

# Governance by Indicators

*Global Power through Quantification and Rankings*

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## Internally Displaced Population in Colombia

### *A Case Study on the Domestic Aspects of Indicators as Technologies of Global Governance*

*René Urueña\**

The notion of indicators as technologies of global governance, as advanced in this volume, denotes at least two parties: one “producing” the indicator, the other being measured by it. Each of these parties may be, in turn, unpacked so as to include competing actors and agendas on each side of the equation. Thus, research of the challenges of this technology requires two complementary paths. First, an exploration of the producing end of the equation: How are indicators created? By whom? Do they enhance or reduce accountability? Can they be regulated? Part II of this book explores these questions. A second area of exploration is the “receiving” end of the indicator; that is, research focusing on those whose performance is being measured and compared.

This chapter belongs to that second area. It presents a case study on the role of international indicators in the implementation of internally displaced population (IDP) policy in Colombia, and argues that monitoring is only part of the indicators story, as there is a dialectic element to the process of creating and applying them. Focusing on the role of indicators in domestic politics, and thus sharing some of the preoccupations featured in this volume by Stone’s study on the “Problems of Power in the Design of Indicators of Safety and Justice in the Global South,” and by Hagan and Zaloznaya’s work on Belarus, this chapter argues that indicators are also creatively used for local purposes, not necessarily connected with their original, global origin. Both governments and non-state actors adopt indicators as part of their rhetoric. Moreover, indicators become a variable in the interaction between independent branches of domestic power. It is also likely that those who are measured will try to influence the scale of measurement, making indicators an important aspect of their strategic political choices. Ultimately, the case study

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featured in this chapter suggests that governance through indicators is more complex than a one-way, top-to-bottom process. On the contrary: there is a process in which an indicator, once it enters local debates, seems to gain a life of its own. It is by looking at the intimacies of its domestic life that we get a better sense of the inner working of this technology of governance, the reasons behind its success, and the specific challenges it poses.

This chapter is divided into four sections. The first argues that IDP policy is a species of global governance, and introduces the role that indicators play therein. The second section is a brief introduction to the human tragedy of internal displacement in Colombia, and sketches the domestic institutional reaction to it. That section also features the role that indicators have played in domestic IDP policy in Colombia. The third section features the domestic aspects of indicators as technologies of global governance, and explores the mechanisms of creative use of global IDP indicators in the Colombian context and consequences for domestic policymaking. It does so in reference to four axes: (a) domestic IDP indicators as input for global decisions, (b) the role of the news media in the turn to indicators as technologies of global governance, (c) IDP indicators as social mobilization and, finally, (d) IDP indicators and their role in the interaction among separate branches of power. The fourth and final section concludes.

## IDP indicators and global governance

IDPs came into the global spotlight as successive humanitarian crises forced massive populations to move within the borders of single states, mainly since the early 1990s. To be sure, forced displacement had been in the agenda of international institutions for decades. The League of Nations, for instance, had a High Commission for Refugees, created in 1921 under the direction of Fridtjof Nansen (who previously led the repatriation of prisoners of war from Siberia, acting as High Commissioner for the League of Nations<sup>1</sup>). Seeking to address the problem of the exiled population fleeing the Bolshevik regime after 1917, Nansen proposed and implemented the so-called “Nansen Passport,” that is, an identity document (yet not a passport, *stricto sensu*) issued by adherent states, valid for a year, allowing the bearer to return to the country issuing it.<sup>2</sup> The “passport” was first issued to Russians, but was then extended to Armenians in 1924, and then to Kurds, Turks, Assyrians, and Syrians in 1928.<sup>3</sup>

The Nansen initiative is an early example of what would come to be the default approach to the problem of displaced population in most of the twentieth century. In essence, the approach was that forceful displacement became a problem as

<sup>1</sup> Louise W. Holborn, “The League of Nations and the Refugee Problem,” *Annals of the American Academy of Political and Social Science* 203 (1939): 124.

<sup>2</sup> Louise W. Holborn, “The Legal Status of Political Refugees 1920–1939,” *American Journal of International Law* 32 (1938): 684.

<sup>3</sup> Laura Barnett, “Global Governance and the Evolution of the International Refugee Regime,” *International Journal of Refugee Law* 14 (2002): 242.

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populations or individuals crossed borders—thus becoming, for example, “refugees,” or asylum seekers. Displacement was an inter-governmental problem, which concerned the relation between states.<sup>4</sup> This premise was confirmed by the effects of World War II, as the allies established the United Nations Relief and Reconstruction Agency (UNRRA) in 1944. UNRRA existed until 1947, when its mandate ended. In 1948, a temporary International Refugee Organization was set up as an agency of the United Nations (UN). Soon after, though, it became evident that the refugee problem was not of a temporary nature, and a permanent UN High Commissioner for Refugees (UNHCR) was created in 1950. Like its predecessors, and due to the demands of the particular moment in history in which it acted, the UNHCR was unconcerned with population displaced within a country. In fact, the agency lacked a specific mandate to deal with such populations under its Statute.<sup>5</sup>

### IDP policy as global governance

Article 9 of the UNHCR Statute, though, did allow for the High Commissioner to “engage in such additional activities, including repatriation and resettlement, as the General Assembly may determine, within the limits of the resources placed at his disposal.” As the tragedy of internally displaced people began to be evident, mainly outside Europe, the alternative offered by Article 9 proved useful. Thus, in the context of the Sudanese crisis of the early 1970s, the UNGA “urged the organizations associated with the United Nations and all Government to render the maximum possible assistance to the Government of Sudan in the relief, rehabilitation of Sudanese refugees coming from abroad *and other displaced persons*.”<sup>6</sup> Since then, the UNHCR has seen its mandate with regards to IDPs become broader and broader until 1997, when the now default formulation was established, which gave competence to the UNHCR to deal with the issue.

Despite the interest of the UNHCR as the organ of an international organization, IDPs are also (and perhaps, predominantly so) a domestic problem: IDPs are protected by domestic laws, and often are displaced by internal armed conflict, according to the 1948 Geneva Conventions. IDPs affect distribution of wealth, land ownership, and gender and ethnic victimization, all within a single state. Ultimately, IDPs are first and foremost a responsibility of the state within which the displacement occurs. But, as we have seen, the UNHCR has much to do and say about the problem. Reaction to the IDP challenge is, therefore, a point of contact between the agenda of an organ of a traditional inter-governmental organization (the UNHCR) with the agenda of national governments, their interests, and

<sup>4</sup> In the same sense, see Holborn, “The Legal Status of Political Refugees 1920–1939,” 387. For a useful historical review, see Barnett, “Global Governance and the Evolution of the International Refugee Regime,” 239–45.

<sup>5</sup> Statute of the Office of the United Nations High Commissioner for the Refugees, UN General Assembly (GA) Res. 428 (V) of 1950, UN Doc. A/1775 (1950).

<sup>6</sup> UNGA Res. 2958 (XXVII), December 12, 1972, UN Doc. A/8918 (1972), para. 3 (emphasis added).

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those of other national power structures. A contact that is often bound to become a clash, as internal displacement becomes a sensible part of domestic politics, or is even caused by the very government primarily responsible for the victims.

The role of international law in IDP policy is a reflection of this circumstance. It has become common to argue that soft law plays an important role in the context of IDPs.<sup>7</sup> This all-important role of soft instruments can be explained by the middle ground between international and domestic politics where IDPs stand. Consider the central normative piece to be found in IDP policy: the Guiding Principles on Internal Displacement, issued by the UN’s Secretary-General’s Special Representative on IDPs.<sup>8</sup> The legal status of the Principles is rather ambivalent, considering that it is not a UN declaration, nor is it an attempt at codifying customary international law.<sup>9</sup> Rather, it is a study of domestic legislation and analogous regulation (e.g., refugee law) which is, in the words of the Representative of the UN Secretary General for Internal Displacement, “consistent with international law.”<sup>10</sup> The Guiding Principles and their accompanying legal annotations make no reference to the Colombian situation, although they do rely twice on Colombian law as state practice in support of two principles therein enshrined: the right not to be discriminated against,<sup>11</sup> and the right to have access to an education.<sup>12</sup>

At the heart of these principles is the realization that several matters affecting IDPs are indeed covered by traditional (hard) international instruments, such as the right to life in human rights treaties, or the principle of distinction in international humanitarian law. Such is the international aspect of the problem. However, there are other matters affecting IDPs that concern mainly domestic jurisdictions, for example, the problem of identification within the state, compensation for property or land lost during the displacement, or the possibility of finding a safe place within one’s own state. Facing such a situation, norm entrepreneurs (e.g., activist and academic networks, and the UN Representative of the Secretary-General for IDPs) quickly rose to support the drafting and adoption of some sort of norm that would address the limitations of the international aspect of the problem.<sup>13</sup> The answer was the Guiding Principles.<sup>14</sup> While no hard international instrument was available and challenges fell under each state’s sovereignty, some degree of governance still could

<sup>7</sup> For a recent example, see Phil Orchard, “Protection of Internally Displaced Persons: Soft Law as a Norm-Generating Mechanism,” *Review of International Studies* 36 (2010): 281.

<sup>8</sup> Available at <<http://www.idpguidingprinciples.org/>>. The principles were recognized by the GA as “an important international framework for the protection of internally displaced persons.” GA Res. 60/L.1, UN Doc. A/60/L.1, para. 132.

<sup>9</sup> See Walter Kälin, “Guiding Principles on Internal Displacement—Legal Annotations,” ASIL-Brookings Institution/University of Bern Project on Internal Displacement, Occasional Paper No. 38, 2008, 6.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid., 12.

<sup>12</sup> Ibid., 108.

<sup>13</sup> See Orchard, “Protection of Internally Displaced Persons: Soft Law as a Norm-Generating Mechanism.”

<sup>14</sup> On the role of international norm entrepreneurs in the IDP context, see Roberta Cohen and Francis M. Deng, *Masses in Flight: The Global Crisis of Internal Displacement* (Washington: Brookings Institution Press, 1998), 283–5.

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be exercised through the principles. IDP governance, then, is not strictly national or international, but seems to include several layers of domestic governance, which is complemented by the international action of the UN and several networks of activists. A certain balance was, in this way, struck: While the primary responsibility still fell on states, international involvement remained possible. Francis Mading Deng, Representative of the UN Secretary-General on IDPs, clearly portrays this dynamics in his description of his work at the UN:

In my dialogue with governments—one of the requirements of my mandate—the first five minutes with the head of state is crucial to assure them of my recognition of the problem as internal and therefore under state responsibility. Having emphasized my respect for their sovereignty, I quickly move on to present the positive interpretation of sovereignty and the supportive role of international cooperation. Once I establish a cordial climate, candid and constructive dialogue can follow with little or no constraint in the name of sovereignty.<sup>15</sup>

And then Deng concludes:

the critical issue becomes how the international community can intercede to overcome the obstacles of negative sovereignty and ensure access for the needy population.<sup>16</sup>

Such is indeed the challenge. IDP policy is a combination of binding and non-binding instruments that is developed, implemented, and enforced by public, private, and semi-public agencies of national and international origin. It is a paradigmatic example of a global regulatory regime.<sup>17</sup> IDPs are a primarily domestic issue, and the reasons behind any international action are not presumed, but need to be carefully spelled out. In the case of the UNHCR, GA Resolutions 47/105 (1992), 48/116 (1993), and 49/169 (1994) put forward the basic requirement for the agency's involvement in an IDP situation, including the specific request from the Secretary-General or other competent UN organ, and the consent of the state concerned. This need for justification points to a larger issue. Both global IDP policy in general, and the UNHCR in particular, have been perceived as too selective and too unpredictable in their approach to domestic crisis: Why get involved in this context and not in that one? Why that action and not the other? Why this agency, here?<sup>18</sup> Ultimately, having one foot in international politics and one foot in domestic politics, global IDP policy is in the constant need of proving itself rational and predictable, both to its international principals and to its domestic addressees.

