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Legal Empowerment in Development Programs:

The case of internally Displaced Persons in Colombia

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Abstract

With around 3 million affected people, Colombia has the second highest number of internal displaced persons (IDPs) in the world after Sudan (ACNUR 2007). They are basically refugees inside their own country. One of the main problems of IDPs living in the cities is the difficulty to generate income that allows them to satisfy their basic needs. Looking to solve this problem, the government of Colombia implemented a program to support IDPs to start small businesses so that they can provide for themselves. The issue under focus in this research states: what is the role of legal empowerment in the policy of income generation for IDPs in Colombia?

Legal empowerment is a practical concept and depends on its concrete application. For that reason I have made a case study. I have analyzed the program history and I also conducted semi-structured interviews with participants of this program, to obtain a complete understanding of how legal empowerment operates in development programs.

After conducting this study I conclude that legal empowerment can contribute to people's freedom, but it can also undermine it. It can enhance people's freedoms when it fosters effective access to justice to protect fundamental rights, as I will show with the use of *tutela* in Colombia. However, legal empowerment can also be perceived as unnecessary, expensive and useless when trying to formalize the businesses of poor people working inside the informal economy.

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Table of Contents

Abstract	2
Acknowledges	3
1. Introduction	7
1.1. Research Problem.....	8
1.2. Research Questions	8
1.3. Research Aim.....	8
1.4. General Overview	9
2. Background	11
2.1. The life of Internally Displaced Persons (IDPs) in Colombia	11
2.2. Causes of the Displacement.....	12
2.3. The institutional response to the Displacement: Legal Framework.....	13
3. Legal Empowerment: Theoretical Framework	14
3.1. Empowerment and Development Studies	15
3.1.1. Empowerment as creation or extension of power.....	16
3.1.2. Empowerment as an end in itself.....	17
3.2. Empowerment from Agency	18
3.3. The Legal Empowerment Approach.....	20
3.3.1. The Commission on Legal Empowerment of the poor (CLEP).....	20
3.3.2. Legal empowerment in the informal economy: the influence of legal pluralism.....	21
4. Methodology: Case Study	23
4.1. Definition of the Case Study	24
4.2. Methods	25
4.2.1. Semi-structured Interviews.....	25
4.2.2. Sample.....	26
4.2.3. Complementary Methods.....	27
4.3. Validity	27

4.4. Limitations	28
4.5. Ethical considerations	29
5. Legal Empowerment of IDPs in the Colombian	31
5.1. Legal background: Internally Displaced Persons' rights	31
5.2. Access to Justice as a Means of Empowerment	32
5.3. The Constitutional Court in Colombia: an actor of legal empowerment	34
5.4. Legal Empowerment and the impact on policy reforms	35
6. Fieldwork Analysis: Legal Empowerment as a Bottom-up Approach	37
6.1. Program of Initial Attention for Income Generation (PAI- GI)	38
6.2. Empowerment through income generation programs: four life stories	40
6.3. Marta: business registration vs. working in the informal sector	43
6.3.1. The displacement	43
6.3.2. The process of business strengthening in the IGP	43
6.3.3. Legal Empowerment: business registration and social security	45
6.4. Yolanda's case: dependency on illegal micro-credits	45
6.4.1. The displacement	46
6.4.2. Empowerment in the practice: breaking illegal micro-credits in Colombia	47
6.4.3. Legal Empowerment: illegal micro-credits is still an unsolved problem	47
6.5. Maria's case: street vendors working within a culture of legal pluralism	48
6.5.1. The displacement	49
6.5.2. Empowering the poorest among the poor	50
6.5.3. Working within a culture of legal pluralism	51
6.6. Teresa's case: empowerment as an end in itself	53
6.6.1. The displacement	54
6.6.2. When business pursuits failed	54

6.6.3. Empowerment as an end in itself.....	55
6.7. Legal Empowerment in Practice.....	55
6. Conclusions.....	58
Appendix 1: Internally Displaced People Worldwide 2006	61
Appendix 2: Interview Format.....	62
Appendix 3: Conducting and recording the interviews	63
Appendix 4: Life Stories located in the Colombian Geography	64
Executive Summary	65
References.....	69

1. Introduction

After more than forty years of internal armed conflict, Colombia has experienced one of the longest national confrontations in the world. One of the results of this chaotic situation is an ever increasing number of internally displaced persons (IDPs). More than three millions Colombians have been forced to leave their traditional homelands in the countryside and move to urban areas. Essentially, they have become refugees within their own country.

For many years no one took responsibility for these people and they were condemned to constant social exclusion and human rights violations. The situation of the displaced in Colombia is highlighted by the drama of thousands of rural migrants visiting different government offices in the cities, asking for help at every agency, and finding no answer to their problems. It was common to see people on the streets with signs saying, *“somos desplazados por la violencia colaborenos”* (we are displaced by the violence, please help us). The common experience of the displaced routinely included: closed doors, a series of government officials with no solutions, and generally hostile environments in cities.

It was not until 1997 that the law came to recognize the unique needs and the situation of these people. However, a law reform did little to generate many changes in the everyday lives of the displaced, due to a common discrepancy between what is the law and what actually happens in reality. After years of fragmented struggles and constant demands for the effective application of the law, in 2004 more than 1000 families raised their voices in unison to the court, demanding an effective solution to this humanitarian crisis. Prior to this, the constitutional court dealt mostly with violations of human rights in individual cases, but at this point the court system declared a national state of unconstitutionality. In other words, the court ordered that the government should effectively address the needs of the internally displaced as a group rather than specific cases. As a result a national plan was formulated, including specific allocation of funds for education, healthcare, housing and particularly income generation.

1.1. Research Problem

In the last years, the ‘legal empowerment of the poor’ approach has asserted that one of the reasons why disadvantaged people are trapped in poverty is that they are not covered by the rule of law. This international debate became very active after 2008 when the Commission on Legal Empowerment of the Poor (CLEP) published a report based on an extensive research. The report states that poor people must be allowed to use the law and to exercise their rights to be active drivers of their development. The focus of my thesis is the income generation program for internally displaced persons in Colombia initiated after the court decision in 2004. I seek to understand the role of legal empowerment in IDPs’ lives.

1.2. Research Questions

The research question that guided this study is: what is the role of legal empowerment in the new policy of income generation for IDPs in Colombia? I wanted to understand the role that legal empowerment of internally displaced persons played in the creation of the recent policy of income generation. Secondly this thesis aims to examine the practical application of this new policy was used to enhance legal empowerment of the poor. To answer these questions I conducted a case study which looked at the process of empowerment from a holistic approach, analyzing how the policy of income generation for IDPs was influenced by people’s demands. In addition I also looked at how this policy was practically applied.

1.3. Research Aim

Creating conditions to facilitate the opening of small businesses and in general income generation or employment initiatives, constitutes one of the main priorities for many developing countries looking towards development for the poor and durable peace solutions. This research departed from the strong connection between Income Generation Programs (IGPs) and empowerment, addressing the role that particular circumstances and institutions play in this process.

This research aims to illustrate the practical aspects of legal empowerment within IGPs. It contributes to the discussion on the role of the law in empowering disadvantaged people so that they can improve their living conditions. Legal empowerment as stated by Stephen Golub (2010: 12) is a contextual concept and therefore conclusions must be taken after considering the particularities of each situation and the specific needs of the poor.

1.4. General Overview

This thesis is divided into six sections: background, conceptual framework, methodology, legal empowerment of IDPs in Colombia, fieldwork analysis and conclusions. The background includes the context of the internal conflict in Colombia, the lives of internally Displaced Persons, the causes of displacement and the institutional response to this situation.

The conceptual framework of this research is in essence the structure of the analysis of empowerment in this case study. It includes a discussion on legal empowerment, which serves as a point of departure and a vehicle for the data analysis.

The methodology chapter states the research process that guided this study. Since I have conducted a case study, the methodological chapter is more of an overview of the way the research was conducted to explore the role that legal empowerment, and empowerment as an end in itself, played inside income generation programs. This qualitative research used different methods to gain a comprehensive understanding of the phenomena being studied. The first analytical section is the result one of the analyses of legal documents, including the national constitution, the lawsuits that brought the case of income generation to the court and the subsequent judicial decision. The section analyzing the application of the income generation program in practice is based mostly upon participant observation and interviews with program participants and managers. These interviews were developed in 2009-2010 in two cities of Colombia (Bogotá and Pitalito) and were essentially made to achieve a comprehensive understanding of the program and how the process of empowerment is reflected at the micro level.

In chapter on legal empowerment of IDPs, I provide a detailed description of the laws that enable legal empowerment of IDPs and the processes in which they use those laws to promote policy changes. Following, the fieldwork chapter presents the results of how the program was applied in practice and the implications that this has for empowering the displaced in Colombia. I have also included four “life stories” that highlight some of the strengths and limits of the program.

Finally, the conclusions of this study show how legal empowerment must always be seen as a process that affects not only the law, but also people’s lives. It is this interaction between claims of rights, court decisions and practical changes which re-enforces both legal reform and empowerment there must be a balance between top-down empowerment, through law and institutions, and bottom-up strategies that can enable concrete changes.

2. Background

With around three million affected people, Colombia has the second highest number of internal displaced persons (IDPs) in the world, after Sudan (ACNUR 2008). The total number of refugees has risen to more than three million people between 1997 and 2009 (IDMC 2009: 13), which, in a country of forty four million inhabitants, represents almost seven percent of the total population. The problem of internal displacement affects around twenty six million persons in the world, the majority of which are in countries such as Sudan (4.9 million), Colombia (3.3 to 4.9 million), Iraq (2.7 million) and the Democratic Republic of Congo (1.9 million).¹

Internally Displaced Persons are, according to the United Nations, individuals that have been forced to move from their original lands in order to protect their lives from armed conflicts, generalized violence, human rights violations or natural/human made disasters, but who continue to reside within the same country. In other words, they are refugees inside their own national borders (UN 1998).

The situation of displacement in Colombia has multiple causes, many of them related to the internal armed conflict that Colombia has experienced since the 1960s. Massacres, forced disappearances, torture, and threats against life, are part of the endless list of human rights violations experienced by many Colombians.

2.1. The life of Internally Displaced Persons (IDPs) in Colombia

Looking at the life of IDPs before and after the displacement is essential to understanding any type of government or legal intervention which aims to help IDPs to improve their living conditions. The majority of IDPs are small subsistence farmers or landless day laborers who generally live in rural

¹ See Appendix 1: Internally Displaced People Worldwide December 2006

areas. They have been forced to abandon their lands and most often receive no compensation due to the fact that land in the rural areas is mostly transmitted from person to person without any legal title. It is not clear who is occupying the land of this three million people and some people say Colombia is experiencing a regressive agrarian reform taking away the land from the poor (Romero 2008).

IDPs move mostly to small towns and cities across the country looking to survive and escape from the internal conflict. Bogotá, the capital of Colombia, absorbs about 60 percent of the total IDPs in the country while the others are dispersed in the large cities and in municipalities of medium size. The level of education among IDPs is lower than the general average and their main skills are related to farming activities, reasons that difficult the process of assimilation in the cities (Econometria 2007:6). When they arrive to the cities their hope for a better life seems to be blurred and they face a large number of struggles. First, living in the cities is more expensive than in rural areas and many of them must sleep in parks or on the streets before they can afford to rent a room in the slums. Humanitarian assistance, when it is accessible, includes rent for the first three months and some food support but after that they must find a way to provide for themselves. Children and adolescents are seen, by gangs and armed groups present in the cities, as subjects of recruitment and therefore are at high risk to be absorbed by criminal organizations (ACNUR 2005).

2.2. Causes of the Displacement

The history of violence and armed confrontations is a situation that most Colombians have learned to live with for the last 40 years. Even though civil society claims constantly for peace and an end to the conflict, the actors of the conflict keep interested in an eternal war that only brings repression and human rights violations for everybody. The three main actors of this conflict: the national army, left-wing guerrillas (FARC and ELN) and

right-wing armed groups called Paramilitaries, have been responsible of this massive displacement of the population (IDMC 2009:19).

The history of the Colombian conflict can be tracked to the 1960 when leftist guerrilla groups inspired in socialist and communist ideologies decided to take up arms and fight for a revolution. This ideology changed through the years and then they became immersed in other illicit activities related to drug trafficking, which is undoubtedly a central factor of this conflict. Guerrilla groups grew and took control of many municipalities and regions in the country. Later, in response to the increasing presence of guerrillas and the absence of the government, big landowners and some elites created private security groups, with a right-wing inspiration, in order to stop and reduce the power that the guerrilla was gaining in the country (González et al. 2003). These groups were united in 1997 under the name of 'Autodefensas Unidas de Colombia (AUC), in English United Self-Defense Units of Colombia.

