

TITLE:

**BUREAUCRACY AND FORCED DISPLACEMENT  
IN BOGOTÁ, COLOMBIA:  
THE CONSTRUCTION OF FORCED DISPLACEMENT VICTIMS AND OTHER  
PROCEDURES**

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## **Introduction**

### **A. Purpose**

The purpose of this research is to describe in detail the procedures employed by one of the offices that provides humanitarian assistance to persons forcibly displaced from the countryside to Bogotá, Colombia, as a consequence of the internal armed conflict. As I expect to argue these offices are instances of intensive and massive legal production that though apparently minor and unsubstantial are more real in their consequences for forcibly displaced persons than any other legal authority or manifestation of the state. UAO officers largely determine if the legal status of “forced displacement victim” is granted or denied or if the petitioner deserves basic aid or not. How do state officials decide who is a victim and with what consequences?

Also, I expect to examine the general attitudes of UAO officials towards forced displacement law and determine to what extent does it operate as an external object that limits their actions in an effort of depicting not only legal practices but also the features of their legal consciousness.

### **B. Motivations**

My interest with this brief ethnographic report is to participate in three distinct areas of study. First, I am interested in contributing to the empirical and qualitative study of administrative legal adjudication in Colombia and also to its conceptualization. With few remarkable examples, empirical approaches to law are infrequent in Colombian legal scholarship. Most scholar legal research has been directed to organize the legal materials pertaining to a topic or pre-established category – freedom of speech, breach of public contracts, etc.-; identify their philosophical foundations and logical structures for

advancing critical or laudatory observations; or construct legal arguments to justify or dismiss a past and future legal claim. In addition, the scarce empirical studies that have been pursued have focused mainly in judiciary adjudication with particular interest in constitutional litigation and the production of constitutional precedents. Despite the ubiquity of statutory law and administrative authorities in contemporary Colombian life, administrative and legislative legal production have been understudied presumably for not having important implications over the object of study of legal science as conceived by mainstream Colombian legal scholarship.

Second, I am also interested in contributing to the debate about forced displacement law, which has become in recent years an issue of major political concern among the public opinion and has provoked several legal confrontations between the government and the Constitutional Court. How does it work in practice? How should it work? How? can street level officials contribute to the discussion?

Third, I am also interested in studying in general the response of Colombian legal institutions to protracted armed violence and political confrontation. I am particularly concerned with the microscopic but yet definitive bureaucratic actions that occur in this respect. Administrative institutions account for most state action, while judiciary is fairly limited. In the near future, Colombia will launch the administrative reparation of victims of the armed conflict –not only IDPs-. The public policy of forced displacement is the closest experience that we have experienced as a country and we need to assess in great detail its microscopic advantages and disadvantages.

## Chapter I. Forced Displacement in Colombian Contemporary Society

### C. Escalation of the Armed Conflict and Humanitarian Crisis: 1982-2008

The past 27 years of the Colombian armed conflict between guerrillas, paramilitaries and state forces have been characterized by the escalation of violence, especially against civilians, and a major humanitarian crisis.<sup>1</sup> During this period illegal armed actors multiplied their destructive and financial power, their modes of warfare, and their areas of influence.<sup>2</sup>

In the early 1980s guerrilla groups which had been active since the 1960s and the 1970s engaged in kidnapping, extortion, and drug trafficking for the first time. In 1989 many of them signed a peace treaty with the government of President Barco and were granted amnesty. The groups that refused to sign the treaty continued their activities, increasing their warfare capability (and their impact on civilians) at rapid pace. This has been the case of the *Fuerzas Armadas Revolucionarias de Colombia* (FARC) and the *Ejército de Liberación Nacional* (ELN).

Paramilitary organizations emerged in the early 1980s in the region known as the Magdalena Medio, in response to guerrilla activity against landowners and drug lords and as an extension of the armed wing of the Medellin drug cartel, headed by Pablo Escobar.

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<sup>1</sup>Another crucial aspect of this period has been the emergence and consolidation of drug-trafficking cartels and their gradual fusion with the armed groups that originally began as a political project or as private security groups. Today, guerrillas and paramilitaries are structurally intertwined with cartels so that most of the leaders captured by Colombian authorities have been extradited to the United States to face drug-trafficking charges. E.g. in 2008 fourteen paramilitary high commanders were extradited to United States.

<sup>2</sup> This characterization of the last phase of the internal armed conflict is canonical among Colombian scholars and journalists. See for example: Gutiérrez, Francisco; Sánchez, Gonzalo; Wills, María Emma & others. “Nuestra Guerra Sin Nombre: Transformaciones del Conflicto en Colombia”, IEPRI, Editorial Norma, Bogotá, 2006; GONZALEZ, Fernán; Bolívar, Ingrid and Vázquez, Teófilo. “Violencia Política en Colombia. De la Nación fragmentada a la Construcción del Estado”, CINEP, Bogotá, 2002.

The Colombian army directly supervised the creation of these groups and provided military training, infrastructure facilities, weapons, intelligence support, and logistics.<sup>3</sup>

The paramilitary model of the Magdalena Medio was replicated immediately in the coastal region near Panama, in a province called Córdoba where guerrillas had grown stronger and had kidnapped several of the local elite and current and former Escobar collaborators, among them, the Castaño brothers. The oldest brother, Fidel Castaño, founded a group known as the *Magníficos* or *Tangueros* with the support of traditional landowners, smugglers, and state forces. Castano's group killed thousands of leftist activists, community leaders, intellectuals and peasants accused of supporting the guerrillas.<sup>4</sup> This was the time of massacres like El Tomate, Pueblo Bello and Mejor Esquina.

Along with some guerrilla groups, Castaño also demobilized in the peace agreement of 1989, but not for long. The confrontations between the Castaño group and the guerrillas that did not participate in the agreement resumed soon after. More elite members and drug barons joined the paramilitary enterprise and with their support the middle brother, Carlos Castaño, founded the Self-Defenses Forces of Córdoba and Uraba (Autodefensas Campesinas de Córdoba y Uraba – ACCU).<sup>5</sup>

While this second version of the Castaño project was a success in many respects for the local elites of Cordoba, it was a major tragedy for the peasants and the political opposition of the region and eventually of the rest of Colombia. Between 1992 and 1994

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<sup>3</sup> See, for example, Romero, Mauricio. "Paramilitares y autodefensas, 1982-2003", IEPRI-Editorial Planta, Bogotá, 2003; Medina, Carlos. "Autodefensas, paramilitares y narcotráfico: origen, desarrollo y consolidación. El caso de Puerto Boyacá", Bogotá, 2006; and Sánchez, Toño. "Historias que da miedo contar", Ediciones A. Sánchez, Bogotá, 2003.

<sup>4</sup> Romero, Op. Cit.

<sup>5</sup> Sánchez, Op. Cit.

the ACCU defeated guerrillas and eliminated progressive social organizations that had survived the first paramilitary surge. The ACCU also returned political and economic control of the local government to the elites who had suffered partial losses in the elections of the late 1980s. Soon the elites of the neighboring regions of the Caribbean Coast such as Sucre, Bolivar, Magdalena, Cesar and Guajira, and then of the Andean highlands and valleys, established connections with the Castaño brothers and replicated the paramilitary model to fight guerrillas and secure their interests. In most of those regions FARC and ELN had become increasingly stronger. Kidnapping, extortion, forced recruitment, the use of anti-personal mines and other abuses against civilian population in general were pervasive. So in 1997 the second generation of paramilitaries, along with the original ACCU, created the United Self-Defense Groups of Colombia or *Autodefensas Unidas de Colombia* – AUC and launched an extremely violent anti-subversive campaign known as the paramilitary counter-offensive across the country, that lasted until year 2002.<sup>6</sup>

During this time human rights violations increased exponentially.<sup>7</sup> Instead of direct and regular confrontations between armed groups, the violence in this period particularly targeted civilians. Thousands perished in collective and individual assassinations by one side in retaliation against the other and most notably, several millions were forced to abandon their residences and settle in the marginal areas of the largest cities.

In year 2002 more people were forcibly displaced than in the entire decade between 1985 and 1995. According with CODHES, a leading NGO on forced displacement,

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<sup>6</sup> Romero, Op. Cit.

<sup>7</sup> For a detailed report about violence rates associated to illegal armed actors in Colombia see: Fundación Ideas para la Paz - Idepaz. “Informe final: Identificación de patrones de victimización y perfil de beneficiarios para un plan general de reparaciones”, Bogotá, June 2008.

412,000 Colombians were forced to abandon their place of residence during that year: almost 1% of the total population.<sup>8</sup> In January the peace negotiations that the FARC and the government had initiated in December 1998 came to an end. The FARC requested that a territory of 42,000 km<sup>2</sup> in the Eastern region of the country called San Vicente del Caguán was cleared by state forces for the negotiations. The government agreed and for 39 months allowed FARC to regroup in this zone, while fighting paramilitaries in the North and the West in regions of the country that had been under its influence for years. When the negotiations were cancelled paramilitaries had already taken control over most of the Caribbean region, the North East of the country and had surrounded el Caguán. Guerrillas rapidly lost terrain, but had had major tactical successes with the kidnapping of 300 soldiers, several high status politicians and hundreds of affluent citizens.

Three months later, in May 2002, Alvaro Uribe -a right wing political leader, who had made attempts to legalize and through these means regulate paramilitary groups- was elected president. In 2003, the Colombian government signed a demobilization agreement with the leaders of the AUC, that was severely criticized by the political opposition and human rights activists because it was allegedly designed to legalize their crimes against humanity and avoid the reparation of victims.<sup>9</sup> In the following years 31,000 fighters joined the reinsertion programs offered.<sup>10</sup> But nevertheless, the success of the

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<sup>8</sup> See Chart 1 and Table 1 in next section.

<sup>9</sup> The literature about the weaknesses of the demobilization process is abundant. As an introduction see Uprimny, Rodrigo; Botero, Catalina and Saffón, María Paula. “¿Justicia Transicional sin transición? Verdad, justicia y reparación para Colombia”

<sup>10</sup> In a press Conference in 2006, Diana Lozada, a representative of the UNHCR confirmed these numbers. Nevertheless, journalists and researchers have argued that this is an exaggeration. See Procuaduría General de la Nación, “Seguimiento a la Políticas de Desmovilización y Reinserción”, 2006.

demobilization policy and its effects on historical violence rates are still controversial.<sup>11</sup> While the intensity of the conflict stabilized in some regions, it significantly decreased and increased in others. In some regions paramilitaries rearmed under new names and insignias including the “*Aguilas Negras* and ” and “*Autodefensas Gaitanistas*.” In others guerrillas attempted a counteroffensive in order to fill the power vacuum. Finally, the pressure exerted by the army on guerrillas led the latter to intensify population control practices such as forced recruitment and forced displacement.<sup>12</sup>

#### **D. The Tragedy of Forced Displacement in Numbers**

##### **E. Estimations of Internally Displaced Persons in Colombia: 1985-2008**

Currently, Colombia has the second largest population of registered forced displacement victims in the world, after Sudan. According to the official database, the armed conflict since the mid 1990s has provoked the forced displacement of 2,930,911 Colombians. This number represents 6,81% of the national population.<sup>13</sup>

Non-governmental organizations such as CODHES and the Episcopal Colombian Conference, however, estimate that in fact the number exceeds 4,400,000 persons. They take into account the forced displacements that occurred in the 1980s and early 1990s, displaced persons that fail to report to governmental authorities, and persons that have been rejected from the official database for legal reasons. According to these figures, more than 10% of the Colombian population has been affected by forced displacement.<sup>14</sup>

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<sup>11</sup> Many journalists, political opposition and human rights activists have questioned the effects of the demobilization agreement. See Duzan, Maria Jimena. “La Mentira De La Desmovilización”, Newspaper El Tiempo, February 12, 2007.

<sup>12</sup> CODHES, Report No. 73, 2008.

<sup>13</sup> See Statistics on Forced Displacement, Agencia Presidencial para la Accion Social y la Cooperacion Internacional, Government of Colombia. Updated on February 28<sup>th</sup>, 2009: <http://www.accionsocial.gov.co/Estadisticas/publicacion%20feb%2028%20de%202009.htm>

<sup>14</sup> See Conferencia Episcopal Colombiana and Consultoría para los Derechos Humanos y el Desplazamiento: [www.codhes.org](http://www.codhes.org). The Episcopal Conference initiated the collection of data in the mid

Chart 1 and Table 1 show a large divergence between the official database and the data collected by civil society organizations before 2001, when the official database was systematized. From 1985 to 1996 CODHES and the ECC identified 990,000 forced displacement cases reporting an average annual rate of 90,000 persons.<sup>15</sup> The government, in contrast, refused to recognize the existence of the problem until 1994, making no estimates before that year.

Then CODHES and the ECC argue that between 1997 and 2002 1,924,960 Colombians were forcibly displaced and therefore, that the yearly average increased to 320,000 displaced people, a three-and-a-half fold increase over the previous 11 years.<sup>16</sup> As mentioned in the last section, this was the time of the paramilitary counteroffensive, first on the Caribbean Coast and then in the Andean region, and of the peace dialogues between FARC and the government. The year 2002, when the dialogues came to an end and Alvaro Uribe was elected President, was the worst year of the decade with 412,000 displaced persons.

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1980's through surveys and reports issued by 1500 churches around the country that were providing support to forced migrants after being expelled. In 1992 CODHES started to operate with international cooperation resources. Both organizations joined efforts in the mid 1990s to continue with their monitoring tasks.

<sup>15</sup> 1985: 27,000. 1986: 36,000. 1987: 59,000. 1988: 105,000. 1989: 119,000. 1990: 77,000. 1991:110,000. 1992: 64,000. 1995:89,000. 1996:181,000.

<sup>16</sup> Springer, Op. Cit.

**Chart 1. Comparison Government and CODHES-ECC**



The government estimates, on the other hand, only identified 65% of the victims of forced displacement caused by the paramilitary counteroffensive and the end of the peace negotiations during that period, reporting only 1,268,736 cases out of 1,924,960. As a result, the pressing question in 2003 was whether the Colombian government had to prepare assistance for 170,000 families or 600,000, more than three times the official figure.<sup>17</sup>

However, by the year 2001 the numbers in both databases converged and were almost identical until year 2007. The exceptions were years 2004 and 2006, but despite these difference the absolute estimates still coincide. Both databases reported a historic peak in 2002 with 412,000 cases and a steep decrease in 2003 when rates returned to around 220,000 for the first time in seven years. This was the year of the peace agreement between the Uribe administration and the AUC, signed in July 15 of 2003 after six months of negotiation. In addition, both estimates reported that between 2003 and 2007

<sup>17</sup> Newspaper El Tiempo. “Desplazados: cuantos son?”, May 23th, 2003, Bogotá.

approximately 1,276,000 Colombians were victims of forced displacement, with a yearly average of 250,000.

**Table 1. Comparison Government – CODHES-ECC**

<b>YEAR</b>	<b>Government (RUPD)</b>	<b>CODHES-ECC</b>
<b>No Date/1985-1996</b>	143,863*	990,000**
<b>1997</b>	124,823	257,000
<b>1998</b>	55,080	308,000
<b>1999</b>	76,540	288,127
<b>2000</b>	231,912	317,375
<b>2001</b>	363,953	341,925
<b>2002</b>	416,428	412,533
<b>2003</b>	232,994	207,607
<b>2004</b>	214,489	287,581
<b>2005</b>	250,530	252,801
<b>2006</b>	268,513	221,638
<b>2007</b>	311,443	305,966
<b>2008</b>	240,343	270,675***
<b>TOTAL</b>	<b>2,930,911</b>	<b>4,461,228</b>

\* These are cases of persons that have failed to remember the date of the displacement. They are not reported in Chart 1, so in fact

\*\* This number was calculated by the Episcopal Colombia Conference for years 1985 to 1996.

\*\*\* First trimester 2008. If this trend was constant during this would have been the worst year since statistical analysis of forced displacement in Colombia first started.

The only significant divergence between 2001 and 2007 were the years 2004 and 2006. According with CODHES, in 2004 the number of IDPs rose again to almost 290,000 while the government statistics showed a continued decline. The debate was whether the demobilization of paramilitary groups had been effective or not to reverse the trends of human rights violations. NGOs claimed that many of these groups were in fact still active, with the rates of forced displacement proving their argument. They argued that the government was refusing the registration of persons displaced by paramilitaries

because those groups purportedly “no longer existed”.<sup>18</sup> In 2006, the trends were inverted. NGOs announced a drop and the government an increase. Last year, the divergence was again profound. While CODHES reported 270,000 displacements for the first three months of 2008, the government reported 240,000 for the entire year. According to CODHES, this

#### **F. Demographics, Geography and Actors**

The war between guerrillas, paramilitaries and state forces has disproportionately affected the peasant population, forcing migration to major cities, since the conflict has historically taken place in the countryside. In 2004 the UNHCR reported that 75.2% of Colombian IDPs were born and raised in the countryside and abandoned it largely because of threats (45.5%), assassinations of a family member (17%), combat (10.7%), fear (8.5%) and massacres perpetrated against their community or family (4.8%).<sup>19</sup> In 2008, however, many NGOs and the government concluded, that in fact 99% of IDPs come from the countryside. Nevertheless, forced displacement has disproportionately affected women and children in relation with the total rural population. Half displaced families are headed by women -either war widows, single mothers, or wives or partners of recruited men- and 30% of overall IDPs were under 18 years old when forced into the cities.<sup>20</sup> This means that at best 879,000 Colombian children have been displaced so far.

Although the displaced population is predominantly rural, displacement has still

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<sup>18</sup> A researcher of the Anthropology Department of Javeriana University of Bogotá interviewed a person who was denied registration in the region known as the Magdalena Medio because she claimed having been displaced by paramilitaries. The answer of the person receiving the declaration was that paramilitaries had disappeared. NGOs released several reports. See [www.ccj.org](http://www.ccj.org).

<sup>19</sup> United Nations High Commissioner for Refugees - UNHCR, Bogota's Office: “Balance de la Política Pública de Atención al Desplazamiento Forzado: 2002-2004”.

<sup>20</sup> Op. Cit.

affected 95% of Colombia's territory.<sup>21</sup> Every municipality and department has experienced the expulsion of population to some degree. Typically, the highest rates of expulsion coincide with unresolved disputes over the territory between paramilitaries and guerrillas. In the aggregate, the departments most affected by expulsion of population are: Antioquia, Bolívar, Magdalena, Chocó, Cesar, Caquetá, and Putumayo. But remaining departments have still some levels of expulsion. The reception of population, on the contrary, is concentrated in twelve departments and Bogotá with 75% of total IDPs.<sup>22</sup>

Paramilitaries and guerrillas have perpetrated forced displacement with virtually the same intensity. According with the UNHCR, 37% of Colombian IDPs have expelled by paramilitaries, 29.8% by FARC, 1.6% by ELN, 2.3% by combats and 22.5% were unsure. CODHES and the government have similar statistics, except that they report coca leaf fumigation and public forces as causes of forced displacement.<sup>23</sup>

### **G. Socioeconomic and Psychological Tragedy**

Forced displacement is psychologically devastating and almost invariably drives its victims to misery. Several socioeconomic studies of IDPs show that even if registered in the official database, which entitles them to economic support and social security, they are still the poor of the poorest of Colombia.<sup>24</sup> Most IDPs in Colombia are low-income peasants, whose patrimony and productive capacity is structurally associated to rural work and the use of space and natural resources such as water and energy (whether

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<sup>21</sup> Ideas para la Paz. "Patrones de Victimización. Informe Final", June 2008, Bogota.

<sup>22</sup> Natalia Springer. "Colombia: internal displacement – policies and problems", Writenet Report, commissioned by United Nations High Commissioner for Refugees, Status Determination and Protection Information Section (DIPS), June 2006.

<sup>23</sup> UNHCR, 2002-2004, Op. Cit.

<sup>24</sup> See Ibáñez, Ana María and Moya, Carlos. "La población desplazada en Colombia. Examen de las condiciones socioeconómicas y análisis de las políticas actuales", Departamento de Planeación Nacional – DNP, gobierno de Colombia, Bogotá, 2007. See also Internal Forced Displacement Verification Commission, Report No. 11 on the socioeconomic situation of IDPs in Colombia, November 2008.

electric or traditional coal, wood) at no cost. When forced into the cities, they abandon their patrimony, often land, tools, animals and their physical residence.<sup>25</sup> But additionally, they must compete in the labor market with urban workers who already have the skills and the contacts necessary to find stable and adequately paid jobs. Consequently, IDPs tend to be disproportionately unemployed and underemployed, and to have lower incomes than their neighbors.<sup>26</sup> At the same time, their life-costs increase significantly and their preferences and needs change with the new environment. For the first time they have to pay rent, utilities, transportation and other services that they used to obtain from their social network. Because of these pressures, about 50% of IDPs do not have a stable physical shelter.<sup>27</sup> Either they rent rooms, depend on the charity of others, or live in the streets. For example, according to a verification commission created by NGOs and scholars, only 2% of registered families have an income above the poverty line and 26% above the extreme poverty level.<sup>28</sup> Stated differently, of 2,930,000 persons, only 56,800 are not poor; 2,111,400 are poor, and around 761,800 are in extreme poverty.<sup>29</sup>

But the economic tragedy is cause and consequence of the psychological tragedy of the armed conflict. A large proportion of IDPS, are also victims of other crimes associated committed against previously to displacement: rape, torture; assassination, forced disappearance, forced recruitment of family or community members, threats, and

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<sup>25</sup> According with the Report No. 11 above, 73% of displaced families were left behind lands and goods.

<sup>26</sup> See Romero, Marco (President of CODHES). "Desplazamiento forzado: del reconocimiento a la negación" in CODHES: [http://www.codhes.org/index.php?option=com\\_content&task=view&id=338](http://www.codhes.org/index.php?option=com_content&task=view&id=338), February 2009. See also Verification Commission, Report No. 11, Op. Cit.

<sup>27</sup> Op. Cit.

<sup>28</sup> Op. Cit.

<sup>29</sup> Op. Cit.

abuses of a many kinds.<sup>30</sup> So in addition to the trauma caused by the drastic and nonconsensual lost of physical and social place, IDPs exhibit profound psychological sequels caused by acts of violence occurred before being actually forced to leave: post-traumatic stress, severe depression, panic attacks, insomnia or excessive sleep, psychotic episodes, paranoia, among others are frequent. This psychological precariousness diminishes their ability to adapt to the city, to its socioeconomic dynamics and are likely to hinder their engagement in the bureaucratic procedures for officially becoming and IDP. All these circumstances together produce even more anxiety and depression, creating depressive vicious circle difficult to overcome.<sup>31</sup>

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<sup>30</sup> Fundación Ideas para la Paz, Op. Cit.

