



Easier Said Than Done

An analysis of the regulatory framework and public policies
affecting internally displaced and/or confined Afro-Colombians



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Asociación Nacional de Afrocolombianos Desplazados



Partners for Justice

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www.afrodes.org, afrodescolombia@gmail.com

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Editorial Direction

María del Pilar López Patiño

ALTA VOZ Editores

altavoz@etb.net.co

altavozeditores@gmail.com

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Background

1. AFRODES, with the on-going consultancy and technical support of Global Rights and the financial support of USIP, has produced this report on the required normative framework that would lay the foundation for the promotion, protection, and restitution of displaced Afro-Colombian communities' rights.
2. This paper was produced within the framework of a project that seeks to increase the effective participation of Afro-Colombian organizations in public policymaking processes by increasing their capacity for independent analysis and documentation of human rights violations.
3. AFRODES wants to reiterate that "the main value of this endeavor lies in its independent character, because it is carried out of our [Afro-Colombians'] own accord, out of our own perceptions, voices, reflections, and daily experience around the idea of the defense of our rights."
4. In 2007, with the support of Global Rights, AFRODES carried out research on the state of internally displaced Afro-Colombians' human rights in Colombia. This research resulted in the paper *Luces y Contraluces sobre la Exclusión: los derechos humanos de las comunidades Afro-Colombianas* (Lights and Shadows of Exclusion: The Human Rights of Afro-Colombian Communities), which was presented before the Inter-American Commission of Human Rights (CIDH) in March 2008, with the attendance of the Colombian government.
5. *Lights and Shadows of Exclusion* presents ample evidence of the seriousness of the humanitarian crisis stemming from the structural exclusion that Afro-Colombian communities have been subjected to. This has been compounded by the ongoing civil war that has led to the displacement of more than a million Afro-Colombians and to the confinement of those who have refused to leave their ancestral lands.
6. The paper also confirmed the failure of existing public policies that have been created and implemented to protect and restore the rights of displaced and/or confined Afro-Colombians. One of the main causes of this is the lack of recognition of the ethnic dimension that is behind the forced displacement; therefore, current policies do not include any plan for easing ethnic tensions and are, therefore, ineffective.
7. *Lights and Shadows of Exclusion* brought to light the various limitations that the current normative framework has in guaranteeing Afro-Colombians' rights, both generally as well as under conditions of forced displacement and/or confinement that our communities are enduring. This report puts forward several suggestions to counter these weaknesses in its conclusions and recommendations.



8. In following these recommendations, AFRODES has sought to come up with a sounder critical assessment of this regulatory framework and it is for this very reason that *Easier Said Than Done* has been published.

9. Although it is clear that current public policies have failed to address the structural dimension of the Afro-Colombians' situation, it is necessary to assess existing regulations in a more detailed fashion in order to identify the problems and factors that are hindering the effective implementation of public policies in such a way that could stop the systematic infringement of Afro-Colombians' human rights and to generate the restitution processes and effective redress of such rights.

10. Thus, *Easier Said Than Done* has three main goals, namely: (i) to offer a general presentation of the Afro-Colombian regulatory and displacement/confinement frameworks; (ii) to present and assess the public policies that have been approved, and, after presenting our conclusions, (iii) to offer a precise set of recommendations.

Introduction

11. This paper is divided into four chapters. Chapter 1 gives an overview of the socio-political problems that Afro-Colombians are experiencing. Chapter 2 shows the problem's structural antecedents, its history and its development. Chapter 3 deals with the Colombian normative framework's general structure, focusing on the regulation that is in place to respond to the humanitarian crisis generated by forced displacement (hereinafter referred to as HCFD), and on the specific mechanisms regarding the protection of Afro-Colombians' rights. In Chapter 4, we offer an assessment of the public policies' general framework outlined and implemented by the state in order to respond to the HCFD through its institutions and organizations. Finally, we present some conclusions and recommendations in the hope that our paper helps to build new ways for warranting the fulfillment of our community's rights.

12. Methodology. It is not easy at all to assess the set of laws and public policies relevant to the protection, restitution and promotion of the forcefully displaced and/or confined Afro-Colombians' rights. There are hundreds or perhaps even thousands of extant rulings (laws, decrees, agreements, judgments, etc.), on the matter. Institutions and analysts have carried out ongoing and valuable research in this respect¹. This paper delimited the number and type of rulings to be analyzed according to our assessment of their structural character, which we have identified thanks to the main difficulties that we have encountered in several of our rights defense cases.

13. In this sense, we went to great lengths in order to directly review the documentary sources offered by the state agencies and institutions, through their different regulatory concepts embodied in several laws, decrees, judgments, etc. This revision, contrasted with our own direct experience of what the government does to fulfill them, helped us construct the assessments that we now forward in *Easier Said Than Done*.

14. It is our hope that the analysis that we present will be taken into account by those national and international actors who are responsible for and committed to the protection of Afro-Colombians' rights.

¹ See documents by Defensoría del Pueblo, ACNUR, and Ministerio del Interior.



CHAPTER I

THE SOCIO-POLITICAL SITUATION OF AFRO-COLOMBIANS

“We have grown tired of their issuing of new laws, decrees, and judgments that have been unable to bring about change to the situation we are living in, our condition remains the same or even has taken a turn for the worst. If only Law 387 was abided by, that would suffice. Moreover, if the Government had enforced Law 70, we would not have been displaced. We are also tired of witnessing how the Colombian government continuously fails in complying with the Constitutional Court’s judgments that recognize our problems. Please, no more laws...just do something now.”

~Testimony of an Afro-Colombian at an AFRODES workshop.

Who are Afro-Colombians?

15. Colombia is at the forefront when it comes to showing progress in legislative developments on the recognition of Afro-descendants’ rights and in dealing with forced displacement. But these regulatory frameworks that seem so favorable in paper coincide with the greatest tragedy suffered by Afro-Colombians since the painful experience of slavery—between 1996 and 2008 more than one million Afro-Colombians have been displaced from their territories or from their ancestral settlements and the numbers continue to grow. Most of them have not seen their rights redressed, and are forced to live in shameful conditions in which the enjoyment of human rights is a mere fantasy.

16. Significant structural changes are required in order to bridge the huge gap between the narrow “what should be done” mentality and the actual ineffectiveness of the Colombian public policies that are formu-

lated and implemented to protect Afro-Colombian culture. Nor is it about the creation of new laws. The challenge is being able to guarantee consistency between what is said and what is done, between the law and its enforcement. Deep changes need to be introduced in order to achieve an effective implementation of institutional efforts to fully guarantee the rights of Afro-Colombians, not only because they are Colombian citizens, but also because they are members of a unique culture that the state, together with the international community, have committed themselves to protect.

17. A critical analysis of current regulations is needed as a starting point for state reforms aimed at promoting, protecting, and redressing Afro-Colombians’ political, economic, social, cultural, and civil rights. The need for such an endeavor is clear: the institutional framework has foundered, leading Afro-Colombians to the verge of obliteration.



18. Our people's basic traits have to be taken into account in order to fully understand the assessment of the "Afro-Colombian norm" that we forward in this paper. In this type of description it has become the customary for the analysis to speak of an "ethnic minority;" an appropriate concept to signify the existence of a dominant culture that excludes another one, but that can distort the actual dimension and contributions that we have made to the Colombian nation. We have addressed this type of characterization in previous reports (published by AFRODES and Global Rights in 2006, 2007, and 2008). The following lines recall some general traits:

19. In terms of population measurements, according to National Department of Statistics (DANE) estimates, 4,261,996 citizens in Colombia acknowledge themselves as Afro-descendants, making up 10.5 percent of the total population. With regard to this figures we restate what was established in the 2006 and 2007 reports, since, even though this recent official calculation shows an improvement in our population's visibility, alternative measurements of recognized experts recorded between 7.8 and 11.6 million Afro-Colombians living along the national territory, a figure that would indicate that Afro-Colombians actually make up between 18 percent and 26 percent of the total population².

20. With regard to the geographical distribution, the first thing worth mentioning is that Afro-Colombians are currently present throughout the nation. However, it should be noted that such a presence is mainly concentrated in the Pacific, the Caribbean and the Andean region: especially in the regions of Chocó, Valle, Cauca, and Nariño with 1,904,739 Afro-Colombians; and 1,346,221 in the Atlantic Coast (regions of Córdoba, Sucre, Bolívar, Atlántico, Magdalena, Cesar and Guajira). Unfortunately it is also worth noting that an increasing percentage of Afro-Colombians live now in major cities due to forced displacement phenomena.

21. Regarding territorial rights, which are recognized through the protective ethnic-territorial regulation known

as Law No. 70 or simply the Black Communities Law, it is important to point out that 149 communal deeds have been issued, which actually represent a total of 5.128.899 hectares, and benefit a total of 1,458 black communities integrated by 60,418 families, corresponding to 318,577 Afro-Colombians.

22. In terms of life standards, it is important to say that there is a staggering inequality between Afro-Colombians' quality of life and that of the rest of the Colombian population. This was demonstrated at the end of the eighties when the first general study on poverty (DANE, 1989) estimated that between 1973 and 1985 the percentage of our people that inhabited the predominantly Afro-Colombian regions with 'unsatisfied basic needs' surpassed 74%. This percentage has increased, according to the results obtained from the 2005 census (DANE 2006) it has now reached 79.1%; figures that speak for themselves about the long history of exclusion, discrimination, and poverty that Afro-Colombians have endured in this country, all of which is compounded by structural factors such as: low public services coverage, high mortality rates, low alphabetization levels, low wages, very low participation in government and related mechanisms, and no access to goods and services, or financial markets.

The Extent of Forced Displacement

23. The Colombian state has repeatedly stated that the uncertainty on the extent of the displacement of Afro-Colombians is one of the factors that have prevented the implementation of a differential approach. In this regard AFRODES has demonstrated, based on a thorough territorial analysis of the official figures (AFRODES, 2007), that at least 30% of the total of displaced people in the country correspond to Afro-Colombian citizens, that is to say, more than a million Afro-Colombians³.

² See: Urrea, Ramírez, Viáfara (2004).

³ According to Government statistics, the total of displaced people in Colombia is 3.2 million (1997-2009), but, according to CODHES (2009), the number is 4.6 million Colombians (1985-2009). Notice that Colombia is the world's number 2 country in forced displacement figures.

24. Regarding tendencies, we have shown how in recent years, especially since 2004, there has been an escalation of Afro-Colombian displacement, particularly in the 75 municipalities where our communal territories are located or whose population is mainly Afro-Colombian, e.g.: from 19,872 in 2004, it goes to 32,628 in 2005; 37,651 in 2006 and 43,917 in 2007 (AFRO DES-CNOA, 2008)⁴.

25. A gender based division of displacement shows another aspect of the tragedy faced by Afro-Colombians, especially if one considers the cultural perspective: there are more women running Afro-Colombian homes than there are men (29.3% and 28.6%, in urban areas and 25.7% and 18.9% in rural areas respectively). Of the total number of displaced Afro-Colombians, women make up 48.2%. As *Vidas Ante la Adversidad* (AFRODES, 2008), our report on forcefully displaced women indicates, this percentage corresponds at least to 652,489 Afro-Colombian victims. It is important to reiterate that displaced Afro-Colombian women endure a triple discrimination as they are labeled as “women, black, and displaced”, situation in which they continuously fall victim of sexual violence. Thus their grievous vulnerability inevitably compounded by the heavy emotional and social burden that the deaths of their children and spouses cast upon them.

26. After having analyzed the geographic dynamics of displacement it is possible to conclude that the municipalities with communal territories are the ones that have been affected the most, especially in the Pacific Region. Previous analyses have shown how 318,647 people were displaced between 1995 and 2005 in the 50 municipalities where these territories are located. It also shows how in the 75 municipalities of mainly black population, the number of displaced afro-Colombians raised to 355,629 in the 2007. Moreover, the



communities that have remained in their territories live in a confinement situation in which the exercise of their rights is totally or partially impaired. These facts bear witness to the existence of a deliberate despoliation and deterritorialization strategy.

27. The main causes for the deep humanitarian crises bore by the Afro-Colombian displacement and confinement can be grouped in two dimensions: (i) a situational one, directly related to the conflict's dynamics during the last decade and to the actions carried out by armed actors and economic agents: threats, selective murders, massacres, groundless accusations, violations, among other forms of violence; (II) a structural one, i.e., social asymmetries such as historical marginalization, social exclusion and, especially, racism and discrimination. In our view, the causes for Afro-Colombian displacement and confinement, which would be addressed effectively by a differential policy, entail a complex network of variables that interconnect with one another, and in whose behavior there are multiple local and global interests, as well as socioeconomic, cultural and political factors.

28. The call for the adoption of a differential approach vis-à-vis the grievous impact of the violence inflicted upon Afro-Colombians, has been a permanent outcry of our communities to the Colombian society, the state, and the international community. Unfortunately, even though this outcry has gradually gained recognition in the state's regulation structure, it has not been taken into account in the planning and implementation of appropriate public policies⁵.

⁴ Official figures that analyze ethnic belonging also attest to this growing tendency: from 12,337 in 2004, to 19,216 in 2005; 25,587 in 2006, 45,208 in 2007 and 53,708 in 2008 (RUPD.Court September 30 of 2009); i.e., an increase of nearly 300% between 2004 and 2008. From an absolute figures point of view, this official report must be assessed watchfully since it can generate a distortion of the real extent of the Afro-Colombian displacement that actually can reach a million people as our territorial analysis of the same figures demonstrate.

⁵ As attested by the Constitutional Court: A differential approach to adequately value Afro-Colombian's special needs has not been implemented in spite of the disproportioned impact, in quantitative and qualitative terms, of Afro-Colombians' forced displacement within Colombia.

