on market forces (Haggis and Schech 2002; Pieterse 2001). Parallel to the emergence of these neo liberalistic ideas, and as a reaction to the historical emphasis on the macro level, *alternative development* theories contributed to turn the focus towards the social and community level. Rather than being one consistent paradigm, they can be said to be a bundle of approaches, including feminism, existentialism, phenomenology and a number of other theoretical concepts and ideas, emphasizing the important role of the conscious agent or individual. One of the major objections was the grand theories’ focus on structural macroeconomic change constituting society, reducing individual actors to mere spectators of their own lives and development. The classical aim of modernization and ‘catching up’ with the more ‘developed nations’ was questioned, and was no longer an obvious objective. Alternative theories have been concerned with introducing alternative practices and redefining the goals of development, and are people-centred and participatory by nature. This implies that these theories recognize people’s own capacity to effect social change, and introduce a way of thinking and acting on development *from below* (Friedman 1992; Pieterse 2001).

Today, alternative development theories have to a certain degree been absorbed in the mainstream development discourse, reflected for example in the Human Development Report (HDR) from 2006 where development now is said to be about “the realization of potential. It is about what people can do and what they can become — their capabilities — and about the freedom they have to exercise real choices in their lives” (UNDP 2006a:2). Moreover, Amartya Sen with his concepts of *entitlement* and *capability* is one of the most important advocates for an alternative approach to mainstream development thinking. Sen is given a special thanks in the foreword of the HDR for his important contributions over years in shaping the evolution of these annual UN reports on

development (ibid.). This illustrates the important impact gained by the bottom-up approach. Alternative development theories have however failed to develop a clear perspective on relations between the micro and macro level (Pieterse 2001). Hence, the so-called ‘structure/agency – debate’ re-emerged in the 1980s, as a reaction and alternative to the major paradigms’ failure to see the interplay and mutual influence between individual actions and social structures (Chouinard 1996; Pieterse 2001).

### *3.1.1 Theory of Structuration*

The debates about the relative significance of human agency and the societal structures have been going on in academia for centuries (Chouinard 1996), and were further developed by the British sociologist Anthony Giddens in the 1980s. He identified the central problem within modern social theory to be the conceptualization of ‘agency’ and ‘structure’ as a dichotomy. This way of analyzing individual action and social structures as two opposite and incompatible levels has been a dominating issue within the whole field of humanities and social sciences. Theoretical approaches such as structuralism and functionalism have inclined towards objectivism, strongly emphasizing the pre-eminence of the structures over the human agency, and treating ‘structure’ as the establishing parameter within which the agent was able to act. As this social whole has been conceived as having the primacy over action, the constraining qualities of structure are strongly accentuated. On the other hand, the human-centred schools of thought such as hermeneutics have contributed to the opposite way of theorizing the constitution of society. Basically, this implies interpreting the social structures to be the outcome of the sum of individual actions (Giddens 1984).

The chronic failure to reconcile these two analytical levels is exactly what Giddens seeks to address. The structuration theory is a way of conceptualizing social development and the constitution of society, which takes both societal structures and human agency into consideration. It may be defined as ‘an approach to social theory concerned with the intersection between knowledgeable and capable social agents and the wider social

systems and structures in which they are implicated' (Gregory 1993: 600). Thus, structuration theory views society neither as existing independently of human activity, nor as being a mere product of it. The concepts of structure and agency refer to 'the basic organizational features of particular societies and people's capacity to act within this social context' (Chouinard 1996:384). More specifically in the structuration theory, the agents are knowledgeable and capable subjects, conscious of their actions (Dyck and Kearns 2006; Wolfel 2003).

Agency and structure are thus not treated as two independently given sets of phenomena, but rather assumed to be mutually influencing each other. Structures should be regarded as 'rules and resources', which only exist temporally when 'presented' by actors, in which moments of interaction the structures are reproduced and transformed. Hence, they are not perceived as only constraining on human actions, but may also be enabling, as opposed to how the structuralists viewed the constitution of social life. Structure is not something external to the agents, but rather internal to their actions. These ideas were formalized into the model of duality, as an alternative to the traditional dualism (Dyck and Kearns 2006; Giddens 1984). The *duality of structure* therefore implies that there is a recursive process in society, in which 'structure is both medium and outcome of the reproduction of practices' (Giddens 1981:5). Through this theorizing, the structuration theory urges for a contextuality of social life (Dyck and Kearns 2006).

Various studies have proved the importance of analyzing migration within the framework of the structuration theory (e.g. Healey 2006; Richmond 2003; Tammaru and Sjöberg 1999; Wolfel 2003). By exploring the limiting structures which are defining what is possible or even acceptable for the refugees or migrating population on the one hand and the actions of capable and conscious individuals on the other hand, the researcher becomes capable of focusing upon both the macro and the micro level. When analyzing the duality of structure, how human action produce and reproduce the structures, one is able to explore the phenomenon of migration in a more holistic manner. According to Wolfel (2003) the patterns of migration are changing as the structures of our societies are changing and thus create a need for new ways for explaining migration. A theory which

is able to grasp both the societal structures and the actions of the individuals is interesting in the context of research on forced migration.

Actors in all spheres of society are perceived to have an impact on their own lives and situations. Though social structures are essential in terms of determining within which social systems and opportunities we are able to manoeuvre, the actor is also a part of establishing the structures. Giddens defines agency as ‘events of which an individual is the perpetrator, in the sense that the individual could, at any phase in a given sequence of conduct, have acted differently’ (Giddens 1984:9). When an actor is labelled a certain way however, such as an ‘internally displaced person’, the category may constrain agency, as illustrated in Chapter 1. The following section is intended to illustrate how the theorizing on depoliticizing and dehistoricizing may contribute to shed a light on this point.

### **3.2 Depoliticizing displacement, conserving structures**

The image of refugees or internally displaced, when presented by assisting agencies, donors or governments, is not uncommonly characterized by helplessness, suffering and loss. This kind of presentation creates an idea of the displaced as a universal mass of victims, abstracted from the specific political and historical context which caused the displacement (Rajaram 2002). The motives providing emergency aid, relief and development projects are perceived in terms of humanitarianism: it is the moral obligation of the international community and governments to offer their help to those conceptualized as victims of war, conflict or natural disasters. The moral responsibility and possibility to act should by no means be underestimated or considered discarded, yet the importance of analyzing possible unintended consequences is crucial. By labelling refugees, IDPs or others included in an aid project as ‘vulnerable victims’, the assisting agencies ignore the historical and political dimensions of the situation.

James Ferguson (1994) demonstrates an interesting point in this context when analyzing a World Bank report on the situation in Lesotho, where technical assistance and economic aid is offered as the solution to highly complex problems. He shows how the ‘development industry’ has consolidated its discourse on the ‘less developed countries’ by portraying the beneficiaries of aid as victims of concrete and measurable challenges, such as lack of infrastructure or access to markets. Ferguson argues that when the assisting agencies are uncompromisingly reducing poverty to a technical problem and offering technical solutions to oppressed and powerless people, the ‘development industry’ becomes the main mean through which poverty is depoliticized. Ferguson argues that the actual causes of poverty in Lesotho must be analyzed in connection to political structures within and in relation to South Africa. The ability to understand the structural circumstances is however lost because of the limitations of the development discourse.

Humanitarian interventions tend to be perceived as the opposite of political ones, portraying the former to be operating separate from any political or cultural context. Liisa Malkki (1996) argues that when this ‘dichotomy’ is taken for granted, one of the consequences may be the picturing of the recipients of aid – in this case refugees – as a homogenous mass; a universalizing and conventionalized image where the ‘victims’ themselves are silenced. This figuration is also reflected in the media, which to a large degree seem to have adopted the discourse of the refugee regime. When categorized as refugees, they are assigned certain characteristics as a group. Helplessness, horror and dependency are common features in media coverage of refugees. The standardized image of the powerless refugee strips the person from any individuality, personal history or culture, leaving the display of ‘bare, raw humanity’. In this context, the refugees as a category are further silenced. Narratives coming directly from a person forced to seek refuge is a rare sight: refugees are muted and their accounts are disqualified, while national and international agencies and ‘experts’ are entitled the production of reality (Horst 2006).

The representation of the helpless victim in the imagined 'sea of humanity' may create compassion and a feeling of horror, which in itself is a decent response and certainly better than not reacting at all. The problem however is that this image also encompasses the idea of a universalized condition and a homogenous mass of people and conceals the fact that 'established practices of humanitarian representations and interventions are not timeless, unchangeable, or in any way absolute' (Malkki 1996:389), but rather embedded in specific historical, political and cultural context.

### **3.3 Rights-based Approach**

What is today termed the 'rights-based approach to development' has a relatively recent history in the international development discourse, emerging from the post- Cold war epoch in the early 1990s, but has since then gained attention and is constantly more important within the development cooperation and discourse. The approach was a reaction to the so-called *needs-based* approach, seeking to give a more ample and broader definition of rights (Nyamu-Musembi and Cornwall 2004). The rights-based inclusion in the development discourse will here be considered as an essential contribution to the focus of basic rights, and as an important tool for any individual to claim their rights.

Ever since the Universal Declaration of Human Rights was proclaimed in 1948, socioeconomic development has been regarded as part of the human rights agenda. The rights-based approach has been defined in various ways, and though all agree on some core elements, the definitions have been differing from merely including standards and principles of human rights to a complete paradigm shift within development studies (Johnston et al. 2000; Mikkelsen 2005).

The UN Office of the High Commissioner of Human Rights (OHCHR) describes the rights-based approach as a

conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. (...). Mere charity is not enough from a human rights perspective. Under a human rights-based approach, the plans, policies and processes of development are anchored in a system of rights and corresponding obligations established by international law. This helps to promote the sustainability of development work, empowering people themselves— especially the most marginalized—to participate in policy formulation and hold accountable those who have a duty to act.

(OHCHR 2006:15)

Human rights law recognizes three groups of actors with certain responsibility and rights: the *rights holders* include all human beings, who hold the same rights equally; *duty-bearers* are nation states and other authorities, which are obliged to ensure protection and realize human rights, and; *other actors*, comprising among others NGOs, corporations and the UN, and which have a moral obligation to respect and promote human rights. The core of rights-based approach fundamentally encompasses two main strategies: *strengthening the duty-bearers* in order for them to be able to fulfil their obligations, and *empowering the right-holders* to be conscious of and claiming their rights (Mikkelsen 2005). For some of those involved in promoting a rights-based approach, their arguments have been grounded in the usefulness of a normative framework based in international recognized conventions, which provides a more powerful approach to development

### **3.4 Power structures and political manoeuvrability**

#### **- An analytical framework**

The Colombian law of internal displacement covers all stages of displacement, but crucial issues – especially prevention of displacement and resettlement – are still far from being realized as rights. In order to explore this discrepancy it is essential to include and analyze both the *structures* and the *agency* of the individuals within the IDP system. It is crucial to recognize on the one hand the possible unintended political consequences of a humanitarian intervention, and on the other hand, how such operations may become a smokescreen and remove the focus away from deep-rooted political issues. When

categorizing a certain group of society, such as IDPs, this may both lead to unintended consequences such as social exclusion and lack of possibilities to political participation, and it may remove the focus away from underlying causes of displacement. On the other hand, the label IDP is necessary in order to recognize internally displaced persons as a group in need of special attention and protection.

The concept 'structures' in this context encompasses two levels: on the one hand the overreaching political, historical and cultural structures which have developed over time and may be interpreted differently by different people. On the other hand, the 'structures' in this thesis include the legal structures, that is, the concrete IDP law and its corresponding institutions, which also influence the manoeuvrability of the IDPs. Simultaneously, it is crucial to acknowledge the political and historical context influencing any given situation in order to understand why different actors act as they do and how overreaching structures have an impact on specific conditions. It is in this perspective important to perceive the involved parties as conscious actors who are able to influence their own situation. The actors should not be viewed as passive victims, but rather capable right-holders in relation to which the duty-bearers are responsible to ensure rights.

Ferguson's analysis spins around the assertion that the outcome of development aid often differs from its original intentions. The side-effects of a development project often appear to be highly political, covered by the image of a neutral aid operation to which no one would object. This discrepancy between the stated aim of a project and the actual outcome illustrates how the underlying value of development aid is depoliticized, and unable to grasp the root causes of poverty. In the Colombian setting, the government has achieved important improvements in the areas of emergency aid to the displaced population, but far less is accomplished in terms of prevention of displacement and in return to the place of origin. The massive focus on the humanitarian side of the challenges of internal displacement removes the focus away from politically sensitive issues. Liisa Malkki's theorizing of depoliticizing and dehistoricizing of the refugee regime contributes further to shed a light on how the IDP regime addresses the massive

displacement in Colombia. The causes of displacement are highly complex and the interests of owning land complicate return and resettlement. When failing to take the historical and political structures into consideration, the image of the Colombian IDP situation becomes unbalanced and hinders the implementation of all stages of the IDP law. Ferguson's theorizing of the gap between intention and outcome and Malkkis' concepts of depoliticizing and dehistoricizing of the refugee situation enable us to analyze the structures of the Colombian IDP situation.

Assessing the structures however, does not complete the assessment of the Colombian IDP system and the difficulties of implementing the law. In order to understand the role of the internally displaced and their possibilities to act and react, the rights-based approach proves useful. Much in line with Malkkis ideas of how the image of a 'helpless mass of refugees' strips individuals of historical background and meaning, the rights-based approach is a step towards discarding the need-based approach where individuals are perceived in light of what kind of needs they have and how these can be assisted by the outside world. The idea of charity undermines the understanding of how persons are capable of acting and influencing their own situation. The rights-based approach allows an understanding of the Colombian IDPs as individuals who are entitled to a certain set of rights and who themselves are capable of influencing their situation. By including the responsibility of the duty-bearers, the rights-based approach enables a focus on the IDP regime and how the actors comprising these structures also should be considered capable individuals who must be held accountable to adapt systems which permit the displaced to gain access to their rights.

The two analytical levels structure and agency should however not be perceived separately. Giddens structuration theory is applied in order to understand how the two spheres are interlinked. The possibilities of action for the IDP population in Colombia are to a large degree determined by the existing political and historical structures of the society, and by the legal structures of the IDP law. These structures are considered to be constructed both by the IDP regime and the IDPs themselves, and are constantly negotiated and renegotiated by all actors involved. The displaced should therefore be

regarded as capable of influencing and changing the structures, while the structures to a certain degree limit the space within which the IDPs are acting.

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## 4 The study

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In this I seek to present how I have proceeded to study the gap between IDP law and reality in Colombia in light of the theories and analytical framework presented in Chapter 3. My methodological approach comprises qualitative methods applied during fieldwork in Colombia and the use of a wide range of secondary sources.

This chapter is built up by two parts. In the first part, I will present the methodology applied in the dissertation, including my fieldwork experience and the concrete methods used during fieldwork. In the second part, I will give an overview of what I consider to be the most important reflections on my fieldwork and data collection process, and discuss the challenges I met in terms of ethics, accessing informants and handling uneven power relations in the field. Lastly, I will show how I analyzed the data collected.

## **4.1 Methodological approach**

### *4.1.1 Conducting Fieldwork*

Fieldwork for this dissertation was conducted from mid June until mid August 2007 in Bogotá, Colombia. The fieldwork was based on qualitative methodologies, using interviews and observation as the core methods. During the two months of fieldwork I conducted 14 semi-structured interviews and one group interview, in addition to having a number of informal conversations with displaced persons. Given the importance of secondary sources in this study, I also gathered written material such as reports and books. Observations were also a crucial part of my fieldwork. A conference on the ‘10 years of Law 387’ was arranged in July by the government, including IDP communities, international organizations, NGOs and state officers. By participating in this conference, I was able to observe the relations between the different actors and assess the tensions between them. The observations have added crucial insights to my analysis of the situation, which could not have been reached by the interviews alone. On two accounts I also visited one of the Units of Attention and Orientation (Unidad de Atención y Orientación, UAO). This is the office where IDPs first arrive to register and receive information on their rights. The visits to the UAOs further contributed to an understanding of the interplay between IDPs and representatives from the state.

The period chosen for conducting the fieldwork was very timely considering the focus of politicians, media and the general public. On a number of occasions kidnappings and assassinations of politicians and harassment of trade union workers and indigenous people by armed groups were given extensive media coverage in newspapers and television. This led to a large scale public debate on humanitarian exchange agreements, peace negotiations and the governmental effort of stabilizing the country and reducing the violence. Moreover, as 2007 marked the 10 years anniversary of the national IDP legislation, the year 2007 was proclaimed ‘The year of the internally displaced persons’

by the UNHCR. In this occasion, there were several events arranged and a general focus on the situation for the internally displaced persons, which contributed valuably to my fieldwork.

#### *4.1.2 Qualitative research*

Qualitative methodologies are characterized by an in-depth, intensive approach, and seek subjective understanding of the world. This is derived from the epistemological idea of the nature of social reality: there is no ‘real’ world that exists independently from the relationship of the researchers and their subjects. Researchers using qualitative methodologies are conscious of the idea of the relational construction of knowledge between researcher and the research subject, which also implies an inter-subjective encounter where researchers and the study become part of people’s lives. The researcher has to be conscious of her behaviour, but at the same time be aware that she cannot always know all the consequences of her actions (Kobayashi 2001; Smith 2001). Qualitative researchers have applied different models and perspectives. Qualitative methodology should not be perceived as a field strictly separate from quantitative research, as it is far from a homogenous category and may include a variety of methods (Silverman 2005).

When exploring the reasons for the gap between the IDP legislation and implementation, this has been conducted on the basic view that all included actors are conscious subjects who are able to influence the course of the development, but in light of the structures which may constrain and enable these actions. It is important to recognize that this study, with its research questions, selection of informants, angle and perspective, is a product of certain choices I have made through the process, and that my cultural background and previous experiences contribute to the construction of the thesis. Though always striving for a balanced, comprehensive and nuanced portrait of the IDP situation and the process of implementing the legislation, qualitative research is based on the acknowledgement that all research will to a certain extent be influenced by the researcher.

