The notion of the victim in mobilizing legal action : the case of women in the colombian war

Carolina Vergel Tovar

Electronic version

URL: <http://journals.openedition.org/revdh/7124>

DOI: 10.4000/revdh.7124

ISSN: 2264-119X

Publisher

Centre de recherches et d'études sur les droits fondamentaux

Electronic reference

Carolina Vergel Tovar, « The notion of the victim in mobilizing legal action : the case of women in the colombian war », *La Revue des droits de l'homme* [Online], 16 | 2019, Online since 04 July 2019, connection on 09 July 2020. URL : <http://journals.openedition.org/revdh/7124> ; DOI : <https://doi.org/10.4000/revdh.7124>

This text was automatically generated on 9 July 2020.

Tous droits réservés

The notion of the victim in mobilizing legal action : the case of women in the colombian war

Carolina Vergel Tovar

Introduction

- 1 A detailed study of the forms of action of feminist activism in Colombia since the second half of the twentieth century reveals a central fact: starting from the 2000s, when faced with a surge of violence following the transformations of the armed conflict¹, part of the movement changed some of its strategies of opposition. The strategies turned towards an investment more and more intense in the legal and judicial sphere to be more efficient. This strategy bore fruit, not only in relation to some key judicial criminal decisions, but also, much more significantly, in terms of its impact on the Constitutional Court and on the effect its decisions had in favor of women victims of the war².
- 2 When going through the judicial system, and, particularly for the Constitutional Court, through actions of *tutela* (constitutional action in justice), and using all the levers provided to it by the 1991 Constitution, the movement's actions in favor of women who were victims of the armed conflict forced the State to recognize and admit the disproportionate impact the conflict had had on women's lives, and, in particular, to change its public policies, programs and speeches³.
- 3 Crystallized in a series of judicial decisions that constitute a number of ruptures, the women's movement has progressively developed into a cause, that of women victims of the war. These transformations have revealed problems, highlighting aspects that had thus far been silenced, including within the women's movement itself. However, they have also shed light on innovations that have borne fruit beyond issues connected with the impacts of the armed conflict.

- 4 We would like to resume the investigatory work undertaken in Colombia and ask a number of questions. How, for instance, did those actors manage to build and organize a mobilization around this notion of the victim that had such important consequences, including from a constitutional point of view? Which debates did they face? Which issues allowed them to move forward? Using the central axis of the work of feminist activism and its relationship with the legal sphere, we will consider these questions starting with the analysis of the debates raised within the movement by the use and conceptual development of the notion of the victim. This notion, carried by its legal efficiency, was the subject of contradictory interpretations by sectors of the movement, problematizing its contents for legal action.
- 5 From around 2005 in Colombia, debates about the “law for justice and peace”⁴ and the project to adopt a “general law for victims”⁵ highlighted the strategic scope of the definition of the word “victim”. The central character of the formal conditions for the “victim” to be able to access the judicial arena was also highly debated. The mastery of these two aspects thus becomes an unavoidable task for feminist activists, mobilized around the cause of women victims of the war. However, the construction of a line of action around the two dimensions of the question, is not obvious for Colombian feminist activists.
- 6 There are two reasons for this: first, because of the complex relations between social movements,⁶ especially feminism, and the law,⁷ but also because of the difficulties of establishing a global reading of violence in the context of armed conflict. Thus, the different processes of victimization are understood as the construction of a “woman victim” entity that is legitimate in not only social but also legal terms. Those processes constitute political issues that challenge the foundations of collective action, especially when the movement turns towards litigation and legal action.
- 7 Among these issues, let us underline two, which can be posed as questions. Firstly, for whom are we mobilizing? And secondly, who may speak on behalf of the victims – women victims? Providing a concrete response to these questions implies a double exercise: a conceptual, discursive one on the one hand, and the organization of activism at the pragmatic level on the other. This analysis focuses on the examination of the main conceptual and technical problems experienced and debated by a sector of the women’s movement, mobilized for the defense of the cause for women victims of the war. This concerns, namely: the debate around: the thesis of the continuum of violence issued by British sociologist Cynthia Cockburn⁸; the issue of the attribution of responsibility connected with this violence; the complex relationship between the notion of the victim and the possibility of action in the judicial sphere; and, finally, the centrality of the “victim” in the cause.
- 8 The main point of discussion for activists is the construction of a victim subject. This debate has had had political and conceptual extensions deeper than the strategic attitude towards the situation of evolution of the Colombian armed conflict. As we will see, the way the issue should be raised immediately revealed the import of the judicialization of the cause⁹ but also the political and conceptual significance that the movement accorded to the word “feminism”.