<sup>31</sup> Palacio, J. & Sabatier, C. “Impacto psicológico de la violencia política en Colombia: Salud mental y redes sociales en familias desplazadas en el Caribe”, Barranquilla, Ediciones Uninorte, 2002.

## CHAPTER II. The legal framework in brief: core dispositions and tensions

The public debate in Colombia on forced displacement in the last ten years has revolved around two general questions. The first is usually phrased as a descriptive or empirical question, but in substance it is predominantly normative. According to the existing legal framework what are the legal obligations of the Colombian state vis-à-vis internally displaced persons?

The legal framework regulating Colombian state actions to reestablish the rights of IDPs is an enormous and intricate collection of legal provisions (statutes, decrees, case-law rulings, and, according to many observers, international law dispositions) that are often contradictory and vague. For more than a decade, the content and the practical implications of this legal framework have been an ongoing matter of dispute between the government, in charge of the regulation and the implementation of the policy, and institutions like the Constitutional Court and the Public Ministry,<sup>32</sup> which evaluate government's response from a human rights perspective.

Many public institutions and legal scholars argue in favor or against the implementation of certain legal rules and their meaning. Most legal texts organize this universe of legal

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<sup>32</sup> The Public Ministry is composed by three institutions: the Ombudsman Office, the General Controller's Office (*Procuraduría General de la Nación*) and the *Personería Municipales y Distritales*; and the Fiscal Control Office. In the 1991 Constitution the Public Ministry was given the general attribution of exercising the function of surveillance and disciplinary control of all public officials' actions. Its functions include: (a) supervising the compliance to the Constitution, the law, judicial decisions and administrative acts; (b) protecting human rights and ensuring their effectiveness; (c) defending the interests of society; (c) nsuring the diligent and effective exercise of administrative functions; (e) exercising the disciplinary power when public servants incur in the noncompliance of their duty, opening investigations and proffering sanctions; (f) intervening in processes, and before judicial authorities, to defend the juristic order, human rights and the interests of society.

provisions in a particular hierarchy, solving contradictions and inconsistencies in different ways, clarifying meanings, and deriving rights and corresponding obligations (or on the contrary, arguing that certain rights or obligations do not exist).

One fundamental point of dispute is the legal justification of the state's action or inaction in the realm of socioeconomic assistance to IDPs. Some argue that is a matter of political priorities while others would contend that it is beyond political discretion and that the Constitution and international law prescribe particular treatment of IDPs.

Although several administrations have come and gone since the beginning of this question first emerged, the answer of the national and the local governments has been restrictive both in the interpretation and application of the rules on forced displacement. Since the mid 1990s the Colombian government issued decrees and policy documents acknowledging the problem of forced displacement. However, these documents establish several filters to reduce the number of legally recognized IDPs and limit their rights (and consequently, the financial and institutional duties of the state). Initially the government insisted that IDPs have privileges or benefits rather than rights. Thus, the executive had full discretion in the regulation and implementation of the policy toward IDPs. Later, the government avowed the existence of rights but considered that their protection would depend on budget and institutional capacity and ultimately the political priorities of both national and local governments. In practice, the policy's implementation followed this course, at least until 2004.

The Constitutional Court, the Public Ministry, and international human rights organizations such as the UNHCR have consistently argued that the rights of IDPs are human rights protected by international and constitutional law. They also argue that the

state is responsible for redress because it has failed to fulfill several of its basic functions, among them securing Colombian citizens' right to life, basic freedoms, and property. Consequently, the state has not just the capacity but the duty to develop and implement an assistance policy. Through its rulings the Constitutional Court has sought to reduce government's discretion in the application of IDP policy and expand the scope of the rights of IDPs.

The second question guiding the public debate on forced displacement is with regard to the outcomes of the policy. How has the Colombian state actually responded to IDPs so far? This is an empirical question that has also been a matter of continuous dispute between government, the judiciary, and public institutions. In the mid 1990s, the government recognized that the few legal provisions that existed at the time had barely been implemented. But then, it has insisted that its prevention and attention efforts have had a positive impact and that the situation of forcibly displaced persons tends to improve. The Public Ministry and NGOs, on the other hand, have generated their own statistics, comparing them with official figures, and until the present would persist in their criticisms for not responding adequately to the challenges of forced displacement. Therefore, another important part of the writing on forced displacement in Colombia has been oriented toward evaluating the policies' implementation and discuss if it meets certain sufficiency standards. However, the answer to this question largely depends to the answer of the first one.

In this section I offer a version of the legal framework intended to guide the Colombian state response to internal forced displacement and provide a general description of its implementation. In the first subsection I rely on the arguments

developed by Roberto Vidal and other refugee law commentators about the emergence of the notion of forced displacement in the international scene.<sup>33</sup> In the following subsections I examine the responses of the government, Congress, the Constitutional Court and the Public Ministry towards forced displacement.

#### **A. The international debate: the construction of internal forced displacement**

Internally displaced persons are not explicitly protected under international law. While international protection of refugees is more or less automatic by virtue of the United Nations High Commissioner for Refugees Statute (1950) and Convention of Refugee Law (1951), the notion and the protection of Internally Displaced Persons (IDPs) is recent and still lacks a formal legal basis.<sup>34</sup> Nevertheless, after several decades of criticism of refugee law for not protecting IDPs and indirect stimulus to IDPs to seek refugee status, the category appeared on the international agenda in the early 1990s.<sup>35</sup> NGOs and individuals, among them, the Sudanese law professor Francis Deng and his colleague Roberta Cohen of the Brookings Institute insisted on the need to create a legal framework for IDPs.<sup>36</sup> Consequently, in 1992 Deng was appointed as the U.N. Representative for IDPs, and in 1998 he issued the Guiding Principles for Internal Forced Displacement. During this process, Deng visited Colombia twice.

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<sup>33</sup> For a comprehensive historical review of the emergence and consolidation of the notion of IDP see Weiss, Thomas G. and David A. Korn. "Internal Displacement: Conceptualization and its Consequences", Routledge, London and New York, 2006.

<sup>34</sup> Cohen, Roberta and Francis Deng. "The forsaken people. Case studies of Internally Displaced People", Brookings Institute, Washington, 1998.

<sup>35</sup> Vidal, Roberto. "Derecho global y desplazamiento interno. La creación, uso y desaparición del desplazamiento forzado por la violencia en Colombia", Universidad Javeriana, Bogotá, 2008.

<sup>36</sup> Weiss, Thomas and Gareth Evans. "Humanitarian intervention: ideas in action", Polity, 2007. Weiss and other international law theorists have called Deng and colleagues "normative entrepreneurs" to illustrate their intellectual and political endeavors.

Soon after the UNHCR Statute and the Refugee Convention were approved, several observers argued that the definition of refugee endorsed by the UN was overly restrictive and did not coincide with the sociological reality of most non-voluntary migrants.<sup>37</sup> The Convention defines refugees as:

“Any person who, on the basis of a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, is outside the country of such person's nationality and is unable or, because of such fear, unwilling to avail himself or herself to the protection of that country; or any person who does not have a nationality and, because of such events, is outside the country in which she or he habitually resided and is unable or, because of such fear, unwilling to return to that country.”

One of the concerns was that this provision systematically excluded from the definition of refugee two types of migrants: victims of political, religious, racial or any other identity violence that had not been able to cross a national boundary, and victims of generalized violence, whether they had managed to cross an international boundary or not.<sup>38</sup>

But another concern – for many the definitive one – was that the lack of response to internal forced displacement by the states involved in internal conflicts would eventually create an upsurge of refugees, transferring the costs of internal wars to members of the international community. For this reason, some critiques have contended that notion of

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<sup>37</sup> Op. Cit.

<sup>38</sup> See Zolberg, Aristide, Astri Suhrke and Sergio Aguayo; *Escape from Violence. Conflict and the Refugee Crisis in the Developing World*; New York; Oxford University Press; 1989. Zolberg et. al. argue that the international legal regime for refugees was created to solve the legal situation of the 30 millions of European refugees of World War II and its preamble, who by the 1950s had already crossed and settled in foreign countries. The regime was intentionally designed to protect two types of forced migrants: (1) Political activists that defy the state authorities; (2) members of a group that has been persecuted and oppressed by the state authorities in consideration of race, religion or ethnicity. A third type of migrants - internal migrants by generalized violence, who were contained by migratory law or by geographical or economical obstacles- was not taken into account.

IDPs has been endorsed by the powerful countries of the UN system, not as humanitarian gesture, but as an anti-immigration strategy.<sup>39</sup>

In 1957 the United Nations extended the powers of the UNHCR, allowing on the ground assistance to non-conventional migrants, including internally displaced persons, without imposing new obligations on member-states or on the UNHCR itself. The provision authorized the UNHCR to engage in discretionary “good offices” or humanitarian services in favor of in-country forced migrants instead of obligating intervention, as with refugees.<sup>40</sup> This mechanism would allow the UN and member countries to negotiate humanitarian interventions but would leave IDPs without the legal power to demand assistance.

The UNHCR undertook actions in several countries under the new provision, including Sudan, Bangladesh, India, Pakistan, and others. By the 1970s the UNHCR used the term Internally Displaced Person in a number of international legal settings, insisting that internal displacement was a “disaster caused by human means, similar to natural disasters” and requiring humanitarian intervention based on human solidarity.<sup>41</sup>

In the 1980’s UN representatives began a debate about international responsibility for the costs of migrations in the countries that were generating or failing to prevent forced displacement. Simultaneously, other UN members and NGOs, raised questions about the relationship between forced displacement, crimes against humanity, and other violations of core human rights. NGOs argued that forced internal migrations are often preceded by

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<sup>39</sup> Vidal, Op. Cit. Vidal restates the argument presented by Patricia Tuitt in her book: *“False Images. The Law’s Construction of the Refugee”*, London; Pluto; 1996.

<sup>40</sup> The UNCHR has been overtly reluctant to accept a reform of the UN statutes in any sense that could restrict the political discretion of the institution. Currently the UNCHR intervention in a country is decided open a case-to-case deliberation process.

<sup>41</sup> Vidal, Op. Cit. Also see Fearon, James. “The Rise of Emergency Relief Aid”, Working Paper, in <http://stanford.academia.edu/JamesFearon/Papers/34042/The-Rise-of-Emergency-Relief-Aid>.

human rights violations, and also constitute in themselves unfair and inhumane practices: “those persons who have been uprooted, have been shown to be especially vulnerable to physical attack, sexual assault, abduction, disease and deprivation”.<sup>42</sup> The risk of starvation among IDPs is greater than for any other human group and death rates may be 60 times higher than non-displaced populations in their home countries.<sup>43</sup>

As a result, the General Assembly appointed a group of experts on the economy of migration and a special *rapporteur* on human rights and forced migrations. From their specific perspective, both teams contributed to the inclusion of IDPs in the legal agenda of the UN and other international organizations. The role of human rights “normative entrepreneurs” such as Deng and Cohen was crucial for the enhanced interest of such key actors in the drama of IDPs.<sup>44</sup>

In the 1980’s, in addition, the number of internal forced migrations doubled that of refugees as a result of the civil wars in Central America, Africa, and Colombia.

According to a worldwide NGO:

“The need for international standards for the protection of internally displaced persons (IDPs) became apparent in the 1990s when the number of people uprooted within their own countries by armed conflict, ethnic strife and human rights abuses began to soar. When IDP statistics began in 1982, only 1.2 million people were internally displaced in 11 countries. By 1995, there were an estimated 20-25 million IDPs in more than 40 countries, almost twice the number of refugees”.<sup>45</sup>

These circumstances led to the appointment in 1992 of Deng as Representative of IDPs before the United Nations. Deng produced several doctrinal documents compiling and cross-interpreting existing international legal rules to argue that IDPs should be

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<sup>42</sup> Bellamy, Alex. “A Responsibility to Protect. The Global Effort to End Mass Atrocities”, Polity, 2009.

<sup>43</sup> Cohen and Deng, Op. Cit.; Weiss and Korn, Op. Cit.; Weiss and Evans, Op. Cit.

<sup>44</sup> Vidal, Op. Cit.; Weiss and Korn, Op. Cit.; Weiss and Evans, Op. Cit.

<sup>45</sup> Internal Displacement Monitoring Center: <http://www.internal-displacement.org>. Still it is worth asking if the number of IDPs increased exponentially in part because the number of admitted refugees within the international system of protection decreased or if it increased because more and more forms of migration that had been occurring for years or decades were gradually identified as internal forced migration.

considered specially protected subjects of the international system and national legal regimes. He argued that the prohibition of forced displacement is implicit in the main human rights treaties, in particular, Article 12 of the Treaty on Civil and Political Rights regarding freedom of mobility and residence and Article 22 of the Interamerican Convention on Human Rights.<sup>46</sup>

**B. 1990-1994: Reception and resistance to the notion of internal forced displacement in Colombia**

In the early 1990s the international categories of “forced displacement” and “internally displaced person” gradually entered the lexicon of the Colombian human rights community. The terms were used to provide a legal description of migration induced by violence, a pervasive phenomenon in Colombian modern history.

Since the 1980s a group of social organizations and research centers had been actively engaged in the promotion of human rights, among them the *Corporacion Colombiana de Juristas*, the CINEP, the *Colectivo de Abogados Jose Alvear Restrepo*, and the Episcopal Colombian Conference mentioned in Chapter I. These organizations had been in constant contact with rural communities and representatives of the UN and international NGOs for several years. They were exposed, on one hand, to the debate in the international realm about human rights in general and forced displacement in particular, and on the other hand, to first hand data about migration from the countryside to the city as a result of human rights violations in the Colombian armed conflict.

Consequently, even before the appointment of Francis Deng, the Colombian community of legal activists began to use the new terms “IDP” and forced displacement

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<sup>46</sup> Vidal, Op. Cit.

“to pressure the Colombian state. They constructed strong links between displacement, international human rights law, international humanitarian law, and refugee law”. The . Their purpose was to introduce the international concept of IDPs “to *rename* the migrations from the countryside to the city that had been studied since the 1950s, connecting them conceptually to the internal armed conflict” and severe human rights violations.<sup>47</sup>

Violent migrations were not new in Colombia.<sup>48</sup> The new aspect of the conflict in the 1980s was the intensity of violence against civilians, at least in comparison to the 1970s. The other new development was the emerging conceptual framework through which external observers, including the international community and urban human rights activists, would characterize and oppose the migration. They sought to replace the mainstream representation of migration as an “accident” or worse, as an inevitable historical process, with an innovative humanitarian approach, first characterizing forced migration as a disaster and eventually as a violation of rights. For the first time such migration was represented by some legal authorities and audiences as an illegitimate and unjust phenomenon that required redress from public authorities. Eventually, the The category of *desplazados* (the Spanish colloquial term for displaced persons- was) was soon incorporated into grassroots legal and political discourse and emerged as a new social identity that did not exist before.

A new set of civil society initiatives contributed significantly to this “renaming campaign”. The most notable efforts were already mentioned in Chapter 1. Since the mid

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<sup>47</sup> VIDAL, Op. Cit. Emphasis and translation are mine.

<sup>48</sup> In the time known as “La Violencia” between 1948 and 1960, large-scale movements of population from the countryside to the city and from old rural settlements to inhabited areas occurred across the country occurred.

1980s the ECC –Episcopal Colombian Conference, a network of catholic organizations in remote regions, was reporting the emergence of armed actors and a steep increase in forced migration. In 1991 the *Consultoria para los Derechos Humanos y el Desplazamiento* – (CODHES) began operating with international funding and initiated an intensive campaign to raise awareness of the problem of forced displacement. Since then, the data collected by both organizations has been used by key actors as a basis for their decisions.

However, the impact of these organizations in the public opinion and the political realm was marginal. The government, headed by President Gaviria, resisted the legal recognition of IDPs as an independent legal category, different from that “victims of violence”. This latter had special legal recognition and technically included IDPs.<sup>49</sup>

### **C. 1994 – 2004: Legal Change without Enforcement**

The situation changed in 1994. For the first time the government recognized the need to address forced displacement independently from general social and economic unrest and also from other victims of violence. So from 1994 to 2004 the Colombian state developed on paper a comprehensive legal framework to counteract the social and economic consequences of forced displacement. However, the implementation of that legal framework was consistently poor until 2004, when the Constitutional Court demanded from the government to restructure the policy and enhance its enforcement.

In the following subsections I discuss the core provisions enacted during this period by the Congress and the government. Although the Constitutional Court had an active role during this time, I have reserved subsection D to comment its role.

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<sup>49</sup> Vidal, Op. Cit.

#### **D. 1994-1997: The discursive shift of the Samper administration**

In May 1994 Ernesto Samper was elected President of Colombia. Contrary to his predecessor, Samper was receptive to the concerns of human rights activists and international organizations about the situation of internally displaced persons, agreeing that the Colombian state should provide them special assistance.<sup>50</sup> That year Deng visited the country and exchanged information and data with national NGOs. Then, in several meetings with high rank officials he presented a preliminary report about the situation in the country and urged them to face the situation with a specific public policy.

In 1994, the government presented to the Congress a general budget plan that included an assistance program for the internally displaced population. The budget was approved without substantial modifications in 1995, and soon after, the government released CONPES document No. 2804 of 1995, a policy document that assessed the magnitude of forced displacement in the country and described the mechanisms and goals of the program.<sup>51</sup>

Vidal rightly notes that this document was a “foundational discursive event”. For the first time the Colombian state officially recognized that forced displacement required public intervention. However, as Vidal also notes, the document adopted the “natural disaster model”, according to which IDPs were not yet depicted as subjects of rights of an objective responsibility of the state but as victims of a human disaster that would be assisted for solidarity purposes.

As described in the document, the program had several goals. The first was to prevent forced displacement through social programs for rural inhabitants and a system of alerts.

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<sup>50</sup> Vidal, Op. Cit.

<sup>51</sup> CONPES documents are diagnostic papers that assess the dimensions of a public problem and make recommendations. Often, CONPES documents present detailed public policies.

Second, it had the goal of provisionally protecting internally displaced persons from subsequent violent actions, because their “life and physical integrity are still in danger even after displacement.” The third goal was to satisfy displaced persons’ basic needs in the meantime.<sup>52</sup> However, the government response was still viewed as predominantly reactive, similar to the case of natural disasters. The Bogota-based division on Human Rights of the Ministry of Internal Affairs, in collaboration with institutions in the place of reception of IDPs, would coordinate emergency assistance, “social programs and assignation of land.”<sup>53</sup> For these purposes, the Division would be assigned in addition 10,000 millions of pesos (at that time approximately US \$10 million).

Nevertheless, the program was not put into practice, with the exception of some isolated humanitarian assistance actions. In May 1997, the government released a second CONPES document (No. 2924) recognizing that the program had been a failure largely because of financial and organizational restrictions. In this second document, the government explained that the Ministry of Internal Affairs had gone through a restructuring process in 1995 that had paralyzed the institution for a year. The document also explained that in 1996 the Human Rights Division had not been allocated a budget. Then, in 1997, the Division only received 1.6 trillion pesos for all its activities (approximately US \$.1.6 million). With these resources, some humanitarian aid actions had been properly delivered to a group of victims, but the lack of cooperation by regional agencies had made any other efforts impossible.

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<sup>52</sup> CONPES document No. 2804 of 1995.

<sup>53</sup> Comment about CONPES document No. 2804 of 1995 by the Grupo de Apoyo a Desplazados – GAD in “Civil and Political Rights and the Internal Displacement in Colombia”, Exodo Review, No. 9, September, 1998.

Meanwhile the ECC and CODHES would release their first comprehensive study about forced displacement, announcing that nearly 1,000,000 of Colombian had been forced to displaced by the armed conflict in the last 10 years.<sup>54</sup>

**E. Law 387 of 1997: From contingency program to statute**

In July 1997 the Colombia Congress approved Act 387 defining, in general terms, the victims of forced displacement, their rights or benefits, and the institutions in charge of providing assistance.

The first article of the Act describes forced displacement victims as individuals who have been:

Forced to migrate within national boundaries, abandoning their former residence or habitual economic activities because their life, physical integrity, personal security or freedom have been violated or are directly threatened by any of the following situations: internal armed conflict, internal disturbances and tensions, generalized violence, massive human rights violations, violations of International Humanitarian Law or other circumstances derived from the situations mentioned before that may drastically affect public order.

According to this definition, forced displacement must be preceded by a manifest harm or a direct threat to a person's life, integrity, or freedom derived from a generalized and severe disruption of public order. Since the definition is vague, Article 1 delegates to the government the task of defining more specifically the elements of the condition or status of the forced displacement victim.

The Act also defines forcibly displaced persons as protected group that is entitled to three broad types of assistance: (1) immediate humanitarian aid, (2) economic stabilization, and (3) return or resettlement. Article 15, which establishes the right to humanitarian aid, states that immediately after the forced displacement has occurred the national government is required to:

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<sup>54</sup> See Chart 1 and Table 1, Chapter I, Section B.

“help, assist and protect internally displaced people and satisfy their needs of nutrition, personal hygiene, cooking devices, medical and psychological assistance, emergency transportation, and temporary accommodation, in consideration of their human dignity.

Originally Article 15 restricted immediate assistance to a period of three months, which could be extended for three additional months only in exceptional circumstances. For several years the UNCHR and human rights activists criticized this provision, arguing that three months were not enough to overcome the socioeconomic and psychological effects of forced displacement. In 2007 the Constitutional Court finally overruled this provision and in the present the government is expected to provide assistance for an undefined period of time, until the displaced person achieves economic stability.

Article 3 recognizes the right of IDPs to return to their former place of residence, while Article 16 obligates the state to support those persons that wish to return by providing security and economic sustainability. This right, therefore, involves, like other rights, both affirmative actions and restrictions. The state is expected to refrain from interfering with the efforts of IDPs to return to their former residences as well as to actively contribute with economic resources, local management of development programs, and military presence.

Article 17 requires the national government to undertake medium- and long-term actions promoting the economic and social stability of IDPs, either after returning to their former residence or in their new settlement. To achieve this goal the national government is expected to include IDPs in pre-existing public programs for income-generating projects, land reform and rural development, bottom-up entrepreneurship, social organization, health, education, and urban and rural housing.

Following this line, Article 18 states that the status as an IDP ceases after achieving economic stability, whether in the former place of residence or in the new setting. Under this article, IDPs are expected to actively cooperate with government programs looser lose the status and benefits derived from it.

The Act did not create a new agency for the execution of the policy. Instead, the Act ordered existing national, provincial and local authorities to undertake joint efforts to prevent future forced displacements and counteract the socioeconomic consequences of past cases. At the municipal and provincial level, authorities are expected to meet regularly in a special committee to discuss the situation of forced displacement in their region and determine specific actions. At the national level, agencies in charge of public services such as health, education, and rural development must meet regularly in the National Council on Forced Displacement. This organism is defined by the Act as a “consultation institution.”