In light of this situation, many IDPs left their lands after their families suffered all type of human rights violations including massacres, disappearances and political killings by military and security forces, paramilitary groups, and guerrilla forces (Amnesty International 2010). Some of the most common reasons for the displacement, according to the people I interviewed were threats by one of the conflict's actors, claiming that they were collaborators of other rival groups. In other cases, people felt because of a fear that guerrillas or paramilitaries would take their children and forced them to become part of these armed forces. These are only some of the reasons of the displacement but the list could go on with all the human rights violations that they have experienced in Colombia.

2.3. The institutional response to the Displacement: Legal Framework

Although the problematic situation of IDPs have been well documented since the 1970s, it was only in 1997 that it came into the spotlight of the law. In 1997, the Congress proclaimed a law to state the rights of displaced

people and demand that the government take to protect them². As Villegas (2002) demonstrates, it is common in Latin America that the law only serves as a formality but rarely are the laws implemented in practice. Until 1997 IDPs were constantly denied their rights by government officials arguing that they needed to wait until the government would have the financial resources to implement programs or just by claiming that other office had the competence. It was not clear who had the responsibility to protect IDPs under this law; it contained list of rights but no clear allocation of resources to meet those needs. It was only until 2004 after a landmark decision made by the Constitutional Court that the government made a drastic change in its policy towards IDPs. This radical change in the policy towards IPDs recognized many flaws in pervious legislation and addressed a variety of issues, including income generation programs. Then the law changed from one that was a formal strategy of income generation with low budget and low results³, towards a more comprehensive empowering strategy based on people's skills and capabilities. However this strategy is not the panacea and many organizations have also criticized for the costs that implies and the difficulties that presents in the long term.

3. Legal Empowerment: Theoretical Framework

The recent report of the Commission on Legal Empowerment of the Poor

² In 1997, the Congress of Colombia passed the law 387 to address the situation of IDPs. This law defines the legal status of the displaced and stated the obligation of the government to provide attention, protection, consolidation and socio-economic stabilization for them.

(CLEP) in 2008 raised many of the questions about the use of law to promote development. One of the main assumptions of the CLEP was that poverty exists partly because the poor are outside the legal system, and thus that they are not entitled to many rights which means that they cannot effectively use them for their benefit. This research was based on the idea that government programs aiming at improving people's lives must address the issues of legal empowerment and empowerment in itself. It uses the theory of empowerment inside the field of development to argue that people must have the freedom to decide over their lives. This chapter presents the conceptual framework that guided this research from the idea of empowerment to the more specific concept of legal empowerment of the poor.

3.1. Empowerment and Development Studies

The Western mission to 'develop the poorest countries in the world' has brought about different ideas over the last fifty years. However with nearly half of the world's population living in conditions of poverty and with less than two dollars a day, we could consider such missions and ideas to be failures. In reaction to this situation, the most developed states have made different efforts to salvage the idea of development with a strategy called 'empowerment'. According to this approach the participation of individuals in the definition and search for their own development is considered to be crucial. Everybody should be able to decide the things they want to do in order to improve their living conditions and developers should only help them to build this capacity of social and communal action. This has been called the empowerment of the poor or the empowerment of communities in third world countries.

According to Cowen & Shenton (1996:3) the idea of '*empowerment*' has its roots in the concept of '*trusteeship*' which has always been part of the development discourse. In the development process there is a need for finding a '*trustee*', someone that we believe will guide us to prosperity. This

³ According to the National Planning Department (DNP 2008) the budgetary allocation to attend the IDPs has increased steadily from 177 million USD (363 million Colombian pesos) in 2004 to 525 million U.S. dollars (1,080 million pesos) in 2008.

idea of trusteeship was essential in the nineteenth century when the problem of attaining development was as matter of finding the right trustee and it was used also to justify colonization.

Nowadays the question of *'what we can do for others'* or the ideas about western countries leading the development of the south have been highly questioned. Post-modernist have criticized the big failure of the West on imposing their strategies and interventions in the poorest countries. They have also revealed the clear links between trusteeship and colonialism showing how Europe and North America have presented themselves as trustees imposing their own interests. As an answer to those critics, developers have conceptualized the idea of 'empowerment' or giving power to the individuals in order to make them responsible for their own choices. Since the idea of a well suited trustee failed, the concept of empowerment brings a more passive intervention that aims at generating strong community capabilities that can enable individuals to change their future. According to the World Bank empowerment is:

"The process of increasing the capacity of individuals or groups to make choices and to transform those choices into desired actions and outcomes" (WB 2008)

Instead, some of the post-Marxists see empowerment as a way of liberation of the oppressed masses. Post-Marxists believe that these oppressed masses should mobilize themselves against the state and the market (Mohan & Stokke, 2000:2). They also argue that the 'empowerment' project promoted by international development agencies (as the World Bank) is just a way of gaining local governance and the final decisions are kept in the old power structures governed by the state. The question of what type of empowerment and for whom still remains as a central dispute inside the field of development and therefore it is better to see the elements of empowerment and the programs that apply them in practice.

3.1.1. Empowerment as creation or extension of power

Defining empowerment brings us to the well-debated concept of power

because the term in and of itself implies a process to shift, transfer or extend power. Indeed, using the notion of power, and the importance of questioning power structures, is essential to better understand how things happen in reality. Referring to the previous definition of empowerment, it is not only necessary to examine who has the power to decide on someone's life, but also to study the social and political structures where power relations are exercised (Narayan 2005:6).

One of the most prominent definitions of power was developed by the French sociologist Michel Foucault (1982:780), who recognized the complexity within social relations and sought to explain power as a relational concept connected to one's experience in society. Weber also referred to power and defined it as the result of a relation between institutions or people, in which one has the ability to execute its will even though it may be against the other's wishes (1947 cited by Narayan 2005:221). In the case of self-reliance through IGP, power becomes essential to understand a process in which people are supported to become autonomous to improve their living conditions and satisfy their basic needs. Its objective is to uncover the power relations that shape the process of self-reliance, particularly within the IGP that I am examining here. In this case power implies a process to make people aware of their inner capacity to make decisions over their lives (agency), and also to recognize other actors' and institutions' powers that influence the empowerment process and which constitute structural constraints (ibid.:233).

Awareness of the existence of power structures and relations was essential to this study and provided a framework to analyze the role empowerment among development programs.

3.1.2. Empowerment as an end in itself

One of the precursors of the idea of empowerment comes from the Brazilian educator Paulo Freire (1921-1997) who brought up the concept of education as a mean to build people's capacity to see themselves as social actors and thereby take action in their lives (Freire 1988:114). Freire's liberating theory relates to the concept of empowerment but it is distant from the

understanding that other international institutions as the World Bank or the UN have given to it. In Freire's conception it is only by people and their genuine desires that liberating change can occur in social reality. He sees education as a means to liberate the oppressed, but not only to make them follow certain programs. Freire's definition is definitely powerful and makes one realize the importance of change that comes from people (bottom-up approach). However, it is also true that people in extremely disadvantaged circumstances, such as IDP in Colombia, have a lot of obstacles to truly become empowered only by education. I have taken the importance of education and change from individual's own desire in Freire's terms, but complemented this approach with a more institutional perspective that includes the role of the state and the law in creating real choices.

Then, empowerment can be understood as the process to "*improve individuals' or groups' capacity to make purposive choices in order to transform their lives*" (Alsop et al., 2006). It implies on one hand a change in someone's capacity to make purposive choices (agency), but additionally, a change in the social and institutional context (opportunity structure) that allows people to transform their desires into reality (Ibid: 10). This definition of empowerment is related also to the idea of development as freedom, extensively developed by the Indian economist Amartya Sen. Sen considers that people need to be able to exercise their agency, and to do so there must exist a social and political context that allows freedom of choice. Not only is a context of economic opportunities and political liberties necessary, but also internal conditions, such as good healthcare, education and self-confidence, are necessary for poor people to be free and able to make choices for their own lives (1999:5). From this perspective empowerment is an end in itself, no matter the outcome, what is really important is that people have real opportunities to make changes in their lives.

3.2. Empowerment from Agency

Agency is one of the core elements of the idea of empowerment and can be

defined as someone's capability to make deliberate and determined choices in life (Alsop et al, 2006:84). Looking at the process of empowerment can become extensively abstract and in order to avoid this I have chose to look at the two main elements of agency: assets and capabilities. The combination of these two elements is essential for people to make well-informed decisions in order to satisfy their basic needs.

When one is starting up a business, it is necessary to have in hand a number of resources to make this possible. In this study, the concept of assets was limited to the two resources that were built up by the program, first financial or capital resources and, secondly, business management skills obtained by training. Assets play an important role in the process of income generation for IDPs, but there are also some constraints in the process of starting up or continuing income generation activities – these aspects will be examined further in the analysis chapters.

Assets, such as financial resources or education, are external, and capabilities are internal and are inherent to individuals. These two remain strongly correlated. One of the pioneers of the capabilities approach is the philosopher Martha Nussbaum who considered 'capabilities as an end itself'. This approach comes from a pluralistic way of viewing the world and understanding that people should have capabilities to achieve freedom of choice and not necessarily to attain some objectives defined by others (7-8). Capabilities include, among others, having good health, basic education, a sense of identity, capacity to organize and act as group, self-esteem and the ability to aspire for a better future. Capabilities are important for any type of IGP because they affect people's possible choices. In fact, someone that does not have good health or cannot read and write would have more difficulties to start up a business and therefore will need more support.

The program of income generation for IDP had an important role to increase and foster people's capabilities, particularly by (a) guaranteeing access to free education for the family members under 18 years old; (b) free access to health; and (c) a specific component within the program called psychological support that is aimed at increasing people's self-esteem and desire to start a new life. This last was object of special attention in this research because even when people were not able to attain the expected

outcomes of improving their income, at least they improved their capacity to aspire.

3.3. The Legal Empowerment Approach

People's lives take place within a complex system called society influenced by the social and political structures. This has been defined within the empowerment approach as 'opportunity structure' and consists of the institutional framework that determines people's lives - the formal and informal rules of the 'game' (Alsop et al. 2006:13). Institutions include laws and government policies, but also the informal rules.

The idea of legal empowerment of the poor is not a new theory and it has been present in the development discourse for many years. Using the law to promote social change was defended by the 'Law and Development Movement' during the 1960s. This movement said that law reforms were needed to promote economic growth among developing countries (Tamanaha, 1995:473). However, the newer postulates of the legal empowerment of the poor approach focused on specific legal needs of the poor as a bottom-up approach.

3.3.1. The Commission on Legal Empowerment of the poor (CLEP)

The discussion about the role of law in development has recently reemerged, after the publication of a special report by the Commission on Legal Empowerment of the Poor (CLEP) in 2008. This report was the result of a debate between experts from developed and developing countries who studied the role of law in reducing poverty. It concludes that one of the main reasons why many people remain poor is that they are excluded from the rule of law (CLEP 2008:1). It considers that laws and institutions play an essential role in poverty reduction strategies and in empowerment itself. The commission focused on four pillars of legal empowerment to show how the process of guaranteeing legal rights for the poor can occur.

These four pillars are: (a) access to justice, (b) property rights, (c) labour rights and (d) business rights. Although all these areas are essential for any

income generation program, I have focused on pillars (a) and (b) in order to illustrate the role that legal empowerment played in this case study. Following the report, access to justice is essential to make law and institutions available for the poor in reality. Formal laws and rights are not useful when people can never approach the courts in case of violations, and successfully acquire legal assistance or compensation (2008: 5).

Complementary to this, business rights are essential to income generation programs. According to the commission, helping the poor to formalize their businesses and be covered by the rule of law is crucial (2008:8). Making business formalization affordable and easier for the poor can foster better working conditions. It can also give the poor the right to sell and to access financial institutions (to obtain micro-credits), among others.

3.3.2. Legal empowerment in the informal economy: the influence of legal pluralism

Some important criticisms have been made of the idea of Legal Empowerment and the relevance that 'law has in countries with high informality and where people do not trust the law. The Chilean professor Julio Faundez argues that the recommendations of the CLEP are impractical and unrealistic because they try to bring people to legality by making them fit within labor and business laws (2009:156). He concludes his study by saying that people in an informal economy do not see the law as a solution to their needs and therefore empowerment should be contextualized. Any type of law reforms should be made in response to people's special needs, based upon the idea that empowerment is a complex goal that depends on specific circumstances. People do not see the law as empowering, namely because they have nor or very low confidence in government institutions (ibid.172).