According to Winchester (2000), two of the most important concepts in qualitative research are *structures* and *individual behaviour*. As described in chapter 3, Anthony Giddens (1984) argues that it is impossible to separate the two levels, as the structure is shaped by the individuals and the individuals are a part of the same structures. Through conducting interviews, the intent was to see how IDPs perceived their possibility to change their situation, and how they as individuals were enabled by structural mechanisms to influence and transform the system, and hence obtain access to rights. Observations and reflections during interviews have contributed to gaining an understanding of the structural premises of the IDP system, and possible constraints for effective implementation of the legislation.

#### *4.1.3 Primary data: methods applied*

In order to search for answers to my research questions, I have used different qualitative research methods in addition to a variety of secondary sources. The main research methods during my fieldwork were *interviews* and *observation*. I will in the following present these methods, their weaknesses and strengths. It will also be discussed why these have been considered relevant for the chosen theoretical framework, and how I have used them to answer my research questions. I will further give an account of the main secondary sources used, and the relevancy of these.

#### **Interview**

Interviewing is the method ‘par excellence’ in development studies, and qualitative interviews particularly. The objective of the semi-structured interview is to obtain a relatively flexible conversation with the interviewee, with possibilities to go deeper into the issues which there and then appear to be interesting. Some of the questions and main topics are predetermined by the researcher, but the characteristics of a semi-structured interview are its openness to changes of sequence and forms of question, and the

possibility of posing follow-up questions (Kvale 1996; Mikkelsen 2005). Before leaving for the fieldwork, two different interview guides were prepared<sup>2</sup>: one to be used when meeting IDPs and the other in relation to interviews with state officers and NGOs. These were essentially structured the same way, including three to four main topics. The interview guide employed in interviews with IDPs was relatively open, and modified according to the different persons I talked to. The topics included were for instance the person's or organization's opinion on the way the formulation of the IDP law was managed or their viewpoints on their possibility to come closer to a realization of IDP rights. Each of these sections included a number of more or less open questions. This enabled the upholding of an overview of the most important issues to be covered in each interview, while still maintain a certain degree of flexibility. This structure easily allowed for follow-up questions and that could go more deeply into issues when this was felt to be natural or necessary.

The semi-structured interview, however, is a double-edged sword and implies certain challenges. As pointed out by Mikkelsen (2005), the researcher and informant might get 'hung up' on certain parts of the interview, and hence risk inadvertently omitting important issues. In spite of being aware of this possible difficulty, I experienced interviewees who nearly took control over the interview, either by spending more time than envisaged on a very specific or descriptive issue, or by bringing in new topics which were considered to be of less relevance for my research. This of course is the possible advantage as well, as new and important insight might emerge.

## **Observation**

The second central method I chose to use was *observation*. This enabled me to explore the perceptions of the IDPs themselves, to try to understand the underlying reasons for why actors act the way they do, and how they relate to each other. Observation of situations where different actors' interact has contributed to my understanding of the implications of the deep gap between the political and intellectual elite on the one hand

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<sup>2</sup> see Appendix I and II for interview guides

and the displaced - mostly rural - population on the other hand. The method of observation basically implies that the researcher is present in the situations where the participants are acting, and more or less systematically observes their behaviour (Kearns 2000; Thagaard 2003). I was able to draw conclusions by being present in places where my presence was not necessarily influencing the situation, as opposed to an interview situation.

The observations in two main sites brought valuable insights on the IDP situation, the relations between the different actors within the IDP regime, and the possible reasons for the discrepancy between law and reality. The first was at the previously mentioned two-day conference marking the 10 years of the IDP law, where I attended as one out of 400 - 500 participants. The other site of interesting observation was at one of Bogotá's reception centres for IDPs, where displaced may go to register, denounce the perpetrator, and possibly gain access to humanitarian assistance and psychological aid. Additionally, ideas emerged when walking through different areas of Bogotá, seeing demonstrations through the main street of the capital, and when observations during interviews, informal settings and conversations. These informal observations contribute to construct a picture of the structures which influence the IDP system.

One of the major advantages of using observation as a method in qualitative research is the directness of this technique: you observe what people actually do, as opposed to what they say they do (Kitchin and Tate 2000). Furthermore, observation allows the researcher to study people's behaviour and everyday life instead of asking them to reflect critically upon their own actions, which in an interview setting might be difficult considering the relatively artificial situation (*ibid.*). Observation is especially well suited for studying the relations between people, because the researcher may see how individuals relate to each other in social settings (Thagaard 2003). This has been particularly valuable for me in order to understand how different groups act within in the IDP system. While participating at the conference of the 10 years anniversary of Law 387, I was able to observe the interplay between IDPs, representatives from the Colombian government, and the international community. Massive protests, shouting, and interruptions from the

displaced in response to some of the speeches by representatives of the authorities showed the intense dissatisfaction and distrust between the two groups. I could observe the reactions when key institutions such as the Presidency and the Ministry of Interior failed to show up while the displaced communities were presenting their cases. Such insights through observation could not have been gained through purely conducting interviews, and thus contributed to my understanding of the complex situation.

#### *4.1.4 Secondary data*

In addition to the methods applied during fieldwork in Colombia, a wide range of secondary sources have been studied in order to supplement the analysis of the discrepancy between law and genuine access to rights. Reports from UN institutions such as UNHCR, OHCHR and country missions conducted by the UN General Secretary's Representative on IDPs are taken into consideration since these are the main international bodies working on IDP issues, recognized by most states and civil society organizations. Furthermore, I studied country analyses and annual reports published by the Internal Displacement Monitoring Centre (IDMC), which is an Geneva-based research centre established in 1998 after a request from the UN and in cooperation with the Norwegian Refugee Council (NRC). IDMC is considered to be the leading international body monitoring conflict-induced displacement worldwide.

Besides the above mentioned institutions reflecting some key aspects of the international community's views on the Colombian IDP situation, I have sought to employ Colombian sources as much as possible, in order to include those most closely related to the conflict and internal displacement. Publications from the Colombian research institute CODHES have been used because of its national importance and influence on issues related to forced migration and human rights. CODHES is widely recognized in Colombia, referred to by the media, and used as a source by NGOs such as the NRC. Legal documents such as Law 387 and sentence T-025 from the Constitutional Court have been studied as well. Articles and general coverage by Colombian media on the armed conflict, displacement

and politics have to some extent been useful for obtaining an insight in the latest social and political developments. Official documents from the Colombian government have also been interesting to review in order to compare statistics on displacement with other sources.

The use of secondary sources has proven to be crucial in identifying structural causes related to the implementation of the legal framework. Though observations in the field are important when analyzing the relationship between actors and may add valuable insights to the research, the literature on topics such as access to land and the political will to employ land reforms has in this dissertation contributed further to shed a light on the power structures. In such a politically polarized situation as the case of Colombia, one should be careful to consider the agenda of each author of information. Given the difficulty, or impossibility, of reaching any ‘objective’ information, it has been a clear aim to include as many different sources as possible, in order to obtain a certain degree of balance.

## 4.2 Reflections and Challenges

### **Positionality: assessing my own role**

The information conveyed by informants will inevitably be influenced by the way the researcher is perceived. The concept *critical reflexivity* is important in this context, and implies being conscious of one’s role and impact in the field, and constantly reflecting upon this throughout the research process (Dowling 2000; Kearns 2000). In my case, this involved – among other aspects – age, gender, nationality and my status as a student.

When presenting myself as Norwegian I was in a few cases by state officers met by a certain degree of scepticism. This was due to a scandal earlier in 2007 caused by a Danish NGO openly supporting FARC both morally and economically. As some of my informants only remembered the NGO as a Scandinavian one, I initially had to spend

time convincing them that I was not from the country associated with the NGO, nor supporting the guerrilla group. It may be argued that the initial suspicion was even turned into something positive, as I got a natural opportunity to position myself as neutral, while condemning the violent actors. Throughout the fieldwork, I attempted to emphasize my status as a student when contacting potential informants. In general, people proved to be extremely helpful and open towards students, and the category is most often considered relatively 'neutral'.

### **Access to informants**

Before arriving to Bogotá for the fieldwork, I had contacted Dr. Juan Carlos Guataquí at the Rosario University through my thesis supervisor Dr. Brun. His Ph.D. dissertation concerned internal displacement in Colombia, which made him a valuable adviser throughout the fieldwork. Dr. Guataquí provided me with an office space at his university, which again led me closer to students working on issues related to my work. In addition to having the Rosario University as a starting point, I had contacted the Norwegian embassy before arrival and scheduled a meeting. This meeting, which initially was meant merely to provide me with basic information on Bogotá and inform them briefly on my work, ended up being useful also in terms of receiving further contact information to possible informants. A representative from The Norwegian Refugee Council (NRC) was one of many constructive and helpful contacts I got from this meeting, which again led contacts with other interesting organizations, advices on how to access the state institutions and possible IDP grass root organizations to approach. Some informants were reached through the more formal contact channels, such as the university and the embassy, while others were relatively random. For instance, a friend basically by coincidence mentioned that she 'knew someone who knew someone' in the IDP research institute CODHES. This is a highly important organization in the Colombian context, but rather difficult to access. A couple of phone calls were everything needed to have an appointment with CODHES scheduled for the following day.

In general during the fieldwork, I was amazed by the Colombian hospitality and helpfulness. Most people I got in contact with were eager to help me to access further

information and relevant contacts. One of the main challenges on the issue of access however, was to get in touch with internally displaced who were not directly engaged in organizations. At several instances I had appointments with NGOs and the state institution Acción Social to accompany them to IDP settlements in order to conduct interviews and observations, but every time the trips were cancelled due to various reasons. Security measures were also partly complicating the possibility to get in direct contact with people in IDP neighbourhoods, as these areas were known to be among the most violent of Bogotá, hindering me from going by myself. Though many of my interviewees were in a condition of displacement, these were all relatively resourceful people. This makes it hard to argue that I have had the opportunity to get an image of the general and ‘average’ IDP population.

### **Ethical considerations**

There are a number of issues and dilemmas concerning ethics in the research, and the various disciplines apply different codes of conduct. It is crucial to reflect upon ethical challenges before and during fieldwork, and continuously consider ethics when analyzing, working through and saving data. During my fieldwork I kept a field diary to keep track of my interviews and observations, but also to add notes on how I experienced the different situations. I continuously documented the research process, by noting down thoughts and experiences, ideas and interpretations all the way during the fieldwork and process of analysis. This became a helpful tool for reflecting on my methods and encounters with informants, and enabled me to be more conscious of choices and decisions.

One of the ethical challenges I was confronted with during my fieldwork in Colombia, was the dilemma of *reciprocity*. Patton (2002) rhetorically asks why anyone should wish to help you by giving an interview if you cannot promise to contribute to change the informants’ situation. There is no clear answer to this, yet it is crucial to recognize that the research setting is unbalanced (Thagaard 2003). Several of my informants spent hours of their time to share their life stories, opinions and experiences with me, without receiving anything concrete in return. The unbalanced situation inevitably leads to an

aspiration to be able to give something in return. I attempted to show that I was genuinely interested in the Colombian IDP situation, and constructively tried to assess the discrepancy between law and reality. In most cases, especially in the encounters with displaced persons, I believe this contributed to a slight improvement of the highly unbalanced situation. Some informants explicitly stated that the attention and interest in the Colombian IDP situation was crucial for improving their situation, and were welcoming my requests for interview on this basis.

Another possibility for obtaining a certain degree of reciprocity is to utilize the research for stating the opinions and thoughts of a certain group or person by quoting them in the thesis. In that case, the issues of *risk assessment* and *confidentiality* are essential to consider (Dowling 2000; Patton 2002). Throughout this dissertation, initials of the informant's name or a pseudonym are used. All the internally displaced persons I talked to have in some way experienced threats or persecution, and many are now involved in politically sensitive work. Though some informants expressed the will to have their full names published, I have chosen to be consistent when I avoid using real names. This is in itself an ethical dilemma, as it could be argued that making their names known when this is desired is a way of achieving a certain degree of reciprocity. However, due to risk assessment I have chosen to maintain complete confidentiality.

*Informed consent* is also a critical ethical issue when conducting research including human relations. Informants should know exactly what they are agreeing to when included in a research, and be aware of the possible implications for them as individuals. It is essential that they are informed of the intention of the study and how the material will be handled by the researcher, in addition to knowing practical details such as how long the interview will take (Dowling 2000; Mikkelsen 2005). When potential informants were contacted I aimed to give a thorough explanation of the purpose of my investigations, and why I wanted to conduct an interview with that person. Before starting any interview I also made sure to repeat this to the informant in order to make sure that he or she was fully aware of what the intention was, and what the possible implications could be. In an interview setting the issue of informed consent was relatively

straight forward and became a matter of standard procedure. During observations, especially in situations like the Conference of Law 387, this became more problematic, and as pointed out by Dowling (2000), informed consent during observation in public spheres or locations including a large number of individuals may be unnecessary or even physical impossible.

### **Power relations**

Power is an important concept to address when reflecting upon one's positionality. Knowledge may be both directly and indirectly powerful in qualitative research. *Directly*, because the findings of the research can be used for input into policy, which directly influence people's lives. *Indirectly* because a qualitative researcher often tells stories about people's situations, understandings and life worlds, and the outcome of a study has the potential of changing the way people involved are perceived, or the way they think about themselves. Hence, the researcher has a major responsibility towards the participants of the study and the society as a whole (Dowling 2000). As I am conducting a quite policy oriented research, these have been important issues to consider throughout the work of my thesis.

The power relations in the field between the researcher and the participants in the study are also important to consider. As mentioned above, I have interviewed both representatives from the Colombian authorities, international and national NGOs, and displaced persons settled in Bogotá. It is crucial to be aware of one's role when interviewing marginalized groups of the society. Feminist scholars have criticized the conventional 'cookbook' guides on how to conduct an interview, because it rarely conforms to the actual event by implying that the interviewer takes control over the situation, asks questions about a certain topic, and expects the interviewee to respond. This way of interviewing represents a masculine view of research because it seeks to exploit the knowledge of the respondent rather than to empower them, and thus maintain and reinforce the current power relations (Kitchin and Tate 2000). In order to compensate for this imbalance, the interviewer should try to build up genuine trust, and renegotiate

the power relations. Moreover, the researchers must recognize that they cannot be objective and neutral.

On the other hand, interviewing so-called ‘powerful persons’ may also be a challenge. Powerful persons or organizations can be defined as those who wield ‘one or (typically) more kinds of power- e.g. social, economic, legal, professional, physical, political, informational or gate keeping power’ (Sieber 1989:1). Conducting these kinds of interviews implies a risk for an asymmetrical relationship, as those being interviewed are in position to influence the course of the interview (Dowling 2000). Before going into the field, I had to some extent thought through these issues, especially in relation to interviewing state officers, whom I assumed to have much authority and who wanted to demonstrate this when confronted with a young student. However, when interviewing representatives from public entities and the government, I was rather surprised as to how the situation was marked by relatively reciprocity and respect. I believe this was partly due to me being prepared and thus striving to appear confident, and partly because the actors working on internal displacement are sensitive to criticism from any representative coming from abroad. On the other hand, I was surprised to learn how an NGO leader seemed relatively hesitant to be interviewed and dismissing several of my questions by claiming them to be irrelevant. The fact that I was probably 30 years younger than the NGO leader and him being a male in a male-dominated society, seemed to influence the course of the interview. This attitude was by no means symptomatic for my informants in general or the NGO community, but it contributes to illustrate how stereotypes may be distorted, and how power relations in an interview setting may alter and influence the outcome.

### 4.3 Analysis of data

The process of analysing data was started after the fieldwork. On basis of the research questions I began to reflect on ideas and categories throughout the fieldwork, which now needed further systematization. All interviews and fieldwork notes were transcribed and entered into the software for qualitative analysis *NVivo*. The process of transcribing recorded interviews was very time-consuming, but simultaneously very valuable in the sense that I gradually achieved a broader understanding of the ethnographical material, and was able to discover links between information received at different occasions.

Based on my research questions and general ideas from the fieldwork, three main categories were made. *'Obstacles for implementation of the legal framework'* and *'positive development'* were meant to cover thoughts, opinions and information from informants on these issues. *'Roles of different actors'* included information on which formal roles and possibilities the IDPs, the civil society and the state had to influence the IDP system. These main categories were separated into sub-categories, which later became the basis for the structure of Chapters 5, 6 and 7. When going through the transcribed interview and fieldwork notes different sections were coded and entered into NVivo according to the relevant category. This facilitated the coding process and provided a broad overview of the data and. One of the challenges of utilizing software such as NVivo is the amount of time and effort invested in learning how to manage the tool. Once learned however, it undoubtedly has the possibility of making the process of analyzing qualitative data more efficient.

In the process of coding the material, new categories were added whereas others proved redundant. The analysis came about through a constant back and forth between theories and fieldwork data, in addition to reading up on relevant literature and following the Colombian media picture. Throughout this process the research questions were slightly changed and the analytical framework was developed.

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## 5 The IDP legislation: Developments and components

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This chapter will firstly give an overview of the Colombian national legislation on IDPs, trying to point out the most important developments within the state apparatus related to building up an integral protection regime for the millions forced to leave their homes. The UN Secretary general on Internally Displaced Persons, Walter Kälin, has pointed out that ‘Colombia has a long legal tradition, with a history of excellent legal scholarship and institutions dating from independence’ (OHCHR 2007:8), underlining the crucial importance of Law 387 of 1997. I will therefore secondly, go more in depth on this legal milestone in Colombian political history, seeking to give an insight into the most important aspects of the relatively comprehensive law text.

This chapter also aims to bring a historical context to the Colombian IDP legislation, in order to be able to determine whether this development has influenced the current structures and the IDP regime, how it might have affected the attitudes of the public in general, and lastly to analysis the possibilities the different individual actors might have had to influence the process.