Some national agencies are specifically required to give priority to IDPs in the execution of their general social programs. Such is the case of public entities in charge of promoting entrepreneurship, providing credit or technical education to low income citizens. Other agencies are required to create special programs for IDPs. For instance the institute of land reform and rural development has the order to create a special program protecting the land abandoned by IDPs from illegal transactions and providing access to new land.

The Act refers the committees and agencies involved in the assistance of IDPs as the “System of Assistance.” The system is be composed of nineteen national agencies, the Council and the municipal and provincial committees. According to the Act, in the in the

six months following its passage, the government should design the System's Plan of Action describing in detail the programs, budget, and goals of the policy and present it to the National Council for its approval before enacting it through a decree.

#### **F. New international standards: Confirm or contest domestic law?**

In 1998, a few months after the Colombian congress issued the Act, the UN Human Rights Commission approved the "Guiding Principles on Internal Displacement" prepared by a group of experts and headed by the Representative for IDPs, Francis Deng. The Principles bring together the international legal norms applicable to IDPs and set the standards by which armed actors and governments will be subject in the international community.<sup>55</sup> Although the Principles are not binding, belonging instead to the category of soft law, the Colombian Constitutional Court has repeatedly treated them as compulsory, for reasons that shall be discussed shortly, in section D.

For many observers, the Act was an early application of the Principles. However, some explicit differences are still worth noting. For instance, according to the Principles, IDPs are:

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

No direct threat or effective harm is required for a person to be considered an IDP. Anticipatory fear or anxiety can also be considered as constitutive of forced displacement. In the national statute, on the other hand, the reference to a direct threat or

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<sup>55</sup> Cohen and Deng, Op. Cit. "The purpose of the Guiding Principle is to address the specific needs of IDPs around the world, establishing the rights and guarantees necessary for their protection. The Guiding Principles reflect, without contradicting, the norms of the international human rights law and the international humanitarian law. The Principles reiterate the norms that are applicable to IDPs, that are scattered in several legal provisions, clarify ambiguities and solves lacunae".

harm is explicit in Article 1 although the text does not provide any additional elements that allow a conclusive interpretation of what the expression “direct” actually means.

**G. 1998-2004: Regulating Act 387 of 1997**

**a. 1998-2000: Solving institutional and budget deficiencies on paper**

Initially, Act 387 was praised by the international community and local NGOs as one of the most sophisticated and progressive laws on the issue of forced displacement.<sup>56</sup> But soon the Act proved to have serious institutional design problems that seriously hindered its application. For example, the system lacked a coordinating agency in charge of promoting and verifying the application of the policy on the part of its multiple members. Each of them was expected to create and execute a program for IDPs, but without technical assistance or supervision. In addition, the Act did not provide to members of the system any additional budget for assistance tasks. As a result, in the years that followed the municipalities, the departments and even the national government were reluctant to assume the financial and political responsibility of implementing the policy.

Instead, the national government oriented most of its efforts to creating formal rules strengthen the Act and resolve some of its flaws. So between 1998 and 2000 the government issued several decrees and CONPES documents reshaping the policy. For instance, soon after the approval of the Law, Decree 173 of 1998 introduced the Plan of Action mandated by the Act. In that document the government defined a timeline for spending and other administrative actions. Then decree No. 489 of 1999 decided that the

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<sup>56</sup> WONG, Karina. “Colombia: A case study in the role of the affected state in humanitarian action,” Humanitarian Policy Group (HPG) - Working Paper, April 2008.

Social Solidarity Network (SSN), a national agency with presence across the country, in particular in depressed areas, was to coordinate the assistance system. Other decrees and documents, including CONPES Document 357 of 1999, addressed the financial problems. In this document the government estimated that the implementation of the policy between 2000 and 2002 would cost US\$360 million, not including housing and land distribution, and established a spending plan.<sup>57</sup>

**b. Decree 2069 of 2000: basic procedures**

In 2000, three years later than expected, the government issued decree 2569, establishing the procedure that individuals should follow to be formally considered IDPs by the state and receive assistance.<sup>58</sup>

To begin, a person seeking classification as an IDP must provide a statement before a representative of the Public Ministry describing the facts or circumstances that provoked her displacement. She must describe her former occupation or economic activity, the property and goods that she had to abandon before displacement, and the reasons that led her the current location. Immediately after, the representative of the Public Ministry sends a copy of the statement to the office of the SSN in charge of granting or denying the status. The office evaluates the statement and any other “available information” about the petitioner and makes a decision within the next 15 days. Statements must be rejected when the facts described are false or when although true they do not fit the definition of internal forced displacement established in the first Article of Act 387. The original

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<sup>57</sup> Decrees 290 and 501 of 1999 were also issued during this time.

<sup>58</sup> If ten families or more, or more than fifty persons are forced out of their residences simultaneously is a massive forced displacement case. Decree 2569 addresses cases that involve less than 10 families or less than 50 fifty people.

version of the decree included a provision that statements provided one year after the displacement had occurred should also be excluded.<sup>59</sup>

Any person presenting a statement is entitled to “immediate aid” even if he or she is eventually denied status as an IDP. But only those registered in the database are entitled to humanitarian aid. However, the distinction between one type of assistance and the other is apparent only in principle. If an individual receives immediate assistance after providing a statement but before being registered in the database, it counts as anticipated humanitarian assistance. The only difference is denomination.

If the individual is granted legal status, her name is registered in an official database called the *Registro único de Población Desplazada* (RUPD), and she becomes a potential beneficiary of the social programs. If the individual is denied legal status she can protest the decision and petition the office to reconsider, or if necessary she can file an appeal. Once included in the registry, the person’s status as an IDP ceases if the contents of her statement are found to be false, she refuses to participate in the programs offered by the state to regain economic stability, or she has achieved economic stability in the former or new place of residence.

In addition, the decree limited the amount of humanitarian (or immediate) aid to a maximum of 1.5 monthly salaries per month for three months for accommodation purposes, plus 0.5 salary for cooking and sleeping implements for one time. In sum, the decree prescribes a fixed maximum for humanitarian assistance of five monthly salaries (in present currency this would equal 2,500,000 Colombian pesos or US \$970). The decree does not establish a fixed amount for economic stability of IDPs, but rather asked

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<sup>59</sup> The Constitutional Court eventually overthrew this rule, but meanwhile agents operating the registration system pervasively applied it. See CODHES reports No. 83.

the National Council to estimate it for each year. Finally, the decree ordered the SSN to promote the establishment of Attention and Orientation Units (UAOs) in the main cities of the country.

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The UNCHR, the Public Ministry, and human rights NGOs severely criticized three provisions of the decree. As with the Act, the original text restricted the humanitarian assistance to a period of three months, which could be extended for three additional months only in extreme cases.<sup>60</sup> This eventually changed in 2007 with the Court's ruling already mentioned. In addition, the decree established two rules that were considered to be inconsistent with the humanitarian nature of the Act and with the seriousness of forced displacement itself. First, the decree stated that, along with inaccurate and inadequate statements, those provided one year or more after the displacement had occurred should also be rejected. Second, the decree introduced a budget clause stipulating that the availability of resources to fund immediate aid packages, the programs directed to economic stability and others would depend on the budget of each institution. This clause was intended to protect the financial discretion of the system's agencies and Congress's ability to define the annual budget. For the UNHCR and the local NGOs this provision was in practice overruling the entire legal scheme enacted by the state until that moment. The legal obligations vis-à-vis IDPs established in the Act and in the Deng Principles would lose their binding effect, since executive authorities were now authorized to decide whether to assign resources to the assistance of forced displacement victims.

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<sup>60</sup> The extension is granted to families with one member that suffers from a serious mental or physical condition or families headed by single persons older than 65 years.

## **H. The Criminal Code: from accident to crime<sup>61</sup>**

In 2000, Congress reformed the Criminal Code through Act 589 of 2000. Forced displacement was included in the chapter of crimes against humanity, in the following terms:

“Article 284A. Forced displacement. Who ever shall use violence or other coercive or arbitrary acts against the population and through these means shall force one or several persons to change their place of residence, will be subject to: imprisonment for 15 to 30 years; fines for 500 to 2000 monthly salaries and interdiction from public service for 5 to 10 years.

The decision of the public force of moving a group of people away from its place of residence for their own safety or for imperative military reasons, and as long is consistent with international humanitarian law, shall not be considered forced displacement.

The Code also established that if the victim is a civil servant, a disabled person, a minor, a senior citizen, a pregnant woman, a journalist, a human rights activist, a candidate in a political election, a community, ethnic, political or religious leader, or a witness of a crime, the imprisonment time shall be longer.

The redefinition of forced displacement as a crime definitively changed the substance of the concept. Forced displacement was no longer considered an accident that required the intervention of the State as matter of solidarity with the victims, but an illegal conduct, that should be prosecuted and punished under the ordinary standards of criminal law.

## **I. 1997-2004: Poor implementation**

As noted, despite the normative activity of the government and the Congress between 1997 and 2004, Act 387, its decrees, the Criminal Code, and the recent CONPES

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<sup>61</sup> Several additional legal dispositions were enacted from 2000 to 2004, among them, a new CONPES document -No. 3115 of 2001- and decrees 2562 of 2001, 2181 and 2284 of 2003. These regulations established the procedures through which registered IDPs would have access to health, education, and housing. These provisions would impose on the local government the responsibility of offering the service. All of them, however, were replaced by decree 250 of 2005, issued in response to the Court’s ruling T-025 of 2004, discussed below.

documents were barely applied. Most of the agencies that constitute the system of support to IDPs under the Act did not implement the policy, and those that did so in highly restrictive and incidental ways during this period.

After visiting Colombia in 1999 the representative of the General Secretary of the UN for IDPs, Francis Deng, wrote a second report on forced displacement in the country where he concluded the following:

*“Since my first visit the Colombian government has made significant progress in the formulation of public policies and the elaboration of legislative and institutional dispositions to face the situation of IDPs. However it is indisputable, from every perspective, that the actions of the government at the implementation level are insufficient. In fact, the establishment of the national system of assistance has suffered many delays. The government has recognized that, indeed, several structural obstacles prevent the application of the policy: central and local institutions have not embraced their responsibilities in relation with IDPs, the system has been denied the technical and financial resources required to function properly and the lack of coordination is still pervasive”.*

Five years later, the office of the UNHCR in Bogota and the local NGOs concluded that the problems that had been identified earlier persisted until 2004 without significant changes. Only the Ministry of Health and the SSN – later renamed as Social Action or SA – had positive results, most of them related with immediate assistance. The other institutions failed to fulfill their duties, largely because of the reasons identified by UNHCR and summarized by Deng.<sup>62</sup>

According to the UN reports “the (assistance) system in general and the National Council were practically inactive until 2001.”<sup>63</sup> Before that year none of the institutions of the system was assigned the budget necessary for supporting IDPs. The government reports spending 267,541 million pesos (currently US \$100 million) from 1995 to 2000

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<sup>62</sup> UNHCR-ACNUR: “Balance de la política pública de atención al desplazamiento forzado en Colombia 1999-2002” and “Balance de la política pública de prevención, protección y al desplazamiento forzado en Colombia 2002-2004”. For online copies of these text: [http://www.acnur.org/paginas/index.php?id\\_pag=5595#D](http://www.acnur.org/paginas/index.php?id_pag=5595#D)

<sup>63</sup> UNHCR-ACNUR, 1999-2002, Op. Cit.

on forcibly displaced persons.<sup>64</sup> However, the UNHCR, control organisms, and NGOs agree that those resources were not employed for that means but for ordinary operations, with few exceptions.<sup>65</sup> Forced displacement was granted an annual budget of 146,000 million pesos in 2001 and 150,000 million in 2002. The budget continued to increase steadily until 2003, decreasing again in 2004.<sup>66</sup>

Because of a lack of funding, the registration system became operational only in April 2001, and only in the main cities. Until IDPs were only registered intermittently, first by the Human Right's Division of the Ministry of Internal Affairs and after by the SSN, and only in the face of massive forced displacements. Individual displacements were rarely registered. From 1995 to 1999, the government registered 22,150 families, while CODHES-ECC counted more than 400,000 persons, approximately 80,000 families.<sup>67</sup>

In addition, until 2001 no set form or protocol had been devised to gather the personal information of IDPs and their socioeconomic characteristics. At each opportunity IDPs had been asked different questions in different ways. Thus, the information collected in the 1990s by the state was not only extremely reduced in comparison with the NGOs, but the data was not comparable.

After 2001 the registry had other problems. The officers in charge would only admit forced displacement cases that had occurred within that year, applying the "one year" rule

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<sup>64</sup> Social Action, Government of Colombia. "Desplazamiento Forzado. Diez años de Política Pública", Bogotá, 2007.

<sup>65</sup> UNHCR-ACNUR, 1999-2002, Op. Cit.

<sup>66</sup> UNHCR – ACNUR: "Introducción y conclusiones. Balance de la política pública de atención integral a la población desplazada por la violencia, 2004-2006".

<sup>67</sup> Social Action, Op. Cit. Statistics for years 1995 and 200: 1995: 95 families; 1996: 596 families; 1997: 2,465; 1998: 9,600 and 1999: 2000.

included in the decree.<sup>68</sup> The population that had been individually displaced during the 1990s and late 1980s, estimated at 1,700,000 persons, was largely excluded. For successful registration they were frequently forced to file an individual lawsuit called *tutela*<sup>69</sup> against the state agency in charge of coordinating the implementation.<sup>70</sup>

The only aspect of the policy in which the UNHCR identified concrete results was the delivery of emergency humanitarian aid. According to reports from 1999 to 2002 the Colombian state provided aid to 43.2% of registered families, affected by massive forced displacements, and to 33.18% of families that had been displaced individually. Between 2002 and 2004 these percentages increased in the first case to 50.4% and in the second to 42%. In contrast, according to the UNCHR no programs on economic stability were implemented between 1999 and 2002; and from 2002 to 2004 only 31.6% of displaced families were offered either technological or entrepreneurial training and 3.7% any kind of housing solution.

Something similar happened with immediate aid. In 2005 the PGN found that the delivery of immediate aid was practically inexistent, except from the city of Medellin, where there was a 40.4% performance rate. For the rest of Colombia, the provision of alimentary and housing attention was the following: for the first trimester alimentary and housing aids reached 6.1% and 0.006% respectively; and in the third trimester performance rates were of 2.43% and 8.46%.<sup>71</sup>

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<sup>68</sup> See for example, Procuraduría General de la Nación - PGN. "Quinto Informe de Seguimiento al Cumplimiento de la Sentencia T-025 de 2004 de la Corte Constitucional", Coordinación de Desplazamiento Forzado, Procuraduría Delegada Preventiva en Derechos Humanos, May 2005.

<sup>69</sup> A *tutela* is a lawsuit vindicating an individual fundamental right. Fundamental rights are described in the first chapter of the Colombian Constitution and in the rulings of the Constitutional Court. The *tutela* is the Colombian equivalent of the Mexican *amparo*.

<sup>70</sup> Op. Cit.

<sup>71</sup> PGN, Op. Cit.

## **J. The intervention of the Constitutional Court in the public policy**

### **1. 1997 – 2004: From benefits to rights**

From 1997 to 2004 IDPs used constitutional actions to force the government to respond to their individual claims or to modify the legal framework.<sup>72</sup> Some administrative agencies would only react after the intervention of judicial authorities. To some extent, judicial actions became a standard procedure to obtain a response from the government.<sup>73</sup> Such was the case of registration procedures.

Since many cases reached the Constitutional Court, the Court gradually developed a substantial case law clarifying and in many respects redefining the rights of IDPs and the legal duties of the state.<sup>74</sup> In total the Court issued approximately 30 rulings during this period, refining public policy on many topics, among them the following:

T-227 of 1997	<ul style="list-style-type: none"><li>- Responsibility of local authorities in providing assistance to IDPs and preventing discrimination against them.</li><li>- Right to remain in the territory, judicial protection of rights, freedom of locomotion and to choose residence.</li></ul>
SU-1150 of 2000	<ul style="list-style-type: none"><li>- Legal principles that govern the state response to IDPs</li><li>- Special treatment by virtue of precarious circumstances</li><li>- Right to provisional shelter</li></ul>
T-327 of 2001	<ul style="list-style-type: none"><li>- Bona fide assumption in the registration procedure and the right to be registered</li><li>- Application of the most favorable interpretation on behalf of IDPs</li><li>- The legal force of Deng's Guiding Principles</li><li>- General rights of IDPs</li><li>- Preamble to the "unconstitutional state of affairs"</li></ul>
T-098 of 2002	Protection of rights to education, housing, work and health.

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<sup>72</sup> Some organizations would even recur to civil disobedience. In the late 1990s a group of forcibly displaced persons occupied the headquarters of the International Red Cross in Bogota and stayed there for several months.

<sup>73</sup> Procuraduría General de la Nación, 2006, Op. Cit.

<sup>74</sup> See, for example, Constitutional Court of Colombia: T-227 of 1997, ACU 573 of 1999, C-1316 of 2000, T-448 of 2000, SU-1550 of 2000, T-1635 of 2000, ACU-1762 of 2001, ACU-4279 of 2001, ACU-1378 of 2001, ACU-0080 of 2001, T-327 of 2001, T-258 of 2001, T-1346 of 2001, T-0130 of 2001, T-268 of 2001, T-277 of 2002, T-1026 of 2002, C-232 of 2002, T-704 of 2003, T-268 of 2003, T-603 of 2003.

Rulings SU-1150 of 2000 and T-327 of 2001, discussed next, illustrate the Court's position towards forced displacement during this time.

**a. SU-1150 of 2000**

In ruling SU-1150 of 2000 the Court redefined the normative nature of the assistance to IDPs. No longer was assistance a mere public policy, dependent of the political discretion of the government, but rather a constitutional duty. The benefits in favor of IDPs established in the bulk of legal provisions were also redefined as constitutional rights. According to the Court although the Colombian state does not directly provoke the forced displacement of peasants, its failure to prevent the problem makes it directly responsible. Forced displacement, argued the Court, is a violation of all constitutional and basic human rights, in particular, freedom of locomotion. Since the state's existence is justified solely in the protection of those rights, the state has the duty to employ every available means to prevent the violation of these rights, mitigate the resulting harm, and make all the efforts to retribute the rights

In this ruling the Court acknowledges that so far the policy's implementation has been poor. The Court identifies some of the most urgent problems, echoing the UNCHR reports. However, in that opportunity the Court did not issue a judiciary order directed to the central government for redesigning the policy. Rather, the Court invited the government to solve the problems identified and made recommendations.

**b. T-327 of 2001**

In ruling T-327 of 2001 the Constitutional Court established the specific rules to govern the registration of IDPs. The Court relied on Deng's Guiding Principles issued by the UN as guidelines for Colombian state action in relation with IDPs.

First, the Court reiterated its thesis of the “constitutional block” according to which international human rights and humanitarian law provisions are an extension of the Colombian constitutional text. Therefore, since the Guiding Principles compile binding international law, present in human rights treaties ratified by Colombia and have already been incorporated into the Constitution, they should also be considered an extension of the Constitution and be followed at all levels public policy application.

Second, the Court also argued that the Guiding Principles demand that the most favorable interpretation principle is applied by public authorities on behalf of IDPs:

The most favorable interpretation principle, applicable to the human rights of IDPs, makes the Guiding Principles of Internal Displacement (stated in the Report of the Special Representative of the United Nations) a constitutive component of our National Constitution... Consequently, all the officials that are involved in the assistance of IDPs – from which the officials of the Public Ministry that receive the statements and the officials of Social Action are illustrative examples- most conform their behavior to the constitutional text and to those Principles.

Third, the Court ordered the administrative bureaucracy in charge of the statement and registration procedures to apply the principle of good faith recognized by the Constitution. Thus, the Court mandated that the government must bear the burden of proof to deny legal status to a petitioner. In addition, the Court argued that the legal status of IDPs and the state actions that are derived from it could not depend on a formality because petitioners are in a particularly precarious socioeconomic and psychological situation:

IDPs come from contexts where formal education is scarce... When required to provide a statement ... IDPs are less clear and spontaneous than they normally are... But in addition, IDPs suffer the residual effects of the violence against them. This situation (...) can affect their performance during the statement procedure. Also the fear they may be experiencing about sharing or making public the events of the displacement may also reduce the spontaneity of the statement.

These circumstances imply that (in) the cases of IDPs the bona-fides principle must be taken into account. Captious questions, intended to provoke contradiction, must be avoided...as a possible mental effect of forced displacement, the person may be unable to

remember the facts with total coherence and clarity (...). In summary, a displaced person must be regarded as a subject, worthy of the highest respect (...) and deserving of special protection from the State.

The bona-fide presumption shifts the burden of proof and therefore, authorities are required to fully prove that the person has not been displaced. (...) The fact that the authority does not have evidence of displacement does not prove that it did not occur. This only proves that the problem (...) is so pervasive and overwhelming (...) that governmental institutions cannot keep track of it. (...)

However, it was in T-025 of 2004 that the Court directly intervened in the legal framework on forced displacement ordering the government to restructure the statutes and the decrees and modify substantially its practices regarding IDPs.

### **K. Ruling T-025 of 2004: “The unconstitutional state of affairs”<sup>75</sup>**

Forced displacement victims persisted in their use of judicial actions against government institutions to acquire assistance. The Constitutional Court reviewed hundreds of *tutela* cases and low-ranking judges heard several thousands. The discontent of IDPs became apparent to judicial authorities with increasing numbers of legal actions. Meanwhile, human rights groups, international organizations – in particular the UNHCR and the IOM – and victims’ organizations continued to inform public opinion with reports about the desperate situation of IDPs in the cities, their growing numbers, and the lack of response from the government.<sup>76</sup>

In 2003 the Constitutional Court revised 180 *tutela* actions presented by 5,000 people against the agencies of the assistance system and in February 2004 issued ruling T-025 declaring that the situation of forcibly displaced persons in Colombia was an “unconstitutional state of affairs.” The Court had used this phrase on eight prior occasions to describe a situation in which: (1) the fundamental rights of a significant

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<sup>75</sup> Since then the Court has issued other relevant ruling, among them: T-602 of 2004; T-771 of 2007; T-705 of 2007; T-704 of 2007; T-688 of 2007; T-611 of 2007; T-559 of 2007; T-496 of 2007; T-334 of 2007; T-191 of 2007; T-136 of 2007; C-370 of 2007; T-056 of 2008 and T-057 of 2008.

<sup>76</sup> UNHCR: “Introducción, Conclusiones y Balance de la política pública de atención integral a la población desplazada por la violencia 2004-2006”.

group of citizens are being persistently violated, overflowing the judiciary system with individual lawsuits, and (2) the violation of such rights is not a consequence of the discretion of a singular authority or agent but of a structural weakness in public policy or institutional design.