1. The stakes and issues of the construction of a “woman-victim” subject

- 9 To begin with, an important assertion should be made: very few developments can be found, nor efforts to justify or theorize the categorization of victims by the feminist activists whom I had the opportunity to work with when carrying out this investigation in Colombia. The category seems to have been adopted as an integral part of the legal norms and concepts that introduced it into common language usage, as well as in the activists’ instruments of action, especially the discourse taking place within the context of “transitional justice”. This time, the ‘performance’ of the legal notion of the victim, is a “typical act founder of classification”, to quote the words used by B. Fraenkel in his analysis based on Austin’s theory¹⁰. He clearly demonstrates the judicialization of the cause, and more precisely, of its discourse.
- 10 This performance of the word “victim”, transposed onto the subject of the “woman victim”, seems to rely on the plurality of “causes” with which this category can be associated. Indeed, this can comprise: the struggle for the recognition of “women’s human rights”; the struggle against violence against women or because of gender; the struggle against discriminations against women or because of gender; the struggle for the right to truth, justice and reparation; and, finally, “victims’ rights” within judicial proceedings¹¹.
- 11 All of these possible causes can be expressed in terms of a “victim” figure onto which either a violation of human rights, discrimination, violence, or the conception of a subject figure that has corresponding rights and wants to exercise them within the rule of law is materialized. To put it another way, the word ‘victim’ comprises a plurality of qualifications and categories implied by the diversity of normative registers likely to be convened.
- 12 Speaking of “women victims”, it is therefore possible to take sides and to denounce these different problems in a simultaneous and parallel way. The scope of this notion can hide some distinctions that it establishes or conveys, as well as limitations imposed upon the political subject of feminism. As we will see, the issue of a political subject of feminism is central to the discussion on “women victims” insofar as a fundamental concept of the “subject” is at stake. It is conceived of in as broad a sense as the definition of “feminism” itself, as suggested by Mary Dietz, for whom feminism is “a movement at the same time global and local, social and politic which presupposes a normative content doubled with an emancipation goal”.¹² As a matter of fact, when studying discussions held by activists themselves, the definition of “women victims” presents itself as a line of principle. At the same time, it implies a construction project that claims to be exclusive,¹³ which gives rise to a new language for the cause for women and that interprets the “subject” in several different ways.
- 13 This definition leads to a distinction between “those who are victims” and “those who speak on their favor, or on their behalf”. The category of the victim seems to only be universalizable by assuming the permanent risk for all women of becoming one. These considerations invite one to question the conditions that make it possible to conciliate the appropriation of the notion of the “woman victim” as an activist line of work, with the objective of ensuring the empowerment of women, or even their emancipation.

- 14 While these questions can be asked in relation to any context in which processes of victimization and a corresponding mobilization occur, it is nonetheless important to take into account the specificities generated by certain situations such as armed conflict or extreme crises. In this context, the category of the “victim” encounters other distinctions, including the classic division between “civilians” and “combatants”. Its use also leads to other arguments, especially as far as our topic is concerned, not only about the relationship between pacifism and feminist struggles, but also about the issue of violence against women in the context of war or in situations of “extreme” violence in general.
- 15 As we can see, the definition and the centrality of the category of the “woman victim”, establish a tension between the pragmatic exigencies of the Colombian context, and, on the other hand, the historic debates of feminism. The conceptual centrality of action stood in opposition to a tradition that believed victimization to be the major issue of feminist struggles.