## 5.1 Constructing a national legislation

When IDPs were acknowledged internationally as a vulnerable category in the late 1980s, people had been forcibly displaced within their countries for years (IDMC 2008a). According to Fagen et.al (2003) forced migration had been a phenomenon in Colombia for decades before the international society reacted. The Colombian economist Juan Carlos Guataquí argues that internal migration has been going on for centuries in Colombia, and that civilians have been victims of internal displacement as a consequence of political violence since the beginning of the 20<sup>th</sup> century (Guataquí 2006). Before Law 387 was included in Colombian legislation in 1997, internally displaced persons did not exist as a juridical category in Colombia, even though there were hundreds of thousands of victims of forced migration spread throughout the country. Today, the legislation is considered to be one of the most advanced in the world in its field (UNHCR 2007a).

The process of developing a legal framework to prevent forced displacement and to protect Colombian IDPs was initiated in 1994, after an announcement by the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng (OHCHR 1999). The Colombian government had together with a large group of NGOs invited Deng to Colombia to meet with various representatives from the state and the civil society (Fagen et al. 2003). A comprehensive report on the background of the armed conflict and causes of the forced displacement, mechanisms and measures imposed – and the lack of such – by the state, the international community and local NGOs, was the outcome of this visit (OHCHR 1994). At that time, the Government of Colombia (GoC) had no exact number on the displaced persons in the country. This may be explained partly by the relatively recent acknowledgement of the enormous consequences of forced displacement and the state's responsibility of addressing these issues. In 1994 on September 9<sup>th</sup>, Colombia's national human rights day, President Ernesto Samper formally recognized the catastrophe of internally forced displacement and the responsibility of the state, based on the recommendations in the report from the Representative on Internally Displaced Persons (Obregón and Stavropoulou 1998). In 1997, the Colombian government invited UNHCR to establish an office in the country

and the following year the UN entity opened its Colombian headquarter in Bogotá (UNHCR 2008). National and international NGOs have in addition to the UNHCR been crucial over the last decade in assisting the Colombian government with capacity building and economic support, in addition to managing several programs directed towards the displaced population.

## 5.2 The 1991 Constitution: A new foundation

The traditional governmental attitude in Colombia when considering the consequences of the long-running armed conflict has been one of denying any responsibility, portraying it as arbitrary banditry and common delinquency. The handling of social problems saw a slight improvement throughout the 1990's. In the beginning of the decade, Colombian authorities adopted a new constitution, which includes extensive measures for protecting human rights (Cepeda 2006). The Attorney General's Office (*Procurador General*) was settled as a body to investigate and request disciplinary actions in cases when public officers have violated the law. As part of the Attorney General's Office, The Office of the Human Rights Ombudsman (*Defensoría del Pueblo, DP*), was created in order to oversee the protection of human rights, and promote and disseminate international humanitarian law (DP 2008; OHCHR 1994). The Prosecutor General's Office (*Fiscalía General de la Nación*) was established as an entity of the judicial branch responsible for 'investigating crimes, defining cases, and accusing supposed offenders of the criminal law before judges and competent courts, either as a result of it's own initiative or because of a formal complaint by a third party' (IDMC 2007a:1-2). Furthermore, the important petition procedure *tutela*<sup>3</sup> was introduced and opened up for the possibility for any Colombian citizen to denounce violations of basic rights, and receive a decision within ten days. The *tutela* is a 'complaint that any citizen can bring before any judge in order to seek an immediate judicial injunction against actions or omissions of any public authority that they claim violates their constitutional fundamental rights' (Cepeda 2006:2). It

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<sup>3</sup> The *tutela* will be further elaborated in Chapter 7.

should also be mentioned that the 1991 constitution requires that the minister of defence must be a civilian and accountable to Congress, and that this ministry is responsible for proper human rights training of the armed forces (Obregón and Stavropoulou 1998; OHCHR 1994). These are all crucial new measures included in the Constitution from 1991, which emphasise the need of investigating and sanctioning human rights violations, and open up for the citizens to take action when their rights are threatened.

The attempts of reforming parts of the Colombian society through the Constitution of 1991 with the new positions and institutions aiming at promoting and protecting human rights should be viewed as an important step towards more focus on the huge social problems the country was and still is facing. Though the above mentioned new institutions have met various difficulties because of lack of human and economical resources, they represent a relative positive change within the Colombian legislation. The fundamental reframing of the constitution is arguable contributing to alter the social and political structures, and is reflected in the continuous development of the legal framework throughout the decade and up until today.

### **5.3 CONPES - the official plans for assistance to IDPs**

The National Council for Economic and Social Policy (CONPES) is part of the executive branch and comprise the major ministries, banks and syndicates of the state, and answers directly to the Presidency. CONPES is the official planning agency, and in charge of adopting recommendations and plans on issues concerning the national economic and social development. In 1995, the first CONPES document on internal displacement was published, including many of the recommendations from the Representative's report from 1994, and elaborating measures and mechanisms for addressing the needs of the internally displaced. The announcement also declared the responsibility of the Colombian state, and outlined the necessary reactions in financial and institutional terms (CONPES 1995; Fagen et al. 2003; Ibáñez and Moya 2007; Obregón and Stavropoulou 1998). However, in spite of the well-elaborated plan, the program suffered from various

structural problems, such as coordination between the different institutions, a clear-cut division of labour and information, and sufficient financial resources (Fagen et al. 2003; OHCHR 1999).

The shortcomings of the 1995 CONPES were partly recognized by the government, and a new document from CONPES was adopted in May 1997 in order to address the limitations of the current programs. In this statement, a national system for addressing the problem of forced displacement suggested, putting more focus on and outlines a strategy of prevention, emergency assistance and socio-economic stabilization. This proposal was adopted by the Ministry of the Interior, the Presidential Adviser for the Displaced (a position established the same year), the Presidential Adviser on Human Rights, the Presidential Adviser for Social Policy and the National Department of Planning (Ibáñez and Moya 2007; OHCHR 1999) The second CONPES document, together with Law 387, also provided an important three-tiered institutional structure for the assistance of IDPs, which will be further elaborated below.

On the basis of the two CONPES documents of 1995 and 1997, as well as policy initiatives contained in various government decrees, ‘Law 387 for the prevention of forced displacement and the support, protection and socioeconomic stabilization of the population displaced by the violence’<sup>4</sup> eventually passed in Congress on 18 July 1997. The formulation and passage of Law 387 gave a juridical basis to subsequent national action on behalf of the internally displaced population.

Marco Romero, President of CODHES, points out in one of my interviews that there were few organizations working specifically on IDP issues at the time the legislation was developed, at about 10 years ago. Furthermore, few displaced individuals, households or communities were organized the way many are today and in general the consciousness and attention from media and public institution was far lower than at present. Romero explained how the development of the IDP law was managed by a limited number of actors, precisely because there were few organizations existing at that time. This, of

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<sup>4</sup> See Appendix V for the complete text of Law 387

course, is partly the reason why relatively few actors from different spheres of society, and the IDPs themselves, were poorly represented when this crucial law was adopted.

## **5.4 The content of Law 387**

As noted above, the Colombian IDP legislation is very complex, and in an international level relatively advanced. The law and institutional mechanisms are developed in order to give assistance in all phases of displacement, and is thus in line with the Guiding Principles on Internal Displacement which were under development when Law 387 was passed in Congress in 1997. The definition of an IDP is also similar to the one in the Guiding Principles.

After having neglected the problem of forced displacement throughout decades, the Colombian government goes far in the wording of law 387 in recognizing the state's responsibility for the displaced persons. It explicitly confirms that it is the duty of the Colombian state to 'formulate policies and adopt measures for the prevention of forced displacement, and for assistance, protection, socioeconomic consolidation and stabilization of persons internally displaced by violence' (CoC 1997: Law 387, Art. 3). In the following will be described the main elements incorporated in Law 387, and a brief overview of the institutional structure of the Colombian IDP regime will be presented. The Colombian governmental system for assisting the displaced population is comprised by three main phases: the attempts and aims of *preventing* the displacement, the temporarily *emergency aid and socioeconomic stabilization*, in addition to *return or resettlement*.

### **5.4.1 Preventing displacement**

All though the prevention of internal forced displacement in Colombia arguably will not be reached until we see a definitive end to the armed conflict, the challenge of the politics

of prevention lies largely in recognizing the necessity of finding strategies in the midst of this war-like situation, without increasing the risks for the population (UNHCR 2004). Article 14 in Section 3 of Law 387 defines the measures for preventing forced displacement, focusing mainly on early warning systems, such as early communication of potential risk factors that may cause displacement, in order for the local and national systems to react and supply services before displacement occurs. The law furthermore underlines the importance to educate the general public on humanitarian law and to generate community tolerance, in addition to promote immediate action from the armed forces on tumults or attacks.

#### *5.4.2 Emergency humanitarian assistance*

Households and individuals registered at the official IDP register<sup>5</sup> are entitled to receive emergency aid from the state. In all cases of displacement, it is further the responsibility of civil and military authorities located in receiving communities to ensure the safe and free passage for the emergency consignments. Once the displaced person is registered at the official register, they should, according to the law, receive three months of emergency aid. In exceptional cases the aid may be extended for another three months, depending on the conditions and needs of the individuals or households (CoC 1997; Ibáñez and Moya 2007). Persons who are not included in the official register Sole Register for Displaced Persons (Registro Unico de Población Desplazada, RUPD) are not entitled to receive emergency assistance from the Colombian state (IDMC 2006). The question on when displacement actually ends has been much debated in academia (see for example Bonoan 2003; Brun 2005; Kälín 2003; Mooney 2003), focusing on when the need of assistance and protection ceases and defining responsibility. According to national law, displacement in Colombia is for most IDPs ended after three months of emergency assistance. Most displaced people I talked to in the Bogotá area had received this aid for three months, and were thus formally no longer considered to be in condition of displacement.

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<sup>5</sup> See section 5.6 for an explanation of the official registration system.

### 5.4.3 Socioeconomic Stabilization and Social Services

In order to ensure long term social and economic sustainability, the government is according to Law 387 obliged to promote training and programs for socioeconomic stabilization and generation of income. Article 17 includes different strategies for socioeconomic stabilization, such as *proyectos productivos*, ‘productive projects’, which are supposed to ensure some degree of income and a dignified standard of living. Most of the displaced persons in Colombia come from the rural areas and are farmers or indigenous population, which by and large implies that they have no experience with how to survive economically in the large cities, where most of the IDPs end up (CODHES 2006b). The displaced have the right to receive information on what kind of opportunities they have, and training in how to go forth to establish for example their own *tienda* – a small shop – or other types of income generating activities. The law also indicates that the measures for socioeconomic stabilization should include access to programs related to social organization.

Included in Article 17 of Law 387 is also social attention within services such as health and education. The programs of integral assistance of IDPs, elaborated in the prolongation of Law 387<sup>6</sup>, have given special attention to the aspect of education to minors, as statistics show that a large percentage of the displaced population is children (AS 2008a; Ibáñez and Moya 2007). One of many social consequences of displacement is that the educational process in the area of origin becomes interrupted, and the access to further education in the recipient community is often limited due to lack of capacity for additional pupils at the schools, absence of educational programs adjusted to the necessities of the displaced children, or inability from the part of the family to pay the costs. Hence, programs to facilitate the educational process have been formulated, granting the Ministry of Education the competence to define the educational politics on a national level, and – together with the Secretaries on the department, district and municipality levels – identify the actions to guarantee the right to education to the

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<sup>6</sup> Law 387 has been followed up by three decrees (in 1999 and 2000) and law 962 (2005), elaborating specific issues from Law 387. Two of the decrees have been declared ‘unenforceable’ by the Constitutional Court.

displaced population (CoC 1997: Law 387, Art. 19). Educational and health services should be provided for free of charge for the first three months of displacements, as a part of the emergency assistance, and thereafter a small fee must be payed (Fagen et al. 2003).

#### *5.4.4 Support for return to the place of origin*

As mentioned above, Law 387 include most of the same components as the UN Guiding Principles for Internally Displaced, for example on the definition on IDPs and on the inclusion and measures formulated on the different phases of displacement. However, when it comes to reassuring return to the place of origin, Law 387 falls short. While the Guiding Principles encourages governments to provide for the safety of returnees to areas of origin, this important part of the process of displacement is only briefly mentioned in the Colombian law. Section 5 of Law 387 states that the government will support the displaced who would like to return to their homes of origin, in accordance with other elements of the law, such as protection and socioeconomic stabilization. However, as pointed out in a comprehensive report on the IDP policies in Colombia (Ibáñez and Moya 2007), this part of the legislation is limited due to the state's lack of territorial control in many of the areas where displacement occurs.

## **5.5 Institutional structure of the Colombian IDP regime**

The institutional structure of the IDP regime the way it is presented in the second CONPES document and law 387 includes three main entities. Firstly, the National Council for Comprehensive Assistance to the Displaced is a consultative body composed by senior government officials and chaired by a delegate from the Presidency. Its responsibility is to provide the design of national policies on internal displacement and to ensure the economical resources in order to implement these policies. Secondly, for the actual implementation of these policies, the National System of Attention to People Displaced by Violence (SNAIPD) was created. SNAIPD comprises 14 government

ministries and other public, private and community organizations covering various areas such as agriculture, social security, health and education. SNAIPD is managed by Acción Social<sup>7</sup>, which was created in 1999. Acción Social further coordinates and administers assistance to IDPs and people in risk of being displaced, and plans and delivers services to IPDs officially registered (IDMC 2006). NGOs and IDP organizations are also allowed to participate in this implementing body, but do not have the right to voice their opinions or vote (OHCHR 2007). Thirdly, at the different local levels – department, district, and municipality – throughout the country, committees are settled to support the national system for the displaced at the local level. These committees include representatives from the local authorities, police, civil defence, health authorities, Red Cross, the church, and the displaced community (OHCHR 1999).

## 5.6 Official registration of IDPs

As mentioned above, Colombian IDPs have to be registered in an official register in order to gain access to a most of the services and goods provided for in the legislation. In order to have the right to receive assistance, the displaced must register within a year after being displaced from his or hers place of origin. This system, *Registro Unico de Población Desplazada* (Sole Register for Displaced Persons - RUPD) was given a mandate in Law 387, and created by decree 2569 (2000). The aim was to identify the persons considered legally displaced, characterize this population, and quantify the demand of state attention in order to adjust the assistance from Acción Social (AS 2008c). The registration can be done through a statement to any entity within the Public Ministry, and the displaced person should receive an answer within a maximum of 15 days determining the inclusion or exclusion. The decision is based on whether the statement is considered to be true, and cause of displacement is within what is defined through Law 387 (Ibáñez and Moya 2007; IDMC 2006).

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<sup>7</sup> Originally named the Social Solidarity Network (Red de Solidaridad Social)

## 5.7 What works, what does not?

So far, I have presented an overview of some of the most central elements in the complex Colombian legislation for internal displacement. In theory, the Colombian IDP population should be guaranteed safe livelihoods, the number of persons forced to flee should decrease, and those with desire to return to places of origin should in accordance to the law be assisted economically. I will in the following discuss which parts of the law are improving in terms of implementation, and which are still far from being realized as rights.

### **Humanitarian assistance**

As outlined above, all displaced persons registered in the RUPD are entitled to emergency assistance. The law states that:

once displacement takes place, the National Government shall initiate immediate action to guarantee emergency humanitarian assistance with the purpose of relieving, assisting, and protecting the displaced population, and attending to its needs in the areas of food, personal hygiene, supply management, kitchen utensils, psychological and medical assistance, emergency transportation, and temporary housing in appropriate conditions

(CoC 1997: Law 387, Art. 15)

Since the Constitutional Court in 2004 declared that the government was far from complying with the IDP law, the access to humanitarian aid has increased significantly, especially in the capital where most IDPs end up. According to official statistics, nearly 80 percent of the displaced population have been provided with the three months of basic assistance (Romero 2007). These statistics are however disputed, and a recent report from the Monitoring Commission for the Public Policies on Internal Displacement (MCPD) argues that barely 64 percent of displaced households registered in the RUPD in 2006 received emergency aid, and only 57 percent in 2007 (MCPD 2008: 132). Nonetheless, the resources invested in humanitarian aid have increased since 2004 (Ibáñez and Moya 2007), which is a positive development.

## **Prevention of displacement**

As mentioned above, the prevention of displacement is included in Law 387, which states that the government is responsible to:

1. Stimulate the formation of work groups for prevention and anticipation of the risks that may produce displacement, 2. Promote community and citizen actions to generate peaceful coexistence, and law enforcement activity against agents of disturbance, 3. Develop actions to avoid arbitrariness and discrimination, and to mitigate the risks to life, personal integrity, and the private property of displaced populations, 4. Design and execute an International Humanitarian Law Information Plan, and, 5. Advise the municipal and departmental authorities responsible for the development plans so that they include prevention and assistance programs.

(CoC 1997: Art. 14)

In addition to the governmental responsibility of implementing these measures, an early warning system (Sistema de Alerta Temprana, SAT) is developed by Acción Social and coordinated by the Human Rights Ombudsman. This system has however proven to be very inefficient, because the national army is rarely ready to intervene when receiving messages of possible attacks or harassments. This has again led to reluctance by potential victims to notify the authorities in cases of possible displacement, because of fear of further reprisals from armed groups. Moreover, the risk assessment undertaken at the local level encompasses armed, illegal actors only. This undermines the dynamics of the ongoing conflict where displacement can be caused by common hostilities and general lawlessness in areas with high criminal activity or as a side-effect of eradication activities of illicit crops (CODHES 2006b; Fagen et al. 2003; OHCHR 2007).

The military strategy emphasized by the current administration further complicates the focus of protection of the civilian population from harassment and armed attacks. An example from a report from the UN representative on IDPs' contributes to illustrate this challenge: in 2006 the national army did manage to mobilize and react when receiving reports on harassments and possible attacks the Nariño department. However, in stead of protecting the civil population caught in the middle of the hostilities, soldiers were sent to protect areas of military importance such as the Pan-American Highway (OHCHR 2007). The number of displaced persons in Colombia is increasing every year, and the

governmental efforts of preventing displacement are far from being implemented in accordance with law 387.