For the Court, both circumstances were indisputable in the case of IDPs. On one hand, the Court restated its traditional approach to forced displacement as the violation of every constitutionally protected right and contended that forced displacement was affecting almost three millions of Colombian citizens or nearly 8% of the population. On the other hand, the Court also concluded that there was a general lack of enforcement of public policy. Since 1997 the Court had accumulated evidence that national governmental agencies and local authorities were evading their legal responsibilities with IDPs. The Court had even received communications from army majors and governors explicitly refusing to enforce the policy. So far CODHES had released more than 50 reports, UNHCR three comprehensive ones, and grassroots organizations and social scientists had produced substantial literature about the precariousness of the government's actions. The Court stated:

“[...] the formal declaration of an unconstitutional state of affairs means that national and territorial authorities in charge of assisting IDPs must adjust their actions ... and must harmonize the resources assigned for supporting IDPs with ... constitutional and legal mandates. The sense of responsibility means respect not of the political or the rhetorical force of a statute, decree, or any other legal instrument that articulates a public policy, but its normative force; and it also means defining the scope of the rights that have been recognized and clarifying the corresponding state duties. By coherence, we mean harmony between the promises of the state and its economic resources and institutional capabilities, especially when those promises have become legal rules... when the state recognizes a right... it must obtain the resources and capability required to provide the services associated with the satisfaction of such a right”

The Court ordered the government to undertake a comprehensive revision of the policy under its supervision and explicitly required the execution of specific actions. These

actions included estimating the financial resources required to assist currently displaced persons and present a spending timeline, followed by annual reports to the Court about its execution; presenting a new institutional design addressing the lack of coordination and duplicity of functions; and developing a completely new system of public accountability that would allow NGOs, the Public Ministry and civil society in general to scrutinize state action.

Since the ruling was released, each agency involved in the application of the assistance policy, including municipalities and provinces, has submitted around 30 implementation reports to the Court, the international community, civil society and the Public Ministry. Each report explains the regulatory reforms that have been undertaken to meet the Court's standards and the administrative efforts in support of displaced persons' rights. Among other things, the government released a new Plan Action under decree 250 of 2005, which initially restricted many dispositions of Act 387.<sup>77</sup>

The Court, in turn, has issued more than 40 memos evaluating the reports and issuing new orders. On several occasions, it has invited civil society to public audiences to debate the results of the review. Up until now, the Court has found that the unconstitutional state of affairs has not been overcome yet and continues to supervise the policy. Still, some important improvements have been acknowledged by the Public Ministry, the NGOs and the Court itself, in particular, those regarding the financial effort and the delivery of humanitarian aid.<sup>78</sup>

According to these actors, the other elements of the policy are still scarcely implemented. First, they argue that the rate of exclusion from the registration is still high

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<sup>77</sup> For example, the decree states that humanitarian aid can only be awarded to the internally displaced who suffer a situation of extreme poverty.

<sup>78</sup> Op. Cit. See also the Constitutional Court memos.

and insist that many illegitimate practices are still pervasive: application of the one year-rule despite of having been overthrown; the indifference towards the social and psychological context of petitioners when providing the statement and before forced displacement; and widespread restrictive interpretation of Article 1 of Act 387. Several situations that are common in the armed conflict are excluded from the notions of direct threat and perpetrator.<sup>79</sup>

For example, the Public Ministry issued in 2006 a report denouncing a strongly restrictive use of the notion of “displacement” among regional authorities. It mentioned displacements that occur within the same city, town, or county, or -in the case of ethnic groups- within the same reservation which are not recognized as proper displacements. According to that institution similar happens with the meaning of “forced” displacement. Often the local authorities reject people on the basis that they were not displaced as consequence of direct threats or consolidated damages to their life, integrity of patrimony; but because there exists a general threat against their region or community, that is, a collective feeling of fear.<sup>80</sup>

Second, they have also argued that economic stabilization is practically non-existent. The national government has accordingly admitted that only 0.004% of the displaced population has been effectively reestablished with all their rights. As discussed by the Procuraduria in 2006, one of the governmental agencies reported that in December 2004 “rights had not been restituted” to 1.593.202 of the 1.599.586 officially registered

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<sup>79</sup> UNHCR, Op. Cit.

<sup>80</sup> Op. Cit.

persons, meaning that approximately 6.300 people had achieved economic reestablishment. The rest, in consequence, had, if only, received partial attention.<sup>81</sup>

### **Chapter III. Weberian and anthropological approaches to bureaucratic action**

Max Weber's conceptualization of *bureaucracy* as the quintessential rational organization has permeated social sciences and legal studies alike. His core assumptions

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<sup>81</sup> Op. Cit.

are still predominant in contemporary organizational theory<sup>82</sup> and in classical and neo-classical legal thought.<sup>83</sup>

However, empirical research on bureaucracy has challenged Weber's model in many crucial respects and has led to revisions self-described as post or un-Weberian. One marginal of literature within this project is what some anthropologists have called the anthropology of bureaucracy. Based on thoughtful ethnographic observation of bureaucratic action this literature resists Weber's assumptions and attempts an incipient reconceptualization of the object of study. Although its theoretical contributions are yet to come, a review of some of its conclusions seems to be particularly relevant for the purposes and means of this case study.

For this reason, in the following sections briefly explore Max Weber's basic theory about bureaucratic organization, in particular, in his insights about the relationship between bureaucratic action, formal rules and rationality. My purpose is to reflect about its limitations and advantages for the ethnographic research on legal bureaucracies. Then I turn to the anthropology of bureaucracy, even if theoretically is still under construction, and contrast it with the classical weberian approach. My scarce experience in the field suggests me that the anthropological perspective can make promising contributions to study of street-level legal bureaucracies and legal administrative decision-making.

### **A. Weber in brief**

Weber's major research topics are the exercise of *authority* and human *rationality* in its diverse historical and sociological manifestations. In his view the structure and internal

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<sup>82</sup> Fischer, Frank and Carmen Sirianni (Ed.). "Critical Studies in Organization and Bureaucracy", Temple University Press, Philadelphia, 1984.

<sup>83</sup> Kennedy, Duncan. "The Disenchantment of Logically Formal Legal Rationality, or Max Weber's Sociology in the Genealogy of the Contemporary Mode of Western Legal Thought", *Hastings Law Journal*, Vol. 55: 1031, 2004.

dynamics of social organizations depend exclusively of the type of authority or power that governs the relationship between its members: “for Weber, authority is the cornerstone of any organization. It directs the organization towards its goal: It imposes order on chaos”.<sup>84</sup>

Each type of authority, however, is an extension or an expression of an underlying rationality. So simultaneously to the types of authority, Weber identifies four ideal-types of rationality that presumably describe the patterns of human action and life across universal history: substantive, formal, theoretical and practical rationality. Practical rationality is synonymous to instrumental or means-end rationality and is described as the ability to identify the most expedient means to overcome present difficulties and shape reality according to specific ends. Theoretical rationality involves a “conscious mastery of reality through the construction of increasingly precise abstract concepts rather than through action”, as in religious and scientific. Substantive rationality is described as axiological consistency within subjectivity or worldview and between this latter and practical behavior. Formal rationality, on the other hand, refers to the employment of formal rules to deduct conclusions. As conceived by Weber, these four types represent universal anthropological features that transcend time and culture.<sup>85</sup>

However, Weber also argues that in particular historical periods, a specific type of universal rationality may acquire a contingent, but distinctive social manifestation, which

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<sup>84</sup> Fischer & Sirianni, Op. Cit.

<sup>85</sup> Karlberg, Stephen. “Max Weber Types of Rationality: Cornerstones for the Analysis of Rationalization Processes in History”, the American Journal of Sociology, Vol. 85, No. 5, March 1980. According with Karlberg, Weber tends to use the term “rationality” or the dichotomy “rational/irrational” ambiguously to make reference to any type or sub-type, often inducing the reader into greater conceptual confusion. The confusion is even worst when he applies the four types to concrete areas of behavior and thought, such as law, governance, economy or religion. See also Fischer & Sirianni, Op. Cit.

can be isolated and studied as an ideal-type<sup>86</sup> of its own – as is the case of his notion of *bureaucracy*. General rationalities acquire different social manifestations that change, emerge and disappear with the passage of time. In addition, general rationalities develop complex and unstable relations with different spheres of social life such as law, religion or authority. So in each sphere of life a different general type of rationality can prevail in a given time and place.<sup>87</sup>

In the case of law, as shall be explained in short, he distinguishes between four different types of legal thought or rationality which have been intermittently present in human history: irrational-informal, irrational-formal, rational-informal and rational-formal legal thought.<sup>88</sup> Each of these types of legal thinking has an intricate and unique relation with the four general types of rationality and authority.

Bureaucracies are social organizations governed by a specifically modern type of authority that he terms *legal-rational authority*, and as the social materialization of two types of rationality, one universal, and one specific to legal sphere of life: the first is practical rationality<sup>89</sup> and the second, legal-formal rationality.<sup>90</sup> The coexistence of both types of rationalities within bureaucratic organizations is interdependent. As Weber suggests, the instrumental capacity of bureaucracies to respond rapidly and effectively is in part due to the rule-based authority and rationality that supposedly motivates the actions of bureaucratic agents.

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<sup>86</sup> Weber, Max. “Economy and Society” in Rhenstein, Max (ed.). “Max Weber on Law in Economy and Society”, 1954, included in Macaulay, Stewart; Friedman, Lawrence and Mertz, Elizabeth. “Law in Action: a socio-legal reader”, Foundation Press, 2007.

<sup>87</sup> Kalberg, Op. Cit.

<sup>88</sup> Weber, 1954 in Macaulay, Friedman and Mertz, 2007.

<sup>89</sup> Weber, Max. “Bureaucracy”, in Gerth & Wright Mills (ed.). “Max Weber: Essays in Sociology”, Oxford University Press, 1946, reprinted in 1973; included in Fischer & Sirianni, Op. Cit.. See also Kalberg, Op. Cit.

<sup>90</sup> Weber, 1954, Op. Cit.

On Weber's description, the prototypical bureaucratic structure is characterized by: (1) a firmly-ordered hierarchy of offices with continuous supervision of superiors over subordinates; (2) a fixed and stable distribution of tasks and duties among offices; (3) the regulation of activities by stable administrative laws that can be easily learned by entering agents; (4) the compilation and organization of knowledge and information in written documents ("the files"), "which are preserved in their original or draught form"; (5) the seizure of the full working capacity of the official; and (6) a distinctly modern office management, that is, a management that is increasingly expert and specialized.<sup>91</sup>

The advantage of bureaucratic structures over other types of social organizations, and the reason that they spread so rapidly from laic or ecclesiastical governance to economic production in modern Europe, was their efficiency in achieving goals in terms of time and costs-benefits. Weber metaphorically describes bureaucracy as a "machine" to emphasize its instrumental supremacy compared to other pre-existing forms of organization and domination. In his own words:

*The decisive reason for the advance of bureaucratic organization has always been its purely technical superiority over any other form of organization.*<sup>92</sup> The fully developed bureaucratic mechanism compares with other organizations exactly as does the machine with the non-mechanical modes of production.

Precision, speed, unambiguity, knowledge of the files, continuity, discretion, unity, strict subordination, reduction of friction and of material costs –these are raised to the optimum point in the strictly bureaucratic administration, and especially in its monocratic form. (...)

(B)ureaucracy has been and is a power instrument of the first order- for the one who controls the bureaucratic apparatus.<sup>93</sup>

The instrumental rationality or power of bureaucracies largely depends of the rational-legal type of authority that governs their actions. Instead of obeying particular persons,

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<sup>91</sup> Weber, 1946, in Fischer & Sirianni, 1989.

<sup>92</sup> Emphasis in original text.

<sup>93</sup> Op. Cit. Emphasis is mine.

bureaucratic agents obey clearly-defined rules, designed to coordinate the relations between them –even between superior and subordinates— and to “direct them collectively toward the efficient accomplishment of organizational goals”.<sup>94</sup>

For this reason Weber also argues that bureaucracies, in contrast to other types of social organizations, provide the “material foundation for the realization of a conceptually systematized rational body of law on the basis of “laws””.<sup>95</sup> He suggests that a bureaucracy is the most suitable social instrument for implementing an administration of justice based on formal rules –what currently is referred to as the “rule of law,” in some contexts- precisely because of the legal-rational authority inherent to bureaucratic practices. Modernity’s aspiration of overcoming the rule of men is potentially accomplished by bureaucracies. When analyzing legal practices Weber identifies four-ideal types of law-making and law-finding: rational or irrational and formal or substantive depending of the degree of systematization involved. Law is *informally irrational* when decisions depend on factors that are specific to the case –the emotions experienced by the operator, the power relations that are at play, etc; is *informally rational* when action is decided through norms that, although general, are “external” to formal rules –ethical theories, political maxims, etc.- and is *formally irrational* when action is decided through merely ritualistic practices that have no substantial correlation with the purposes pursuit with action, are overtly primitive, etc. such as oracles.<sup>96</sup>

On the contrary, law is *formally rational* when legal operators deduct the course of action to follow in each case from general or abstract legal rules through the logical

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<sup>94</sup> Fischer & Sirianni, Op. Cit.

<sup>95</sup> Weber, 1954, in Macaulay et. al. Op. Cit.

<sup>96</sup> Op. Cit.

analysis of their meaning. The hierarchical arrangement of a bureaucracy, along with its predominant characteristics of expertise, specialization, standardization and impersonalization of actions is the most suitable for this type of legal rationality:

In the place of the old-type ruler who is moved by sympathy, favor, grace and gratitude, modern culture requires for its sustaining external apparatus the emotionally detached, and hence rigorously “professional” expert and the more complicated and the more specialized it is, the more it needs him. All these elements are provided by the bureaucratic structure.<sup>97</sup>

The instrumental capacity of the bureaucracy, however, has the paradoxical consequence that “once fully established, is among those social structures which are the hardest to destroy” since agents have achieved a complete material and ideal identification with the organization.<sup>98</sup> The expression “fully established” seems to have two meanings in this context: accomplished and embedded. “Accomplished” in the sense that the organization is now composed by agents that dedicate all their intellectual endeavors to perform efficiently in the highly specialize tasks that they have been assigned. “Embedded” in the sense that the personal and social identity of these highly committed agents is likely to be substantially defined by their role in the organization and consequently, they would be inclined to oppose great resistance to the elimination of the organization or even to any modification. Weber concludes: “they have a common interest in seeing that the mechanism continues its functions and that the societally (sic) exercised authority carries on”.<sup>99</sup> Under such circumstances, the bureaucratic organization that initially served as a means to an end becomes the end itself.

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<sup>97</sup> Op. Cit.

<sup>98</sup> Weber, 1946, in Fischer & Sirianni, Op. Cit.

<sup>99</sup> Op. Cit.

## **B. Neo-Weberian models**

The social sciences have produced a vast literature discussing the flaws of the Weberian model and proposing different variations. Numerous schools in organizational theory, management sciences, micro-economic theory, psychology and sociology have emerged in response to its weaknesses.<sup>100</sup> For example, Weber's work received great criticism in the 1930s by American sociologists and later by scholars from other disciplines for the descriptive weakness of his model. Empirical work conducted on American factories, trade unions, banks and public organizations found that bureaucracies in the US were less hierarchical, formal, mechanical and standardized than predicted by the Weberian-rational model.<sup>101</sup> The model was rejected for overemphasizing rationality and overestimating the influence of formal hierarchies over the behavior of subordinate agents.<sup>102</sup> Other criticisms emerged later on, focusing on the Weberian model's indifference towards the historical context and the larger social structures that surround and traverse bureaucracies. In this case the critique was directed towards the artificial insulation of Weberian bureaucracies.

However, according to Fischer and Sirianni, despite its criticisms of the Weberian model mainstream organizational theory is still fundamentally linked to Weber's assumptions at both the descriptive and prescriptive level. For this reason, they all can be properly described as "Neo-Weberian models". According to them: "the bureaucracy fitting the rational-legal model succeeded in becoming a basic analytical or conceptual foundation of modern organization theory. (...) Classical rationality, with its criteria of economy, efficiency, stability and prediction, predominates". And therefore, even though

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<sup>100</sup> See Fischer & Sirianni for a detailed description of reactions against the rational model.

<sup>101</sup> Fischer & Sirianni, Op. Cit.

<sup>102</sup> Heinz-Dieter, Meyer. "Organizational Environments and Organizational Discourse: Bureaucracy between Two Worlds", *Organization Science Review*, Vol. 6, No. 1, 1995.

each new theoretical approach is critical of the Weberian model in its own way “none can be said to jettison its basic contours”.<sup>103</sup>

The rational paradigm still views organizations as potential instruments of efficiency or in Weberian terms, as instrumentally rational.<sup>104</sup> Contemporary organizational theory has consistently used Weber’s model as a point of departure for deductive analysis, assigning to organizations and bureaucratic agents “ideal-type characteristics” previously to observation and directing empirical research to uncover the rules of rational behavior, in order to replicate it in other scenarios.<sup>105</sup> In this scholarship, efficiency is presumed to have ontological and axiological value. Efficiency is plausible: is spontaneously present in the social world and can be promoted through rational planning. And it is desirable: it is capable of materializing any socially valuable goal or project.

But criticisms against these Neo-Weberian models have also been persistent. In reference to these and additional critiques a prominent organizational sociologist declared: “we have been...explaining realities that don’t exist”.<sup>106</sup> As a result, the rational paradigm has been subjected to several rounds of revisions and has been challenged by relatively post-weberian or critical approaches to organizations. Fischer and Sirianni

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<sup>103</sup> Fischer & Sirianni, Op. Cit.

<sup>104</sup> In this sense, the model should be called instrumental, instead as Weberian, because as discussed before, Weber considered various kinds of rationality and used to expression to refer to a wide and distinct variety of human thought. Rationality and instrumentality are synonymous in Weber’s theoretical grid.

<sup>105</sup> Handelman, Don and Elliot Leyton. “Bureaucracy and World View. Studies in the Logic of Official Interpretation”, Social and Economic Studies No. 22, Institute of Social and Economic Research, Memorial University of Newfoundland, 1978.

<sup>106</sup> Op. Cit. Fischer and Sirianni quoting Charles Perrow: “Organizational theory in a society of organizations”, paper presented at the Annual Meeting of the American Sociologist Association, Boston, Sept., 1979.

point to the emergence of a critical literature on organizational theory that seeks a redefinition of the notion of rationality.<sup>107</sup>

### **C. The anthropology of bureaucracy**

One interesting alternative to the predominantly Weberian or instrumental approach to legal organizations is the anthropology of bureaucracy.<sup>108</sup> This line of inquiry is still incipient and among critical organizational literature it is certainly marginal. However, for the purposes of exploring street-level administrative decision-making the anthropological perspective is a promising starting point, because of its use of ethnographic research and its interest in describing in detail the subjectivities at work in social interaction.

In Weber's model agents may acquire one out of two characteristics: mechanical legal operators that interpret legal rules literally and apply them homogenously to similar cases, and in this way fulfill the general goals of the organization; and/or selfish pursuers of their personal or collective interest, that resist formal rules, and substitute the goals of the organization by their own direct benefits. In both cases bureaucrats are disconnected from larger political, social and economical struggles that occur around them and within their subjectivity. In the first case they manage to separate the formal legal purpose of the organization from their subjective view of the world, as if legal rules were objects that can be strictly distinguished from the subject –the subject does not complement or create

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<sup>107</sup> Ironically, this “new” approach, may be also Weberian, but not anymore in its instrumental version but, for instance, substantive.

<sup>108</sup> The reduction of the literature to two primary theoretical perspectives, weberian or un-weberian/post-weberian, may seem too simplistic. However, most contemporary writing on organizations invoke Weber as a reference, either for restating some of his observations or to reject them. In addition, authors have found the dichotomy useful to expediently situate a research or approach in the abundant scholarship on the subject.

their meaning-. And objects that operate as lens –the subject use them to see the world, maybe even in substitution of precedent normative guidelines. In the second case, bureaucrats manage to separate and impose their immediate economic and political needs from and over overarching normative views of the world, the state and the law. The subject eliminates or mutes from consciousness reasoning about collective goals and challenges. The model reduces decision-making at one of these extremes which have in common a fundamental disconnect between agent and ideology and ignores the universe of dynamics that may occur in between or outside this continuum.

From the legal perspective, in addition, this model is uninteresting. Since it presumes that legal rules are clear, unequivocal, do not overlap, are not contradictory and are sufficiently evident for legal operators, the conduct of legal operators is either completely formal or completely illegal. The model does admit any further elaboration besides these two possible scenarios.

The anthropology of bureaucracy, on the other hand, instead of treating bureaucracy as a social organization governed by a predefined type of rationality – either formalistic and/or self-interested-, treats it as an indeterminate, flexible, and contextual social organization, composed by agents whose symbolic and material practices need to be discovered inductively through ethnographic observation and a variety of research questions that transcend the instrumental inquiry.

These questions examine some of the elements that explain the practical behavior of bureaucratic agents and can also illuminate the role of bureaucratic organizations in the larger social processes and structures that cross-cut them. One of the elements that is explored, as shall be explained later, is subjectivity of the agents. How is it composed?

What is its substance? How does it structure the organization? How does the organization –its logistics, infrastructure, group dynamics- affect the worldview of its agents?

Of course, the conclusions of the anthropological inquiry may or may not be pro-Weberian (because the facts confirm the rational model or because the questions were directed to uncover the causes of the efficiency or lack of efficiency); it all depends of the organization under study and the interests of the observer.

But the aim is definitely not to uncover the rules governing the organized rational pursuit of goals, as organizational theory or management sciences intend to do or operate deductively, by contrasting ideal-types with empirical data. Rather, the purpose is to provide a thick description of an organization, identify representations or symbolic processes that are at work in the interpersonal interaction, and ultimately understand the different, often overlapping rationalities that govern actions. From the legal perspective, I would add that the anthropology of bureaucracy can contribute to understand the interplay in the subjectivity of administrative decision-makers between rules, normative schemes and other ideas.

Josiah McHeyman summarizes the quest of the anthropology of bureaucracy in the following paragraphs:

Max Weber (...) delineated a set of work procedures and organizational arrangements on the argument that these were the most rational and effective way to accomplish tasks for political leaders (though he worried that bureaucracies might usurp the power of those masters). This has diverted most consideration toward the question of whether a given bureaucracy is rational or not. But rationality presupposes clear goals, and in practical situations we face exactly the question of what are various contested goals as well as means that are not obviously rational. At the same time, the Weberian claim to optimal efficiency and rationality can mystify political agendas and legitimize policies that otherwise might be questioned. Thus, I would suggest that for engaged work it is more useful to ask not *is this bureaucracy rational* but *what is the rationale* for this kind of bureaucratic set-up and behavior?<sup>109</sup>

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<sup>109</sup> Emphasis in original text.