<sup>15</sup> Francis M. Deng, "The Global Challenge of Internal Displacement," *Washington University Journal of Law and Policy* 5 (2001): 145.

<sup>16</sup> *Ibid.*, 145.

<sup>17</sup> Previous scholarship has made this point with regards to other aspects of the UNHCR's mandate. See, for example, B.S. Chimni, "Co-option and Resistance: Two Faces of Global Administrative Law," *New York University Journal of International Law and Politics* 37 (2005): 799; Mark Pallis, "The Operation of the UNHCR's Accountability Mechanisms," *New York University Journal of International Law and Politics* 37 (2005): 869.

<sup>18</sup> In what counts as strong wording for the General Assembly, GA Res. 58/177 of December 22, 2003 "Emphasizes the need to strengthen further inter-agency arrangements and the capacities of the United Nations agencies and other relevant actors to meet the immense humanitarian challenges of internal displacement, and underlines in this regard the importance of an effective, accountable and predictable collaborative approach" UN Docs A/RES/58/177, para. 13.

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**Indicators enter the scene**

Part of the reaction to this call was the adoption of a “cluster approach” in 2005, in which several agencies concerned with humanitarian action, all belonging to the Inter-Agency Standing Committee (IASC),<sup>19</sup> agreed to take on responsibilities according to their expertise, both at the global and country levels.<sup>20</sup> In essence, the effort in the cluster approach seeks, at the global level, “to strengthen system-wide preparedness and technical capacity to respond to humanitarian emergencies.”<sup>21</sup> At the country level the goal is, in turn, to “to strengthen humanitarian response by demanding high standards of predictability, accountability and partnership in all sectors or areas of activity.”<sup>22</sup>

Due to its expertise, the UNHCR took most of the responsibility concerning IDPs.<sup>23</sup> And it turned to indicators in order to achieve its aims. In the clusters where the UNHCR is the lead agency, a target objective is the development and implementation of some kind of indicator.<sup>24</sup> Thus, in the Camp Coordination and Camp Management (CCCM) Cluster, the UNHCR seeks to “develop and disseminate appropriate standards and indicators for CCCM,”<sup>25</sup> in the Emergency Shelter Cluster, the objective is to “establish impact indicators which will allow proper monitoring.”<sup>26</sup> More indirectly, perhaps, in the Protection Cluster, the goal is more generally to “strengthen information management.”<sup>27</sup>

This move to indicators is, in fact, a reflection of a general trend within the UNHCR. In 2005, the UNHCR Camp Indicator Report (CIR) was replaced by the Standards and Indicators Report (SIR) in order, according to the agency, “to further the implementation of results-based Management (RBM) and facilitate multi-year planning based on measurable indicators illustrating the well-being of the population of concern.”<sup>28</sup> As a result, quantitative reporting and monitoring became a central aspect of the architecture of IDP governance,<sup>29</sup> and of its local reception and use.

<sup>19</sup> The IASC was created in 1992, following the mandate of GA Res. 46/182 of December 19, 1991 (UN Docs A/RES/46/182, para. 38). In practice, it is an informal forum where several UN and non-UN humanitarian agencies meet to coordinate their action. See <<http://www.humanitarianinfo.org/iasc>>.

<sup>20</sup> On the cluster approach, see IASC, “Guidance Note on Using the Cluster Approach to Strengthen Humanitarian Response,” November 24, 2006, available at <<http://www.reliefweb.int/humanitarianreform/IASC%20GUIDANCE%20NOTE%20ON%20CLUSTER%20APPROACH.pdf>>.

<sup>21</sup> Ibid., 2.

<sup>22</sup> Ibid.

<sup>23</sup> See IASC, “Guidance Note on Using the Cluster Approach to Strengthen Humanitarian Response,” 3.

<sup>24</sup> See UNCHR, UNHCR’s Contribution to the Inter-agency Response to IDP Needs. Summary of Activities under the Supplementary Appeal (2007).

<sup>25</sup> Ibid., 33.

<sup>26</sup> Ibid., 31.

<sup>27</sup> Ibid., 30.

<sup>28</sup> United Nations High Commissioner for Refugees, SIR, available at <<http://unchr.org/pages/4a0183436.html>>.

<sup>29</sup> United Nations High Commissioner for Refugees, Practical Guide to the Systematic Use of Standards and Indicators in UNCHR Operations, 2006, 27.



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Given the context where the turn to indicators occurs, it is possible to interpret it as a reaction to the need of rationality and predictability in the UNHCR's involvement with situations involving IDPs. In a context where the need of striking a delicate balance between humanitarianism and sovereignty is imperative, where "hard" norms of international law seem to have limited use, indicators would seem a useful source of justification for UNHCR's involvement with a certain crisis, or to further the agency's involvement. "Hard-data" comes in handy for an agency whose domestic presence in an IDP situation needs to be always justified.

That is, though, only part of the story. While the state is still primarily responsible for IDPs, the general use of indicators changes the way the problem of displaced population is dealt with by the national administration. While the UNHCR has no formal authority over the state concerning its national IDP policy, the implementation of indicators as the language of communication between the national state and the international agency provides the latter with a mechanism of, in effect, monitoring domestic policies. This use of indicators has been already noted in other contexts. Human rights indicators, for instance, allow monitoring of compliance and fulfillment of human rights obligations.<sup>30</sup> IDP indicators seem to be useful in much the same manner. For example, the Internal Displacement Monitoring Centre keeps rankings of the numbers of displaced people in different states.<sup>31</sup> It seems unlikely that domestic administrations are unaware of such comparisons.<sup>32</sup> For better or for worse, once IDP policy becomes a matter to be expressed in the language of quantitative terms, something changes in the way everyone *thinks* about it.

Indicators in the context of global IDP policy serve, therefore, two different purposes. On the one hand, they are useful to justify international involvement in a situation that is, in principle, recognized as merely domestic. Moreover, indicators are a useful mechanism to influence political outcomes. In this latter sense, indicators seem to work in a way similar to soft law instruments. They are not menaces backed by armed enforcement, but rather seem to change agents' terms of engagement with the problem. Just as soft law norms have proven effective in the IDP context, indicators influence the way domestic governments behave with regards to their IDPs. One could plausibly understand indicators as governance

<sup>30</sup> On the audit function of indicators, see AnnJanette Rosga and Margaret Satterthwaite, "The Trust in Indicators: Measuring Human Rights," *Berkeley Journal of International Law* 27 (2009): 279.

<sup>31</sup> See <<http://www.internal-displacement.org>>.

<sup>32</sup> A case in point is the Colombian Acción Social agency, responsible for part of IDP policy in that country. The agency proved concerned enough with rankings, that it adopted at least one official press communiqué entitled: "Colombia is Not Number One in Displacement." It follows: "In connection to international press reports, attributing to the UN information to the effect that Colombia is the country with the largest number of displaced population in the world, the Presidential Agency for Social Action and International Cooperation wishes to state: [...] There is no report by a UN Agency stating that Colombia has the largest displacement in the world [...]." The communiqué then proceeds to compare the amount of IDPs in Colombia, with those in Afghanistan, Iraq and the DRC. See Acción Social, "Colombia no es el Número Uno en Desplazamiento: Acción Social," available at <<http://www.accionsocial.gov.co/contenido/contenido.aspx?conID=5308&catID=127>>; copy on file with the author.

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through knowledge and as an exercise of global public authority, in the sense used by von Bogdandy and Goldmann.<sup>33</sup>

This angle is certainly important; however, it seems to imply that once the global decision (in this case, the indicator) has reached the domestic setting, domestic authorities and politics have a take-it-or-leave-it choice. Either they follow it, and change their domestic policies accordingly, or they resist it, and follow their home-grown policy in the name of cultural exceptionalism, resistance to neo-liberalism, or other formula.

The goal of this chapter is to complement such an assessment. I suggest, through the case of indicators and IDP policy, that the process of influence is much more subtle: There is a local use of the global indicator, which is then deployed in the domestic setting in order to achieve goals set by the domestic agenda. In that process, the indicator may be transformed, or used for purposes very different from those originally intended. In the case of indicators, there is indeed an effective influence in domestic decisions (and in that sense, an actual exercise of public authority); and yet, that influence is not solely a top-down process, but is rather subject to a subtle process of transformation in the context of use. We shall explore this process in the Colombian context. Before we do that, though, it seems useful to introduce the basic elements of the IDP situation in that country, in order to turn later to the use of indicators therein.

## IDPs in Colombia

Armed conflict is the main reason behind internal displacement in Colombia, with armed groups ranging from guerillas, paramilitary groups and official armed forces, to armies organized by emerald dealers.<sup>34</sup> There are documented episodes of internal displacement long before this, during the early 1950s, caused by civil unrest in a period so violent that—standing out even in the violent history of Colombia—it came to be known as *La Violencia*.<sup>35</sup> Some contemporary analysis count up to two million displaced people between 1946 and 1966.<sup>36</sup> These

<sup>33</sup> See Armin von Bogdandy and Matthias Goldmann, “The Exercise of International Public Authority through National Policy Assessment: The OECD’s PISA Policy as a Paradigm for a New International Standard Instrument,” *International Organizations Law Review* 5 (2008): 241.

<sup>34</sup> Procuraduría General de la Nación, *Desplazamiento Forzoso y Reubicación* (1998).

<sup>35</sup> La Violencia refers the period of time that began in 1948, with the murder of liberal populist and charismatic leader Jorge Eliécer Gaitán, and ended in 1953, with the coup by General Rojas Pinilla. The murder sparked riots and killings, first in Bogotá and then throughout the country, along political lines: conservative governmental and para-governmental forces against members of the liberal party. Contemporary guerrillas would emerge, in part, from the remains of those original liberal armies. The five years of La Violencia left around 250,000 deaths, in a country whose total population was around nine million at the time. For a useful introduction to La Violencia in English, see Marco Palacio, *Between Legitimacy and Violence: A History of Colombia 1875–2002* (Durham: Duke University Press Books 2006), 135–69. Also useful is David Bushnell, *The Making of Modern Colombia: A Nation in Spite of Itself* (California: University of California Press, 1993), 201–22.

<sup>36</sup> Mary Roldán, *A Sangre y Fuego: La Violencia en Antioquia, Colombia, 1946–1953* (Bogotá: Instituto Colombiano de Antropología e Historia, 2003).

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episodes, though, were not defined as internal displacement. The contemporary crisis of IDPs started during the late 1990s, and seems to coincide with the moment of highest growth of paramilitary activities and the failure of peace negotiations with the FARC guerillas.<sup>37</sup>

To be sure, displacement in Colombia features also an international aspect. The UNHCR reports that there are 77,000 refugees of Colombian origin in the world, and close to 296,000 people in a “similar situation.”<sup>38</sup> The IDP situation, though, seems to be more pressing on the domestic political front. By definition, refugees are outside state borders, making them a political liability for the administration in the receiving state.<sup>39</sup> In contrast, IDPs have grown to be a sensitive domestic political issue in Colombia.