### **Return and resettlement**

Durable solutions for IDPs are crucial to ensure safety and the possibility for sustainable livelihoods. The Colombian state is responsible for assisting and protecting returnees in their reintegration efforts. Law 387 specifies that the Colombian Institute for Agrarian Reform (Instituto Colombiano para la Reforma Agraria, INCORA) should

adopt special procedures and programs for the transfer, adjudication, and titling of land in the expulsion and reception zones of populations affected by forced displacement, as well as special lines of credit giving priority to displaced populations<sup>7</sup>

(CoC 1997: Law 387, Art. 19).

The displaced population is however far from an achievement of this right. Resettlement projects are very few, and research suggests that hardly any of them have proven successful (Fagen et al. 2003).

A problem which adds to the difficulty of securing safe return for IDPs is the increasing number of former paramilitaries now settled in the areas where people have been displaced from. As an important step in the governmental plan for demobilization of these so-called self-defence groups, most paramilitaries who have agreed on laying down their weapons have been given impunity and comprehensive assistance for reintegration and resettlement. Many former paramilitary soldiers are reported to have received far more attention and support than the displaced population (OHCHR 2007). The challenge of impunity leads to reluctance among IDPs to return to their places of origin, as the perpetrators of their displacement may be settled in the same community.

### **Measurable solutions to a humanitarian catastrophe**

The overview given above on the governmental efforts on some of the different challenges on internal displacement suggests that the Colombian state is investing far more resources in the area of short-time humanitarian relief. The emergency aid is vital for a person arriving to an unknown place, when forced to leave property and assets

behind and with no foreseeable opportunity for income generating activity. The area of humanitarian assistance is furthermore among the more concrete elements of the governmental obligations towards the displaced population, which makes it easier to measure and reach tangible goals. The effort invested in this stage is unquestionably necessary, but it may be argued that it is utilized as a mean to draw attention away from lack of ability or will to address the far more complex issues of preventing displacement and ensuring secure resettlement. In light of Malkki's concepts of the depoliticizing of the refugee regime, the humanitarian assistance is perceived as a 'neutral' measure, applied because of moral responsibility towards a mass of victims. The far more politicized issues of reclaiming occupied land for resettlement or return for IDPs is loaded with political and economic interest by a number of groups.

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## 6 Different Actors – Different Roles

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This chapter presents an overview of the different key actors within the Colombian IDP regime, and point out which roles the various parts play in this complex scenery. The aim is on the one hand to find out how actors, such as an internally displaced person or individuals within the civil society or state apparatus may contribute to change IDP situation in Colombia and the premises for the course of development of current state of affair. On the other hand, it attempts to show how the actions of the different actors are both constrained and enabled by the structures and how these structures and produced and reproduced by the actors. This chapter also seek to explore the relationship between the different actors, aiming to illustrate how this may influence the implementation of the legal framework.

I have chosen to group the actors into 1) state level institutions, 2) civil society, and 3) IDPs themselves. There are certainly other important institutions playing a role in this complex system, such as the international community, but I have chosen to include these three groups of actors because I consider them crucial in order to explore the dynamics within the IDP regime and in relation to the displaced population, and how they have an impact on the implementation of the legal framework.

## 6.1 State level

As outlined in previous sections, the Colombian state plays a crucial role within the whole structure concerning the internally displaced in Colombia. However, the state apparatus is large and consists of various entities with different roles.

### The Presidency

The Colombian government, here referring exclusively to the *executive branch*, is in charge of SNAIPD (see previous chapter) and is moreover directly responsible for enforcing the laws. The various ministries have specific responsibilities in relation to IDPs, such as the ministry of education which are in charge of ensuring access to schools for displaced children and providing specially designed educational support when that is needed (CoC 1997:art.19). Shortly after law 387 was incorporated in national law, the government had, at least on paper, built up a complex institutional system operating on state, departmental and local level to meet the challenges of internal displacement (Fagen et al. 2003).

### The Congress

The Congress played a crucial role in initializing the formation of the IDP legislation. The main role for the Congress is to act as the *legislator*, and in addition to having passed Law 397 in 1997, it has ratified international treaties which defines the situation of forced displacement in Colombia as a humanitarian catastrophe. Various laws have been passed during the last decade which aims to protect the displaced population and address Sentence T-025 which pointed out the governmental lack of complying with Law 387.

### The Legislative Branch

The courts are usually referred to by the IDPs as an entity which must not be confused with the state as such, or associated with the government. This is due to the independency of the Courts and the general reputation of especially the Constitutional Court of being an important controlling entity vis-à-vis the government. Especially in relation to the protection of the Constitution and the IDP law have the courts proved to a crucial and

powerful actor. Through the sentence T-025 in 2004 the Constitutional Court concluded that the lack of protection and assistance to IDPs, in addition to the poor efforts to address populations in risk of displacement, constituted an unconstitutional state of affairs. This was an important step forward in relation to the monitoring of the governmental measures towards the displaced population. When Colombia enacted its new constitution in 1991, fundamental structural changes were made possible (see chapter 5). The constitution makes several references to human rights and creates a number of valuable mechanisms for the protection of civilians in general and the displaced population specifically, which allows for the courts to further monitor and sanction the government when not complying with law.

## **6.2 Civil society**

The civil society has been defined in a number of ways in the literature, such as ‘those segments of a capitalist society which lie outside both the sphere of production and the state’ (Johnston et al. 2000). Based on this definition, but more specific in the Colombian setting, civil society will here comprise Non Governmental Organizations (NGOs), the Catholic Church and universities. These actors play an important role for various reasons, including its long experience and knowledge within the field of forced displacement, and being an actor which has gained trust at most other parts of the IDP regime. Some of their main roles are to advocate for IDP rights, implement different kinds of humanitarian, social or political projects, and conducting research on various issues related to internal displacement.

Even before the IDP legislation was adopted, and before there was much awareness of the scope and graveness of the forced displacement, there existed a keen interest in social problems and consequences for internally displaced persons within the civil society. The Catholic Church and many of the NGOs have long experience with grass-root work and social projects far from the capital and often in areas out of state control. Hence the civil society has in several instances gained more trust than the government among vulnerable parts of the population. On the other hand, the Church is widely respected among the

political elite. The Catholic Church and other parts of the civil society, such as the universities and research institutions, are respected and acknowledged by the Colombian state as necessary and lawful actors (Cohen and Sanchez-Garzoli 2001; Obregón and Stavropoulou 1998).

The governmental rhetoric of social change, countered by the IDP community's perceptions that no action follows these words, have created a deep gap between the political elite and great parts of the Colombian people. The lack of state presence and control of various parts of the national territory and the histories of power abuse and encroachment of rights by the army has further strengthened these sentiments. This has again lead to a deep-rooted scepticism towards any information, project or person coming from the Colombian state. Likewise, internally displaced persons are often viewed with by distrust the public officers, as they are suspected to collaborate with armed groups, most often the guerrilla. The civil society is thus crucial when it comes to being a mediator, a source of information working both ways: towards the government and towards the displaced population.

### *6.2.1 Non-governmental organizations*

In Colombia, a multitude of local, national and international NGOs are working to improve the situation of the IDP community. These organizations may be divided into four categories. Firstly, many NGOs have specialized on providing *assistance*, often within certain areas such as nutrition or psychological services, irrespective of the cause of displacement. Secondly, there are NGOs with a *political agenda*, with ties to existing political parties or organizations. This type of NGOs normally also seeks to offer some kind of humanitarian assistance. Thirdly, NGOs which provide *social organization* mainly focuses upon supporting grass-root movements and arrange workshops and projects on topics such as prevention of violence. Lastly, *human rights* organizations comprise associations of lawyers giving legal assistance to IDPs and NGOs focusing on

mapping and denouncing violation on human rights and advocating on the international level (Obregón and Stavropoulou 1998).

However, while the amount of NGOs is growing and the premises of their work largely differ among the diverse groups of organizations, the coordination between these actors becomes more difficult. This may lead to inefficiency in a field where cooperation and exchange of ideas and knowledge is crucial. In 1994, the Support Group for Displaced Persons' Organizations (Grupo de Apoyo a Organizaciones de Desplazados, GAD) was established in order to overcome these problems. It was comprised by 13 NGOs working on issues related to internal displacement, and became crucial both in the aspect of coordinating NGO work, and to systematize and compile data on the challenges of forced displacement. GAD also promoted dialogue between the government and IDP organizations (IDMC 2006; MSF 2001). However, the differences between its variety of member organizations and the lack of economical resources lead to the dissolution of GAD in 2001 (Fagen et al. 2003).

### *6.2.2 The Catholic Church*

The Catholic Church in Colombia is one of the oldest and most respected institutions in Colombia. The Church has since its arrival to the continent had great influence on both the inhabitants in general and the political institutions. In the 1960s the liberation theology directed parts of the church into a new sphere of society, focusing upon social injustice and poverty. The proponents of this movement interpreted Jesus Christ as the liberator of the oppressed and agitated for more human and social politics. Parts of the liberation theology were rejected by the Catholic Church, but still the religion moved towards a social focus (Berryman 1987). In Colombia, the Conference of Bishops (Conferencia Episcopal) has been in the forefront of documenting internal displacement years before the government even recognized the existence of the problem. In 1995, they released a report stating that between 1985 and 1995 more than half a million Colombians had been forced to flee their homes as a consequence to the armed attacks

and threats. This document led to a conference with national and international participants, resulting in important responses and increased actions from various social and humanitarian organizations, academic institutions and the international community, in addition to the national government (CODHES 2006a).

One of the most important aspects of the Church as a part of the civil society is that they are able to provide assistance and support the displaced community without arousing political suspicions. Through the important efforts of documentation and consciousness rising through the 1980s and especially the 1990s, the church has managed to put the internal displacement on the political agenda. Hence, the Catholic Church, and the Bishops Conference especially, must be considered one of the main actors within the IDP regime, and probably the one actor which has had most influence on the structural problems of recognizing and acting on internal displacement.

### *6.2.3 Universities*

After the Bishops Conference in 1995, the universities and other research institutions intensified their focus on forced displacement and its dramatic consequences, realizing that research and documentation on such a topic was a crucial task depending largely on their efforts. Since the 1990s, internal displacement has been a major field of investigation within a number of disciplines, making the knowledge on the topic far more systematic and comprehensive, and contributing to solid profession of competent scholars capable of influencing the structural problems. The universities have also opened up for a space of discussion concerning the challenges of displacement, by concentrating intellectual and social forces. Through the intensified focus on various consequences of the armed conflict and the causes and dynamics of forced displacement, the universities have to a greater extent become a forum for the next generation to meet the social challenges of its country (CODHES 2006a; OHCHR 1994).

One of the effects of the latter is the many student organizations focusing on social and political challenges in Colombia. One example of such an organization is the Colombian Association of University Students (Asociación Colombiana de Estudiantes Universitarios ACEU). In addition to working for student rights and improvements in higher education, one of the objectives of ACEU is to search for solution of the armed conflict and protection of human rights. 'Fernando', one of the central persons in ACEU explained in an interview how his organization strives to be neutral and not give or receive support from any political party, in order to be able to include all students and keep their academic role. However, students engaged in political tense issues such as the conflict and its brutal consequences certainly are, run a high risk and are often labelled collaborators of the guerrilla. 'Fernando' explained how he had been exposed to death threats and had to flee his home town because of his engagement with ACEU. Internally displaced students are an increasing problem in Colombia, especially for those working within organizations focusing on tense political issues.

As we have seen, the Colombian civil society constitutes a crucial role within the protection regime of internally displaced persons. Actors such as the church and the NGOs have through their years of experience on working for and with the displaced population achieved profound understanding for the situation and gained trust among the affected part. The civil society is working within the existing structures, as they are a part of the IDP system and act within the legislative frames. Being entangled in these structures does however not necessarily imply that they are constrained by them, because the very mission of great parts of the civil society is to challenge the Colombian authorities on the existing situation.

### **6.3 Internally Displaced Persons and their organizations**

In spite of the constant insecurity after having been threatened and forced to flee, many displaced persons choose to organize themselves and speak out, in hope of being able to

reform the structures and influencing the situation of the displaced Colombians. According to Cohen and Sanchez-Garzoli (2001), the extent to which displaced are organizing themselves in the Americas, is strikingly high compared to other regions of the world. Organizations are created by and for the IDPs themselves in order to speak out for their rights and make effective changes. Until the beginning of the 1990s, Colombian IDPs had no tradition of organizing themselves, as anonymity was considered to be the best way to preserve security. During the last decade however, numerous organizations have been created by IDPs themselves, both at national and local levels. In 2001, among 60 and 70 such organizations were counted.

The first IDP organizations joined forces in order to pressure the government to acknowledge their situation and re-establish fundamental rights. After further pressure from the Constitutional Court through sentence T-025, the government issued decree 250 (GoC 2004), by which the first Boards of the Displaced Population (Mesas de Fortalecimiento de la Población en situación de Desplazamiento) were established. The boards were later expanded to include various entities at both national and departmental levels. Through these organizations the displaced are supposed to obtain a formal space to meet with official authorities, articulate their needs and opinions and contribute in the elaboration of local development plans in their areas. The idea is to reach the government through direct dialogue, and when coordinating and working as one entity, the IDPs should have a better chance of influencing the public policies (UNDP 2006b).

On the national level, the National Coordination of Displaced (Coordinación nacional de desplazados, CND) was established in 2000 as the umbrella organization for the numerous IDP associations spread around the country. Initially, CND participated the boards established by the government, supporting the initiative of dialogue with official authorities. Later the same year however, CND decided to withdraw from the board because of the Uribe administration's Democratic Security Policy, which they claimed had contributed to an aggravation of the situation for the displaced population (CND 2004).

In an interview with an officer in the Norwegian Refugee Council (NRC), the departmental boards were described to be very moderate. Given that the boards were created through state decree, they are by many IDP organizations regarded as merely a process of legitimating the governmental actions rather than being created for genuine communication channels for IDPs. Thus, numerous IDP organizations working independently of the governmental structures have emerged recently. Many of them play an important role supporting displaced persons and advocating for IDP rights, but the abundance of new organization may also contribute to complicate the cooperation and the aim of addressing the government with one unison voice.

## **6.4 Relationship and gap between the actors**

Today the law 387 is 10 years old, but for us, the indigenous people of Colombia, this is not a celebration. Here we wanted to inform about our situation, but they are not even present, and that is a lack of respect from the high officers in this country, for our culture and identity as indigenous, as women, as afros, and especially for us who have lived through the violence in this country.

R.A: An indigenous woman from la Guajira

This quote is from an indigenous woman; one of the spokespersons for displaced persons of the Kankuamo tribe. During the Conference of the 10 years of Law 387, held in Bogotá 17 and 18 July 2007, several IDP organizations had been invited. Approximately 200 displaced persons were present, representing different interest groups such as indigenous people, afro-Colombians and women. A number of debates and presentations by state institutions and organizations including the World Bank, the European Union, USAid and UNHCR were held in order to demonstrate their achievements, current work and challenges. After having spent the first day listening to numerous speeches on the many successes of the governments and international community, the IDP organizations were given day two of the conference to present their perceptions of the situation. The first panel was comprised by representatives from different interest groups, such as indigenous, ‘afros’ and women. However, at the moment the presentation and debate were about to begin, the IDP representatives realized that only a very few of the state

officers and international delegates who had given their speeches and presented their views the previous day were present. Immense protests aroused, and the panel participants refused to begin their session until representatives from the ministries, municipalities, and international society again were present. This incident contributes to show how far it still is between the protagonist within the IDP system – the displaced themselves – and the IDP protection regime.

The lack of funding is inevitably a source of frustration for many of the IDP organizations. Without financial support from the government and the international community, it is of course extremely difficult to run an organization when being for example a group of poor peasants. An IDP leader commented during an interview that they knew there were much resources coming from large international organizations, but that they did not see any of this. Again the suspicion and distrust towards the government become visible. During the Conference of the 10 years of Law 387, the distribution of financial resources was one of many topics debated. When touching upon such issues, the panels were met with huge protests from the IDP communities, who interrupted the speeches to show their genuine disagreement.

The distribution of financial resources is also a seed to conflict between IDP organizations and NGOs comprised mainly by non-displaced, but working for the rights of IDPs. Traditionally, donors have been much more willing to cooperate with established NGOs than the smaller and less experienced IDP organizations. This has seen a slight change as CND and National and Departmental Boards of Displaced Persons has gained more experience and trustworthiness, but still most resources and support are channelled to the NGOs. The Support Group for Displaced Persons Organizations (GAD) had a crucial role of bridging the work between NGOs and IDP organizations, by promoting cooperation and among actors working for the same cause. After GADs dissolution in 2001 however, no other such entity has managed to fill the vacuum. The inevitable competition for funding may thus be a source of problems between IDP organizations and NGOs, and to a certain degree constraining the work for both parts.

Access to financial resources is an important issue because it determines whether the displaced are able to run their own organizations, where they are more directly involved and may define which areas and methods are of most concern. However, the IDPs as agents within the IDP regime are also determined by their possibility of voicing their demands and claiming their rights. The perceptions of being heard and having their opinions and stories taken into consideration by ‘high officers in this country’, is a question about dignity and respect. Unfortunately, the poor share of the population with roots in the countryside, far away from the educated classes in the larger cities, has traditionally not had a voice in the Colombian society.