This study complements the idea that legal empowerment must be contextualized and follows Faundez' argument focusing on contextual legal needs. In this sense, the study sees legal empowerment as a bottom-up approach, similar to that proposed by Stephen Golup, in which any legal reform aimed at empowerment must be based on the needs of disadvantaged

people (2010: 13). Law and legal empowerment, as I have used it in this research, do not only cover the norms enabling equal access to the rule of law, but also the norms that protect and support social rights, integrating legal reforms with other development fields, as health, education, etc (Golup, 2010:17).

Legal empowerment of the poor working in the informal economy can be contextualized in the Colombian reality by looking at the idea of legal pluralism. From a general point of view, legal pluralism states that different legal systems can co-exist in the same country (Tamanaha 2007: 375). Sousa Santos insists that what people consider to be law is not always what states in the books (Tie 199:52). Law is subjectively constructed and can simultaneously represent different images of society (ibid.: 195).

In Latin America people's attitude regarding the legal system can be considered ambivalent and form an extensive field of legal pluralism. On one side, people see the law as necessary, important and as a source of emancipation and empowerment. But on the other hand they see it as a means of domination that is unfair to the disadvantaged sectors of society. Therefore, it evokes both feelings of emancipation and resistance (Garcia 2002 :15). Legal pluralism is intrinsically present in the program object of this research in the sense that the government supports businesses that are informal and do not follow the law. However working under the assumption that people have different ideas of what is legal and what is outside the law allows the government to understand the needs of the poor. Imposing a program or strategy that was trying to bring people into formality could have been impossible, because it requires a lot of procedures and extra costs that would have not made sense from the participants' point of view. In contrast to the postulate of the legal empowerment that sees informality as the result of failure of laws and institutions to cover the poor, this case shows that sometimes legalization is not the most practical approach. In some cases, governments can just aim at opening up avenues for economic self-reliance independent of considerations of informality.

4. Methodology: Case Study

I selected the use of case study as the methodological approach in order to look at the process of empowerment inside a development program. In order to determine the role of legal empowerment in the income generation program (IGP) for IDPs, it was necessary to look at the program from a broad perspective, which a case study approach allowed for. Looking at legal empowerment in the program's designs but also in practice was best achieved by using a case study methodological approach.

Case study approach is considered to be a very interesting methodology in which to study people, programs or single events in the broad field of social sciences. A case study consists basically of in-depth research of a single phenomena based on the gathering of plentiful data in a systematic way (Willis, 2007:240). This approach assumes that social phenomena can have similar traits but are also unique in and of itself and thus must be understood inside their complexity (Stake, 1995:1).

There were three main reasons to choose a case study as the most appropriate methodology to conduct this research. The first reason is that I wanted to explore how legal empowerment is applied in practical development programs. However, since the concept of legal empowerment is more abstract and does not appear in program documents or in people's language, it was necessary to make an in depth research. The second reason to make a case study was its ability to answer to the research question of *what is the role of legal empowerment and empowerment in itself in the new policy of income generation for IDPs in Colombia*. Case studies are known to be advantageous when trying to answer descriptive questions on how a certain process occurs as in this case (Stake 1998: 86). Finally, case studies are also well suited to develop research in 'naturally occurring contexts' using fieldwork to better understand participants' reality (Silverman, 2005:259).

4.1. Definition of the Case Study

Selecting a case to study requires that at least two factors are adequately addressed: first about the ability of the case to illustrate the problem being studied and second about the feasibility to access relevant information (Silverman 2005:125). The problem object of this research was the role that legal empowerment plays in IGPs. In 2006 the government of Colombian implemented a program called initial attention in income generation (PAI-GI) to promote and support IDPs in starting their own small businesses. The final aim of the program was to increase peoples' ability to be self-reliant so that they could improve their living conditions by themselves. The PAI-GI is my case of study and the fieldwork was conducted in two cities where the program was developed in 2009.

Although this program (2009) operated in all the provinces in Colombia attending a total of 30,583 families, I made the fieldwork in two cities in which the program was run. I chose to conduct the fieldwork in Bogotá⁴, capital of Colombia, which has about 480.000 IDPs (ACNUR 2003: 23). Studies are usually made in bigger cities but do not account for medium size municipalities (between 100,000 to 300,000 inhabitants) that are geographically located near the conflict areas and that have more difficulties providing employment for IDPs. For this reason, I also selected the municipality of Pitalito (south of Colombia), which has about 102.485 inhabitants. Pitalito has received about 11.800 displaced persons as a consequence of the Colombian conflict (Alcaldia Pitalito 2010). There are other medium size municipalities that could satisfy this criterion of medium size and proximity to the conflict areas, like Turbo (121,919 inhabitants), Piedecuesta (117,364 inhabitants) or Ipiales (109.116)⁵. However, accessing the field in municipalities with security problems can be difficult and it is better to conduct research in a place where one can have some local contacts. For that reason, I finally chose the city of Pitalito due to personal knowledge of the region from previous work there.

⁴ According to the national statistics from 2005, Bogotá has 6.840.116 inhabitants. (DANE 2005)

⁵ DANE 2005

4.2. Methods

Case studies often use a combination of different methods in order to achieve the comprehensive understanding of the particular situation or program studied (Silverman, 2005:121). It can make use of qualitative data gathered from documents, interviews, observations, participant observations, etc. It can also use information from numerical data coming from quantitative studies. I decided to use semi-structured interviews as the main method of data gathering in this research. However, I conducted the interviews at participants' business locations and therefore I was able to complement the interviews with my personal observations of their conduct at their new businesses. I also used literature review and analysis of the legal documents supporting the case.

4.2.1. Semi-structured Interviews

I conducted thirty interviews with people that participated in the program during the year 2009, in the cities of Pitalito and Bogota. Semi-structured interviews were considered to be the most suitable method to obtain information about the process in which they became entrepreneurs, the way the government program supported them, and the role that legal empowerment had in the program application. All the interviews for this research were conducted visiting participants' places of work, about one month after they participated in the program and with the permission from the program managers.

I used semi-structured interviews because they allow a combination of techniques from structured and focused interview methods (May, 1997: 111). The first part of the interview was structured to obtain the same specific data from all participants in relation to their socio-economic situation. While the second and third part were guided by open questions and therefore were more related to the unstructured or focused interview. Understanding legal empowerment was not easy therefore I decided to make open questions to understand better their legal needs.

The interview guide has three main sub-parts (See Appendix 2). First, there was a general section about participants' socio-economic profile, including general questions of age, gender, education level and number of family

members. The second part was focused on the occupation before the displacement, particularly the place of origin, reasons for the displacement and most important of all the occupation before the displacement. Finally, the third part was about their participation in the program and how the program influenced their lives. I also asked some questions about business registration and social security to see if there was any type of legal empowerment. This section was open and aimed mostly at learning about participants' reality in order to understand their situation and legal needs. It was not possible to ask specific questions on legal empowerment because this is an abstract term that is not part of people's everyday language. Therefore it was from their experiences and their stories about their lives that I wanted to understand the role of legal empowerment.

Interview open questions:

- *What were your reasons to select this type of economic activity? Describe how you started your business?*
- *Describe the personal benefits of having starting your own business?*
- *Describe how you benefited from participating in the income generation program?*

Interview question related to legal empowerment:

- *Is your business registered with the local authorities?*
- *Do you have access to social security (health and pension)?*

4.2.2. Sample

The selection of the informants for the interview was made based on purposive sampling rather than using random techniques. I asked the program operator to help me to select different types of participants which cover a wide variety of cases including 'new entrepreneurs' and 'strengthened entrepreneurs', men and women, successful and not very successful cases. As we see, the informants were selected in a deliberative way to cover the greatest variety of cases possible in a short period of time. Purposive sampling is a valuable strategy to select informants based in known characteristics of the population being studied and allows the study of typical cases in a short period of time (May, 1997:88).

I did not decide the number of interviews to make before starting the fieldwork and instead, I had a time limit of one week in each city to perform them. I conducted twenty-one interviews in Pitalito and nine in Bogotá. The reason why this number is not equal is that accessing moving from one

business location to another, in a big city as Bogotá requires more time than in a small municipality. The number of interviews conducted in Pitalito is relatively large in relation to the time because I was able to commute in the vehicle of one of the program staffs. Instead in Bogotá, I had to use public transportation, which takes considerably more time. (For more information about conducting and recording the interviews see Appendix 3)

4.2.3. Complementary Methods

The main empirical analysis is based on the interviews conducted with the participants; however, I also interviewed four of the program managers⁶ in order to better understand the practical operation of the program.

It is also important to note that this research was developed by visiting the participants in their places of residence, looking inside their businesses and in this way was not just a survey or a long distance interview study, instead it included a short time immersion in the field studied. Besides the interview data, I made personal notes about the places I visited; I also took some videos and pictures.

I also developed some participant observation by attending one of the trainings that was part of the program⁷. I considered that this fieldwork was important to understand the program was studied but I have focused my analysis mainly on the interviews. This was my primary source for understanding participants' legal empowerment and empowerment in itself. Finally, it is necessary to say that this case study also made use of legal and program documents to understand the context and the legal framework around the program.

4.3. Validity

Validity in case studies can be problematic because there is big potential for subjectivities from the researcher. Yin (1994) proposed three remedies to

⁶ I conducted open interviews in January of 2010 with Alonso Botero (Accion Social), Claudia Arias (Opcion Vida), Gladys Valero (Opcion Vida) and Ludivía Trujillo (Fundacion Alto Magdalen).

⁷ I participated in the workshop called *taller plan de vida* (Workshop on life plan). This meeting took place in January 20, 2010 at the office of Opcion Vida, NGO developing the program in Bogotá.

counteract this: using multiple sources of evidence, establishing a chain of evidence, and having a draft case study report reviewed by key informants. In my case I have used the primary data coming from the interviews, observations, photographs and also program documentation that can show the theoretical aspects of the program and how it works in reality. I consider that covering these two sides, theoretical and practical matters of the program, allows a better understanding of what happened in reality.

Internal validity in regard to the semi-structured interviews was obtained using a guide that measures and expresses the problem being studied. Considering that there was no attempt to build a general hypothesis and causal relations, using questions on *how* and *why* allowed the purpose of understanding the program operation and brought me to participant's perceptions and construction of reality.

Concerning external validity, it is important to say that this is one of the main concerns in case studies because of the limitations to make generalizations and extract broader conclusions. However the richness of a case study allows one to gain a comprehensive understanding of reality. It also makes it possible to contribute to similar cases of legal empowerment and income generation in other places in the world. I consider that for academics and policy makers working in post-conflict situations is also useful to see the way that income generation programs occur in reality and the role that legal empowerment can play in there. Then validity is not achieved through big theories and general conclusions but from the relevance of the study to be used in other researches in the same field (Stake 1998: 104).

4.4. Limitations

Even though I consider that a case study was the best methodological approach to investigate the role of legal empowerment among IGPs, there are some limitations that one must be aware of. The main critique of case studies is that they do not allow for generalizations and therefore the conclusions are only relevant for a very specific situation (Willis, 2007:239). This study does not aim at generalizations and consider that legal empowerment is a phenomenon that requires contextualization. For

this reason, I prioritized in depth knowledge about few cases that allow a deeper understanding of the role of empowerment in practice. This research can contribute to new programs which are being developed in other countries to help IDPs be self-reliant and thus would be able to address the question ‘what can be learned from this single case’(Stake: 1998:86).

The second limitation of this study is the impracticality of the concept of legal empowerment to be specifically asked during the interviews. Ordinary people do not use in their daily lives the term of empowerment and therefore the interviews had to be limited to two features of legal empowerment: business registration and social security. It also covers general aspects of people’s lives to better understand the circumstances that define their participation in the program.

4.5. Ethical considerations

Considering that Colombia is a country where the armed conflict is still ongoing was without doubt a challenge to this research, because people are afraid of expressing their feelings to strangers. This research needed to be sensitive of this situation and therefore the interviews were conducted under confidentiality and photographs or videos were always obtained upon permission from the informants. In order to comply with ethical standards, prior to initiating the interviews participants were informed by the program operator (my gate opener) about the aims of the research. The program operator asked them for their permission to perform the interviews.

Finally, I would like to state my personal background and my relation to the object of study since this possibly influenced the outcomes of this research. I was born in Colombia and my academic background is in Law. I have lived in both cities where the fieldwork was conducted and I can consider myself to be close to the reality of people living in these two locations. Under various circumstances I have met people that were displaced and therefore it is necessary that I state here my at times, position as an insider and active participant of the situation in Colombia. . I believe this was an advantage and allowed me to develop more extended, in-depth conversations during the interviews. I consider my closeness to the field in

which I studied was useful in understanding the research problem from a holistic approach.

5. Legal Empowerment of IDPs in the Colombian

As I presented before, the debate about legal empowerment has been renewed insisting on the importance of law reforms to address the needs of the poor. In this chapter I will analyze the role that access to justice played in this case study. I will show how legal empowerment must include not only a change in the substantial rights of the poor but also in the effective access to courts when their rights are violated, making the law not only to be available in the books but also effective in practice.

5.1. Legal background: Internally Displaced Persons' rights

Over the last 15 years Colombia has implemented a very complex, but inclusive, legal framework to address the special needs of the displaced people. While in some places legal reforms are one of the main arenas to address new changes, Colombia has shown relatively high engagement in making legal changes that follow the international standards of human rights protection. However, Colombia has also been very ineffective in implementing these laws (IDMC, 2009:91).

IDPs' status and main rights are contained in *law 387 of 1997*, however the implementation of this law has been highly criticized because the government has not been able to stand up to the magnitude of the crisis and the attempts to do it have failed to answer the special needs of the population. Specifically in regard to income generation, which is the focus of this research, article 3 of this law states that "*it is the responsibility of the State to formulate policies to make IPDs socio-economically stable*". However, more than seven years passed without the application of this law and it was only after a court order in 2004 that the government was finally forced to act. Before this court decision the policies related to income generation were poorly implemented and failed to effectively cater for the special needs of the displaced (ACNUR 2004).

Some of the attempts of the national government to support income self-reliance among IDPs involved training and micro-credit financing opportunities. According to a study made by the National Planning

Department (DNP, 2007:87) these strategies were not successful and did not achieve the expected results. There were two main problems with regards to the policy of income generation before 2004. First, the government expected to absorb IDPs by the regular programs of income generation that already existed for the poor population. Second, there were many formalities and rules obstructing the real access to the programs, including credit reports and investment plans.

5.2. Access to Justice as a Means of Empowerment

After being denied in practice the right to be supported by the government to freely seek opportunities for employment and to participate in economic activities, displaced people continued mobilizing and demanded real support from the state.

During the year 2004, 1,150 nuclear families of IDPs around the country filed a total of one hundred and eight small lawsuits called '*tutela*', arguing that the government was violating their rights. These demands argue, among other things, that the government was violating displaced persons' rights to work and access income generation programs. This massive exercise of a legal action (*tutela*) and the subsequent decision of the Court (T-025-04) was, in my opinion, a boost for the following radical shift in the national policy of income generation. I will show following. how IDPs were effectively empowered by the opportunity structure that enables them to use 'tutela actions'. This empowering structure is contained within the National Constitution of 1991 that created the mechanism of '*tutela*' to effectively guarantee the protection of individuals' fundamental rights. I will describe first the mechanism of tutela as a revolutionary empowering tool, and subsequently show how it was used by IDPs in Colombia.

Since the approval of the National Constitution of 1991, Colombians have experienced a radical transformation in the way they perceive the law. The Constitution brought three significant changes that have generated a process of legal empowerment of Colombians, making legal protection available to ordinary citizens. First, it establishes a bill of fundamental rights, including the rights of freedom against discrimination, life and personal integrity, the

right to work and the right of free development of the personality, among others. Secondly, it established a quick and effective mechanism for the protection of those fundamental rights, called ‘*action of tutela*’. And finally, it created the Constitutional Court as a supreme guardian of the effective application of the rule of law.

The tutela is defined in the Constitution article 86, as a *i)* legal action, *ii)* available to everyone, *iii)* to present a petition before a judge, *iv)* when a public authority has violated his or her fundamental rights. Tutela is then:

“the right to file a writ of protection before a judge, at any time or place, through a preferential and summary proceeding, for himself/herself or by whomever acts in his/her name for the immediate protection of his/her fundamental constitutional rights when that person fears the latter may be violated by the action or omission of any public authority.”

One of the main characteristics that makes the ‘*action of tutela*’ a tool of empowerment is its informality. This kind of lawsuit does not require any type of legal knowledge, only a clear explanation of how a fundamental right has been violated. It can be presented by anyone without having an attorney and, therefore, it empowers people to make use of the law, allowing real access to the judicial system. It is also a prompt action because the judge has only ten days to resolve the writ of protection. Additionally, the Constitution includes the possibility for people to claim contempt of court if the government officials do not follow the judge’s decision protecting the violated rights, which may include fines or even imprisonment for negligent officials. Finally, all of the decisions made by the judges answering *tutelas* are sent to the Constitutional Court for *certiorari* selection, which essentially means that the court can discretionally select the cases considered relevant to develop a national coherent precedent system (Cepeda-Espinosa, 2006:22).

Since 1992, more than two million *tutelas* have been filed in the country and the number continues to increase dramatically. This situation is being caused by the popularity of this mechanism, but also due to the lack of effective response by the government to protect fundamental rights (GI, 2009). Prior to 2004, internally displaced families filed more than a

thousand tutelas requesting protection of their rights, such as non-discrimination, life, access to health and education services, minimum income, housing and freedom of movement. Despite its response to the individual cases that filed legal actions, the government failed to make a comprehensive policy applicable to the whole population (Cepeda-Espinosa, 2006:22).

Such cases were solved by the court, on an individual basis until 2004, when the court declared the existence of an ‘unconstitutional state of affairs’ in relation of the government’s lack of general response to the protection of IDPs’ fundamental rights. This decision has considered as being revolutionary in terms of IDPs jurisprudence because it orders the government to provide regular updates of the different steps taken to correct that situation (Easterday, 2008:13).

5.3. The Constitutional Court in Colombia: an actor of legal empowerment

Legal empowerment in practice implies looking at the effect that people’s legal actions have on regular cases. It encompasses not only the existence of possibility to access the judicial system, but also requires having judges that are not corrupt and do not hesitate to take an active role in the protection of human rights. Active courts, those that interpret the law to support the rights of the poor, are in fact essential to this idea of legal empowerment.

The Constitutional Court arrived at its landmark decision in a revision process of 108 *tutelas* presented nationwide in the year 2004. These legal claims had similar petitions, but they were each resolved by different judges with different outcomes. At that time, the Constitutional Court resolved to review all the cases under a unique verdict, since the rights violated were similar and it was necessary to develop a unified jurisprudence. This historical decision, contained in more than 100 pages and five extra appendices, examined all of the government’s policies for displaced persons and evaluated this response from a fundamental rights approach. It concludes that the state needs to cease its omissions and act to protect the fundamental rights of:

- humanitarian assistance,
- health care,
- voluntary and safe return to traditional lands or resettlement,
- immediate admittance to an education institution, especially for children,
- access to justice and reparation; and
- support by the government to seek freely opportunities for employment and to participate in economic activities.

To understand the relation that this decision has with the policy of income generation, I considered the answer that the national government gave to the court in regard to the existence of effective and accessible support for productive projects. When the court asked the government to answer the request by IDPs for seed capital to start income generation programs, *Accion Social* (the office responsible for coordinating the actions to protect IDPs) indicated that the government had decided to not make any type of cash transfer available for IDPs. They said, “...*the government decided to not support productive projects with seed capital, because that is not its function and the only support would be through micro-credits*⁸.”

This policy of not providing seed capital for productive projects was completely changed after the court decision and the government decided to launch an income generation program specifically directed to IDPs, including seed capital of about 800 US dollars. Legal empowerment has many limitations and one of those is related to the political will of the government. Especially in the case of income generation, the rights violated depends on specific policies and economic resources, therefore it is difficult for judges to make orders to protect this right.

5.4. Legal Empowerment and the impact on policy reforms

The case of income generation for IDPs in Colombia is an interesting example of how legal empowerment of the poor can influence policies, thus

⁸ Answer sent by *Acción Social* to the Constitutional Court in the process that originated the Sentence T-025-04.

giving a voice to the most disadvantaged and vulnerable groups in society. It illustrates that access to income generation projects is considered to be a 'right' by IDPs. Internally displaced people approached the courts and demanded the protection of this right. Empowerment was in this case effective because IPDs were able to influence the government and consequently affect change in its income generation policy. This case shows what effective access to justice can do for internally displaced people in Colombia.

However, it also shows that when the protection of a right implies financial resources, the political will of the politicians in charge plays the most decisive role. Legal empowering constitutions can influence policy changes but one must be aware that they are not a panacea and are limited by political circumstances.

6. Fieldwork Analysis: Legal Empowerment as a Bottom-up Approach

Empowering disadvantaged people through income generation programs has implied in the last years a shift in the question of '*what can we do for others*' to '*what can people do for themselves*'. The Income Generation Program (IGP), initiated by the Colombian government to assist IDPs become small entrepreneurs, is one example of state intervention to support people's struggle to get out of poverty. I have shown in the previous section how this program was highly influenced by people's legal empowerment through an action called '*tutela*'.

However in order to see whether the program in practice was influenced by the idea of legal empowerment of the poor it is necessary to examine the develops in terms of its application. To examine this , I conducted thirty interviews with program participants as well as some of the program managers in order to understand their experiences and their needs. Before this fieldwork, I considered that IGPs needed to use the tools of legal empowerment to guarantee people's business rights and labour rights. I considered that any program of income generation needed to address the legal exclusion that people faced when working in the informal economy. As the CLEP said, people in the informal sector are excluded from the benefits of the rule of law and therefore, governments must try to bring them to legality. However after conducting fieldwork I was able to see a different role of legal empowerment of the poor.

The application of the IGP supports one of the critics made to CLEP and it is that legal institutions are not necessarily the best point of departure to empower workers in the informal economy (Faundez 2009). I will show here, how the program empowers participants to become entrepreneurs by training and financial resources, without entering the field of legal empowerment.

I have selected four life stories that illustrate the process of empowerment itself along income generation programs. These four cases explain how the poorest among the poor are logically not worried about legal formalities but

about generating a basic income. Then IGPs must accept people's reasons for preferring the informal sector and understand their special legal needs.

6.1. Program of Initial Attention for Income Generation (PAI-GI)

Before looking at the program application, I will explain here the main objectives and the structure of the PAI-GI. The PAI-GI was based on a transfer of capital seed⁹ support people's initiatives to generate their own income, a short training on how to start-up a business and psychological guidance to overcome people's fears and traumas after the displacement. This program started in may of 2005 under the name of 'program of economic assistance (PAE)' and the main objective was to contribute in the self-sustainability of the internal displaced population through the development of small businesses (Acción Social 2009).

According to the program documents the specific objectives were:

- Provide participants with information, education, training, advice and the basic elements that allow them to be linked to social and economic networks offered in the municipalities where they live.
- Provide economic support for employment, entrepreneurship or strengthening, in order to support income generation to satisfy their basic needs.
- Build inter-agency coordination strategies to complement the basic services required by the population and the financing of their projects.

However the program did not specifically wanted to support people's businesses through registration and it did not include any kind of training in social security rights and duties. The PAI-GI was designed to attend IDPs and the only requirement was to be registered in the national database for displaced people RUPD (United Registry for Internal Displaced). Each year the program was supposed to be executed between eight to nine months in which the participants were required to complete the following stages:

- Invitation to the selected participants

⁹ Seed capital (In Spanish capital semilla) is money that people need to start-up their businesses.

- First meeting: welcoming to the program and explanation of the process
- Home visit by the psychologist. The main objective of this visit was to record the socio-economic conditions of the participants and to learn more about his/her potentials.
- Workshop on vocational abilities to identify which of the program modalities was more adequate. The program modalities included employment, entrepreneurship and strengthening.
- Workshop in human relations and how to lose the post-displacement fear.
- Workshop on how to make a life plan. Definition of the best alternative to generate income in the short term.
- Workshop on a Business Plan to describe of all the steps needed to start the selected business.
- Delivery of the economic resources of 1,600,000 Colombian pesos (about eight hundred USD) to each of the participants and help in the process of investment. This support consisted on accompanying participants to buy the products, tools or machines needed.
- Visit of following up after one month of paying the money to the participants.

There were three possible ways of participating in the program: 1) employment, 2) entrepreneurship and 3) strengthening. Employment consisted on giving the cash incentive of eight hundred US dollars to employers that could hire the participants for a minimum of ten months. This strategy was not successful because for lack of potential employers interested in participating in the program and only one percent of the participants were included under this modality¹⁰. Entrepreneurship consisted basically of helping participants to start-up a new business and it accounted for thirty percent of the program. Finally, the strengthening strategy was

¹⁰ This strategy was also problematic because Colombia has suffered from an endemic unemployment in the last years and even educated people have problems finding employment opportunities. According to the National Statistics Agency (DANE) Colombia

implemented when participants had already a small economic unit or small business and wanted to develop or expand it (forty nine percent). During the years 2007, 2008 and 2009, the program has attended a total of 109,061 families which represents twenty percent of the IDPs families in Colombia (Acción Social 2009).

The PAI-GI was evaluated in the year 2007 by the private firm Econometria¹¹ concluding that the program in general had in general a positive impact. It considered that “the program was achieving poverty reduction among participants and helping them to improve their income and living conditions”. It also verified that seventy-three percent of the businesses survive after ten months of leaving the program. According to Zarama (2009:22), the program was achieving positive outcomes but the conditions of displaced persons were still worse than those considered to be chronically poor. However the government insisted that the program cost as little as possible and that it was assessing a great number of people possible per year.¹²

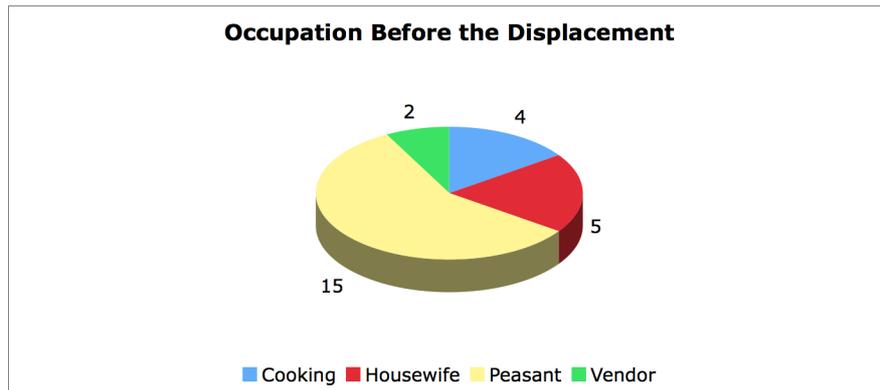
6.2. Empowerment through income generation programs: four life stories

Before entering the specific four stories, I want to present the general overview of the interviews conducted. I collected information from twenty-six women and four men that participated in the program in 2009. Their average age was 36 years old and five years of formal education. They were coming from the provinces of Boyaca, Caldas, Caqueta, Cauca, Guaviare, Huila, Nariño, Putumayo and Tolima. The majority of my informants used to cultivate the land and only one had previous experience in commercial activities (See graph 1).

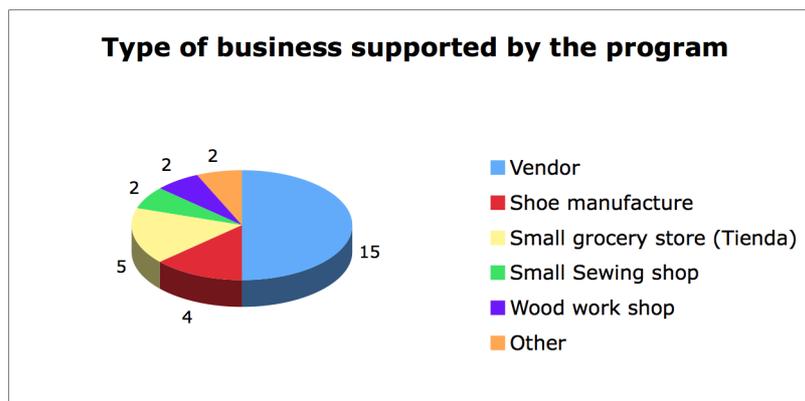
registered an annual unemployment rate of approximately eleven percent for the year 2008 and 2009.

¹¹ The firm Econometria was hired by Acción Social in 2007 to evaluate the impact of the program.

¹² The total cost of the program is 2,250,000 Colombian pesos (1,150 USD) per participant.



I interviewed seventeen participants from the modality of entrepreneurship and thirteen from strengthening. After the program's intervention, only one of the participants had a registered business and the other twenty-nine worked in the informal economy. From the participants in the informal economy twelve were street vendors. The following graph summarizes the type of business initiated.



I selected four life stories¹³ from these thirty interviews. I have chosen them in order to illustrate some of the legal needs that appear as common features in the interviews. I also selected them also in order to see the different outcomes of the program. This number is not representative in a program that assisted more than 30,583 families during 2009, and it is necessary to highlight that the aim of this thesis was not to make generalizations. Instead it was to understand legal empowerment in practiced. This study goes beyond numbers that show rates of success or failure among IGP and

¹³ The names used to describe the stories have been changed to keep anonymity for the informants.

exemplifies how empowerment as an end in itself is a valuable goal in the process of development. It also shows that legal empowerment must depart from simply understanding people's reality from a bottom-up approach.

The following table summarizes the cases I have selected to illustrate the process of empowerment in practice. The first two stories are from participants in the modality of 'strengthening' (improving of an existing business) and the last two from the group called 'entrepreneurship' (participants starting a new business). In the first three stories participants' income was 100% coming from their micro-business while the last case illustrates a business that due to different circumstances was not operating any more.

Category	Name/ City	Previous Experience	Type business	of Open Business
Strengthening	Marta/ Bogotá	Housewife Peasant	Sewing shop	yes
	Yolanda/ Pitalito	Peasant	Coconut Sell	Yes
Entrepreneurship	Maria/ Pitalito	Peasant	Fruits sell	Yes
	Teresa/ Bogotá	Peasant	Clothes Sell	No

These stories illustrate different aspects of empowerment that were present in the program. The first story demonstrates the importance that previous experience had to facilitate people's choices during the program (Marta's story). The second story illustrates the role that financial support (in this case seed capital) played within the income generation program and highlights the importance to break disadvantaged people's dependency on illegal micro-credits (Yolanda's story). The third story brings us to one of the typical cases of new business among IDPs and consists of street sellers (Maria's story). According to an evaluation of the socio-economic situation of IDPs in seven regions in Colombia, twenty percent of them survive out of small sells on streets (CICR & OIM 2005: 5). Finally, the last story was an

initiative that did not survive after the program ended (Teresa's story). According to the program evaluation (Econometria 2007) twenty-seven percent of businesses did not continue after ten months of the program intervention. See Appendix 4: Geographical location of the four life stories.

6.3. Marta: business registration vs. working in the informal sector

The case of Marta illustrates how legal empowerment through business registration materializes when participants have increased their incomes. It also illustrates that the IGP was lacking a social security strategy in making participants aware of the importance of thinking about and planning for their retirement.

6.3.1. The displacement

Marta is a thirty-five years old woman that lived in a rural area of San José del Guaviare (south east of Colombia). This city was considered to be “the coca capital” of Colombia for many years, and currently has the third largest area of coca crops in the country (Prada 2006: 11). Marta was forced to leave her farm in 2003 when the guerrillas came to her land and took her husband to work for them. Marta said, “*we left everything when my husband was taken by the guerrilla...they came one day and asked him to help with the cause...they said we needed to collaborate...and they took my husband that night with them.*” Marta left her farm because she was scared the guerrilla would come back and take her three sons (aged seven, thirteen and fifteen years old).

6.3.2. The process of business strengthening in the IGP

Marta moved to Bogota and lived with a relative for few months with her three children in. They lived in the locality of Kennedy, which hosts about ten percent of the IDPs living in the city of Bogotá (CCB 2002). When Marta lived in San Jose del Guaviare she attended eight years of education and learned the skill of sewing. These skills allowed her to find work at a small workshop in Bogotá, where she improved her abilities and gained the

economic resources to start-up her own sewing shop: *“I saved some money from work and then bought the machines that I needed, this is how I started my business”*, Marta said.

Marta’s knowledge of sewing techniques and her previous experience at the workshop for two years were her fundamental assets in becoming an entrepreneur. When she entered the program (PAI-GI) she had already been working in her sewing shop for more than three years.

With the training given in the IGP Marta analyzed different alternatives to expand her business and then she decided she could produce not only formal shirts but also sport T-shirts, and in this way she could increase her sales. With the seed capital, she decided to buy a new sewing machine which she required for this type of sewing as well as the raw materials such as fabrics and threads, to start the new line of production. *“My business is good, I sometimes even need some extra help and then my sons or one of my neighbors come...you can see the quality of the job...”*, says Marta. She believes that the program helped her to expand her business with a new product. However due to the fact that the interview was made only one month after she received the seed capital, she could only show the new T-shirts she had made but she had not begun the commercialization at that time. Without starting to sell her new product, Marta’s monthly income was about one million Colombian pesos (500 USD). However Marta was not registered in the retirement funds and she was still receiving subsidized health from the state due to her condition of being an internally displaced person.

Marta’s case was very interesting in terms of legal empowerment because among the thirty interviews included in this study, her business was the only one that was registered. She had to register her small sewing shop last year in the chamber of commerce because one of her clients requested that. For her, it was relatively easy to make the registration but she never thought about the need to do that before. People such as Marta, working in the informal economy, are busy trying to make their business productive and profitable and business registration comes later when there is a specific need for it.

6.3.3. Legal Empowerment: business registration and social security

The case of Marta illustrates how people's background, vocational training and education can make a difference in the choices that participants make. The fact that she had already a small sewing shop was an asset that Marta brought to the program, which in combination with the seed capital and the training received empowered Marta to make a well informed decision on how to improve her business. Even though this intervention could be seen as a successful case, it also shows a big shortcoming of the program in terms of legal empowerment. Although Marta's income was above the minimum wage in Colombia, she was not contributing to social security including health and retirement funds. It is important to question how a program that is training IDPs to start their own businesses do not include a clear policy on social security. Legal empowerment was not prioritized by the program which focused exclusively on short term results. Having a clear policy to promote social security should be a priority and the excessive informality in which the program works prevented IDPs from the opportunity to be covered by the law.

However, this case also shows that business registration comes when the conditions allow or encourage them to do so and not when such action is imposed by the state. When people are too worried about meeting their daily needs, business registration is seen as a mere formality and not as a responsibility. Covering people under the law does not necessarily come from policies that promote this type of legal empowerment but from legal needs when businesses achieve a certain level of organization and profitability.

6.4. Yolanda's case: dependency on illegal micro-credits

This case illustrates the role that financial support (in this case seed capital) played in the program and highlights the importance of breaking disadvantaged people's dependency on illegal micro-credits. Yolanda's story is similar to the preceding one (Marta's sewing business) in the sense that previous experience as an entrepreneur and personal skills were essential for her to make a more informed choice. Both cases point out that displaced people have assets that must be taken into account by income

generation programs. However, Yolanda's case exemplifies an issue that affects many poor people in Colombia¹⁴, the existence of an illegal credit system that provides people with the seed capital to start-up their business but at the cost of very high interest rates, the '*gota a gota*' system (drop by drop). Yolanda's case showed the need to break poor people's dependency on illegal micro-credits and the need to create a fairer credit system available to the poor.

6.4.1. The displacement

Yolanda is a thirty-six years old woman who was forced to leave the municipality of Tumaco (on the Pacific coast) in the year 2008, accompanied by her husband and two children (three and ten years old). With one of the highest levels of displacement in Colombia (more than 7.353 forced to leave in 2009), the city of Tumaco is experiencing a very critical situation in terms of human rights violations in the country (RUPS 2009). Unfortunately, the strategic location of this area being near the border with Ecuador and also a large producer of coca, has generated an increase in the confrontations among guerrillas, paramilitaries and the national army struggling for control over this territory. Yolanda and her husband used to grow coca plants in their farm as a means of economic survival, until the year 2008 when disputes between guerrillas and paramilitaries in the region made it impossible to live there. The situation became complicated in Tumaco, she explains because "*...chemicals to process coca were sold by the guerrillas or the paramilitaries, and they both wanted to buy the final products. It became too difficult for everyone in the region because when you sold to guerrilla, paramilitaries became angry or the other way around ... guerrilla started detonating gas cylinders and threatening everyone ... we could not live there anymore ... the government also started spraying chemicals from airplanes and the water and soil were contaminated ... they ask you to grow legal crops but they spray all the crops anyways.*"

Once the situation became very difficult, Yolanda and her family moved to

¹⁴ According to the Business Magazine 'Cambio' eight of every ten credits in Colombia are inside informal systems as the '*gota a gota*' (drop by drop). October 2008.

the city of Pitalito because it was relatively close and they had a relative living there. *“When we arrived here it was difficult to find a job, I only made it to third grade in school and never worked outside the farm before”*, she said. However Yolanda knew some people producing coconut in Tumaco and she and her husband decided to start a small ‘coconut stall’ in the central market of Pitalito.