Internal displacement in Colombia differs from the situation in other countries, where people are massively displaced by a single significant armed action. In Colombia, displacement often occurs individually, as the head of the household is threatened or killed by armed actors in targeted actions. As a consequence, he or she (or his/her survivors) is (or are) forced to move.<sup>40</sup> The result of this dynamic is that the displaced population increased marginally over the years, and the magnitude of the problem only became apparent after years of this strategy of retail violence. Moreover, this structure led to IDPs being originally considered as homeless individuals in the main cities; that is, as a symptom of the general economic problem of urban poverty, and not as the specific byproduct of a political armed conflict in the rural areas. While data is controversial (a point discussed at length later on), the general perception of the human tragedy suffered by a multitude of Colombians only became a matter of mainstream concern in the late 1990s.

To some degree, the same could be said about the level of awareness in the Colombian government. As early as 1995, the administration recognized its deficiency when dealing with the IDP issue.<sup>41</sup> It lacked a general view of the problem,

<sup>37</sup> See Ana Maria Ibañez, *El Desplazamiento Forzoso en Colombia: Un Camino Sin Retorno Hacia a Pobreza* (Bogotá: Universidad de los Andes, Facultad de Economía, CEDE, Ediciones Uniandes, 2008), 10.

<sup>38</sup> SUNCHR, *Refugiados, solicitantes de asilo, desplazados internos, y otras personas bajo el mandato del ACNUR en las Américas*, 2008, available at <<http://www.acnur.org/t3/recursos/estadisticas>>.

<sup>39</sup> This is quite clear in dealing with Colombia refugees who have fled to Ecuador. According to the UNCHR, there are 19,098 refugees and 82,300 people in “similar situation” in Ecuador, most of whom are of Colombian origin. Ecuadorian President Correa has started to feel political pressure in northern Ecuadorian states, at the border with Colombia, where most of the Colombian refugees are located. These are poverty stricken districts, where refugees come to share poverty with the locals. President Correa has recently called for the “co-responsibility” of the Colombian government with regards to costs. See “Ecuador pide Corresponsabilidad de Colombia Frente a Refugiados,” *Revista Semana*, August 25, 2010.

<sup>40</sup> See Ibañez, *El Desplazamiento Forzoso en Colombia*, 13. It should be noted, though, that as violence increased in the areas of Antioquia, Chocó, and Cesar in 2001, cases of massive displacement became more common. The peak of massive displacement was, according to Ibañez, in 2001–2002.

<sup>41</sup> Conpes document 2804 of 1995. The Conpes (the National Council for Economic and Social Policy) is a legally established entity which serves as a consulting agency for the government in all of its aspects of economic and social policy. It produces several position papers named “Conpes documents,”

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and seemed (or at least appeared to be) unaware of its magnitude. At the time, very little government assistance existed for IDPs, and the few aids that were available worked in an isolated and uncoordinated manner. There was neither an articulate public policy nor a coordinated group of institutions to execute it.<sup>42</sup>

After the official recognition of the unresolved IDP crisis, the government created the National Program for Integral Attention to the Displaced Population due to Violence (the “Program”).<sup>43</sup> Not long after this initial response to internal displacement, the government recognized that the Program had not been successful, as it had shown “inter-institutional management and coordination difficulties, as well as financial and information deficiencies.”<sup>44</sup> In consequence, the government created the National System for the Integral Attention for Displaced Population due to Violence. The new system attempted to correct the mistakes made by earlier attempts to make a blanket approach to the IDP crisis by rearranging some of the existing policies. Most importantly, it also called for a meeting of the National Council for the Displaced Population, which had existed for two years but had failed to meet.<sup>45</sup>

Notwithstanding the government’s attempts at tackling the IDP problem, its efforts were met with legislation that sought to institutionalize all coordinated approaches.<sup>46</sup> In July 1997, Congress enacted Law 387 of 1997 (the “Internal Displacement Attention Act”), which served as the legal framework for the integral aid that should be offered to IDPs, and was the first legal recognition of the rights they were entitled to.<sup>47</sup> Arguably, the Act had some impact on the drafting of Deng’s Guiding Principles on Internal Displacement,<sup>48</sup> adopted only a few months later, in February 1998.<sup>49</sup> The Act was significant, in that it finally established an actual policy that gave visibility to IDPs as a distinct group of the population, different from other victims of other “emergencies,” that was entitled to attention to its special needs.<sup>50</sup> However, its application was limited, and the government

which embody the decisions and recommendations taken by the national government regarding the areas of its jurisdiction.

<sup>42</sup> Cesar Rodríguez and Diana Rodríguez, “El Contexto: El Desplazamiento Forzado y la Intervención de la Corte Constitucional (1995–2009),” in Cesar Rodríguez (ed.), *Más allá del desplazamiento: políticas, derechos y superación del desplazamiento forzado en Colombia* (Bogotá: Ediciones Uniandes, 2009), 19.

<sup>43</sup> Conpes document 2804 of 1995.

<sup>44</sup> Conpes document 2924 of 1997.

<sup>45</sup> Ibid.

<sup>46</sup> C. Rodríguez and D. Rodríguez, “El Contexto: El Desplazamiento Forzado y la Intervención de la Corte Constitucional,” 20.

<sup>47</sup> Law 387 of 1997 (July 18). Published in the Official Diary no. 43,091, July 24, 1997.

<sup>48</sup> *Guiding Principles on Internal Displacement*, E/CN.4/1998/53/Add.2, February 11, 1998.

<sup>49</sup> This argument has been suggested before in Rodríguez and Rodríguez, “El Contexto: El Desplazamiento Forzado y la Intervención de la Corte Constitucional,” 21.

<sup>50</sup> Manuel José Cepeda, “The Constitutional Protection of IDPs in Colombia,” in Rodolfo Arango (ed.) *Judicial Protection of Internally Displaced Persons: The Colombian Experience* (Washington: The Brookings Institution—University of Bern Project on Internal Displacement, 2009), 7.

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acknowledged that serious modifications were needed.<sup>51</sup> In consequence, Decree 2569 was issued, attempting to further regulate the Act. The Decree undertook several measures, most notably creating a Single Registry of Displaced Population, that attempted to register information on the number and condition of the displaced population of the entire country. Additionally, it created municipal, district, and state committees to monitor and aid the displaced population as provided for in Law 387.

In spite of the amount of legislation, regulation, and executive measures to deal with IDPs, the late 1990s were critical for the displaced population. Specifically, they were not enjoying their fundamental rights provided by the Constitution. This led to the landmark decision by the Colombian Constitutional Court that changed the IDP debate, and brought indicators into the spotlight. To understand the context of the decision, it is first useful to briefly explore how the debate on IDPs ended up in the hands of the Constitutional Court, and the role of indicators in that context. Under Colombian constitutional law, there is an exclusive constitutional jurisdiction, which is headed by the Constitutional Court, a high court with the final word on constitutional matters. The constitutional jurisdiction decides *acciones de tutela*, a legal action that seek an immediate judicial injunction against the breach of fundamental constitutional rights (such as the right to life, the right to privacy, due process, etc.). Such action may be filed by any person who believes that his or her fundamental rights have been infringed, and has an expedited process whereby judges must render a decision on the matter within ten days of its filing. A decision rendered on an *acción de tutela* has an appeal procedure, and may be eventually selected for *certiorari* by the Constitutional Court.

Given the severe conditions faced by IDPs, *tutelas* became a preferred mechanism of judicial protection. By the time that the Constitutional Court rendered its influential decision on IDPs in 2004, it had already ruled 17 cases dealing with the rights of the IDPs: (i) in three cases to protect them against discrimination; (ii) in five cases to protect their life and personal integrity; (iii) in six cases to guarantee the effective access to health; (iv) in five cases to protect the right to the minimum income standard; (v) in two cases to protect the right to housing; (vi) in one case to protect the right of free transit; (vii) in nine cases to protect the right to an education; (viii) in three cases to protect the rights of children; (ix) in two cases to protect the right to choose one's own domicile; (x) in three cases to protect the right to work; (xi) in three cases to protect the right of access to humanitarian emergency aid; (xii) in seven cases to avoid the prerequisite of registry in the IDP database as a condition for government aid.<sup>52</sup>

<sup>51</sup> The weaknesses of the existing regulation at the time were expressed through Conpes document 3057 of 1999, which identified as a main failure the lack of a single methodology to gather data and indicators to assess relevant information and prevent further displacement.

<sup>52</sup> Rodríguez and Rodríguez, "El contexto: El desplazamiento forzado y la intervención de la Corte Constitucional," 25.

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By 2004, the amount of *acciones de tutela* being filed by displaced persons reflected a general and structural problem, which is why the Constitutional Court decided to review them. When case file no. T-653010 reached its docket, involving a petition for protection regarding a displaced person, the Court decided to join 108 cases, which were filed by 1,150 families (roughly 4,000 claimants) all of which were under a similar situation of constitutional breach because of their displaced condition.<sup>53</sup> The result was Decision T-025 of 2004, which declared that internal displacement had become an *unconstitutional state of affairs*<sup>54</sup> and ordered many public institutions to undertake several changes in their policy, in order to give adequate coverage to IDPs, protecting their constitutional rights.

#### IDP indicators enter the domestic scene

The decision taken by the Court is notable in at least four senses:<sup>55</sup> First, its sheer ambition is remarkable. This is a decision of enormous implications, considering the number of people whose rights are protected, the number of public agencies called into action by the Court, and the amount of resources (economic and otherwise) required to comply with the Court's orders. Second, the Court's decision neatly falls on the global governance nature of IDP policy. While clearly dealing with a matter of domestic law and policy, and addressed mainly to domestic bureaucracies, the decision drew heavily from international law; mainly, Deng's Guiding Principles on Internal Displacement. For the Court, the Principles were “pertinent for the interpretation” of rights provided in the domestic constitution.<sup>56</sup> Thus, the Court's methodology was to establish a series of IDP rights under domestic law that were threatened by the unconstitutional state of affairs (say,

<sup>53</sup> The decision to join these files is given by a writ dated November 10, 2003. I translate as “writ” the term Spanish term “Auto,” which refers to a judicial decision that decides matters that are not of substantive importance for the conflict. Under Colombian procedural law, there are no specific writs ordered by the Court, but only a general term which serves to refer to every order of a Judge which is not the ruling of a case.

<sup>54</sup> Decision T-025 of 2004. An unconstitutional state of affairs is a legal doctrine under Colombian constitutional law 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. Perhaps the closest notion would be that of structural injunction applied, inter alia, in US and South African constitutional law. A structural injunction is a “formal medium through which the judiciary seeks to reorganize ongoing bureaucratic organizations so as to bring them into conformity with the Constitution” (Owen Fiss, “The Allure of Individualism,” *Iowa Law Review* 78 (1993): 965). For an introductory piece on the US side, see Owen Fiss, *The Civil Rights Injunction* (1978), 7; on the South African approach, see Danielle Hirsch, “A Defense of Structural Injunctive Remedies in South African Law” *Oregon Review of International Law* 9 (2007): 10–18. In the Colombian case, the “unconstitutional state of affairs” was declared as the Court found that the IDP situation constituted a repeated and constant violation of fundamental rights, affecting a multitude of persons, due to problems of a structural nature and requiring the intervention of several state authorities for its resolution (see Cepeda, “The Constitutional Protection of IDPs in Colombia,” 18).

<sup>55</sup> For arguments one, three, and four, see Cesar Rodríguez and Diana Rodríguez, *Las Cortes y el Cambio Social Estructural: Los Efectos del Constitucionalismo Progresista* (Bogotá: DeJusticia, 2010), 15.

<sup>56</sup> Decision T-025 of 2004, Section 2.1.3.