The historian Herbert Tico Braun (2007) touches upon this issue when he seeks to explain why the Colombian government and the guerrilla have never been able to come to peace during almost 50 years of armed conflict. Braun focuses on the *cultural* relationship between the political and intellectual elites in the urban areas and their rural clientele. In Colombia, the romantic imagination of the pure and authentic *campesino* underscores the widespread nationalistic sentiments within the population. However, in the 1950s while the state in most other Latin American countries sought to integrate the countryside more thoroughly in the nation, Colombian elites and authorities rather tried to disentangle themselves from the ties which bind them to the rural population. The fact that the poor rural population has never been secured civil and political rights has created a sensation of humiliation. The feeling of being excluded from the rest of the society has contributed to widening the gap between the rural poor and the urban political elite. This ambiguous relationship has created a deep-rooted distrust between the two stands.

I argue that this may also contribute to explain the obvious lack of communication and understanding between the actors within the IDP system. On the one hand, the decision-makers who hold the law in their hand and control the financial resources, and on the other hand, the displaced population who feel humiliated after years of exclusion. The great majority of displaced persons has fled the rural areas and are perceived as aliens arriving to urban areas from the ‘primitive’ countryside, while the political and intellectual elites are viewed as arrogant oppressors with great words, but who in reality

have no intentions of relieving the situation of the internally displaced persons. This mutual distrust has roots centuries back, from systematic oppression of indigenous people and the institutionalized feudal relationship between the wealthy landowning *patron* and poor *peon*. In order to reach mutual respect and understanding this problematic relationship needs to be overcome. Growing organization by the displaced population and support from the civil society may contribute to surmount the feeling of powerlessness when confronted with 'the high officers'. Since Law 387 was passed in Congress more than 10 years ago, the encounters between the involved actors have been much more frequent, through meetings, hearings in Court and conferences such as the one mentioned above. Though the protest and discontent from the IDPs are immense, a space which visualizes the gap between the actors has been created, and might thus be the first step towards a reduction of the differences.

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## 7 The IDP legislation: Constraints and opportunities

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Since law 387 was passed in 1997, millions of persons have been forcibly displaced from their homes, both according to CODHES and governmental numbers (IDMC 2006). These enormous numbers of people forced to leave their homes make it hard to argue for a success of preventing displacement. Protection and safe return to the place of origin or resettlement are also stages of displacement covered by the IDP law which largely have been subjects to criticism on lack of implementation.

However, there have also been positive developments within the Colombian IDP system during the last decade. Though there is a long way to go for the Colombian authorities to accomplish what they are obliged to through the legislation, important steps towards improvement have been made. Legal mechanisms are allowing IDPs to formally react to violations of basic human rights and increased organization among the displaced population is strengthening the possibilities to influence the IDP regime. I will in this chapter give an overview of and discuss what I consider the main structural obstacles and concrete constrains for implementing the IDP law, and lastly consider which positive development may contribute to fortify IDP rights, and hopefully eventually narrow the gap between law and reality.

## 7.1 Obstacles for implementation

In order to address to the discrepancy between law and reality, it is crucial to identify the obstacles for enforcing the law. I will here argue that it is necessary to recognize both the underlying, structural problems and the more direct and obvious causes in order to obtain a holistic picture of the legal flaws within the Colombian IDP regime.

### 7.1.1 *Structural challenges*

#### **Access to land**

Latin America is known for its immense gap between social classes, as wealth and land ownership has been concentrated throughout history in most parts of the continent. The income distribution was probably the worst in the world in the 1960s, and has amplified during the last half of the 20<sup>th</sup> century, culminating in the neoliberal era in the 1980s and 1990s (Thorp 1998). The guarantee of the right to land is a fundamental necessity in the rural and often poor sectors of society, including indigenous, afro-Colombian and other groups vulnerable to displacement. One of the displaced indigenous persons I talked to, mentioned the access and right to their land, *la madre tierra*, as the main issue they were fighting for. Legal access to territories, when respected by all actors, contributes to predictability in terms of safe and stable livelihoods. The Colombian conflict includes a number of intertwined elements and the right to land is one of the major concerns. The situation has been called a ‘veritable ‘guerra de territorio’ or war for land’ (Muggah 2000: 138), a description which has a fundamental impact on the internal displacement and the efforts of complying with the IDP law.

The high land concentration which characterizes Latin America has, according to Kay (2001), been one of the main triggers and a catalyst for widespread rural violence and the emergence of insurgency movements. Violence in the rural areas has been endemic and persistent throughout the history of the continent, with the Spanish conquest and

colonization as one of the most brutal periods. The agrarian system which emerged in the colonial and post-colonial period, where landowners monopolized territories and established large landed estates, paved the way for the imbalanced and exploitative relationships between land owners and tenants (Kay 2001). In chapter six, I showed how the tense relationship between the displaced population and the urban politicians may be characterized by mutual suspicion and distrust. The cultural and political differences between the intellectual elite in the urban centres and the displaced persons with origin in rural areas are an important obstacle for the two groups to understand each other. This historical context has implications for the contemporary situation, and is important to bear in mind when exploring the reasons for the difficulties of implementing the legal IDP framework.

The Colombian Commission of Jurists (CCJ) has established that territories that present possibilities for expansion of stockbreeding or extensive extraction of minerals and natural resources coincides with high levels of forced displacement (CCJ 2006). The correlation between the usurpation of land and forced displacement is not new. As mentioned above, the land structure where large *haciendas* turned the peasantry into oppressed wage-workers, continued throughout the post-colonial period. The accumulation of land as a source to power and the role of the paramilitaries in protecting the privileges of the landowners in the Colombian history has been documented in various studies (e.g. Braun 2007; Palacios and Safford 2002; Sanín Gutierrez 2006). During *La Violencia* in the 1950s, millions of persons were forced to flee their territories, which resulted in an increased concentration of land and ownership of agrarian property (CCJ 2006; Gallón 2007). Following Muggah (2000), it is today widely recognized by national and international actors that forced displacement is used as a strategy in armed conflicts to seize land and control the civil population. The professors of economy Ana María Ibáñez and Pablo Querubín (2004) have further investigated the connections between land concentration and forced displacement in Colombia, and concluded that the two phenomena are strongly linked. The depopulation of areas is used as a deliberate strategy by the illegal armed groups to strengthen their territorial control and to appropriate agricultural land. The displacement has proven to be more intense in regions

well-suited for agriculture or areas rich on minerals (CCJ 2006; Ibáñez and Querubín 2004).

A recent example from Colombian agrarian politics may contribute to illustrate the point of lack of will or ability by the authorities to comply with its responsibilities towards the displaced population. In 2004, the Uribe government granted an area of 17.000 hectares of land in Carimagua in the Meta department to IDPs. The area was meant to ensure resettlement for approximately 80 families, allowing them to start up new lives in relatively safe areas. In February 2008 a Colombian newspaper (El Tiempo 10 February 2008) revealed what later became known as the 'Carimagua scandal'. The land originally given to comply with the national IDP law was sold to international companies for the purpose of producing African palm for the production of bio fuel and rubber. According to the minister of agriculture, the land was not appropriate for small scale farming. A report from IDMC (2007b) further underlines this tendency by documenting how return to certain areas is blocked because of the production of palm and the producer's presumed links with paramilitary forces. In 1996, the national army led an attack on a guerrilla base in the Chocó region, causing massive displacement of the civilian population and abandonment of large-scale areas. Soon after, private companies cultivating African palm for the production of bio-fuel established businesses in these territories. The government has financially and politically supported initiatives of building such plantations, in order to eradicate illicit drug crops and promote regional development.

According to Law 387, the lack of political ability or will to provide new land for resettlement IDPs or securing the areas they were forced to abandon, is a clear violation with the IDP rights. Ferguson (1994) argues that the chronic failure of addressing poverty stems from the narrow discourse of the actors implementing the aid projects, which emphasizes technical and economic solutions to complex problems. He claims that this approach is not necessarily caused by ignorance, bad will or lack of knowledge but rather by the limitations caused by the traditional ways of providing answers and solutions. If the aim is to comply with national law on internal displacement, the government is

missing the target when investing most resources in short-term emergency aid. It is of course vital to provide basic assistance to people arriving to the city after being forced to flee, but the internal displacement in Colombia will not reach an end until prevention of displacement is ensured. Nor will the number of IDPs decrease unless safe return is guaranteed. The causes of forced displacement are, as I have illustrated above, extremely complex, and the political and financial interests gaining access to land have deep historical roots. Following Malkki's (1996) analysis of the refugee regime, the forced displacement needs to be addressed in its historical and political context in order to be properly understood.

Ferguson is careful not to speculate on possible hidden intentions behind the policy-makers' or implementers' decisions and actions. Yet, the 'Carimagua scandal' described above may illustrate the authorities' inclination to prioritize large-scale private investments rather than showing a genuine will by to comply with the IDP law and ensure safe return or resettlement to new land for the IDPs.

### **An armed conflict or isolated terrorist acts?**

When President Alvaro Uribe took office in 2002, his mandate was based on an electoral campaign promising to confront the guerrillas with a hard line. FARC is now labelled a terrorist group by the Colombian government, neglecting to acknowledge them as political actors (Mason 2003). By reducing the insurgents to 'terrorists' and 'bandits', the Uribe administration has been able to redefine the contemporary situation: *'In Colombia there exists no armed conflict, but rather the threat of terrorism'* (GoC 2005) Colombia's High Commissioner for Peace, Luis Carlos Restrepo Ramírez stated in March 2005. This has been repeated at various occasions throughout the years of the Uribe administration. During one of my interviews with a Colombian lawyer and human rights expert, this new rhetoric was pointed out as one of the main obstacles for reaching sustainable peace, and accordingly as one of the core reasons for the huge problems of implementing the comprehensive legal IDP framework.

The previous administration, led by President Andrés Pastrana, invested all its political capital in reaching an end to 40 years of internal war by negotiating with the guerrillas. After a number of attempts of reaching a peace agreement by dialogues and compromises, the negotiations collapsed in 2001. Both parties had broken several promises, and the general public again lost faith in achieving peace within the foreseeable future. People were tired of decades of war and centuries of political violence, and when the 'soft line' had proved to fail, the public embraced Uribe's proposal of ending the conflict by military means. Through immense financial and military support from the US government, Uribe has achieved some important improvements in relation to security. The number of random killings has declined; the FARC guerrilla has lost parts of its territory; and the government has realized important demobilizations and reintegration of the paramilitary groups.

Financial and political support from the US administration has been important for decades for the Colombian authority, as it has been in most parts of Latin America. While the tides have turned for the majority of the countries on the continent, with centre- or left wing oriented governments becoming increasingly independent from US influence, the Colombian development has assumed a different direction. Ties to the Bush administration have been strengthened since Uribe took office, which is reflected in the expansion of Plan Colombia – the US funded assistance package aimed at eradicating the production of illicit crops and drug trafficking. In the light of the US led 'War on Terror', the Uribe government terrorist discourse is reducing armed actors to terrorists, stripped of any legitimate political objectives. The government argues, as mentioned above, that it has managed to demobilize approximately 30.000 paramilitaries, and organized the handing in of around 12.000 small arms (Duncan 2006). Since 2006 the Uribe government has claimed that the Colombian paramilitaries are completely demobilized, and are not agents of displacement. The discourse on the absence of 'self-defence groups' such as the paramilitaries in the light of the non-existing war has an impact on the difficulties of securing access to rights and thus implementing the legal framework. A displaced person in Bogotá explained how the assumed non-existence of paramilitary groups could affect one's possibilities to register as displaced and access IDP rights:

If you go to denounce your case of displacement, there are some conditions. If you say that the ones who displaced you were the paramilitaries, they will tell you that they won't accept it, the declaration, because the paramilitarism was legally ended one and a half year ago. The High Commissioner of Peace said this one and a half year ago, that the paramilitarism in Colombia has ended, that they'd buried it.

This is further investigated and proven by the Control Commission of Public Policies on Internal Displacement (CSPD), during their process of scrutinizing to what extent the government was following up the demands from the 2004 sentence T-025 from the Constitutional Court. The report from CSPD revealed that displaced persons who had tried to denounce their displacement as caused by paramilitaries, were systematically rejected in the public centres for registration (CSDP 2008).

The discourse on the non-existence of an armed conflict and the supposed abolishment of paramilitary groups is contributing to isolate the Colombian humanitarian catastrophe from its political and historical context. By portraying the illegal armed groups as a sphere of society completely detached from state actions the authorities urge for the sympathy by the general public, arguing that they are all fighting a common enemy. The usurpation of land may continue, and private companies are welcomed to establish in abandoned areas, complicating the efforts of preventing displacement and ensuring safe resettlement. Hence, the power structures may remain untouched and reproduced by actors of the ruling elite.

### **Fear constrains action**

Displaced persons are often afraid to denounce the violations of their rights. This is due to experiences of being labelled as collaborators of the guerrilla or other armed groups, and fear of further persecution, threats and displacement. Moreover, displaced persons I talked to commented that there are 'rumours' saying that paramilitary organizations have infiltrated the public institutions in several places around the country, which increases the scepticism to report encroachments. This claim is also supported by a research group investigating the national and international responses to the Colombian internal displacement (Fagen et al. 2003). IDPs often fear that their anonymity will not be

preserved when registering in the RUPD which would increase the likelihood of further attacks and threats from armed actors.

In addition to fear of further persecution there are a number of reasons for why many displaced persons abstain from entering into the process of denouncing violations of human rights and their forced displacement. Firstly, the suspicious attitudes many citizens have towards displaced persons often make IDPs reluctant to register in order to avoid the label '*desplazado*' (displaced). If there are other ways of surviving and gaining livelihoods, such as social networks or own capabilities, this may be perceived as a better and less stigmatizing solution for many. During some of my interviews and informal talks with displaced persons, this issue was touched upon when discussing the arrival to a new location. A feature which seemed to be relevant for many IDPs was the fear of discrimination, which made people move towards areas where other displaced were already settled. The IDP category, although first developed by the humanitarian regime, tends to assume particular meanings in local contexts. The side-effect of separating out the displaced as a specially vulnerable group in society with access to a certain set of rights different from 'ordinary' citizens, may for instance be discrimination and difficulties of integration (Brun 2003). In Colombia, the stigmatization seemed to be mainly related to the armed groups, and though an IDP most often have no connection or affiliation to any such groups, they tend to be associated with criminals by the public in general.

Secondly, persons having been forced to flee from rural areas may in many instances lack personal documentation papers, either because they have never received such, or because these have been lost during the flight. This becomes a problem during the registration procedure, because some sort of identification is necessary. The process of acquiring personal documentation requires knowledge on how to proceed and might additionally be a very long and complicated process. Thus, the option may be not to register at all, and thus not receive assistance, nor being able to change one's own situation (Cohen and Sanchez-Garzoli 2001). Thirdly, upon arrival to the large cities, IDPs are forced to settle in slum areas in the outskirts of the urban centres, often on illegally occupied land. The

fear that local authorities will forcibly remove them when detecting the land invasion, keeps many IDPs from registering. Finally, some displaced have stated that the reason why they have not approached the authorities to register and hence claim their rights is that they simply do not know how (Fagen et al. 2003). As a displaced man commented during an interview; ‘in general in Colombia, there is no culture of knowing the law’. There are thus many reasons for displaced persons not to register and actively trying to change the course of their lives.

Displaced persons involved in organizational work run extremely high risks. Colombia is reported to be one of the most dangerous countries to lead a group of vulnerable people such as IDPs (Cohen and Sanchez-Garzoli 2001). According to the Representative for the Secretary-General on IDPs, 127 leaders of indigenous IDP communities were assassinated only during 1998 and 1999 (OHCHR 1999). The dangers of being involved in an organization and openly fight for access to right and the prosecution of the persons or groups who caused the displacement, is clearly extremely risky, both for the individual involved and his or hers family and community.

Research and statistics from both Acción Social (2008b) and CODHES (2006c) show that the majority of the displaced persons eventually end up in the larger cities such as Bogotá, Cali and Medellín. The violence in the urban centres is wide-spread, and though the size of the large city implies a greater possibility for IDPs to hide and ‘disappear’ in the crowds of people, the arrival to cities is far from safe. Urban conflicts between paramilitaries, guerrillas and other armed actors create a feeling of constant insecurity among IDPs, and keep many displaced from actions which could improve their living conditions and social status. The armed groups are fighting for control over the population, and many displaced have experienced continued threats and harassment from the same actors who displaced them in the first place. Thus, when an IDP arrives at a new destination, the flight has not necessarily ended. ‘Social cleansing’ has been reported at several instances, where groups of armed men threaten, assassinate or force people to flee from their *barrio* (neighbourhood). Fear is thus used systematically in order to keep people under control or keep IDPs ‘silent’ (AI 2007; CINEP 2004). Displaced persons in

general and IDP leaders specifically are often targets of these kinds of threats. Violence and threats clearly constrain the possibilities for influencing their own situation, for denouncing attacks and making the vulnerability of the IDP population visible. Another factor which complicates to the urban violence against IDP, is that inter and intra-urban forced migration is not recognized as a ‘valid’ reason of displacement. This implies that persons who are forced to flee within a city or between cities, are not included in the official register of displaced persons, the RUPD, and are thus not entitled to any assistance or protection from the state.

Violence and attacks is thus an imminent danger for displaced persons, and even more so for those engaged in organized work. The aspects of danger and the culture of violence are without doubt constraining the action of IDPs, and thus reducing the ability to work for improvements on a personal level or more structural change.

### **Mass media rendering forced displacement invisible**

The Colombian mass media, including daily and weekly newspapers and magazines, TV stations and radio, continuously reports on the development of the armed conflict. Most online newspapers have proper banners directing the reader towards issues like ‘peace’, ‘armed conflict’ and ‘justice’, illustrating the dramatic situation and giving the impression of a mass media covering these circumstances. However, the news published for the Colombian population is far from nuanced, and the space for critical journalism is highly limited. The lack of freedom of press is due to on the one hand a concentration of the ownership of the most central and far-reaching media houses, and on the other hand a brutal series of harassments, threats and assassinations of journalists having published material criticizing either the government or the armed groups.

Latin-American businesses have traditionally been run within the family, including cousins, uncles and distant relatives. In Colombia, the daily *El Tiempo* is the only remaining newspaper which is circulated nationally on a daily basis, after the rival *El Espectador* reduced its publication to a weekly basis in 2001. The main shareholders in *El Tiempo* have for nearly a century been the Santos family, which members have had

extensive influence within Colombian politics. Today, the Santos family is still highly integrated in the national political life: Juan Manuel Santos is both the Minister of Defence of the current Uribe government and the sub director of *El Tiempo*. His cousin, Francisco Santos, is the Vice President of the Republic. The brother of Juan Manuel Santos' grandfather served as President of Colombia while also owning *El Tiempo* (Hughes and Lawson 2005; Vélez López 2006). This example of the tight bounds between *El Tiempo* owners and the political elite is symptomatic for the reality of Colombian press. When politicians are able to influence and decide what may and may not be published in the national media, the democratic mechanisms are threatened. During the above mentioned interview with the human rights expert, these strong links between media and the central government and politicians in general were emphasised as one of the main reasons for the problematic situation of the IDPs:

The displaced population is systematically made invisible. They are being put in the shadow by the personification of the kidnapped, the corps of the 'diputados'<sup>8</sup>, humanitarian agreement, etcetera (...) The owners of the mass media are also a part of the government.

It was during the same interview argued that this 'invisibilization' is a conscious move by the political elite in cooperation with the media, in order to keep the public attention away from the increasing problems of internal displacement. This would not have been possible to the same degree if there existed a genuinely independent and free press in Colombia. It is however important to stress that there are a number of smaller newspapers, radio stations and magazines where journalists and publishers are eager to portray a more nuanced picture of the political situation, the armed conflict and the consequences for people forced to flee from their homes. Sadly, Colombia is considered to be one of the most dangerous countries to conduct critical journalism (IPI 2006), and the work of investigating reporters might be highly unsafe and limited. Though organizations such as Reporters without Borders (RWB) and International Press Institute (IPI) report that the number of journalists killed has decreased during the Uribe

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<sup>8</sup> In June 2007, 11 'diputados' (Members of Parliament), who had been prisoners of FARC for more than five years were killed in crossfire. FARC hesitated to hand over the corpses, an event which received extensive media coverage for weeks.

Presidency, they also stress that freedom of press has not necessarily improved. Threats and assassinations by paramilitaries and guerrilla groups are most often met by impunity, which makes journalists use a high degree of self-censorship (IPI 2006; RWB 2008).

Media coverage may thus be constrained by the insecure situation and the threats journalist and publishers receive when highlighting armed groups' activities or criticizing the government. However, when talking to displaced persons I got the impression that journalists choose not to cover certain events – such as attacks on displaced populations - not only because of fear of harassment and threats, but also because of lack of interest:

Last week when they demonstrated for the hostages, five persons were killed during that same week just outside Bogotá, and no one said anything. The displacement and the assassinations of 'campesinos', and of the lower class, here you will not hear any of that in the media.

This characteristic statement shows the perception of the media and authorities by many displaced and marginalized in the Colombian society. There is a deep rooted scepticism towards the social sphere defined as the elite, which may also include the media and journalists. If the newspapers, TV stations and the radio in general are reluctant to ensure comprehensive coverage and a deep analysis of the situation of the displaced, either because of fear of reprisals or because that social group is perceived uninteresting for the media consumers, this clearly adds to the negative sentiments and distrust between 'the elite' and the displaced persons. The idea which the quote above is an example of, the doubt of the media even being interested in the situation of the displaced and the lower class of the Colombian society, also reinforce the gap between the marginalized and the rest of the society, and complicates the possibility for mutual understanding. It is not to say, however, that all Colombian media is bound by political interest nor that all journalists are unwilling to report on the political sensitive issues. Throughout the first half of 2008 there has been extensive coverage in Colombian newspapers on the 'parapolitica', a topic which illustrates a fundamental democratic problem. Parts of the media thus play an important role, but the influence of central politicians on vital newspapers and TV-stations hinders the free press, which again could have been crucial in scrutinizing the governmental efforts towards the IDP population.

### *7.1.2 Direct constraints for implementation*

In the landmark decision from the Constitutional Court in 2004, two main causes for governmental failure of complying with their own policies were identified; financial and human resources invested in all stages of displacement were insufficient, and institutional capacities on local, regional and national level were unskilled and inadequate to attend the displaced population (Rothing and Romero 2008). The effectiveness of the different official programs have been limited by the deficiency of the design of the programs, which, in spite of its in theory all-encompassing and integrated nature, have proven inadequate when applied on the ground. This is mainly due to low institutional capacity and lack of cooperation between the many entities in the SNAIPD- system (Ibáñez and Querubín 2004).

The insufficient allocation of economic resources is partly due to the underestimation of the number of IDPs. The debate on the actual numbers of IDPs in Colombia has been going on since the government started its official registration in 1995. As outlined in chapter 4, the Colombian state officially recognized its responsibility towards the displaced population when the legislation was in the process of being developed. Through the IDP legislation, RUPD system<sup>9</sup> for registering IDPs has been established as the official system for systematizing the displaced and the causes of flight. This formal system of registration constitutes the basis for which the displaced are entitled recognition of their vulnerable situation and right to humanitarian emergency aid, and is hence crucial in terms of allocation of economic and human resources (AS 2007a). The research institute CODHES has developed their own system of registering the IDPs, the so-called SISDHES system (Sistema institucional de Información sobre desplazamiento, conflicto armado y derechos humanos – Institutional Information System of displacement, armed conflict and human rights) and as pointed out above, their estimates of the size of the IDP population by far exceed the numbers of IDPs registered in the RUPD. CODHES has managed this system since 1995, and included the statistics of

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<sup>9</sup> See Chapter 5

displacement from 1985 to 1995, developed by the Bishop's Conference (CODHES 2006b).

When asking officers in the governmental body Acción Social about the large discrepancies on the numbers of IDPs, they mostly referred to limitations by law 387:

We are aware of the criticism towards the state on the issue of counting the displaced. But CODHES count massive displacements, whereas AS count one by one. For us the displaced is the person which appears in the register. Why? Because the law is saying so. We can not go against the law and the norms. There is a difference in about 30%, but it is not possible to compare this

As of December 2007 the state, through their RUPD registration system, counted approximately 2,4 million internally displaced persons in Colombia (AS 2007b). The SISDHES system had 4,2 million IDPs registered in their system, counting from 1 January 1985 to December 2007<sup>10</sup>. Hence there is a gap of around 2 million persons, who are not entitled to any form of assistance or protection from the state, nor any recognition of their vulnerable situation. The discrepancy between the two main sources of statistics on the IDP population is thus due to the government starting their registration system a decade after the Bishop's Conference and CODHES. The different methodologies applied add further to the discrepancies between the two sources. The government operates with a list of existing armed groups which are 'valid' perpetrators; any other reason for displacement is thus not approved. As mentioned above, the paramilitaries are no longer perceived as a 'valid perpetrator'. There are also other reasons contributing to the discrepancies between the systems, as underlined by an officer in the Norwegian Refugee Council (NRC) during an interview:

Intra urban IDPs are not counted by the state, nor do the persons displaced by fumigation of illicit crops. Since the AUC has become 'demobilized', there exists a list of groups which are 'approved' as actors which might be causes to flight. After 2006 there has appeared another 50 to 80 new groups like that. All of these new groups do not exist on the lists of the state, and may therefore not be causes to forced migration. This is one of the important reasons for the gap between the numbers of CODHES and the numbers of the state. The discourse of the state is that there are no longer any AUC.

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<sup>10</sup> See figures Chapter 2

The NRC did, as most other NGOs interviewed, express a keen concern for the Colombian IDP situation and the seeming unwillingness by the state to enter into serious discussions on the issue of registration of the displaced persons. As underlined by a researcher from CODHES, operating with the exact number of IDPs is crucial in order to be able to implement the comprehensive legal framework:

When it comes to the debate on the numbers of IDPs, some say it is secondary, but it's not. It is absolutely essential to know the number in order to know how much resources you need to invest.

CODHES stresses the necessity of managing the registration system in a more comprehensive way; encouraging the government to look deeper into the reasons for the gap between the estimations of the amount of IDPs. So far, the government has not showed any will to change and expand their system, which implies that resources distributed are most likely severely underestimated. Moreover, when the numbers of IDPs differs as substantially as they do in the Colombian case, this is due to different discourses and perceptions of the current political situation. Most IDP organizations on both national and international level base their work on the perception of the reality of an armed conflict and the recognition of the existence of its victims (IDMC 2006). However, without a shared idea of the nature of the political situation, and who should be considered a victim, it is hard to conceive a comprehensive response where all actors work towards the same end.

## **7.2 Positive developments**

### *7.2.1 Legal measures forcing government to comply*

Starting in the mid 1990s with the initiative from the Congress and the cooperation with the UN on the IDP law, the legal framework and additional measures such as a number of verdicts and sentences, have constantly developed and improved. Though there is no

doubt that the Colombian government is still far from being able to implement its comprehensive laws and additional legal measures, the improvements are vital for a continuous pressure on the responsible authorities. Two crucial legal measures will be included here: the *tutela* and a sentence from the Constitutional Court.

### **‘Tutelas’**

As outlined in previous chapters, Colombia has adopted a large body of human rights jurisprudence since the reformulation of the Constitution in 1991. Among these is the legal mechanism of *tutela*, a petition procedure which allows any Colombian citizen to seek protection before a court when he or she considers their fundamental human rights to be violated, or in risk of violation. The *tutela* may be defined as a ‘complaint that any citizen can bring before any judge in order to seek an immediate judicial injunction against actions or omissions of any public authority that they claim violates their constitutional fundamental rights’ (Cepeda 2006:22). The Court must hand down a ruling within three days, treating the cases as emergency issues. The use of *tutela* has increased rapidly during the last decade, and the numerous petitions coming from displaced individuals since 1997 quickly made the Constitutional Court acknowledge the existence of a humanitarian crisis. Since 1992, the Court has received more than 1.400.000 *tutela* decisions (Cepeda 2006; Fagen et al. 2003) and is considered to be an important step forward for IDPs in terms of formal and weighty ways of addressing the authorities and claiming their rights. The *tutela* has enabled the displaced to take action within the existing structures and the many IDPs who have made use of this right have contributed to a step towards changes within the system, where authorities are slowly being obliged to make efficient change.

### **Sentence T-025 from the Constitutional Court**

In January 2004 the Constitutional Court concluded in the sentence called T-025 that the Colombian government were not fulfilling their responsibilities on the prevention of displacement or on the issue of protecting and ensuring assistance the people already displaced from their places of origin. This ruling stated that the non-compliance with the

law constituted an unconstitutional state of affairs, and has made the Court into the most authoritative and essential supervisor of the government's actions in relation to the IDP problem. The sentence concluded that the Colombian IDP regime had serious structural shortages. This was based on findings of lack of compliance with Law 387, the numerous *tutelas* brought before the Court by IDPs, and constantly worsening situation of the displaced. In conversations with displaced persons and different NGOs addressing IDP issues, the Constitutional Court was described as a fundamentally important actor in the work of pressuring the authorities to comply with law 387 and ensuring basic human rights for the IDP population.

### *7.2.2 Increased attention, organization and action*

#### **Civil society**

Since the attention around the IDP problems started receiving extensive state attention while developing the legal framework, the space and possibilities for civil society to focus on IDP issues, also increased. As we have seen, the Catholic Church had already been deeply engaged in the complex realities of internally displaced for more than a decade before the government eventually recognized its responsibilities. Furthermore, several social movements and human right defenders are often as old as the displacement and conflict itself. The experience, knowledge and trust in these organizations among the displaced population are often profound and wide-ranging. Many of both the relatively new and the experienced institutions and organizations which constitute the civil society are now making extensive use of the national IDP law and the international legal instruments in order to restore the rights of the IDP population and hold the state accountable for their legal commitments (IDMC 2006). The civil society is hence able to take advantage of the existing structures to advocate for a better implementation of the legal framework, to improve the situation for the IDPs, and to draw attention to the gap between laws and reality on the ground.

## **Internally displaced person and possibilities to act**

As a female indigenous, I have come here to the huge city together with other women who have lost their husbands. Our friends are being killed, and this is a very difficult situation. But now we are organized, and we can better claim our rights.

Throughout the last decade, internally displaced persons have increasingly started organizing themselves, working to assert their demands, advocate for their rights and receive the governmental assistance they are entitled to according to national law. However, it is highly problematic to be organized in Colombia, when this implies criticizing and confronting both armed illegitimate groups, the national government and army. Since the early 1990s hundreds of leaders of displaced communities have been assassinated (IDMC 2006). In spite of the important efforts to organize and create channels where IDPs may directly voice their demands, the lack of security and protection still constitute a major constrain for grass root work. On the contrary to what discussed above, internally displaced persons in Colombia are in many cases noted to have a very good knowledge to their rights as displaced both in relation to Law 387, sentence T-025 from the Constitutional Court, their constitutional rights, and the possibilities within the existing assisting programs. As the Representative of IDPs noted at his last official visit to Colombia, this awareness distinguishes Colombia from other countries with severe problems of internal forced migration (Kälin 2006a). As discussed throughout this dissertation, the level of power and choice is considered to be relatively low among IDPs in Colombia. Yet, small steps are taken to improve the situation, among which legal mechanisms and increased organization are found.

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## 8 Conclusions

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In this dissertation I have attempted to analyze of the discrepancy between Colombia's comprehensive legal IDP framework and the realization of rights for the displaced population. Colombian authorities have developed one of the world's most comprehensive and advanced legislations for internal displacement, but the number of IDPs increases every day, and very few are able to return to their places of origin. I have found that the Colombian displaced population has achieved an increased access to humanitarian emergency aid from state institutions. Particularly in Bogotá and other large cities significant distributions of basic assistance are accomplished, and according to law 387 this is an important step forward. As described in this thesis however, where the Colombian government most fundamentally fails to enforce the IDP law is the areas of prevention, resettlement and return. The massive emphasis on humanitarian assistance and the lack of genuine measures to address prevention and resettlement are portraying the internal displacement in Colombia in technical terms. This undermines the political problems the country is facing, which are causing massive forced displacement. Given the ongoing armed conflict, the challenges of securing the rural population and their territories are arguably extremely complex issues to address. Yet, the possible reasons and interest behind investing largely in one element of IDP law and falling short in other aspects are important to investigate.

The reasons for the discrepancy between the above mentioned areas of the IDP law and the realization of these rights are highly complex, and need to be analyzed by encompassing the political and cultural structures and the history of Colombia. The many actors which the Colombian IDP system is comprised by have throughout the course of history contributed to define these structures. Giddens' (1984) theory of structuration contributes to illustrate how different actors are shaping and negotiating the structures

while the structures simultaneously are enabling and limiting human action. The internally displaced persons and the actors representing the civil society and the state are all perceived as capable individuals in position to influence their situation through political organization or participation, legal measures or other means. The structures may contribute to enable the actors to change their situation, as the legal mechanisms in the Constitution permit IDPs to denounce governmental failure of protecting fundamental rights. The political and cultural structures are however also limiting the space of manoeuvrability of the actors. As explained in this dissertation, the cultural gap between the poor rural population and the political elite in the urban centres should be interpreted in the light of the Colombian history. The urban elite is generally associated with the traditional landowning elite, in relation to which the peasantry has experienced oppression, exploitation and marginalization. The access to and ownership of territory is still vital in terms of power and extensive income generating activities. Possibilities for large-scale 'development' projects, production of African palm for bio fuel and extraction of minerals - in addition to the cultivation of illegal coca crops - imply immense potential for profit for those in control of land. The overreaching political and cultural structures are limiting the actors in the sense that these are contributing to maintain the gap between on the one hand the few persons with large landed estates and access to political power, and on the other hand the majority of impoverished peasantry and the displaced population.

The structural explanations for the inability to implement the parts of the law ensuring prevention from being displaced and possibilities for resettlement are furthermore to be found in the discourse of the Colombian IDP regime. The internal displacement in Colombia must be understood in light of the ongoing conflict. The government is however claiming that there is no longer an armed conflict going on in the country. The alleged complete demobilization of paramilitaries further implies that the only remaining illegal armed actors are left-wing insurgents. By the governmental labelling of the guerrillas as 'mere terrorists' and by portraying them as a sphere of society completely detached from any state action, these groups become stripped from any legitimate political objectives. The guerrillas emerged as a reaction to the social injustice and the

governmental oppression of the poor and rural population, and should be considered to be highly interlinked with the political sphere. Moreover, when claiming the complete demobilization of paramilitaries, the state is allowed to disengage itself even more from the structural causes of displacement, as paramilitaries are proven to have close ties to state officers and politicians. Ferguson's (1994) thesis on the 'anti-politics' of the development regime contributes to shed a light on this situation, as the Colombian IDP regime is picturing the internal displacement as a problem to which technical solutions are the answer. The perception of emergency assistance as 'neutral' and based on a humanitarian imperative disguises all possible political intentions and interests. Malkki's (1996) concepts of depoliticizing and dehistoricizing further illustrate the consequences of detaching the need of humanitarian aid from its context. The IDPs in Colombia are through media and the IDP regime pictured as a 'universalized mass of victims' in need of immediate relief from 'the outside world'. The 'victimization' of the displaced population undermines the possibility of perceiving IDPs as conscious actors with individual histories and backgrounds. Furthermore, the massive focus on the aspect of humanitarian assistance removes the focus away from the structural causes of displacement and obscures the identification of responsible actors, especially when the government itself can be considered a perpetrator. While the IDP regime maintains its central focus on providing humanitarian aid, the usurpation of land may continue, rendering the prevention of displacement and the resettlement even more complicated. In this way the structures are remained untouched and reproduced by a few actors possessing the power of definition.