2. The discourse of the activists and the four central issues regarding the construction of the cause

- 16 Although the “cause for women victims of the armed conflict” is still presented by activists as a problem, a general concern, or even a universal scandal, it involves quite a particular and specific idea of the “woman victim”. This distortion between the discourses built around the problem and the political goal of the cause, on the one hand, and the circumscription of the notion that defines *in fine* its object, on the other hand, results from an interaction between different factors.
- 17 We have identified four factors that we believe combine the most important issues. The first involves the difficulty of establishing a discourse on violence against women victims of armed conflict as a manifestation of violence against women *in general*, i.e., the difficulty of positioning the idea of the “continuum” of violence against women in times of peace and war as suggested by C. Cockburn.¹⁴ Indeed, the difficulty of the idea of the *continuum* lies in the fact that it cannot highlight the plurality of forms and registers of violence. A second factor involves the attribution of responsibility in relation to the violence. The third factor concerns the complex relationship between the notion of the victim and the possibility of acting in the judicial form. All these factors converge, lastly, around a fourth and final factor, i.e. the centrality of the object “victim” in the cause.
- 18 Despite some differences, these factors are, in a way, interrelated. The first one, we believe, is due to the particularities of the Colombian case, and the difficulty of establishing a global narrative of violence,¹⁵ including for feminists, who have long been involved in the formation of a historic story. The other factors, however, are subject to a limitation, specific to the new place of the victim. This is inconceivable outside of the legal and judicial category, especially from a perspective that claims to be feminist.
- 19 This last dimension becomes more obvious in light of one of the rare analyses of the cause proposed by activists, in relation to the notion of the victim, which thus deserves to be quoted *in extenso*:

“Women have played very diverse roles during wars and those roles have been analyzed from different perspectives. Some have implied a kind of dichotomy between the role of victim and the role of social actor. Presenting women only as victims means to perpetuate their position of vulnerability and inability to defend themselves. It minimizes their active role and their participation in the reconstruction of the social bounds as well as the construction of peace. However, the recognition of the situation of victim is not (...), in a perspective of rights, a disability. Using the word victim about someone who had their rights violated, does not remove their capacity of action, or more generally, their capacity to take action. The qualifier of victim is relational. There is no need to use it without the conjunction of three elements: a person with rights, another person that violates them, and a State responsible for the violation that was committed”¹⁶.

- 20 Therefore, it is only by virtue of the capacity of imputation in the judicial sphere that the qualification of victim would be conceivable or compatible with the idea that it is at the same time an active social player. The notion of victim is part of the institutional and conceptual tradition of human rights. This matrix enables to identify a victim, a responsible agent and a reparation. Giving this legal form is framing political action.
- 21 Let us therefore analyze the specific issues relating to this particular articulation of legal normativity within political action, on the basis of the above-mentioned factors.

3. The ambivalence of the idea of a “*continuum*” of violence (in relation to C. Cockburn’s thesis)

- 22 The issue of responsibility lies at the center of the idea of the *continuum* of violence. In theory, this idea is intended to explain the connection between manifestations of violence against women (but also “gender-based” violence¹⁷), regardless of the context, be it political or domestic. The idea according to which these different kinds of violence, in times of peace or during armed conflict, only show structural violence that is already part of the kind of gender-based violence in a specific country probably has a greater capacity to politicize the violence sustained by women outside of periods of war. From a perspective wherein gender is thought of in terms of a power relationship, this position also renders intelligible violence that could be - or is - “reduced” to excesses perceived as traditional in war, and that would therefore be considered as somewhat exceptional compared to ‘normal’, daily social life.
- 23 This close connection between the different forms of violence against women (as well as gender-based violence) both before and during a conflict also has the benefit, for the discourse of the cause, of strengthening the idea of an “us” that seems to erase the distinction between the concrete “victims” of the armed conflict and the others, in this case, other women. And since the claims are addressed to the State, this “us” established around the victim figure seems to be ensured. If we closely examine most documents and the discourse generalized among the activists interviewed, it is in this way that the issue of violence sustained by women during an armed conflict is presented. The “us” of the “cause for women” in the general sense is the constituted.
- 24 However, the particular dynamic of the conflict, as well as the words and issues specific to public action, establish differences between victims, as well as in the words used for potential responsibilities depending on the kind of armed actor and the crime committed. This is how, from proceedings in the context of justice and peace Law, the

distinction between a “direct” victim and a “denouncing” victim ends up formalizing distinct perceptions in official reports.

- 25 Upon closer examination, official numbers on legal and peace actions draw a distinction in their calculation between the categories of the “victims” and of those who “make the facts known” (i.e. those who *report*). Official numbers also provide the percentage of each of these categories. However, on the balance sheet, the insistence on “victimization” mostly derives from the first category. In this way, and still according to official reports based on the analysis of the figures, “it is obvious that the most recurring crime is manslaughter and that the part of the population the most targeted are the men aged between 20 and 39.”¹⁸
- 26 Unquestionably, the *number of deaths* remains, par excellence, the current unit for measuring the losses in an armed conflict, in particular when it comes to civilian victims. Correlatively, the institutional response and, more practically, criminal and tort law treatment, is based on a hierarchy of crimes according to *legal goods protected*, wherein “life” occupies a predominant place. But when it comes to the *acknowledgement of victims*, this hierarchical system becomes a simple opposition between those that have died and the survivors, which are reduced to spokespersons of the dead.
- 27 This seems to form a certain trend in the institutional discourse that accords a greater value to their status as the representatives of those that have died, rather than as spokespersons of “their” own violence. This can, among other things, be observed in the way justice and peace trials are organized. The prosecutors don’t take in consideration the severity of the sexual crimes. This trend is clearly reinforced when it comes to the issue of women in prosecutions, who are discreetly reassigned to their role as mothers, widows etc.’ ... This trend is, of course, far from specific to the Colombian case, and belongs to a more common aspect, which is striking in its continuity, patterns and logics, of the *gendered roles* assigned to women throughout the social history of wars.¹⁹ The victims themselves internalize it, or even anticipate it, as they do in the domestic life. They are inclined to consider illegitimate or at least “less legitimate” any kind of personal claim. According to the activists interviewed in this work, their first difficulty is to succeed in obtaining that victims consider their own experience of violence as severe crimes too, so that they might then consider reporting them without any doubt as they for crimes perpetrated against their relatives²⁰.
- 28 To return to the issue raised in C. Cockburn’s thesis, it should be noted that the idea of a *continuum* of violence comes up against the logic of distinction in the law, inasmuch as its implications are not only of a technical nature but also political. More specifically here, we are confronted with two questions. Firstly, there is the question of the transition towards a post-conflict stage, and, secondly, the legal and political qualification of violence that takes place in a context of multiple violence. The specificity of the Colombian case lies in the fact that the multiple violence in question not only concerns the acts of violence perpetrated during the armed conflict. We will briefly consider C. Cockburn’s thesis in relation to these two aspects.
- 29 Concerning the question of the transition towards a post-conflict situation, or to put it more concretely, as part of the process of demobilisation, disarmament and rehabilitation in civil life (DDR), the idea of a *continuum* of violence can present a challenge inasmuch as it can be used to deny differences among the various deeds perpetrated by the armed forces, as such, during the conflict. In a context such as that of Colombia, it is just as important to be able to report acts of gendered violence as to

identify the status of those who committed them, as well, of course, as their connection with the context of the armed conflict, in particular a specific political strategy led by an armed individual.

- 30 Here, as we can see, a delicate question arises in both national and international legal debates, and for feminist critics of the law, concerning the question of liability. It can be summarized by two ways of acting: action against the State (because of human rights violation), and the individualisation of liability (criminal and international criminal law). The debates that took place concerning the Law of justice and peace, as well as those relating to the draft legislation of the Law on the victims, offer concrete examples of these tensions. Hence, as H. Charlesworth suggests, there is no question of “criminalizing every violation of human rights”. What is essential is “that the principle of liability does not, in effect, reinforce the difference between gender”. And, still according to his analysis, “the criteria of the official actions (...) might well have this effect”.²¹ In other words, the choice of the categories that will make it possible to establish liability for the violence endured by women must not reproduce inequalities and discriminations. However, this is an ongoing issue and risk faced by campaigners when it comes to choosing a specific legal framework at the moment of the denunciation and the trial.
- 31 These distinctions also seem useful from a symbolic point of view, and above all for the victims themselves, inasmuch as they enable them to develop a story that can provide a better understanding of the context of the violence carried out in the armed conflict in which they took part against their will. And, if we stick to a strict interpretation of the theoretical position of the *continuum* of violence, we are confronted with the fact that its use erases or reduces the particularity of the conflict. This conflict is entirely and absolutely assimilated to the expression of a patriarchal, continuous, long-term, timeless violence. More precisely, for the construction of a ‘cause’, we need to erase these differences and create a *continuum*. More precisely, the construction of a “cause” we require erasing those differences and to create a *continuum*.
- 32 Furthermore, debates over the formal acknowledgement by the victims present two opposing views. Firstly, there is the political understanding of crimes under the criterion of “dangerosity” (proposed by certain governmental actors, notably during the Uribe presidency) or of their effect, like that of “terrorism”. In this view, the idea of the *continuum* serves a socio-historical reading of gender-based violence. However, it risks blurring the criteria used for distinctions to establish liability’, even though the establishment of this responsibility is essential for the notion of the “the “relational victim” (*victime relationnelle*) or “acting victim” (*victime agissante*)” (*supra*). As far as the *continuum* approach is not appropriate, can the introduction of a gendered-based dimension of violence serve not only a better understanding of the acts of violence themselves, but also the context in which they took place?

4. The nature of the process of ‘reparation’ and the question of liability

- 33 The complexity of the notion of the “*continuum*” of violence lies in the fact that, thanks to the perspectives that it revealed, feminist denunciations have opened up certain parameters of tort law, in a concrete manner. The attention given to social relations between genders before violent events arise intensifies and question the standard of

the “*statu quo ante to reinstate*”. This is the basic standard for legally deciding on the compensation, in this case of a full repair that aims to return things to their previous state. But it becomes questionable as soon as the women treated as victims of an armed conflict have already been subject to other forms of violence (of the domestic kind, in particular) or discrimination. The legal formalization of the compensation should, in principle, decide on the prejudice in accordance with the *statu quo ante* of things. However, this would risk contributing to an unjustified enrichment.²² This formalization corresponds to the tendency - as analyzed by Roberto Vidal - of associations in defense of human rights and humanitarian actions, which present the situation of victims before the displacement in an idealized light²³.

- 34 In this context, the gendered view of violence sheds new light on the understanding of violence as a result of armed conflict, in particular when it is articulated around the question of discrimination. A clear example can be found in the analysis suggested by the ‘Women’s Human Rights Observatory’ of the *Corporacion Sisma Mujer* on forced displacement. Since its creation in 2001, the latter has insisted on the importance of taking into account the whole migration process to design aid policies for displaced women and offer victims the option of either returning to their place of origin or staying in their point of destination to build a life there²⁴.
- 35 In the same way, the Observatory has contributed to bringing a balance to the idea that gained ground with the start of the national forced displacement crisis at the beginning of the 2000s. According to certain opinions, forced migration could have certain “positive” effects on women because, in order to obtain help, they become, when facing the hardships of surviving and forced migration, the chief and/or spokesperson of their family, in particular in relation to the public authorities. By tracing back these dynamics, the analysis carried out by the Observatory, as well as the analyses conducted by associations specialized in issues of displacement, insisted on the importance of recognizing women’s new role as a potential radical change compared to their traditional one, provided that it receives appropriate institutional backing. Indeed, those analysis signaled that the system of aiding the population (the SNAIPD) does not go in the same direction, placing the emphasis on the new role of women, so as to minimize the weight of their traditional responsibilities, for example ensuring food aid or schooling for children. Critics from associations point out the importance of offering better support to women so that they can undertake domestic work, while ensuring conditions involving their greater, sustainable involvement in the public sphere (while still in “the name of the family” rather than in their own name). This would help bring about a transformation of gendered roles within households²⁵.
- 36 In this way, Colombian feminist activists have tried to promote an image of the victim that does not erase its ability to engage in litigation. They brought an important nuance to the discourse of victimisation, which is used as a strategical rhetoric from the legal point of view,²⁶ or as an international issue in the context of the fight against violence towards women²⁷.
- 37 Additionally we will note that this questioning of the legal form of compensation from the overall historical perspective of gendered violence reveals the added harmful impact of poor coordination between public policies, and, in particular, of the political divide between social subsidies and victim assistance. Lastly, this interpretation displays the limits of the legal framework of compensation, in order to respond to the specific needs of victims.

5. Opportunities and obstacles in taking legal action

- 38 From the standpoint chosen by activists, the legal aspect of the notion of the victim leads *legal action*. Although all gendered violence committed within the context of an armed conflict can be subject to denunciations (in particular through a report by an association), the same is not true when it comes to taking legal action. In this context the notion of the “victim” becomes a category that underpins a specific procedural burden, at both the human and procedural levels. As Kristin Bumiller has pointed out in relation to the “legal protection model” destined to respond to discriminations, “protective laws make victims bear the weight of the responsibility of the perception and of the reporting of crimes committed towards the victim; it implies that those who belong to the protected category need to accept to bear this weight”²⁸.
- 39 This comment should be nuanced when it comes to crimes in which the duty of investigation and adjudication mainly lies with the State. In order to be a victim who “takes action” in a legal context, facts nonetheless need to be proven and it is important to be able to undertake all that a trial requires.²⁹ Yet, activist discourse seems to display a tendency to disregard the context. It might give the impression that a political commitment on the part of the justice administration would be sufficient to shed light on crimes and the rights of victims to be ensured. And, in spite of a clear awareness of the actual limits of the judicial system, to which we might sometimes add those of the questionable or relative independence of the judicial system (at the district, regional or national level), this appeals to more specifically armed actors. By way of example, in response to a question raised in an interview – “how would you describe the relations between organisations which are involved in women’s right with the judicial system?” – one of the lawyers from a human rights organization explained that:
- “It is not simple. It is an unfair system. There is no trust (from the women’s organisations) and it is justified. When it comes to human rights and international human rights law, there is a system of impunity, and this was affirmed by the international commission of human rights (...). We went through dark times in the Colombian justice. For example the prosecutor Osorio³⁰ is heavily compromised by the paramilitary. And he gave the order not to investigate on militaries or paras. There is a harassment towards attorneys who take their work seriously. It was not very wise to send a women to the prosecutor’s office, knowing that this information will surely be transmitted (or the armed actors concerned), as for example in CuCuta (the capital town of the Santander department in the North, in the northeast region of the country, adjacent to the Venezuela).³¹
- 40 In addition to this comment which derives from daily experience, more general overviews underline the impact of armed conflict and other forms of violence on the judicial system³² and, indeed, on victims.³³
- 41 This situation gives rise to an ambivalent relationship between feminist activists and the judicial system. In the same way these activists expect a general answer for criminal investigations, judgement of the perpetrators and guarantee of the rights of victims, on a daily basis, they handle on a case-by-case basis the risks that victimization implies.

6. The central question of the “victim” in the cause

- 42 To this already complex overview, one final aspect should be added, concerning the conception that the victim is the “central object of the cause”. It seems that throughout this research, the approach to “women victims” masks distinctions established *de facto* by feminist activists. The conflict and the legal processing of the violence that results are structured, for the most part, around the traditional division between civilian populations and fighters. As a consequence, and when we take a closer look at the denunciation made by the feminist activist, the question of the *female combatant* is only targeted when it can be deemed to belong to the category of the victim, for example, as a result of forced female enrolment or due to sexual violence suffered within illegal armed groups. Thus, the prospect of gender, including the analysis of discriminations and violence towards women in the context of or during an armed conflict, must ultimately submit to the principle of this fundamental distinction in international human rights law. In the end, the interest in achieving a gender understanding of armed conflict is aimed more at adjusting categories and legal formating rather than making them instrumental. It illuminates the activists’ ability in taking into account the variety of local forms of evaluation when they use “the legal weapon” to solve the case.
- 43 Ultimately, in our view, the activists adhere to and accept the “legal protection model” because they are familiarized with local forms of evaluation as well as legal formats. They have confidence in their role as effective intermediaries between victims and the State, or between these victims and possible “impartial third parties”. In other words, they actively contribute to their being legitimated as a “third order”, to use the terms of Guy Nicolas³⁴ analysis. Assuming this role involves a profound transformation and adaptation of the forms specific to the activist work of feminists inasmuch as the “cause of women victims of the armed conflict” takes a contentious form and engages in a mode of legal normativity.

Conclusion

- 44 To conclude this study by picking up a few of the issues and debates within the context of Colombian feminist activism, which elaborate on and structure the cause of women victims of the armed conflict, we could say that the choice of the category of victim forced the movement to cope with two complex routes. The first is to determine the political subject of feminism. It raises an intense debate on the situation of women and their struggle in the Colombian context. This political and symbolic dimension, which is an important element in the definition of a “woman victim” in the case under consideration, has become intrinsically intertwined with the second issue : the judicial procedure, namely to deal with the legal format of the case and to bring the case before the court. . Eventually, activists define the “woman victim” throw integrating a plurality of normative forms dealing with the categories of “victim” and “combatant”. Consequently, despite the efforts of activists, the idea of the “woman victim” does not refer to the kind of unified “we” that they claim.

BIBLIOGRAPHY

- ABEL Richard L., FELSTINER William L. F., SARAT Austin, « The Emergence and Transformation of Disputes: Naming, Blaming, Claiming... », *Law & Society Review*, 1980, vol. 15, n° 630, pp. 630-649.
- BUMILLER Kristin et al., « Victimes dans l'ombre de la loi » Une critique du modèle de la protection juridique », *Politix*, 2011/2 n° 94, pp. 131-152.
- CHARLESWORTH Hilary, « Méthodes féministes en droit international », *Sexe, genre et droit international*, Paris, Pedone, 2013, pp. 193-219.
- COCKBURN Cynthia, « The Continuum of Violence. A Gender Perspective on War and Peace », in GILES Wenona, HYNDMAN Jennifer (éds.), *Sites of Violence. Gender and Conflict Zones*, University of California Press Berkeley, Los Angeles, California, 2004.
- COMITÉ INTER-INSTITUCIONAL DE JUSTICIA Y PAZ » Informe Matriz », Bogotá, mars 2012, 11 p.
- COMMAILLE Jacques, DUMOULIN Laurence, « Heurs et malheurs de la légalité dans les sociétés contemporaines. Une sociologie politique de la « judiciarisation », *L'Année sociologique*, 2009/1, vol. 59, pp. 63-107.
- CORPORACIÓN HUMANAS – CENTRO REGIONAL DE DERECHOS HUMANOS Y JUSTICIA DE GÉNERO, Guía para llevar casos de violencia sexual. Propuestas de argumentación para enjuiciar crímenes de violencia sexual cometidos en el marco del conflicto armado colombiano, Bogotá, Ed. Ántropos, juillet 2009, 179 p.
- DIETZ Mary G., « Current Controversies in Feminist Theory », *Annual Review of Political Science*, 6, 2003, pp. 399-431.
- FRAENKEL Beatrice, « Actes écrits, actes oraux : la performativité à l'épreuve de l'écriture », in : *Études de communication* [En ligne], 29 | 2006.
- HENAO, Juan Carlos, *El Daño. Análisis comparativo de la responsabilidad extracontractual del Estado en derecho colombiano francés*. Bogotá, Universidad Externado de Colombia, 1^{ère} éd, 1998, 346 p.
- JENSON Jane, LÉPINARD Éléonore, « Penser le genre en science politique » Vers une typologie des usages du concept, in : *Revue française de science politique*, 2009/2 vol. 59, pp. 183-201.
- KAPUR Ratna, « The Tragedy of Victimization Rhetoric: Resurrecting the “Native” Subject in International/Post-Colonial Feminist Legal Politics », *The Harvard Human Rights Journal*, vol. 15, Spring 2002, p. 37.
- LATTÉ Stéphane, « La « force de l'événement » est-elle un artefact ? Les mobilisations de victimes au prisme des théories événementielles de l'action collective », *Revue française de science politique*, 2012/3 vol. 62, pp. 409-432.
- LOPEZ Gérard ; PORTELLI Serge ; CLÉMENT Sophie, *Les droits des victimes. Droit, auditions, expertise, clinique* (2e édition). Paris, Dalloz, 2007, 411 p.
- NICOLAS Guy, « De l'usage des victimes dans les stratégies politiques contemporaines », *Cultures & Conflits, Les conflits après la bipolarité*, n° 8 (hiver 1992), pp. 2-20.
- Observatorio de los derechos humanos de las mujeres en Colombia “en situaciones de conflicto armado las mujeres también tienen derechos”. « Boletines del Observatorio ». Confluencia nacional de redes de mujeres - Corporación Sisma Mujer, IEPALA, ATELIER.

PÉCAUT Daniel, « Brouillage de l'opposition 'ami-ennemi' et 'banalisation' des pratiques d'atrocité. À propos des phénomènes récents de violence en Colombie », *Problèmes d'Amérique latine* 2012/1, (n° 83), pp. 9-32.

RUEDA Pilar, « Documento Marco Conceptual ». Observatorio de los derechos humanos de las mujeres en Colombia "en situaciones de conflicto armado las mujeres también tienen derechos". Confluencia nacional de redes de mujeres - Corporación Sisma Mujer, