



FAR BEYOND WHAT IS MEASURED:  
GOVERNANCE FEMINISM AND  
INDICATORS IN COLOMBIA\*

*MÁS ALLÁ DE LO QUE ES MEDIBLE:  
EL FEMINISMO DE LA GOBERNANZA Y  
LOS INDICADORES EN COLOMBIA*

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## ABSTRACT

This article analyzes how power feminism, a mainstream feminist trend in international legal discourse, was incorporated into the Colombian legal system through the process of design and discussion of indicators to measure the Colombian government's compliance with the Constitutional Court's orders regarding internal forced displacement in the country. To do so, this paper examines the participation of Corporación Sisma Mujer, one of the most well-known Colombian women's rights NGOs, in the debates inside and outside the Constitutional Court that led this Court to adopt a battery of indicators to track internally displaced women's *effective enjoyment of rights*, and in general a women-sensitive approach to forced displacement. To unveil the theoretical foundations of Corporación Sisma Mujer's interventions and strategies before the Constitutional Court, this article combines a theoretical approach with documentary research and interviews. Nancy Fraser's paper *Rethinking the Public Sphere*, and Janet Halley, Prabha Kotiswaran, Hila Shamir and Chantal Thomas' concept *governance feminism* constitute the basic theoretical framework. Documents drafted by Sisma Mujer and Constitutional Court decisions that accepted, appropriated and transformed Sisma's claims are analyzed through the lens of Fraser and Halley, Kotiswaran, Shamir and Thomas' theoretical contributions. Interviews with Sisma's staff, and with other relevant actors complement what is found in documents and judicial decisions.

**Keywords:** power feminism; governance feminism; indicators; internal forced displacement; women; global governance

## RESUMEN

*Este artículo analiza cómo el feminismo del poder (power feminism), una corriente feminista en el discurso jurídico internacional, se ha incorporado en el ordenamiento jurídico colombiano por medio del diseño y discusión de indicadores para medir el cumplimiento del gobierno colombiano de las órdenes de la Corte Constitucional sobre desplazamiento forzado interno en el país. Para lograr lo anterior se analiza la participación de la Corporación Sisma Mujer, una de las ONG promotoras de derechos de las mujeres más conocidas en Colombia, en los debates dentro y fuera de la Corte Constitucional que llevaron a esta Corte a adoptar una batería de indicadores para hacer seguimiento al goce efectivo de los derechos de las mujeres desplazadas y, en general, a implementar un enfoque sensible a las mujeres en el análisis del desplazamiento forzado. Para conocer los fundamentos teóricos de las intervenciones y estrategias usadas por la Corporación Sisma Mujer ante el Alto Tribunal Constitucional, este artículo combina una aproximación teórica con investigación documental y entrevistas. El texto de Nancy Fraser *Rethinking the Public Sphere*, y el concepto del feminismo de la gobernanza (governance feminism) de Janet Halley, Prabha Kotiswaran, Hila Shamir y Chantal Thomas constituyen el marco teórico básico. Los documentos elaborados por Sisma Mujer y las decisiones de la Corte Constitucional que aceptaron, apropiaron y transformaron las afirmaciones de Sisma, se analizan desde la perspectiva de Fraser y los aportes teóricos de Halley, Kotiswaran, Shamir y Thomas. Entrevistas con el personal de Sisma, y con otros actores relevantes complementan lo encontrado en los documentos y en las decisiones judiciales.*

**Palabras clave:** *Feminismo del poder, feminismo de la gobernanza, indicadores, desplazamiento forzado interno, mujeres, gobernanza global*

## SUMMARY

INTRODUCTION.- I. PUBLIC SPHERES AND GOVERNANCE FEMINISM.- II. GLOBAL GOVERNANCE LANDS IN COLOMBIA: IDPS SHIFT THE BOUNDARIES BETWEEN NATIONAL AND INTERNATIONAL AFFAIRS.- III. SISMA MUJER AND GOVERNANCE FEMINISM.- IV. POWER FEMINISM IN COLOMBIA: GOVERNANCE FEMINISM THROUGH THE DEBATE ON INDICATORS.- CONCLUSION: WHAT THIS POWER MEANS.- BIBLIOGRAPHY.

INTRODUCTION<sup>1</sup>

This article analyzes the participation of Sisma Mujer, a Colombian women's human rights non-governmental organization (NGO), in the design of a set of indicators to measure the Colombian government's compliance with the Constitutional Court's orders regarding internal forced displacement in Colombia. It shows how the process of constructing reliable instruments to determine the Colombian government's performance was a favorable scenario to further the interests of an organization like Sisma, to transform its agenda into specific parameters for lawmaking and public policy design, and to promote its interpretation of international law. A closer look at the debates about the indicators, which started in 2005, unveils the selective nature of acceptance and resistance to dominant feminist discourses, and helps to understand how governance feminist discourses are incorporated and translated in Colombia. Although the growing international community's pressure on global South States like Colombia was intensely felt, starting in the seventies, through the prioritization of migration administration and regulation of gender offenses by international law, Sisma's intervention in the indicators debate demonstrates that governance from the global North on the global South is not exempt from modulation and opposition. In the indicators debate, Sisma found an avenue to integrate its *counterpublic* notion of public good into a mainstream state narrative, transforming itself into a *governance feminism* that speaks through the voice of a *strong public*, in this case the Constitutional Court, within the frontiers of the country.

The article uses a theoretical approach combined with documentary research and interviews. Nancy Fraser's paper *Rethinking the Public Sphere*, and Janet Halley, Prabha Kotiswaran, Hila Shamir and Chantal Thomas' concept *governance feminism*

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1 The author of this paper worked as a lawyer for Sisma Mujer from January 2007 until September of that same year. She participated in the Constitutional Court's hearing that led to Writ 092/08. Also, she drafted some parts of the legal memorandum that was filed to the Court that day. She was not involved in the indicators debate.

constitute the basic theoretical framework to analyze the strategies Sisma Mujer employed to participate and succeed in this scenario, and to determine what kind of feminism lay behind their advocacy for women's rights through indicators before the Constitutional Court. Documents drafted by Sisma Mujer and Constitutional Court decisions that accepted, appropriated and transformed Sisma's claims are analyzed through this theoretical framework in order to identify the basic contents of the NGO's strategy and to delineate its understanding of feminism. Interviews with Sisma's staff, and with other relevant actors complement what is found in documents and judicial decisions, and help to understand the political and legal stakes Sisma faced when it decided to participate in the indicators discussion.

This paper is divided into five sections. The first section, primarily theoretical, elaborates on the concepts of *public sphere*, *public opinion* and *governance feminism*, and on their usefulness for furthering the analysis proposed by this paper. The second section provides a brief context of Colombia's human rights situation between the 1980s and early 2000s, and describes how the influence of global governance and the call for indicators were felt in the country through the growing attention paid by the international community to the situation of internally displaced persons (IDPs). It also explains how a different set of actors, ranging from the government itself to the Constitutional Court, NGOs and international organizations, incorporated and translated this international law narrative into local discourses through law and policymaking, advocacy and litigation. The third section offers an overview of Sisma Mujer, of the political and legal context in which the NGO emerged, and its translation of power feminism into vernacular language through the interpretation of international and national law on IDPs. The fourth section examines the debate on indicators held in the Constitutional Court, and the strategies Sisma employed to participate in that discussion and to instill its vernacular power feminism into the devices designed to measure IDPs' effective enjoyment of rights. Finally, the last section offers some conclusions and

poses new questions regarding what was gained and lost through the translation of power feminism into indicators.

## I. PUBLIC SPHERES AND GOVERNANCE FEMINISM

Analyzing Sisma's intervention in the debate on indicators in Colombia requires the deployment of some theoretical tools to organize the facts and unveil the strategy behind an advocacy action employed by a national NGO. This set of concepts also helps to make visible the interactions between the global North and global South, and to determine the consequences of a political move that at first sight seemed limited to affecting the domestic debate (Colombian State's non-compliance with Constitutional obligations) around a domestic problem (forced displacement due to armed conflict).

Generally speaking, human rights NGOs, such as Sisma, are *public actors* that participate in *public spheres* with the goal of establishing or influencing *public opinions*.<sup>2</sup> Following Jürgen Habermas, a purist understanding of *public sphere* indicates that it is a body constituted by private persons with the objective of deliberating on public issues in order to establish through rational consensus the common good or *public opinion*.<sup>3</sup> Habermas' depiction has been contested by Nancy Fraser in different aspects, but for the purposes of this paper it suffices to say the following: Habermas' definition of *public sphere* intended to draw a pristine differentiation between state officials and private persons. Only the latter are included in the *public sphere*. Fraser has pointed out how the introduction of parliaments in states' structures incorporated early on a *public sphere* within the state, blurring Habermas' distinction. This conclusion led her to

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2 Though not every NGO intends to become a public actor, as some of them focus on other areas, such as the provision of care services or entertainment, human rights NGOs usually want to engage in public debates and contribute to the formation of public opinion. Sabine Lang, *NGOs, Civil Society, and the Public Sphere* (Cambridge University Press, New York, 2012). Available at: <http://ebooks.cambridge.org/ebook.jsf?bid=CBO9781139177146>

3 Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, 27-56 (MIT Press, Cambridge, Massachusetts, 1991).

propose that two kinds of publics take part in the deliberation practice, ones “whose deliberative practice consists exclusively in opinion formation and does not also encompass decision making”, and other ones, like parliaments, “whose discourse encompasses both opinion formation and decision making.” She named those publics *weak* and *strong*, respectively. Fraser also noted that although Habermas identified the existence of more than one *public sphere*, he did not analyze the competing arguments, narratives and interactions among them, devoting his argument only to examining what he called the bourgeois *public sphere*. For Fraser, this left outside the picture *subaltern counterpublics*, or “parallel discursive arenas where members of subordinated social groups invent and circulate counter-discourses.”<sup>4</sup>

Fraser later highlighted an additional dilemma: the Westphalian nature of Habermas’ concept. That refers to the setting in which the *public sphere* is located theoretically and the essential premises for its functioning. In brief, her critique is related to the requirement of a strong and sovereign state in order to have functional *public spheres*. The presence of the state was key in Habermas’ conception for determining who participated in *public spheres* (citizens) and to whom the public opinion was conveyed (the state). Today governance from global North to South, transnationalization, and intensified migration, among other phenomena, have made the boundaries of the nation-state porous. Deliberation over the common good now takes place globally, and the problems of inclusion/exclusion of public deliberation have been globalized. Currently, the understanding of what a *public sphere* is, and how the different *strong* and *weak* publics interact through it, entails a broader vision in which the relations between international/national constituencies, priorities and concerns must be taken into account.<sup>5</sup>

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4 Nancy Fraser, *Rethinking the Public Sphere. A Contribution to the Critique of Actually Existing Democracy*, in *Justice Interruptus: Critical Reflections on the Post-socialist Condition*, 69-98 (Routledge, New York, 1997).

5 Nancy Fraser, *Transnationalizing the Public Sphere: On the Legitimacy and Efficacy of Public Opinion in a Postwestphalian World*, in *Scales of Justice: Reimagining Political*

*Public actors* craft and assume political and legal narratives to promote their idea of common good. Those narratives can be *mainstream* discourses, widely accepted and acknowledged by *strong publics*, such as human rights, or can represent *counter-discourses*, widely contested and not appropriated by *strong publics'* narratives, like gender deconstruction or anarchy. NGOs typically use a combination of both discourses to advance their objectives, a strategy that allows the *public actor* to paraphrase a widely contested goal by framing it in mainstream language. Feminist and LGBTI [Lesbian, Gay, Bisexual, Transgender and Intersex] NGOs illustrate this approach when they use human rights discourse to address widely contested issues, such as abortion, gay marriage and adoption, surrogacy, etc. Discourses are not static, nor is their categorization as mainstream or counter-discursive. They mutate and are refined, and what today is viewed as widely accepted may have been widely contested earlier.

Women's equality and violence against women are some of those subjects that have made that transition from widely opposed to widely acknowledged. In many jurisdictions, most basic feminist claims have been achieved at least formally, and women's human rights, states' obligation to ensure equality, and gendered offenses are now part of the political and legal mainstream narratives at the domestic and international levels. Approval and ratification of international and regional treaties, such as the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Rome Statute with its incorporation of sexual violence and persecution based on gender, the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Belém do Pará), and the existence of international agencies, such as the United Nations Committee on the Elimination of Discrimination against Women, CEDAW Committee, or the Inter-American Commission on Women, CIM (after its name in Spanish), devoted to this problematic, proves that some feminist

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*Space in a Globalizing World*, 76-99 (Columbia University Press, New York, 2009).



discourses have had impact on the international community and have found their way into the mainstream narrative. Janet Halley, Prabha Kotiswaran, Chantal Thomas and Hila Shamir call this move *governance feminism*, and characterize it as an “incremental but by now quite noticeable installation of feminists and feminist ideas in actual legal-institutional power.”<sup>6</sup>

*Governance feminism* finds its place in the broader concept of global governance which “denotes governance beyond the state.”<sup>7</sup> The crisis of the Westphalian nation-state and the appearance of new national and international non-state actors, such as NGOs, international and multinational organizations, have altered the way in which national and international legal regulations are hewed. Currently, there is a transnational public sphere where those actors interact and shape the hard and soft law that regulates international and domestic matters. In this scenario, some feminist movements and claims have found fertile ground to gain traction, and to shift their position from counterpublics to stable mainstream publics recognized by the narratives of strong publics like the United Nations Assembly, Security Council, and international ad-hoc tribunals.<sup>8</sup>

As Hila Shamir observed, governance feminism is a descriptive category with no normative pretention, “it signifies a certain form of power—which in itself is not *necessarily* bad—, but the fact that it is feminist does not make it necessarily good either.”<sup>9</sup>

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6 Janet Halley, Prabha Kotiswaran, Hila Shamir & Chantal Thomas, *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29 *Harvard Journal of Law and Gender*, 2, 335-423, 340 (2006). Available at: <http://www.law.harvard.edu/students/orgs/jlg/vol292/halley.pdf>

7 Kevin E. Davis, Benedict Kingsbury & Sally E. Merry, *Indicators as a Technology of Global Governance*, 46 *Law and Society Review*, 1, 71-104, 80 (2012).

8 Janet Halley, Prabha Kotiswaran, Hila Shamir & Chantal Thomas, *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29 *Harvard Journal of Law and Gender*, 2, 335-423, 340-347 (2006). Available at: <http://www.law.harvard.edu/students/orgs/jlg/vol292/halley.pdf>. Janet Halley, *Rape at Rome: Feminist Interventions in the Criminalization of Sex-Related Violence in Positive International Criminal Law*, 30 *Michigan Journal of International Law*, 1, 1-123 (2009). Available at: <http://www.law.harvard.edu/faculty/jhalley/cv/Rape.at.Rome.pdf>

9 Janet Halley, Prabha Kotiswaran, Hila Shamir & Chantal Thomas, *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Traf-*

When Halley, Kotiswaran, Shamir and Thomas used it in their seminal article on rape, prostitution, sex trafficking and sex work, the category helped them to identify how certain feminist discourses dominated the understanding of those phenomena, and permitted them to criticize the particular consequences of a specific feminist stance, especially when it makes its way into the law. Therefore, governance feminism is an analytical category that exposes the agenda for which feminists are advocating nationally and internationally, how that agenda affects and conditions lawmaking, and by which strategies that agenda makes its way into the international and national strong publics.

Feminism is a multifaceted area of knowledge that groups multiple theories, explanations and solutions for one common problem: discrimination against women.<sup>10</sup> There is not a unique feminist theory but multiple ones aiming to explain the origins of discrimination and its possible solutions. Some theories stress structural domination of men over women, some highlight the non-structural contribution of culture, and others emphasize the pervasiveness and disperse nature of power. Not all of them have found a space in the rhetoric of global governance and its strong publics, and therein lies the usefulness of governance feminism in identifying which feminist discourses govern the global and local understandings of discrimination against women and of the precise actions to overcome it in a given time.

Janet Halley, Prabha Kotiswaran, Hila Shamir and Chantal Thomas have demonstrated that *power feminism* has made its way into mainstream accounts of discrimination against women in the globalized world.<sup>11</sup> This feminism, which finds

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10 Janet Halley, *Split Decisions: How and Why to Take a Break from Feminism*, 17-20 (Princeton University Press, Princeton, New Jersey, 2006).

11 Janet Halley, Prabha Kotiswaran, Hila Shamir & Chantal Thomas, *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29 *Harvard Journal of Law and Gender*, 2, 335-423, 360 (2006). Available at: <http://www.law.harvard.edu/students/orgs/jlg/vol292/halley.pdf>

in Catharine MacKinnon its most representative, public, and combative figure, has developed a structural understanding of patriarchy as a power that creates the sexes and endorses heterosexuality. In this fashion, male domination over women is sexual and is engrained in every manifestation of daily life, in the public and private spheres, in economics, politics, culture, etc. The prevalent presence of sex and sexuality in society and in the state has created a disempowered subject whose destiny is victimization as long as the structure remains undisputed and unaltered: women. All what is defined as women, that is, anybody who is feminized, endures discrimination, no matter his or her class, race, ethnicity, even sex, because feminized men can experience the same fate as biological women; men in jobs traditionally related to women will earn less, indigenous men will be perceived as lacking capacity to decide, in the same way women have been treated for centuries. Feminism in this version is a totalizing and expansive theory that explains any discrimination found in society, and that places its accent on the sexual nature of the domination. Therefore, its particular agenda has heavily underscored the features of the sexualized nature of its understanding of discrimination: sexual violence, sex work, and sex trafficking.<sup>12</sup>

For power feminism, women are a group, no matter their economic, social and racial differences, since they suffer the same discrimination, and that discrimination is ubiquitous. Sexual domination is incorporated in the state and the law; therefore, a feminist legal project would be to change the law and to promote the inclusion of the discriminated sex, and to expand the causes of action to take women's victimhood experiences into the courts. Power feminism would fight impunity of the crimes perpetrated by male domination, and would see in every woman

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12 Janet Halley, *Split Decisions: How and Why to Take a Break from Feminism*, 39-56 (Princeton University Press, Princeton, New Jersey, 2006). Catharine MacKinnon, *Toward a Feminist Theory of the State*, see particularly chapters 6 and 7 (Harvard University Press, Cambridge, Massachusetts, 1991).

standing in court the embodiment of all women subjected to discrimination.<sup>13</sup>

It is not a coincidence that MacKinnon's power feminism became the *lingua franca* of women's discrimination, the governance feminism that has influenced international prosecutions, the drafting of the Rome Statute, and Security Council resolutions, among others. First, it is a theoretical framework developed in the United States, spoken in English, and minted in one of the most visible and influential academic environments of the world. Second, the theory itself is sufficiently abstract, related to every woman without distinction, as to fit perfectly into the human rights narrative. Third, it has a magnetic appeal, for women and for states as well, with its calls to criminalization, legal enforcement, and identification of state obligations that do not hold directly on economic and social rights.<sup>14</sup>

The case explored in this paper exhibits the interactions between governance feminism and its local reception through the analysis of the debate on indicators. As power feminism has had a significant impact on international law, its governance over national public spheres, and weak and strong publics, implies an important translation of international regulation into the domestic recipients and interpretative communities through the incorporation of its terms and goals into the mainstream discourses and counter-discourses.<sup>15</sup> As will be explained in the following sections, it is not a coincidence that governance feminism found in Colombia a fertile ground to expand its influence in the discussion on the situation of IDPs, another international law and global governance subject.

The indicators debate that the Constitutional Court initiated officially in 2005 to measure Colombia's compliance with its

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13 Catharine MacKinnon, *Toward a Feminist Theory of the State*, 86, 237-249 (Harvard University Press, Cambridge, Massachusetts, 1991).

14 Karen Engle & Annelies Lottmann, *The Force of Shame*, in *Rethinking Rape Law: International and Comparative Perspectives*, 76-91 (Clare McGlynn & Vanessa Munro, eds., Routledge, Abingdon, Oxon, United Kingdom, 2010).

15 Sally E. Merry, *Gender Violence: A Cultural Perspective* (Wiley-Blackwell Publishing, Malden, Massachusetts, Oxford, 2009).

orders is an instructive setting to observe global governance and governance feminism in action. Indicators have been understood as technologies of global governance, that is to say, they are devices that impact and administer the distribution and forms of power beyond and among the states. Depending on who uses the indicators and how they are presented, they are capable of affecting decision-making at a global and local level. Their effectiveness stem from their halo of objectivity.<sup>16</sup>

Usually, indicators simplify raw and disorganized information, and sort it out in methodical categories that receive names that supposedly reflect a given reality.<sup>17</sup> However, those tags do much more than that, because they also create and distort the reality that is being measured. For instance, the indicator for the rule of law is not based on the measure of a single fact, but tracks several manifestations of what the indicator's designers consider constitutes a complex concept called the rule of law.<sup>18</sup> Therefore, the indicator does not mirror a single object or social fact that could be easily identified and followed in reality, but it tracks a concept that comes to life in the very same moment is traced. Indicators mix concepts and numbers, but generally the concepts and their genesis stand behind the powerful presence of the number. Thus, the history behind the concepts' design, its abstraction, elaboration, and sometimes unreality, disappears behind the veil of objectivity that numbers have. Indicators are powerful because their sole presence in papers and documents claims transparency, efficiency, and impartiality, and make their audience forget or disregard their conceptual basis, and therefore the biases that every conceptual design implies. In this fashion, they are influential governance technologies, since they are not only capable of halting conceptual discussions, and

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16 Kevin E. Davis, Benedict Kingsbury & Sally E. Merry, *Indicators as a Technology of Global Governance*, 46 *Law and Society Review*, 1, 71-104, 80 (2012).

17 Kevin E. Davis, Benedict Kingsbury & Sally E. Merry, *Indicators as a Technology of Global Governance*, 46 *Law and Society Review*, 1, 71-104, 80 (2012).

18 René Uruña, *Indicators and the Law: A Case Study of the Rule of Law Index in The Quiet Power of Indicators. Measuring Governance, Corruption, and the Rule of Law* (Sally Engle Merry, Kevin Davis y Benedict Kingsbury, Cambridge University Press, 2015).

of making certain conceptual discourses mainstream, but also because they are able to make their audience believe that they had no conceptual basis at all. Once the conceptual basis is out of sight, discussion focuses on the number itself, but not on its theoretical foundation. For this reason, when certain concepts are translated into indicators they almost reach a stage where they are beyond discussion.

A constant call to produce indicators has been an essential part of the feminist agenda in international law. Since the United Nations established the decade for women in 1976 [1976-1985], the gathering of reliable data and assessing progress on the promotion of women's human rights through indicators has been a priority. One of the main targets of this strategy has been the inclusion of indicators in the Human Development Report, another powerful device aimed at enhancing global governance.<sup>19</sup> This demand for data has had a specific impact on states, because they are the main responsible actors and collectors of this information within their boundaries, and the simple exercise of putting together the numbers and name them as indicators of certain goals creates new realities, compliance and non-compliance scenarios and objectives. As Nikolas Rose has stated, indicators are "governance at a distance"<sup>20</sup>, or as Sally Engle Merry has explained, they are devices that promote self-governance.<sup>21</sup>

Recently, the United Nations Security Council has boosted both the influence of global governance and governance feminism precisely through the use of indicators. Starting with

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19 Hilary Charlesworth & Christine Chinkin M., *The Boundaries of International Law: A Feminist Analysis*, 4-5 (Melland Schill Studies in International Law Series, Juris Pub., Manchester University Press, New York, 2000). Sally E. Merry, *Gender Violence: A Cultural Perspective*, 76 (Wiley-Blackwell Publishing, Malden, Massachusetts, Oxford, 2009).

20 Nicolas Rose as cited in Sally E. Merry, *Measuring the World. Indicators, Human Rights, and Global Governance*, 52 *Current Anthropology*, Supplement 3, S90 (2011). Available at: [https://www.law.berkeley.edu/files/cslls/Merry\\_-\\_Measuring\\_the\\_World\(2\).pdf](https://www.law.berkeley.edu/files/cslls/Merry_-_Measuring_the_World(2).pdf)

21 Sally E. Merry, *Measuring the World. Indicators, Human Rights, and Global Governance*, 52 *Current Anthropology*, Supplement 3, S83-S93, S89-S90 (2011). Available at: [https://www.law.berkeley.edu/files/cslls/Merry\\_-\\_Measuring\\_the\\_World\(2\).pdf](https://www.law.berkeley.edu/files/cslls/Merry_-_Measuring_the_World(2).pdf)

Resolution 1325 of 2000, and followed by resolutions 1820 of 2008, 1888 and 1889 of 2009, 1960 of 2010, and 2106 of 2013 this United Nations body has expressed its concern with the particular harms and damages women face during armed conflict, has given special attention to sexual violence women endure, and has demanded data collection. One of the main features of these resolutions is that the rhetoric of governance feminism has worked as a strategy for expanding the scope of collective use of force. Particularly, in Resolution 1820 the Security Council stated that addressing widespread and systematic sexual violence in armed conflict contributes to “the maintenance of international peace and security”, and affirmed its disposition to adopt measures to deal with this phenomenon when necessary.<sup>22</sup>

The Security Council’s request for data on sexual violence and other related armed conflict harms has had impact in Colombia.<sup>23</sup> By the beginning of the 2000s, human rights and women’s NGOs were engaged in documenting what was happening to women in the context of the Colombian armed conflict. By that time, the narrative of forced displacement had been incorporated into the rhetoric of these organizations, principally through national legislation, presence of the United Nations High Commissioner for Refugees, UNHCR, office in the country, and international cooperation. Sexual violence was starting to be outlined as a specific IDP women’s problematic. This discourse around IDPs was accompanied by a UNHCR call for assessing objectively what was happening to this population and how well the government was handling the situation.<sup>24</sup>

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- 22 Dianne Otto, *Power and Danger: Feminist Engagement with International Law through the UN Security Council*, 32 *The Australian Feminist Law Journal*, 97-121, 108 (2012). Available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1576225](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1576225). United Nations Security Council, *Resolution 1820, S/RES/1820*, paragraph 1 (2008). Available at: <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/CAC%20S%20RES%201820.pdf>
- 23 Françoise Roth, Tamy Guberek & Amelia Hoover Green, *Using Quantitative Data to Assess Conflict-Related Sexual Violence in Colombia: Challenges and Opportunities*, 7 (Corporación Punto de Vista, Benetech Technology Serving Humanity, Bogotá, 2011). Available at: [https://hrdag.org/content/colombia/SV-report\\_2011-04-26.pdf](https://hrdag.org/content/colombia/SV-report_2011-04-26.pdf)
- 24 René Urueña, *Internally Displaced Population in Colombia: A Case Study on the Domestic Aspects of Indicators as Technologies of Global Governance*, in *Governance by Indicators: Global Power through Quantification and Rankings*, 249-280, 254-256 (Kevin

In this setting, the intervention of the Colombian Constitutional Court, its order to design indicators, and the attention it paid to sexual violence in armed conflict were no more than a logical outcome of global governance and a response in order to adapt those global governance flows to the national scene. Sisma's stance and involvement in this process can be viewed as an expression of power feminism extending its influence to a Latin American country, but also as an effort to adjust its content to Colombian realities. Following are the details of that story.

## II. GLOBAL GOVERNANCE LANDS IN COLOMBIA: IDPS SHIFT THE BOUNDARIES BETWEEN NATIONAL AND INTERNATIONAL AFFAIRS

Colombia's armed conflict has had significant effects on the civilian population, the State, social movements, public and private spheres, and public opinion. Civilians have paid a great toll in lives, forced displacement, loss of property, forced disappearances, and sexual violence, among other human rights and international humanitarian law violations. The State, not always willingly, has had to adjust its laws and policies to respond to the challenges posed by an ongoing confrontation with illegal armed actors. Social movements and public opinion have had to adapt their demands and notions of public good and affairs in order to include the armed conflict and its consequences in their discourses. They have also been compelled to explore different advocacy and discursive public spheres, like highly institutionalized courts or distant international fora, in order to survive in a very hostile environment or to ameliorate the effects of strong publics' cooptation by illegal armed groups, such as has been the case with the Congress. The incidence and omnipresence of the armed conflict in daily life have shifted the boundaries between private and public spheres, either because

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Davis, Angelina Fisher, Benedict Kingsbury & Sally E. Merry eds., Oxford University Press, Oxford, United Kingdom, 2012). Available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2282812](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2282812)



of legal regulation coming from the state or informal regulations enforced by illegal armed actors.

Although it is difficult to establish a specific date in which the Colombian armed conflict began, it was only in the late 1970s that guerrillas initiated a direct confrontation with the State and started to have presence in the cities. In the 1980s, guerrillas started to outgrow the resources they were gaining through drug trafficking, extortion and kidnapping. The State responded with repression, particularly under Julio César Turbay-Ayala's presidency (1978-1982), and drug lords and upper classes affected by kidnapping and extortion supported the formation and maintenance of paramilitary groups to protect them.<sup>25</sup> Colombia's situation was under the radar of the international community primarily as a question of drug trafficking. The United States of America's approach to "war on drugs" shaped the way the country was perceived in the international community.<sup>26</sup> Colombia's internal armed conflict remained a domestic matter for more than twenty years until two conditions were met in order to attract international attention: (i) beginning in the 1970s, the international community began to pay increasing attention to potential and real migratory fluxes caused by non-international armed conflicts; and (ii) in the 1990s, the country's situation of violence reached a peak of serious intensity.

During the 1980s and 1990s, the Colombian State faced the escalating violence mainly through punitive measures. The humanitarian crisis the conflict was causing remained almost unaddressed for several decades. Apart from scattered and not very successful interventions from the executive branch to solve specific claims, like coordinated missions with the International Committee of the Red Cross (ICRC), the most visible consequences of the conflict, such as forced displacement and kidnapping, homicides, forced disappearances, among others, were dealt

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25 Daniel Pécaut, *Guerra, proceso de paz y polarización política*, in *Violencias y estrategias colectivas en la Región Andina: Bolivia, Colombia, Ecuador, Perú y Venezuela*, 73-102, 78-82 (Gonzalo Sánchez & Eric Lair, eds., Editorial Norma, Bogotá, 2004).

26 European Commission, *Colombia. Country Strategy Paper* (2002). Available at: [http://eeas.europa.eu/colombia/csp/02\\_06\\_en.pdf](http://eeas.europa.eu/colombia/csp/02_06_en.pdf)

with policies and laws fitted for public disasters and common delinquency, respectively.<sup>27</sup> Emphasis was placed specially on the war on drugs, and issues pertaining the rapidly growing presence of paramilitaries and guerrillas were constantly overlooked.<sup>28</sup> In brief, heads of state did not want to acknowledge that the country was entrenched in an armed conflict. Therefore, the available legal tools were inappropriate for preventing and putting an end to the multiple harms that the civilian population was enduring.

Colombia's neglect of the armed conflict and its consequences on the civilian population started to change as the international community began to intervene actively in administering and controlling international migrations. The growing attention paid to migratory fluxes was directly related to the increasing rate of migration from the global south to the global north<sup>29</sup> caused by political and/or economic unrest in the countries of origin.<sup>30</sup> In this setting, IDPs were considered a matter of concern given the possibility of their migration to other states. Although the inter-

27 Roberto Carlos Vidal-López, *Derecho global y desplazamiento interno. Creación, uso y desaparición del desplazamiento forzado por la violencia en el Derecho contemporáneo*, 172-173 (Editorial Pontificia Universidad Javeriana, Bogotá, 2007).

28 Daniel Pécaut, *Guerra, proceso de paz y polarización política*, in *Violencias y estrategias colectivas en la Región Andina: Bolivia, Colombia, Ecuador, Perú y Venezuela*, 73-102, 78-82 (Gonzalo Sánchez & Eric Lair, eds., Editorial Norma, Bogotá, 2004). Mauricio Romero, *Democratización política y contrarreforma paramilitar en Colombia*, in *Violencias y estrategias colectivas en la Región Andina: Bolivia, Colombia, Ecuador, Perú y Venezuela*, 335-377, 362-365 (Gonzalo Sánchez & Eric Lair, eds., Editorial Norma, Bogotá, 2004).

29 Recently, academics and international organizations have begun to analyze South-South migrations, a phenomenon that received scarce attention during the Twentieth Century. Oliver Bakewell, *South-South Migration and Human Development: Reflections on African Experiences* (United Nations Development Programme, UNDP, Human Development, Research Paper 2009/07, 2009). Available at: [http://hdr.undp.org/sites/default/files/hdrp\\_2009\\_07.pdf](http://hdr.undp.org/sites/default/files/hdrp_2009_07.pdf). Dilip Ratha & William Shaw, *South-South Migration and Remittances. Development Prospects Group World Bank* (The International Bank for Reconstruction and Development/The World Bank, World Bank Working Paper No. 2007/102, 2007). Available at: <http://siteresources.worldbank.org/libproxy.temple.edu/INTPROSPECTS/Resources/South-SouthmigrationJan192006.pdf>, <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1110315015165/SouthSouthMigrationandRemittances.pdf>

30 "Between 1970 and 1980, the number of international migrants increased by 18 million, i.e. from 82 million to nearly 100 million... [and] the stock of international migrants increased by some 21 million during 1990-2000. That is, without the disintegration of the Soviet Union, the number of international migrants worldwide would have risen by 18 million in 1970-1980, 27 million in 1980-1990, and 21 million in 1990-2000." International Organization for Migration, IOM, *World Migration Report 2005. Costs and Benefits from International Migration*, 380 (International Organization for Migration, IOM, Geneva, 2005). Available at: [http://publications.iom.int/bookstore/free/wmr\\_2005.pdf](http://publications.iom.int/bookstore/free/wmr_2005.pdf)

national community's approach to migrations was far from clear in the 1970s, its first moves through the United Nations General Assembly were aimed at incorporating IDPs' monitoring and protection to the Office of the United Nations High Commissioner for Refugees' mandate. Consequently, from that moment on the General Assembly framed migrating populations that had not crossed frontiers as IDPs under the protection of the Office of the United Nations High Commissioner for Refugees, UNHCR.<sup>31</sup> In 1976, the Economic and Social Council explicitly broadened the UNHCR's humanitarian assistance functions in order to include IDPs. Later, in 1980, the United Nations Human Rights Commission announced its intentions to analyze the link between human rights violations and forced migration. Regionally, Latin America responded to this tendency in 1984 with the issuance of the Cartagena Declaration on Refugees; this document dealt not only with international migration, but called attention to the situation of IDPs in Central America, Mexico and Panama.<sup>32</sup>

By the beginning of the 1990s international and regional actors and legal developments began to identify Colombia as a country facing a complicated IDP situation. The increasing strengthening of guerrillas and paramilitaries groups fueled massive and individual exodus throughout Colombia. The Episcopal Conference of Colombia stated that 600,000 persons were internally forcibly displaced from 1984 to 1995, and the Colombian NGO Consultancy for Human Rights and Displace-

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31 The expanding role of UNHCR was evident in 1972, when Sudan asked for support from the United Nations to accomplish the return of 700,000 IDPs to their places of origin after peace agreements were signed between the government and the guerrillas. UNHCR was the designated United Nations agency to coordinate and implement emergency aid programs for this population. Roberto Carlos Vidal-López, *Derecho global y desplazamiento interno. Creación, uso y desaparición del desplazamiento forzado por la violencia en el Derecho contemporáneo*, 53-55 (Editorial Pontificia Universidad Javeriana, Bogotá, 2007).

32 Roberto Carlos Vidal-López, *Derecho global y desplazamiento interno. Creación, uso y desaparición del desplazamiento forzado por la violencia en el Derecho contemporáneo*, 35-59, 167-171 (Editorial Pontificia Universidad Javeriana, Bogotá, 2007). Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama. Adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, held at Cartagena, Colombia, November 19-22, 1984. Available at: [https://www.oas.org/dil/1984\\_Cartagena\\_Declaration\\_on\\_Refugees.pdf](https://www.oas.org/dil/1984_Cartagena_Declaration_on_Refugees.pdf)

ment (Consultoría para los Derechos Humanos y el Desplazamiento - CODHES) indicated that from 1985 to 1990 approximately 423,000 people internally migrated due to armed conflict.<sup>33</sup> The Permanent Consultation on Internal Displacement in the Americas (CPDIA, after its name in Spanish), a program of the Human Rights Institute in Costa Rica, visited the country in the early 1990s and suggested measures for handling the situation to the government. During the presidency of César Gaviria-Trujillo (1990-1994), the Colombian government showed some reluctance to incorporate IDPs and internal forced displacement categories into its legal and political discourse, since it was well aware of their potentiality to legitimize the international community's intervention into domestic affairs. This attitude changed radically during the next presidency. President Ernesto Samper Pizano's government (1994-1998) considered the attention placed by the international community on IDPs as an opportunity to strengthen the country via international cooperation.<sup>34</sup> While Gaviria's position opposed any redefinition of internal displacement that might open the Colombian armed conflict and IDPs' situation to international scrutiny through its internationalization, Samper decided to shift the boundaries between domestic

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33 CODHES is an internationally known Colombian NGO. Its main mission is monitoring internal forced displacement in Colombia through data and research. Since its establishment, CODHES has confronted the Colombian government with data to make the situation of this population visible. Consultoría para los Derechos Humanos y el Desplazamiento, CODHES, *Víctimas emergentes, desplazamiento, derechos humanos y conflicto armado en 2008*, 75 CODHES Informa. Boletín Informativo de la Consultoría para los Derechos Humanos y el Desplazamiento, 1-15, 2 (April 22, 2009). Available at: [http://www.abcolombia.org.uk/downloads/B2D\\_codhes\\_informa\\_no.75\\_-\\_Victimas\\_emergentes.\\_22\\_abril\\_2009.pdf](http://www.abcolombia.org.uk/downloads/B2D_codhes_informa_no.75_-_Victimas_emergentes._22_abril_2009.pdf). César Rodríguez-Garavito & Diana Rodríguez-Franco, *El contexto: el desplazamiento forzado y la intervención de la Corte Constitucional (1995-2009)*, in *Más allá del desplazamiento. Políticas, derechos y superación del desplazamiento forzado en Colombia*, 14-35 (César Rodríguez-Garavito, coord., Ediciones Uniandes, Bogotá, 2010). René Uruña, *Internally Displaced Population in Colombia: A Case Study on the Domestic Aspects of Indicators as Technologies of Global Governance*, in *Governance by Indicators: Global Power through Quantification and Rankings*, 249-280 (Kevin Davis, Angelina Fisher, Benedict Kingsbury & Sally E. Merry eds., Oxford University Press, Oxford, United Kingdom, 2012). Available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2282812](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2282812)

34 Roberto Carlos Vidal-López, *Derecho global y desplazamiento interno. Creación, uso y desaparición del desplazamiento forzado por la violencia en el Derecho contemporáneo*, 169-194 (Editorial Pontificia Universidad Javeriana, Bogotá, 2007).

and international affairs slightly using a controlled approach through specific laws, decrees and public policies.

In 1994, the Government of Ernesto Samper-Pizano invited Francis Deng, the representative of the United Nations Secretary-General on Internally Displaced Persons in charge of a comprehensive study on IDPs, to Colombia. His conclusions were not a surprise: he found that there was a lack of reliable tools and data for measuring the magnitude of internal forced displacement in the country, an absence of comprehensive policies to prevent it and manage its consequences, and a lack of consensus around the basic definition of IDP.<sup>35</sup>

After Francis Deng's visit, the Colombian government embarked on the drafting of legal instruments and public policies to respond to this phenomenon. The Colombian Council on Economic and Social Policies (Consejo Nacional de Política Económica y Social, CONPES) published two documents on the matter, Conpes 2804 of 1995 and 2924 of 1997.<sup>36</sup> In 1995, the Government supported three bills in Congress about forced displacement. The ICRC and the UNHCR followed the debates closely and provided technical assistance during the drafting process. Scholars, NGOs and experts were part of this process as well.<sup>37</sup>

In 1997, Congress approved Law 387<sup>38</sup>, a normative document through which the state appropriated the concept of IDPs as an

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35 United Nations Commission on Human Rights, *Report of the Representative of the Secretary-General, Mr. Francis Deng, submitted pursuant to Commission on Human Rights resolution 1993/195 Addendum. Profiles in displacement: Colombia* (October 3, 1994) *El CN. 4/1995/50/Add.1*. Available at: <http://www.refworld.org/docid/45377b680.html>

36 Consejo de Política Económica y Social, CONPES, Departamento Nacional de Planeación de Colombia, DNP, *Conpes 2804 de 1995, Programa nacional de atención integral a la población desplazada por la violencia*. Available at: <http://www.refworld.org/docid/46d57e112.html>. Consejo de Política Económica y Social, CONPES, Departamento Nacional de Planeación de Colombia, DNP, *Conpes 2924 de 1997, Sistema Nacional de Atención Integral a la Población Desplazada por la Violencia*. Available at: <http://www.refworld.org/docid/46d57efa2.html>

37 Roberto Carlos Vidal-López, *Derecho global y desplazamiento interno. Creación, uso y desaparición del desplazamiento forzado por la violencia en el Derecho contemporáneo*, 184-185 (Editorial Pontificia Universidad Javeriana, Bogotá, 2007).

38 Colombia, Ley 387 de 1997, por la cual se adoptan medidas para la prevención del desplazamiento forzado; la atención, protección, consolidación y estabilización socioeconómica de los desplazados internos por la violencia en la República de Colombia, 43.091 *Diario Oficial*, 24 de julio de 1997. Available at: [http://www.secretariassenado.gov.co/senado/basedoc\\_ant/ley\\_0387\\_1997.htm](http://www.secretariassenado.gov.co/senado/basedoc_ant/ley_0387_1997.htm)

indirect means to deal with the armed conflict's consequences on the civilian population without actually acknowledging that the country was involved in one. Concurrently, the Government solicited the UNHCR to open an office in the country. In 1998, the UNHCR started operations in Colombia, offering technical assistance and strengthening international cooperation on the subject of internal forced displacement. Almost at the same time, the Representative of the United Nations Secretary-General on Internally Displaced Persons submitted the *Guiding Principles on Internal Displacement (Guiding Principles)* to the United Nations Commission on Human Rights as an addendum to his annual report.<sup>39</sup>

Law 387 of 1997 made some indirect references to human rights and international humanitarian law in the article where the principles for interpretation were outlined. Taking a closer look at the legislation shows how its aim was not creating specific IDPs' rights, but the administration of this population by state's agencies through the dispensation of particular "benefits". However, its article 33 opened the door for further developments through litigation, when it established that NGOs could use an *acción de cumplimiento*, the legal equivalent of a writ of *mandamus*, to pursue state compliance with Law 387 of 1997.<sup>40</sup> As the writ of *mandamus* was not regulated when the law was passed, Congress authorized the use of a constitutional action called *tutela* to serve that purpose.<sup>41</sup> This move changed the meaning

39 Even though the *Guiding Principles* were not crafted as a binding set of rules, since their submission they have gained significant authority. International organizations, NGOs and states' reiterative citation of the *Guiding Principles* have contributed to giving them weight and traction in international and national law. In 2005, the General Assembly of the United Nations, which groups all members states, endorsed the *Guiding Principles* as a key international framework to protect IDPs. United Nations General Assembly, 60/1. *2005 World Summit Outcome, A/RES/60/1*. Available at: <http://www.refworld.org/docid/44168a910.html>. United Nations Commission on Human Rights, *Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39, Addendum, Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2* (1998). Available at: <http://www1.umn.edu/humanrts/instreet/GuidingPrinciplesonInternalDisplacement.htm>

40 Roberto Carlos Vidal-López, *Derecho global y desplazamiento interno. Creación, uso y desaparición del desplazamiento forzado por la violencia en el Derecho contemporáneo*, 186-195 (Editorial Pontificia Universidad Javeriana, Bogotá, 2007).

41 Roberto Carlos Vidal-López, *Derecho global y desplazamiento interno. Creación, uso y*

of the “benefits” included in the law, and gave them the aura of IDPS’ rights, since *tutela* was the action the 1991 Constitution put in place to protect fundamental rights. Moreover, the systematic use of this action by IDPS gave the Constitutional Court the opportunity to engage in the debates and discussions on forced displacement. The Court’s discretionary power to grant *certiorari* to revise lower courts’ *tutela* decisions when it considered it necessary to unify standards and constitutional interpretation was a key instrument to transfer this topic to a judicial setting that proved over the years to be more democratic than Congress. The courtroom replaced the public spheres, such as Congress, departmental assemblies and municipal councils, where this debate was not possible at all given the cooptation by illegal armed actors, the pervasive violence or lack of interest.<sup>42</sup>

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*desaparición del desplazamiento forzado por la violencia en el Derecho contemporáneo*, 186-188 (Editorial Pontificia Universidad Javeriana, Bogotá, 2007).

- 42 Kim Lane Scheppelle, *Democracy by Judiciary (Or Why Courts Can Sometimes Be More Democratic than Parliaments)*, in *Rethinking the Rule of Law After Communism*, 22-60 (Adam Czarnota, Martin Krygier & Wojciech Sadurski, eds., Central European University Press, Hungary, 2005). Previous version available at: <http://law.wustl.edu/harris/conferences/constitutionalconf/ScheppellePaper.pdf>. Kim Lane Scheppelle, *Parliamentary Supplements (Or Why Democracies Need More than Parliaments)*, 89 *Boston University Law Review*, 795-826 (2009). Available at: <http://www.bu.edu/law/central/jd/organizations/journals/bulr/volume89n2/documents/SCHEPPELE.pdf>. In 2006, the infiltration of paramilitaries in Congress was made public. The parapolitics scandal, as it is known in the media, revealed the deeper connections Congress members had established with paramilitaries. By 2010, 102 Congress members elected to the 2002 and 2006 Congress were under investigation for their links with paramilitaries groups, and 25 had been convicted. This number is especially high if it is taken into account that almost the entire 2002 elected congress was reelected in 2006 together with president Álvaro Uribe-Vélez. Claudia López-Hernández, *La refundación de la patria. De la teoría a la evidencia*, in *Y refundaron la patria... De cómo mafiosos y políticos reconfiguraron el Estado colombiano*, 29-78 (Claudia López-Hernández, ed., Random House Mondadori, Bogotá, 2010). The influence of paramilitaries groups on Congress affected the legislative agendas and put into question even more this strong public before the eyes of the Colombian society. If corruption and drug related funding scandals had contributed in the past to discrediting Congress as an appropriate forum for debating public matters, the parapolitics scandal hurt its image even more. It is important to note that the Colombian State was not only co-opted by paramilitary groups. Guerrillas also captured public administration strategic points in the regions as well, but their influence was not as deeply felt in Bogotá, the capital city, since they allegedly helped with the election of, at most, ten congress members. Fabio E. Velásquez C., coord., *Las otras caras del poder. Territorio, conflicto y gestión política en municipios colombianos* (Deutsche Gesellschaft für Technische Zusammenarbeit, GTZ, GMBH, Foro Nacional por Colombia, Bogotá, 2009). Available at: <http://www2.gtz.de/dokumente/bib-2010/gtz2010-0038es-gestion-publica-municipio.pdf>. Ariel Fernando Ávila-Martínez, *Injerencia política de los grupos armados ilegales*, en *Y refundaron la patria... De cómo mafiosos y políticos reconfiguraron el Estado colombiano*,

As early as 1998, the Constitutional Court began to revise *tutela* decisions on the matter of IDPS. Starting with a few cases in 1998 and 1999, the year 2000 marked a breaking point with ten decisions on the subject. The Constitutional Court's increasing commitment in those cases was a symptom of at least three related things: the Colombian state's non-compliance with Law 387 of 1997, a growing judicial activism by NGOs and IDPS,<sup>43</sup> and the Constitutional Court's interest in the matter.

By 2004, more than one hundred cases were waiting on the Constitutional Court's docket for the grant of *certiorari*. The Court, given the increasing number of *tutelas* it had reviewed throughout the years, decided to join the cases in its docket, grant *certiorari* for all of them, and issue a single decision (T-025 of 2004) with a more overarching reach, one that would not only tackle the situation of the approximately 4,000 claimants, but one that would also address the institutional inertia of the Colombian state.<sup>44</sup>

Decision T-025 of 2004<sup>45</sup> continued and reinforced the trend the Constitutional Court had initiated in 2000. First, it reiterated that the *Guiding Principles* were incorporated into the Colombian legal system as mandatory standards for lawmaking and legal interpretation.<sup>46</sup> Second, it addressed the particular

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79-213 (Claudia López-Hernández, ed., Random House Mondadori, Bogotá, 2010). Claudia López-Hernández, *La refundación de la patria. De la teoría a la evidencia*, in *Y refundaron la patria... De cómo mafiosos y políticos reconfiguraron el Estado colombiano*, 33 (Claudia López-Hernández, ed., Random House Mondadori, Bogotá, 2010).

43 It is worth noting that *tutela* is a simple and inexpensive action. It does not have to be filed by a lawyer, and the plaintiffs do not have to have one to follow and attend the process. Also, as it was intended to be the action to protect the most fundamental rights, *tutela* suits can be worded in very simple language, and it is the judges' and courts' obligation to determine which rights are endangered or were violated, even if the plaintiff has not identified them by their legal name.

44 René Urueña, *Internally Displaced Population in Colombia: A Case Study on the Domestic Aspects of Indicators as Technologies of Global Governance*, in *Governance by Indicators: Global Power through Quantification and Rankings*, 249-280, 250-260 (Kevin Davis, Angelina Fisher, Benedict Kingsbury & Sally E. Merry eds., Oxford University Press, Oxford, United Kingdom, 2012). Available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2282812](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2282812)

45 Constitutional Court, Decision T-025, January 22, 2004. Presenter magistrate Manuel José Cepeda-Espinosa. Available at: <http://www.corteconstitucional.gov.co/relatoria/2004/t-025-04.htm>, Annexes available at: <http://www.corteconstitucional.gov.co/T-025-04/Anexos.php>

46 Decision SU-1150/00 established that although the *Guiding Principles* were not an interna-



situation of the plaintiffs while at the same time issued orders directed to the state as a whole. To do so, the Court used the *unconstitutional state of affairs* doctrine (*doctrina del estado de cosas inconstitucional*), “whereby it is declared that a violation of fundamental rights is systematic, widespread, and due to structural causes, thus warranting a judicial intervention on general policy.”<sup>47</sup> Third, it stated that the lack of indicators for measuring the implementation of Law 387 and the promotion of IDPs’ rights was halting any serious effort to evaluate governmental public policies. Finally, it decided to remain seized of the matter, and did not let the lower courts that had issued the more than one hundred decisions studied under *certiorari* follow-up on its orders. Although this was not the first time the Court used the unconstitutional state of affairs doctrine, it was the first time the Court remained seized of a particular matter and opened its courtroom to hearings where the Government, NGOs, IDPs, and international organizations debated the present and the future of the state’s policies on forced displacement.<sup>48</sup>

Since the beginning of the 1990s, NGOs had found in the IDPs international legal regulation a fertile ground to bring in and apply human rights and humanitarian law discourse to the country’s situation. These organizations had established a strong link between internal migration and the international regulation of human rights and humanitarian law, aiming at circumvent-

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tional treaty, they had been drafted taking into account international law rules, and their purpose was to fill a lacuna in international law regarding the situation of IDPs. Therefore, the Constitutional Court deemed that the *Guiding Principles* had to be understood as parameters for lawmaking and as standards for the interpretation of the IDPs’ national legal framework. Constitutional Court, Decision SU-1150/00, August 30, 2000. Presenter magistrate Eduardo Cifuentes-Muñoz. Available at: <http://www.corteconstitucional.gov.co/relatoria/2000/su1150-00.htm>

47 René Urueña, *Internally Displaced Population in Colombia: A Case Study on the Domestic Aspects of Indicators as Technologies of Global Governance*, in *Governance by Indicators: Global Power through Quantification and Rankings*, 249-280, 260 footnotes (Kevin Davis, Angelina Fisher, Benedict Kingsbury & Sally E. Merry eds., Oxford University Press, Oxford, United Kingdom, 2012). Available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2282812](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2282812)

48 Rodrigo Uprimny-Yepes & Nelson Camilo Sánchez, *Juzgar y medir: el uso de indicadores de derechos humanos por la Corte Constitucional Colombiana*, in *La medición de derechos en las políticas sociales*, 295-327, 298-302 (Victor Abramovich & Laura Pautassi, comps., Editores del Puerto, Buenos Aires, 2010).

ing the obstacle posed by successive governments' denial of the armed conflict. NGOs as counterpublics had appropriated the thriving international developments on IDPs, and were fully aware of and equipped with its terminology when the bill on forced displacement was discussed and passed in Congress. Both the Government and the NGOs had welcomed the international narratives on internal forced displacement and had incorporated them in their analyses and descriptions of the public good for different reasons.<sup>49</sup> By the time decision T-025 of 2004 was issued, NGOs' involvement in the litigation was undeniable, through drafting tutela suits, supporting the plaintiffs with legal advice, filing amicus curiae, etc. Sisma Mujer was already established as one of the leading women's NGO in Colombia. As its director Claudia Mejía-Duque stated, a gendered interpretation of the *Guiding Principles* was what was at hand by the beginning of 2000s, so this was the most viable and strategic approach to advocate for women's rights in the context of armed conflict.<sup>50</sup> The organization, as other NGOs, was taking advantage of a global governance device embodied in the IDP discourse, and through the gendered interpretation of the *Guiding Principles*, it started to reproduce, modulate and introduce the major features of governance feminism into the narrative of the Constitutional Court (a strong public). Its determined intention to participate and figure as a women's organization in the indicators debate shows that Sisma's target was to expand and impregnate public policy and lawmaking with a determinative reading of women's reality: the disproportionate impact of forced displacement and armed conflict on women's lives, an expression tailored in international law. The United Nations Committee on the Elimination of Discrimination against Women and the Security Council had been using that approach since 1996 and 2000, respectively,

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49 Roberto Carlos Vidal-López, *Derecho global y desplazamiento interno. Creación, uso y desaparición del desplazamiento forzado por la violencia en el Derecho contemporáneo*, 170 (Editorial Pontificia Universidad Javeriana, Bogotá, 2007).

50 Skype interview with Claudia Mejía-Duque, February 26, 2013.

and Sisma employed it to speak about women's situation in the Colombian IDPS crisis.<sup>51</sup>

### III. SISMA MUJER AND GOVERNANCE FEMINISM

Sisma Mujer was established in 1998, shortly after Law 387 was passed in Congress. Its headquarters are in Bogotá, Colombia, and Alicante, Spain. In spite of its two locations, Sisma is not a large NGO, as its permanent staff is around twenty-five people<sup>52</sup>. The NGO identifies itself as a feminist organization invested in the promotion of women's rights, particularly their right to a *life without violence*. It focuses on sexual violence in armed conflict, the family and the community, and on forced displacement. Its lines of work aim to promote access to justice and empowerment of women victims of these types of violence. Its advocacy strategy is focused on women's rights enforcement, and the production of knowledge around the subject<sup>53</sup>. Although Sisma does not identify itself as a lawyers' NGO, the role law and lawyers play in the organization has been significant. Claudia Mejía, one of its founders and current director, is a lawyer, as is Claudia Ramírez, deputy director from 2005 to 2010, Mejía's close collaborator, and other senior members of the staff. Therefore, Sisma's rhetoric is full of references to rights, enforcement, discrimination, victims, and disproportionate impact of armed conflict. Its involvement in judicial proceedings like the ones that led to decision T-025 were part of an integral strategy outlined to engage higher courts in the enforcement of women's rights.

Sisma was founded in a period during which the Colombian state and the national feminist movement were experiencing noteworthy changes. The 1991 Constitution had transformed

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51 United Nations Committee on the Elimination of Discrimination against Women, CEDAW, *General Recommendation No. 19: Violence against Women, A/47/38*. Available at: <http://www.refworld.org/docid/453882a422.html>. United Nations Security Council, *Resolution 1325, S/RES/1325* (2000). Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/720/18/PDF/N0072018.pdf?OpenElement>

52 Skype interview with Claudia Mejía-Duque, February 26, 2013.

53 Corporación Sisma Mujer, *Quiénes somos*. Available at <http://www.sismamujer.org/qui%C3%A9nes-somos>

the Colombian establishment, and the narrative of fundamental rights, along with *tutela*, were permeating social movements, grassroots organizations, existing NGOs, and feminist agendas. The supremacy and normative pretention of the 1991 Constitution altered the hierarchy of the sources of law. Private law and its Civil Code, the old backbone of the Colombian legal system, was being replaced by and put under the authority of the constitutional text. Public opinions coming from those weak publics (social movements, grassroots organizations, and NGOs, among others) started to talk the talk of rights and to demand enforcement. Litigation before the Constitutional Court was challenging the longstanding inertia of the legal system through daring decisions in which international human rights and humanitarian law were gaining more and more weight. Article 93 of the Constitution, which states that international law treaties ratified by Colombia and approved by Congress related to human rights that cannot be suspended by the State under any circumstance will prevail in the Colombian legal system, would become the foundation of the *constitutional block* (bloque de constitucionalidad).<sup>54</sup> These international law instruments turned into obligatory standards to determine the constitutionality of inferior norms, and contribute to the dissemination of international law.

Sisma's immediate experience comes from the constitution-making process and indirectly from a century of conservatism and violence. The first thirty years of the 20<sup>th</sup> Century were ones of radical traditionalism in Colombia. One conservative government succeeded another, and the influence of the Catholic Church was deeply felt in daily life. In the 1930s this dynamic was broken, and the first liberal Government of the century was elected. In this setting, the women's movement in Colombia emerged as a counterpublic around claims related to the right to vote, and the abolition of *potestad marital* or the right of the

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54 The Colombian *constitutional block* doctrine is an adaptation of the French *bloc de constitutionnalité* doctrine, which serves the purpose of identifying all the rules that limit the scope of legislative action. In Colombia, this doctrine is used to incorporate human rights and humanitarian law provisions into the constitutional framework, turning them into mandatory parameters for legislative action and for analyses of constitutionality.

husband to control the property and the person of his wife. The liberal regime also enabled the rising Colombian feminist movement to establish international ties with other Ibero and Hispano-American movements.<sup>55</sup> Potestad marital was moderated in 1932 through Law 28, and the feminine vote was obtained in 1954 and was exerted by the first time in 1957. However, the women's movement and feminist impetus started to fade away in the middle of the 1940s, when the Conservative party came back to power, and the period known as *La Violencia* took hold of the country in 1948.<sup>56</sup> Later on, in 1958, the conservative and liberal parties agreed to alternate their presence in office for sixteen years in order to put an end to violence. The agreement, called *Frente Nacional*, supposed two non-consecutive terms for each party in government and parity in Congress. Even though this arrangement diluted the confrontation, in the long run it deinstitutionalized the political parties, erased their ideological differences and halted political deliberation in public spheres. The incipient Colombian feminism also suffered the consequences of this homogenization of thought.<sup>57</sup>

This lethargy came to an end when the last Government of *Frente Nacional* finished and open elections were underway. Traditional parties used women's issues to attract voters and to draw ideological frontiers. Although the fight for civil and political rights and equality in marriage and family remained

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55 In 1930, Colombian feminists hosted the Fourth International Feminist Congress, an event that gathered together women from Ibero and Hispano-America to share their experiences and knowledge on feminism and women's issues Charity Coker González, *Agitating for their Rights: The Colombian Women's Movement, 1930-1957*, 69 *Pacific Historical Review*, 4, 689-706 (2000). Lola Luna, *El sujeto sufragista. Feminismo y feminidad en Colombia, 1930-1957*, 85-92 (Centro de Estudios de Género, Universidad del Valle, La Manzana de la Discordia, Cali, 2004).

56 Colombia reached the 20<sup>th</sup> Century in the middle of an internal war between the conservative and liberal parties, commonly known as the One Thousand Days' War (Guerra de los Mil Días, 1899-1902). The confrontation between these political parties lasted nearly another 60 years, and gave way to the period know as *La Violencia* (1948-1964). This period witnessed an intensification of clashes between the parties, the emergence of guerrillas, the strengthening of the peasant movement, and the governmental shift toward radical right wing policies. *La Violencia* is considered one of the immediate causes of the current armed conflict.

57 María Emma Wills-Obregón, *Inclusión sin representación. La irrupción política de las mujeres en Colombia. 1970-2000*, 155-158 (Editorial Norma, Bogotá, 2007).

as essential claims for the Colombian feminist counterpublic,<sup>58</sup> new topics began to enter into the scene in the late 1970s and 1980s: abortion, homosexuality, sexual and reproductive rights. The influence of the international arena was felt through feminist literature and international law. Women began to read European and North American feminists, and middle and upper class women who studied in Europe and the United States promoted feminists ideas when they came back to Colombia. In 1979, the Government of Julio César Turbay-Ayala ratified the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW, and in 1981 it was incorporated to the domestic legal system through Law 51. For the Government, CEDAW's ratification and incorporation was a strategy to show a progressive face to the international community while advancing a repressive agenda internally.<sup>59</sup>

In 1988, a movement to reform the 1886 Constitution gained traction. The women's movement organized around that initiative and formulated precise demands that they wanted to see incorporated into the new Constitution. Again, civil and political rights were coupled with sexual and reproductive rights. Although they did not have direct representation in the National Constituent Assembly, they designed a strategy to lobby members of the Assembly. The 1991 Constitution recognized their demands on political and civil rights, equal status within marriage and family, and material equality promoted by the State through affirmative actions. Sexual and reproductive rights were not recognized. In fact, they were a long shot for a

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58 Equality within marriage and family was formally attained in 1974 through Decree 2820. Colombia, Decreto 2820 de 1974, por el cual se otorgan iguales derechos y obligaciones a las mujeres y a los varones, 34.249 *Diario Oficial*, 4 de febrero de 1975. Available at: [http://www.icbf.gov.co/cargues/avance/docs/decreto\\_2820\\_1974.htm](http://www.icbf.gov.co/cargues/avance/docs/decreto_2820_1974.htm)

59 Maria Emma Wills-Obregón, *Inclusión sin representación. La irrupción política de las mujeres en Colombia. 1970-2000*, 168-175, 384 (Editorial Norma, Bogotá, 2007). Colombia, Ley 51 de 1981, por medio de la cual se aprueba la Convención sobre la eliminación de todas las formas de discriminación contra la mujer, adoptada por la Asamblea General de las Naciones Unidas el 18 de diciembre de 1979 y firmada en Copenhague el 17 de julio de 1980, 35.794 *Diario Oficial*, 7 de julio de 1981. Available at: <http://www.dhcolombia.info/spip.php?article1153>

country that up to that moment had lived under the influence of the Catholic Church.<sup>60</sup>

In the 1991 Constitution-making process, Colombian society had a unique opportunity to deliberate about different notions of the public good. After more than one hundred years, the Colombian population was able to discuss what kind of State Colombia needed to overcome decades of conflict, social and economic inequality, and political elitism. For the Colombian women's movement, that process was an incentive to articulate a precise agenda for which to advocate before the State, and sparked the interest of its members in influencing political and legal initiatives from that moment on. The anarchist and radical left feminists disappeared from or adapted to the mainstream women's movement's discourse, and a movement that was more uniform and willing to engage with the State emerged after the 1991 Constitution entered in force<sup>61</sup>. Although the critical stance before governments and the State as a whole was not lost in this transformation, the women's movement would recognize them as essential pieces in their strategy to advance women's rights.<sup>62</sup>

Unfortunately, the Constitution-making process could not involve all the illegal armed actors. Both the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia, FARC) and the National Liberation Army (Ejército de Liberación Nacional, ELN) considered they were not represented in that new pact and continued their fight against the establishment in a more violent fashion. While the country was entering formally into a more open democracy, the armed

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60 María Emma Wills-Obregón & Florentina Cardozo-García, *Los partidos colombianos y la representación de las mujeres (1990-2006)*, 71 *Revista Colombia Internacional*, 127-149 (2010). Available at: <http://colombiainternacional.uniandes.edu.co/view.php/498/view.php>

61 Julieta Lemaitre-Ripoll, *El derecho como conjuro. Fetichismo legal, violencia y movimientos sociales*, 207-214 (Siglo del Hombre Editores, Bogotá, 2009). Available at: <https://derecho.uniandes.edu.co/images/stories/pdf/lemaitrederechoconjuro.pdf>

62 One of the most well-known outcomes of the new Constitution-drafting process for Colombian feminism was the creation in 1992 of the Women's National Network (Red Nacional de Mujeres), a group of feminist women that started a project to promote women's human rights through political participation, lobbying before different State agencies and institutions, and social mobilization. Red Nacional de Mujeres, *Quiénes somos*. Available at: <http://www.rednacionaldemujeres.org/index.php/quienes-somos-red-nacional-de-mujeres>

conflict escalated.<sup>63</sup> The promise of wider public spheres and intense deliberation ceded to widespread violence involving civilians in direct and indirect confrontations among guerrillas, paramilitaries, drug lords, and the military forces.

By 1996, feminist claims focused on civil and political and sexual and reproductive rights lost some *momentum*, and new demands for stopping the armed conflict and redressing the specific impacts on women in this context gained relevance. In 1997, the Colombian Congress passed Law 387 on forced displacement. In 1998, the *Guiding Principles on Internal Displacement* were approved at the United Nations, and Sisma was founded, initiating its documentation on women's experiences in conflict and forced displacement. Meanwhile, the international community was witnessing the establishment of the international *ad-hoc* tribunals for Ex-Yugoslavia (ICTY, 1993) and Rwanda (ICTR, 1994), the drafting of the Rome Statute (1995), and the expanding influence of Global North feminists in those discussions and courtrooms through their determination to include power feminist views into the international tribunals' rules of procedure and evidence, and to intensively litigate cases related to rape and sexual violence. In brief, internal and internationalized armed conflicts were taking the international scene, along with a rising attention to women in conflict.<sup>64</sup> Was that a mere coincidence?

It is possible to approach this question from the performativity perspective, which holds that legal discourses shape the realities they want to control or regulate. However, it is better to understand law, in its national and international manifestations, as a mediator between raw reality and envisioned reality. In Colombia, there was a clear and objective (raw) fact: armed

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63 María Emma Wills-Obregón, *Inclusión sin representación. La irrupción política de las mujeres en Colombia. 1970-2000*, 213-214 (Editorial Norma, Bogotá, 2007).

64 Janet Halley, *Rape in Berlin: Reconsidering the Criminalisation of Rape in the International Law of Armed Conflict*, 9 *Melbourne Journal of International Law*, 78-124 (2008). Available at: <http://www.law.harvard.edu/faculty/jhalley/cv/Rape.in.Berlin.pdf>. Janet Halley, *Rape at Rome: Feminist Interventions in the Criminalization of Sex-Related Violence in Positive International Criminal Law*, 30 *Michigan Journal of International Law*, 1, 1-123 (2009). Available at: <http://www.law.harvard.edu/faculty/jhalley/cv/Rape.at.Rome.pdf>



conflict was escalating during the 1990s. Now, competing national and international envisioned realities were contending to enter into the narratives of the law, and into the words spoken by the strong publics. First, the international community was eager to name and administer internal migrations, so it supported the development of a body of law around the subject. Second, the Colombian state gradually realized that translating the international regulation on IDPs into the national context could boost state building via the attraction of international cooperation and the presence of international agencies. Third, Colombian feminists might have been aware that an agenda based exclusively on civil and political and sexual and reproductive rights without any reference to the conflict endangered their projection and alliances in the Colombian regions, where women were enduring the consequences of legal and illegal armed groups' confrontations and dispute for territorial control.

It appears that Sisma's strategy was delineated from the beginning as a juxtaposition of national and international law in order to push for a more gendered reading of the *Guiding Principles*. As Claudia Mejía<sup>65</sup>, Claudia Ramírez,<sup>66</sup> and Lizbeth Márquez (ex-coordinator of the Mobility Area at Sisma)<sup>67</sup> expressed, the *Guiding Principles* were the key legal instrument of their strategy. That choice was deeply embedded in the Colombian legal and political context. The state had invested time and energy passing legislation on IDPs, the UNHCR had opened an office in the country, and the Constitutional Court had incorporated the *Guiding Principles* as part of the Constitutional block in 2000, through decision SU-1150. The most intelligent move to advance a feminist agenda in Colombia in the middle of an internal armed conflict was to embrace the international legal paraphernalia that had gained recognition in the country. To enhance the gender approach of the not so gendered *Guiding Principles*, Sisma proceeded to integrate the CEDAW Committee's

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65 Skype interview with Claudia Mejía-Duque, February 26, 2013

66 Skype interview with Claudia Ramírez, March 6, 2013.

67 Skype interview with Lizbeth Márquez, February 25, 2013.

*General Recommendation No. 19* into the *Guiding Principles'* interpretation.

CEDAW's text does not refer specifically to violence against women, but in 1992, its Committee interpreted article 1 to include it as a form of discrimination. In General Recommendation No. 19, the CEDAW Committee offered an ample interpretation of this provision that included not only the violence that usually targets women, but also the violence that affects women disproportionately, even when that violence is directed against women and men randomly. What makes the latter violence against women is precisely the presumption of discrimination against them, because if the presumption were not present, the effect of violence would not be disproportionate.

According to Sisma, forced displacement is not gender-based violence that is directed specifically at women because they are women, but because it is a kind of violence that affects women disproportionately.<sup>68</sup> This disproportion is due to the historical discrimination women have faced, and it heightens their disempowerment and exposure to harm in situations when they have to flee, and move to unknown towns and cities. The discrimination women face before, during and after forced displacement is violence, and the State has an obligation to put an end to this violence and its disproportionate impact through affirmative actions, Sisma concludes. Women were not in an ideal situation in their places of origin, and they were subjected to the historic discrimination society has imposed on them. In addition, during and after their displacement, their situation only worsens and that historic discrimination gets stronger, exposing them to

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68 Observatorio de los Derechos Humanos de las Mujeres en Colombia, *Documento marco conceptual* (Confluencia Nacional de Redes de Mujeres, Corporación Sisma Mujer, Alicante, Bogotá, 2001). Available at: [http://webs.uvigo.es/pmayobre/textos/cecilia/documento\\_marco\\_conceptual.pdf](http://webs.uvigo.es/pmayobre/textos/cecilia/documento_marco_conceptual.pdf). Observatorio de los Derechos Humanos de las Mujeres en Colombia, *Mujeres Desplazadas: Acciones del gobierno colombiano*. Available at: [http://www.google.com.co/url?sa=t&rct=j&q=observatorio%20de%20los%20derechos%20humanos%20de%20las%20mujeres%20sisma&source=web&cd=7&cad=rja&ved=0CFIQFjAG&url=http%3A%2F%2Fwebs.uvigo.es%2Fpmayobre%2Ftextos%2Fcecilia%2Fmujeres\\_desplazadas\\_colomb.doc&ei=KPxAUdi3Haix0QHKzIDY-CQ&usg=AFQjCNHM8lWtswyh5\\_2z3lwyUPJgnblj0w&bvm=bv.43287494,d.dmQ](http://www.google.com.co/url?sa=t&rct=j&q=observatorio%20de%20los%20derechos%20humanos%20de%20las%20mujeres%20sisma&source=web&cd=7&cad=rja&ved=0CFIQFjAG&url=http%3A%2F%2Fwebs.uvigo.es%2Fpmayobre%2Ftextos%2Fcecilia%2Fmujeres_desplazadas_colomb.doc&ei=KPxAUdi3Haix0QHKzIDY-CQ&usg=AFQjCNHM8lWtswyh5_2z3lwyUPJgnblj0w&bvm=bv.43287494,d.dmQ)

multifarious dangers and violations of their rights. This legal and political stance, whose foundations are found explicitly as early as 2001<sup>69</sup>, led the NGO's advocacy and judicial strategy from that moment on. In that fashion, Sisma would point out violations against women IDPs' rights to education, healthcare services, employment, housing, land, and access to justice, among others.

Sisma did not lay out explicitly the feminist theoretical foundations for those claims. It is possible that Sisma staff was not quite aware of the specific feminist trends that were behind recent international law developments. According to María Emma Wills, a leading scholar on feminist mobilization in Colombia, it is quite difficult to determine which waves of feminism have had an impact on the Colombian feminist movement.<sup>70</sup> Wills noted that Colombian feminists had been trained in the liberal or left wing political parties, and advanced an agenda on equality for two decades, and then had to adjust their claims to armed conflict. It is evident that the Constitution-making process smoothed their sharp differences, the ones that lay in the disjunctive between those who believed it was possible to work with the state and those who rejected that idea, and gave them a reason and incentive to use national and international law as a tool for activism and advocacy.

Interviews with Claudia Mejía, Claudia Ramírez and Lizbeth Márquez were very telling on this point. When asked about their feminist affiliation, Mejía held she was not aware of different feminist waves and conceptions, and that her advocacy for women was aimed at achieving their liberty, equality and dignity. Ramírez said that until recently she had been very reluctant to

69 Observatorio de los Derechos Humanos de las Mujeres en Colombia, *Documento marco conceptual* (Confluencia Nacional de Redes de Mujeres, Corporación Sisma Mujer, Alicante, Bogotá, 2001). Available at: [http://webs.uvigo.es/pmayobre/textos/cecilia/documento\\_marco\\_conceptual.pdf](http://webs.uvigo.es/pmayobre/textos/cecilia/documento_marco_conceptual.pdf). Observatorio de los Derechos Humanos de las Mujeres en Colombia, *Mujeres Desplazadas: Acciones del gobierno colombiano*. Available at: [http://www.google.com.co/url?sa=t&rct=j&q=observatorio%20de%20los%20derechos%20humanos%20de%20las%20mujeres%20sisma&source=web&cd=7&cad=rja&ved=0CFIQFjAG&url=http%3A%2F%2Fwebs.uvigo.es%2Fpmayobre%2Ftextos%2Fcecilia%2Fmujeres\\_desplazadas\\_colomb.doc&ei=KPxAUdi3Haix0QHKzIDY-CQ&usg=AFQjCNHM8lWtswyh5\\_2z3lwyUPJgnblj0w&bvmb=bv.43287494.d.dmQ](http://www.google.com.co/url?sa=t&rct=j&q=observatorio%20de%20los%20derechos%20humanos%20de%20las%20mujeres%20sisma&source=web&cd=7&cad=rja&ved=0CFIQFjAG&url=http%3A%2F%2Fwebs.uvigo.es%2Fpmayobre%2Ftextos%2Fcecilia%2Fmujeres_desplazadas_colomb.doc&ei=KPxAUdi3Haix0QHKzIDY-CQ&usg=AFQjCNHM8lWtswyh5_2z3lwyUPJgnblj0w&bvmb=bv.43287494.d.dmQ)

70 Skype interview with María Emma Wills, February 15, 2013.

call herself a feminist, because she found every affiliation a restriction. After she left Sisma, she started to acknowledge herself as a feminist, one who wants to *deconstruct* patriarchy. Marquez confessed she had not studied gender or feminism theoretically, and stated that the only thing she was sure about is that women sometimes need affirmative actions. Despite these answers, it is possible to delineate Sisma's position and its major feminist influences by reading their reports, legal briefs, and other organization documents.

Sisma promotes a vision of women as victims of historical discrimination. This discrimination is rooted in structural understandings of sex and gender, and although it intersects with discrimination based on class, ethnicity or age, these circumstances only work as exacerbating devices of a constant and ever present diminished stance of what is feminine. All women are discriminated against; therefore, all women endure violence. What varies is its intensity, which is affected by the color of their skin, or their age, or their class, etc. Women who face discrimination are victims, thus women IDPs are as well, since the disproportionate impact is an expression of discrimination against them. Women are entitled to the same rights as men, but given their historic discrimination, the state has to implement affirmative measures to ensure that they enjoy these rights on an equal basis. Access to justice, litigation and adjudication are key to enforce women's rights and to weaken the structures that uphold this state of affairs. Women's involvement as lawyers, advocates, plaintiffs and victims is essential to make the causes and consequences of discrimination visible. Men's participation is not needed or even wanted. All of Sisma's research focuses only on women, and involves only women. Its staff is exclusively female and when Claudia Mejía has been asked about men's participation in the organization or as subjects of their research, she usually says that that is beyond the scope of Sisma's mission.<sup>71</sup>

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71 Skype interview with Claudia Mejía-Duque, February 26, 2013. There have been some scarce exceptions in which Sisma has engaged male interns and administrative staff.

The counter-discourse Sisma forged for its action was deeply ingrained in what Janet Halley calls *totalism*, or feminism as a totalizing and ultimate explanation for every discrimination and violence women face. This approach is based on “the idea that women have a single point of view,”<sup>72</sup> and that discrimination against them is structural and pervasive. One woman is every woman, totalism proclaims, so when discrimination against that one woman is unearthed, automatically it impregnates the lives of the others. Totalism is part of power feminism, the same feminism that has given violence, especially sexual violence, a privileged place in the international community agenda.<sup>73</sup> It is important to remember that CEDAW did not refer to violence at all and that it was not until the Committee’s general recommendations of 1989 and 1992 that its focus on discrimination would broaden to include violence.<sup>74</sup> This is not a coincidence if the link is established between the general recommendations and the growing influence power feminist women’s coalitions and NGOs had in the drafting of the Rome Statute and in the litigation before the ad-hoc tribunals. Governance feminism landed in Bogotá and was shaped by Sisma to advance its particular agenda. As Claudia Ramírez said when asked about the legal influences of her work, the *Guiding Principles* were handy, the Constitutional Court had incorporated them into the Constitutional block, and therefore it was more strategic to talk about violence and discrimination against women through the rhetoric of forced displacement, especially to the strong publics. This strategy did not mean that they were not attuned with the most recent developments of *governance feminism*. She affirmed that they were keeping track of the ad-hoc tribunal decisions, especially those focused on sexual violence.

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72 Janet Halley, *Split Decisions: How and Why to Take a Break from Feminism*, 57 (Princeton University Press, Princeton, New Jersey, 2006).

73 Janet Halley, *Split Decisions: How and Why to Take a Break from Feminism*, 53-55 (Princeton University Press, Princeton, New Jersey, 2006).

74 Sally E. Merry, *Gender Violence: A Cultural Perspective*, 21-24 (Wiley-Blackwell Publishing, Malden, Massachusetts, Oxford, 2009).

What followed—the Constitutional Court’s involvement, the declaration of an unconstitutional state of affairs, the hearings in the courtroom and the indicators debate— illustrates how Sisma’s narrative changed from counter-discourse to mainstream discourse, and how its involvement in the design of indicators is an example of the deployment of governance feminism in action.

#### IV. POWER FEMINISM IN COLOMBIA: GOVERNANCE FEMINISM THROUGH THE DEBATE ON INDICATORS

Celeide Prada, a lawyer and expert on indicators, recalled that in 2003 the Constitutional Court asked the Office of the Inspector General (Procuraduría General de la Nación), the Ombudsman’s Office (Defensoría del Pueblo), CODHES, the Colombian Commission of Jurists (Comisión Colombiana de Juristas, CCJ), and the UNHCR to file reports on the situation of IDPs in Colombia. At that time she was working at CODHES, and she was put in charge of drafting the aforementioned report on behalf of the NGO. The Court was sufficiently abstract in its request and did not hint for which purpose these reports were going to serve. Almost a year later she would realize that these documents were key to decision T-025/04, and that the Court’s willingness to engage the State, NGOs, and the international community through international organizations in a debate around IDPs was more than an isolated episode.<sup>75</sup>

Decision T-025 was issued in January 2004. In December 2004 the Court requested the government to submit information to prove that it was complying with its orders and implementing policies to protect IDPs’ rights. The Court also invited CODHES, CCJ, and the UNHCR to file information on the same point. In June 2005, the first hearing was held. The Constitutional Court considered it necessary to hear and support a dialogue between stakeholders, and to discuss the government’s improvements and relapses regarding this subject. The Constitutional Court’s

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<sup>75</sup> Skype interview with Celeide Prada, February 28, 2013.

courtroom was turned into a forum to debate competing notions of public good, rights and public policy around the IDPs' situation. Strong publics finally engaged in a conversation with weak publics. Governmental agencies, ministries, and policymaking institutions such as the National Planning Department (Departamento Nacional de Planeación, DNP), the most technocratic one in the Colombian State, entered into conversation with NGOs and international organizations under the surveillance of the Constitutional Court justices. The first years of this process allowed the Court to identify the most obvious flaws of the government's IDP policy.<sup>76</sup>

Nonetheless, early on the UNHCR noted that it was not productive to continue to hold hearings in which discussions were held around positions and interpretations advanced by every interested party. The UNHCR insisted on bringing an objective device to the discussion and its proposal was centered on indicators.<sup>77</sup> The Court also believed that the government was in need of them. Since decision T-025/04 had been issued, the justices had noted the lack of instruments to measure the efficacy and efficiency of relevant public policies, but seemed disinclined to open a discussion in its courtroom about that topic. Prada recalled that the UNHCR's suggestion did not get proper attention at the beginning of the process, until the Constitutional Court realized that there was an urgent need for standardizing the information filed by the stakeholders, and that the government was not going to develop these instruments without pressure.

In 2005, the Court formally inaugurated the discussion on indicators, stating that they should measure the IDPs' *effective enjoyment of rights* (goce efectivo de derechos, GED).<sup>78</sup> That order was challenging for the government, since Law 387 of 1997 and

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76 César Rodríguez-Garavito & Diana Rodríguez-Franco, *Cortes y cambio social. Cómo la Corte Constitucional transformó el desplazamiento forzado en Colombia*, 84-90 (Ediciones Antropos, Bogotá, 2010).

77 Skype interview with Celeide Prada, February 28, 2013.

78 César Rodríguez-Garavito & Diana Rodríguez-Franco, *Cortes y cambio social. Cómo la Corte Constitucional transformó el desplazamiento forzado en Colombia*, 219 and footnote 53 in that same page (Ediciones Antropos, Bogotá, 2010).

its regulation did not have a rights-based perspective. In September 2006, the government filed the first group of indicators, which showed several shortfalls. The Constitutional Court, following the model of interaction set out at the beginning of this process, once again invited NGOs and international organizations to join the debate. The most legitimate counterweights to the government in this discussion were UNHRC and the Follow-Up Commission on Public Policy on Forced Displacement (Comisión de Seguimiento a la Política Pública sobre Desplazamiento Forzado), an independent body of experts, NGOs, and scholars established in 2005 to keep track of the government's compliance with decision T-025. Since its formation, the Court has ordered that the Commission be given notice of each of its decisions and has invited it to file information. In 2007, through Writ 109, the Court changed the status of the Commission in the follow-up process, and asked it not only to provide information and to intervene in the technical hearings on indicators, but also to conduct its own verification of IDPs' effective enjoyment of rights.<sup>79</sup>

The Constitutional Court's call for indicators sparked an intense debate inside and outside the courtroom. The Follow-Up Commission wanted input from other NGOs and experts, so

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79 To this end, the Commission designed the National Survey to Verify the Rights of the Forced Displaced Population (Encuesta Nacional de Verificación de los Derechos de la Población Desplazada, ENV). Currently, the ENV is the most representative survey in the country regarding forced displacement. It is based on the responses given by 10,433 forced displaced households in 68 municipalities situated in 26 departments. The estimates put forward by the survey were reached using the calibration estimators methodology. Unfortunately, the government has not taken the initiative to conduct other intensive surveys on forced displaced population, although it was in charge of the Central Registry for the Displaced Population for more than a decade (Registro Único de Población Desplazada, RUPD) and currently runs the Central Registry of Victims (Registro Único de Víctimas, RUV). Comisión de Seguimiento a la Política Pública sobre Desplazamiento Forzado, *VII informe de verificación sobre el cumplimiento de derechos de la población en situación de desplazamiento*, 7-18 (Bogotá, 20 de octubre de 2008). Available at: [http://www.acnur.org/t3/uploads/media/COI\\_2492.pdf?view=1](http://www.acnur.org/t3/uploads/media/COI_2492.pdf?view=1). Comisión de Seguimiento a la Política Pública sobre Desplazamiento Forzado, *III encuesta nacional de verificación de los derechos de la población desplazada 2010. Resumen de resultados preliminares en materia de bienes rurales*, 3 (Bogotá, octubre de 2010). Available at: [http://www.viva.org.co/pdfs/III\\_enc\\_poblacion\\_desplazada\\_18\\_10\\_10.pdf](http://www.viva.org.co/pdfs/III_enc_poblacion_desplazada_18_10_10.pdf). Comisión de Seguimiento a la Política Pública sobre Desplazamiento Forzado, *III informe de verificación sobre cumplimiento de derechos de la población en situación de desplazamiento*, 17-28 (Bogotá, diciembre de 2010). Available at: <http://mesadesplazamientoydiscapacidad.files.wordpress.com/2011/01/iii-informe-de-verificacic3b3n-cs-2010.pdf>



it embarked on a participative process through meetings and written contributions. On gender, Casa de la Mujer, another well-known Colombian NGO working on women's rights, was engaged to design the first set of indicators in this area. Prada, who moved from CODHES to the Commission as soon the latter started its work, said that that was a political decision. Casa de la Mujer was part of Viva la Ciudadanía's board, and Viva la Ciudadanía, a coalition of Colombian NGOs, was one of the members of the Follow-Up Commission. Olga Amparo Sánchez, Casa de la Mujer's director, said that she wanted her organization to actively participate in the follow-up process of decision T-025/04, but there was no easy way to become a member of the Commission. She therefore appealed to Casa's involvement in Viva La Ciudadanía's board to achieve that end.<sup>80</sup>

Prada and Sánchez recalled that the process of designing indicators was difficult for different reasons. For Prada, the main hurdle was that the great majority of national NGOs did not have previous experience on indicators, so their contributions were really general and did not get to the specific devices needed for measuring GED. In the end, she stated, a few experts outlined the first set of indicators provided by the Commission to the Court. For Sánchez, the chief obstacle was that some members of the Commission opposed particularized public policies, and therefore did not want to support specific measures and recommendations focused on women.

Sisma's director likely was well aware of this entire process. Lizbeth Márquez, former coordinator of the Mobility Area at Sisma, pointed out that after decision T-025 cited some of the documents Sisma had produced through its Observatory of Women's Human Rights in Colombia (Observatorio de los Derechos Humanos de las Mujeres en Colombia), Claudia Mejía committed the NGO to following every move of the Court closely and to feeding it information.<sup>81</sup> The Court had acknowledged

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80 Skype interview with Olga Amparo Sánchez, July 1<sup>st</sup>, 2013.

81 Skype interview with Lizbeth Márquez, February 25, 2013.

in decision T-025 that internally displaced women needed a specific public policy and affirmative actions, but it did it in an addendum to the decision and in a very broad and vague way.<sup>82</sup> Mejía might have known that the indicators debate was crucial, as it was an opportunity to force the Court to enhance its position toward women IDPs and to expand the NGO's relevance. Moreover, she might have foreseen that means of communication were going to change in the courtroom, and wanted Sisma to participate in developing that new language. Furthermore, she may have identified this debate as a unique chance to push for and influence the production of relevant data related to women and armed conflict, an area where Colombia had, and still has, a significant deficit.<sup>83</sup>

Sisma's counter-discourse had had an initial endorsement and integration into the strong public (Constitutional Court) utterances, but there was a real danger of losing traction if Sisma's theses were not assimilated in the indicators devices. Claudia Mejía stated that she had had previous experiences with indicators, specifically when she participated in the Proequidad Project at the beginning of the 1990s. This project, funded by the German Technical Cooperation Agency (Deutsche Gesellschaft für Technische Zusammenarbeit, GTZ), and implemented with the participation of the National Planning Department (Departamento Nacional de Planeación, DNP), aimed to achieve gender mainstreaming in the Colombian state. According to Mejía, as one of the main project's goals was to include a gender perspective into the planning dynamics of the state, indicators had a

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82 Decision T-025, Annex 5. Constitutional Court, Decision T-025/04, January 22, 2004. Presenter magistrate Manuel José Cepeda-Espinosa. Available at: <http://www.corte-constitucional.gov.co/relatoria/2004/t-025-04.htm>, Annexs available at: <http://www.corteconstitucional.gov.co/T-025-04/Anexos.php>

83 Procuraduría General de la Nación, *Consultoría para la evaluación y seguimiento a las políticas públicas y programas de atención integral, prevención, promoción y protección de los derechos de las mujeres víctimas de la violencia sexual en el marco del conflicto armado colombiano*, unpublished report. Françoise Roth, Tamy Guberek & Amelia Hoover Green, *Using Quantitative Data to Assess Conflict-Related Sexual Violence in Colombia: Challenges and Opportunities* (Corporación Punto de Vista, Benetech Technology Serving Humanity, Bogotá, 2011). Available at: [https://hrdag.org/content/colombia/SV-report\\_2011-04-26.pdf](https://hrdag.org/content/colombia/SV-report_2011-04-26.pdf)

special place in its development.<sup>84</sup> Therefore, Mejía might have been quite aware of the appeal indicators had for technocrats, especially those involved in public policymaking at the DNP level.

According to Lizbeth Márquez, Sisma's efforts to gain access to discussions on indicators being held by the Commission were fruitless. She indicated that the Commission kept saying to Claudia Mejía and other staff members that Casa de la Mujer represented women's perspective in those debates. Celeide Prada has a different explanation: that Claudia Mejía was invited to the Commission's meetings and encouraged to share Sisma's contribution, but ultimately chose not to take part in the Commission's consultation. For Prada, Mejía's reluctance to participate might have been fueled by two circumstances. First, Mejía seemed to be suspicious of the Commission, because she considered it a masculine body with no real intention of integrating a women's perspective. Second, Sisma had high stakes at play, so its decision could have been a political move. Although Prada did not elaborate on specific political motivations, it is possible to discern that Mejía wanted to maintain Sisma's name visible in this whole enterprise. There was a real possibility of losing importance in the consultation process, and being swallowed by the Commission's prestige, which happened to Casa de la Mujer. After intense debates, the Commission decided that Casa de la Mujer's logo would not appear in the Commission's documents or institutional images, since its participation was granted through Viva la Ciudadanía.<sup>85</sup> Certainly, Claudia Mejía might have been waiting for a better chance to intervene and stand out.

2007 was an intense and vibrant year for Sisma, and the organization was striving to get as much as possible from the political context. While discussions on indicators were taking place inside and outside the courtroom, women's NGOs and grassroots organizations advocated for a hearing on women and forced displacement before the Constitutional Court. The Court granted

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84 Skype interview with Claudia Mejía-Duque, February 26, 2013.

85 Skype interview with Celeide Prada, February 28, 2013.

the request and scheduled it for May 10<sup>th</sup>. For Sisma this was a unique political and legal opportunity to present its views before the Court, and the staff started at once to draft a document to present to the justices. Gathering data to sustain Sisma's claims was challenging, given the almost complete absence of state databases on the situation of IDPs, even less on the particular condition of women. In this context, Sisma used inconclusive findings of its fieldwork and figures from Profamilia's survey on the situation of internally displaced women in Colombia.<sup>86</sup>

In writing the document for the Court's hearing on women and forced displacement Sisma refined and enriched its arguments. In the text the reader can follow how Sisma's stance is laid out, how the arguments are proposed, and how the conclusions are reached as if they were inevitable, an outcome of pure logic. Here is their deployment of power feminism:<sup>87</sup> (i) There is an anatomic difference between men and women that society transforms into structural inequality; (ii) this inequality is naturalized, although it has deep historical roots, and it impacts the distribution of political, legal, social, and economic goods in society; therefore, inequality leads to discrimination; (iii) discrimination against women includes violence against women; (iv) violence against women happens either when women are targeted because they are women, or when violence has a disproportionate effect on them; (v) women IDPs have been subjected to historical discrimination because they are women; (vi) forced displacement exacerbates historical inequality due to the traumatic experience of uprooting, the challenge of starting all over in a new place, and the State's default on its obligations; (vii) conclusion: women IDPs need affirmative action, meaning special public policies.

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86 Profamilia is a Colombian non-profit organization specializing on sexual and reproductive health. Periodically, they conduct surveys on different health issues, such as HIV risk and prevalence, internally displaced women's sexual and reproductive health, and also the national survey on health and demography.

87 I drafted part of the memorandum that was filed to the Court under the direct supervision of Sisma's director, Claudia Mejía. Corporación Sisma Mujer, *Escrito de intervención en la audiencia de la Corte Constitucional del 10 de mayo de 2007*, unpublished manuscript.

To support its argument, Sisma relied heavily again on the *Guiding Principles*, CEDAW and General Recommendation No. 19, but also on Convention Belém do Pará, the Inter-American Court's decision in *Miguel Castro-Castro Prison v. Perú*, and the Rome Statute.<sup>88</sup> There was a tangential reference to Security Council Resolution 1325, which was telling for its brevity and that stood in stark contrast to the elaboration that other international law resources had had in Sisma's narrative. Claudia Ramírez explained that brevity as a political position of Sisma and other NGOs that were part of the Women and Armed Conflict Working Group.<sup>89</sup> From 2002 until 2008, president Álvaro Uribe-Vélez denied armed conflict in Colombia, and Sisma and other NGOs found Resolution 1325's wording troubling for its references to transitional justice, post-conflict and peacebuilding. As they did not want to participate in the post-conflict rhetoric, they decided not to use the cited resolution's substance in any significant way. Ramírez recalled how they had to resist pressure

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88 United Nations Commission on Human Rights, *Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/139, Addendum, Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2 (1998)*. Available at: <http://www1.umn.edu/humanrts/instreet/GuidingPrinciplesonInternalDisplacement.htm>. Convention on the Elimination of All Forms of Discrimination against Women, CEDAW, United Nations, General Assembly, New York, December 18, 1979. Available at: <http://www.un.org/womenwatch/daw/cedaw/>. United Nations Committee on the Elimination of Discrimination against Women, CEDAW, *General Recommendation No. 19: Violence against Women, A/47/38*. Available at: <http://www.refworld.org/docid/453882a422.html>. Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, Organization of American States, OAS, Belém do Pará, June 9, 1994. Available at: <http://www.oas.org/juridico/english/treaties/a-61.html>. *Miguel Castro-Castro Prison v. Perú*. Inter-American Court's of Human Rights. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C. No. 160. Available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_160\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_160_ing.pdf). Rome Statute of the International Criminal Court, Text of the Rome Statute circulated as document A/CONF.183/9 of 17 July 1998 and corrected by process-verbaux of 10 November 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001 and 16 January 2002. The Statute entered into force on 1 July 2002. Available at: [http://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome\\_statute\\_english.pdf](http://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf)

89 The Women and Armed Conflict Working Group is a coalition of Colombian activists and women's rights and human rights NGOs. It was established in 2001 with the aim of documenting the human rights and humanitarian law violations inflicted on women and girls in the context of the Colombian armed conflict. Each year, the working group releases a report that analyzes and summarizes the main incidents of the year. The group stopped temporarily the production of the annual reports. Their latest report was launched in March 2012 and a new report is expected in 2014. Sisma has been part of this Working Group.

coming from donors and international organizations (she did not specify names) that were really interested in seeing Resolution 1325 incorporated into NGO discourse.

Another interesting aspect of Sisma's written intervention was the space it devoted to sexual violence against women IDPs, another clear and strong manifestation of governance feminism taking root in Colombia. In October 2004, this topic started to get a life of its own in the country after Amnesty International's report, *Colombia: Scarred Bodies, Hidden Crimes: Sexual Violence Against Women in the Armed Conflict*.<sup>90</sup> Although it was true that Colombian NGOs were following sexual violence in conflict, as can be seen in the reports published since 2001 by the Women and Armed Conflict Working Group (Mesa de Trabajo Mujer y Conflicto Armado), in which Sisma participated, Amnesty's approach was the first of its kind in Colombia.

Until then, Colombian women's NGO had merged sexual violence into a longer list of women's rights violations, one that sometimes included social and economic rights, and without giving any of them a specific priority. In this context, what Amnesty did seemed far more radical, because devoting one of its reports only to sexual violence in the Colombian armed conflict and treating it as an isolated problem sent the message that that was the most serious women's rights violation in the country. Comparing Sisma documents from 2001 and 2004 with Sisma's 2006 report on forced displacement and its 2007 brief to the Court, it is clear that its interest in the subject had grown.<sup>91</sup>

90 Amnesty International, *Colombia: Scarred Bodies, Hidden Crimes: Sexual Violence against Women in the Armed Conflict*, AMR 23/040/2004 (London, Amnesty International, International Secretariat, October 13, 2004). Available at: <http://www.amnesty.org/en/library/info/AMR23/040/2004>

91 Corporación Sisma Mujer, *Las invisibles. Mujeres, desplazamiento y política pública. 2002-2005: informe derechos humanos de las mujeres en Colombia 2006* (Papelería Atlas E.U., Bogotá, 2006). Corporación Sisma Mujer, *Escrito de intervención en la audiencia de la Corte Constitucional del 10 de mayo de 2007*, unpublished manuscript. Observatorio de los Derechos Humanos de las Mujeres en Colombia, *Documento marco conceptual* (Confluencia Nacional de Redes de Mujeres, Corporación Sisma Mujer, Alicante, Bogotá, 2001). Available at: [http://webs.uvigo.es/pmayobre/textos/cecilia/documento\\_marco\\_conceptual.pdf](http://webs.uvigo.es/pmayobre/textos/cecilia/documento_marco_conceptual.pdf). Observatorio de los Derechos Humanos de las Mujeres en Colombia, *Mujeres desplazadas: acciones del gobierno colombiano*. Available at: <http://www.google.com.co/url?sa=t&rct=j&q=observatorio%20de%20los%20derechos%20humanos%20de%20las%20mujeres%20>

This concentration became clearer after Sisma's 2007 publication, *Sexual Violence, Armed Conflict, and Justice in Colombia*.<sup>92</sup>

Preparing Sisma for the May 2007 hearing shaped the organization's subsequent intervention on the indicators debate. Starting in January of that same year, the government and the Follow-Up Commission held technical meetings to reduce the number of indicators that had been filed with the Court on December 2006 (more than 500), to reach some consensus on their design, and to present a more consolidated proposal to the Court. The Constitutional Court held more hearings and started to rule on the indicators gradually. For example, on May 4, 2007, the Court accepted some effective enjoyment of rights indicators for the rights to housing, health, education, and food, among others. On September 7<sup>th</sup> of the same year, the Court incorporated effective enjoyment of rights indicators on the rights to life, freedom and integrity. By the beginning of 2008, more hearings and technical meetings were necessary to design the remaining effective enjoyment of rights indicators. Additionally, the Court emphasized again that it was urgent to incorporate specific instruments to measure forced displaced women, children, elderly people, indigenous people, Afro-Colombian people, and people with disabilities' effective enjoyment of rights.<sup>93</sup>

Claudia Mejía might have grasped the importance of this moment, and decided to respond to the Court's call. Without the partnership of the Follow-Up Commission or of any other coalition or NGO, Sisma filed an intervention to the Constitutional Court in late April 2008. There, Sisma transposed and translated the views on women and forced displacement that it had already filed with the Court in May 2007, and proposed to incorporate

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sisma&source=web&cd=7&cad=rja&ved=0CFIQFjAG&url=http%3A%2F%2Fwebs.uvigo.es%2Fpmayobre%2Ftextos%2Fcecilia%2Fmujeres\_desplazadas\_colomb.doc&ei=KPxAUdi3Haix0QHKzIDYCQ&usg=AFQjCNHM8IWtswyh5\_2z3lwyUPJgnblj0w&bvm=bv.43287494,d.dmQ

92 Corporación Sisma Mujer, *Violencia sexual, conflicto armado y justicia en Colombia* (Torreblanca, Bogotá, Colombia, 2007).

93 César Rodríguez-Garavito & Diana Rodríguez-Franco, *Cortes y cambio social. Cómo la Corte Constitucional transformó el desplazamiento forzado en Colombia*, 221-245 (Ediciones Antropos, Bogotá, 2010).

them into the indicators. The foundation of every critique authored by Sisma of the Commission and government's proposal was the lack of acknowledgment the indicators showed to the disproportionate impact forced displacement had on women's lives. Expressly, Sisma affirmed that disaggregating the data by sex was not sufficient to assess the reality of forced displaced women's lives, even less so to measure their enjoyment of rights. In that fashion, Sisma stated that indicators had to measure the effective enjoyment of rights taking into account women's historical discrimination, therefore, other things had to be tracked and measured in addition to those proposed by the government and the Follow-Up Commission. For example, Sisma said that the indicator for the right to emergency humanitarian intervention had to include, in cases of sexual violence, measurement of access to contraceptives, transitory shelters, and prosecution of perpetrators. Regarding the indicator on the right to food, Sisma pointed out that in dire circumstances women renounced their ration in favor of other members of the household, so the indicator should measure access to food individually (instead of by *household*) to assert women's specific situation. On the rights to life, integrity, security and personal freedom, Sisma advocated for a broader understanding of sexual violence in accordance with the Rome Statute in order to include sexual slavery, forced prostitution, forced pregnancy, and force sterilization, among others.<sup>94</sup>

When Sisma filed its intervention to the indicators debate, the Court's decision on the hearing on women held on May 10, 2007, Writ 092 of 2008, had not yet been published. It is therefore possible that Sisma was not yet aware of the traction its ideas had had within the Court's discourse, although some human rights activists and advocates have said that unofficially the word was already out. What is undeniable is that the Court had already

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94 Corporación Sisma Mujer, *Comentarios desde la perspectiva de género a la propuesta de indicadores de la Comisión de Monitoreo y del Gobierno Nacional para mediar el goce efectivo de los derechos de la población desplazada* (Corporación Sisma Mujer, Alicante, Bogotá, 2008). Available at: [http://www.sismamujer.org/?attachment\\_id=553](http://www.sismamujer.org/?attachment_id=553)



reached a conclusion on the women's hearing when it decided on that set of indicators. Writ 092 is dated April 14, 2008, and the decision on this set of indicators, Writ 116, is dated May 13, 2008.

The same justices presided over the hearings on women and forced displacement and on the issue of indicators and signed both decisions in these cases. Writ 092 stated, using almost exactly the same words that Sisma had used in its brief, that forced displacement, and in general, armed conflict, had a disproportionate impact on women's lives. Moreover, they gave sexual violence against women in the context of armed conflict special consideration, and declared that this criminal conduct not only takes place in the Colombian armed conflict, but that it is "habitual, widespread, systematic and invisible." Sisma had achieved more than was expected. This is what Claudia Mejía, Claudia Ramírez, Lizbeth Márquez, and even Celeide Prada expressed, what was heard in informal conversations on that date, and possibly still heard today. Sisma was not a counterpublic anymore, but had gained a space and a voice in the debates held in the courtroom. Its theses had been acknowledged and appropriated by the Constitutional Court.

What happened next is quite telling about this transformation of Sisma's position in the debate. The discussion and issuance of writs 092 and 116 were pretty close in time to each other, and can be read together to understand issues related to women and indicators. While the Court was pressuring the government for indicators that were capable of grasping what women face in forced displacement, the same Court was having a hearing on women IDPs. Governance feminism found its way into the Constitutional Court. Writ 092 is mostly focused on sexual violence, women as victims, and the permanent discrimination they face. Every violent act or lack of opportunity they have to endure finds its explanation in *historical* discrimination. Land loss, absence of job opportunities, barriers accessing the healthcare system, among other situations, are explained under the heading of discrimination based on sex. This rationale was implicit in Writ 116, since the Court integrated into the indicators debate indicators

designed by Sisma to show that forced displacement does indeed have a disproportionate impact on women. The Court appeared to subscribe to Sisma's argument that disaggregation by sex would not suffice and that it was critical to incorporate criteria where women and their needs are the main target of measurement. Therefore, the Court decided that Sisma's proposal was valuable, and that it deserved a special recognition and support in practice in the following way: (i) the government could use the set of indicators proposed by Sisma; (ii) in any case, Sisma could file reports to the Court based on its indicators; and (iii) the information gathered through Sisma's indicators would be used to evaluate the government's performance, if the government did not provide other solid proof to contest those findings.

Sisma's indicators were not ordered as mandatory. There are two possible explanations for this that may be interrelated. First, it is probable that although the Court wanted to encourage civil society participation, it did not want to challenge the authority and representation that the Commission had acquired throughout the follow-up procedure. That recognition had come not only from the explicit recognition of the Court, but also implicitly from the government and civil society. Therefore, suddenly investing another civil society actor with the power to contest government and even Commission proposals posed a real danger to the stability of the process. Second, the Court had maintained a work plan in which it wanted to promote and protect government initiative. After all, public policy is government's responsibility, and it is possible that the Court was not interested in interfering with government any more than it already had done. When the government's default was evident, the Court engaged the Follow-Up Commission not only to comment, but also to bring an indicators proposal to the table. The process was later opened up to proposals from NGOs. This is the point at which Sisma decided to participate. The final set is a mixed product of mandatory indicators coming from the government and the Commission, filtered through the Constitutional Court's intervention. The mixture was possible after

one and a half years of continuous and joint labor between the government, the Commission and the Court. Sisma arrived at the formal process of adopting the indicators later. It was not part of the technical sessions between the government and the Commission, and its contribution came when the procedure was about to end. Nonetheless, the Court wanted to acknowledge its involvement and found a middle ground: complementarity.

CONCLUSION: WHAT THIS *POWER* MEANS

Since 1998, Sisma has covered a short and successful road to position its main political and legal views. It took it only ten years to transform its views from counter-discourses into mainstream discourses that have influenced the perception that public spheres have of women and armed conflict. The discrimination narrative is in the media, and integrated into the indicators narrative. T-025/04's follow-up procedure proved to be the ideal scenario for Sisma to hone and advance its understanding of discrimination against women and the role that law has to play to end this discrimination. The work that Sisma had done years before found fertile ground in the discussions that took place before the Constitutional Court. During this process, Sisma achieved major victories that contributed to the dissemination of its version of *power feminism*: Writs 092 and 116 of 2008.

Even though those writs are based on the same theoretical narrative, they are of a very different sort. Writ 092/08 is openly conceptual, and speaks to and is a matter of discussion for the general public, advocates, litigators, lawyers and psychologists inside and outside government agencies. This explains why Writ 092/08 has become an advocacy tool, a pedagogical instrument, and a framework to organize the debate around the particular manifestations of violence against women in the context of the Colombian armed conflict. On the contrary, Writ 116/08 did not openly convey its conceptual foundations, apart from its narrative about effective enjoyment of rights, and had a more restricted audience: experts on indicators. Writ 116's rationale is barely present in mainstream discourses of advocates and activists, apart from their call for the production of relevant data on women, among other relevant groups. In fact, it is essential to understand Writ 092 of 2008 in order to have a comprehensive understanding of what were accepted as indicators on women's effective enjoyment of rights in Writ 116. They are interconnected in this way because the Constitutional Court effectively embraced Sisma's position in both writs. Their theoretical prem-

ises are thus identical, and the agenda they advance is rooted in power feminism. However, in the long term the victory Sisma attained with Writ 116 could be more significant. Indicators camouflage conceptual debates, and depict theoretical hypotheses as objective facts. If Sisma manages to make the government use its indicators, or at least to have them as a parameter to design them, power feminism would not only be the mainstream discourse, but also an almost uncontested narrative deployed and reassured through indicators' devices.

At the time of writing, the government and the Commission were still working on the final version of these indicators, so the real impact of Sisma's proposal and of Writ 116's order on that matter is not yet clear.<sup>95</sup> Nonetheless, power feminism is stronger than ever in Colombia. As noted above, governance feminism is an analytical category, through which it is possible to track what kind of feminism is in command in the international arena, and what are possible consequences of that authority. Governance feminism helps to understand the real influence feminist theory had and has had in shaping international law. As shown in this paper, governance feminism contributed to delineating the history of how a Colombian women's NGO positioned a particular feminist theory in the Colombian realm and to identifying its links with governance feminism in the international spheres. The influence of power feminism has been palpable since General Recommendation No. 19 issued by the CEDAW Committee introduced the topic of violence against women into the international agenda. Through this interpretation, CEDAW took distance from the bases of its inception, which were grounded on the pursuit of equal rights and concerns with economic development.<sup>96</sup>

Sisma Mujer took advantage of the impetus the IDPs' discourse had in Colombia, and translated international governance feminism to fit into that narrative to advance its agenda. This

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95 Departamento Nacional de Planeación de Colombia, DNP, *Response to the official writ of information filed by Lina María Céspedes-Báez in February 15 of 2013, sent by Claudia Alejandra Gélvez-Ramírez in March 1 of 2013, Coordinator of the Group of Special Projects.*

96 Sally E. Merry, *Gender Violence: A Cultural Perspective*, 74 (Wiley-Blackwell Publishing, Malden, Massachusetts, Oxford, 2009).

translation was not an automatic transliteration of what was circulating in the international discourse, but a conscious effort to use only what was pertinent to its cause. This is why Sisma advocated for a more gendered understanding of the Guiding Principles using General Recommendation No. 19, and showed resistance to using Security Council resolutions in its arguments. The wording of these resolutions, with its emphasis on peacebuilding, post-conflict and transitional justice, did not serve the purpose of highlighting that the country was in the middle of an armed conflict and that women were victims of an historical discrimination due to their sex. Sisma adopted this position even though it meant renouncing Resolution 1325's wording, in which the agency of women was reaffirmed instead of played down by an exclusive focus on victimhood. Sisma's intervention in the legal and political debate on IDPs and indicators gave their agenda more traction. The Constitutional Court transformed their counter-discourse into a mainstream discourse that has shaped the way in which the general public and experts have approached the subject since writs 092 and 116 were issued.

Framing the situation of Colombian women IDPs and women in conflict in this context entails significant positive and negative consequences. It is important to note that the latter are not always deliberate, as happened in this case, but often stem from unintended side effects of certain theoretical choices, and/or the government agencies' appropriation and translation of civil society's demands. After all, every time a theory is outlined on paper it is impossible to foresee every effect, success and drawback it would have. Identifying the not so bright side of power feminism in Colombia does not mean passing a sentence on Sisma or other NGOs and advocates that have contributed to the promotion of that discourse. To the contrary, such an assessment only seeks to continue the debate, and ask power feminists whether they are taking into account all the factors that contribute to discrimination against women.

This analysis also highlights how Sisma's power feminist version of the armed conflict was translated into indicators, and

how the Constitutional Court accepted Sisma's theses through the indicator's complementarity. Given the halo of objectivity that indicators exhibit, it is essential to question what those indicators would measure if the government implements or uses them as parameters to design its own indicators, and how that particular information would contribute to addressing discrimination against women.

On the positive side it is fair to highlight that the discussion of women's rights is more vibrant than ever in Colombia, and that a strong public like the Constitutional Court has taken the lead on this subject. It is also significant for an NGO to achieve this degree of influence, particularly in a country where open debates around the public good are scarce and constantly threatened. However, Sisma's position, and therefore, the Constitutional Court's position, is trapped in the discourse of recognition, and fails to consider the urgency of redistribution.<sup>97</sup> Every difference of treatment, every disadvantage women face is due to their identification as women. Therefore, recognizing special rights and affirmative actions for them should overcome the disparate treatment they suffer. In this context, reinforcing womanhood through victimhood looks like a reasonable strategy, since women as a group endure discrimination based on their sex. Nonetheless, recognition as the main objective threatens reductionism: every difference in treatment between men and women stems from the structural domination of men over women, not from the economic or political system, for example. In this view, deep interventions in the economy are not necessary as long as states put in place some affirmative actions for women. The same applies to politics and other relevant areas. In addition, recognition without a clear policy in redistribution enhances a limited/dependent view of women, always in need of assistance, always asking for more.<sup>98</sup>

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97 Nancy Fraser, *From Redistribution to Recognition? Dilemmas of Justice in a Post-socialist Age*, in *Justice Interruptus: Critical Reflections on the Post-socialist Condition*, 11-40 (Routledge, New York, 1997).

98 Nancy Fraser, *From Redistribution to Recognition? Dilemmas of Justice in a Post-socialist Age*, in *Justice Interruptus: Critical Reflections on the Post-socialist Condition*, 11-40, 29 (Routledge, New York, 1997).

Currently, the indicators devised for measuring women's welfare and enjoyment of rights in the context of armed conflict are reductionist. It is true that at least in the short term they will contribute to the production of data on women in the context of armed conflict, and to make the deficit in protection and enforcement of women IDPS' rights visible. However, their deployment would fortify the depiction of women as victims, rather than furthering women's interest in the long run. This does not mean that Sisma's success is meaningless or that its illustration of what is happening to women in conflict is inaccurate. Rather, what it indicates is that the picture it conveys is incomplete, and that sometimes it misses other structural and non-structural causes of violence against women, like the economic model, the organization of the family, the distribution of cultural goods, etc. That is not in itself a problem, since every theoretical choice leaves other plausible and good ones behind. However, when theories get translated into indicators, the possibility of keeping track of their pros and cons is reduced to its minimum, and the spaces for discussion and deliberation tend to disappear. In this manner, what could be Sisma's great victory, the translation of its theses into government-endorsed indicators, could ultimately represent its great defeat: losing, at least for a significant period of time, the possibility to craft, adjust, and update the mainstream feminist discourse captured through indicators.



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