6.4.2. Empowerment in the practice: breaking illegal micro-credits in Colombia

Yolanda’s assets, including her previous knowledge of the coconut business, her relations with the producers and her personal skills to sell the product were critical in her start-up. *“The coconut business is really good because we know the producers in Tumaco so we buy the coconut at half of the price that we sell it here”*. Her business could generate a monthly income of one and a half million pesos (eight-hundred USD) a month, a number that is higher than the minimum wage in Colombia (about two-hundred and fifty USD¹⁵), but she had to pay a ten percent interest rate to the local lenders that gave her the money to buy the coconuts every month. *“The banks never lend you money when you are displaced, because you do not have the means to prove that you can pay back”*, said Yolanda. The program articulated Yolanda’s previous assets and capabilities with an endowment of financial resources that helped her to get out of this illegal lending system to become independent. She put together her savings and the seed capital from the program and stopped using the informal micro-credits system. Now they do not have to continue this expensive and vicious cycle and can re-invest directly without having to take-out a new line of credit.

6.4.3. Legal Empowerment: illegal micro-credits is still an unsolved problem

The case of Yolanda is important in illustrating how disadvantaged people are denied access to legal credits and as a result are forced to pay extra

¹⁵ The minimal wage in Colombia for 2009 was 497.000 pesos.

costs associated with illegal¹⁶ loans. Like Yolanda, many people in Colombia have to borrow money from an illegal system called '*gota a gota*', (drop by drop) consisting of small loans that people pay back every day or every week. They are very popular in Colombia among the poor because they can get loans without any formality but at the cost of very high interest rates (one of the reports said that people pay sometimes three hundred percent annual interest rate¹⁷). According to one of the prosecutors from a municipality in Colombia, the system works because the moneylenders have contacts with armed groups and people know that if they do not pay the money back, they will pay with their lives. He says, "*Whoever goes to the 'gota a gota' knows what can happen because the speculators cannot charge through legal means, they must be able to do this in other ways.*"¹⁸ This illegal system punishes people with less economic resources to pay extremely high interest rates and condemns them to stay in this circle of poverty.

Even though the income generation program helped Yolanda to break the circle of illegality in which she was trapped and seed capital in this case solved the problem of Yolanda faced, the program did not provide a solution to all users of this unfair and illegal system ('gota a gota'). The process of empowerment showed how displaced persons need access to seed capital to start profitable businesses. However, it also shows the need to understand the reality of the workers in the informal economy and the importance of generating micro-credits that are accessible without several papers and formalities.

6.5. Maria's case: street vendors working within a culture of legal pluralism

Various businesses supported by the program under the category of

¹⁶ In Colombia the state imposed a maximum interest and when people lend money over that limit is consider to be an illegal activity. This is typified in the Colombian criminal law article 305 (in Spanish Código Penal).

¹⁷ From the newspaper El Pais (2010) citing a study made by the USAID (United States Agency for International Development).

‘entrepreneurs’ used labor-intensive activities with low profits that were operating as street vendors (Econometria 2007: 14). For many IDPs the only possibility to generate income was re-selling products on the streets. The case of Maria illustrates the importance of giving people the opportunity to become entrepreneurs even when they do not have clear ideas about the type of business they want to start. Empowering the most disadvantaged among the poor is in fact a challenge and the government must make big efforts in this direction instead of ignoring this population arguing that they are not ready to be entrepreneurs. From the legal empowerment approach, this case also shows that when people are in extremely vulnerable conditions legal institutions are not the best point of departure for empowerment. For the very poor, there is a dilemma of what must be address with more urgency, legal empowerment or basic needs. It is true that people’s businesses should be registered and that they should contribute to social security but they depend on income to satisfy basic needs.

6.5.1. The displacement

Maria is a thirty-six years old woman, one of the 12,765 people forced to move from their homeland in the province of Putumayo (south east of Colombia) during the year 2008 (RUPD 2009). She, her husband and ten children lived on a small farm in a rural area of the municipality of La Hormiga. They had to leave because the paramilitaries came to town and started assassinating people, accusing them of being guerrilla supporters. *"When the guerrilla comes to your farm they do not ask anything, they camp there and you must give them food.... we had no options, if you don't let them stay they will kill you as well"*, said Maria. She and her family moved to the city of Pitalito in 2008 because it was the closest place (approximately one hundred and eighty-five km away from La Hormiga) people said it is to be safe. *"I did not want to move from my land but my husband insisted that this was the only way to be safe...he said paramilitaries will come and kill us for letting guerrilla stay on our land..."*

¹⁸ From the newspaper El Pais (2010) interview with the ex-prosecutor of Aguablanca in Colombia.

they did it with other people there". When they arrived, Maria and her family received support from the government to pay for the first three months of rent and received some food from a humanitarian assistance program. She had to stay at home taking care of her children while her husband was asking for jobs in the city. For Maria's husband it was difficult to find a job because the only thing that he knew was how to cultivate the land. They both attended two years of primary school and the only work they had done before was related to the farm.

6.5.2. Empowering the poorest among the poor

Maria and her husband entered the program with the expectation to receive a subsidy but without a clear understanding of what the aim of the program was. In fact, one of the characteristics of this program is the flexibility and lack of specific requirements to apply and the only prerequisite is to be registered in the official data base of IDPs (SIPOD¹⁹). People apply for the program and then they are called to start the trainings in which they receive all the information about the 'rules of the game'. Then, they must sign a letter of commitment agreeing to attend the workshops and to spend the financial resources according to the program guidance. When Maria first visited the NGO that was developing the program in the city of Pitalito²⁰, a member of the program staff explained to her that she could only receive the money once she had developed a business idea. This was an essential part of the program so people could identify themselves as capable of becoming entrepreneurs. The program was supposed to build up people's capabilities by recognizing their vulnerable condition, their background but also their potentials.

Maria and her husband proposed to make a street stall selling salad fruits; they knew where to buy cheap products and how to prepare them to be sold in the city's downtown. They used the money from the program to buy a small flatbed trailer, some showcases to display their products and the initial

¹⁹ SIPOD is the information system of displaced persons in Colombia (in Spanish Sistema de Información de la Población desplazada).

²⁰ Each region has a local NGO applying the program; in the case of Pitalito it was the Alto Magdalena foundation.

amount of fruits to start their stall. For Maria the most valuable thing in the program was the support that the professionals gave them to help them plan the investment and think about the best way to use their money. *“They helped us to buy the products and they made us find at least three different suppliers so we could choose the cheapest”* said Maria, when she was asked how she would benefit from the program. Before participating in the program Maria, her husband and ten children survived with about 300.000 Colombian pesos a month (150 USD). Her husband worked sometimes in construction but the work was never regular and there were periods with no work at all. According to Maria, with their new business they made about 500.000 Colombian pesos (two hundred and fifty six USD) in the last month and they consider they can make more next month. *“I feel good because I can help my husband preparing the fruits at home and we know that there is money coming everyday”*, says Maria.

This case shows how the program was able to make a difference in participants' life by making them aware of their inner capabilities to become entrepreneurs. It is true that this is not a very profitable activity but now they have an option to meet their basic needs.

6.5.3. Working within a culture of legal pluralism

The process of empowerment, based on increasing assets and capabilities, brought into play people's inner abilities to be active participants of the process. It trusts people's capabilities to make a difference in their lives. However, this one as well as other cases, illustrates how the program was able to make changes in the 'agency' but not in all of the elements of the 'opportunity structure' and then it missed one of the elements of empowerment. It definitely increased the financial assets of Maria and her husband by helping them to buy the raw materials necessary to start their sell. It also increased their business skills showing them the importance to write down their costs and to find the best suppliers for their products. The program worked to make Maria's business idea feasible in the short term, without asking for formal registration or legal documents for her business. The focus of the program was on empowering by financial and management

skills but not through legal tools such as social security and business registration.

Making policy changes and coordinating policies between the national and the local government to legally empower the poor can be extremely complicated. In this case the informal approach of the program to work without any kind of formalities or permissions was a way to solve the institutional constraints to legalize people in the informal economy. People distrust the system of business registration and consider it to be unnecessary and complicated *“Our business is very small and we don’t need to register it in the chamber of commerce...we don’t need to do that because that is only for big businesses”*, said Maria, when she was asked about her business registration. The informal economy for many IDPs is a source of flexible income and they see formalization and legalization as a waste of time.

Although working under conditions of informality was a practical and effective approach to empowerment, there are some legal needs that have to be addressed so that the IGP can attain better results. People working in the informal economy need to have access to social security, childcare and cooperation from the police so they do not live in a hazardous environment, with fear of evacuation by the local authorities.

From the opportunity structure, understood as the formal and informal rules that regulate social life, people were limited by the lack of a clear and empowering policy with regard to street vending. Although Maria did not experience eviction from her street sell, she was doing her business without the formal permission from the municipality and therefore the hazard was constantly there.

In contrast to the legal empowerment of the poor approach, which insists on the importance of bringing workers from the informal economy into legality, the government of Colombia decided to work within the social and cultural norms that operate among the poor. *“We needed to be realistic about the country in which we live and about people’s reality”* says Alonso Botero, program manager²¹. For people with very low education levels and living in a vulnerable condition-as IDPs, business formalities can be

²¹ Interviewed in January 14 2010.

considered unnecessary and oppressive. Instead, working under the assumption that people have different rules to develop their business seemed to be more reasonable for the program to proceed. This idea of legal pluralism recognizes the different customs and norms that are socially accepted and it was in this case a feature that made the program useful for the poor. Although in the documents of the program there was no reference to working within the informality sector, this could be deduced from the program in practice. As one of the managers said, “...it is easy to design programs for start-ups but in reality helping IDPs becoming entrepreneurs is not an easy task”. Informality was then the only realistic option for many of the participants, and government efforts to support their business pursuits inside the informal sector was a valuable approach. Instead of undermining people’s efforts in the informal economy, the program accepted the existence of this culture of legal plurality and worked understanding people’s values and reasons to stay inside this informality.

6.6. Teresa’s case: empowerment as an end in itself

Not all the cases inside the income generation program generated the same results; while some participants were able to expand their businesses (case one and two) or to initiate small micro-enterprises (case three), some others did not succeed in their pursuits. This case is useful to illustrate some of the personal circumstances that prevented people from becoming self-reliant after the program. It also shows how ‘empowerment as an end in itself’ is valuable even when results are not the best, and improving people’s self-esteem could be considered an accomplishment. Teresa was not able to keep her business open after the program intervention. According to an evaluation of the program made in 2007, cases like Teresa’s accounted for twenty seven percent of the population (Econometria: 11) and although the number is not too high, it constitutes a challenge to the government in terms of resource allocation.

6.6.1. The displacement

Teresa is a forty-two women that left the municipality of Ataco (located in the province of Tolima central Colombia, south west from Bogotá) during the year 2004, after being accused by paramilitaries in the region of collaborating with guerrillas. *“...those men (referring to guerrilla) came to my land many times and I had to cook for them and let them stay, but that year paramilitaries also came and they said they were going to ‘clean’ our town”*, said Teresa. She was forced to leave her house and move to Bogotá, after receiving threats by paramilitaries present in that area. Teresa’s husband had left her some years ago so she moved to the locality of Kennedy in Bogotá with her only child (seventeen years old) and stayed at a rented room for two months. Then, she met her new partner there and she moved with him to a small house where they share toilets and kitchen facilities with other four families.

6.6.2. When business pursuits failed

Teresa’s new partner helped her to register in the income generation program. She was very motivated and decided to buy clothes and re-sell them to her neighbors and in the streets near her house. She said she could sell most of the clothes she bought with the seed capital from the program but her business was closed at the moment of the visit and she did not want to continue that sell. The reason for that is that she realized that the clothes business was very hard and now she had a better idea to start one mini-shop, with some of the money she saved from selling the clothes and also working as a cleaner. *“I want to start a ‘todo a diez’ (everything at ten) but I want to have my business on a place and not on the streets...”*, says Teresa when asked about how to continue with her business. This case illustrates one of the main problems of the program and it is the lack of preparation of people to become entrepreneurs.

According to Teresa she thought the clothes business could be her answer but once she tried it she realized the difficulties that were implied. The fact that Teresa had the economic support from her new partner and that her son was not living with her anymore allowed her to be independent from her clothes sell.

6.6.3. Empowerment as an end in itself

Teresa's case illustrates how choosing the right activity to start-up a business can be very complicated and not everyone is ready to become an entrepreneur. However after her failure, Teresa still felt that she had the energy, the assets and the competence to start a new business (*todo a diez*). "*...I know I can do it, I am a hard-working woman and I will keep working to get ahead*". This is perhaps one of the main goals of empowerment as 'an end in itself' and it is: to help individuals recognizing their enormous potential as human beings.

One of the main difficulties of this type of income generation programs is how to work with the different factors that are outside the range of the program. It is not only necessary to increase people's capabilities but also many other externalities that can affect the results. Trying to make IDPs self-reliant was not an easy goal and program managers knew there would be some failures. According to Alonso Botero (government official in charge of coordination of the program)²², "*...we cannot guarantee the success or failure of people's attempts, we think that the program gives strong support but there are many other factors that determine this outcome*". Although it is difficult to determine the level of empowerment when the business failed, the experience of taking the risk to start-up a business showed people that they were capable of generating at least some basic income.

6.7. Legal Empowerment in Practice

These four cases illustrate the story of how increasing assets and capabilities played a crucial role in people's achievement of choice and in the process of empowerment as 'an end in it-self'. First, they show a decision process in which participants were entitled to make the final decisions. Additionally, they state the importance of government support to build assets and

²² Interviewed on January 14, 2010.

capabilities for people that are in vulnerable conditions, like the internally displaced in Colombia. They also showed that empowering people in the informal economy requires using a bottom-up approach that resembled the idea of legal pluralism in order to understand their needs and their rules. Finally, these cases exemplified that empowerment as ‘an end in itself’ is a powerful tool of development and that increasing people’s self-esteem and confidence is as important as increasing their incomes.

Participants were entitled to make the final decisions. They had the spaces to determine: (a) the type of business they wanted to start, (b) how to invest the seed capital, (c) the amount of time dedicated to work, (d) the level of re-investment, (e) the place to work²³ and (f) the way to expand their economic activities further. The essence of the program was people’s own decision on how to structure and develop their business ideas. People with previous experience knew the market and their products, and then the program took those assets and helped them to improve. New entrepreneurs had more difficulties to come up with good and profitable ideas, but the program supported them and helped them to make business plans in order to identify possible constraints and limitations of their business pursuits.

The government played a vital role in empowering people to become entrepreneurs. While empowerment can help people to make better choices to improve their living conditions, it can actually reduce people’s possibilities when they are left alone. Extremely impoverished people such as IDPs needed support from the state to be truly empowered because when people do not have the same opportunities they cannot be asked to perform the same results. However, this type of programs that transfer cash resources to people can also create a culture of dependency when the only thing people care for is the money they will receive, and therefore this is a main constraint to further results.

The fact that the government allowed people to work under their own rules and in the informal economy, without asking for many formalities in their

²³ People could work as street sellers or from their houses and the program did not require them to have a commercial local or place as a pre-requisite. Although there is not much choice when someone has to work on the streets because the profit is not enough to rent a place, the program allowed flexibility inside the reality of informal employment in Colombia.

business pursuits, facilitated the program execution. This could be seen as a bottom-up approach to development, based on the idea of legal pluralism. Making people use formal processes may not only delay processes but also create a feeling of unconformity among participants. Government officials must understand people's reality before formulating programs trying to bring the informal into the formal sector.

After all, Empowerment as an end in itself was evidenced when individuals' attitudes reflected a desire to do better and to keep working on their business pursuits. I consider that participants were empowered by the program even if their micro-enterprises were not that successful, because many of them could aspire for a better future. The program showed in the studied cases that it is possible to start-up and to search for a new live.

From a legal empowerment approach I consider that working under informality was a valuable approach. However there are many criticisms and problems in this type of programs and as I presented in each of these four cases. Working within the informal rules of IDPs and understanding their reality generate some practical results but there are big questions about the long term problems that the government is leaving unresolved. Those are questions for further research into the area of IGP.

6. Conclusions

The main objective of this thesis is to understand the role that legal empowerment plays in the IGP for IDPs in Colombia. After conducting the fieldwork, I have concluded that legal empowerment can contribute to people's freedom, but it can also undermine it. It can enhance people's freedoms when it fosters effective access to justice to protect fundamental rights, as is shown by the use of *tutela* in Colombia. However, legal empowerment can also be perceived as unnecessary, expensive and useless when it seeks to formalize the businesses of poor people working inside an informal economy.

Tutela in Colombia: a tool of legal empowerment

“Even the best laws are mere paper tigers if poor people cannot use the justice system to give them teeth” (CLEP)

This case study exemplifies the importance of endowing vulnerable people such as the IDPs with legal tools that allow them to access the justice system. This was the first pillar of the commission of legal empowerment of the poor and consists of making the law work for everyone. The Colombian case is a practical model of how legal empowerment of the poor that promotes access to justice is essential to protect people's rights. It showed that in Colombia IDPs are legally empowered by the action of *tutela* and they can claim the protection of their rights in the courts.

Although IDPs in Colombia still suffer from exclusion and the government has not been able to actively protect them, they are aware of their rights and they will keep fighting to demand effective protection. Unfortunately, the complexity of the displacement in Colombia will need more than legal empowerment to be fully resolved. There will be still more *tutelas* and more court decisions demanding rights protection. Legal empowerment is a powerful tool, but it is also limited by circumstances depending on the entrenched social realities of a society. A non-ending conflict, powerful elites, government corruption and market constraints, among other factors, are inalterable through legal empowerment. One must acknowledge the

macro-structures that determine our lives and that legal reform is only one battlefield along the journey towards of poverty reduction.

Legal Empowerment in the Informal Economy

Understanding people's reality and their legal needs is essential for any type of legal empowerment strategy. When I first looked at the program of income generation I thought that it was problematic to allow the creation of businesses in the informal sector. I wondered why this program did not include any strategy to formalize people's businesses to become covered by the law. I thought that new entrepreneurs needed to register their business and to understand the importance of following legal duties.

However, after interviewing program managers and mostly the participants of the program, I was able to better understand their reality and their needs. I saw that the poorest among the poor are, logically, not worried about legal formalities, but simply about generating a basic income. People in the informal economy do not stay away from business registration because the laws are unfair or inefficient, as proposed by the CLEP. They keep their small business pursuits informal because they are instead primarily concerned with meeting their everyday needs. Legal empowerment through the formalization of informal businesses was not a priority for the IDPs in Colombia.

Legal empowerment: a bottom-up approach

Legal empowerment for people working within the informal economy must be based both on people's legal needs and on the circumstances of their realities. The interviews conducted for this research showed that although the program was able to address empowerment as an end in itself, it neglected legal reforms that are necessary to protect informal businesses. Following the fieldwork, there were three legal problems that remain unresolved in the Colombian policy of income generation for IDPs. First, there is a need to have a social security system that is accessible by people working in the informal economy. Secondly, the absence of a micro-credit system that is available and provides financial services for the poor. Finally, there must be a national policy in regard to street vendors that allow them to sell under certain rules and protect them from evictions.

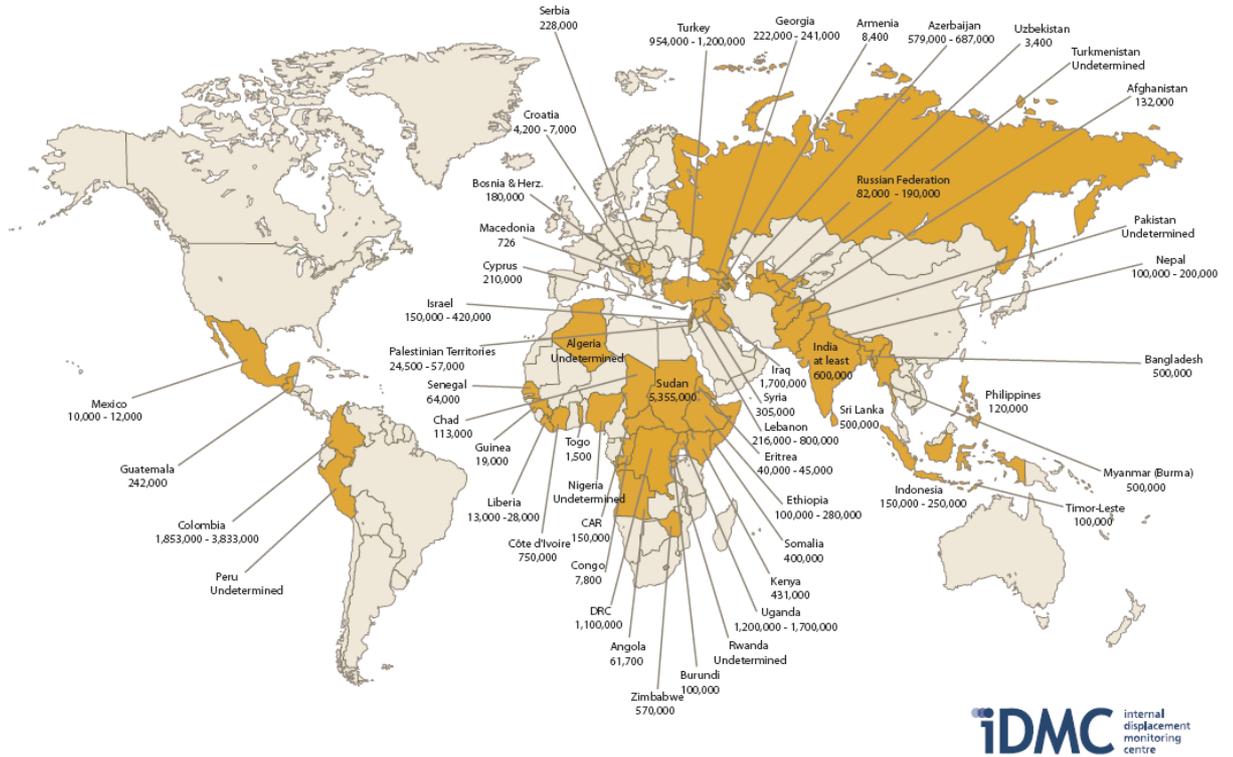
Intrinsic Legal empowerment: the rights approach to development

Finally, this research helps to show that there is dimension of legal empowerment that goes beyond the four pillars proposed by the CLEP. This is the rights based approach to development and consists of making development programs to answer people's rights. Although the income generation program did not include any specific tools of legal empowerment and worked outside the legal system, it took people's fundamental rights as a priority.

The program used the idea of legal empowerment from a different approach than that proposed by the CLEP. People's rights are a priority in guiding the program and it supports people in their productive projects because that is their right. IDPs know that they have the right to be supported in their productive projects and know that they have legal actions in case the government fails to protect this right.

Although the program did not have an explicit approach of legal empowerment, it arose as a result of people's legal empowerment, but it also put people's rights as the program priority. It was the fruit of legally empowered people that accessed the courts to demand government support. And although the program itself did not follow the postulates of legal empowerment in the informal economy, it made people aware of their capabilities and assets. In this sense it empowered IDPs to see themselves as capable to make changes in their personal lives to improve their living conditions. In other words, it was a tool of empowerment as an end in itself.

Appendix 1: Internally Displaced People Worldwide 2006



Source: IDMC 2006

The map shows the most recent available estimates for each country affected by conflict-induced internal displacement. The figures come from a variety of sources. In several cases, estimates have not been updated recently, or do not cover all parts of a country or certain groups of IDPs. See the table in the Annex for a full annotated list of IDP estimates by country, including sources and dates.

Appendix 2: Interview Format
 Legal Empowerment of IDPs in Colombia
 Date: _____

Personal Information	
Age: _____	Gender: F M
Level of Education in years: 1 - 2 - 3 - 4 - 5 - 6 - 7 - 8 - 9 - 10 more: _____	Total family members: _____
Family composition: _____	Single Parent: SI NO
City of residency: _____	State: _____
Neighborhood: _____	
Background: Situation before the displacement	
City of residency before the displacement: _____	State: _____
Date of the displacement: _____	Activity or occupation before the displacement: _____
What was the reason of the displacement? _____ _____	
Participation in the Income Generation Program	
Type of participation: a. Job placement b. Entrepreneurship c. Strengthening	Type of economic activity: Sells - vendor Sewing shop Wood Workshop Small (local) grocery store Shoe manufacture Other: _____
Does your business have an operating license? YES NO	Where is your business located: Home Retail space Street Other: _____
The business is still operating at the moment of the interview: YES NO	Describe why the business is not operating: _____ _____
How much was your income before the program? _____ What is your current income? _____ How much did you earn in the last month? _____ Do you have access to social security (health and pension)? _____ What were your reasons to select this type of economic activity? Describe how you started your business? _____ _____	
How could you improve your business and your profits? _____ _____	
Describe the personal benefits of having starting your own business? _____ _____	
Describe how did you benefit from participating in the income generation program? _____ _____	

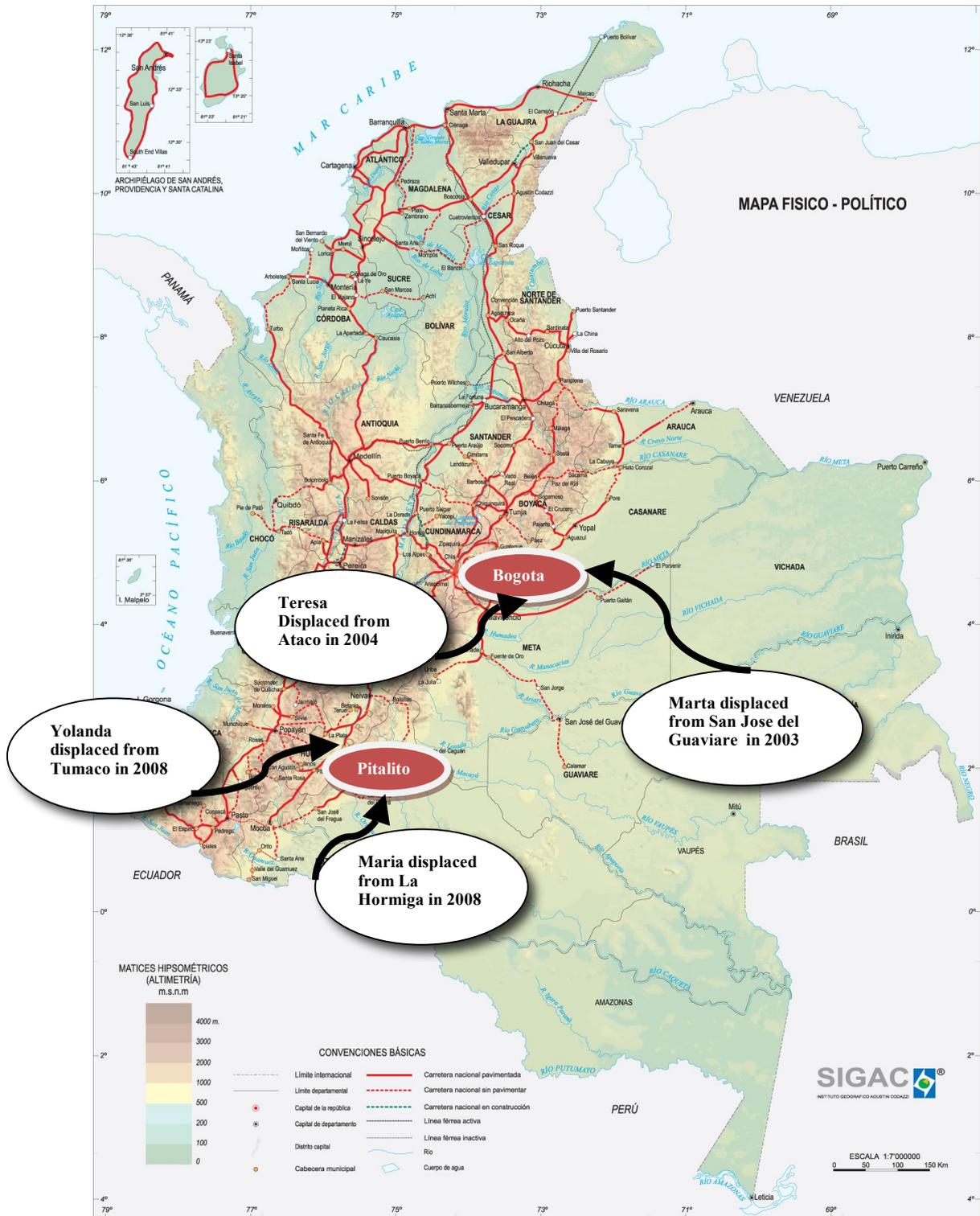
Appendix 3: Conducting and recording the interviews

The interviews were all conducted and transcribed by myself. I audio recorded some of the interviews (when participants agreed on that) and made handwritten field notes of my observations whilst the tape was recording. This enabled me to record visual data and to take notes about people's attitudes, house conditions work conditions that otherwise would have been lost or unavailable to me if I only rely in the recorded tapes.

The interviews were conducted between the 5th and the 22nd of January of 2009, around one month after the informants finished their participation in the program activities and also after they received the seed capital of eight hundred USD. This time specifications have two important connotations one is that it was difficult to see how successful a business can be after only one month of operation (for the newly businesses) but it suit the aim of the research of getting participants descriptions on legal empowerment. Making the interviews one year after the program was conducted would have obscured many of the rich details about participants' relations with the program and the way this affected their lives.

At the end of each day I went back to my working place and used my notes and the recorded interviews to extend the notes making a selective transcript of the issues that were interested and related to the research. However when I made the transcripts I transcribed the exact words used for the informants and I made a clear differentiation of participants descriptions versus my own descriptions.

Appendix 4: Life Stories located in the Colombian Geography



Executive Summary

In the last years, the ‘legal empowerment of the poor’ approach has asserted that one of the reasons why disadvantaged people are trapped in poverty is that they are not covered by the rule of law. This international debate became very active after 2008 when the Commission on Legal Empowerment of the Poor (CLEP) published a report based on an extensive research. The report states that poor people must be allowed to use the law and to exercise their rights to be active drivers of their development. It states that development programs must include legal empowerment tools, so people can take advantage of their rights and improve their living conditions (2008: 3).

Research question

To look at legal empowerment in practice, I studied a specific development program for Internally Displaced Persons (IDPs) in Colombia. This program was designed to help IDPs to become economically self-reliant by starting their own micro-businesses. The research question that guided this study was: what is the role of legal empowerment in the income generation program for IDPs in Colombia? I wanted to examine both the program design and the application of the program in order to assess how legal institutions influence people’s lives in reality.

Theoretical Framework

This study is part of the field of ‘empowerment and development studies’. The main postulate of this approach is that people are the primary actors in their own development and therefore they must have the capabilities and the freedom to work towards the improvement of their own lives (WB 2008). Empowerment in development studies has been seen as a ‘means to an end’ or an ‘end in itself’. It is a ‘a means to an end’ when it can modify people’s welfare by giving them tools to effectively change their lives. It is also an ‘end in itself’ when it builds people’s capacities, allowing them to take action over their lives, regardless of the final results (Freire 1988: 114). I have focused on legal empowerment and the role that plays inside development programs, although empowerment includes social, economic, and psychological aspects, among others. Legal empowerment as

understood in this research project, is the use of the rule of law to increase the freedom and capabilities of disadvantaged people (CLEP 2008). From a practical approach it ensures that the poor have effective access to justice and enjoy property, labor and business rights.

The area of legal empowerment is a well-contested field and many critics have been made the above outlined position. One of the critics refers to the application of legal empowerment in developing countries, where there are high levels of informality and people do not usually trust the institutions. Faundez (2009: 156) defends the argument that in developing countries people do not always see the law and the formal institutions as a solution to their needs. They distrust many of the state institutions and therefore legal empowerment must be contextualized to understand people's special needs. This research aims at contributing to this discussion by looking at the issue of empowerment from two angles : first looking at the use of law to generate access to justice and protect people's rights and second looking at legal empowerment that aims to answer the specific legal needs of the poor.

Program Description

The program of income generation for IDPs studied in this research is a government response to a big humanitarian crisis that has left many families in Colombia facing extreme poverty. With more than three million affected people, Colombia has the second largest number of IDPs in the world, after Sudan (ACNUR 2007). IDPs have been forced to move from their lands as a consequence of the internal armed conflict in Colombia²⁴. In essence this makes them refugees inside their own country.

One of the main challenges facing IDPs is their need to generate a basic income to satisfy their essential living needs. They arrive from the rural areas into the cities and find it enormously difficult to get jobs in order to provide for their families. To address this problem, in 2006 the Colombian government initiated a development program to help IDPs to start their own businesses. This program was based on the idea that people need income

²⁴ This armed conflict has affected Colombia for more than forty years and it is currently the result of constant confrontation between leftist guerrillas (FARC and ELN), right wing armed groups (paramilitaries) and the national army.

from economic activities in order to become self-reliant and exit aid dependency. The program supported IDPs in various ways such as providing them with business skills training and seed capital to initiate their small economic activities.

Methodology

To conduct this research I made a case study of the program of income generation and conducted interviews, observations and document analysis. I conducted thirty interviews in the cities of Bogota and Pitalito and visited participants' new micro-business. The fieldwork which I conducted collected information on participants' background, socioeconomic situation and their participation in the program. After conducting the interviews I selected four life stories that illustrate specific features of the program in relation to legal empowerment. These stories are useful to see what development programs can do to empower the poor and their legal needs. This is a qualitative study and the conclusions illustrate in detail people's reality and the role that law institutions play in their lives.

Legal empowerment as access to justice

The legal analysis of the program's objectives and history enable this research to see the importance that access to justice has inside the field of legal empowerment. The program of income generation for IDPs was the result of a legal empowerment process in Colombia. According to the Colombian law IDPs have the right to be supported to become economically self-reliant and be able to satisfy their needs in the new places of residency²⁵. However the government tried to avoid this obligation for many years arguing that this was not its responsibility.

The government created this program of income generation only after 2004, when more than one thousand families of IDPs used a legal action called 'tutela' to demand protection of their rights. This program was the result of a court decision (T-025-04) ordering the government to stop the continuous violation of IDPs rights. It commanded the national government to effectively support IDPs to generate their own income.

²⁵ In the constitution, this is state as the right to have access to 'minimum vital' income to survive.

The action of ‘tutela’ in this case is a tool of empowerment that allows poor people to have effective and real access to justice. It shows that disadvantaged people in Colombia can be active drivers of their development when they can access the courts to claim the protection of their fundamental rights. The action of ‘tutela’ is a unique tool of legal empowerment that is effective because it is prompt and available to everyone. It is prompt because judges have only ten days to answer this claim and the rights must be protected immediately after the judge decision. It is also available to everyone because it can be filed without a lawyer and people only need to state the fundamental right that is violated. It is also important because the constitutional court, which is the judge in charge of reviewing these lawsuits, has continuously decided in defense of people’s rights. The use of ‘tutela’ by IDPs is an example of what legal empowerment can do for the poor in practice.

Legal empowerment in business rights

I look at the implementation of the income generation program in two cities in Colombia to understand the role of legal empowerment in practice. I conducted thirty interviews to obtain a better understanding of the program application. My study shows how most of the businesses were in the informal economy and people were not asked to have any kind of previous knowledge to participate in the program. The government decided to work under informal conditions to be able to access the reality of IDPs and to answer their need to generate income in the short term. These cases show how the program of income generation was not applying directly the ideas of legal empowerment and instead was working under informal circumstances.

The program instead empowered IDPs in a different way, making them able to aspire for a better future and supporting them to satisfy their basic needs. This case illustrates that empowerment can be ‘end in itself’, understood as increasing people’s capacities to make purposive choices in their lives (Alsop et al., 2006). Participants were entitled to make the final decisions inside the program. They had the spaces to determine: (a) the type of business they wanted to start, (b) how to invest the seed capital, (c) the amount of time dedicated to work, (d) the level of re-investment, (e) the

place to work and (f) the way to expand further their economic activities. The essence of the program was people's own decision on how to structure and develop their business ideas. So people were empowered in general terms but there was not specific reference to legal empowerment.

However, conducting the fieldwork allowed me to understand three legal problems that remain unresolved in the Colombian policy of income generation for IDPs. First, there is a need to have a social security system accessible for people working in the informal economy. Second, there is an absence of a micro-credit system that is available and provides financial services for the poor. Finally, there must be a national policy in regard to street vendors that allow them to sell their products under certain rules and protect them from evictions.

Conclusions

This research has shown how legal empowerment of the poor is a contextual and practical matter that must address the special needs of the poor. In fact, empowerment can contribute to people's freedom but it can also undermine it. It can enhance people's freedoms when it fosters effective access to justice to protect fundamental rights, as with the use of *tutela* in Colombia. However, legal empowerment can also be perceived as unnecessary, expensive and useless when trying to formalize the businesses of poor people working inside the informal economy. Working in the informality was a practical solution and it was an effective way to empower IDPs in the short term. However not looking at the problem from a more holistic approach can be problematic because it is solving the need of income of IDPs in the short term and overlooking longer term structural problems.

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