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The interest of Western anthropology in the study of bureaucracies is relatively recent, underdeveloped and often incidental.<sup>110</sup> Noting the increasing preeminence of bureaucracy in modern life, in the 1970s a group of anthropologists engaged in the study of governance, the state and law, alerted their colleagues of the need to inquire about the functioning of bureaucracy as an object of study in its own right.<sup>111</sup> In the introduction to the book “Bureaucracy and World View: Studies in the Logic of Official Interpretation,” Canadian anthropologist Don Handelman is emphatic:

(...) we maintain that bureaucratic organization has been consistently under-studied by anthropology, obscuring our comprehension of how the bureaucratic view –its internal logic of perception and organization- transmutes the interpretation of problems and issues it attends, thereby influencing the decision it makes”. (...)

It is obvious that there are serious *lacunae* in the anthropological perception of what is a prime constructor and moulder of social reality in many contemporary societies. This is a selective perception, which an anthropology concerned with the structuring of experience, the codification of knowledge, and with the organization of human lives in concert can ill afford.<sup>112</sup>

Handelman develops a list of research topics and basic reconceptualizations that if explored through direct observation could provide important insights about bureaucracies and their role in modern life. In the first instance, he poses the question: “why should we be content to attribute ideal-type characteristics to bureaucrats and to bureaucracy, and

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<sup>110</sup> Nader, Laura. “Up the anthropologist – Perspectives gained from studying up” in Hymes, Dell (ed.), *Reinventing Anthropology*, Vintage Books, New York, 1972; Handelman, Don and Elliot Leyton. “Bureaucracy and World View. Studies in the Logic of Official Interpretation”, *Social and Economic Studies* No. 22, Institute of Social and Economic Research, Memorial University of Newfoundland, 1978; McC. Heyman, Josiah. “Putting Power in the Anthropology of Bureaucracy: The Immigration and Naturalization Service at the Mexico-United States Border”, *Current Anthropology*, Vol 36, No. 2, April 1995; McC. Heyman, Josiah. “Class and Classification at the U.S. – Mexico Border”, *Human Organization*, Vol. 60, No. 2, 2001; McC. Heyman, Josiah. “The Anthropology of Power-Wielding Bureaucracies”, *Human Organization*, Vol. 63, No. 4, 2004. According with McC. Heyman (Op. Cit., 1995) in comparison with the history of the anthropological discipline itself, and of bureaucracy as a concept and organization, anthropologists arrived “late to the scene of the study of bureaucracies”.

<sup>111</sup> McC. Heyman, 1995, Op. Cit.

<sup>112</sup> Handelman, Don. “Introduction: a Recognition of Bureaucracy” in Handelman & Leyton, Op. Cit.

then to treat these as givens or constants in accordance with assumptions of their attribution?

The first topic in the list is the arrangements that precede and derive from the bureaucratic connection. What leads a user to establish the bureaucratic connection? What are the effects on a person's life of the decision of becoming a client? In Handelman's view, becoming a client requires a reorganization of time and priorities, a learning process through which new information is incorporated to the client's consciousness and the development of new observable attitudes. Clients have to cope with the advantages or disadvantages that may derive from this connection and also have to incorporate the new experience to their view of the world. In a word, the interface implies a process of symbolic and material adaptation: users may change their perceptions and also their behavior. How persons who become bureaucratic clients adapt to rules of access, eligibility, evaluation, judgment, and to the nature of benefits received?

From a socio-legal perspective the preamble to the bureaucratic connection can contribute to solve the question about the penetration of law in the consciousness of lay people, in particular, in relation with reactive bureaucracies that use law in response to petitions. How do users become aware of possibility of the bureaucratic connection? In which circumstances do they seek the connection? In the case of forced displacement, for example, seems interesting to explore the subtle perception processes, through which a person becomes aware of the notion of IDP, the public policy, the institutions that apply it and to approach them to acquire the legal status. In addition, seems also interesting to examine in which particular manner the logistics of the bureaucratic connection may affect the actions and notions of potential users. Are the logistics of the bureaucracy

generating or preventing forcibly displaced persons from seeking the benefits of the policy?

Handelman also encourages researchers to pay particular attention to the intimacy of the face-to-face encounter –what he also refers as the *dyadic interface*- between “the man that seeks the service and the man that provides it”. This encounter is itself a social action rich in symbols and meaning: since the interests, the resources and the world-views of the two actors involved in the face-to-face encounter frequently differ, their interaction is a “crucial point of articulation” that, although microscopic, can depict dynamics between larger social fields of different scale and quality, such as power relations between forms of discourse, racial features or cultural cleavages. Anthropological methods are particularly apt for capturing these clashes in individual interfaces and establishing relations between them and macro-processes.<sup>113</sup>

Legal studies have widely discussed the role of underlying social, moral and political assumptions in legal reasoning, but usually applied to judicial adjudication. Some additional studies have explored the psychology of trials, in attempt to understanding the dynamics of such encounters. In the case of administrative decision makers, face-to-face interactions have been scarcely studied despite the pervasiveness and expansion of the administrative state. They are difficult to track; they occur behind closed doors and are thought to not have significant implications over social life.

Finally, Handelman also encourages the study of the internal logic of bureaucracies: the constraints, licenses and conduct norms that are confined to that social space. How do immediate structures affect bureaucratic action?

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<sup>113</sup> Op. Cit.

Apparently the invitation of Handelman, Leyton and their colleagues to conceive bureaucracy as an object of study itself had a notable reception among anthropologists during the 1980's and early 1990's. Helen Schwartzman, in her book "Ethnography in Organizations", provides several examples to prove her claim that in that time an anthropology of work, oriented to the investigation of public bureaucracies, corporations and occupations was emerging.<sup>114</sup> In several articles Heyman (1995, 2001 and 2004) cites several additional works that are illustrative of the renewed interest in bureaucratic behavior from anthropologists and interpersonal sociologists such as Michaels Lipsky's book on "Street Level Bureaucrats" and Gilboy's article "Deciding who gets in: immigration in the US-Mexico Border".<sup>115</sup>

Nevertheless, in his articles Heyman notes that anthropological accounts of bureaucratic practices, although increasing in number, are still underdeveloped in substance. Among other reasons, because the majority of works have focused primarily on describing the "microscopic or "ethnographic" encounter" between street-level bureaucrats and users -what Handelman had referred to as the dyadic interface -, without consideration of how bureaucracies exercise their power over non-bureaucratic population, how they are mutually constitutive of local contexts and how they are inserted in broader cultural and historical accounts:

"Bureaucracies, however, interest us precisely because they orchestrate numerous local contexts at once (Wolf, 1990). Power makes context stick, and bureaucracies are the preeminent technology of power in the contemporary world".<sup>116</sup>

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<sup>114</sup> Schwartzman, Helen. "Ethnography in Organizations", Qualitative Methods Series No. 27, Sage, 1993.

<sup>115</sup> Heyman, 1995, Op. Cit.

<sup>116</sup> Op. Cit.

He invites the discipline to engage in longitudinal study of power relations: power inside, above, coming from and coming towards the organization and to examine the mutually constitutive relationship between bureaucracies and contexts.

In addition, Heyman suggests that the face-to-face encounter needs to be approached from a perspective that balances, on one hand, micro-ethnographic insights with local contexts and on the other, broader cultural or social considerations such as the national economy, the regional history or “Western” culture. His analysis suggests that bureaucratic practices cannot be accurately represented from extremely micro or macro perspectives without oversimplifying them. On one hand, self-contained ethnographies, in which the organization and its agents are isolated from their mediate and immediate contexts, captures the internal symbolic and material processes of the organization but may misrepresent them as self-referential when in fact they arise from the local context and the major social and historical matrix –the community, the state, the political struggles- in which the organization operates. Such narrowness may reduce dyadic interfaces to interactions that occur in semi-cultural voids.<sup>117</sup> According to Heyman, Schwartzman’s work is an example of this kind. Even while she recognizes in her research the need to construct macro-micro analysis, she does not pursue that line of inquiry.<sup>118</sup>

On the other hand, macro-cultural analysis, in which bureaucracies are conceived as the materialization of a cultural tradition (e.g. Western culture) or a period of (e.g. modernity), or a human trait (e.g. rationality or lack of) fail to capture the specific characteristics of the organization itself, deploying it from any content and any symbolic

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<sup>117</sup> Classical rational choice theory and similar models have this inconvenient.

<sup>118</sup> McC. Heyman, 1995, Op. Cit.

life of its own. An overarching attempt of exploring the cultural origins of the archetype of the bureaucrat is present in Michael Herzfeld's book "The Social Production of Indifference. Exploring the Roots of Western Bureaucracy".

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Despite these variations, some common conceptualizations can be identified within the anthropological literature reviewed. Although this in no way an exhaustive review of the questions and answers that guide the relevant they constitute promising elaboration tools for the empirical research of legal bureaucracies:

*Flexibilization of bureaucracy and bureaucrat*

In the anthropological perspective the bureaucrat is no longer presumed to be "a mere administrative tool" but as a versatile and permeable agent: "a whole human being with emotions, beliefs and goals... which do not always coincide with the general goals of the organization, but which can affect its the operation profoundly... is not longer insensitive to sociological perspectives".<sup>119</sup>

The invitation consists in self-consciously resisting the Kafkean, pseudo-Weberian, stereotype of the bureaucrat that might be embedded in our cultural schema, in particular the value judgment that is often implicitly attached to bureaucratic practices as rigid and unfair –formalistic- or flexible and unfair -corrupt. Such heavy culturally charged use of the terms "bureaucracy" and "bureaucratic" obscures the altruistic, substantive and moral elaborations that may guide bureaucratic practices and attitudes in a given place and time. Such cooperative bureaucrats are as real as Weber's subjects of study and less unusual than sometimes presumed. Herzfeld explicitly rejects the stereotypification of the

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<sup>119</sup> Handelman, Op. Cit.

bureaucrat as mechanical, not compassionate, and spoiler of the good ends of the institution. He calls for a flexibilization of the meaning given to such descriptor:

“ (...) if we see bureaucrats as all-too-human agents, we do not ignore or reject their besetting normativity but, instead, understand the latter as a practice –a form of practical essentialism-, behind which skilled operators can act in accordance with specific personal interests. Such a vision is broader than the usual convention of treating all bureaucrats as corrupt or unimaginative. It allows for the recognition of those bureaucrats –and they are numerous- who view themselves as servants of the people and who make every effort to mitigate the harshness of laws that are not always sensitive to local particularities. It also accommodates certain other bureaucrats, those whose actions are more in keeping with the conventional stereotypes who manipulate rules to achieve selfish ends or to avoid any form of unnecessary labor. But the important point is that in this perspective we can view both kinds of bureaucrats as agents exercising choice in varying degrees of self-awareness and for a wide range of ends”.<sup>120</sup>

Herzfeld still identifies bureaucracy and bureaucrats with a “besetting normativity” and also seems to suggest that “personal interests” are still determinant in their practices. But again in both cases, such elements as normativity and personal interests should be regarded as blank variables that acquire meaning only after observation.

*Bureaucratic action as thought:*

The anthropology of bureaucracy conceives bureaucratic action as thought in a broad sense: is simply reasoning or deduction from premises, but the use of beliefs about how the world is and should be to guide action. When examining the face-to-face interaction between officials and clients the different anthropological texts reviewed describe bureaucratic work as an exhibition of a particular epistemological apparatus that employs and constructs a specific set of categories and meanings. Researchers use different expressions to denote a similar idea: bureaucratic work as “conceptual production,” or

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<sup>120</sup> Herzfeld, Michael. “Political Optics and the Occlusion of Intimate Knowledge. Comments to James C. Scott’s ‘Seeing like a State’”, *American Anthropologist*, Vol. 107, No. 3, 2005.

“the enactment of a particular mode of thought”<sup>121</sup> or “thought-work”.<sup>122</sup> Some of them locate this intellectual exercise in a broader cognitive horizon called “world-view”, defined as “a set of fundamental assumptions about the nature of being and comprehensible forms of action and relationship in the human and physical universe”.<sup>123</sup>

This mode of thought may have any set of distinctive features, however, the authors reviewed coincide it involves three basic exercises: taxonomy or classification, hierarchy and reduction of complexity. According to their observations, bureaucrats are required to classify complex and fluid realities -persons, interactions and written or oral requests- along a variety of unidimensional categories in relatively short time. For example, the notion of worldview used by Heyman envelops the personal theory or vision of the official about seven basics descriptors of experience: self, other, relationship and causality from self and other and vice versa, time, space and classification. Although these elements are theoretical tools used by some anthropologists to describe the fluid and complex reality that they are studying and not by their subjects, constitute a good example of how the bureaucratic agent may reduce complexity and classify.

#### *Bureaucratic thought as interpretation of rules and persons*

In consistence with a socio-legal and realistic approach to law Handelman depicts bureaucrats as active decision-makers who provide legal rules of their final and only relevant meaning:

“it is the bureaucrat who mediates between legislators and members of the public by interpreting the application of rules to particular cases. Thus the bureaucrat who deals with the public is not simply an interstitial node of administrative allocation or of information-

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<sup>121</sup> Handelman, Op. Cit.

<sup>122</sup> Heyman, 1995, Op. Cit.

<sup>123</sup> Op. Cit.

transmission who functions in mechanical fashion, but rather, he is an active contributor to the production of decisions, the application of rule to case.”

As he notes, bureaucrats mediate between the legal framers and recipients, but not in a mechanical fashion as the Weberian model would predict or desire. They are not mere instruments that implement public policies and legal rules.

Legal studies have explored extensively the complexities of this interpretative and active role in legal operators. In comparison the anthropology of bureaucracies is unsophisticated. However, its concern with the creation of meaning as a transversal process in bureaucratic action, that involves also interpreting persons –gestures, linguistic cues, facial and racial features- and the interest in understanding how they are attributed features –past experiences, virtues and vices, etc.- and classified in different legal (victim, perpetrator) or extra-legal categories (helpless, opportunist) complements the legal debate. The anthropology of bureaucracy can eventually help to capture and dissect the subjectivities at play in street level legal decision-making and generate a model in which legal rules –formal and informal- are but one object of analysis. Handelman expresses this aspect of anthropological inquiries of bureaucracies in the following terms:

“In order for rules to be applied to social situations (namely, cases), one must know how officials perceive these rules and how they conceive of the persons who approach them as clients. In other words, one must know the “native” conceptions of social categories and social situations. With the identification of such socio-cognitive resources within the process of interpretation, it then becomes possible to uncover the dynamics of the application of the rule to case. It makes little sense for the official to ask only “what kind of case is this?” since the categorization of case is often intimately related to questions of “what kind of person is this?” and “what rules apply?” or can be made to apply. Hence the typification of client, problem, rule-eliciting situation, and thus case, influences the bureaucratic perception and interpretation of rules, thereby influencing bureaucratic decisions and outcomes.<sup>124</sup>

An advantage of the anthropological perspective in the study of subjectivities seems to rely in its attempts to connect them with macro social processes through observation,

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<sup>124</sup> Handelman, Op. Cit.

but still without forgetting about the immediate scenario and actors in which the enactment of a mode of thought occurs.

*Production of enduring knowledge about the world:*

Foucaultian and post-structuralist anthropologists have pointed out that bureaucracies do not simply gather data about a person, a group, an event or a place; they construct a version of each of them that is manageable and is public, to the extent that is created by and for an audience with authority as a tribunal. Forms, surveys, other written records, capture some of aspects of an intrinsically multidimensional reality and ignores others, constructing a petrified and reduced representation of a person, a group or a social event. Each of these devises uses or invokes categories through which the person is characterized: married, disabled, alien, undergraduate, extemporary, Hispanic, etc. Through categories agents select important information about the object and organize it: “the world is made “legible””<sup>125</sup> and is communicated. For the recipient of the message, the message substitutes reality and when the recipient is invested with authority such reality is imposed to the person, group or social event. Therefore, bureaucracies create social knowledge and enact themselves a macroscopic “worldview” that can mediate collective action and consciousness.

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<sup>125</sup> Heyman, 2004, Op. Cit.; Scott, Op. Cit., 1998.

## **Chapter IV. Methodology**

In the following sections I will explain briefly the research questions and methods I planned to use, how the plan was actually executed, and some limitations and valuable aspects of the fieldwork.

### **A. Research Questions**

The purpose of this study was to provide a thick description of the practices of petitioners and officials that interact in one Unit of Attention and Orientation for IDPs in Bogotá, Colombia, beyond the representations of the legal framework and its outcomes

by the legal actors discussed in Chapter II. In this face-to-face encounter the public policy forced displacement acquires its final form for legal users. The officials of the UAO directly or indirectly determine if certain rights are protected and what these rights are. More than in any other setting, such as the Constitutional Court, the Congress, or the UN, there the law is real and immediate in its consequences. The general question that guided my fieldwork was the traditional realist or socio-legal inquiry about the law in action: What is the actual substance of displacement law in this particular point of application?

As a starting point for answering this question, I aimed to discover the officials' worldview with respect to the Other (in this case, the IDPs or petitioners), the policy, the state, the armed conflict, the general problem of forced displacement, and the set of undefined variables that could emerge during the fieldwork as constitutive of bureaucratic action. I directed my attention to beliefs and attitudes under the assumption that these inform the officials' practical behavior and ultimately, their application of the policy, whether mediated or not by formal law.<sup>126</sup> The anthropology of bureaucracy suggests that underlying beliefs of officials regarding users or clients and the social world from which they come precede legal considerations.

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<sup>126</sup> This empirical approach suggests that the bureaucratic response of the UAO also depends on the attitudes of petitioners towards the officials, the law, and the state, as well as their self-perception and the strategies they employ to deal with the challenges of establishing the bureaucratic connection. In a legal setting that is predominantly reactive like this one, what users do or fail to do precedes and influences in any official action, either overtly or subtly. Indeed, if someone who has been displaced does not consider herself to have a right to ask for state assistance, either because she does not know that she has a legal entitlement, does not think she deserves it, or unwilling to bear the burden of the bureaucratic connection, then there is no state action. In this case the causality between the subjectivity of the victim of forced displacement and the lack of state action is obvious. However, it can also be less evident and nonetheless important. For example, the psychological ability of legal users to cope with the logistical challenges of entering the UAO, communicate effectively their personal story to the representatives of the Public Ministry, or seek the legal actions necessary to receive assistance when denied during the ordinary process. It is also worth asking what attitudes or beliefs on the part of users are determinant or at least relevant for constituting displacement law, as it is applied in these settings? In this sense, portraying the legal consciousness of petitioners is also then a worthy analytical question.

In this sense, ground-level bureaucrats are mostly challenged by a question that is less legal than psychological or sociological: what kind of persons in this? Like any human agent, in their face-to-face encounters bureaucrats rapidly screen petitioners, and according to certain salient visible features they attribute to the latter other non-immediate features, which allows bureaucrats to classify them as IDPs, non-IDPs, and other transversal categories.<sup>127</sup>

According to this basic model of social psychology I posed two additional concrete questions: what are those salient and less immediate traits (race, gender, linguistic proficiency, etc.) in this decision-making scenario that influence the inclusion or exclusion of a person from one category or another?

In this rapid characterization, additional ideas beyond the features of persons intervene. “Symbolic objects” such as law in generic terms, or specific legal rules or notions of justice, morals, the state, the armed conflict, the public policy, the phenomenon of displacement and of course, the role of bureaucrats influence their view and treatment of petitioners and ultimately, the substantial legal status of these latter. In light of this consideration I also inquired specifically about the role of formal legal rules - and other “objects” or representations that could be relevant for bureaucratic action as the ones mentioned above.

However, my approach to the specific question about rules differed from the anthropological perspective presented by Handelman and other anthropologists and by Weber. Handelman apparently assumes that formal rules are clear for bureaucratic agents, or at least that such rules clearly inform their practices, even though he accepts

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<sup>127</sup> Marilyn, Brewer. “A Dual Process Model of Impression Formation” in Srull, Thomas and Robert Wyer. “Advances in Social Cognition”, Hillsdale, NJ, 1988.

that bureaucratic agents have a certain range of interpretive action. Others suggest that formal rules are marginal to socially or culturally embedded notions about types of persons or situations, for example, Heyman in his analysis of migration officers in the Mexican border.<sup>128</sup>

Weber, in contrast, depicts legal rules as the sole or at the least the primary source of the authority and action of bureaucrats. Whether the substance of the legal phenomena of the UAO coincides with a Weberian or an anthropological view of the official response is an empirical question. It still seems accurate to argue that formal rules are definitive in any context as long as legal operators employ them as a reference for the performance of their tasks or such rules are forced upon them for that purpose. What is the case of the UAO? Are formal legal rules an immediate reference for this particular group of legal operators? If not, what is the relationship between the substance of displacement law at the point of application and the legal framework described in Chapter II. What alternative notions and considerations guide their decisions?

More concretely, in the case of officials I was interested in identifying the rules that govern the registration process and the delivery of immediate and humanitarian aid, beyond the contents of legal provisions. What is the notion of internally displaced person at work in the UAO, beyond any legal definition? Which criteria do Public Ministry representatives use to recommend the recognition or denial of the legal status of IDPs? Which considerations matter for granting immediate aid to a petitioner? Have officials applied the Constitutional Court ruling about renewals?

Finally, in order to complement these questions I also asked to what extent both types of actors are restricted by the immediate and larger material structures in which they

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<sup>128</sup> Heyman, 1995, Op. Cit.

operate and interact. What is the role of the material conditions, budget shortages, hierarchical structures, and the labor regime? Are they definitive? Apart from beliefs and attitudes, what else is important?

In summary, I inquired about the representations of officials and petitioners regarding their routine and the following categories emerged:

<b>Object</b>	<b>Officials</b>
Definition of IDP	What is the notion at work of IDPs? “How do you recognize an IDP?” Who are they?
Petitioners	Who are they? What kind of persons?
Officials	What is and should be their role? Self-description
Public policy: Purpose	Help IDPs, help poor people; help friends...other?
Public policy: Outcome	Fair/unfair; sustainable/ unsustainable; other
The state	What is it? What is its function? What is its function in relation with IDPs?
Forced displacement	What was lost? What is the harm?
The armed conflict	How do they experience it? A responsibility of the state? A human disaster? Something else?

## **B. Fieldwork**

### **1. Observing and interviewing**

I spent fourteen working days in the UAO of Campo Solo in December 2008. I usually spent about three hours between 4:00 am and 9:00 am on the sidewalk outside the UAO building, observing the interaction among petitioners standing in line and their interaction with others present in the setting, including myself. Then, I circulated inside the building for another three to four hours, observing the dynamics of officials with each other and the petitioners.

The underlying question that I continually struggled with during my observations is common to most ethnographic research: of what implicit assumption might this behavior

be a logical function?<sup>129</sup> Instead of attempting an answer exclusively from my outsider’s perspective, I sought to capture the actor’s subjectivity. When possible, I engage in conversation with any of the actors and attempted to explore their perspective in a longer, in depth interview. As a result, I conducted 27 in-depth interviews (20 to 60 minutes each) and short testimonies (10 to 15 minutes). Every day, I participated in dozens of informal conversations with both petitioners and officials. The following table summarizes the data:

	<b>Officials</b>
<b>Interviews: 15</b>	
<i>City Hall</i>	Coordinator of the Assistance Policy for IDPs
<i>UAO-District Level</i>	Coordinator UAO Puente Aranda
	Contractor 1: Immediate Aid
	Contractor 2: ID/Health/Education
	Contractor 3: Health/Education
	Contractor 5: Internal Administration
<i>UAO-National Level</i>	Contractor 6: Legal Issues/Health/Education
	Coordinator National UAO
	Contractor 7: Legal advise
	Contractor 8: Notifications
	Contractor 9: Renewals
<i>Personeria</i>	Contractor 10: “Families in Action Program”
	Contractor 11: Reception/Renewals
<b>Short testimonies:</b>	Personero 1
	Personero 2
	Six Contractors: three District Level and three National Level
	<b>Petitioners</b>
<b>Interviews: 12</b>	
	Man from Valledupar
	Woman from Eastern Tolima – Anzuategui
	Woman from Western Tolima
	Man from Tumaco
	Man from Bogotá
	Woman from Caquetá – Cartagena del Chairá
	Young woman from Caquetá

<sup>129</sup> Foster, George. “Peasant Culture and the Image of the Limited Good”, *American Anthropologist*, New Series, Vol. 67, No. 2, Apr. 1965, p. 293-315.

	Mother/son from Santander
	Young man from Boyacá
	Man from Risaralda – Emberá-Chamí
	Man from Boyacá
	Two men from Meta
<b>Short testimonies</b>	Fifteen

## 2. Limitations and advantages

The participant observation allowed me to see the interactions between the parties and identify a range of underlying assumptions could potentially be motivating their actions and reactions. The interviews and informal conversations provided me with fragments of discourse that portray the latent subjectivity of each actor. This either provisionally confirmed or allowed me to discard the intervention of these assumptions in their cognitive processes. Although self-reports cannot be considered definitive descriptions of the external world, they still contain rich implicit descriptions of the internal world-view of the actor. The combination of external observation and self-report provide with me elements to approach the initial research questions regarding the attitudes of both petitioners and officials.

This methodology is by definition open to debate and has two structural limitations. First, it cannot be generalized to settings different from the ones directly observed. Second it cannot be replicated since is eminently interpretative. In addition, this research has two contingent weaknesses. On one hand, the fieldwork was conducted for an extremely short period of time and at a time of year in which a significant percentage of the officials were on holiday. In addition, I was excluded from observing two types of encounters between officials and petitioners. I was not allowed to be present during the statement process, when petitioners provide their personal accounts about forced

displacement to the agents of the Public Ministry or *personeros*. The meeting occurs behind closed doors and *personeros* are instructed to not disclose the written statements to any third party. For the same reason, I was also not allowed to observe the individual encounters between petitioners and officials when requesting a specific service. As a result, I had to rely on self-reports by both parties to reconstruct the encounters.

Another limitation was the general feeling of fear of petitioners in response to my inquiries. My interviews with them were more difficult to conduct than with officials. Initially I had assumed that officials would regard my inquiries about their practices as an unsolicited evaluation and ultimately as a threat. Although this occurred, it was exceptional. In general, the officials seemed grateful for my interest in their job. They regarded me less as a detractor than as an ally who valued their efforts and was interested in understanding the challenges of the policy. Consequently, they easily shared their thoughts about the petitioners, the public policy, the running of the UAO, their functions, their colleagues, and their frustrations and satisfactions.

Petitioners, on the contrary, were less open. I had assumed that in general they would be willing to talk extensively since I planned to avoid topics considered sensitive or intimate, such as the events that forced them to abandon their residence, their current address, or their real names. Instead, I planned to discuss with them the institutional aspects of forced displacement. I had assumed that they would be willing to complain, criticize, make suggestions, or provide dispassionate description. However, even though I made clear that I had no intentions of inquiring about their past, that I had no institutional connections whatsoever with the UAO, that their anonymity would be protected, the

general response was silence. There were exceptions, but the people willing to talk to me had been displaced for several years, in most cases more than five.

I did not expect to answer any of the initial research questions in a definitive or even approximate manner. I merely hoped to immerse myself and explore in a preliminary way the subjectivities of the primary actors involved in the operation of the forced displacement policy in a face to face setting, beyond the subjectivities or world-views incorporated in the legal dispositions discussed in Chapter II.

Still, I expected to provide a thick description of the basic dynamics of the UAO. However, once in the field, I realized that the complexity of the interaction, the flow of people in and out the building, and the limitations mentioned above made any attempt at “thick description” in such a short period of time look like a sketch. Although I was able to capture most bureaucratic agents’ general attitudes towards their role, the public policy, the Other (the petitioner), the law etc., and depict some general features of the infrastructure in which they operate, in order to provide an hypothesis about this particular legal decision-making setting is necessary to observe for a longer period of time and to include in the analysis the legal consciousness of petitioners and conduct comparative studies with other UAOs in the country. Still I am convinced that has been a valuable attempt of assessing the legal and public challenges of the national humanitarian crises caused by forced displacement and studying administrative decision-making at the microscopic level.

## **Chapter V. The Case Study: The Unit of Attention and Orientation of Campo Solo in Bogotá**

### **A. Units of Attention and Orientation in Bogotá**

The UAOs were created by decree 2569 in 2000. However, the first ones began operating in Bogotá in 2004. Currently there are five in the city and thirty-two in the rest of the country.

UAOs were created in an attempt to minimize the time and energy spent by potential and registered IDPs to gain access to the assistance offered in the law.<sup>130</sup> At the UAOs, representatives of the different state agencies in charge of implementing the displacement

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policy assist IDPs side by side. Representatives of Social Action (the national agency in charge of coordinating the implementation of the policy), the local government, and the Public Ministry compose the permanent staff of most UAOs. Other agencies with special programs for IDPs, such as the Colombian Institution for Family Welfare or public hospitals and universities, may also be intermittently present.

Currently UAOs perform several functions, among them, (1) processing the registration petitions of potential IDPs; (2) explaining potential IDPs' rights and the procedures for claiming them; (3) providing basic immediate aid (food supplies for US\$150 and child-care assistance for US\$12); (4) serving as intermediaries between IDPs and health and education services.

In each of Bogotá's UAOs a team of 20 to 35 public officers provides assistance to an average of 150 users every day. Since the creation of the policy, Bogotá has been consistently rated as the largest receptor of forced displacement population in the country. According to CODHES, at least 265,921 forcibly displaced persons arrived to the city between January of 1999 and December of 2005. This represents an average of 37,988 persons per year and 104 per day. Between January and June of 2008, approximately 40,000 forcibly displaced persons arrived in the city for an average of 222 persons per day.<sup>131</sup> If this estimate is accurate, 2008 was the worst year of the exodus to Bogotá since 1985.

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<sup>131</sup> Numbers for arrival to the city of 2006 and 2007 are not available on the web. Numbers for 2008 were released on October 05, 2008 in a press conference led by the director of CODHES.

## B. The Routine in the UAO of Campo Solo<sup>132</sup>

### 1. Outside

#### a. The place

The UAO I studied is located in a former warehouse in the industrial neighborhood of Campo Solo, above 60<sup>th</sup> Avenue, less than two blocks away from noisy and polluted Caracas Boulevard. However, like most of Campo Solo's streets, 60<sup>th</sup> Avenue is relatively empty, semi-paved, and muddy. 60<sup>th</sup> Avenue is not a through street; it ends 80 meters away from the UAO where it meets an abandoned railroad. The tracks are half torn out of the ground, half covered by dusty grass. Garbage and abandoned objects (an old couch, the remnants of a bike) are scattered around and on top of the tracks. Still, pedestrians have carved a path that crosses the railway, finding its way through the garbage and connecting Caracas Boulevard with 60<sup>th</sup> Avenue.

Several old warehouses with high walls, no windows, and truck-sized doors separate the UAO from the railroad. The first warehouse, right beside the railroad tracks, is an informal garbage trade center. Apart from the UAO, this is the only point of activity on the block. Once in a while a garbage collector arrives in his *zorra*, a rudimentary chariot pulled by a famished horse used to transport garbage, and unloads his merchandise in front of the warehouse.<sup>133</sup> The building's door is usually wide open, but little light enters. Piles of cardboard, cans, and glass bottles grow gradually in the background while an

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<sup>132</sup> I have replaced the real names of places and persons with pseudonyms to protect the anonymity of the interviewees.

<sup>133</sup> There are more than 10,000 *zorras* in Bogotá. The Spanish word *zorra* is used to internationally describe the female fox but also to describe a prostitute in figurative sense. This third meaning is limited to Bogotá and neighboring towns.

unidentifiable person covered by dirt, arranges a trash bag on what seems to be a scale.<sup>134</sup> Two or three children wait in the *zorra* for the driver to finish the deal. They have dirt on their faces and hands, and one of them does not have shoes. I offer them my breakfast but they refuse in silence.

The following two warehouses remain closed most of the time. For weeks, no movement could be perceived from the outside. The fourth warehouse, right beside the UAO, is smaller and livelier than its neighbors. Doors open early in the morning, near 6:00 am. Inside is a mechanic's garage, a parking lot, a vendor of cigarettes, candies and cell-phone minutes, and a copy machine. However, cars rarely come in and out. Inside, semi-demolished cars lie by the wall. Most of the clients are users of the UAO who need to place a call or make a copy of their ID.

The fifth warehouse is the UAO, and the last one, on the corner, is a mysterious grey building with no apparent internal activity. The UAO is a brick building painted in blue and grey with two steel doors and a window with bars on the second floor. The door on the right is for petitioners and leads to the first floor. The door on the left is for officials. It also leads to the first floor but is also very near to the

#### **b. The line**

The UAO is opened from Monday to Saturday, every week of the year, from 8:00 am to 5:00 pm, except for Thursdays when attention to public ends at noon. The line to get in usually starts the day before between 6:00 pm and 10:00 pm, sometimes even at 5:00 pm

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<sup>134</sup> The business of spontaneous garbage collection is the economic activity several thousands of families in the city. Three adults and usually by small children who since earliest ages are educated in the business of garbage collection.

when the officials of the UAO leaving to go home. Some people bring blankets and mattresses to spend the night. Others only have puffy jackets and gloves, and others are dressed in warm weather clothing: shorts, sandals and only a jean jacket. Bogotá's weather during the day ranges between 52° and 68° F, but in the night it can get below freezing. When the morning comes, one can see on the sidewalk the remnants of a bonfire, a tire half burned, or a garbage can full of ashes, still warm.

A girl of twenty years old arrived at 3:00 am. She woke up at 11:00 pm, had a hot beverage made of sugar cane, and rode a bus for almost two hours from a distant southern neighborhood, the most depressed area of the city. Nevertheless, ninety people are in front of her in line. She arrived in Bogotá four months ago with her parents and her four younger brothers and sisters. They came from the mountains of Caquetá, where they had their own farm. They left because guerrillas intended to recruit her and her 16 year-old sister but she refused. She did not want a life without her family and without love. "You know, they do not let you love whoever you want to. They tell you who to love and when. They always say: 'your boyfriend, your husband, your wife' is your rifle". Guerrilla members visited her father and gave him three options: give up his daughters, abandon the region immediately, or stay and die. One hour later the entire family was walking through the jungle in the middle of the night to the nearest town. They left all their belongings behind them. She could not even change her slippers for shoes. They walked for four hours and arrived to the town at midnight. The mayor gave them some money for the bus and left immediately to Bogotá.

Now they live in a rented room and her father, who had been a peasant all his life, is now a night guard in a building in the rich neighborhoods of the city. He works from 6

pm to 6 am and earns a minimal wage, less than 200 US dollars per month. She is waiting for him to come to the UAO after work. She does not know what are they looking for in the UAO. She thinks they are expecting some money but she is not sure.

Half an hour later, a man in his early thirties, tall, with shaved head, strong facial features, and prominent shoulders, joins the line. It is 3:30 am. He also comes from the neighborhoods of southern Bogotá. He used to be in the military and a police officer. In the army, he served in an anti-narcotics squad and then as professional soldier. He decided to retire a couple of years ago. "I could not take anymore". He has been forced to move many times because of threats. A group of ex-paramilitaries arrived in his neighborhood and contacted him and his friends to rejoin the army for two weeks. They offered them money: around 400 dollars each. He and one of his friends accepted the deal. A lieutenant of the army contacted them and explained that they needed travel to Santander, in the northeaster region of the country, where they would join a group of newly recruited soldiers to accomplish a secret mission and then return to Bogotá. They were instructed to not mention the deal to anyone. The next day, the lieutenant picked them up and took them to the bus station where they met a group of men. In the bathroom, someone gave him the money. Then they bought the tickets and boarded the bus. The trip from Bogotá to Bucaramanga is around 13 hours, so in the middle of the night the bus stopped in a gas station and some passengers went down to the rest room. He tried to convince his friend to escape, but they refused. So he got off the bus alone and hid in the woods. The next day he was back in Bogotá with the money. His friend, on the other hand, never came back. A month later the army presented a report that said his friend was a member of the FARC who had been killed during combat near the border of

Venezuela. His body had several bullet wounds, but his uniform did not have any holes.<sup>135</sup>

At 6:00 am, two hours before opening, almost 300 people are already in the line. Men, women, old, young, of varied racial and physical complexions, stand or sit with their backs against the external walls of the warehouses neighboring the UAO. Most young women have one or two small children by their side. Old people come alone. Clusters of young Afro-Colombian men and women are frequent. A group of Emberá-Chamí, mostly women and children, has come day after day for over two weeks. Young men are usually in clusters of three to seven. Many petitioners suspect that they are former combatants from the paramilitary groups, allegedly because of their haircut.<sup>136</sup> Almost all of the interviewees, officials and petitioners alike, agree that a large percentage of the persons are in fact not forced displacement victims. One man from the Eastern plains, after a long conversation, turned to me and whispered so that only I could hear him: “you know, half of the people here are not *desplazados*; many are former paramilitaries and others are in fact active militants of guerrillas. They come to check people out.”

Fear is an underlying emotion in the line. Just before dawn the perception of hidden enemies in the persons standing next in the line or inquiring about their presence in this place seems particularly intense. Someone explained to me: “They told me they were going to hunt me down wherever I try to hide.”<sup>137</sup> Later on an official also argued that

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<sup>135</sup> The scandal about the “false casualties” of the Army has been in the Colombian newspapers for the last two years. The Army has been accused by NGOs and the Attorney General’s Office of the forced disappearance of 1,000 persons who have been then reported as casualties and used as evidence of the “successful” anti-guerrilla policy of the Uribe administration.

<sup>136</sup> Known as the “schuler” haircut.

<sup>137</sup> See Jaramillo, Ana María, Villa, Marta Inés y Sánchez, Luz Amparo “Miedo y desplazamiento. Experiencias y percepciones”, Medellín, Corporación Región, 2004.

what is at stake “is not only fear of being persecuted by who actually expelled you, but also by any other armed group who can see you as an enemy because of your attitude here in the UAO.” According to her description, many persons are not *desplazados*, but there is no way out: being silent and being talkative can both be lethal.

When the day comes and numbers in the line increase, the first group of people in line barely moves from its post. They sit steadily by the door of the UAO, heads between their knees. The last in line, stands almost in the tracks of the old railroad, beside a couple of *zorras*. Since there is little traffic in the street, women let the children run around, from one sidewalk to the other, jumping over the holes in the street. People in groups take turns standing in line while the others sit on the sidewalk on the other side of the street or walk slowly up and down the line, stretching their legs.

Street vendors of hot beverages, snacks, and cell-phone minutes circulate lively among the people in the line with their merchandise arranged in a portable stand or on a bike. The cell-phone people carry a sign in the back or in the chest: *MINUTOS A \$200* (cell phone minutes for US 0.10) and repeat steadily, like a prayer: *miiiiiii-nutos-minutos-minutos/miiiiiii-nutos-minutos-minutos*. They have their pockets stuffed with phones. Others rent folding chairs. A man well equipped for the cold carries them on his shoulders. I wonder how many of them were a *desplazados* as well.

Less evident and more cautious but still recognizable are the sellers of spots in the line, information about the procedures inside the UAO, special contacts with officers, and “turns”: pieces of paper with a number. Two women and one man are offering them for \$4-6 US dollars. Thus, some last minute arrivals suddenly occupy one of the first spots in line. Some of their neighbors complain, but not for long. Others do not buy the physical

spots but only the turn and wait across the street or on the sidewalk for the UAO to open. A sign in the door of the UAO, written with a black marker on a yellow piece of paper, cautions the public that purchased numbers and spots “ARE NOT VALID.” But still the sales continue.

**c. The filter: *el filtro***

The first officials arrive to the UAO around 7:00 am. Some of them arrive earlier, especially if they are in charge of “doing the filter” (*hacer filtro*). This is the expression used to refer to the distribution of official turns for the entrance to the UAO. At 8:00 am one person from Social Action and one person from the national government begin to distribute small pieces of paper with numbers from 1 to 300 among the people in the line and then proceed to register their names and the purpose of their visit to the UAO. If the person is only seeking assistance from the local government, they do not give her a number but ask her to start a new line in front of the left door of the building.

As soon as the officials in charge of the filter step out of UAO, people in the line stand up if they are seated or run back to the line to rejoin their spot if they were sitting in the sidewalk or walking around. Others surround the officials and start to overwhelm them with questions. Officials beg them repeatedly to go back and wait for them in their spots. Some people obey, but others insist. When there is no answer, some react with manifest anger. Tension begins to rise.

Once in a while someone in line can be heard raising his voice and sometimes even openly insulting the officials. A man in his early fifties, who has not gotten a number yet, starts shouting: “If I come here it is because are not going to visit me in my home and

give something to eat, you %\$@\*^&!! And you do not care because you already have things, but you get a salary thanks to us and still you do not help us, you %\$@\*^&!!”

Tension increases as officials run out of numbers. When number 300 approaches, both officials and people in line get very anxious. At this point, disputes in line for the last twenty to forty spots are common. One woman accuses another one of forcing herself in the line; the second woman protests. Officials must decide and cope with the reactions of one party or the other and third parties that might feel affected, while petitioners have to cope with the decision of the officials and either leave or insist.

The most common sources of conflict are the unofficial numbers that people with no previous experience have purchased and, convinced that the piece of paper is enough, have failed to join the line. Here officials explain to them that in fact they have been deceived and that unfortunately their expectations cannot be satisfied.

Officials are in general afraid of the reactions of the people. “Doing the filter is horrible. I do not like it at all... A friend of mine was threatened with a knife; another one has seen several fights, most of them among women,” says Ana, a woman in her early thirties. Everyone in the UAO has to do the filter twice a month. They rotate this task among them to share the psychological burden that it imposes. Currently the filter is less dangerous than before. Since November 2008, a police officer works in the UAO full-time and his first task of the day is to help the officials in charge of the filter to deal with the pressure and contain possible aggression.

An old woman is now sitting on the sidewalk across the street. Her head is resting on the palm of her hand. She has long white hair down to her waist, arranged carefully in braids. “My hips are killing me. My daughter is in line while I rest.” This is the second

time she has come to the UAO. The last time was three months ago, despite the fact that she was displaced in 1997. “That time they were not giving a thing,” she says, referring to the government. But now she has heard that they are even “giving you money to have begin a business... some say it is useful, and some say it is not. I am grateful for anything I can get. I do not complain.”

The officials have finished distributing the turns. She already knows she did not get in. “We came at 6:00 am. We knew we were late, but we took the risk. We should not insist and go home...we will try some other day.”

## **2. Inside**

### **a. Officials**

The Unit of Attention and Orientation of Campo Solo is the biggest in the district of Bogotá in terms of number of officials, influx of petitioners, and tasks accomplished on a daily basis. The permanent staff of the UAO is composed of thirty-seven persons in their late twenties to mid-forties and is divided into three main groups. Fourteen of them work for *Acción Social*, sixteen work for the district government, and two for the *Personería* of Bogotá, which belongs to the Public Ministry. Four additional persons work as cleaners and private guards under the supervision of the district team. Since November 2008, one police officer provides support in case of uprisings, conflicts, or aggression. However, on busy days the UAO’s staff increases to forty-two people or more. Once or twice a week representatives of other national and local agencies are present in the UAO for a couple of hours. For example, delegates of two local hospitals assist sick IDPs once a week and during their class period, law students from the Public National University provide legal assistance and help petitioners with written administrative requests and legal actions.

### *Acción Social*

The group *Acción Social* group is divided in three teams with clearly assigned tasks. The first group is in charge of the national network of UAOs, the second team is in charge of Bogotá's UAOs, and the last of Puente Aranda's UAO itself. Most of the members of the first two groups spend more than half of their time outside the Unit, visiting other UAO's under their supervision.

The last team, in contrast, is permanently in the Unit. Two people are in the reception room. They check the identification of each petitioner that has been handed out a turn during the filter and set up the appointments or interviews. Once a person has been scheduled to meet with one of the staff members, she is allowed in the service area, where are two people that manage a program known as "*Familias en Acción*," one lawyer that provides guidelines to his colleagues and the petitioners, three people in Renewals, and one in Notifications. Everyday they provide assistance to approximately 80% of the people that receive a turn during the filter: around 240 persons.

Their tasks are predominantly procedural: they involve receiving and processing petitions related with the registration procedure, humanitarian aid and special aid programs for single mothers or minors, but they have no decisive power over resources. They either transmit requests to *Acción Social* headquarters, where someone else decides the request, or consult the official database online and if according to the information the petitioner is eligible, they subscribe him or her in the program of expenditures. They are also in charge of letting petitioners know about the status of their previous requests. They

are ultimately intermediaries that transmit the demand of services and the subsequent state action.

*The district's team*

The district team is composed of sixteen persons: the building administrator, ten operators and their supervisor, two private guards, and the cleaners. In the words of the supervisor, his team “provides complementary assistance,” which consists of mediating between registered IDPs in need of a specific service and the institutions that provide it: healthcare, education, identification clearance, special services for pregnant and nursing women, and settlements for indigenous people, among other issues. Like his colleagues of *Accion Social*, most of their tasks are procedural, except for the person in charge of immediate aid who has total discretion over individual requests. The headquarter of *Acción Social* issues to every IDP a certification of their new legal status, known as “the letter.” IDPs present this certification to the district team’s members, who then contact the institution(s) that provide the service and process the petition. They act as brokers that negotiate services between institutions belonging to the district. The tasks are divided among the team. Each member specializes in one or two services, but each member can eventually be required to process any sort of petition. One contractor is in charge of petitions related to ID problems, another of immediate aid, and another with legal problems. If necessary, they also take care of health, education, and housing petitions, which are the most common.

A secondary function of the team is to administer the physical place of the UAO. The building belongs to the city and so happens with the infrastructure. Two persons from the

team are predominantly in charge of this task although they also contribute with the procedures once in a while.<sup>138</sup>

### *Common features*

Most members of the local and the national government teams hold a bachelor's degree and without exception are all contractors. The *personeros* and the police officer are the only ones that can be technically referred as civil servants. They have work contracts, health coverage and social security. The rest of them have service contracts of relatively short duration. The maximum is one year and the least of one month. In average each of them has spent one year in the UAO and has signed several successive contracts. In the period between the formalization of one contract and the next one, most reported to have kept working for free for several weeks or months. Their stated reasons are that the UAO "cannot close". In words of the administrator of the UAO, a woman in her mid-thirties:

"in fact they asks us to continue, because the people cannot be left without assistance... is a place in which you cannot say 'I leave the Unit alone'. This attitude is general. We all work for free".

But some also admitted to continue with the activities because they were afraid of not getting the renewal: "I keep coming to the UAO, because I do not want them to think that I abandoned the job and have my contract cancelled for good".

Nevertheless, in general they think that their permanence in the post depends more of financial availability of the government than of performance, except in extreme cases such as not going to work. They have to submit to their headquarters a periodical report

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<sup>138</sup> I describe the function of *personeros* in full detail in the next section 2.c.

describing their activities in order to receive their monthly payment. But in their perspective it is a formal requirement that has no relation with continuity. They do not get any feedback about the reports. In addition, none of them reported to have to submit reports to their immediate supervisors within the UAO or to have to fulfill “quotas” or fixed performance standards as a condition for payment, salary upgrade or the renewal of the contract.

Still they all described their job as emotionally, physically and even financially demanding. Several coincide in that their interaction with petitioners “drains their energy out”. The references about the “gloomy energy” or “the sadness of the people” were also common. Others would be inclined to associate their health problems with the interaction with petitioners. For instance, after three days visiting the UAO I felt sick and stay at home for one day. When I told one official about my illness he replied: “that is because you were here; in this place there is all sorts of things. Now, for example, I have something in my arm” and he showed a red rash spreading in his forearm.

One of the *personeros*, a woman in her mid-forties, expressed her emotional shock when she first started the job:

“Twenty days after starting I got sick because of the stories I had heard... I would close my eyes and see dead bodies... I stopped eating meat because I imagined terrible things... I became afraid of going out to the street... I had to stop working for a couple of weeks and go to the psychologist. I learned how to not listen”.

“I used to not go out for lunch on time. I felt sorry for the people who were outside waiting for me. I got gastritis... My friends told me to not feel sorry because without lunch I could not help nobody in any case.”

As stated in the description of the filter, many of them are afraid of being harmed by petitioners. Anecdotes about verbal and physical abuse abound. The filter is the most frequent scenario but inside the building such episodes also happen. For instance, one day during the fieldwork, one female petitioner hit in the face one of female official with a

big stapler and sent her to the hospital. The official was working in the reception that day and was explaining to the petitioner that her aid was not ready yet. The administrator of the building and the coordinator of the district teams were close to being harmed by one petitioner, a few weeks before starting fieldwork. The person first shouted at them and then tried to hit them.

There are also anecdotes about groups of petitioners occupying the UAOs in order to force the local or national government. These acts are usually planned by organizations of IDPs. There have been some attempts in Campo Solo, but they have managed to prevent them thanks to other petitioners who find about the plan in the line and inform the officials. Leaders arrived with 200 or 300 people of their own organization, block the doors and demand priority in the assistance or special treatment. Now the guards and the police officer know who they are.

Resources are scarce for the maintenance of the UAO. The administrator states that they “work with scraps as in any other public institution... but here is even more extreme because of the large number of desperate people that come and go everyday”. The building is continuously in reparations because petitioners are so desperate that they still anything: light bulbs, toilet seats, door locks.

Officials frequently pay with their salaries what they cannot purchase with the budget. The district team, for example, bought plastic tables, chair and a micro-wave and installed a small cafeteria in the second floor. In addition once or twice a week they raise money among themselves to help a petitioner. It is a spontaneous practice but is very common. It happens when one them feels deeply touched by a case: “terrible cases...

women that come with 4 or 5 kids, her husband left her, she has no housing, she does not have money for transportation bus”, says a young woman that works for the district.

Consistently with this attitude, and despite the emotional and contractual conditions, of their work officials in general, are consistently cooperative with petitioners. Almost without exception –at least in my presence- would be permanently ready to assist, answer questions, explain procedures and solve problems. According to the administrator of the UAO “our only obligation more for professionalism than for any other reason- is to assist all the people that show up and to assist them well, with the highest quality, trying to provide all the services with have as district. Because for us, for ourselves, as persons and as professionals, to not assist someone is dramatic. We try to assist everybody”.

Another official of the district team, a lawyer of approximately fifty years old, assured that he would do his best “because those people remind of myself when I was young. I had no family, nobody to help me and yet things have turned well for me... and I feel I need to give back what I was given”. He would even try to “make procedures easy for them... I gave them my phone number so that instead of coming all their way over here, they can contact me and I will try to solve their questions and prepare the documents or whatever they need”.

Him and many others reported having many positive experiences and many friends among IDPs: “people that come here to thank us... who bring their kids so that we can see how their health and education is improving”.

#### **b. The waiting room**

The interior of the building is arranged as a classical warehouse: a mezzanine with windows towards the street, and the interior covers a third of the first floor. The left door

in the façade of the building leads upstairs, where the district team operates. Brick walls divide the space in five rectangles of different sizes, including a small bathroom with a locked metal door. The supervisor and the administrator have their offices apart. The operators sit together in the other two spaces. Each of them has a personal desk, a PC with connection to the Internet, and one or two chairs for petitioners.

The right door in the façade leads to the first floor, which is divided into two main spaces. The first one, underneath the mezzanine, is the waiting room. The second space is beyond the mezzanine. This is the service area of the national government, the Personería and the other agencies. The roof is eight meters high and is painted in black. White, long lamps hang from the ceiling. The walls are grey and blue and have no windows. The space is divided in twelve cubicles of different sizes. Four of them have walls of ordinary size and doors that can be locked from the inside: two for them for the *personeros* and two for the national and the city's coordinators.

Around 9:00 am the first group of sixty petitioners is allowed inside the building through the right door. Before they can enter, the private guard and the police officer search their bags and pockets. Once inside they take a seat in the waiting room for another couple of hours. Two officials from *Acción Social* seated behind the counter ask once again for their names and the purpose of their visit to the UAO and hand them a new number. Then, they are conducted to the cubicle of the person in charge of the issues they need solve.

### **c. Statement and pre-evaluation**

The first visit of any petitioner to the UAO is usually to request his or her registration in the database of IDPs. The first step towards the registration is the statement (*la*

*declaración*), which according to decree 2569 of 2000 consists in providing an account of the events that allegedly led to the displacement to a representative of one of the institutions that compose the Public Ministry.

Sylvia María and Marcos – two representatives of the *Personería de Bogotá* or *personeros* – perform this function in the UAO of Campo Solo. Together they gather and pre-evaluate between six and eight statements a day, five days a week, 50 weeks a year, around 3,500 statements per year.

Sylvia María is a talkative woman in her early forties who had been a personal assistant all her life before she became one of the *personeros* of the UAO two years ago.<sup>139</sup> Her job, she explained to me, is to do a “pre-evaluation” of the narrative or account provided by any petitioner. “We [including her colleague Marcos] ask them questions. ‘Where do you come from? Who came with you?’...According to the law, it is indispensable that we receive everyone’s declaration, whoever they might be”.

However, her perception is that most declarers are not forcibly displaced persons. “They are all very vulnerable people, but the majority has not been forcibly displaced...I would say that 90% are false *desplazados*.” She knows how to identify them though. “I am no fool. I have a special sagacity for these things<sup>140</sup>...For example, people tend to

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<sup>139</sup> The UAO is an office that provides assistance to persons that claim to be victims of forced displacement. In Colombia there are 37 offices of this sort. Most of them are located major cities.

<sup>140</sup> She said “*uno se tiene su malicia indígena*” In this specific context the expression *malicia indígena* means sagacity or special cleverness to avoid being deceived. But in other contexts can also stand as the pejorative quality of being especially skillful to deceive. A literal translation from Spanish to English is “indigenous sagacity”. This ambivalence of meaning is relatively recent. In the past the expression was unequivocally pejorative. To describe someone as having an “indigenous sagacity” was an accusation of being either dishonest and/or “bad blood”.

believe that the bigger the family, the greater the aid they will get, so they exaggerate the number of kids or brothers or sisters. Another example are faxes<sup>141</sup> or...look.”

She puts her glasses on and reads out loud from her computer the observations she made on the case of a woman from Antioquia who had just left her office. The woman claimed to be a victim of an armed group known as *Los Rastrojos*. “The lady presents many inconsistencies...she does not know the region; she says she was threatened, but then she says that the one threatened was her son.”

Then she takes off her glasses and states: “We do not agree with providing aid to people that do not need it...we are trying to help the people from *Acción Social*...At the end of the day, we are the ones who directly experience the declaration; it is too unfair when people get help that do not deserve it”.<sup>142</sup> The problem, in her opinion, is the state:

“Here you find a lot of “institutionalized” people; idle people that are lazy and do not like to work. The state, the law, is creating them. The state is making people lazy...The law can depict any reality the legislature is capable of imagining, but reality cannot be overruled.”<sup>143</sup>

To solve this problem, Sylvia María thinks that the state should prosecute the liars. In her opinion this would deter false *desplazados* from trying their luck and from receiving benefits they do not deserve. “I wish we could keep track of the statements we have received and punish deceivers.” When people really need help, she explained to me that

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<sup>141</sup> People would often present faxed documents that have the date of reception in the margins. This date is often prior to the day petitioners claim they arrived to Bogotá.

<sup>142</sup> “*Nosotros somos los que vivimos la declaración*”.

<sup>143</sup> “*Sabes? Es que las leyes aguantan todo.*” The original expression is also commonly used in Colombia to criticize the unreality or inapplicability of certain legal dispositions.

they would even supervise the case, providing advice about legal actions that can be undertaken to become a registered *desplazado/a* such as filing a *tutela*<sup>144</sup> or a *desacato*<sup>145</sup>.

She then returns to the case of the woman from Antioquia to illustrate what she meant by people that have not been forcibly displaced. The woman had already given a statement in 1994, but according to Sylvia María, because she was rejected now she “is telling a bunch of lies.” The woman claims that *Los Rastrojos* forced her displacement, but according to Sylvia María that group “has never been present in Medellín... they are present in the Valle del Cauca,” a different region of the country. In addition, the woman initially said she had traveled from her town to Medellín and from there to Bogotá. She also claimed that this latter stage of the trip took her eighteen hours by bus. But Sylvia María thinks such account is not possible. Her experience is that driving from Medellín to Bogotá takes only four hours. Then, the woman said she had been displaced from Medellín, not from a town, and could not remember the time and the date of her arrival to Bogotá. So Sylvia María is convinced that the woman is bluffing.

She is also suspicious when the declarer does not know what armed group provoked the displacement. According to her, when a group threatens or harms a person or family the group always reveals its identity to the victim, precisely because their purpose is to mark the territory. They want people to acknowledge their power. She also suspects when in her view the body and the gestures of the declarer do not correspond with the account. “Look, the hands of a person from the countryside are never clean and soft. The tools they (sic) use give them calluses.”

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<sup>144</sup> A *tutela* is a lawsuit vindicating an individual fundamental right. Fundamental rights are described in the first chapter of the Colombian Constitution and in the rulings of the Constitutional Court. The *tutela* is the Colombian equivalent of the Mexican *amparo*.

<sup>145</sup> A *desacato* is a judiciary procedure against a public servant that has disobeyed a *tutela* or any other judiciary order. The consequence of the *desacato* is imprisonment.

Sylvia María does her best to help the people she believes are “real.” She recalls the case of a woman she is assisting. “Last Friday she came to the office and I invited her to have lunch. Then I gave her 6,000 pesos (US\$3.00) to buy fabric and other supplies she needs to work. She was raped with her sons by the paramilitaries. When she first came, some a time ago, she cried in such way that I could not believe it was theater.”

“How would you define a real IDP then?” I asked. “What makes a person eligible for registration as an internally displaced person? What are the requirements?” She replied: “a *desplazado* is someone who has been forced to abandon a place by an armed group...personal conflicts are not admitted as causes of displacement.” She remembers the case of a woman who claimed to have been displaced by her husband.

“What happens if a petitioner has had personal problems with someone belonging to an armed group and consequently was forced to leave?” I continued. “No, she insisted, you need to be displaced by the group. If it is a personal problem you are not eligible.” “Does any group that is armed count as an armed group?” “No, it cannot be a street-gang or ordinary crime. The group has to be involved in the conflict.” “Can it be the army, then?” I asked. “Oh no, I cannot tell *Acción Social* that a petitioner has been displaced by the Army. Can you imagine that? Impossible!” “Would you admit someone who was forced to leave because of the poisoning of the water and the soil as result of coca leaf fumigation?” “No, fumigations have nothing to do with us.”

After a pause I asked Sylvia María to describe step by step the procedure she follows in taking the statements. To start with, she explains to the petitioners that she is going to ask them questions about the facts of the displacement and that she is going to write their answers down. Then she asks them to do a brief account of the displacement, including

the date, the place, and the events that made him or her leave, and to state if other family members were also displaced. In addition, she asks them to identify the armed group that provoked the displacement and to tell whether or not they have reported their case to the police. Almost invariably the petitioners have not done so, largely because of fear.

To make sure that the person comes from the place he or she claims, Sylvia María asks for details about its inhabitants; for example, she asks for the name of “a well-known person in the town, such as the priest, the mayor, the *personero*...” or the main grocery store and the grocer’s name. She asks the same question several times, at different stages of the statement, to assess the consistency of the account and, ultimately, its truthfulness.

Once the person has finished, Sylvia María explains that the petitioner is under oath, meaning that if he provides a false statement, he would be committing a crime. “At this point I note that people get nervous,” she says.

She then turns to her computer and writes the statement in a Word template. The template has three sections. The first is an identification form, a half page long. She fills in the blanks for name, ID number, date of birth, etc. The second section has no defined length. In one, two, or more pages, she writes down the story. She uses CAPS throughout and avoids any punctuation. The last section is a box, headed by the Spanish word *OBSERVACIONES*. Here is where she explicitly pre-evaluates the narrative of the petitioner as implausible, inconsistent, or not within the definition of forced displacement. Before finishing she reads the statement out loud – skipping the Observations section, of course – and asks the petitioner if she or he wants to add or remove something from the statement. (People often delete things like rape from the account.) Then she prints it, adds her signature, and asks the petitioner to sign it as well.

In the afternoon, she sends the original document to the headquarters of *Acción Social* in Bogotá, where the final decision of approval or rejection of the petitioner takes place.<sup>146</sup>

She never saves the document on her computer, not even while she is writing the statement. In fact, her computer has only one file in its entire memory: the Word template that she fills in with the accounts of the petitioners, only to erase them a few minutes later. “It’s for security reasons...here many things are said and you do not know who the person you just spoke with actually is or who is interested in knowing what she has to say.” This is why, she continued, Bogotá’s *Personería* “has purchased life insurance for the *personeros* working with *desplazados*.” The statement is confidential for the same reason. None of her colleagues in the UAO are allowed to read it.

Besides the risks, she is glad she has acquired a special knowledge about the geopolitical dynamics of the armed conflict. “We have learned a lot.” For instance she has identified the armed groups that operate in each region. “I already know. When people say ‘Tolima region,’ I think of the Teófilo Forero Front of the FARC, or when they say ‘Eastern Plains,’ I think of Front 42 of the FARC.” Sylvia María’s perception is that armed actors rarely move. Their purpose is to control as much territory as possible, so when they have captured a region they do not abandon it. She also has clear ideas about the relations of force that currently exist between armed actors. The guerrilla is cornered and is going through a process of fragmentation; paramilitaries are reemerging, but they have not been as involved like the guerrillas in drug-trafficking.

At this point of one our conversations, we heard several voices outside Sylvia’s door, engaged in an argument. A black man opened the door; he had some questions for her.

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<sup>146</sup> *Acción Social* is the federal agency in charge of coordinating the assistance policy for internally displaced persons.

She encouraged him to speak with the other official, two doors down to the left. When he leaves she turns to me again and says: “My colleague picks on me, he says I am racist. But the thing is that they are the ones who cause problems.” According to her, Afro-Colombian men tend to be more difficult to handle than other petitioners. They start fights in the line and are especially aggressive with officials. She told me the story of a man who had been denied assistance by *Acción Social* and refused to leave the building. They had to ask the police for help.

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In comparison with Sylvia María, Marcos is extremely reserved about his work and his pre-evaluation criteria. He described an IDP as a person that has been forced to abandon her former place of residence “against his or her will” but did not provide additional information about what this means for him. In our several conversations I tried to test different hypothetical cases that could illuminate the standards he would use to distinguish between voluntary and non-voluntary displacement and about how he would handle cases involving general fear, personal problems with armed actors and armed actors whose participation in the armed conflict and forced displacements is controversial. Is the army “capable” of committing forced displacement? Are drug-trafficking mafias? What does it mean to be subject to a “direct threat”? But he was resistant. Most times he would answer that “it depends” and end the conversation.

Like Sylvia María, he also believes that false statements are frequent and although he did not make an estimate, he did explain to me that nervousness, sweaty or shaky hands, and trembling voices made him suspicious. However, when I tried to inquire more about his strategies to distinguish a false IDP from a real one, his answer was “it depends.” He would only say that demobilized persons are not and cannot be IDPs,

implying that he would recommend their exclusion from the registry automatically and that IDPs are “clear, concise and real” during the statement: “people that comes here needs to be clear about the reasons that brought them. Fights between members have nothing to do with this”.

Nevertheless, he was ready to provide a general description of the statements: “everyday you find stories that combine poverty, armed conflict and natural disasters... friends in the city and the aid provided by the government. Hunger is part of the problem but is not the problem”. He would not say which are considered by him to be cases of forced displacement.

I asked him about the orientation he and Sylvia María had received when appointed to the job, either psychological, legal, or of any other kind. He mentioned that they had attended several conferences on human rights and the legal framework, but he thought of them as a “waste of time.” “What you need to know, you can only learn it sitting here... more than learning about the conflict, you learn to be acute and psychologist, because the armed conflict has always been there... I just listen to everybody, because everybody must be listened”.

#### **d. Evaluation**

The officials of the UAO have vague perceptions about what happens during the evaluation process. They know that every afternoon a person from *Acción Social* picks up the statements collected by Marcos and Sylvia María and then someone in the headquarters of the institution downtown Bogotá evaluates them. However, there is no concrete information about who makes the evaluation and how.

The supervisor of the district team describes the whole procedure as a “black-box” (*una caja negra*): “nobody knows what happens there”. The supervisor of *Acción Social*’s national team explains to me a group of evaluators compare official databases such as electoral lists, registration records and... but everything occurs behind closed doors and nobody else intervenes in the process.

One official<sup>147</sup>, that has been working in the city hall for many years in forced displacement, assures me that the evaluation is done by computer technicians and system engineers who contrast the statement with the information of various official databases in order to discard or confirm its veracity: “they check electoral databases, healthcare information, military reports, things like that.” *Social Acción*, according to him, keeps saying that lowest income families are given priority, but in his opinion at the end of the day “the whole thing is completely subjective”. He also affirms that *Social Acción* is deviating from legal provisions: “they do not admit drug-trafficking bands as perpetrators of forced displacement; they do not admit coca crop fumigation...” As a result, his office estimates that in Bogotá 40% to 45% of petitioners are admitted and 55% to 60% are excluded. In raw numbers, 30 to 33 families are included and around 45 are excluded.

#### **e. Notification**

His colleagues refer to him as the *notificador*. Hugo is a young lawyer whose job is to communicate to petitioners whether they have been denied or granted the legal status of victims of forced displacement. Decree 2569 of 2000 states that *Acción Social* has fifteen working days –approximately three calendar weeks- to decide and notify the petitioner.

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<sup>147</sup> He does not work in Campo Solo’s UAO, but is the coordinator of the district teams that work in each of Bogotá’s UAOs.

But according to Hugo, in practice the notification or the inscription in the database takes from four to five weeks. After this time petitioners have to come back to the UAO, go through the line and the filter again and then approach Hugo's cubicle where he announces them the decision. The notification is personalized because petitioners usually do not have a phone, nor an address and much less likely an email where they could be reached. Many come back to the UAO before this time, just to find out that the decision has not been taken yet.

In case of admission *Acción Social* includes the petitioners in the official database. Hugo just needs to check it in the web and communicate them the decision informally. In case of rejection, Hugo is required to read to the petitioner a notification letter that *Acción Social* sends back to the UAO justifying its decision and explain them the legal actions that they can employ to impugn. They can request a revision (*reposición*) and if denied a second time then they can file an appeal. If the appeal is also denied then they can proceed with a judiciary action –the *tutela*- or request the revocation of the rejection.

*Acción Social* grounds rejections in one of two reasons. The first is that the person “does not fit the parameters established by the Act 387 of 1997”. Hugo shows me several notification letters. *Acción Social* does not specify how does it solve the ambiguities of the definition of IDP in crucial elements like “direct threat”, “armed conflict”, “armed actor” and voluntary/involuntary”. I ask him if he has ever seen an explicit explanation.

The second reason is that “the statement is contrary to the truth”. Hugo explains to me that inconsistencies or contradictions in the account are evidence of the falsity of the statement. The notification letter usually provides an explanation about which elements in the account are inconsistent with the official databases or in relation to each other. “So I

show to people the problem of their statement: you voted in a county that does not correspond to your alleged residence; your son was registered in a different region to the one you claim to come from... In response, many of them try to justify these facts”

He spontaneously coincides with the official of the city hall that 60% of petitioners are admitted and 40% are rejected. When the petition is denied, Hugo is inevitably “the bad guy.” In his view many petitioners have been through really “hard times,” and although some of them understand the reasons for the decision, the majority “take it very badly. They get angry with the bureaucracy, they get angry with me. Several people have gotten aggressive with me for giving them bad news.” Some tear up the rejection letter and leave in anger, and they do not get to hear the explanation about the legal remedies available.

But for Hugo in that moment is easy to recognize who is a real IDP and who is not. He also thinks that many people pretend to be an IDP. He estimates that around 30% are very poor but have not been displaced. He knows because these people do not “react violently” when rejected. “When their inconsistencies have been identified they do not waste their time anymore. They just stand up, leave and never come back. When people feel the decision is unjust they insist. Real IDPs are the ones that file the appeal”.

He estimates that half of rejections are followed by appeals, from which half are admitted and half rejected. This means that in total 20% of the total number of statements file an appeal and 10% are granted the status after the appeal. Still, Hugo argues that this process is difficult for this 20%. “They have to wait at best for two more months for the review and the appeal to be considered.” When appeal is denied, half of the cases recur to

the *tutela* –this is, 5% of the total number of statements- from which around 80% are successful –this is, four out of a hundred.

He has noticed that the attitudes of petitioners towards legal mechanisms vary from one regional group to other. He is convinced that the most litigious are Afro-Colombians that come mainly from the region of Chocó. “They go all the way to the end... they are that struggle the most... they use more the legal mechanisms that anymore that is denied access”. The least insistent are the former inhabitants of the higher lands of the Andean plains, in particular, a region called Boyacá. He has noticed that they are inclined to provide the statement but do not come back for the notification or that they do not use the appeal or the *tutela*. “Everything is cultural... some are more sharp than others”.

#### **f. The immediate aid**

The district administers the immediate aid package through one of its officials. His name is Gael. He is studying system engineering after work. He has been in the UAO for fourteen months. He started doing brokerage in health and education. But then a colleague left and he was offered the job.

After providing the statement petitioners go to his office in the second floor where he interviews them and after a small inquiry in the computer Gael decides to grant or deny the package.

Currently the aid consists of a voucher that can be exchanged for food, hygiene supplies, dippers... is equivalent to 120,000 pesos (approximately 60 US dollars). The size of the family is not relevant. The package does not vary... and it can be provided only once per family.

According to Gael if the person is between eighteen and fifty-five years she cannot get immediate aid. His explanation is that since it's a complementary aid, is not obligatory, the priority is for single mothers, pregnant women, seniors and children that are alone or families with many kids. In addition, if the person has been in the city for more than three months he cannot grant the aid. In order to find out whether a person makes them several questions. In his own terms:

“ I make an evaluation. I look in the web page of the national registrar office, the district's health department, etc. and little things start come out. For example, if a person says she arrived to the city two days ago but she appears to have voted in Bogotá a year ago, you ask her what happened... she might go: “the thing is that came to visit and then went back home..., so in such ways you deal with persons and slowly discovery whether they are lying or not”.

“The thing is that I talk to them. Where do they come from, when did they arrive to the city, if they have ID, etc.”

“I also look into Accion Social' database. Many people that come here are already IDPs and some have been displaced several times.”

In these latter cases, people are not eligible for the voucher but can receive other types of help. So he sends them to the IRCC or gives them food supplies provided by international cooperators. Depending of the size of the family they get a larger or smaller package. “In these circumstances, he states, I can help persons that come by themselves. They get rice, oil, sugar, salt and peas. Is not much, but it helps.”

As some of his colleagues he also believes that many petitioner are actually lying:

“in such cases they end up admitting it, others keep justifying themselves... they complain, is very difficult... legally those people are the ones who are denied the registration (...) there is some people you might think that they really need help... and others that on the contrary declare just to see what they can get... these latter are really in need”.

I ask about origins of the criteria or rules mentioned above. In which legal provision aer they stated or who has impose them? He answers that they were defined by him and his colleagues from other UAOs. In relation with the three-months rule his explains to me that if people have managed to live in the city for that period it means that they have

adjusted. For him it does not make any sense to be in need three months after arrived to the city and not before.

In which elements do you rely to determine whether a person is need and who is not? I ask. “To be honest, he answered with a nervous laugh, I basically rely in my personal criteria.” And then he added:

“I pay attention to the family. I check if the person has kids... when talking to someone you can feel that the person sensibilizes you with her story. I cannot hear everybody because otherwise I would not assist all of them... but still there are cases that are definitely out of context”.

He remembered a 24 years old African-American from Chocó, who in his opinion did not deserve immediate aid: “that man arrived alone, and declared alone, in the Personeria of another neighborhood... they told him ‘go to Campo Solo, they might give a voucher’, but since the man was by himself it was obvious that I could not... so I explained to him that I could not give him a voucher, but instead some food supplies. But he did not wanted that.

Then he compared this case of lack of eligibility with cases that in his view were eligible:

“The man had psychological problems (...) Because he said that back home there were rivers of blood... he was mentally disturbed. So I told him to go downstairs and talk to the psychologist from the National University. He just said that he had been hit in the face with a rifle. But there are people that have more need, people that come with bullet wounds, with casts... I mean people with disabilities. Because people with health problems can also receive a voucher. They come with cancer, AIDS... they bring medical certifications.”

The man from Chocó<sup>148</sup> insisted for a while, until got tired and left. He was nice and decent but still Gael refused to give him a voucher because “I would have broken the equilibrium, which is unfair with others in the same situation.”

Other people protest and a few tear up the certification letter that that they have provided a statement. This is the “letter” which identifies someone as an IDP. That letter

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<sup>148</sup> The Chocó region is the poorest of the country

allows them to request medical assistance for three months, and before the decision of their legal status is taken. If rejected the code is eliminated from the database and services are denied. Then, after being admitted into the register, beneficiaries need to come back to the UAO and ask for a second letter, which has no expiration data and allows them to access the every service: education, health, nursery, shelter, etc.

In an ordinary day Gael assists between 15 and 20 persons, but in the worst day 30 and in the more relaxed only five. Lately, statements have gone up sensibly. For example, last month they got 160. But in addition many people comes from other UAOs, from the Ombudsman Office, the General Controllers Office after providing their statement. As happened with the man from Chocó they encourage them to go to Campo Solo, to see whether they can get some food or supplies.

### **C. Judgment: law and persons in the make**

#### **a. Legal rules: non-objects or objects of the subject**

In the Weberian model of bureaucracy, the behavior of agents is described as application of legal rules involving a minor interpretative aspect or, in the anomalous version, as self-interested administration of resources. In the first case formal legal rules are the determinant cause of bureaucratic behavior. In such schema bureaucratic agents are sufficiently aware of formal legal rules, have a common understanding of the meaning and the implications of those rules and apply them homogeneously across their individual bulk of cases. They have also minimized their agency and their exposure to external structures that could affected their reasoning: they are isolated from the surrounding cultural and political atmosphere, are impermeable to stereotypes, have control over their

antipathies and sympathies, and clearly distinguish between their normative view of the world and the legal discourse or, on the contrary, have aligned them. But either way there is no functional conflict between these two realms of consciousness. Ideally in this scheme, any agent would solve any case in exactly the same way that any other agent.

In the second case, bureaucrats are still isolated from most extra-legal references of the world, except a basic selfish rationality, which they use as a guiding principle of their decisions, instead of the formal rationality of law finding present in the functional version. Empathy, social impressions, substantive rationality about the functioning of the state, power relations, distributive justice and legal rules have no role in decision-making.

The bureaucratic work of the UAO does correspond to any of these versions of the Weberian model. Decision-making in the UAO is not strictly and not even predominantly governed by formal legal rules. Legal rules are not first hand references for the agents of the UAO when planning and executing the logistics of the place –such as the line and the filter- and when undertaking substantial decisions in relation with the legal status of petitioners and their eligibility.

Formal legal rules certainly play a role in the UAO but is not the expected one. From an external perspective, most officials appear to follow them in the sense that their behaviors are not manifestly contrary to the many possible interpretations of the multilayered legal framework of forced displacement, described in Chapter II. However, the majority of officials do it unconsciously or by inertia: almost none of them has ever consulted the formal legal framework and have never been instructed to do so. With the exception of one of the lawyers and the head of the national government's team none of them would be able to identify a specific formal rule guiding the UAO's functioning: nor

the typographic name of a rule –Act 387, decree 2569, Article, 3, etc.- nor its content. Consequently, none of them would be aware of the interpretative challenges posed by the existing legal framework in relation with the notion of “forced displacement”, the registration procedures and the delivery of humanitarian or immediate aid. But when inquired about the legal basis of their role and actions they would mention “Law” in general as a self-evident source of their behavior and decision-making.

Instead, they would call “legal rules” the habits of their superiors, closer colleagues or by the previous agents in their same post in response to practical, even logistical, challenges of everyday activities and would also consider “legal” certain common normative standards or criteria not established in any identifiable legal provision but that ultimately in their consciousness have the same function that formal rules: correlate a set of facts to a particular form of decision in a legitimate way. These standards, nevertheless, share with legal rules the aspiration of uniformity, consistency and “objectivity”.

The case Sylvia Maria is the most illustrative. She has developed a set of self-prescribed rules based in notions of distributive justice, equality and the existence of the state that she would be willing to describe as “legal” even if they do not coincide with a mainstream version of the legal framework. She does not describe her decisions as “hunches” or random impulses. She perceives her self as administrating justice and honoring the goals of the public policy of forced displacement.

In the case of Gael he is explicit about the origins of his criteria. He describes them as “personal” and also as the product of a collective decision taken by him and his peers from other UAOs. In practice they have redefined the formal rules about immediate aid

by their own criteria of worthiness or need. According with decree 250 of 2005 immediate aid should be delivered to people in “extreme economic need” without mentioning gender, age or physical situation. Gael and colleagues have chosen women, kids, seniors and sick persons –traditional social categories of vulnerable or weak populations- as the recipients of extra-assistance and have excluded single adults, in particular young men. In addition, he would use a fairly restrictive notion of sickness, excluding mental problems from this category. In none of the conversations with him he would invoke “law” as the source of the standards he employs to deliver immediate aid. But nevertheless he still aspires to equality, equilibrium and justice in his decisions, even if from many perspectives they seem unfair.

Another notable example that I have mentioned until know is that of Sylvia María and the lawyer of Acción Social in regard with prosecution of false IDPs. They both claim that the law and the state should undertake sanctions against opportunists. However, the interesting detail about this claim is that the law not only allows but mandates them –the officials that apply the public policy in general- to push forwards those actions. None of them, however, seems conscious that in such circumstances nobody different than them personalizes the state and the law.

Finally, another example that is also evident is the lawyer of the district team and his tight state-client relations, which involve cell phone calls, informal meetings outside the UAO and legal assistance. In his perspective, his attitudes are legal and consistent with an overarching notion of fairness and are consistent with the goal of the policy, but for Sylva Maria for example, his behavior is close to corruption. In one interview she would

describe the lawyer as “bringing his friends to provide statements” suggesting that because they were his friends they could not be, by definition, forcibly displaced persons.

These examples suggest that to describe the bureaucratic action of these members of the UAO as application of formal legal rules would be an artificial description of the official’s thought-work and would stand more as a projection of the Weberian and formalist ideal of bureaucratic action, than a reconstruction of their specific subjectivity. But to describe their actions as selfish, utilitarian and arbitrary in structure is also misleading. Officials try to enact microscopic systems of justice and avoid random decision-making, even if from an external perspective they are deviating from formal legal rules, are openly guided by their sympathies and antipathies or admit not having any legal knowledge about their own tasks. These normative impulses seem to share with legal rules an aspiration of consistency and “objectiveness” and legitimacy. Seems reasonable that legal and state operators view themselves as promoters of a highest value –justice, efficiency, etc- that as self-interested and predatory bureaucrats.

**b. World-views with legal consequences:**

Second, because as noted in the considerations, the thought-work of officials in the UAO is also different to the Weberian approach in that besides the formal legal considerations –which do not happen, as argued above- it involves classifying persons into categories of legal origin -IDP/not IDP, eligible/not eligible- making use of a second collection categories that are necessarily extra-legal. These are the ones that ultimately allow them to make the first classification, even if they have to rely on *cues* that are not

verifiable in any sense. Officials have to rely in the petitioners' general appearance and narrative to deduct by association of ideas their legal status.

Now, what is the nature of those ideas? Although this is an empirical question, that I did not attempt to address, and that would require a robust theory about identity and cognition, still seems reasonable to suggest that they have acquired them in their individual experiences as cultural and social agents outside the UAO, but they have also created them during their time in the UAO in their interaction with petitioners and their colleagues.

Again the case of *personeros* and Gael are the most palpable examples of this second stage of bureaucratic action. They have in common that their daily challenge consists in qualifying according to their social and cultural mediate and immediate background the discourse of petitioners and their more apparent physical and psychological in order to decide *in situ* if granting or not access to a public service. As I shall explain later this is not an exclusive mental process of these three agents, but is certainly where it matters the most.

The thought-work of *personeros* has several stages that are definitive for the decision about the legal status. First, they reconstruct the account, which is the object of evaluation itself; it is not the person's direct account not the person herself who is observed and judged, but the *personeros* writing. Whatever they omit, include, restate or misrepresent is final in its consequences.

Second, their practical notion of Internally Displaced Person, beyond any formal legal definition is determinant in the decision about a person's or a family legal status. Their observations about the legal characterization of the statement are likely to be taken into

great consideration precisely because its intimate connection with the object of evaluation, which is the written statement itself.<sup>149</sup>

For example, Sylvia María María's notion of IDP coincides with a restrictive interpretation of Article 1 of Ac 387 even if she did not mention this provision at all during the interviews. In her perspective an IDP is a person that has abandoned her or his former place of residence because an identifiable armed group has harmed or has threatened the petitioner personally or through a written communication. She provided several examples of circumstances that are not forced displacement: cases of general fear, fumigation, "personal problems", displacement caused by state forces and poverty.

A second stage of the thought-work of *personeros* is to identify cues in the body, outfit and language of petitioners that allow them to distinguish fake IDPs from real. A feature that for both Sylvia María and Marcos is definitive is "narrative consistency". Both consider that contradictory accounts are false accounts. Therefore, an IDP is not only someone who fits into the conceptual definition used by Sylvia María but also someone that has a consistent and clear speech.

Moreover, the account provided by the petitioner has to be considered plausible by the *personero* according to his or her own experience in relation with a wide range of variables topics. To some extent both *personero* and petitioner have to have a common world-view in certain key elements. In the case of Sylvia María, for example, an IDP is someone capable of identifying the armed actors that provoked the displacement, the name of the priest or the *personero* or the main grocery of the town, and coincidentally confirms her map of the conflict and of the country. The armed group mentioned in the

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<sup>149</sup> Unfortunately there is no data available that could reflect if the pre-evaluation and the final decision are correlated in any way.

account must be located in the area expected by Sylvia María and must coincide with her perceptions about the places, distances and the lapses of time in order to be considered veracious. Her reference to the trip between Bogota and Medellin and the presence of the Rastrojos in certain region of the country is a clear example of the relevance of this shared world-view for legal outcomes.

A third stage of thought work is the application of stereotypes and emotion norms. Again Sylvia María is the most explicit example: in her mental scheme of the social world peasants have callous hands, Afro-Colombians are problematic, women are more vulnerable than men and tears are real evidence of suffering.

**c. The state and the public policy in the make**

Despite the lack of legal knowledge the officials of the UAO hold strong views about the underlying questions that have guided the debate on the policy on forced displacement in Colombia. Their accounts are loaded with descriptive and prescriptive consideration about how it works, how it should and for what reason. Seems interesting to observe that an analogous discussion to the one in which the government and the Constitutional Court have been engaged for years unfolds at this microscopic level between two types of officials who hold two different points of views and attitudes towards their role, the state and the public policy. As suggested in past sections, officials have many characteristics in common in terms of age, contractual situation, emotional evaluation of their work and performance. Officials have also in common a critical appreciation about the effectiveness of the policy reaching the population affected by forced displacement and enhancing their welfare. However, their criticisms are based on considerations that are radically different and so are their attitudes towards the petitioners and their own job. The

first group is predominantly composed by officials performing gate keeping or access tasks and/or who have to deal every day with large numbers of requests and consequently, spend less time interacting with petitioners.

The second group is predominantly constituted by officials performing intermediation tasks and/or officials that deal with small numbers of requests and consequently, spend more time interacting with petitioners.

*Skeptics about petitioners: the public policy is captured by free-riders and institutionalized victims*

Most Acción Social contractors, two district contractors and Sylvia María, *the personera*, and some expert petitioners are skeptical about the sustainability of policy. They suspect that one significant portion of illegitimate petitioners is taking advantage of the imperfections of the policy and is excluding legitimate ones from accessing the system.

On one hand, they tend to believe that many petitioners are opportunists using the weaknesses of the registration process to acquire the legal status and participate in the programs of humanitarian aid and socioeconomic stability. Many of them coincide with Sylvia María that free-riders know that statements are intrinsically unverifiable and that, in any case, falsity is not sanctioned.

Among petitioners is common knowledge that plausible, consistent and reasonable but not real stories have the same chances of being admitted that unreasonable, inconsistent and not plausible but true stories. For this reason for many petitioners is a matter of luck, fate or sagacity. They get the assistance or are admitted for registration by chance.

On the other hand, this type of skeptics also believe that many formal IDPs either have currently the same economic stability –if not better- than the average Colombian population but are still receiving support or deliberately maintain their economic scarcity in certain level to keep their legal status. Skeptics refer to these IDPs as “institutionalized” petitioners, suggesting that this kind of petitioners is created by the policy. One of the lawyers working for Acción Social expressed his skepticism in the following terms:

“Show me please an IDP that has overcome the condition of IDP. Show me only one and I will be grateful! Because so far I have not met the first”.

There are two versions of institutionalized petitioners. The first version refers to formal but no longer substantial IDPs that can be termed internal deceivers. They are IDPs that have attained a positive economic condition but keep receiving assistance because in practice the state does not or cannot verify their material conditions to exclude them from the system. In order to illustrate this point the lawyer of Acción Social recalled two examples of persons displaced in the 1990’s that are still getting economic assistance from the state while enjoying a high life quality:

“There is an IDP who is a friend of mine. We became friends here. She has a yoghurt factory but when she is not doing well with the business she comes here for some “pocket-money””.

“One of the leaders of the 1990’s has his own flat and a car. And once in a while you can still see him here in the UAO”

“They all think that they are retirees”

In his opinion the ruling 278 of 2007 of the Constitutional Court has only made things worst. The Court eliminated the restriction of three months for renewals, asserting that forced displacement cannot be overcome in three months, but failed to determine when

and through which procedure is the condition of IDP supposed to cease: “petitioners know that we are in the legal limbo and we have to keep providing assistance indefinitely.”

Another version of the institutionalized petitioner is the one provided by the *personera*. This is the self-deceiving version of institutionalized petitioners, according to which since IDPs are economically dependent of the policy, they have no incentives to avoid acquiring new skills to compete in the labor market or become entrepreneurs. In this version the policy is paralyzing them by solving their economic anguishes, instead of them paralyzing the public policy by consuming resources that they do not need. For this group of actors free riders and institutionalized petitioners are preventing deserved IDPs from accessing the policy and are substantially diminishing the capacity of the state to maintain the policy in the short run. For the lawyer of Acción Social the ruling of the Constitutional Court will make “the state collapse”: “in which world do those Justices think they live in? They blame us of bad service but the thing is that this is not sustainable”

The supervisor of the national team agrees with him: “there are many people that have excluded from the register that should be in it; but there are also too many people that has included that should not be there”. In her view, Social Accion has a “bad name” just because is the institution that bears the burden: “we already know that whatever we do, is not going to be enough for the Court but how could we?”.

Among expert-displaced persons –persons that know every detail of the procedure and been coming to the UAO for years- the existence of internal deceivers and

opportunists has also made the policy less sustainable on time and the ones that deserve it are not getting it because the ones that do deserve it do get it.

Consistently with their skeptical view of the policy this group of officials tend to regard themselves as gate-keepers but not ironically not as bouncers. Ana and others are in charge of visiting in their households IDPs that apply for renewals and evaluate their economic situation and although I did not manage to have a in depth interview with her, she would still be explicit in our informal conversations that she needed to be very careful about who she evaluates as deserving and undeserving, but she would not recommend the exclusion of someone who is getting assistance without deserving it, because “is not my function”. In the case of Gael, Sylvia Maria and the lawyer the inclination to view their role in this way is also manifest.

*Skeptics about petitioners: the public policy is not sufficient and maybe even regarded as a second victimization or offense*

Most of the district contractors belong to this group. They are critical of the public policy more for resource insufficiency and exclusion, than for over inclusiveness or over expenditure. The general claim is that the state mistreats IDPs: services are too scarce, or are low quality or are inadequate to resolve their economic situation.

Most of them, as already suggested, perform intermediation tasks for already registered IDPs, in significantly small numbers and with longer meetings, than the AS team. The district team has to assist around 30-40 people every day between 10 people while the AS team, also of 10 people, has to assist a group ten times bigger in size.

They exceptionally distrust petitioners and consider that such question has already been resolved, even in cases where they find themselves in doubt. And when they distrust

them they excuse the inclusion of free-riders in terms of effectiveness and/or in terms of basic welfare considerations. In terms of the supervisor of the district team: “An open policy allows legitimate IDPs to have access even if some free-riders get in, but a restrictive policy is risky because it excludes the latter at expense of the former”. And in his perspective it is still positive, because then resources are distributed to poor people, that otherwise would never be assisted by the state. He mentioned the case of the group of Emberá-Chamís who in the last weeks had been approaching the UAO: “they come here, provide the statement, come up to talk with Gael about immediate aid, wait for their first humanitarian aid and go back to their town... they have not been displaced. But something is happening with their food and their way of life”.

The administrator of the UAO would add: “who are we to determine if they have really displaced? That is out of question.”

Instead they to blame the state for the suffering of IDPs. This is likely to be associated with the fact that they need to help petitioners to get assistance from an institution different to their own. Anecdotes about the “inefficiency or the absurdity of bureaucracy” are abundant. Damian, one district contractor, and the lawyer of the district consider that the state was responsible for the forced displacement by omission: for not being capable of preventing. But in addition, that the state is also responsible for inducing IDPs to attempt bureaucratic connections that are time and energy consuming, that are disappointing and that ultimately generate unnecessary suffering. Damian, for example, is in charge of helping IDPs that have no ID to get one. He is amazed about how “cruel can the state be. People are required to provide proofs of having been born where they claim... a certification of a police officer, the doctor of the town, the priest, someone, but

this people come from very distant and dangerous places and cannot just go back to find the certification. That is why they are here!”.

For the lawyer, the whole policy is “a complete lack of respect”. For him the line outside is only the beginning. “Then they give them 1,500,000 pesos (750 US) to start a business. Tell me, what do you do with that money? Nothing! At best feed the family... then they make them go to “business school” for a couple of weeks. They need to take a bus everyday that costs 4,000 pesos, pay a rent and not find a job because of the business”.

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