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the “right to life in dignified conditions”<sup>57</sup>) and then find the Guiding Principles that were pertinent for interpreting such domestic rights (in our example, Principles 1, 8, 10, and 13<sup>58</sup>). In that way, the Court skillfully articulates the global nature of its undertaking. Third, the Constitutional Court did not abandon the IDP problem merely by rendering its far-reaching decision. It decided to remain involved in the matter<sup>59</sup> and traced its effects and compliance strictly; quite an unusual move for this kind of rulings.<sup>60</sup> And, finally, beyond simply deciding that certain rights were violated, the Court felt it necessary to hold that “No specific goals or indicators have been established, which can allow for a verification of whether the purposes of the policy have been fulfilled or not,”<sup>61</sup> thus ordering that IDPs indicators be created.<sup>62</sup>

In 1994, Francis Deng, the Special Representative of the UN Secretary-General for IDPs, had already pointed that the Colombian government had no indicators at all regarding internal displacement, and that the gravity of the problem had been established merely by word-of-mouth.<sup>63</sup> He had also noted that there was no effort to create a methodological approach towards the creation of indicators on internal displacement.<sup>64</sup> In the following years, three different attempts to create information systems on IDPs were made. The first of these systems, devised in 1997, was the RUT System of the Colombian Episcopal Conference. Its methodology to recover information is built around churches and religious establishments, where IDPs arrive and share their own information with the religious leader of the community. Although there is no information-gathering on persons who fail to arrive at these Catholic establishments, there seems to be wide coverage on the whole territory, as well as general access to the displaced population.<sup>65</sup> A second

<sup>57</sup> Decision T-025 of 2004, Section 5.2.1.

<sup>58</sup> Ibid.

<sup>59</sup> Article 27 of Decree 2551 of 1991, which regulates the exercise of jurisdiction of the Constitutional Court, allows it to remain seized of a matter until the breach has ceased to exist.

<sup>60</sup> It is worth noting that the Court went beyond using writs as mere procedural orders, and implemented what it called “Autos de Seguimiento” (more or less: “Follow-up Writs”) under which the Court supervised compliance with the main decision. It is reasonable to say that, without these follow-up writs, the Court’s order of indicators would have remained a dead letter.

<sup>61</sup> Decision T-025 of 2004, Section 6.3.1.1(ii). In the same sense, according to Section 6.3.1.3(ii) “[...] there do not exist systems to evaluate the policy. The policy does not include a system designed to detect mistakes or obstacles in its design and implementation, needless to say one that allows an adequate and timely correction of such failures. There are no systems or indicators for the verification, follow-up and evaluation of results, either at the national or territorial levels” (footnotes omitted, RU).

<sup>62</sup> Specifically, the Court found that part of the problem was that there were deep institutional flaws in IDP policy, one of which was lack of indicators. Therefore, the Court ordered the relevant agencies “to adopt, within the three months following the communication of this judgment, a program of action, with a precise schedule, aimed at correcting the flaws in institutional capacity, at least with regard to the ones indicated in the reports that were incorporated to the present process and summarized in Section 6 and Annex 5 of this Judgment” (Decision T-025/94, Order 4).

<sup>63</sup> United Nations Commission on Human Rights, Internally Displaced Persons: Report of the Representative of the Secretary General, Francis Deng, submitted pursuant to CHR resolution 1993/95 Addendum 1: Profiles in Displacement: Colombia, 1994, UN Doc. E/CN.4/1995/50/Add.1, para. 10.

<sup>64</sup> Ibid., para. 15.

<sup>65</sup> While the government does not keep religious data, recent media polls have shown that the country is close to 81 percent Catholic. The Catholic Church is often the main institutional presence

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effort in compiling data was attempted by the International Committee for the Red Cross (ICRC), though restricted only to its humanitarian aid operations. The manner by which the ICRC collects data is reliable, including domiciliary visits and personalized interviews. Its scope, however, is limited, as it may only collect information on the displaced persons under the ICRC’s attention, which fails to cover the total of IDPs in the country. The final data producer is the government, through its Unique Registry System of the Social Solidarity Network, created by the Law 387. This system only stores the information of displaced persons who have approached official entities to declare their situation.

Enter the 2004 decision. The Court based its reasoning on the idea that the mere re-statement of rights was insufficient to solve the unconstitutional state of affairs found in the IDP situation in Colombia. It therefore adopted the “effective enjoyment of rights” as the relevant criterion for evaluation—a specific results-based threshold to be achieved by IDP policy in Colombia. This focus in results (and not in processes) was reflected in the Court’s approach to indicators. It soon became evident to the Court that effective implementation of its orders could not be measured in terms of bureaucratic processes (that is, meeting after meeting of the relevant actors with no results in sight), but should rather be measured in terms of results. However, despite the several attempts referred to before, by the time the decision was rendered there were very few results indicators in national or international debates. In fact, the best evidence of this is the relative absence of reliable or independent indicators in the text of the decision itself.<sup>66</sup>

The bottom line was that the results-based “effective enjoyment of rights” approach required some sort of indicators, which were wholly absent from the Colombian landscape. Therefore, the Court ordered the development of such “results indicators,” as opposed to “process indicators,” making the issue a central tenet of the follow-up process. At least seven of the writs following the decision were concerned with indicators.<sup>67</sup> In the first couple of years after the decision, it became clear that the institutions were not developing the indicators wanted by the Court.<sup>68</sup> Therefore, in 2006, the Court established a fast-track procedure for the creation of indicators, and called upon the UNHCR, the Colombian Ombudsman, and other institutions to present proposals for indicators that would do the trick.<sup>69</sup>

in areas of conflict. Information collected by these Catholic institutions were, therefore, the first clear source of hard-date concerning IDPs. See “¿Qué tan Católicos Somos” in *El Tiempo*, April 8, 2001. On the Church’s role in the armed conflict, see generally: R. Arias and F. González, “Búsqueda de la Paz y Defensa del ‘Orden Cristiano’: El Episcopado ante los Grandes Debates de Colombia (1998–2005)”, in Francisco Leal Buitrago (ed.), *En la Encrucijada: Colombia en el Siglo XXI* (Bogotá: Norma, 2006).

<sup>66</sup> Decision T-025 of 2004, Section 6.3.1.1(ii) and 6.3.1.3(ii). The very first indicator referred to by the Constitutional Court related to the level of nourishment of displaced populations (n. 86). The Court further relied on governmental statistics and indicators both to determine the amount of displaced persons in Colombia, by using a report from the governmental agency Red de Solidaridad Social (n. 93), and to determine the amount of resources allocated to IDPs, by relying on a report sent by the government itself (n. 115). Furthermore, some indicators, such as the level of access to higher education (at 45) or the “level of fulfillment of basic needs” (at 61) have no referred source.

<sup>67</sup> Writ 337 of 2006, Writ 027 of 2007, Writ 109 of 2007, Writ 116 of 2008, and Writ 011 of 2009.

<sup>68</sup> Writ 218 of 2006.

<sup>69</sup> Writ 337 of 2006.



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Over 500 indicators were proposed in this process.<sup>70</sup> On March 1, 2007, the Court held a public hearing to discuss the proposals.<sup>71</sup> On that date, the government also presented what has been called a “serious”<sup>72</sup> indicators proposal to the Court. Months later, the Court decided on the proposal, holding that some of the proposed indicators should be rejected, as they were not “adequate, relevant and sufficient” to measure the effective enjoyment of rights, as defined by the Court.<sup>73</sup> Other indicators, in turn, did follow the Court’s Guidelines, but had gaps that had to be solved.<sup>74</sup> And, finally, some indicators could be adopted as they were.<sup>75</sup> The Court asked the government to submit better indicators to replace those that had been rejected. The Court then decided on this new submission,<sup>76</sup> and went over the process once more,<sup>77</sup> thus settling on the final version of the basic toolkit of indicators that would be available to evaluate whether (and when) the unconstitutional state of affairs was overcome.

With the decision, several Colombian institutions were obliged to produce periodical reports with their respective indicators, and send them to the Court. The Tribunal, though, was critical of the work done by governmental agencies in this regard. Particularly, in Writ 218 of 2006, it was critical of the impossibility of determining any improvement in the general situation of IDPs due to the lack of relevant indicators. In contrast, government officials had submitted huge amounts of irrelevant information whilst, according to the Court, the most eloquent measure of compliance was still missing: statistical data that indicated the fulfillment of IDPs’ rights.<sup>78</sup>

At any rate, after six years of follow-up writs, and the mobilization over indicators of several governmental agencies, activists, and academics, the Court ended up with a complex set of indicators to measure 20 IDP rights,<sup>79</sup> each of which measured from three different perspectives: (a) “effective enjoyment of rights” indicators (which is self-explanatory); (b) “complementary” indicators (which measure the general context where the effective enjoyment is measured); and, finally, (c) sector indicators, measuring the advances of each the governmental

<sup>70</sup> Clara Elena Reales, “Design and Implementation of the Orders Issued in Decision T-025 of 2004: An Assessment of the Process,” in Arango (ed.), *Judicial Protection of Internally Displaced persons*, 80.

<sup>71</sup> See Writ 027 of 2007.

<sup>72</sup> Reales, “Design and Implementation of the Orders Issued in Decision T-025 of 2004,” 80.

<sup>73</sup> Writ 109 of 2007, paras 57–71.

<sup>74</sup> Writ 109 of 2007, paras 28–31.

<sup>75</sup> Writ 109 of 2007, Section 81.3.

<sup>76</sup> Writ 337 of 2007.

<sup>77</sup> Writ 116 of 2008.

<sup>78</sup> Writ 218 of 2006, 3–5.

<sup>79</sup> The rights measured by indicators are: (1) right to life, (2) personal integrity, (3) freedom, (4) housing, (5) health, (6) education, (7) food, (8) “income creation,” (9) identity, (10) social and economic stability, (11) prevention of further displacement, (12) return, (13) subsistence, (14) family reunification, (15) personal security, (16) participation, (17) truth, justice, and reparation, (18) specific indicator: boys, girls, and teenage IDPs, (18) specific indicator: ethnic and different culture IDPs, and (19) specific indicator: gender IDPs. Source: Cesar Rodríguez “Más Allá Del Desplazamiento, O Cómo Superar Un Estado De Cosas Inconstitucional” in Rodríguez (ed.), *Más Allá del Desplazamiento*, 460–73.

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agency involved.<sup>80</sup> Thus, for example, the right to life would be measured by (a) an effective enjoyment of rights indicator (“members of the displaced family remain alive”); (b) complementary indicators (for example, the “number of IDPs killed for causes directly related to displacement as a percentage of the general IDP population”); and (c) several sector indicators (for example, the “number of IDP leaders who are under special police protection as a percentage of the total of IDP leaders”). The idea, then, is that governmental agencies are to provide data to feed these indicators, and will be measured according to them. Only by observing the landscape drawn by these quantitative instruments, will we ever know whether the unconstitutional state of affairs has been solved.

## **IDP indicators as a technology of global governance**

The Court’s order sparked a number of processes and interactions that are revealing of the complex political, institutional, and legal effects implicit in the turn to indicators. This section explores such processes, focusing on (a) domestic IDP indicators as input for global decisions, (b) the role of the news media in the turn to indicators as technologies of global governance, (c) IDP indicators as social mobilization and, finally, (d) IDP indicators and their role in the interaction among separate branches of power. From such areas of exploration, some conclusions concerning indicators as tools for global governance will be drawn. These conclusions will be presented in the last section of this chapter.

### **Domestic IDP indicators as input of global decision-making**

As we have seen, the central turn to indicators at the UNHCR occurred around 2005, with its cluster approach. It is interesting that, since then, domestically produced IDP indicators had an impact on international monitoring. In the fleeting reference made to IDPs in the Report of the UNHCR on the situation of human rights in Colombia in 2008,<sup>81</sup> the Commissioner relied exclusively on the figures presented both by an independent NGO (CODHES) and the Colombian government itself (Social Action).<sup>82</sup> The report presented by the Norwegian Refugee Council’s Internal Displacement Monitoring Centre (IDMC) for the consideration of the Committee for the Elimination of Racial Discrimination at its 75th session<sup>83</sup> made the disparity in indicators evident, and relied heavily on the requests of the Constitutional Court for the compliance of Decision T-025<sup>84</sup> which, in turn, were framed almost exclusively on the demands for the production

<sup>80</sup> Id.

<sup>81</sup> UN Doc. A/HRC/10/032 (draft of December 31, 2008).

<sup>82</sup> Ibid., 21.

<sup>83</sup> Available at <<http://www.internaldisplacement.org/8025708F004CE90B/%28httpCountries%29/CB6FF99A94F70AED802570A7004CEC41?OpenDocument>>.

<sup>84</sup> Report of the Displacement Monitoring Centre (IDMC) for the consideration of the Committee for the Elimination of Racial Discrimination at its 75th session, para. 1.

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of indicators. This too was the case for the report presented to the Human Rights Committee.<sup>85</sup>

It makes sense, then, that the Court felt obliged to order the production of indicators to aid in the determination of compliance on behalf of the government. As a result, CODHES endorsed another independent commission to collect direct evidence on displaced populations: the Monitoring Commission of Forced Displacement Public Policy, composed of renowned academics, jurists, and economists. The Commission produced its first report in 2006, and has produced 15 reports since then with its own methodological and statistical approach, as well as independent data gathering.

In the international sphere, the most readily available database on indicators of forced displacement is the already cited IDMC of the Norwegian Refugee Council, which relies almost exclusively on the indicators provided by CODHES and its monitoring Commission, both on its website and on the reports submitted to international organizations such as the United Nations.<sup>86</sup> Furthermore, the UNHCR refers to both CODHES and governmental figures in its annual report, and takes no particular position on disputed figures.<sup>87</sup> It seems clear that the UN and its subsidiary organs, at least, are the consumers of locally produced indicators.

The local character of these indicators should not be exaggerated. The whole process of the follow-up writs implied an interaction of domestic agencies with the UNHCR. Moreover, domestic NGOs were involved, whose funding and network may very well be global in origin and reach. However, it is clear that the origin of the IDP indicators was not a global governance institution, which then imposed it or transplanted it into the domestic setting. In that sense, even if the local process was not clinically isolated from global influences, it may be still meaningfully understood as local. This dynamics problematizes the governed-governors-public framework put forward by Davis, Kingsbury, and Merry.<sup>88</sup> It seems awkward to think of the UNHCR as the governor in this context. Rather, it was the Court's emphasis on the effective enjoyment of rights and the subsequent "results" rhetoric that brought emphasis to the quantitative tools of governance. The UNHCR, of course, followed suit. The role of governmental agencies seems to be an ill-fit here as well, as they seem to be both governors and governed at the same time. The Court, in turn, seems to be a governor, despite being part of a state that would be one of the "governed." Moreover, the indicators were created by a process

<sup>85</sup> Submission from the Internal Displacement Monitoring Centre (IDMC) of the Norwegian Refugee Council (NRC) for consideration in the formulation of the List of Issues by the Human Rights Committee's Task Force during the 97th Session (October 12–30, 2009).

<sup>86</sup> See <<http://www.internal-displacement.org>>.

<sup>87</sup> Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and of the Secretary General—Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, UN Doc. No. A/HRC/10/032, para. 21.

<sup>88</sup> Kevin Davis, Benedict Kingsbury, and Sally Engle Merry, "Indicators as a Technology of Global Governance," *Law and Society Review* 36:1 (2012): 71–104.

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of cooperation between NGOs, the UNHCR, governmental agencies, and the Court itself. Who is the governed here? Who is the governor?

The role of NGOs and the media seem to also reveal the limits of the model. Activist mobilization played a central role in defining the specific traits of technology of global governance. If NGOs are active in defining the relevant indicators, can they still be considered part of the “public”? The same can be said about the media. Media coverage plays a crucial role in the emergence of an indicator as a veritable technology of global governance, beyond it being a mere statistical piece of information. If that is the case, can the media still be considered as part of the “public”? Does it not have a more direct stake in the development of this particular exercise of global power? And yet, should we then understand the media as part of the governing structure? Is it possible to draw a line between the public and the governor if the latter is wholly dependent on the former? Part of the answer to these questions may come from taking a closer look at the role of the media in the Colombian IDP case.

#### **IDP indicators and the news media**

The authority of IDP indicators is intimately linked with the media.<sup>89</sup> Reference to IDP indicators has been a key point in public media coverage at least since the late 1990s, after major legislative changes concerning public displacement took place. It is noteworthy that the manner in which the media refers to IDP indicators plays an important role in their function as technologies of global governance. There seem to be at least three different approaches to indicators in the media: (1) indicators with no stated source (presumably taken from other media); (2) indicators with a stated source (regardless of the source itself, e.g., the government or independent NGOs); and (3) indicators with a misleading source (which prove to be the most interesting case of creative use, as will be seen further on).

As early as 2000, newspapers were adopting the first approach to IDP indicators: high numbers with no reference to sources. At the time, newspapers were reporting indicators as high as 1.5 million IDPs in Colombia.<sup>90</sup> The second use of indicators is also common at this point, using, for example, indicators produced by some of the actors discussed earlier.<sup>91</sup> It is important to note, however, that prior to the

<sup>89</sup> The foregoing section refers almost exclusively to references made in published media in Colombia. The pool of available media includes the seven newspapers with highest circulation in the country for the last three years, as well as the two most-read news sources for the last ten years (in magazine and newspaper format). References made to these will include the publication name and date, as most of the sources were taken from digital format. Where reference to a specific published material is available, it is expressly mentioned. All quotations taken from these sources have been freely translated by the author into English.

<sup>90</sup> “Mil Millones de Pesos de la Red Para Desplazados del Sucre,” *El Tiempo*, January 1, 2000.

<sup>91</sup> For example, the ecclesiastical production of indicators by the Pastoral Social of the Catholic Church. See “Desplazados no Saldrán del Pastoral,” *El Tiempo*, July 27, 2000. This approach is not missing entirely from latter dates, where the reporting style on indicators had changed. See, e.g., “Desplazados, una bomba de tiempo,” *El Tiempo*, December 22, 2004.

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Constitutional Court's intervention in 2004, production and use of indicators were of lesser importance and prominence in the public sphere.

By 2004, the third approach to indicators in the media took an important turn. As we have seen, the production of statistical data on IDP was a major concern in the Court's decision in 2004, and throughout the process that followed. Once referred to in the text of the ruling, these numbers acquired an authority for the media that did not exist beforehand. All of a sudden, figures that used to be read with a grain of salt, became "what the Court said," and thus, acquired a higher sense of reliability by magically changing their producer.<sup>92</sup> It is also around this time that the media started to report the difference in indicators depending on their source, quite literally referring to the phenomenon as "quarrels over indicators,"<sup>93</sup> probably due to the Court's admonishment on this issue. Global decision-makers, such as the UNHCR, became empowered by this move, and played a more important part in the media during and after 2004, considering the increased spotlight placed by the Court on the production of indicators, even on an international level.<sup>94</sup>

As already seen, the Court's decision in 2004 radically changed the debate on IDPs and indicators. Media reference to the topic took two major paths after 2004: much like the Court itself, newspapers were either chastising public institutions due to their lack of compliance with decision T-025,<sup>95</sup> or there was a general admiration for the Court's action, seen as a bold step towards social justice.<sup>96</sup> It was not until the mid and late 2000s that media reports on IDP indicators were spiced up by the addition of international reports on the same topic. Not only the UNHCR, but other international institutions such as the Norwegian Refugee Council through its IDMC started to do some heavy reporting on the IDP situation. During this time, the way in which the media wrote about internal displacement and the sources used for their indicators were much more sophisticated. A general tendency to discriminate sources to attempt to draw an objective picture emerged.<sup>97</sup> Furthermore, reliance on other indicator producers became more typical to include, for example, third-party NGOs.<sup>98</sup> In these cases, claims on the number of IDPs in Colombia were generally of high proportions and made by press statements and not through published materials<sup>99</sup>.

<sup>92</sup> See, e.g., "54 Días para dar respuesta a desterrados," *El Tiempo*, February 7, 2004; "No Más Pañitos de Agua Tibia," *Revista Semana*, February 9, 2004; "Se agota el plazo," *Revista Semana*, March 12, 2004.

<sup>93</sup> "Agarrón por las cifras," *El Tiempo*, September 3, 2004.

<sup>94</sup> "Acnur pide replantear política de desplazados," *El Tiempo*, December 16, 2004.

<sup>95</sup> "No hay política de desplazados," *El Tiempo*, May 12, 2004; "Crisis en los desplazados del meta," *El Tiempo*, October 12, 2004.

<sup>96</sup> See "Desplazados," *Revista Semana*, July 30, 2004.

<sup>97</sup> "Comunidades afro de Tumaco urgen atención del gobierno," *Revista Hechos del Callejón*, March 18, 2008. It is noteworthy that this is the first reported reference to the Norwegian Refugee Council's use of indicators on IDPs.

<sup>98</sup> In this particular case, an Ecuadorian religious NGO (the "Jesuit service for refugees and migrants") is quoted by: "ONG asegura que hay más de 600 mil desplazados colombianos," *El Espectador*, March 14, 2008.

<sup>99</sup> *Idem*. According to *El País*, the Ecuadorian office of the UNHCR noted that there were 3.5 million internally displaced persons in Colombia by 2008 through a public statement.

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The most cautious approach was taken by the ICRC, perhaps in accordance with their mandate in the country. When interviewed, the spokesman for the ICRC described merely a range of indicators and was careful to explain that his organization did not have “competence to refer to the amount of internally displaced persons” but merely to the amount of people to which they had provided humanitarian aid.<sup>100</sup> Nonetheless, the Colombian media attempted to rely on the ICRC as a producer of indicators, even on the total amount of IDPs, going as far as to refer to their statements as “reports.”<sup>101</sup>

At this point, the different sources of indicators and their political implications had already been noted by the national and international press. However, reports from international monitoring bodies started to emerge, quickly shifting the manner in which these indicators were seen in the Colombian media. During 2008, at least five different major Colombian newspapers began relying on indicators produced by international entities. *CMI*, a Colombian news network, reported that the UNHCR had presented a report in Geneva which stated that there were four million IDPs in Colombia.<sup>102</sup> *El Universal*, a regional newspaper of importance along the Caribbean coast, referred to a report of the IDMC which also stated that there were four million IDPs in the country,<sup>103</sup> using the terms “IDMC” and “UNHCR” interchangeably. *El Espectador*, which is largely seen by Colombian journalist circles as being an independent newspaper, referred to the same report produced by the IDMC but this time “under the auspices” of the UNHCR.<sup>104</sup> *El Tiempo*, by all accounts the most influential newspaper of the country, referred to (presumably) the same report, although this time as authored by the Norwegian Refugee Council and rendered “in the presence of the UNHCR” (emphasis added), again with the same four million figure.<sup>105</sup> *El Herald*, another influential Caribbean newspaper, wrote of the report presented by the IDMC with the same figure,<sup>106</sup> and *El País*, the leading newspaper in the western side of the country and the Pacific coast, reported the same figure, although attributed the report both to the UNHCR and the IDMC.<sup>107</sup>

All of these publications were referring to the only relevant report rendered at the time: the IDMC Activity Report of 2007, published in April of 2008, which in turn referred to a country-specific report entitled “*Resisting Displacement by Combatants and Developers: Humanitarian Zones in north west Colombia*.” Although the report did have a fleeting reference to indicators by stating that “almost four million

<sup>100</sup> “Desplazarse no es solo huir, es perderlo todo,” *British Broadcasting Company (BBC)*, April 2, 2008.

<sup>101</sup> “Aumento del desplazamiento en diferentes regiones del sur occidente colombiano,” *El Tiempo*, April 2, 2008.

<sup>102</sup> “Siguen aumentando en Colombia número de desplazados según ONG,” *CMI*, April 16, 2008.

<sup>103</sup> “Situación de desplazados empeoró en 2007,” *El Universal*, April 16, 2008.

<sup>104</sup> “Conflictos internos dejaron 26 millones de personas desplazadas,” *El Espectador*, April 17, 2008.

<sup>105</sup> “Hay 26 millones de personas desplazadas en el mundo,” *El Tiempo*, April 17, 2008.

<sup>106</sup> “Desplazamiento se agravó,” *El Herald*, April 17, 2008.

<sup>107</sup> “Colombia, el segundo país con más desplazados. Junto a Iraq y Sudán lidera la lista de los países con alto número de desplazados,” *El País*, April 18, 2008.



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Colombians have been displaced,” its source had quite a different take on the matter. The IDMC report is exhaustive on its use of indicators, not only describing in full details the production of indicators in Colombia and the general issues with their use as warned by the Constitutional Court, but being cautious on its very use of indicators. Its general overview of IDP indicators in Colombia warns that “there is a huge discrepancy between official and non-official IDP numbers reflecting different approaches to durable solutions, the nature of the conflict and to what constitutes the end of displacement.”<sup>108</sup> It then summarizes the divergence of indicators in Colombia: “The Colombian NGO CODHES has recorded a total of 3.7 million internally displaced in Colombia since 1985. The government’s current estimate is much lower, at 1.75 million, largely due to the fact that it started registering IDPs systematically only in 2000. CODHES registered about 1.8 million IDPs between 1985 and 1999, whereas the government in the same period registered only 79,000. However, from 2000, the year the government improved its registration procedures, there is much less discrepancy. CODHES registered around 1.8 million between 2000 and October 2005, against 1.6 million recorded by the government.”<sup>109</sup>

The same discrepancy on indicators reported by international bodies continued in the late 2008 as quoted by the Colombian press. According to *Semana*, the leading magazine on political affairs, the UNHCR had “reported over 3 million internally displaced persons.”<sup>110</sup> This same figure was reported by *El Espectador* when describing the constant quarrel between the government and independent organizations as to the amount of displaced persons in the country,<sup>111</sup> and furthermore by *El País*,<sup>112</sup> the online media *Terra*,<sup>113</sup> and the international press agency *Reuters*.<sup>114</sup> It remains unclear why the same newspapers that had published similar stories that same year, reported a different indicator a few months later, though the various sources referred to statements made by UNHCR in Europe. In this context, it seems of importance to note that only two UNHCR reports were produced at the time: the “*Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and of the Secretary General—Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*,”<sup>115</sup> still in its draft form, and the “*UNHCR Global Report 2007—Colombia Situation*,”<sup>116</sup> which is part of the

<sup>108</sup> Internal Displacement Monitoring Centre, “Colombia: Resisting displacement by combatants and developers: Humanitarian Zones in north-west Colombia. A Profile of the Internal Displacement Situation,” November 5, 2007, 99.

<sup>109</sup> Ibid.

<sup>110</sup> “La hecatombe de las cifras,” *Revista Semana*, June 21, 2008.

<sup>111</sup> “Desplazamiento no se puede medir,” *El Espectador*, June 18, 2008.

<sup>112</sup> “Acnur aclara que Colombia es el segundo país con más desplazados en el mundo,” *El País*, June 17, 2008.

<sup>113</sup> “ACNUR dice que refugiados y desplazados internos alcanzaron cifra récord 2007,” *Terra*, June 15, 2008.

<sup>114</sup> Reuters, “Colombia reporta más de 2.5 millones de desplazados por conflicto,” *Reuters*, June 13, 2008.

<sup>115</sup> UN Doc. No. A/HRC/10/032.

<sup>116</sup> Available at <<http://www.unhcr.org/484923382.html>>.

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UNHCR Fundraising Reports. The former had but a fleeting reference to IDPs which was introduced in the following manner: “All the figures show a continuous growth in the numbers of IDPs, with a disproportionate effect on communities located in regions where the armed conflict is most intense.”<sup>117</sup> And, even though no figures were included in the body of the text, such statement was based on the following sources: “Between January and June 2008, the NGO Consultancy on Human Rights and Displacement (CODHES) recorded 270,675 new IDPs, 41 percent higher than during the same period in 2007. According to Acción Social, 249,816 IDPs were registered between January and October 2008.”<sup>118</sup>

On the other hand, the 2007 Global Report included a chart with the relevant indicators on refugees, asylum-seekers, and IDPs, although it actually left blank any IDP indicators with the following caveat-footnote: “According to the Constitutional Court of Colombia, there is a discrepancy between the real number of internally displaced people and the number given by the national registration system. The Court cites the Director of the Agencia Presidencial para la Acción Social y la Cooperación Internacional who acknowledged that the number of IDPs in Colombia is close to *three million* (Order of Compliance 218, dated August 11, 2006, related to the landmark Judgement T-025)”<sup>119</sup> (emphasis added). This trend continued in 2009, albeit not with the same thrust as it had in previous years. *El Tiempo* reported that according to the UNHCR, there were 3.3 million IDPs in the country,<sup>120</sup> while *Semana* reported roughly the same number,<sup>121</sup> both relying on the UNHCR Global Trends 2008 report,<sup>122</sup> although the report avoided entirely any figure on the number of IDPs and Colombia, and such indicator is nowhere to be found. In the latter years after the rise in international reports concerning the IDP situation in Colombia, a more sophisticated attempt at describing the different figures from different sources was made by the Colombian media. Significantly, both *El Tiempo*<sup>123</sup> and *Semana*<sup>124</sup> made an attempt to more accurately explain the divergence in indicators.

What kind of indicator is interesting for the media? It seems that the media is interested in the indicators that shame the government, either because they show a heartless administration doing nothing for victims of the conflict, an administration being shamed by an international actor, or an inept administration that is unable to have reliable figures on the victims’ plight. It is interesting to note, though, that

<sup>117</sup> UN Doc. No. A/HRC/10/032, 21.

<sup>118</sup> Ibid.

<sup>119</sup> UNHCR Global Report 2007—Colombia Situation, 452.

<sup>120</sup> “Desplazados en Colombia son más de 3.37 millones, dice agencia de refugiados de la ONU,” *El Tiempo*, June 16, 2009.

<sup>121</sup> “Colombia, entre los que más desplazados tiene en el mundo,” *Revista Semana*, June 6, 2009.

<sup>122</sup> UNHCR, 2008 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons.

<sup>123</sup> See “Al menos 380.863 personas fueron desplazadas el año pasado en el país, según Codhes,” *El Tiempo*, April 22, 2009; “Choque por la cifra de desplazados,” *El Tiempo*, April 22, 2009; “Numero de desplazados en el mundo se mantiene en 26 millones de personas,” *El Tiempo*, May 2, 2009.

<sup>124</sup> See “Cuántos secuestrados y cuántos desplazados?,” *Revista Semana*, May 1, 2009; “El conflicto se ha movido a zonas que no estaban afectadas,” *Revista Semana*, September 22, 2009.



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indicators are seldom used by the media as a description of a humanitarian crisis, in and of itself. In this sense, the role of indicators as a useful instrument to lend notoriety to an issue that is difficult to grasp should be, perhaps, qualified. While indicators have indeed been useful in Colombia to give shape and traction to the IDP crisis in the mainstream agenda, the interest of the media seems to be often mediated by the use of indicators by public officials. This is, of course, not an absolute rule; as discussed in the next section, indicators have become a platform for social mobilization, despite governmental pressures. And yet, most news coverage is not concerned with the indicator in itself, but with the use given to it by public officials, who ultimately remain in control of the agenda.

The connection between indicators and the news media is crucial to understand the former's role as technologies of global governance. Indicators become relevant and influential as news media begin to quote them and use them as evidence of a social reality. To be sure, this move empowers those producing the indicators. Moreover, the role of the press also seems to underscore the dynamics of local use of the indicator. The domestic impact of international indicators is correlated with their prominence in the national press, notwithstanding the fact that all of these indicators, if existent at all, are produced locally and then picked up internationally. This conclusion, though, should be placed in context, as it presumes media that are not controlled by government or other specific interest. What happens if that is not the case? The process whereby indicators become technologies of global governance in contexts with no free press is an important line of further research, which has not been developed yet.

Finally, it is noteworthy that many of these international sources are cautious with their use of these indicators in the Colombian context, always explicitly citing the discrepancies in numbers and the different variations. Domestic media seem uninterested by these subtleties: Indicators are appropriated by the domestic media and attributed to international sources, perhaps to give a feeling of impartiality. This closes an important circle; one indicator produced domestically is entered into a process of transformation by being cited by an international report, and then cited back by domestic media. Once the indicator "bounces" back, it acquires a new form, as if it had been produced by a different entity and a different method, and gains renewed authority in the domestic political debate.

### **IDP indicators as social mobilization**

Indicators have become a valuable instrument for civil society organizations active in IDP policy. Most clearly, as we have seen, indicators are useful to place the IDP agenda in the media, communicating a sense of urgency that seems useful in lobbying efforts. Moreover, indicators provide a clear standard for "naming and shaming" domestic governments in their treatment of the IDP situation. Beyond these aspects, though, IDP indicators seem to be more than a tool for social mobilization: They seem to *be* a process of social mobilization, in and of themselves. When doing research for this paper, I was often referred to the Human Rights and Displacement Consultancy (CODHES), an NGO that claims to

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“represent neither displaced population, nor the organizations of IDPs.”<sup>125</sup> Rather, CODHES seeks to “prevent the causes of displacement,” “evidence the phenomenon of displacement,” “analyze the forms of institutional intervention in the displacement,”<sup>126</sup> etc. All in all, instead of an activist NGO, CODHES seeks to fashion itself as a research institute, a technical source of expertise on IDPs.

CODHES is one of the most important sources of IDP indicators in Colombia. As a private, non-governmental organization, CODHES has been collecting information for the creation of indicators since 1992 through its Human Rights and Forced Displacement Information System, which gathers information through “a systematic and uninterrupted exercise of statistical estimation of contrasted sources.”<sup>127</sup> Since 1995, CODHES manages the Information System on Forced Displacement and Human Rights (SISDHES, for its initials in Spanish), whose methodology involves:<sup>128</sup> (a) the daily monitoring of more than 450 primary sources (including some international sources) regarding armed conflict and forced migration; (b) reports from other NGOs, some public institutions (such as the Office of the Ombudsman), academic institutions, and the Catholic Church; (c) raw data collected by CODHES staff sent to perform interviews on the ground. Finally, from 1995 to 2004, SISDHES applied the National Poll of Displaced Homes and, since 2007, it supports the Monitoring Commission of Forced Displacement Public Policy in the implementation of a National Poll of Verification, which was put together in the context of the follow-up process to decision T-025 of 2004, in order to apply the indicators the Court had accepted in Writs 109 and 233 of 2007.<sup>129</sup>

CODHES creates the indicators that are then taken up by the UNHCR or the IDMC, and then fed back to the Colombian media, becoming a crucial argument in the domestic debate on IDPs. In this role, CODHES has a fairly activist agenda. The organization is not shy in taking a stand against armed actors and the Colombian government in human rights issues, joining hands with other human rights NGOs. Most of its work is, in fact, along the lines of human rights activism.<sup>130</sup> My own experience with CODHES gave me that impression. When discussing some of the issues in this paper, I was in contact with CODHES director, Marco Romero. A man of strong character, Mr Romero does not come across as wanting to sound neutral or academic. Quite on the contrary, his interventions often label the administration as a “massive violator of human rights,” pointing out the social injustices suffered by IDPs, and their stigmatization in domestic politics. I shared a panel with him in Bogotá at the end of April 2010,

<sup>125</sup> See <[http://www.codhes.org/index.php?option=com\\_content&task=view&id=5&Itemid=32](http://www.codhes.org/index.php?option=com_content&task=view&id=5&Itemid=32)>.

<sup>126</sup> Ibid.

<sup>127</sup> CODHES, *Cifras e Indicadores del Desplazamiento Forzado y Derechos Humanos en Colombia*, Documentos CODHES No. 3 (2005), 67.

<sup>128</sup> CODHES, “CODHES Informa” No. 75 (2009), 1.

<sup>129</sup> Comisión de Seguimiento a la Política Pública sobre Desplazamiento Forzado, *Primer Informe de Verificación Presentado a la Corte Constitucional* (2008), 15.

<sup>130</sup> A good glimpse is its most representative publications, available at <[http://www.codhes.org/index.php?option=com\\_content&task=blogcategory&id=32&Itemid=46](http://www.codhes.org/index.php?option=com_content&task=blogcategory&id=32&Itemid=46)>.

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where some of the ideas of this chapter were discussed. I can report that, to any observer, there was hardly room for doubt: his is the voice of an activist—and a quite convincing voice at that. In fact, Mr Romero was attacked with a knife one month after we shared that Panel.<sup>131</sup> Fortunately, the wounds (which were apparently the result of a random mugging which had gone wrong) were not mortal. However, as soon as news of the attack spread, the press office of CODHES also released the information that, in the week before, Mr Romero had received death threats from three different paramilitary groups.<sup>132</sup> News desk EFE suggested that the attack could have been connected to Romero's criticism of remarks by the (then) Minister of Interior, who hinted that IDP funding was being ill-used, as it was being channeled to people who were not displaced, but merely taking advantage of the subsidies.<sup>133</sup>

In the context of this difficult situation, CODHES spends precious resources in producing all sorts of indicators. Why does it do that? Because such is the language that structures their mobilization. And the strategy is certainly effective, if we understand effectiveness in this context as the marginal increase of the NGO's influence. In its landmark decision, the Constitutional Court called for the creation of a Monitoring Commission of Forced Displacement Public Policy to follow the implementation of policy on IDPs, of which CODHES is a member.<sup>134</sup> Through its intervention in indicators, this organization has gained access and influence as an expert in the measurement of the IDP situation—an expertise highly valued by the Constitutional Court, as we have seen before. In this way, CODHES has gone beyond producing quantitative data for other activists to use. CODHES does activism by producing the indicators, feeding them with data from different sources (including its own), and then confronting the national government with the large discrepancies between different indicators.<sup>135</sup> Paradoxically, this move may in turn have demobilizing effects. In the Colombian case, the Constitutional Court opened spaces for public participation in the formulation of IDP policies. While several NGOs used this opportunity, the very complexity of the terms in which the matter had been framed (among other reasons) may have left most of the actual displaced population outside the debate. According to the Monitoring Commission of Forced Displacement Public Policy, less than one third of IDP organizations are in contact with the national table, where the policy debates take place. In turn, only

<sup>131</sup> See "Director de Principal ONG Defensora de Desplazados fue Atacado por Desconocidos," *El Espectador*, May 23, 2010, available at <<http://www.elspectador.com/noticias/judicial/articulo-204635-director-de-principal-ong-defensora-de-desplazados-fue-atacado-des>>.

<sup>132</sup> According to the press communiqué, the threats came from "Aguilas Negras," "Los Rastrojos," and "Bloque Capital." See CODHES, "Ataque contra director de CODHES, Marco Romero Silva," May 23, 2010, available at <[http://www.codhes.org/index.php?option=com\\_content&task=view&id=822](http://www.codhes.org/index.php?option=com_content&task=view&id=822)>.

<sup>133</sup> See EFE, "Director de Codhes es herido en presunto atentado" (May 23, 2010), available at <<http://www.terra.com.co/noticias/articulo/html/acu31735-director-de-codhes-es-herido-en-presunto-atentado.htm>>.

<sup>134</sup> See Comisión de Seguimiento a la Política Pública sobre Desplazamiento Forzado, *Primer Informe de Verificación Presentado a la Corte Constitucional* (2008), 14.

<sup>135</sup> This is seen through the media coverage of the public debate that arose after CODHES reported almost twice as many internally displaced persons as the Social Solidarity Network. See "Agarrón por las cifras del desplazamiento," *El Tiempo*, September 3, 2004, 3A.

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32 percent of all IDPs belong to an IDP organization.<sup>136</sup> Indicators as social mobilization may, in the end, not necessarily imply grassroots mobilization of the excluded, but rather a high impact strategy of NGOs holding specific technical expertise.

Beyond the influence of a particular NGO, a different standard of effectiveness refers to the impact of the indicators they produce, in terms of changing social policy. In this case, it is hard to assess the impact of CODHES as an independent actor, for its impact is inextricably linked to the emphasis placed by the Constitutional Court on indicators, serving as a sounding board for the particular mode of social mobilization chosen by the NGO. Indicators as technologies of global governance work not as single cause of policy reform, but rather as an important part of a more general narrative of social mobilization that triggers change. This process, though, does not occur in a vacuum, but rather influences and is influenced by the institutional structure. The following section explores the role played by indicators in the interaction between the three branches of power in Colombia: Who wins and who loses when indicators are deployed?

### IDP indicators and the interaction among separate branches of power

The role of IDP indicators in the political economy of institutional design in Colombia can be usefully understood in reference to two wider debates on governance in Latin America. The first debate is that of judicial activism. As has been discussed, the Court's decision implied a number of structural orders, which were bound to have deep impact in Colombian society. This fact, though, left the Court open to the standard critique of judicial activism: Is it undemocratic to have a Court making this kind of structural decision?<sup>137</sup> Are Courts the best actor to push for social change?<sup>138</sup> Does one need to have a deliberative process (ideally through Congress)?<sup>139</sup> Do Courts have the institutional muscle to enforce this kind of structural order?<sup>140</sup> This discussion exceeds the scope of this chapter. However, the Court clearly faces severe challenges in justifying its ambitious intervention. There is an underlying problem of legitimacy that cannot be ignored.<sup>141</sup> It is not as if the Court can simply give an order, and all the bureaucracies of the Colombian

<sup>136</sup> Comisión de Seguimiento a la Política Pública sobre Desplazamiento Forzado, Primer Informe de Verificación Presentado a la Corte Constitucional, 2008, 49.

<sup>137</sup> See Jeremy Waldron, “The Core Case Against Judicial Review,” *Yale Law Journal* 115 (2006): 1346.

<sup>138</sup> See Ran Hirschl, *Toward Juristocracy: The Origins and Consequences of the New Constitutionalism* (Cambridge, MA and London: Harvard Press University, 2004), 169.

<sup>139</sup> See, e.g., the notion of populist constitutional law in Mark Tushnet, *Taking the Constitution Away from the Courts* (United Kingdom: Princeton University Press, 1999), 177.

<sup>140</sup> For a summary of this argument (and the counter argument) in the South African context, see Mark Tushnet, *Weak Courts, Strong Rights: Judicial Review and Social Welfare Rights in Comparative Constitutional Law* (New Jersey: Princeton University Press, 2008), 196.

<sup>141</sup> The term legitimacy is used here in its normative sense, as an answer to the question: why should the structural intervention of the Court be obeyed? In Weberian terms, the Court's intervention needs to command uncoerced obedience. To that effect, as we will see, indicators are useful. On the normative/empirical aspects of legitimacy in global governance, see Dencho Georgiev, “Politics or Rule

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establishment happily bow to its commands. Quite on the contrary, one finds bureaucratic inertia, turf wars, and lack of will. While throughout the 2004 decision (and the follow-up process), one notes the Court's constant concern for respecting the sphere of action of the institutions involved with IDP policy, the fact is that the sheer scope of the orders was bound to create a certain backlash from the administration.

This is, to be sure, not the first time that one of the Court's decisions sparked severe debate on the legitimacy of its far-reaching decisions.<sup>142</sup> While the Court's objective seems to have been to jump-start lethargic bureaucracies and bring them to speak the language of rights, it still shows a certain restraint that can be understood as deference to other branches of power. There is a constant need to legitimize (and re-legitimize) the structural decision taken by the judge, as opposed to the same decision taken by elected representatives in Congress. Enter thus indicators. Indicators provide the Court with at least four valuable assets in its quest for legitimacy:

- (a) First, they provide objective criteria to evaluate the reasons for the Court's structural intervention. In much the same way as indicators provided the UNHCR with rationality and predictability in its involvement with IDPs' situations, the same technology provides rationality to an intervention by the Court that could be perceived as random and unpredictable.
- (b) Second, indicators provide transparency to the Court's structural intervention. While the decision-making process within the Court could be perceived as obscure, indicators set (or at least, give the impression of setting) certain guidelines for decisions that are open and known to all.
- (c) Third, indicators provide a standard to assess whether the Court's structural intervention is needed or not. Ultimately, once the "jump-start effect" has faded away, the longer the Court stays involved with a situation such as the IDP crisis in Colombia, the less legitimacy its intervention has. Indicators are useful in this context, as they provide a reasonable exit strategy to the Court, once its intervention has worn out its welcome.

of Law: Deconstruction and Legitimacy in International Law," *European Journal of International Law* 4 (1993), 12ff.

<sup>142</sup> Prior "unconstitutional state of affairs" included the situation of public funding of education (Decision SU-559 of 1997), the inhuman conditions in Colombian prisons (Decision T-153 of 1998), and the general vulnerability of human rights activists (Decision T-590 of 1998). The most controversial decisions, though, have been those that are perceived to have deep impact on the country's economy. For example, the Court's legitimacy was questioned on the occasion of Decision C-700 of 1999, where it decided that the mortgage and housing financing system in force was contrary to the Constitution. Controversy was also sparked when the Court decided that the yearly salary raise of civil servants should be equivalent, at least, to the yearly consumer price index (Decisions C-1433 of 2001, C-1064 of 2001, and C-1017 of 2003), and when the Court decided that the yearly raise of the minimal wage should be equivalent, at least, to the inflation rate (Decision C-815 de 1999). For a critique of the latter decision from the economics perspective, see Marc Hofstetter, "Política Monetaria y la Corte Constitucional: El Caso del Salario Mínimo," Documento CEDE 2005–36.

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- (d) Fourth, the Court’s turn to indicators fostered a process of public debate underscoring its legitimacy. As we have seen, the Court called (with varying degree of success) different civil society organizations and other stakeholders to propose and evaluate IDP indicators. The political dynamics triggered by this call, the discursive practices it inspired, seem useful to further advance the legitimacy of the Court’s structural intervention. This suggests a different angle for understanding the connection between indicators and legitimacy. One constant preoccupation with the use of indicators as a technology of governance is that, by turning to quantitative data, it may hinder democratic decision-making, instead empowering experts and technocrats. However, the Colombian Court tried to foster social mobilization by inviting organizations to create and criticize indicators, thereby also trying to expand popular support to a judicial intervention that was certain to draw fire. In this case, then, instead of featuring a sharp contrast to democratic legitimacy, the Court’s turn to a dialectical construction of indicators can be read as a move to actually increase (again, with more or less success) the decision’s legitimacy.

The combination of these four variables contributes to a more convincing justification for the Court’s structural intervention in the IDP case. It should be noted that the IDP decision was one of the very first decisions where the Court placed an emphasis on indicators. Since then, quantitative methodologies have become a central tenet when a far-reaching structural decision is on the table. A case in point is a recent decision concerning the structure and financial stability of health care in Colombia.<sup>143</sup> Perhaps inspired by its experience following the IDP decision, the Court gave structural orders to all institutions involved with health care, and put in place a follow-up process based on writs. Once again, the Court held that an indicator of the “effective enjoyment” of the right to health was required.<sup>144</sup> And, once again, the Court adopted follow-up writs where indicators play an important role.<sup>145</sup> The Court formed an experts committee comprised of deans of medical schools, lawyers, and epidemiological experts. The group was tasked with identifying parameters for creating indicators to evaluate government’s compliance with health rights. In its task, the experts group drew on norms and guidance of the World Health Organization, the Pan-American Health Organization, the Inter-American Court of Human Rights, as well as literature by Western academic scholars. In October 2011, the Constitutional Court adopted Writ 226, in which it established the framework for its interaction with Congress, the government and independent regulators of health care. Indicators are at the core of the Court’s approach. Expressly inspired by recent scholarship on indicators as technologies of governance, the Court developed quantitative parameters to be followed by regulators and Congress, under which

<sup>143</sup> See Decision T-760 of 2008.

<sup>144</sup> See Decision T-760 of 2008, Section 9.

<sup>145</sup> See, e.g., Writ of July 13, 2009 (no number), concerning the implementation of Order 20 in Decision T-760 of 2008.



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the Court will monitor their performance.<sup>146</sup> In this sense, the turn to indicators fits well in the wider debate of judicial activism. When a structural intervention is advanced, emphasis on indicators provides a useful platform for the judiciary to enhance the legitimacy of such intervention.

Moreover, the role of IDP indicators in the political economy of institutional design in Colombia can be also usefully understood in reference to a second axis—this time, the general trend towards rationalizing administrative action. The evolution of Colombian administrative law can be understood as a never-ending quest to achieve efficient bureaucracies, where technocrats would populate the administration, and exercise power rationally and predictably. This ideal of expelling politicians and their electoral rationality from the administration has been usefully labeled the “Weberian Dream” of Colombian administrative law.<sup>147</sup> The turn to indicators in the Court’s decision seems to be another expression of this dream. The Court pushes for indicators, because it wishes to empower rational bureaucracies who may be monitored, and who accept the legitimacy of quantitative methods. To be sure, this focus on indicators underscores the relation between the Court and the Executive branch. Congress is left in an accessory role, a guest whose internal dynamics of deliberation is an ill-fit for the quantitative language of indicators.

Two different attempts at passing IDP-specific legislation were attempted at the end of the 1990s, both of which successfully culminated in the passing of the aforementioned Law 386 of 1997.<sup>148</sup> Colombian legislative procedure demands that an ordinary bill (one which does not modify the Constitutional Bill of Rights or Congress’s powers) receive two separate debates from each Chamber in their respective committees, and in their plenary sessions. Accordingly, each ordinary bill is discussed four times before its passing, and its author is allowed to deliver a general statement to support the project in its initial debate. Consequently, Law 386 of 1997 had five specific parliamentary discussions: its first general statement, and four reports in the subsequent discussions in Chambers. None of these reports, discussions, or statements focused on IDP indicators. The bill’s authors quoted the amount of displaced persons as reported by the Episcopal Conference, which counted 600,000 displaced persons at that time.<sup>149</sup> However, the general statement took a cautious approach towards the use of indicators, by declaring expressly that “although the registered quantitative variables show great discrepancies and are in themselves not too eloquent of the dimension of the problem, the latest research by the Human Mobility Section of the Colombian Episcopal Conference show the existence of six hundred thousand displaced persons [...]”.<sup>150</sup> This was further

<sup>146</sup> See Writ 226 of October 21, 2011.

<sup>147</sup> See Diego López-Medina, “El Sueño Weberiano: Claves para una Comprensión Constitucional de la Estructura Administrativa del Estado Colombiano,” *Revista de Derecho Público-Universidad de Los Andes* (2007): 1.

<sup>148</sup> These attempts were Bill 033 of 1996 and Bill 016 of 1995 of the Chamber of Representatives, and Bill 015 of 1996 of the Senate (which corresponds to the Chamber of Representatives’ latter Bill). Both of these projects were joined in the Senate’s plenary session, and thus, had the same discussions and voting procedures.

<sup>149</sup> See Gaceta del Congreso, Tuesday, August 8, 1995, 2.

<sup>150</sup> Ibid.

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stressed when quoting the Colombian Ombudsman who espoused a similar approach: “statistics of catholic hierarchy show that out of the 24 million of displaced persons worldwide due to non-international armed conflicts, 548,261 are Colombians [...]”.<sup>151</sup>

The first debate in the Chamber of Representatives featured no reference at all to IDP indicators. This suggests, alongside the debate lacking in plenary sessions, that Congress was not particularly concerned with indicators, perhaps due to executive action on the same issue, which was much more far-reaching than parliamentary action.<sup>152</sup> The second debate in the Chamber of Representatives, which took place one legislature after its first debate, included only a fleeting reference to any indicator, by an unsubstantiated claim on the total number of displaced persons: “Indicators are growing in an alarming manner, today there are 700,000 Colombians affected and the consequences and effects that this situation has for our nation are intangible.”<sup>153</sup> The first and second reports in the Senate featured the same report and both failed to be discussed in the plenary. Ultimately, the debate in the lower Chamber was perhaps the most extensive debate on the question of IDPs to have ever taken place in Congress—and there was no reference whatsoever to indicators. And yet, Congress did understand that use of indicators was a discursive strategy available to MPs. In the following year, after the Chamber of Representatives’ second debate, the Senate was using a higher number of internally displaced persons and unfounded indicators regarding the compositions of displaced groups: “It is estimated that the number of displaced persons today is of 750,000 people and the most affected groups are those of women and young people. It is considered that women represent 58 percent of the displaced population. [...] In the same vein, 72 percent are younger than 25 years of age.”<sup>154</sup>

Indicators *were* part of the landscape, but Parliamentary arguments were not ultimately based on them. Even if quantitative data was sometimes introduced in debates, Congress was not that interested in indicators. This may be counter-intuitive, as one could expect Congress to be interested in limiting the discretion of the executive branch in dealing with the IDP situation, and implementing a system of bench-marking based on indicators may be perceived as a way of doing so. However, indicators may be perceived as an expertise held mainly by executive agencies. Therefore, it is possible to interpret Congress’ systematic rejection of indicators as a tool of governance as a way of keeping its control over the IDP issue.

In contrast, the Court seemed clearly interested in enhancing the use of indicators. Indicators can be read, therefore, as a part of a more general agenda of good governance, in the sense that they would be perceived as enhancing accountability, transparency, and rationality. This move also empowers technical experts, who have knowledge on indicators, and could be read as disempowering Congress, who is

<sup>151</sup> See *Gaceta del Congreso*, Tuesday, August 8, 1995, 3.

<sup>152</sup> As shown before, during the 90s and up to Decision T-025 of the Constitutional Court, normative efforts to tackle IDPs were primarily of an executive nature. These included the above-mentioned Conpes documents and presidential decrees.

<sup>153</sup> *Gaceta del Congreso*, Tuesday, March 12, 1996, 3.

<sup>154</sup> *Gaceta del Congreso*, Thursday, June 5, 1997, 3.



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also disempowered if the “Weberian dream” becomes a reality. In the Colombian case, the Constitutional Court seemed to put its weight on the side of the technocrats, as perhaps this move would also empower the Court to control the discussion on IDP policy, by framing it as a matter of indicators and monitoring, and not as a problem of redistribution of wealth, which would require a wider debate in Congress.

Paradoxically, for all its tense relations with dormant bureaucracies, the judiciary is brought closer to executive agencies by the turn to indicators. Indicators work as a common language between the technocrats in government and the lawyers in the Courts, which allows a certain communication that would have impossible otherwise. Through this common language, and particularly through the concept of indicators of “effective enjoyment of rights,” the Court gets involved in the logic of governance—distributive choices, second bests, *Catch-22* situations. Bureaucrats, in turn, get involved in a logic of rights that accepts the counter-majoritarian rationale of adjudication. This process, in turn, has one final interesting feature: The turn to indicators seem to create middle ground between lawyers and economists, where the disciplinary loyalties of each can be fruitfully negotiated.<sup>155</sup> As such, then, indicators can be usefully understood as a technology of governance that crosses both national and disciplinary borders. And yet, Congress seems to be, at any rate, left out of the party.

## Conclusion

The IDP experience in Colombia points to some promising aspects of researching indicators as technologies of global governance. It also reveals some limitations in the understanding of the problem up to now. It shows that indicators do indeed spark an interaction between global decision-makers and domestic agencies. This process is one in which the indicator gains a life of its own in the domestic political debate. In that sense, indicators have influence in domestic decision-making and are indeed a mechanism for exercising global authority. And yet, there remains a space for use and misuse of the indicator, where global agendas get transformed and become the stuff of domestic politics. In those contexts, indicators serve unexpected goals. In the IDP case, for example, they became the sole end of social mobilization, and became part of century-long debates on judicial activism and administrative transformation.

How can the specific influence of indicators in domestic contexts be assessed? While it seems hard to establish a test of strict causation, the IDP experience in Colombia shows that introducing indicators into domestic debate changes the way in which issues are understood and spoken of, empowering some above others. The

<sup>155</sup> For the wider implications of the struggle between lawyers and economists in Latin America, see Yves Dezalay and Bryant Garth, *The Internationalization of Palace Wars: Lawyers, Economists, and the Contest to Transform Latin-American States* (Chicago and London: The University of Chicago Press, 2002).

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lesson seems to be that we need a more robust theory of global influence and authority, in order to determine the specific ways in which indicators change the decision-making process. It also shows the limited use of the conceptual structure featured in previous work on indicators, where the variables in the triad of global governance are governors, governed, and the public. Once the indicator enters the domestic debate, the “public” will use it, but so will the “governed.” Once again, the directionality of authority is less simple than it may appear. As for the “governors,” the IDP experience shows that they are both users of, and measured by, indicators. The UNHCR itself needs to justify its intervention in IDP contexts, and indicators come in handy to that effect.

Indicators are a representation of reality. However, in a way, they create a reality as well. The IDP debate in Colombia is a demonstration of this. While the marginal effect of violence made it difficult to grasp the magnitude of the human tragedy, the introduction of indicators to the debate made it possible to name that reality, and connect a number of circumstances (poverty, violence against women, rising prostitution and suicide rates) with a single cause (displacement due to internal armed conflict). The role of news media in that sense is of crucial importance; it is, quite literally, the mediator between the technical expertise embedded in the statistic and the political happening of the indicator as a technology of global governance. In much the same way as mere statistical data is not an indicator, a mere indicator is not a technology of governance without the media.

Ultimately, the case study featured here confirms the idea that indicators rapidly gain a life of their own. This life is truly global, as it involves both an international and a domestic (even local) aspect. As hinted at before, it is by looking at the intimacies of its domestic life that we get a better sense of the inner working of this technology of governance, the reasons behind its success, and the specific challenges it poses.