The situation of internal displacement in Colombia bears many resembling elements with other countries faced with challenges of forced migration, for instance in the sense that it is highly complicated for international actors to address because of the state's involvement in human rights violations and the principle of national sovereignty. However, the Colombian situation must be analyzed within its specific historical and political circumstances. The Colombian history includes complex narratives of colonialism and oppression of the indigenous population, a continuation of marginalization throughout the post-colonial period, decades of US intervention, large-

scale ‘development projects’ including the extraction of natural resources, and usurpation of land from peasants and indigenous people. The histories are innumerable and influence the situation in Colombia, but are lost when focusing merely upon IDPs as a homogenous mass, as victims in need of a set of certain assisting measures. The categorization of IDPs as a vulnerable group contributes to their separation from the rest of society, stripping them from their political and cultural context.

The Colombian displaced population has throughout the last decade been increasing their capabilities to organize and advocate for their rights. An explicit focus on the rights of IDPs is vital in order to empower the displaced population. When moving away from the need-based approach, this can be interpreted as a recognition of the fact that rather than to perceive receivers of aid as victims of a catastrophe which is located outside of their or any other person’s control, the focus should be centred on the rights of the individual. The rights-based approach contributes to recognize a person’s capability to act and speak, moving away from the ‘victimization’ where people are seen as passive recipients. The figuration of IDPs as a homogenous mass of victims in need of a ‘package of assistance’ is reducing the understanding of the structural causes of the plight. The Colombian IDPs have improved their situation in a certain degree in terms of small changes within the 1991 Constitution. Statistics from the Constitutional Court illustrate that the displaced are actively using their possibilities to act and speak out when fundamental rights are violated. This has led to significant measures taken by the courts in order to force the government to comply with the IDP law. A number of organizations and interest groups are created among the displaced population, and important improvements are made in terms of accessing a level of power and choice. This study has however shown that though the displaced population are making vital steps to influence their situation and actively work for change, there are still immense structural problems which limit their political manoeuvrability.

Resettlement in new areas and genuine efforts of preventing displacement – two essential areas covered by the Colombian IDP law – still seem to be a distant delusion for Colombia’s displaced population. Addressing the structural causes of displacement is a

highly political issue, and far more convoluted and sensitive than providing provisional shelter or a food voucher. The emphasis on technical solutions and economic aid remove the focus from the fact that the creation of a situation where people are forced to flee is always determined by politico-economic and historical factors. If the root causes of flight are not addressed, the underlying reasons for the need of providing assistance will remain.

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## Appendices

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### I: Interview guide 1

Is supposed to cover research question 1 and 2, concerning the process of formulating the Colombian IDP legislation, and to what extent the government is fulfilling its responsibility of implementing these laws. This will be directed to civil society actors and governmental officers (though the interview guide for the latter will be slightly modified).

**Part 1: main aim:** *to map the position of the organization within the IDP regime, in order to understand their working context. This part should be brief.*

1. When was the organization established, and for what reasons?
  - a. Was the IDP concept used from the beginning? If not, when was this concept introduced, and for what reasons?
  - b. How is the organisation financed?
2. What were the main responsibilities of the organisation when you first started up?
  - a. Have this changed during time?
  - b. If yes, how?
  - c. What are you main areas of focus/main tasks today?
3. Based on your experience working with IDPs, what do you think is the most interesting or important questions related to IDPs in Colombia today?

**Part 2: Main aim:** *To get an insight of the process of formulating the Colombian IDP legislation (mainly Law 387 of 1997).*

1. Concerning the context of the process of formulating the IDP- legislation in 1997:
  - a. How did the process start?
  - b. Who/which actors initiated it?
2. Which actors were included?
  - a. Where there any actors, in your point of view, who should have been included, but were not? If yes, why do you think they were not included?
3. What role did your organization have during the process?
4. What were the main topics discussed?
  - a. What was the main controversial issue?
  - b. Did some groups 'win' or 'lose'?

5. Could the process have been different in any way?
6. Since the legislation was developed, has the policy environment for IDP issues changed in any way?
  - a. Has the understanding of who should be included in the IDP category changed in any way from the time the laws were developed and up to now?

**Part 3: main aim:** *to get an insight into the organization's own understanding of its work (and/or the efforts of the government) of addressing various problems related to the IDP situation, whether there is a gap between laws and implementation, and possible obstacles for a more efficient law enforcement.*

1. Related to what you earlier explained about your present work for IDPs, how do you consider the situation for IDPs have changed since 1997?
2. How do you consider the legal framework for IDPs?
  - a. According to UNHCR and the Internal Displacement Monitoring Centre, the Colombian IDP legislation is one of the most comprehensive and advanced in the world. How would you say this influences your work?
3. How do you consider the efforts of the government when it comes to fulfilling the rights of the IDPs?
4. According to several sources there is a serious gap between legislation and implementation of rights.
  - a. What do you believe are the major reasons for such a gap?
  - b. How could the state and the different actors work differently in order to make the aid or programs of assistance more efficient?

**Part 4: main aim:** *to get an insight into how the organization understands of the situation of displaced indigenous people.*

1. How do you consider the way displaced indigenous and other marginalised groups are included in the laws?
2. How do you consider the situation of displaced indigenous people today?
  - a. What are the main challenges for displaced indigenous people in relation to other displaced groups?
  - b. What should be done to better their situation?
    - i. What should the state do?
    - ii. What could NGOs and the international society do?
3. Does your organization have any data specifically on displaced indigenous people, or do you work with such groups in any specific way?

## II: Interview guide 2

For interviews with internally displaced persons

### 1: Background

*Aim: To get an insight in their background (depending on how much they seem to be willing to share)*

- a. What part of the country are you from?
- b. Did you come alone, with family...?
- c. The route: did you come directly to Bogotá, or did you go elsewhere first?
- d. For how long have you stayed in Bogotá?
- e. Where/ how do you live here?

### 2. Registration and access to rights

- a. Did you register as a displaced at the state register? Why/ why not?
- b. Did you receive humanitarian assistance?
- c. How do you consider the way you were received in the UAO and the assistance you got?
- d. Have you received any other kind of help from the state?
- e. From other organizations?
- f. Are you yourself associated to an IDP organization?

### 3: Knowledge on legislation

- a. When you came to Bogotá, did you know which rights you had according to the law?
- b. What did you already know?
- c. Did anyone inform you about this? Who?
- d. According to UNHCR and the Internal Displacement Monitoring Centre, the Colombian IDP legislation is one of the most comprehensive and advanced in the world. What do you think about these laws?
- e. Do you think the situation for the displaced in Colombia has changed since law 387 was incorporated in the national law?

#### **4: Gap between law and reality**

- c. How do you consider the efforts of the government when it comes to fulfilling the rights of the IDPs?
- d. According to several sources there is a serious gap between legislation and implementation of rights.
  - i. What do you believe are the major reasons for such a gap?
  - ii. How could the state and the different actors work differently in order to make the aid or programs of assistance more efficient?

#### **Part 4:** *for displaced indigenous people.*

- a. How do you consider the way displaced indigenous and other marginalised groups are included in the laws?
- b. How are they handled in the legislation in relation to other groups?
- c. How do you consider the situation of displaced indigenous people today?
  - What are the main challenges for displaced indigenous people in relation to other displaced groups?
  - What should be done to better their situation?
    - i. What should the state do?
    - ii. What could NGOs and the international society do?
    - iii. What can you do?

### **III: Overview of informants**

#### **Organizations:**

Norwegian Refugee Council

CODHES (2)

Opción Vida

Fundación Luterana Mundial

Organización Nacional de Indigenas Colombianas (2)

International Migration Organization

#### **Displaced persons:**

‘B.C.’

Group interview, Kankuamo tribe indigenous

‘R.A’. Indigenous displaced woman

Student at the National University

#### **State level:**

Acción Social (2)

#### **Others:**

Lawyer and professor, Baranquilla

#### **IV: Interview and meeting log**

<b>Date</b>	<b>Organization/ person</b>	<b>Venue</b>
21.06.07	The Norwegian embassy	The embassy office
29.06.07	Norwegian Refugee Council	NRC office
29.06.07	CODHES	CODHES office
03.07.07	CODHES	CODHES office
09.07.07	ONIC	ONIC office
10.07.07	4 representatives of Kankuamo indigenous group	ONIC office
12.07.07	Acción Social	Acción Social office
17.-18.07.07	Congreso: 10 años de la Ley 387	Luis A. Arango Libr.
18.07.07	Asociación de indígenas y campesinos desplazados.	Luis A. Arango Libr.
19.07.07	Opción Vida + Visit to the OV delivery office of emergency aid	OV office
24.07.07	Mesa indígena	Coffee shop
25.07.07	ONIC	ONIC office
26.07.07	‘History lesson’, A.F	Coffee shop
27.07.07	Visit to Unidad de Atención y Orientación (UAO), Pte. Aranda	UAO, Pte. Aranda
27.07.07	International Migration Org. (IMO)	IMO office
30.07.07	Federación Luterana Mundial	FLM office
30.07.07	2 <sup>nd</sup> visit to UAO, Pte. Aranda	UAO, Pte. Aranda
31.07.07	‘History lesson’, part II, A. V.	Coffee shop
05.08.07	Lawyer/ professor in human rights	Baranquilla

## V: Law 387 of 1997

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### LAW 387 OF 1997

(July 18)

*Diario Oficial* [Official Gazette] No. 43,091 of July 24, 1997

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

<Summary of Validity Notes>

VALIDITY NOTES:
- Amended by Law <u>962</u> of 2005, published in the <i>Diario Oficial</i> No. 45,963 of July 8, 2005, "By means of which provisions are issued regarding rationalization of administrative processes and procedures of the State entities and organizations and those private organizations that exercise public functions or provide public services."
- Amended by Decree <u>266</u> of 2000, published in the <i>Diario Oficial</i> No. 43,906 of February 22, 2000, "By means of which guidelines are issued to eliminate and amend the regulations, procedures, and processes."
Decree 266 was [sic] 1999 was declared UNENFORCEABLE by the Constitutional Court via Decision <u>C-1316-00</u> of September 26, 2000, Hon. Carlos Gaviria, Justice reporting the opinion of the Court. As of its promulgation.
- Amended by Decree <u>1122</u> of 1999, published in the <i>Diario Oficial</i> No. 43,622 of June 29, 1999, "By means of which guidelines are issued to eliminate procedures, facilitate citizen activity, contribute to the performance and effectiveness of the Public Administration, and strengthen the good faith principle."
Decree 1122 of 1999 was declared UNENFORCEABLE by the Constitutional Court via Decision <u>C-923-99</u> of November 18, 1999, Hon. Alvaro Tafur Galvis, Justice reporting the opinion of the Court.

### THE CONGRESS OF COLOMBIA

#### DECREES:

#### TITLE I.

#### THE DISPLACED AND THE RESPONSIBILITY OF THE STATE

ARTICLE 1. THE DISPLACED. A displaced person is any person who has been forced to migrate within the national territory, abandoning his place of residence or customary economic activities, because his life, physical integrity, personal freedom or safety have been violated or are directly threatened as a result of any of the following situations: internal armed conflict, civil tension and disturbances, general violence, massive Human Rights violations, infringement of International Humanitarian Law, or other circumstances arising from the foregoing situations that drastically disturb or could drastically disturb the public order.

PARAGRAPH. The National Government shall establish what is understood by displaced status.

ARTICLE 2. THE PRINCIPLES. The interpretation and application of this law is guided by the following principles:

1. The forcibly displaced have the right to request and receive international assistance and that engenders the international community's corresponding right to provide humanitarian assistance.
2. The forcibly displaced shall enjoy internationally recognized basic civil rights.
3. The displaced and / or forcibly displaced have the right not to be discriminated against due to their displaced status, or for reasons of race, religion, public opinion, place of origin, or physical disability.
4. The families of the forcibly displaced shall benefit from the basic right to family reunification.
5. The forcibly displaced have the right to consent to definitive solutions to their situation.
6. The forcibly displaced have the right to return to their place of origin.
7. The Colombian people have the right not to be forcibly displaced.
8. The displaced and / or the forcibly displaced have the right for their freedom of movement not to be subject to more restrictions than those provided by law.
9. It is the State's obligation to support the conditions that facilitate coexistence among Colombians, equality and social justice.

ARTICLE 3. THE RESPONSIBILITY OF THE STATE. It is the responsibility of the Colombian State to formulate policies and adopt measures for the prevention of forced displacement, and for assistance, protection, socioeconomic consolidation and stabilization of persons internally displaced by violence. By virtue of the foregoing clause, the principles of subsidiarity, complementarity, decentralization, and equality on which the organization of the Colombian State is based shall be taken into account.

TITLE II.  
NATIONAL SYSTEM FOR COMPREHENSIVE ASSISTANCE TO  
POPULATIONS DISPLACED BY VIOLENCE  
CHAPTER I.  
CREATION, CONSTITUTION, AND OBJECTIVES  
OF THE NATIONAL SYSTEM FOR COMPREHENSIVE ASSISTANCE TO

## POPULATIONS DISPLACED BY VIOLENCE

ARTICLE 4. CREATION. The National System for Comprehensive Assistance to Populations Displaced by Violence is created to achieve the following objectives:

1. Comprehensively assist populations displaced by violence so that, within the framework of voluntary return or resettlement, they successfully reincorporate into Colombian society.
2. Neutralize and mitigate the effects of the processes and dynamics of violence that lead to displacement by strengthening sustainable and comprehensive development of the zones of expulsion and reception, and the promotion and protection of Human Rights and International Humanitarian Law.
3. Integrate public and private efforts for appropriate prevention of and assistance in situations of forced displacement by violence.
4. Guarantee timely and efficient management of all economic, administrative, technical, and human resources as they are essential for prevention of and assistance in situations that arise due to forced displacement by violence.

PARAGRAPH. In order to achieve the foregoing objectives, the National System for Comprehensive Assistance to Populations Displaced by Violence shall use the National Plan for Comprehensive Assistance to Populations Displaced by Violence.

ARTICLE 5. CONSTITUTION. The system shall be made up of the group of public, private, and community entities that carry out specific plans, programs, projects, and activities to further comprehensive assistance to displaced populations.

ARTICLE 6. NATIONAL COUNCIL FOR COMPREHENSIVE ASSISTANCE TO POPULATIONS DISPLACED BY VIOLENCE. The National Council for Comprehensive Assistance to Populations Displaced by Violence is created as an advisory and planning body responsible for formulating policy and ensuring budget allocation for the programs that the entities responsible for the functioning of the National System for Comprehensive Assistance to Populations Displaced by Violence are in charge of.

This National Council shall be made up of:

- A delegate of the President of the Republic, who shall preside
- The Presidential Advisor for the Displaced, or the person acting in that capacity
- The Minister of the Interior
- The Minister of the Treasury and Public Credit
- The Minister of National Defense
- The Minister of Health
- The Minister of Agriculture and Rural Development

- The Minister of Economic Development
  - The Director of the National Planning Department
  - The Ombudsman
  - The Presidential Advisor for Human Rights, or the person acting in that capacity
  - The Presidential Advisor for Social Policy, or the person acting in that capacity
  - The Manager of the Social Solidarity Network, or the person acting in that capacity,
- and
- The High Commissioner for Peace, or the person acting in that capacity.

PARAGRAPH 1. The Ministers of the Offices that, pursuant to this article, make up the National Council, shall be able to delegate their attendance to the Deputy Ministers or Secretaries General of the respective Ministries. In the case of the Ministry of National Defense, it shall be able to delegate to the Commander General of the Military Forces. In the case of the Director of the National Planning Department, he shall be able to delegate to the Deputy Director of the same Department; the Solidarity Network shall be able to delegate to its Deputy Manager. When the nature of the displacement calls for it, other Ministers, Administrative Department Chiefs or directors, presidents or managers of decentralized entities at the national level, or representatives from the Organizations for the Displaced shall be invited.

PARAGRAPH 2. The Director of the Office of the Special Administrative Unit for Human Rights of the Ministry of the Interior shall perform the duties of the technical secretariat of the National Council.

ARTICLE 7. DEPARTMENTAL, DISTRICT, AND MUNICIPAL COMMITTEES FOR COMPREHENSIVE ASSISTANCE TO POPULATIONS DISPLACED BY VIOLENCE. The National Government shall promote the creation of departmental, district, and municipal committees for Comprehensive Assistance to Populations Displaced by Violence, responsible for providing support to and cooperating with the National System for Comprehensive Assistance to Populations Displaced by Violence, and these shall be made up of:

1. The Governor or the Mayor, or the person acting in that capacity, who shall preside
2. The Brigade Commander or his delegate
3. The National Police Commander in the respective jurisdiction or his delegate
4. The Director of the Divisional Health Service or the Chief of the respective Health Unit, as appropriate
5. The Regional Director, Zonal Center Coordinator, or Agency Director in the new departments, of the Colombian Institute of Family Welfare

6. A representative from the Colombian Red Cross
7. A representative from the Civil Defense
8. A representative from the churches
9. Two representatives from the Displaced Population.

PARAGRAPH 1. The Committee, by its own decision, shall be able to call together representatives or delegates from other organizations or, in general, civic organizations or people of social relevance in the respective territory. The Ministry of the Interior or any entity at the national level that is a member of the National Council may attend the sessions of said committees for the purpose of coordinating the execution of the activities and / or providing technical support in any of the areas of intervention.

PARAGRAPH 2. When displacement is produced in populations, settlements, or townships where all of the above-mentioned members cannot be convened, the Committee shall be able to meet with the primary political authority in the place, the police inspector, or the person acting in that capacity, the displaced persons' representative, and / or the representative from the churches, from law enforcement, and from the National Police.

PARAGRAPH 3. In those municipalities or districts where there are displacement situations due to violence, it shall be the obligation of the mayors to call an emergency meeting of the municipal and district committees for Comprehensive Assistance to Displaced Populations. Noncompliance with this provision shall be considered misconduct.

ARTICLE 8. PREVENTIVE ACTIVITIES OF THE MUNICIPAL COMMITTEES. The preventive activities that the municipal committees shall undertake, among others, shall be:

1. Legal actions. The members of the municipal committee shall, by legal and institutional means, guide communities that may be affected by an act of displacement in the solution of conflicts that may lead to such a situation. Likewise, they shall analyze the viability of the legal actions and they shall recommend or decide the appropriate use of relevant legal or constitutional resources that will minimize or eradicate early stages of persecution or violence.
2. The members of the municipal committee shall try to prevent the early stages of displacement by proposing alternative conflict resolution mechanisms.
3. Assistive actions. The members of the municipal committee shall evaluate the unmet needs of people or communities that may possibly accelerate a forced

displacement process. They shall take appropriate assistive measures based on this evaluation.

CHAPTER II.  
NATIONAL PLAN FOR COMPREHENSIVE ASSISTANCE TO  
POPULATIONS DISPLACED BY VIOLENCE  
SECTION 1.  
DESIGN AND OBJECTIVES OF THE NATIONAL PLAN  
FOR COMPREHENSIVE ASSISTANCE TO  
POPULATIONS DISPLACED BY VIOLENCE

ARTICLE 9. DESIGN. The National Government shall design the National Plan for Comprehensive Assistance to Populations Displaced by Violence, which, once approved by the National Council, shall be adopted by decree.

This plan shall be prepared with the cooperation of the community, private, and public entities that make up the National System for Comprehensive Assistance to Populations Displaced by Violence.

The measures and actions adopted in the National Plan shall take into consideration the special conditions and characteristics of the “expulsion zones” and the “reception zones.”

PARAGRAPH. The National Government shall design and execute, in a period of no more than six (6) months, counted from the date this law enters into force, the plan to which this article makes reference.

ARTICLE 10. OBJECTIVES. The objectives of the National Plan shall be the following, among others:

1. Prepare diagnoses of the causes and agents that give rise to displacement by violence from the zones of national territory where the largest population flows are produced, of the reception zones, of the people and communities that are victims of this situation, and of the political, legal, economic, and social consequences that it produces.
2. Design and adopt safety, policy, legal, economic, and social measures for the prevention and surmounting of the causes that produce forced displacement.
3. Adopt emergency humanitarian assistance measures for displaced populations in order to ensure their protection and the conditions necessary for subsistence and adaptation to the new situation.
4. Create and apply mechanisms to provide legal and lawful assistance to displaced populations in order to guarantee investigation of the acts, restitution for violated rights, and defense of affected assets.

5. Design and adopt measures that guarantee displaced populations access to comprehensive projects, programs, and plans for rural and urban development, offering them the means necessary to create their own forms of subsistence so that their reincorporation into the cultural, work, and social life of the country is carried out without stages of segregation or social stigmatization.

6. Adopt the measures necessary to make possible the voluntary return of displaced populations to their areas of origin, or their relocation to new settlement areas.

7. Provide special assistance to women and children, particularly widows, women heads of household, and orphans.

8. Guarantee special assistance to black and indigenous communities subjected to displacement, in accordance with their ways and customs, and supporting return to their territories, and

9. Other activities deemed appropriate by the National Council.

## SECTION 2. NATIONAL INFORMATION NETWORK FOR ASSISTANCE TO POPULATIONS DISPLACED BY VIOLENCE

ARTICLE 11. PERFORMANCE. The National Information Network for Assistance to Displaced Populations shall be the instrument that guarantees the National System rapid and efficient national and regional information about violent conflicts, and identification and diagnosis of the circumstances that compel population displacement.

In addition, it shall allow for evaluation of the magnitude of the problem, taking measures for immediate assistance, preparing plans for the consolidation and stabilization of the displaced, and formulating alternative solutions for assistance to populations displaced by violence. This network shall have a special module for follow up of the activities carried out in the development of the National Plan.

ARTICLE 12. LOCAL INFORMATION POINTS. The Presidential Advisory Board for the Displaced and the Office of the Special Administrative Unit for Human Rights, in coordination with municipal and departmental governments, municipal human rights offices, divisional and regional offices of the Ombudsman, the Colombian Red Cross, the church, and organizations for the displaced, shall agree to set up network points in the municipalities of the zones affected by displacement.

ARTICLE 13. OBSERVATORY ON INTERNAL DISPLACEMENT BY VIOLENCE. The National Government shall create an Observatory on Internal Displacement by Violence, which shall produce semiannual reports on the magnitude and trends of displacement, and the results of state policies for

displaced populations. This observatory shall strengthen the National Information Network and shall include the participation of experts and academic centers with recognized track records.

### SECTION 3. PREVENTION

ARTICLE 14. PREVENTION. With the purpose of preventing forced displacement by violence, the National Government shall adopt, among others, the following measures:

1. Stimulate the formation of work groups for prevention and anticipation of the risks that may produce displacement.
2. Promote community and citizen actions to generate peaceful coexistence, and law enforcement activity against agents of disturbance.
3. Develop actions to avoid arbitrariness and discrimination, and to mitigate the risks to life, personal integrity, and the private property of displaced populations.
4. Design and execute an International Humanitarian Law Information Plan, and
5. Advise the municipal and departmental authorities responsible for the development plans so that they include prevention and assistance programs.

PARAGRAPH. The Office of the Special Administrative Unit for Human Rights of the Ministry of the Interior shall coordinate with the municipal and / or departmental authorities the convocation of the Security Councils when there are well-founded reasons to believe that a forced displacement will take place.

### SECTION 4. EMERGENCY HUMANITARIAN ASSISTANCE

ARTICLE 15. EMERGENCY HUMANITARIAN ASSISTANCE. Once displacement takes place, the National Government shall initiate immediate action to guarantee emergency humanitarian assistance with the purpose of relieving, assisting, and protecting the displaced population, and attending to its needs in the areas of food, personal hygiene, supply management, kitchen utensils, psychological and medical assistance, emergency transportation, and temporary housing in appropriate conditions.

In all cases of displacement, the civil and military authorities in the displaced population reception zones shall guarantee the free passage of humanitarian aid shipments, national and international accompaniment to the displaced population, and the establishment of permanent or temporary offices for the defense and protection of Human Rights and the fulfillment of International Humanitarian Law standards.

While the situation persists, the creation and permanence of inter-institutional teams made up of government and state entities at the municipal, departmental, and national levels shall be sponsored for the protection of the displaced and their personal property.

The Office of the Public Prosecutor and the Office of the Attorney General of the Nation shall undertake, ex officio, investigations into the punishable acts that led to the displacement.

PARAGRAPH. The right to emergency humanitarian assistance has a maximum duration of three (3) months, renewable under exceptional circumstances for another three (3) more.

## SECTION 5. RETURN

ARTICLE 16. RETURN. The National Government shall support displaced populations that want to return to their places of origin, pursuant to the provisions contained in this law on the subjects of socioeconomic stabilization, consolidation, and protection.

## SECTION 6. SOCIOECONOMIC STABILIZATION AND CONSOLIDATION

ARTICLE 17. SOCIOECONOMIC STABILIZATION AND CONSOLIDATION. The National Government shall promote medium- and long-term actions and measures with the purpose of creating conditions of social and economic sustainability for displaced populations within the framework of voluntary return or resettlement in other urban or rural areas.

These measures shall allow displaced populations direct access to the government's social programs, particularly the programs related to:

1. Profitable projects
2. National System of Agrarian Reform and Rural Development
3. Fostering small business
4. Social organization and training
5. Social assistance in the areas of health, education, urban and rural housing and education, children, women, and the elderly, and
6. Urban and rural employment plans of the Social Solidarity Network

## SECTION 7. DISCONTINUATION OF FORCED DISPLACEMENT STATUS

ARTICLE 18. DISCONTINUATION OF FORCED DISPLACEMENT STATUS. Forced displacement by violence status is discontinued when socioeconomic stabilization and consolidation are achieved, whether in the place of origin or the resettlement zones.

PARAGRAPH. The displaced shall cooperate in the improvement, reestablishment, consolidation, and stabilization of their situation.

## SECTION 8. INSTITUTIONS

ARTICLE 19. INSTITUTIONS. The institutions involved in Comprehensive Assistance to Displaced Populations, with their staff and administrative structure, shall internally adopt directives that permit them to provide efficient and timely assistance to displaced populations, within the coordination strategy of the National System for Comprehensive Assistance to Displaced Populations. The institutions with responsibility in Comprehensive Assistance to Displaced Populations shall adopt, among others, the following measures:

1. The Colombian Institute for Agrarian Reform, INCORA, shall adopt special procedures and programs for the transfer, adjudication, and titling of land in the expulsion and reception zones of populations affected by forced displacement, as well as special lines of credit giving priority to displaced populations. INCORA shall maintain a registry of the rural properties abandoned by those displaced by violence and it shall inform the competent authorities in order that they prevent any alienation or transfer of property titles of these assets when such action is carried out against the will of the title holders of the respective rights. In the return and relocation processes of those displaced by violence, the National Government shall give priority to those in the peasant enterprise zones and / or those rural properties that have been the subject of termination of ownership actions through judicial or administrative decisions. The Agricultural Institute of Agrarian Reform shall establish a program that will allow receipt of the land of displaced persons in exchange for the adjudication of other properties with similar characteristics in other areas of the country. The Agricultural Guarantee Fund shall grant 100% guarantees to the loans for profitable projects of the displaced.
2. The Ministry of Agriculture and Rural Development, through the Office of Social Development and the Office of Rural Women, shall design and execute programs for assistance and socioeconomic stabilization and consolidation of displaced populations.
3. The Institute of Industrial Development, through the PROPYME and FINURBANO programs, shall grant special lines of credit in terms of grace

periods, interest rates, guarantees, and amortization periods, for the development of small businesses and profitable projects that are put forward by the beneficiaries of this law.

4. The General Social Security System in Health shall implement ready to use mechanisms so that populations affected by displacement may access rehabilitation, hospital, psychological, dental, surgical, and comprehensive medical assistance services pursuant to that which is established in Law 100 of 1993.

5. The Social Solidarity Network shall give priority at the solidarity desks to the needs of the displaced community and it shall attend to the victims of this phenomenon, connecting them with its programs.

6. The National Office for Equality for Women shall give priority in its programs to women displaced by violence, particularly widows and women heads of household.

7. The Colombian Institute of Family Welfare shall give priority in its programs to the assistance of infants, minors, especially orphans, and family groups, connecting them with the community and family social assistance project in the settlement zones of the displaced.

8. The National Co-financing System shall give preferential assistance to the territorial entities that request co-financing of various projects in order to attend to the needs of populations affected by forced displacement.

9. The territorial entities shall develop special assistance programs in educational matter for populations displaced by violence and they shall access FIS [Social Investment Fund] subsidy program resources for basic education permanence and attendance.

10. The National Ministry of Education and the district, municipal, and departmental Education Offices shall adopt special educational programs for the victims of displacement by violence. These programs shall be in specialized basic and middle education and they shall be carried out in less time and differently from the conventional ones in order to guarantee their rapid effect on the rehabilitation and productive, labor, and social interaction of victims of internal displacement by violence.

11. SENA [National Training Service] shall give priority to and facilitate the access of youth and adults displaced by violence to its technical training and educational programs.

12. The Ombudsman shall design and execute promotion and dissemination programs about International Humanitarian Law standards.

Government entities at the national, departmental, and municipal levels, non-governmental organizations, and Organizations for the Displaced shall be included in these programs.

13. The National Television Commission shall design and execute sensitivity and awareness campaigns on the national television channels in order to prevent forced displacement, and

14. The National Institute of Urban Reform, INURBE, shall develop special housing programs to address the needs of populations displaced by violence.

ARTICLE 20. OFFICE OF THE PUBLIC PROSECUTOR. It is the responsibility of the Office of the Public Prosecutor and its divisional and regional offices to protect and promote the Human Rights and International Humanitarian Law of populations that are victims of forced displacement, as well as to control strict compliance with the obligations assigned to each institution in the National Plan for Comprehensive Assistance to Displaced Populations. The municipal authorities shall immediately inform the appropriate representative from the Office of the Public Prosecutor about any occurrence of displacement or about the occurrence of any events that may lead to it.

### CHAPTER III. NATIONAL FUND FOR COMPREHENSIVE ASSISTANCE TO POPULATIONS DISPLACED BY VIOLENCE

ARTICLE 21. CREATION AND NATURE. The National Fund for Comprehensive Assistance to Populations Displaced by Violence is created and shall function as a special account, without legal capacity, administered by the Ministry of the Interior as a separate system of accounts.

PARAGRAPH. The Presidential Advisory Board for the Displaced shall coordinate the execution of the resources of this Fund.

ARTICLE 22. PURPOSE. The purpose of the National Fund for Comprehensive Assistance to Populations Displaced by Violence is to finance and / or co-finance programs for displacement prevention, emergency humanitarian assistance, return, socioeconomic consolidation and stabilization, and the set up and operation of the National Information Network.

PARAGRAPH. The National Fund's participation in the financing and / or co-financing of the mentioned programs does not exempt municipal, district, departmental, and national entities and institutions involved with comprehensive assistance to displaced populations from managing the resources necessary for execution of the activities under their jurisdiction.

ARTICLE 23. RESOURCES. The resources of the National Fund for Comprehensive Assistance to Populations Displaced by Violence shall be made up of:

1. The resources allocated to it in the General Budget of the Nation
2. Monetary donations received directly by the Fund, prior to incorporation in the General Budget of the Nation, and legally accepted cash donations
3. Loan resources contracted for by the Nation in order to serve the purpose and functions of the Fund, prior to incorporation in the General Budget of the Nation
4. Monetary contributions stemming from international cooperation, prior to incorporation in the General Budget of the Nation
5. Other assets, rights, and resources acquired, adjudicated, or that may be acquired by any legal means.

ARTICLE 24. ADMINISTRATION. The administration of the National Fund for Comprehensive Assistance to Populations Displaced by Violence shall be the responsibility of the Director General of the Office of the Special Administrative Unit for Human Rights of the Ministry of the Interior, who shall be the paymaster by virtue of the authority granted to him by the Minister of the Interior.

ARTICLE 25. ESTABLISHMENT OF REGULATIONS. The National Government, within the three (3) months following the entry into force of this law, shall establish regulations regarding the organization and functioning of the Fund, the objectives and functions that correspond to it, and the system of appropriations and operations in budget and patrimonial matters necessary for its operation. Likewise, the National Government shall make the relevant budgetary adjustments and transfers in the General Budget of the Nation in order to assign to the Fund the resources necessary for fulfillment of its objectives.

### TITLE III. LEGAL PROTECTION FRAMEWORK

ARTICLE 26. DEFINITION OF MILITARY STATUS OF THE DISPLACED. Those who have a legal obligation to resolve their military status and who for reasons related to forced displacement have not done so, shall be able to appear in any military district within the year following the date on which displacement occurred in order to resolve said status without being considered remiss.

ARTICLE 27. DISRUPTION OF POSSESSION. The disruption of possession or abandonment of real or personal property due to a situation of violence that compels forced displacement of the possessor shall not interrupt the term of prescription in his favor.

The interrupted possessor in exercise of his rights shall inform the Municipal Human Rights Office, the Office of the Ombudsman, Office of the Agricultural Attorney, or any other entity of the Office of the Public Prosecutor in order that appropriate legal and / or administrative action be taken.

ARTICLE 28. ADMINISTRATIVE AND JUDICIAL PROCEEDINGS TO WHICH A FORCIBLY DISPLACED PERSON IS PARTY. In administrative and judicial proceedings to which a forcibly displaced person is party, the competent authorities shall evaluate, in accordance with the circumstances of the case, the changes of venue, assignments, transfers, and other necessary measures in order to guarantee the speed and efficiency of the processes with which proceedings deal, without prejudicing the rights of third parties.

#### TITLE IV. OTHER PROVISIONS

ARTICLE 29. PROTECTION OF DISPLACED PERSONS. The Office of the Special Administrative Unit for Human Rights of the Ministry of the Interior shall provide protection to people displaced by violence with regard to which there are well-founded reasons to fear for their safety, within the parameters established in the National Plan for Comprehensive Assistance to Displaced Populations. Evaluation of the safety status of the displaced shall be performed in close cooperation with the Office of the Public Prosecutor, the church, and the non-governmental organizations that carry out activities in the expulsion zones.

ARTICLE 30. SUPPORT TO ORGANIZATIONS FOR THE DISPLACED. The National Government shall provide the necessary guarantees to the organizations for the displaced and to the non-governmental entities that carry out activities in support of human rights and the internally displaced.

ARTICLE 31. CONGRESSIONAL REPORTS. With the purpose of evaluating the development of the National Plan for Comprehensive Assistance to Populations Displaced by Violence, the National Government shall submit to the Congress of the Republic, before March 16 of each year, a report on the execution of the plan and the corrective measures and proposals for action to follow.

ARTICLE 32. BENEFITS ESTABLISHED IN THIS LAW. <Article amended by article 32 of Law 962 of 2005. The new text follows:> Those Colombians who find themselves in the circumstances described in article 1 of this law and who have reported those acts before the Office of the Attorney General of the Nation, or before the Office of the Ombudsman, or before the District or Municipal Office of Human Rights, in the unique format designed by the Social Solidarity Network, shall have the right to receive the benefits established in this law. Any of those organizations that receive the mentioned statement shall submit a copy of the same, not later than the following working day, to the Social Solidarity Network or

to the office that it designates at the municipal, district, or departmental level, for registration in the benefits program.

PARAGRAPH. When it is established that the acts reported by someone alleging displaced status are untrue, this person shall lose all the benefits that this law grants, without prejudice to appropriate criminal penalties.

<Validity Notes>

- Article amended by article <u>32</u> of Law 962 of 2005, published in the <i>Diario Oficial</i> No. 45,963 of July 8, 2005.
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- Numbers 1 and 2 amended by article <u>74</u> of Decree 266 of 2000, published in the <i>Diario Oficial</i> No. 43,906 of February 22, 2000. UNENFORCEABLE.
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- Numbers 1 and 2 amended by article <u>135</u> of Decree 1122 of 1999, published in the <i>Diario Oficial</i> No. 43,622 of June 29, 1999. UNENFORCEABLE.
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