General View on Identified Normative Problems

29. Over previous reports AFRODES has been building up an analysis (based on an assessment of the forcefully displaced and confined Afro-Colombians' rights and the respective institutional answers) on the main problems that are determining the current public policies' low effectiveness at the normative level. (AFRODES-Global Rights 2006, 2007, and 2008). Therefore it is only proper to reiterate them in this normative analysis:

- a. The breach of previously acquired commitments in the levels of both the international law and the national public policies and judicial recourses (v AC-NUR. 2007), e.g., the Court's jurisprudence (ECI) and the policies stipulated in the Development Plans (v.g., "Estado Comunitario: Desarrollo para Todos" 2006–2010).
- b. The lack of an ethnic dimension in the implementation of effective policies and institutional projects and programs at the municipal, department and national levels, that should be oriented towards the protection and restitution of the forcefully displaced Afro-Colombians' rights.
- c. The evident short comings of the implemented policies, especially, in terms of the differential and integral support that would grant Afro-Colombians an actual enjoyment of their rights. This is a critical fact especially if the displacement victims are recognized in differential terms, particularly, children, women and the elderly.
- d. The lack of a follow up and evaluation instrument that employs valid and pertinent indicators in order to produce opportune information.
- e. The failure in guaranteeing the fulfillment of the "Ask the Community First" (Consulta Previa) instru-

Moreover, this displacement has an appalling impact on the protection of the community's individual and collective rights, notwithstanding the character of special subjects under protection granted by the Constitution to the afro-descendant communities (CC. Car, 2009). Thus, the persistence of an Unconstitutional State of Things in Colombia comes as no surprise (CC. Judgment T-025 of 2004 and Follow-Up Decrees).

ment for any action, private or public, that affects Afro-Colombian communities, their territories or their developing conditions; or for any legislative measure that affects their territorial ethnical rights⁶. All this is explicitly addressed by Law No. 70.

- f. The government's lack of commitment in responding to the different kinds of racism and discrimination across the board in Colombia, not only in terms of unsatisfied basic needs such as food, health, ethno-education, housing, public services, etc., but also in political and judicial terms, as the rejection of Bill Proposal No. 68 of 2007 by the Colombian Congress attests; which if approved would have opened the doors for the first Provision against discrimination in Colombia.
- g. The lack of a differentiated support policy for forcibly displaced Afro-Colombians: on this point it is worth noting that we Afro-Colombians have already envisioned such a policy, as attested by the Afro-Colombian organizations' work and politics that will lead to the outline of a policy draft (AFRODES-CNOA, Propuesta para la Construcción, 2008).

General View on the Afro-Colombian Regulatory Evolution

30. This paper's regulatory analysis will be concentrated in describing and critically assessing some norms that are crucial in outlining the public policies that should promote, protect and restitute rights that have been denied us. Therefore, it can be useful to begin with a thorough description of this normative process.

31. The recognition of Afro-Colombians' rights has been the result of a complex social, political and cul-

⁶ When we speak of our "territory", given its rich diversity in water sources, the term must also encompass brooks, rivers and seas, due to their importance in our daily life and in our forms of adaptation and ancestral production (for a anthrop-geographic characterization of our territories see Oslender's study: Black communities and Space in the Colombian Pacific. Towards a geographic approach in the Studies of the Social Movements; 2008). One notices in addition that through adaptation, resistance and hybridization practices with the local and global dominant culture, Afro-Colombians have advanced in the construction of culturally rich social worlds (Escobar and Pedrosa, 1996).

tural process that has been fostered, on the most part, by our base communities. The rulings that are in place on the matter today were not created of the Colombian state's own accord; on the contrary, the state has systematically blocked the roads that could lead to the coming into force of Afro-Colombians' rights.

32. On a historical note, it is worth noting that the abolition of slavery in Colombia, as in the rest of the American countries that received African slaves, was based on rulings that privileged slave mongers and that lacked effective commitments to provide equal conditions for the exercising of rights by all people.

33. For centuries, the Colombian state has turned a blind eye with respect to Afro-descendants rights and even to their existence. To make matters worse, the state issued rulings that favored national and foreign economic entities in their economic exploitation of Afro-descendant territories, without the least respect to our rights and maintaining the deepest levels of social, political, and economic exclusion.

34. Unfortunately, Colombia's belated "modernization" and its ensuing adoption of a resource extraction logic and technology, gave continuity to an economic model that deepened exploitation practices through national development plans, thus hindering Afro-Colombians' progress.

35. The 1991 National Assembly for Constitutional Reform was an unprecedented socio-political process brought about by the deep, and sometimes bloody, institutional and social crisis that Colombia lived during the 1980s. This was a political opportunity that Afro-Colombian communities took advantage of: our redirecting the focus of our struggle toward this process, in conjunction with the ethnically committed actors' and groups' interests, paved the way for the recognition and protection of our cultural diversity as a fundamental component of the Colombian nation; and most importantly, it derived in the issuing of a new law to effectively address the whole set of ethnic and collective rights.

36. The expedition of Law 70 of 1993 (Law of Black Communities) and the beginning of its application cer-

tainly was a reason for optimism and has brought about the following: (i) Procedures' regulation for deeding the territories ancestrally inhabited by our communities, thus enabling the beginning of a land ownership recognition process that has legalized approximately 6 million hectares as collective property; (ii) regulation regarding political participation rights and ethnic-education rights; (iii) the creation of institutional mechanisms dedicated to coordination and follow up tasks; And (iv) the inclusion of the Afro-Colombian agenda in the National Development Plans, together with the issuing of CONPES papers and the beginning of courses of action in specific planning for Afro-Colombian development.

37. These advancements, that certainly had began laying the foundation for the structural changes needed to overcome the historical exclusion of Afro-Colombians, were brutally interrupted by the violence directed against our communities and our organizational efforts. The armed conflict's dynamics intensified the killings and despoliation as a strategy to assume control of our territories, which had increased in value due to their geo-strategic positions for war and drug trafficking.

38. Vis-à-vis this scenario, Law 70's normative developments' course of action remained scanty and out of touch with the tragedy that affected the great majority of Afro-Colombians in the country. To make matters worse, there are even normative developments which pose damaging effects for the achievements previously conquered. The failure of the successive presidents in finishing Law 70's chapters' regulation—key in guaranteeing ethnic-territorial rights, as well as the procrastination of the implementation of suitable public policies through the interminable formulation of development plans without resource allocation—paints a schizophrenic picture, in the sense that there is legislation and planning being done for an ethnic group that at the same time is being exterminated.

39. Whilst an innocuous regulation course continued to be developed in order to guarantee Afro-Colombians' rights, the Colombian state started legislating over forced displacement issues due to the magnitude and grievousness of the problem, as well as partly due to international pressure. At present, it is possible to state



that there has not been an adequate allocation of resources to address the required differential approach, despite the first diagnoses' and first rulings' formal recognition of the differential impacts over ethnic groups.

40. On the contrary, the application of rulings through the different "welfare like" public policies devoid of a differential approach, and completely disarticulated to the normative developments derived from Law 70 of 1993, has been "deactivating" the fundamental change processes that were already underway. Unfortunately, due to the crisis's magnitude in its humanitarian di-

mension, the official model (that includes Colombian society together with international cooperation actors) has turned the Afro-Colombian forced displacement agenda in a matter of humanitarian aids, subsidies, rulings, and projects, whereas our territorial and collective ethnic rights continue being infringed upon and being treated as a subject of little or no importance.

41. Some critical assessments regarding the "Afro-Colombian regulation" have to be analyzed adopting this problematic evolution as a fundamental framework.

CHAPTER II

BENCHMARKS REQUIRED FOR A STRUCTURAL APPROACH.....

Palenque is the name for the fighting process, Palenque of San Basilio listen, it listens. We call it “Palenque de Napi”, because there slavery lived a historical process, right? It was one of the oldest towns in this area, the little town of San Agustín. Slavery was there. There were many things there. That’s why we voted to call it “Palenque de Napi.

~Legal Representative of Community Council of Napi (Guapi)⁷.

42. The structural aspect of the Afro-Colombian’s social problems – specifically the humanitarian crisis of displacement and forced confinement – is a characteristic in which “AFRODES” has repeatedly insisted upon since this crisis started, and several analyses performed have revealed strong evidence of this. The interrelation among the factors associated to their historic exclusion: racism, excluding models of economic development (both legal and illegal) and armed conflict conspire a perverse game where the lives of Afro-Colombian communities don’t have any value.

43. This structural aspect also professes itself in territories that relate norms and public policies; meaning, structural norms are part of the group of factors that have caused their exclusion and therefore, consolidate the public policies maintaining this exclusion. There are numerous examples of this reality, for instance, the

second law of 1959 has permitted the continued exploitation of Afro-Colombian ancestral lands. In other words, for the Colombian government, Afro-Colombian ancestral lands simply did not exist.

44. When undertaking an analysis of the norms, recognizing the role played by legislation in the exclusion processes against the Afro-Colombian population also demands the analyses to maintain a structural perspective that precisely identifies the characteristics influencing the configuration of norms and institutional arrangements that carry on or deepen these processes of exclusion. In this perspective and as a previous framework of comprehension to approach the normative analysis directed toward the protection of the Afro-Colombian rights, it is relevant to briefly narrate of some of the structural elements that have not only marked the history of the Afro-Colombian population, but maintained its influence through contemporary forms.

⁷ Personal Interview. 24 April 1999. Oslender, 2008.

Institutional Racism: Stories that Recreate Themselves



45. Institutional racism is one of the factors AFRODES and many Afro-Colombian organizations have identified as decisive in the exclusion process of the Afro-Colombian population (AFRODES 2009 and AFRODES-CNOA 2008). This approach has been systematically denied by the Colombian government, who has only recently made a formal recognition of this phenomenon, because “the Afro-Colombian and Indigenous are still victims of different types of discrimination in the country” (Colombian report to CERD, 2008). For AFRODES, to take on the search of factors that have prevented the development of effective norms to protect Afro-Colombian rights; it is necessary to insist upon the existence and recreation of a particular Institutional racism.

46. The Colombian society and government gloat about a history as an independent country, in which, no laws have existed that explicitly consolidate discriminatory practices towards Afro-Colombians and indigenous (hence, their resistance to formalize legal and institutional frameworks to sanction racist acts). Obviously by asserting this statement we incur in forgetting about the characteristics of a law that promoted the end of slavery: an article declaring us free and the rest of the articles dealing with the mechanisms that guarantee the compensation for slave owners.

47. However, the point is the “normal circumstances” under which the non-existence of discriminatory laws, similar to those in United States history (Jim Crow laws) or South Africa’s apartheid has done terrible damage by hiding other types of discrimination just as harmful and generalizing institutional and social practices experienced on a daily basis by Afro-Colombians in circumstances of forced displacement.

48. The perspective of continuous historical expressions within Institutional racism can still be felt today in the daily lives of the forcedly displaced Afro-Colombian population, just as it has been recorded in the framework of acts of violence and African diaspora.

49. In fact, the current history of the Afro-Colombian descendants remembers the lamentable common destiny of Afro-Colombian ancestors brought from Africa, a victim of seizure and exploitation of its inhabitants, cultures and territories. In 1441, Portuguese ships commanded by Antonio Gonçalves had already taken from its territory and culture 10 Africans and transferred them to Lisboa. This event gave birth to one of the deepest tragedies of history, as was slavery, the extermination and assimilation of African cultures. By 1619, already one thousand Africans had been taken to South America and the Caribbean to Spanish and Portuguese colonies to work as slaves. They were obligated to live in conditions that little by little destroyed their traditions and family relationships, leaving only the traces of their culture which they did not lose due to their extraordinary perseverance (Zinn, 2008)⁸. Currently, the extent of forced displacement is of one million Afro-Colombians, whom are victims of multiple types of violence against their life, their culture; inevitably, this crime against humanity seems to be recreated, a crime supposedly overcome since 1851.

50. Remembering this historical fact is a useful resource to comprehend the characteristics of the structural exclusion, therefore, making it necessary to analyze precisely the economical dimensions. The colonial economic model was founded upon the blood, sweat, tears and misery of the slaves, which is no different from the processes of social exclusion and dehumanization of current economic models promoted in the cities the Afro-Colombians are displaced to positions and conditions that are not so different from the old times of slavery.

51. In the path of seizing America’s abundant natural resources, the indigenous were victims of extermination, a crime that continued with the Africans and their descendants. The slaves were employed in mines, ships, rivers, ports and the lands of valleys and coastal regions. In this way, history illustrates how humans can dehumanize oth-

⁸ By 1800, 10 to 15 million blacks had already been transported as slaves to the Americas, maybe about a third part were captured in Africa. It is estimated that during these centuries was the start of the modern western civilization, Africa lost approximately 50 million people. Some died while others were enslaved by the slave dealers and slaveholders in Western Europe and America in countries considered the most advanced of the world (Zinn, 2008:30).

ers and treat them as merchandise. Towards the end of the 17th century, slaves made up the main merchandise sent to the colonies, where they would be received in the port of Cartagena.

52. The continuous denial of the existence of institutional racism still seen today constitutes an attitude of the Colombian government and society that blocks an adequate understanding about the dynamics that like forced displacement and confinement, generate impacts with magnitudes, characteristics and pains similar to those lived in times of slavery.

Precedents of Excluding Normativity

53. To fully understand the role played by normative dimensions in the process of Institutional racism and exclusion, it is relevant to remember some precedents that go back to Colombia's origins as a country. Therefore, although the Spanish colonial government was defeated in the Independence War in the first quarter of the 19th century, slavery was not abolished until 1851. The first attempts to overcome this crime against humanity were institutionalized in 1812 in Cartagena and in 1814 in Antioquia; however, the process to dismantle this institution only reached an official nature in 1816 and 1818 due to national proclamations dictated by The Liberator, Simon Bolivar⁹. These norms were institutionalized only by the "Manumisión"¹⁰ Law in 1821.

54. Due to the persistence of the slavery social structure in the new Colombia, the legal code of 1821 was not effective: the legal measure's greatest heights were in 1822, 1823, 1825, 1827 and two more by Bolivar in 1828. Although they were in a free state, the Afro-descendants were submitted to slavery until the Law of May 21st was expedited in 1851. Now, since the effectiveness of this law depended on the resources taken

from the tribute system of "completion" and consequently, the state resources, as is today, these legal measures did not go further than simple intentions due to a lack of resources to implement the law (Oquist, 1978).

55. The legal invisibility of the Colombian ethnic communities had its most noticeable expression in the Constitution of 1886. In it Catholicism was instituted as the official religion, Spanish as the official language and made reference to some of the minorities that lived in the country (Maldonado, 2008). This clear structural marginalization left out the Indigenous survivors of the Conquista and the Afro-descendants that lived in Colombia since the 16th century, all of which explains the long ethnic resistance of the minorities that had been living in Colombian territory. It also explains the linguistic and religious assimilation to which these marginalized cultures have been submitted.

56. To be introduced into the historic marginalization is relevant not only to evidence the continuity of the structural exclusion, but also to remember that is important to observe the implementation of state policies and judicial norms that do not take into account cultural diversity; therefore, generating serious consequences for cultural minorities and for society. It is not surpris-

⁹ It is worth mentioning that before Bolivar had come to an agreement with Alejandro Petión, the Afro-descendant of the first President of the Republic of Haiti (1807-1818), who had changed his unconditional military aid (of more than 6000 guns), logistic and troops, had agreed with the liberator the emancipation of all the slaves where their flag flew (Bierck, 1977).

¹⁰ Manumisión is the term given to the process of liberating slaves.



ing then the consequence this history of invisibility and cultural ignorance, relationships between ethnic minorities, the state and some social groups have all been marked by marginality, extermination, assimilation, exploitation, seizure, discrimination and racism: meaning the types of structural violence¹¹.

Afro-Colombian Resistance: Precedents and Continuity

57. Presently Afro-Colombians in forced displacement conditions and or confinement, nonetheless, the violence violates all their rights and an inoperative normative, persists in the efforts to maintain a cultural identity. This attitude of resistance,¹² far from being a new reaction to threats, is deeply rooted in Afro-Colombian cultural history.

58. Before the evident Institutional racism that represented slavery, the cultural resistance was constituted from then to an active position to preserve the life and cultural identity of the Afro-descendants; a position in which undoubtedly its continuity can be verified through time to the processes of mobilization of the Afro-Colombian communities to achieve a formal recognition of their rights. In that particular moment just as today, despite the asymmetrical conditions of force between victimizers and victims, Africans and their descendants have achieved emancipation through the pacific and Caribbean coasts, forming the known "palenques."¹³

As a result, from the 17th century, "palenques" have become the populations along the coast and the rivers of the isolated geography of Afro-Colombian territory. It was in the Pacific and Caribbean where Africans and their descendants resisted and defended their liberty and autonomy against the colonial government and the slave owners¹⁴.

59. Within this asymmetrical Colombian social and political framework, the ethnic communities have been developing along with their social movements. Throughout history, the Afro-Colombian communities have resisted a monolithic vision of the state, which has seen them as an obstacle for progress, as a barrier for the reinforcement of policies for development¹⁵ and modern institutions. In this framework, emerged the ethnic social movements of resistance, for which Afro-Colombians have their biggest expression in the second half of the 20th century¹⁶, given the growing necessity to defend Afro-Colombian lives, territory, culture and forms of production and social interaction of their ancestors.

60. In this conflictive social framework the Afro-Colombian social movements began to sprout, movements that today continue to resist despite the adversity. During the last three decades of the 20th century, political and organizational processes were registered, promoted mainly through Afro-Colombian farm grounds in the Pacific, where through the threat of dispossession and in the middle of one of the worst social and insti-

¹¹ The laws developed within the state model shaped by the Constitution of 1886 given record of this, for example, the 2nd law of 1959, declared rural lands, in which Afro-descendants, like natives (indigenous), like empty lands, public non-occupied lands, and therefore, property of the state. With this, not only were towns and cultures ignored but also the use and property of their lands and forms of habitat and production development.

¹² "...with this type (of resistance) a reference is being made to a group of attitudes and autonomy practices on behalf of the Afro-Colombian communities in situations of forced or confined displacement, or any other condition that violates the right to exercise their collective rights. The "resistance" is a political and instrumental position with profound historical marks in the experience of the Afro-Colombians have been recreating." (AFRODES-CNOA, 2008).

¹³ Since the 16th century, a growing social movement started, consequently following the black rebellion in cities of the Atlantic coast like Cartagena, Tolú, Mompóx y Tenerife. These runaway slaves established them-

selves permanently in the country house named Palenque of San Basilio (Oquist, 1978).

¹⁴ In Cartago, for example, Palenques were formed on the riverside of the Upia River and on the plateau of snow-covered Ruiz. This movement had carefully planned segways with Cauca, Chocó y Valle. The Spanish investigation found that slaves in Cartago had an organization that chose its chiefs dating back to 20 years ago (Oquist, 1977:110).

¹⁵ Of Spanish interest during the colonial times, due to its rich prospects of the downpour containing gold, the economic situation of Afro-descendant lands, in general, has been of rise and fall, imposed over a subsistence economy (fishing and agriculture to fulfill daily needs), from mid-nineteenth century, during relatively short periods natural resources were exploited intensively in response to external demands, before these economies fell and collapsed (West, 1957; Whitten, 1986. En Oslender. 2008:27).

¹⁶ AFRODES, for instance, was founded in 1999 as a base organization as a response to the humanitarian crisis of the Afro-descendants and to promote and boost the development of our community.

tutional crises of Afro-Colombian history, managed to influence in order to concrete the recognition of cultural diversity and will move forward in the legislative development that will allow formal titles of ancestral territories. Many communities and Afro-Colombian leaders were the base of this conquest or assumed its continuity, many of which have been killed or exiled.

61. The Afro-Colombians have resisted not only a historic marginalization, with its diverse types of struc-

tural violence, but also seeing their territory and lives as input for the ambitious plans of private and State development. Plans and projects that forget the Afro-Colombians are a population with ethnical territorial development; projects that views ancestral territories simply as a spring of resources, representations that in these days are seen in the industry of agriculture, sawmill and megaprojects of miners and more.¹⁷



¹⁷ During the first half of the 20th century, both “tagua” and rubber were exploited. During the 60s, the region has been an important source of mining resources, agricultural (single-crop farming: coconut, palm) and the supply of wood, that which gave way to high levels of deforestation, similar to the destruction of our crops of “palcoger” (mining and fishing).



CHAPTER III

LEGAL FRAMEWORKS FOR AFRO-COLOMBIANS —NEGLECTED MAPS.....

We have worked in your fields and garnered your harvests... And what do we ask of you in return? Do we ask you for compensation for the sweat our fathers bore for you for the tears you have caused, and the hearts you have broken, and the lives you have curtailed, and the blood you have spilled? Do we ask retaliation? We ask it not. We are willing to let the dead past bury its dead; but we ask you, now for our rights...

Henry McNeal Turner

62. There has been a wide documentation about the “coincidental” and systematic violence against the Afro-Colombian communities who were favored by collective land titling during the second half of the decade of the 90s. Ten years later, even though Colombia has achieved a better level of understanding of the structure of this phenomenon, the following paradox is still unclear for us: our rights are officially recognized, but The state has not only been neglectful in developing effective actions to guarantee such rights but also indifferent towards the evident strategy of destruction and/or displacement against our communities.

63. The manifest failure of the public policies reveals the need of insisting on a critical reevaluation the regulative

developments on which the first were inspired. As it has been previously noted, this implies a complex analysis that requires a methodological strategy with a structure to explore the groups of regulations that reflect the compromise of the Colombian state in order to guarantee the rights of the Afro-Colombian people: (i) the first one refers to legislative and political developments derived from the constitutional recognition of the cultural diversity; and (ii) the second one is related to the creation of laws that—in spite of formally recognizing the differential impacts of the forced displacement on the Afro-Colombian people—are related to public policies that on the practice have proven to lack a differential approach: regulations for the attention of forced displacement.

Regulatory framework of the Recognition of Afro-Colombians' Global Rights

64. After 140 years of ethnic marginalization and exclusion (1851-1991) the 1991's Political Constitution of Colombia (PC) set up important changes for the structure of Colombian institutions. This new regulatory framework introduced legal mechanisms that give recognition to the territorial, historical and cultural evolution of African-descending and native peoples¹⁸. This new Constitution gave shape to an outstanding change in the social structures of the country: the so called Social State of Law (Art. 1).¹⁹ This new legal framework, based on an institutional model of balance of powers, restructures and presents Colombia as a participatory state (Art. 2) in which all citizens are equal under the law (Art. 13). Among some other regulations, the 1991 Constitution established in its Article 7 an unprecedented event: the recognition and protection of the ethnic and cultural diversity of Colombia.²⁰

65. Within this new institutional framework African Descendants and the other ethnic communities have achieved legal recognition and protection. Hence, it is not a surprise that in this newborn state of law African descendants, which account for 10.6% of Colombia's population (DANE, 2005), were finally recognized as an integral part of the Colombian social system. Such a condition became a reality with the introduction of T-55, a temporary article which led to the infamous Ley étnico-territorial de Comunidades Negras (Ethnic-territorial Law of Black Communities or Law 70 of 1993).

LAW 70 OF 1993: THE LAW OF BLACK COMMUNITIES

66. Law 70 of 1993 is a regulatory mechanism that brought along a series of positive decrees that recognize and protect our rights over our ancestral lands and, particularly, over our social, historical and cultural development. This important change in our legal structure of protection was the result of the continued social struggles initiated by African-Colombian movements and their actions along the last decades of the 20th century and more recently with the joined work

of scholars and representatives in the government and the Comisión Especial para Comunidades Negras.²¹

67. Law 70 has the purpose of: (i) recognizing –for black communities that have been inhabiting “vacant lands” in rural zones near the banks of rivers of the Pacific basin (and in other zones of the country that meet the requirements established by the law)– the right to collective ownership of such lands and exploit them according to their traditional ways of production-; and (ii) setting the mechanisms for the protection of the cultural identity and ethnic rights of black communities of Colombia while encouraging their economic and social development in order to grant them access to equal opportunities as the rest of the Colombian society.

68. This law has created the conditions for the gradual development of the collective titling process carried out so far. However, as it is plain to see in our current humanitarian crisis, its principles have not been effective in terms of: (i) the recognition and protection of the ethnic and cultural diversity, and the right to equality for all the African-Colombian cultures that are part of the nation; (ii) the respect to the integrity and dignity of the cultural life of black communities; (iii) the independent participation of black communities and their organizations in the making of the decisions that affect them and affect all the nation so to be in accomplishment of the law; and (iv) the protection of the environment under the relationship established with nature by the black communities (Art. 3).

¹⁸ Although the process of constitutional reform was not directly meant to benefit ethnic minorities, the debates about a greater popular participation opened a space for indigenous peoples and, by means of these, to African-Colombian communities. (Arocha, 1992). (Quote translated for this document).

¹⁹ This article obliges Colombia's authorities and public institutions to guarantee the existence of a Democratic State that allows the participation of all its citizens; of law, by respecting the freedom of all its associates; social, by assuring their welfare (Guía de Atención Integral a la Población Desplazada por la Violencia en Colombia. Cuadernillo 1, 2007:17). (Quote translated for this document)

²⁰ To have a wider understanding of what the Constitution implies by ethnic inclusion and protection.

²¹ Decree 1332 from August 11, 1992, created the Comisión Especial para las Comunidades Negras (Special Commission for Black Communities).

69. It is important to point out that this Law has led to the development of some directives even though it still has setbacks, particularly in the chapters referring to the use of the land and the protection of the environment (Chapter 4), the exploitation of mining resources (Chapter 5) and most of all in respect to planning and boosting the economic and social development (Chapter 7).²²

70. Law 70 of 1993 has introduced a regulatory framework for Afro-Colombian ethnic and territorial development and has had a rapid legal influence in the configuration of African-Colombian territorial communities (149 collective titles of ownership of the land, equivalent to 5,128,999 hectares, have been issued). However, these advancements have not been enough for the protection and social development of African Colombians as the programs supported on the underlying policies have been completely unknown and set back by external variables related to violence.

71. The consequences of all this are well known: a systematic violation of Afro-Colombian ethnic and territorial rights along the last 15 years which go against the compromises accepted by the Colombian state in relation to the international instruments to guarantee the defense of human rights and the application of international humanitarian law.

STRATEGIC INTERNATIONAL LEGAL FRAMEWORKS: INVENTORY OF BREACHES

72. The process of creation of Law 70 of 1993 began with the political demonstrations of Afro-Colombian communities and was later facilitated by some internal and external circumstances. Among the last ones we had an international consensus in respect to the environmental protection of territories with a high level of biodiversity, as in the case of those inhabited by African Colombians. Therefore, the Colombian state was interested in receiving positive qualifications in both, the protection of the environment and the recognition of the rights of ethnic groups that were suffering current forms of discrimination and racism.

73. The same idea is the one underlying the adherence of the Colombian state to different international agree-

ments which imply –both directly or indirectly– compromises of protecting the rights of highly vulnerable ethnic groups usually seen as a political asset that could ease the way to reach the real guarantee of the rights of the Afro-Colombian people. It is important to remember that the Colombian state has signed and ratified the following international agreements (Grueso, 2007)²³ among others:

- The Universal Declaration of Human Rights (1948).
- Convention on the. Prevention and Punishment of the Crime of Genocide (1948).
- American Declaration of the Rights and Duties of Man (1948).
- Equal Remuneration Convention (1951).
- ILO Convention on Discrimination (Employment and Occupation) (1958).
- Convention against Discrimination in Education (1962).
- International Convention on the Elimination of All Forms of Racial Discrimination (1965).
- The Convention on the Elimination of All Forms of Discrimination against Women, Resolution 2263 (1967).
- Proclamation of Teheran (1968).
- American Convention on Human Rights (1969).
- International Convention on the Suppression and Punishment of the Crime of Apartheid (1973).
- Declaration on the Protection of Women and Children in Emergency and Armed Conflict (Resolution 3318 (XXIX), 1974).
- International Covenant on Civil and Political Rights (PICP) (1976).
- Declaration on Race and Racial Prejudice.

²² This Afro-Colombian social set-back demonstrates the weakness in the implementation of the law. Hence, for solving it: The National Government will design special financing mechanisms to support the creation of black communities' associations and solidarity groups of production for the sustainable exploitation of their resources under equitable conditions when developing such enterprises in joint ventures with any non-black associations, as indicated by Article 52.

²³ This list is an excerpt taken from Grueso, Libia (2007) La población afrodescendiente y su referencia como sujeto de ley en el desarrollo.



- Declaration on Fundamental Principles concerning the Contribution to the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, Apartheid and Incitement to War (1978).
- International Convention against the Taking of Hostages (1979).
- The Convention on the Elimination of All Forms of Discrimination against Women, Resolution (Resolution 34/180, 1979).
- Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (Resolution 36/55, 1981).
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1985).
- International Convention against Apartheid in Sports (Resolution 40/64G, 1985).
- Inter-American Convention on Support Obligations (1989).
- C169 Indigenous and Tribal Peoples Convention (1989).
- Inter-American Convention on Forced Disappearance of Persons (1994).
- American Convention on Human Rights ratified at the Inter-American Specialized Conference on Human Rights (1998).
- Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities (1999).
- Mandate of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia. (2002).
- Resolution 327 of the Inter-American Court of Human Rights (2005).

74. Although most of the countries that are part of the United Nations System and the Inter-American System on Human Rights have ratified such instruments, there are a few countries like Colombia, which have adhered to these systems but fail to accomplish their objectives



when they allow the continued violation of the rights of African-descendants in the extension and characteristics well known everywhere.

75. An analysis of the effectiveness of the governmental actions in order to meet the objectives of such systems is beyond the purpose of this work. However we would like to highlight some analysis on two instruments that have not been adequately applied and demonstrate how critical the failure of the state and the public policies is when it refers to protect Afro-Colombian rights.

The International Convention on the Elimination of All Forms of Racial Discrimination

76. Based on a 2009 document of the Colombian state, in a recent report presented to the 75th session period of the Comité para la Eliminación de la Discriminación Racial (Committee for the Elimination of Racial Discrimination or CERD), AFRODES pointed out that:

AFRODES considers the answers reported by the Colombian state feature a set of actions that do not accomplish the criteria established in the last paragraph (paragraph 25) and therefore have had a slight im-



impact on the extension and other characteristics of the structural exclusion and discrimination exerted on the Afro-Colombian people. In addition, many of the institutional answers presented do not imply the adoption of a differential approach as required by the catalog of ethnic and territorial rights recognized as inherent to the Afro-Colombian people. On the contrary, Afro-Colombian-specific problems have been included in a standardized institutional offer that has been designed and implemented without the possibility of previous consultation.

“The fostering and protection of the rights of the Afro-Colombian people are actions intended to fight the exclusion and racial discrimination phenomena that affect this group of people. In consequence, the criteria that should be used to evaluate the public policies devised and implemented by the Colombian state to address such phenomena should include aspects like relevance, budget coverage, effectiveness, coherence, and participation guarantees. Taking into account this perspective Afro-Colombian organizations and communities, particularly those that have suffered forced displacement, have come to find that the efforts made by the Colombian state have produced very limited results. Several reports that give support to this document have concluded that: (i) these public policies have not been produced on time to solve the structural phenomena of exclusion nor the impact resulting from the armed conflict, making this even more worrying as this problem has been recognized by the state for a long time; (ii) budget allocations have not been enough as they have been reduced to be mere proposals and in-

stitutional arrangements with no meaningful impact on the structural problems; (iii) the efficiency of the policies has been reduced and in the case of displaced Afro-Colombian people they have meant a setback; in terms of coherence there are proposals of regulation as well as policies and programs that put at risk ethnic and territorial rights already recognized; and (iv) the right of participation and specifically the right to be previously consulted before making decisions have not been granted as it is required” (AFRODES, 2009).

En esta perspectiva, AFRODES considera que las respuestas institucionales reportadas en el Informe del Estado colombiano, refleja la gestión de un conjunto de acciones que en razón de no cumplir con los criterios indicados en el párrafo anterior (Párrafo 25), tienen hasta ahora un impacto marginal sobre la magnitud y cualidades de los procesos de exclusión estructural y discriminación del Pueblo Afrocolombiano. Adicionalmente, muchas de las respuestas institucionales descritas no obedecen a la adopción de un enfoque diferencial orientado por el catálogo de derechos étnico-territoriales reconocidos al Pueblo Afrocolombiano, sino a la inclusión de comunidades y territorios afrocolombianos dentro de una oferta institucional estandarizada que se ha venido diseñando e implementando sin garantizar plenamente el derecho a la consulta previa.

169 ILO Convention: Ethnic and Territorial Rights

77. The Convention of the International Labor Organization concerning Indigenous and Tribal Peoples in Independent Countries (ILO No. 169) was ratified by Colombia through Law 21 of 1991 and must be understood as a main reference in respect to the Afro-Colombians. It states that members of these peoples should benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population.

In order to avoid the erosion of their values, perspectives and cultures (which is exactly what has happened to the African-Colombians and indigenous groups in Colombia), this Law recognizes Afro-Colombian aspirations of taking control of their own ways of living and economic development while keeping identity within

the state in which we are living. As a result, it adopts a set of regulative mechanisms to protect, foster and ensure cultural, social and economic rights.

78. This agreement stipulates governments shall have the responsibility for developing, with the participation of the peoples concerned, coordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity (Art. 2). It also states that those peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination and that no form of force or coercion shall be used in violation of their human rights and fundamental freedoms (Art. 3). It is important to note that in order to achieve the objectives mentioned above, the Convention indicates that special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labor, cultures and environment of the peoples concerned (Art 4).

79. The Convention, among its multiple provisions also points out that States are to: a) recognize and protect the social, cultural, religious and spiritual values and practices of these peoples, and take due account of the nature of the problems which face them both as groups and as individuals, b) respect the integrity of the values, practices and institutions of these peoples and, c) adopt measures aimed at mitigating the difficulties experienced by these peoples in facing new conditions of life and work (Art. 5).

This legal framework also refers to the protection of Afro-Colombian ancestral territories (Part II), Afro-Colombian labor rights (Part III), Afro-Colombian formation and productive capacity (Part IV), social and health security (Part V), education and access to communication (Part VI), international ethnic cooperation (Part VII), participation in the administration and legislation of projects and measures of concern (Part VIII).

80. It is also important to note the convention stipulates how these provisions must be applied. States should: a) Consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures

which may affect them directly; b) Establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programs which concern them; c) Establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose (Art. 6). It also establishes that Afro-Colombians shall have the right to decide their own priorities for the process of development and improvement of socioeconomic conditions (Art. 7) and have the protection against the violation of rights (Art. 11).

81. We can see these international regulations introduce a set of defined mechanisms and procedures for the protection, maintenance and guarantee of the rights of the ethnic communities. These, together with the provisions particularly established in Law 70 of 1993 create the legal framework of the fundamental structure for the regulative protection of the ethnic and territorial rights of African- Colombians. However, in spite of the fact of the existence of such wide framework of institutional protection and compromise, AFRODES has discovered and continuously reported the systematic violations of such provisions, and particularly in what concerns to Afro-Colombian political and social exclusion. AFRODES has also pointed out that this failure in the Colombian state granting their rights has meant, for Afro-Colombians, the deepest humanitarian crisis of their history as an ancestral, social and cultural people (AFRODES 2006, 2007, and 2008).

82. As the Colombian state has not complied with the provisions established by the 169 ILO Convention, clearly seen in the many complaints presented to the Colombian Corte Constitucional (the supreme court on constitutional matters, hereinafter referred to as the Constitutional Court), which has pronounced different verdicts meant to highlight the priority in developing mechanisms to grant the rights of participation and to be previously consulted.²⁴ Those rights were also recog-

²⁴ Read Corte Constitucional: Sentencia SU-039 of 1997, Sentencia C-891 of 2002, Sentencia C-208 of 2007, Sentencia C-030 de 2008.

nized in Law 70 of 1993 and if they had been granted as indicated the processes of institutional exclusion and forced displacement would have been stopped. Therefore, it is important that the Colombian legislative chambers follow the provisions of the above mentioned court and gave the final approval to the law that regulates these matters in order to correct a problem which is once again reported recently in Auto 005 of 2009²⁵.

Normative Framework of Displacement: The Lack of a Differential Approach

We, the leaders who founded of AFRODES in 1999 had previously been working in the process that led to the creation of Law 70 and the beginning of its implementation. When we were displaced and came to Bogota we found that no agenda of any organization working with displaced people or Afro-Colombians included our problems. The situation was even worse as there was a level of reluctance in dealing with the topic. That was the reason why we decided to create an organization meant to solve the problems just mentioned and to have a level of influence so the public policies reflected a reality that was by then evident: we were displaced because of ethnic reasons. More than ten years later our proposed approach has begun to slowly shape up some regulations but these have not become effectively implemented²⁶.

83. Even though some differential developments have been made in the regulatory framework, currently both male and female Afro-Colombians continue to see with great frustration that the differential ethnic and territorial approach has not been fully adopted thereby leading to the continuing systematic violation of our rights. Just a few years had passed after the structural change shaped up by the Colombian Constitution of 1991 and the development of Law 70 when Afro-Colombian communities began to suffer from displacement and the re-

striction of their rights in the hands of armed group's actors of the conflict.

84. The indifference and the absence of recognition of the ethnic dimension were the basic triggers of the displacement phenomena and are still a persisting attitude. This was reported by well known international actors when referring to the first big afro displacement that was visible in the country and in the world. For example, when Julio Roberto Meier, former UNHCR representative for Colombia, came back from Africa in 1997 he was surprised to find 500 people (coming from a village called Pavarandó, part of the municipality of Mutatá in Chocó) displaced and confined by paramilitary groups in different areas of the Urabá zone. According to him the problem had not been given enough attention and was not made visible appropriately. In this distressing picture the UNHCR could not "understand why there was no any national or international interest in this case wondering: Is it because they are Latin-Americans? Colombians? Afro-Colombians?"²⁷.

85. The magnitude of the problem of displacement in Colombia by the end of the 1990's made it impossible for the state to deny its existence. A process to construct a regulatory framework was begun, although it was incomplete as it did not recognize the differential impact in each of the affected ethnic groups. Be that as it may, it began to set the foundations to give a structure for the institutional answer to the problem.

FOUNDATIONS OF THE LEGISLATIVE FRAMEWORK REGARDING DISPLACEMENT

86. The shaping up of a regulatory framework and the public policies to confront the forced displacement in Colombia is the result of a process of decisions made by the executive power. Such decisions have been guided and determined by international forces and the judicial power of Colombia. In consequence, Law 387 of 1997—which sets the foundations for public policies—must be understood as the result of the adoption of different international provisions, particularly in terms of their governing principles. However, the implementation of such a Law, and the institutional changes that

²⁵ See Auto 005 of 2009, particularly, note 101.

²⁶ This is a statement of a leader of AFRODES. Interview carried out in November 2009.

²⁷ See: Assessment of Public Policy for Comprehensive Attention to Forced Displacement in Colombia, January 2004-April 2007 (UNHCR, 2007).

make it work, are the result of the pressure exerted by the Corte Constitucional of Colombia. This court has responded to the claims of the displaced population and, based on its competencies, has begun the construction of a jurisprudence that forced the Colombian government to accomplish its obligations.

87. The “ideal” model in which the executive power is autonomous to generate public policies that grant the rights established by the Constitution and the law has unfortunately not come true. Had it been possible, the accomplishment of constitutional provisions underlying Law 70 would have prevented and stopped the forced displacement of Afro-Colombian communities.

88. Under this perspective it is important to understand the development of the regulatory framework to give protection to the victims of forced displacement. This will require the analysis of the way in which these different forces have shaped it.

International References: Guiding Principles on Internal Displacement (GPID)²⁸

89. At the end of the decade of 1990, the magnitude of the displacement in Colombia made it clear that nor the central government, nor the local authorities or the international community knew how to deal with the problem. The recognition of how serious it was led to the implementation of different types of measures in 1997. One example of it is the arrival of the United Nations High Commissioner for Refugees (UNHCR) which could have its first office in the country thanks to the adherence of the Colombian state to the international standards on the topic by all the members of the United Nations system.

²⁸ Law 5 of 1960 and Law 171 of 1994 preceded this legal framework. They both implied the ratification, by Colombia, of the four Geneva Conventions of 1949 and Protocol II 1977, which together with Protocol I – adopted in 1999 by Comisión Legislativa Especial (special legislative commission), give foundation to international humanitarian law.

²⁹ See: Principios Rectores de los Desplazamientos Internos, (1998) Nota de Presentación de los Principios Rectores (NPPR), Guiding Principles on Internal Displacement, 1998, Foreword to the Guiding Principles.

90. On the other hand, the United Nations’ answer to the concern related to the magnitude of the phenomenon of internal displacement in many countries resulted in the development of work that led to the creation of the so called Guiding Principles on Internal Displacement (which were formalized by the UN in 1998).

91. As it is established by the *Marco General de Derechos de la Población Desplazada por la Violencia en Colombia* (General Framework on The Rights of the Population Displaced due to Violence in Colombia), the GPID present the main references in order to protect the rights of the displaced population and to set the institutional parameters attend on it. Once again, such principles are clearly recognized by the Constitutional Court when referring to the international regulations that make part of the constitution.

92. These principles—which refer to the specific needs of internally displaced people, together with general principles (Section I, Principles 1-4)—set four specific levels of attention to displacement: (i) Principles Relating to Protection From Displacement (Section II, Principles 5-9), (ii) Principles Relating to Protection During Displacement (Section III, Principles 10-23), (iii) Principles Relating to Humanitarian Assistance (Section IV, Principles 24-27) and (iv) Principles Relating to Return, Resettlement and Reintegration (Section V, Principles 28-30). It is clear that in Colombia the regulatory framework on displacement is based on such Guiding Principles which at the same time set the structure of the policies that respond to the problem of displacement following the model of different phases: a) protection from displacement, b) protection and assistance during displacement, and c) guarantees on return, resettlement, and reintegration (NPPR²⁹, 1998, numeral 9).

93. It is important to note that the GPID can be used to describe the current crisis of Afro-Colombians that are displaced and/or confined. Once again, these principles establish the basic precedent for the differential approach, as indicated by Principle 9: “states are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pas-

toralists and other groups with a special dependency on and attachment to their lands”.

Law 387 of 1997: Guidelines and Basic Structure

94. The issuing of Law 387 of 1997 had a positive reception due to its coherence and consistency in respect to the international guidelines proposed to aboard the internal displacement phenomena. Its main goal was the adoption of “measures for the protection from forced displacement; assistance, consolidation and socioeconomic stabilization of the displaced population which is victim of the conflict violence in the Republic of Colombia.” However, this is just an extraordinary and temporary normative framework to face a situation of a moment and not as a permanent state policy. In fact, it has become the foundation to construct an institutional proposal that seems to be administratively perpetuated without giving any real solution to the problem.

95. It is important to highlight two structural elements of Law 387 of 1997 as it defines the following concepts:

Displaced person—Any person who has been forced to flee or to leave his/her homes or places of habitual economic activities within the national territory, because his/her life physical integrity, security or freedom have been directly affected as a result of any of the following situations: internal armed conflict, massive violations of human rights, violation of the international humanitarian law or any other circumstances —resulting from the situations above mentioned— that alter or may alter the public order (Art. 1).

Responsibility of the state—It is a responsibility of the Colombian state to devise the policies and adopt the necessary measures to prevent internal forced displacement and to provide assistance, protection and help in the consolidation and socioeconomic stabilization of the displaced population which is victim of the internal armed conflict violence (Art. 3).

96. The adoption of a rights-based approach—given the nature of the violation of rights implicit in displacement—and the institutional response required was initially interpreted through principles by Law 387:

- The internally displaced population has the right to ask for and receive international help. This creates a correlative responsibility of the international community to provide such a help.
- The person under forced displacement shall enjoy the fundamental civil rights internationally recognized.
- The person or persons under forced displacement have the right to not being discriminated against on the ground that they are internally displaced, for their race, religion, political or other opinion, place of origin or physical disability.
- The family of those under forced displacement shall be granted the right and conditions to be reunited.
- The persons under forced displacement have the right to access to definitive solutions to their situation.
- The persons under forced displacement have the right to return to their homes or places of habitual residence.
- Colombians have the right to not being under forced displacement.
- The displaced person or persons have the right to liberty of movement without any restrictions but those indicated by the law.
- It is the duty of the Colombian state to grant the conditions for Colombians to live together under equity and social justice.

97. In relation to the set of rights of the displaced population, and based on the legislation of the Constitutional Court, the “catalogue” of rights was reformulated as follows:

CHART OF FUNDAMENTAL RIGHTS FOR VICTIMS OF INTERNAL FORCED DISPLACEMENT:

- He or she has the right to be formally registered as a displaced person, individually or with his/her family.
- He or she is entitled to all his/her fundamental rights which shall not be affected by the condition of displacement. On the contrary he/she is subject of a special protection given by the state.
- Once the displacement takes place he/she has the right to receive immediate humanitarian help for a three-month period which can be extended for other three periods or more. Such humanitarian help includes:
 - a. Essential food and potable water;
 - b. Basic shelter and housing;
 - c. Appropriate clothing; and
 - d. Essential medical services and sanitation.
- He/she has the right to be given an identification issued by an institution which provides health care so to grant his/her effective access to health services.
- He/she has the right to return in safety to his/her home or place of habitual residence without being forced to return to or to resettle in any specific location of the country.
- He/she has the right to be assured of the identification, with his/her participation, of the personal or family specific circumstances to be defined as long as he/she does not return to his/her home. These include the possibility of work to receive and income to live with dignity and autonomy.
- If he/she is below 15 years old, he/she has the right to access an educational institution.
- These rights have an immediate effect and shall be respected by the corresponding authorities. Such authorities shall not condition the benefits implicit in these rights to a law suit, although he/she is free to initiate such an action.
- As a victim of a crime his/her rights are protected by the Constitution and the laws, so to assure him/her –under this condition- justice shall be made, the truth shall be unveiled and he/she shall receive the reparation from the authors of the crime.

98. In terms of the institutional design devised to implement the public policies that allow the state to accomplish its duties in relation to this set of laws, Law 387 of 2007 demanded the creation of the following:

- Sistema Nacional de Atención Integral a la Población Desplazada por la Violencia (SNAIPD, the National System of Comprehensive Attention to the Population Displacement due to Violence).
- Consejo Nacional para la Atención Integral a la Población Desplazada por la Violencia (CNAIPD, the

National Council for Comprehensive Attention to the Population Displacement due to Violence) as a consulting, counseling and articulating organ of SNAIPD.

- Plan Nacional para la Atención Integral a la Población Desplazada por la Violencia (National Plan for Comprehensive Attention of the Population Displacement due to Violence) as an instrument to make Public Policies effective. (See: Chapter 4).

99. In addition, taking into account the conditions required to implement the corresponding public policies, the law considered the following:

- Creation of Fondo Nacional para la Atención Integral a la Población Desplazada por la Violencia (National Fund for Comprehensive Attention of the Population Displaced due to Violence) which is in charge of collecting and managing the financial resources for implementing the programs of: attention to displacement, humanitarian attention to emergencies, to return, and to economic stabilization and consolidation.
- Creation of Red Nacional de Información (National Information Network). This network is in charge of the identification and diagnosis of the conditions that lead to displacement.

100. In summary, Law 387 (July 18, 1997) shapes up the legislative and political opportunity to respond to the displacement problem in different levels: prevention (Art. 14), humanitarian attention to emergencies (Art. 15), return (Art.16), and economic stabilization and consolidation (Art. 17). In addition, it defines the institutional instruments and instances required for this law's execution (Section 8 and Chapter 3). Also, based on the principles of subsidiary, complementarily, decentralization and concurrence, Law 387 establishes the shared responsibility between the state and the territorial entities in order to make Law 28 effective³⁰.

101. Adopting a differential approach to give recognition to the specificities of ethnic groups, such as Afro-Colombians, was insufficient at the beginning. However, this approach—"granting special attention to black and indigenous communities victims of displacement in compliance with their ways of life, establishing the conditions to return to their territories" (Art. 10)—was formally introduced by Law 387.

³⁰ It is important to note that Law 387 of 1997 indicates the national government shall grant organizations and supporting displaced people the possibility to develop actions in favor of the human rights of the displaced (Art. 30).

Reparations (Law 975 of 2005): As the Twig is Bent...

...I was first displaced in 1999: I testified in Rio Negro (Antioquia) but got no solution; that's why I had return to Choco. During that first displacement I was raped several times; in one those occasions I became pregnant with my girl. So far, I don't know if the father is the young man I was living with by then, even worse, I never talked about it because I was afraid of being stigmatized and rejected by the others. That left a scar in my life forever.

~Testimony of a forcibly displaced Afro-Colombian woman who participated in AFRODES' June 2008 regional workshop in Cartagena

102. The magnitude and aspects of the violence against the Afro-Colombians in the forced displacement framework registered such profound violations in terms of human rights that the prioritization of the institutional responses aimed at healing the pain and indemnifying the damages caused should have been the fundamental perspective of the normative development and corresponding public policies. That was the horizon the displaced Afro-Colombian communities conceived from the start and expressed in a reiterated manner

103. In a completely fragmented and inarticulate way, also, as a new demonstration of circularity characteristic of structural exclusion towards Afro-Colombians and others vulnerable populations, the state of Colombia commenced the configuration of a normative framework for a "reparation" brought about to benefit the victims, following a similar logic to that behind a compensation to slave holders that was implemented in the Abolition Law of 1851.

104. In 1995, Law 975 (also known as the Law of Justice and Peace) was created specifically to find a process for disarming and reintegrating paramilitary groups. Today it is clear that this law has failed to halt paramilitaries' targeting of violent acts against Afro-Colombians. In response, the Inter-American Commission of Human Rights indicated: "the norm gives more emphasis on reinstating of acquired goods in illicit forms rather than the mechanisms to ease the integral recovery of the victims."

105. The second part of the law makes reference to the rights of victims:

Article 1. Current Law's Objective. The present law's objective is to facilitate the process of peace and returning an individual or a group of armed forces to society, and guaranteeing victims' rights to truth, justice, and reparation.

106. Similarly, the general treatment given in a collective dimension that should be handled by the respective governmental program, denotes that the lack of a differential approach and the marginality given to treating the problems face by the ethnic groups affected by violence.

107. It is not surprising that the law lacks in its absolute totality any mention of Afro-Colombian or indigenous ethnic groups: main targets of the paramilitaries whose actions devastated and continue to devastate the regions we inhabit. Although the law contemplates that reinsertion when presented must guarantee the rights of victims to the truth, justice and reparation (Art. 1), we, Afro-Colombians, have had to observe how none of the three mechanisms of justice have been guaranteed during the development of institutional process; for instance, we've observed how the law does not guarantee these mechanisms of reparation necessary for the misdemeanors that affect in a specific manner our displaced and confined women, continuous victims of gender and sexual violence.

108. Amidst the current problems in Law 975 of 2005 and its implementation process, with the purpose of guaranteeing victims' rights to truth, justice, and reparation, we have noted that the cited law: (i) has privileged victimizers, both in formal aspects as in the practice; in reality, impunity and no reparation of the committed crimes against the Afro-Colombian communities continue to be generalized; (ii) lacks mechanisms that allow an effective way of enforceability and guarantee of the victims' rights ; (iii) does not register an effective development to adopt a differential focus according to the magnitude and characteristics of the victims belonging to the ethnic communities, especially when it comes to the processes of collective reparation;

and (iv) lacks adequate mechanisms to guarantee the access of justice in conditions of security.

109. In establishing the regulations of the law, the Decree 1290 of 2008 was expedited, in which the program of individual reparation was created by administrative means for the victims of armed forces outside the law. This decree of administrative reparation proves from its creation symmetric faults similar to those already known in the mechanism of judicial reparation as stated in Law 975, moreover the uncertainty about the administrative reparation model in terms of truth and justice, the individual aspect of the administrative structure of the reparation; completely excluding the rights that should be guaranteed to ethnic groups as an integral part of reparation.

110. In this manner, the individual reparation program created by the decree 1290, who is in charge of Social Action, has been generating harmful effects for Afro-Colombians, despite recognizing the possibility of partial reparation to fundamental rights such as (i) life, (ii) integrity, (iii) mental and physical health, (iv) individual liberty, and (v) sexual liberty (Art. 2), cracks the framework of rights and consequently, left out of the reparation; in other words, impunity, the ample framework of violated rights, especially those ethnic territorial rights of Afro-Colombians.

111. In this manner the judicial and programmatic framework of the reparation without taking into account the damage done to the social fabric of Afro-Colombian communities neither in numbers nor in components from a differential perspective; furthermore, in the few cases that restore the rights to our victims, it is done in a fragmented and partial form. Regarding this matter it is important to note that for us integral reparation means, the recognition of Afro-Colombians' rights, apart from the judicial introduction and differential programmatic focus.

RESTRUCTURING NORMATIVE FRAMEWORKS: THE ROLE OF THE CONSTITUTIONAL COURT

112. The Colombian government's inability to fulfill Law 387 of 1197 and failure to restore the rights of the displaced population was rapidly proven during the first years of implementation of the respective public policies.

113. Due to the fact that a forced displacement situation implies an integral violation of fundamental rights, the displaced population began to develop a systematic use of the available judicial resources in our legislation for protection: the act of guardianship. The constitutional court of Colombia's response to the demands for protection commenced the expedition of a set of sentences that have been fortifying and determining the governmental obligations, likewise the routes to guarantee protection and restitution of the infringed rights.

114. On this point, the Constitutional Court has been creating jurisprudence regarding all the infringed rights of the displaced population. The authors would like to note the following:

Sentence T-227 of 1997. Established the first jurisprudential precedent for the regulatory framework of displacement by adopting protection measures for the displaced population against acts of discrimination and intolerance.

Sentence SU-1150 of 2000. Founded the need of protecting those displaced with respect to rights such as: life, dignity, family, education, health, residence, freedom to development of personality, and equality amongst others. This sentence points out the direct responsibility of the President, in one's capacity as Chief of State, to manage the public administration accomplishing their obligations with these displaced people.

Sentence 1635 of 2000. Created the fulfillment of the law 387 to protect and include the stipulated programs, as stated by the law, for a displaced group of people.

Sentence T-258 of 2001. Defended the rights to work and protection of life.

Sentence T-327 of 2001. Established in addition the fact of being displaced a condition does not require the inscription in the Only Registry

of Displaced Population, the declaration of any entity to join. This sentence also points out the higher reach held by Guiding Figures of the Internally Displaced about other arrangements, also known as an integral part of the Constitutionality Block.

Sentence T-1346 of 2001. Established gender protection measures to the guardian and the right to a dignified life as a female head of family, relocation and a socioeconomic stability.

Sentence T-098 of 2002. Protects the rights of a displaced group that arrived from Quibdó whose requests to health Access and a socioeconomic stability had not been met on the argument of lack of resources.

Sentence T-215. Protects the right to an education and the protection of minors.

Sentence T-268 of 2003. Observes and protects the rights of inter-urban displaced persons.

Sentence T-419 of 2003. Observes and protects health rights, a dignified light, integral protection of the family, and access to help offered by governmental institutions, affirming that it is unacceptable to adduce budget insufficiency in order to abstain from protecting fundamental rights.

Sentence T-602 of 2003. Favors the rights of elderly people emphasizing the need of special protection and differential attention.

Sentence T-645 of 2003. Guards the right of reestablishment and cessation of the displaced person.

Sentence T-669 of 2003. Guards the right to emergency humanitarian aid for a vital minimum and the right to economic stability.

Sentence T-721 of 2003. Indicates the importance of taking into account the gender perspective when attending the displaced population, identifying the most sensitive needs of the authorities.

Sentence T-795 of 2003. Protects the right for displaced persons to have an education.

Sentence T- 795[1]. Protects the rights to those who are vitally threatened.

Sentence T-025: State of Unconstitutional Affairs

115. In an unprecedented act in Colombia's history, the Constitutional Court ruled on the sentence T-025 of 2004,³¹ declaring that "a state of unconstitutional acts"³² existed regarding matters of the forcibly displaced. With this assessment, the court has exposed the state's profound record of exploitation of the rights of the displaced Afro-Colombian population; specifying the different responsible institutions³³.

116. After its evaluation, the court found that rights violations were occurring often, and that the state was in no way accountable to any authority, rather obeyed a structural problem that affected the entire policy designed by the state and its distinctive components in particular by the lack of resources destined to finance said policy and the precarious institutional capacity to implement it³⁴. Due to the inability of authorities guaranteeing the effective possession of rights for the displaced population, the court formally declared Colombia in a "state of unconstitutional affairs".

117. For the Court to formally declare the state of unconstitutional affairs results in both territory and national authorities in charge of attending a displaced population adjusting their acts in such a manner an agreement is reached among commitments with constitutional and legal mandates and the assigned resources to assure the effective possession of the rights of those displaced³⁵.

118. The verdict of the court has rules that these rights should be defined as the following: (i) to a life, (ii) to dignity and physical, psychological and moral

integrity, (iii) to a family and family union, specifically those family cases constituted by persons whom are protected by the Constitution, such as children, elderly, handicapped or head of family females, (iv) a minimal subsistence, (v) to health, (vi) protection regarding discriminatory practices based on the displacement condition, (vii) to education for minors of 15 years old, (viii) help provision for the auto maintenance, by way of socioeconomic stability and (ix) payment and reestablishment.

119. It was important for the displaced citizen civil society organizations that the court's ruling acknowledged their rights and legitimacy to file an appeal of guardianship for the protection of the rights of their associates among other arrangements. In terms of institutional adjustments the sentence rewrites history in the public policy development, amidst its other judicial and programmatic layouts, ordered by the National Council of Integral Aid of the Displaced Population (NCIADP). The NCIADP assures the coherence between the appointed obligations by competent authorities and the volume of effectively destined resources to protect the displaced; especially those whom the Court has recognized to be in an extremely vulnerable condition not only due to the displacement also because the majority are people specifically protected by the Cons-

³¹ From a judicial point of view, the sentence was the result of the verdict ruled by the court as a response to the guardianship actions for fundamental rights established by 1,150 nuclear families belonging to the displaced population against various governmental institutions.

³² The state of unconstitutional affairs is a judicial construction of the Constitutional Court presented when talking about the repeated and constant violation of fundamental rights that affect a multitude of people and whose solution requires an intervention from several entities to attend structural order problems.

³³ The guardianship appeals filed by the displaced pointed towards the coordinating entity of NSIADP, the Social Solidarity Network, just like other response entities of the Institutional System, like the Administrative Department of the President of the Republic, Ministry of Finance and Public Credit, Ministry of Social Protection, Ministry of Agriculture, Ministry of Education, "INURBE", "INCORA", "SENA", among others.

³⁴ Although the court only signals the guardianships of this ruling as precedents of the unconstitutionality sentence note the vast knowledge of precedents with this problem and the development of public policy attention towards displacement as is shown in the reviewed work from 1997 (22).

³⁵ To carefully study the judicial and programmatic structure stipulated by the Constitutional Court about effective possession rights.

titution such as female heads of family, minors, ethnic minorities³⁶ and the elderly.

Autos Sentencia T-025: rutas superación ECI y enfoques diferenciales

120. The importance of the Constitutional Court to quicken the institutional processes required to adjust the public policies so as to over the SUA point of view, despite the Sentence T-025 had a fundamental starting point but in the practice of its competency continues to develop through the expedition of law documents following these just like the new sentences. .

121. The Constitutional Court is the only state actor with the capacity to recognize the problematic and complex situation face by Afro-Colombians, and to give guidance on how to solve it. In this way the keys concerning the technical design of public policies have been provided for by the court due to the incapacity and neglect of the Executive Branch³⁷.

122. Among the new related groupings the court has been indicating since T-025, the necessity to introduce differential foci that detect vulnerability and the experimented impacts by population groups with special constitutional protection should be highlighted, including women (Decrees 092 and 237 of 2008), children and adolescents (Decree 251 of 2008), displaced indigenous (Decree 004 of 2009), Afro-Colombians (Decree 005 of 2009)³⁸.

123. The jurisprudence that surged after the creation of this framework, especially with respect to differential foci

stand points, contributed to the beginning of understanding, in terms of politics and tools, the meaning of a policy with ethnic territorial foci of the Afro-Colombian citizenry. A perspective being built by organizational processes has been formed from the following elements: (i) the ethnic factor of being Afro-Colombians; (ii) structural factors of alienation; (iii) the restitution of autonomy, promoting the Afro-Colombian participation at various levels in society and politics; for the displaced (iv) the restitution, reparation and return of conditions of security, dignity, and non repetition; also (v) the right to the truth, justice and reparation from an integral perspective; and for the Afro-Colombian people (vi) the necessary reconstruction of the social fabric and balanced relationships between territoriality, ethnic development, sustainability and dignified life (AFRODES-CNOA, 2008).

Law 1190 of 2008: New references to adjust

124. Within the legislative framework, Congress instituted in 2008 a new legal mechanism specifically formed as a response to Law 1190. This law presents us with a new grouping of legal mechanisms designed to rearticulate, integrate, monitor and prioritize the responsive actions of different government institutions to improve the quality of life of the displaced seeking the effective possession of rights. The Law 1190, through which congress declared 2008 as the year of the rights of the displaced population (Art. 1)³⁹, ordered the NCIADP the integral coordination of the institutions to guarantee their commitment in the fulfillment of the rights of the displaced population that finds itself in its respective jurisdictions (Art. 2).

³⁶ The Constitutional Court highlighted in the Sentence T-025, that among other factors that were not fulfilled (by the government) were that “the lack of norms and regulations that will facilitate the access of the national institutions to the most vulnerable groups internally displaced such as (...) the ethnic groups (...)” Similarly it pointed out that “the current register system is not sensitized to indentify the specific needs of the most vulnerable groups such as the ethnic ones” (Constitutional Court, Auto-009).

³⁷ The Constitutional Court, at the vanguard of the Magistrate Manuel José Cepeda, “assumed the challenge of reaching the framework of the Social State of Right, the molded state decisions in the law, international treaties especially the Guiding Figures of the Forcibly Displaced and politics designed by the government, can be taken as conditions for the effective possession of rights coming true and in the case of the

displaced, to overcome what the court as described as “state of unconstitutional affairs” (ACNUR, 2007).

³⁸ Later the Constitutional Court have ruled new sentences like the Constitutional Order 006/09 on the Rights of the people with disabilities internally displaced and the Constitutional Order 007 ton the need to coordinate on land and territory and Constitutional Order 011 on Habeas Data (adjustments on the information system of the internally displaced.

³⁹ Paradoxically 2008 was the second year with the highest record of displaced in the country, with a total of 404,152 people, only to be outdone by 2002, atypical year if we consider the strong social instability as a result of the breach in dialog between the government and FARC; situation which clearly reached a lamentable total of 446,910 displaced people (RUPD. Corte, Sept. 30 de 2009).



125. The territorial entities should implement plans and programs with differential focus, design a strategy, define goals, design evaluation mechanisms, inform the displaced people of the politics as well as guarantee the effective participation of the displaced persons organizations. The law also stipulates the Ministry of the Interior, Social Action and the DNP to have the institutional mission to determine the mechanisms that assure territorial committees implement the Unique Integral Plans (UIP)⁴⁰ in an articulate form with the National Plans of Development and local budgets.

126. The law signals NSIADP, as head of Ministry of the Interior and Justice should coordinate with high representatives of territorial level, mayors and governors, directed actions in guaranteeing the Effective Possession of Rights (EPR). According to the law, the National Government is responsible for: (i) evaluating the accomplishment and reestablishment of the rights to those displaced people following the EPR as a guide; and with the help of an Inter institutional workbench, (ii) design a plan of action that contains the necessary stock and resources to guarantee the EPR (Art. 3).

127. The law requires NSIADP to search for a commitment with the private and public sectors, a priority commitment with the displaced in the diverse lines of social action, and social program enlargement projects. The law indicates the National Government must commit to regulating the observation and assignment of resources to meet the objectives and the NSIADP should regulate a social responsibility policy and a mechanism to follow-up the actions that in the framework of its competencies implement the entities that are constituted (Art. 5)⁴¹.

128. As a preliminary conclusion it is fit to point out that public policies with differential focus for the Afro-Colombians must be a policy that fulfills the state's commitments and the Colombian society should respect and promote our existence as a nation. The next chapter will show the development of the public policy to attend the displaced in order to evaluate the effectiveness of the regulation implementation in Colombia.

⁴⁰ The UIP is an instrument of planning and management that articulates and coordinates the actions en route and the new initiatives of NSIADP. In general the UIP, practices simplified planification strategy and only one to elaborate local coordination (workbenches, thematic commissions and committees) to guide the actions of all the responsible actors and approved at the core of departmental, district and municipal committees who attend the displaced and vulnerable population of violence. Its integrity is derived from the links with NSIADP institutions responsible for the attention of the displaced population so that in a coordinated and arranged form to apply their actions, strategies, efforts and resources.

⁴¹ For a systematic comprehension and evolutionary legislative framework of displacement (See: Annex).



CHAPTER IV

PUBLIC POLICIES “WITHOUT A DIFFERENTIAL APPROACH”

129. The solution became another problem: this is a way of summarizing the qualification that AfroColombians under forced displacement receive in relation to the structure created to design and implement the public policies meant to guarantee the rights established by the law.

130. The way in which the law is implemented through public policies –by allocating a meaningful budget– can be verified in the existence of an institutional structure which features a big amount of employees as well as programs and projects executed by different national entities in order to attend on the displaced population. The impact of such efforts, as it is continuously confirmed through analysis, is limited for the general displaced population and particularly for the displaced AfroColombian Population.

131. The general experience of both female and male AfroColombians, who have survived the situations that led to their displacement, begin with their effort to demonstrate they are telling the truth about their condition

of victims. This in order to be registered in the system of information so they can have access to the available (if any) resources offered -in an unarticulated and fragmented way- by the entities in charge of making a particular right be accomplished. Under such scheme it is common that long after they were victims, displaced Afrocolombians have only received humanitarian support to survive for three months or have to be in line for hours to be granted the right to a basic service, or even to go on waiting to be the winner of a house after a raffle...

132. How could such problems for implementing the public policies be explained? We believe the answer and the solutions require descriptive and analytical efforts which, from a differential approach, critically evaluate some of the elements underlying the construction of public policies and the corresponding institutional structure. This chapter presents a general balance including the main elements of the public policies and regulations to respond to the problem of confinement and displacement of Colombians. Special attention will be given to the possible evolution of a differential

approach to face the humanitarian crisis of Afrocolombians when implementing the policy of displacement according to the Article 10 of Law 387 of 1997⁴².

Institutional Structure and development of public policies

133. The process of designing and implementing public policies to confront the forced displacement has become dynamic thanks to the gradual release of guidelines -of different levels of influence- which have transformed the objectives, contents and responsibilities to be adopted by the institutions in charge of programs and projects. In addition, this process has involved almost all the institutions representing the powers of the Colombian State, each one of which has provided parameters of different nature and reach.

134. As a result, there is a complete set of laws, decrees, agreements, resolutions, sentences and autos that are difficult to understand and in consequence, confusing when there both, the entities in charge and very displaced population. That is why there are decrees that are written as programs and sentences including the structure of technical designs...

135. In terms of the differential approach required to guarantee the rights of the Afrocolombian Population under forced displacement, we find a continuous repetition of principles and criteria but not a single important project to make them come true. Based on this we believe it is necessary to briefly review at least those referential norms that have set the parameters for this unarticulated process under which the State is supposed to carry out actions to restore the rights of the displaced population.

⁴² Based on the need to implement the differential approach, and taking into account that Colombia founds its model of response to displacement on the Principios Rectores de los Desplazamientos Internos-Guiding principles for Internal Displacement (Bloque de Constitucionalidad- Constitutional Block of Laws), it is important to highlight what Principle 9 indicates: States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.⁴³

FIRST NATIONAL PLAN FOR COMPREHENSIVE CARE FOR DISPLACED PEOPLE BY VIOLENCE (DECREE 173/1998): ANTECEDENTS AND STRUCTURE

136. The creation of Law 387 of 1997 (See Chapter 3) was preceded by the release of two CONPES documents (2804/1995) and (2924/1197) y 2924/1197) which in turn were the response to the intensification of displacement in the decade of 1990. Such documents recognize the need of adopting a specific institutional action which should be carried out through a Plan Nacional de Atención -National Plan of Caring- This implied the creation of an institutional structure under the coordination of a high level office (Consejería Presidencial para la Atención Integral a la Población Desplazada - President's Office for Integral Attention of the Displaced people) which would articulate the corresponding entities.

137. Once Law 387 of 1997 is issued and based on the Autos, the First National Plan for the Integral Attention is created featuring the following objectives:

- i. To articulate any governmental action at the national and territorial level.
- ii. To propose strategies and actions for preventing displacement, for giving humanitarian attention in emergencies, and for consolidating and stabilizing the socioeconomic conditions of those affected.
- iii. To create the entities for implementing such actions. Carrying out the corresponding actions under the guidelines of the legal framework implied the use of national and territorial resources and the support of decentralized entities as well as the international cooperation. This was then the first scenario to develop the first public policy under Law 387.

138. The implementation of this first Plan is coincidentally attached to a variable that has become important for the public policies against displacement: change of governments. In 1998 Andrés Pastrana was elected president and a corresponding Plan for Natio-

nal Development (labeled Cambio para Construir la Paz – Change for the Construction of Peace) was created, implementing diverse institutional actions in order to create the appropriate conditions. Under this perspective, and among the most representative aspects we can mention norms and actions to:

- Improve on the information to define the characteristics of the displaced population to design the institutional responses.
- Improve on the mechanisms of institutional response following the Plan de Acción-Action Plan (CONPES-3057/1999).
- Appoint the Red de Solidaridad Social-National Network of Solidarity-as the coordinating entity of the SNAIPD and the Fondo Nacional de Atención a la Población Desplazada-National Fund of Attention to Displaced Population-which was before under the rule of the Ministerio del Interior-Secretary of State (Decrees 489/1999 and 1547/1999).
- Partially structure Law 387 of 1997 in order to create the Registro Único de Población Desplazada-Displaced Population Registry among other statements. (Decree 2569 of 2000).
- Definition of budgetal mechanisms for implementing the corresponding actions CONPES 3115/2001)

139. While this process of institutional design was being developed, the government failed in its attempt to negotiate a solution to the conflict with the illegal armed groups (guerrillas and paramilitaries). These groups continued to use violence against civilians, mainly against ethnic groups whose territories were now strategically important to the war.

140. Over the development of this first plan, two structural weaknesses were put in evidence and they remain to the present: (i) the concentration of institutional design into mechanisms to intervene on the consequences instead of including a significant approach to attacking the causes of the phenomenon, (ii) the absence of a differential approach.

SECOND NATIONAL PLAN FOR COMPREHENSIVE CARE FOR PEOPLE DISPLACED BY VIOLENCE (DECREE 250 OF 2005): RESTRUCTURING OF THE INSTITUTIONAL RESPONSE TO AN UNCONSTITUTIONAL STATE OF AFFAIRS

141. The election of Alvaro Uribe as president in 2002 did not lead to formal substantial changes in terms of public policy regarding forced displacement. Existing programs continued to be implemented with limited results concerning the restitution of displaced people's rights. This situation supported a variety of judgments issued by the Constitutional Court. In the case of Afro-Colombian communities, the military offensive of the democratic security policy went along with deepening the strategies of violence from illegal armed groups in the geographical areas. Hence, as AFRODES demonstrated (2007), using official statistics, the tendency of displacement and confinement in the Afro-Colombian municipalities registered a rising trend.

142. The evident lack of ability of current public policies was demonstrated by the Constitutional Court in 2004. Based on the pronouncement of an unconstitutional state of affairs this institution led the government through the CNAIPD to the design of a new National Plan of Integral Attention to the Population Displaced by Violence (Decree 250 of 2005).

143. The plan substantially restructures the policy of attention to displacement and it is supported on subsidiary principles and correspondence principles, for the sake of an integral answer from different corresponding government institutions. Thus, the plan distribute resources allocated by the national general budget for each institution SNAIPD, the resources of local authorities and the resources achievement of international cooperation have as general aims: to establish the general policy of the government and the plan of action to prevent forced internal displacement in Colombia and allowing the restitution the rights of Colombians affected by it.

144. The first guiding principle of the new plan established "for formulation and development of activities that operate in this plan will be taken into consideration the



characteristics of the population subject or groups involved in the attention, in terms of gender, age, and ethnicity as well as their social and cultural patterns.”⁴³ The differential principle also points out that all this will allow for the recognition and promotion of institutional offers consistent with the interests of the affected groups and individuals.

145. In addition to the differential approach, the new plan points out a territorial approach that recognizes regional diversity and the situation in the territories (Afro Colombian territories); a humanitarian approach, which recognizes the vulnerability and human dignity of victims; a restorative approach that involves fair compensation of losses or damage that took place due to displacement, and, a human rights approach, which means that the plan is based on the assurance of the application and enjoyment of human rights.

146. The plan in its principles of intervention (i.e., management and operational procedures of institutions and organizations involved in its development) is based on the principles of: (i) shared responsibility, (ii) cooperation and solidarity, (iii) integrity and, particularly, (iv) participation and social control, which means active involvement of the displaced population, organizations and associations of displaced population in the management, design, development and monitoring of the plan’s outcomes and objectives. As a measure of sensitivity to the different tribulations of each group, the plan also (v) pays attention to groups’ vulnerability, so, its implementation should include specific interventions to ensure fair application of laws, i.e. creating more flexible ways to access services so that displaced individuals are not punished for due to their having been for having.

147. This ambitious plan also reshapes the phases of strategic intervention and strategic lines into three phases of care: (1) prevention and protection, (2) emergency humanitarian assistance, and (3) socio-economic stability. These phases intersect with four strategic lines of in-

tervention: (a) humanitarian actions, (b) local economic development, (c) social management, and (d) habitat. The new plan, headed by Social Action also reorganizes different coordination mechanisms for its implementation, monitoring, and evaluation. This is reportedly to establish permanent and regular contact with displaced populations, which would enable them to demonstrate their human rights situation.

148. In brief, the new plan, in formal terms, offered more precise ways to guarantee a differentiated approach. Moreover, when it was established by a legislative act, it was expected that its fulfillment became effective by the executing agencies; otherwise the corresponding administrative punishment would be implemented.

SYSTEM OF COMPREHENSIVE ATTENTION TO THE DISPLACED POPULATION BY VIOLENCE (SNAIPD): INSTITUTIONAL SETTINGS

149. Given the complexity and harshness of the impacts of forced displacement, namely the violation of one’s rights, the state recognized from the beginning the unavoidable obligation for most regional institutions to participate in public policies at the national and territorial level and agreed on the creation of a System of Comprehensive Attention to the Displaced Population (SNAIPD).

150. The subsequent decree (250/2005) that creates the second national plan provides the details of SNAIPD’s structure and functions. Its assigned responsibilities come from the recognition of the policy failures observed so far:

- To attend with integral comprehensive care to people displaced by violence, so in the context of voluntary return or resettlement, they achieve their reintegration into Colombian society;
- To neutralize and mitigate the effects of the processes and the violence caused by displacement, through the strengthening of sustainable and integral development of the expeller and receiving areas, and the promotion and protection of human rights and international humanitarian law;

⁴³ The guiding principles define the characteristics and criteria that will guide the various programs and actions that are referred to in the new plan.

- To integrate public and private efforts to obtain adequate prevention and assistance in situations of forced displacement by violence;
- To guarantee suitable and efficient management of all human, technical, administrative and economic resources that is essential to prevention and attention of the situations that take place as a consequence of forced displacement in Colombia.

151. Regarding the hierarchy of its structure, the first item was the creation of the National Council for Integral Attention to the Displaced Population (CNAIPD), which involved the highest staff of the main bodies of the state⁴⁴ and assumed the role of formulating policies and ensuring budget allocation for programs that should be implemented.

152. Another component of SNAIPD was the coordinated participation at the national and territorial levels as a means of dealing with the complexities of a differential approach. The structural limitation of the Colombian state regarding the relationship between the national and territorial levels of the executive branch, have been replicated in the operation of SNAIPD, generating numerous problems that hamper the effectiveness of policies.

153. The coordination of SNAIPD was assigned not only to the Presidential Agency for Social Action but also to International Cooperation (Social Action) through Decree 250 of 2005. Its functions are to promote the design of programs and projects, and support activities among state agencies of any order and national and international NGOs.

154. At the national level, SNAIPD is integrated by four national workshops, structured as coordinating technical bodies whose functions are to plan, arrange, coordinate, develop, and evaluate the different actions,

⁴⁴ The CNAIPD is integrated by a delegate of the President to preside it, the Presidential Adviser for the Displaced Population, six government ministers, the director of the National Planning Department, DNP, the Ombudsman, the Presidential Adviser for Human Rights, the Presidential Adviser for Social Policy, the Manager of the Network of Social Solidarity and the High Commissioner for Peace.



according to institutional responsibilities and the established policy. The workshops are as follows:

- National Bureau of Prevention integrated by the Ombudsman's Office, Ministry of Interior, Ministry of National Defense, Office of the President and Social Action.
- National Bureau of Emergency Humanitarian Assistance is integrated by the Colombian Family Welfare Institute, the Ministries of Education, and Social Protection and Social Action.
- The National Socio-Economic Stabilization Board is integrated by the Ministry of Agriculture and some institutions attached or linked to it, Agrarian Bank, the Colombian Institute of Rural Development (INCODER), Development Finance for the Agricultural area Fund, Ministry of Environment, Dwelling and Territorial Development, Ministry of Education, Ministry of Social Protection, Ministry of Trade, Industry and Tourism and



its attached institutions, External Trade Bank of Colombia and Fund for the Promotion of Small and Medium Enterprises, the National Apprenticeship Service (SENA); the Colombian Family Welfare Institute (ICBF), and Social Action.

- The National Bureau of Strengthening for Displaced Population Organizations was established in order to ensure the proper functioning of the policy and actions set out in the national plan. This committee, in which has also been a decentralized territorial authority, means opportunities for dialogue and effective participation of the displaced population and coordinating place for SNAIPD. In other words, this level of public policy and the institutional structure of SNAIPD is the connection between those who implement policy and those to whom it is implemented, i.e. the displaced population. Failures at this level not only would lead to the implementation of public policy but also increase risk factors for the displaced and confined.

155. At the territorial levels (departmental and municipal), SNAIPD has the structure and framework to reproduce what is been proposed for the national level.

156. It should be mentioned that in case of need each bureau may invite other entities of the SNAIPD. Among others, such as the National Information Network for the Care of the Displaced Population, SNAIPD is the institution responsible for guaranteeing prompt and effective dissemination of information on the subject of displacement at the national, regional and local levels⁴⁵. The purpose of this mechanism is to have the immediate faculties to assess problems related to displaced persons to take immediate action. Due to its informative mission, the institution is also in charge of monitoring the actions executed in the development of the national attention plan.

157. Added to these, the SNAIPD has two extra mechanisms, the first one is the Technical Committee on Information Systems, integrated by the heads of the

offices or executives of information in the institutions and CNAIPD System. The second one is the Legal Committee, which acts as an advisory branch of the department responsible for monitoring and evaluating the National Plan and legal advice to the entities that encompass the system, including CNAIPD.

158. In conclusion SNAIPD is the axis of Colombian public policy on internal displacement. Thus, formally speaking, it is the supragovernmental institution responsible for interinstitutional coordination and it is a sectional agency to articulate physical, technical, human and financial resources of public and private national and territorial institutions that develop plans, programs, projects and activities in each policy phase⁴⁶. At this point it is important to ask how to understand the paradox between what the law states and what is actually implemented?

Legal and Programmatic Developments to Regulate Public Policies: CONPES 3400, PND 2006-2010, CNAIPD Agreements CNAIPD

159. The declaration of the unconstitutional state of affairs (Judgment T-025/2004) became a dynamic factor of the institutions around public policies for the care of the forced displacement population. The exposure of structural failures forced the state to develop a significant adjustment process: Decree 250/2005 designed a new national plan and further adjustments in SNAIPD which at the same time required resolving diverse issues depending on the creation of conditions for the operation of these policies. Below is the description and analysis in relation to two of them: budget and programmatic.

BUDGET ELEMENTS

160. A budgetary effort in correspondence with the magnitude of the problem was certainly one of the fundamental conditions to correct public policies adopted

⁴⁵ Municipal district and departmental committees.

⁴⁶ The range of institutions of SNAIPD are presented in three groups corresponding to each phase of attention in which the policy is structured in its programs, projects and specific actions: (i) prevention, (ii)

Protection and Emergency Humanitarian Assistance, and (iii) socio-economic stabilization, for a general approach to the main care programs for the displaced population.

so far. In that perspective, and based on an analysis that took into account the resources that historically had been invested and trends of displacement, a new document (CONPES 3400/2005) was written that projected a resource allocation of up additional 4.7 billion pesos to 1.3 billion already invested in the period 1995–2004 to reconstitute minimum protection of the rights of registered population in the SUR in December 2004.

161. From the analysis that supports this technical exercise should be mentioned that they have a lack of a differential perspective that deforms the understanding of trends in displacement for the Afro-Colombian population case, as well as negative impacts of other policies. We make reference to: (i) reduction of displacement that is argued in the national consolidated information, as AFRODES has demonstrated it has been accompanied by a significant increase in the magnitude of displacement in predominantly Afro-Colombian municipalities, (ii) the implementation of democratic security policy in the Afro-Colombian regions as a contributing factor to the violation of the population rights.

PROGRAMMATIC ELEMENTS

162. In addition to the requirement of greater budgetary commitments, also involving local authorities, CONPES identified a set of problems related to the management of public policies that outlined the state's institutional inability to protect the displaced population. In a similar perspective, and in accordance with this diagnosis, the new National Development Plan (2006-2010), "Community State: Development for All", proposed some guidelines for policy reorientation. From this set of "new" information we consider important to mention:

- Search of sustainable solutions through programs that leave apart welfare characteristics.
- Stronger approaches through coordination among SNAIPD institutions, which also requires coordination of actions and attention strategies of national and territorial level as well as the coordination of programs specifically designed to deal with the dis-

placed population and programs designed to seek poverty reduction, keeping the difference for that population.

- Strengthening the participation of civilians and displaced populations in the design, development and monitoring of public policy of interest, saying that, those who have been victims of displacement will not be seen merely as beneficiaries of services but as participatory citizens, integrated and empowered in their own process of reconstruction.
- Production and management information to facilitate a better characterization of forced displacement dynamics, as well as the design of indicators for monitoring and evaluation of public policy of attention to the displaced population.
- Training to staff in charge of dealing with displaced people at all government levels.

163. For effective implementation of these guidelines through public policies, institutional conformation of SNAIPD includes CNAIPD, which involves setting accurate courses of action and institutional managers. To this end, it includes an agreements mechanism, proposed between 2005 and 2007. The CNAIPD has since produced eight agreements:

Agreement 001/2006. Establishes criteria to answer the requests of the displaced population, as well as a legal path of processing requirements of the population. This is complemented by an operative mechanism of information consolidation, in charge of coordinate and consolidates it, with its final destination being the Constitutional Court.

Agreement 002/2006. Seeks to correct failures in regard to the participation of the displaced population in different stages of the policymaking, making clear and defining criteria for participation of the displaced population organizations in institutional roles.

Agreement 003/2006. The CNAIPD responds to failures in terms of protective measures against the discrimination of the displaced population.



Agreement 004/2006. Adopt new mechanisms to better define responsibilities in the implementation of institutional programs, as well as the permanent training plan, a training program for officials, which is considered to be a critical element throughout the implementation process.

Agreement 005/2006. Offers the first important precedent in the implementation of differential regulations, given the vulnerability evidenced by the Constitutional Court in indigenous communities, especially those displaced belonging to the ethnic group Nukak Maku.

Agreement 006/2006. Rearticulates territory-level institutions.

Agreement 007/2006. Creates an Inter-Institutional Monitoring Group set up with high-profile staff of all SNAIPD institutions, led by Social Action and in charge of monitoring the implementation of policy and reorients it according to their results.

Agreement 008/2007. The CNAIPD considers that "one of the problems in the design and implementation of state policy of assistance to the displaced population, is the absence of a specific focus on these population groups (children, women, Afro-descendants, indigenous, elderly, and disabled), to identify and provide help for their imperative needs resulting from their specific condition in the context of internal displacement (S. T-025)." As a result of such consideration, the CNAIPD regards the need to take measures to demonstrate differential actions in the policy of care for the displaced population. Thus, the CNAIPD ordered the SNAIPD to make effective implement measures as well as the implementation of new shares, on the basis full enjoyment of rights approach.

SYSTEM OF INTEGRAL ATTENTION TO THE DISPLACED POPULATION BY VIOLENCE (SNAIPD): INSTITUTIONAL SETTINGS

164. The coherence between the new guidelines and courses of action proposed by the CNAIPD, seem adequate. It is also true that government reports pro-

vide evidence of actions and the implementation of resources oriented towards this perspective. However, budget and program adjustments have not meant an effective restoration of rights, as is demonstrated by the effectiveness of the policies, in a situation of forced displacement or confinement case.

- The adoption of significant programs with adequate resources to ensure an effective differential approach is not registered.
- The welfare approach still predominates and is spending large resources on programs that not only obstruct progress on sustainable solutions, but also weak the autonomy and dignity of our communities.
- The lack of coordination between all levels of SNAIPD maintains a fragmentation of institutional responses.
- The effective participation of the Afro-Colombian population in a situation of forced displacement or confinement is still not guaranteed through the mechanisms established. Additionally, the government does not support alternative initiatives in this regard.
- The instruments and procedures for managing information continue with deep lags that prevent the incorporation of the ethnic dimension. This situation is still used as justification for delaying the adoption of the differential approach.

165. In brief, setting policies for administrative actions has thus far been unable to transform the problems of disarticulation and fragmentation. It maintains a homogeneous and insufficient set of policies that not only indicate the failure to adopt a differential approach to Afro-Colombian ethnic but go into rights violation deep in most of our communities.

Mandatory Ways towards the Differential Approach: Order 092 and 005

By identifying specific fundamental constitutional rights that were violated by the forced displacement situations, the Court stated the rights of members of the "specially protected groups 'because of the precarious conditions faced by people forced to move' ", among which ethnic minorities are include, particularly Afro-Colombian popula-

tion. The Court stated that the interpretation of the rights of people of special constitutional protection as part of the displaced population should be performed in accordance with the Guiding Principles on Forced Displacement Nos. 2, 4 and 9, concerning to special protection that the state must extend certain groups of displaced population. However, without ignoring the overall progress made by government to protect the displaced, this indication of the Constitutional Court has not been transformed in full, concrete and differentiated actions, especially aimed at solving the critical situation faced by African descent population and, in general, it has limited the enjoyment and exercise of all their individual and collective rights.

Constitutional Court, Order 005 (2009).

166. Overcoming to the deep issue of implementation that continues charactering government actions in regard of its duty to guarantee the rights of Afro-Colombian population, must have been solved with the adoption of Decree 250/2005, 3400/2005 CONPES and CNAIPD Agreements. The alarming balance that has been presented verify the failure of a practice belief of the Colombian state and society: the failure of a rule is corrected with more rules.

167. Given the tendency of assuming a central role, the Colombian Constitutional Court, in its functions, has contributed with judgments and orders to indicate the precise routes to be followed for the effective adoption of Afro-Colombian ethnic-differential approach. Specifically, orders connected to judgment T-025/2004, orders 092/2008 and 05/2009, constitute the road map to the differential approach. More than “normative parts”, as it was described in Chapter 3, judgments are pieces of public policy. In addition to the creation of an appropriate regulatory framework, courses of action for the particular design and implementation of public policies are offered.

168. The success of these two orders, as the construction of its understanding framework, as the routes proposed, are based on having created mechanisms to incorporate the analysis and proposals of the Afro-Colombian displaced population; from there, as central elements to be highlighted are:

- The recognition on the structural nature of the phenomena of forced displacement and confinement. Therefore, the inclusion of communities that are considered to be “displaced and confined” as objects of public policies, bolsters the claim that the Afro-Colombian community, as a whole, is experiencing a gross violation of its rights. Furthermore, this structural view requires the recognition of economic and political variables, which are based on the phenomena that require change.
- In correspondence with the recognition of this structural character, the set of institutional responses is focused to include routes to transform structural elements as well as paths to deal with priority critical situations that communities are living. The review of all orders of Auto 005 shows comprehensive care that must follow the design and implementation of public policies.
- The recognition of multiple discrimination, especially, in the case of Afro-Colombian women in situations of forced displacement (Order 092/2008), and the need to implement a specific program, it also confirms a critical situation repeatedly evidenced by our own organizations and by international organizations.
- Participation of the displaced Afro-Colombian population and / or confined is a fundamental condition for the adoption of the respective public policy in the terms stipulated by the international regulatory framework to which the Colombian state has acceded. This situation must be re-emphasized as central guiding principle.

169. The precision of the routes indicated by the Constitutional Court’s judgments, obligatory for the Colombian government, unfortunately have not generated an adequate institutional response. What we have been seeing is a delay in the fulfillment of orders through put out of sight actions development that are presented under the heading of differential approach. This occurs without actually presenting a significant contribution to generate protection and recovery processes rights for the Afro-Colombian population in situations of forced displacement and/or confinement.

170. Nevertheless, Orders 092/2008 and 005/2009 are helping to shape a framework and institutional dynamic to the extent that conditions for the effective

participation of forcibly displaced and/or confined Afro-Colombians may serve to shorten the distance between what is said and what is accomplished.





V. CONCLUSIONS

171. The critical assessment about the legislation that should protect internally displaced Afro-Colombians was a complex analytical exercise, not only because of the large volume of related norms, but also due to the enormous gap between the established “ideals” and the inadequate effectiveness of the public policies; which, to this day, have been incapable of detaining the systematic violation of the Afro-Colombian’s rights and guaranteeing it’s restitution.

172. From this stand point, it is easier said than done, an analysis was done focusing on the process of design and implementation of public policies that should protect the Afro-Colombian population in a situation of forced displacement. The completed analysis offers new elements that give deeper insight on the conclusions that AFRODES had in their previous reports, highlighted below:

173. Public policies, with which the state establishes the orders coming from the different norms (constitutionals, legislatives, and jurisprudential) continue to be the main area where the rights of internally displaced Afro-Colombians can be restituted. We continue to highlight the enormous discrepancy between the legislative framework with huge advances and the low effectiveness of public policies designed to implement the same.

174. The two legislative groupings that should currently function to protect the rights of the Afro-Colombian population in a situation of forced displacement, namely; (i) the legislative developments of the law 70, and (ii) the norms that lay the foundations of the attention given to internally displaced with differential focus (Law 387 of 1997, Decree 250 of 2005 and Sentence T-025 of 2004), but there is not an adequate articulation amongst these. These legislations have records of serious implementation problems.

175. There has been major negligence in creating an environment for implementing the rights recognized of Afro-Colombians in the Law 70 of 1993. Other than establishing itself in a factor that eases the systematic violation of our rights, this negligence is a continuous practice by the government when assisting the differential impacts of the forced displacement of the Afro-Colombian population.

176. The adoption of a differential approach capable of recognizing the differential impacts and offering public policies as a response to that recognition results in not only a consensus but an incorporated mandate in the legislative texts that shape public policies giving attention to an internally displaced person. The analyses have shown that after various years of assumed formal commitment, the differential focus continues to be just a text, in other words, without any specific programmatic or budgetary correspondence.

177. The dynamics that have been shaping everything related to the design and implementation of the public policies for attention to the internally displaced, are not customary within a state of rights with separation of powers; situation where the common practice is the executive branch determining the designed that are executed. In the case of internal displacement and specifically the Afro-Colombian’s population displacement, can be the judicial power, in particular the Constitutional Court, whose duty is the surety of rights, verdicts and ruling have been taken on which the executive branch must write the respective public policies.

178. Despite the mandatory orders ruled by the Constitutional Court, the government has not been able to establish public policies that can address the needs of the internally displaced Afro-Colombian population.



179. The basic institutional structure to design, execute, implement and evaluate public policies towards the internally displaced, as well as the norms offered by an ideal model, unfortunately works in a deficient manner. The denominated National System of Integral Aid to the Displaced Population (SNAIDP), although it takes quite an effort to articulate and organize the stock of all the implicated entities in public policies, it registers a fragmented role that cannot offer integral nor opportune results to the forcibly displaced and/or confined Afro-Colombian population. What is perceived as a solution has become a problem and an obstacle to restituting victims' rights.

180. Among the factors that explain the failure of SNAIDP to attend the Afro-Colombian population's needs, we must highlight the inadequate model that is based on a limited comprehension of the problem. This is about a model that formally acknowledges the complexity of the problem; but in reality it concentrates on seeing just the consequences, leaving the causes of the problem intact. With this, the negative effects that have been generated will accompany any superficial policy.

181. The participation of Afro-Colombian communities afflicted by internal displacement has been a fundamental condition within legislation and the institutional structure. Respectively, numerous evidence and reports show that the state has not managed to guarantee this right.

182. In the developed analyses we proved the absence of pertinent legislative frameworks does not constitute

the main problem; actually, we do have norms that hold the state responsible for promoting and protecting the ethnic territorial rights as well as adopting a differential approach that includes the differential impacts that keep Afro-Colombians at the edge of cultural extinction. It seems as though the errors that need to be resolved are located in the design processes that form the basis of an adequate comprehension of the problem and also in assigning adequate resources.

183. The lack of institutional dynamics oriented towards the adoption of public policies with a differential focus, more than a public administration problem, it constitutes a factor that maintains and carefully seeks the painful impact of armed conflict on the Afro-Colombian population in situations of internal displacement of confinement: assassinations, disappearances, massacres, raped women, persecution of our leads, the displaced, confinement, usurpation, exploitation, political exclusion, poverty, disrespect towards international human rights, the militarization of our communities continue to occur parallel to an ideal legislative framework that unfortunately is not an effective institutional model.

184. Community and political actions among our organizations are based on pacific resistance that contributes to the reestablishment of our rights within the framework of the law, despite political adversity. In this way, we continue to be connected by deep Afro-Colombian roots stem from our communities' long search for liberty.

VI. RECOMENDATIONS

185. Without a doubt, the coherent search for a differential regulatory framework and public policies constitutes the fundamental core of the recommendations in this report. In fact, a great part of the grouping of recommendations that we have been making in previous reports (AFRODES 2006, 2007, and 2008) are oriented towards offering alternatives to overcome these gaps in the legislation and acts.

To the Colombian government:

186. The state should guarantee a true cultural diversity in Colombia, as is laid out in Article 7 of the Fundamental Political Document and as has been constantly ratified by the Constitutional Court. Hence, it should promote the political, economic, cultural, and social development of the Afro-Colombian community and recognize its ethnic territories, respecting, promoting, and guaranteeing what is stated in Law 70 of 1993.

187. Initiate the implementation of the ethnic Afro-Colombian differential focus in the defined terms by legislation, the jurisprudence, and the elaborated proposal from Afro-Colombian organizations. To do so the State must have the following:

- Assign specific resources for the already established programs and projects, and processes that give way to designing those that will be required.
- Adopt institutional adjustments that guarantee at every level (sectoral, national, and territorial) the assignment of responsibilities in the face of implementation of the respective programs and projects.

188. With the implementation of the ethnic Afro-Colombian differential focus we must prioritize the attention given to those especially vulnerable group populations:

- Afro-Colombian women—the state must initiate the effective execution of the programs and projects that correspond to the completion of Order 092.
- Leaders of the Afro-Colombian population—the state must implement differential focus with the already established terms in Orders 200/2007 and 009/2009, which should also integrate proposals for protection by organizations.

189. On carrying out the prescribed legislation in response to forced displacement, the Colombian government must guarantee the participation of the forcibly displaced and/or confined Afro-Colombian population and its organizations at every level (including institutional, national, and territorial, technical, and financial), in the design phases, implementation, follow-up, and evaluation of the Integral Policy of Aid for the Displaced in Colombia. To do so you must have the following:

- Assign financial and technical resources that allow the effective participation of the Afro-Colombian population in situations of forced displacement. From this point of view, the financing of the Initiative National Thematic Table of Forcibly Displaced and/or Confined Afro-Colombian Population constitutes a strategy of expertise.
- Ease the expedition of legislative norms that guarantee the right to previous consultation and the creation of conditions to accordingly fulfill with the stipulated in what the state of Colombia has acquired respectively.

190. The Constitutional Court must maintain and immerse itself in the mechanisms that ease the inclusion of the assessments and proposal of internally displaced and/or confined Afro-Colombians, within the processes



for the elaboration of providences oriented towards the protection of our fundamental rights.

191. The territorial entities (departments, municipalities, and districts) must execute with what has been written in terms of budgetary efforts for the courtesy of the displaced population from a differential focus.

192. The entities of the public ministry (defense, attorney general, and others) must extend the conditions to fulfill an accompaniment from a differential focus.

To the International Community:

193. All the actors of the international community who support the protection of Afro-Colombian rights in situations of internal displacement and/or confinement, should maintain and immerse their actions to make more visible, not only the vulnerability of our rights, but the effectiveness of public policies likewise the counteractive effects these can generate.

194. The bodies of the United Nations system in charge of tracking the acquired commitments by the state of Colombia concerning the protection of ethnic rights, need to strengthen their mechanisms to value the impact (and not only the management) of public policies that the state of Colombia adopts for the protection of Afro-Colombian rights.

195. The multilateral and bilateral agencies that give resources to Colombia in order to support the protection of human rights policies, should also delve deeper

into the adoption of differential focuses as a criteria for support and should assign specific resources to strengthen the organizational processes of internally displaced Afro-Colombians.

To Colombian Civil Society:

196. The Afro-Colombian organizations in general must incorporate forced displacement and/or confinement and their resulting issues more fully into their agendas, as well as support the efforts made by the communities themselves.

197. Non-governmental human rights organizations must support the work of Afro-Colombian organizations, spreading work lines to directly offer support for the enforcement processes that these organizations develop.

198. Academics should also deepen the analysis of factors that continue to block effective implementation of existing policies. Critical analyses of the models that infringe the adoption of a differential focus are constituted in a line of study debating what should be a priority. All of this in a horizontal perspective allows for the recognition and participation of the organizations as active subjects in the production of knowledge.

199. The media must immerse themselves in their independence and analyze the events and dynamics that are suffocating the efforts to adopt a differential focus that will restore human rights to forcibly displaced and/or confined Afro-Colombians.



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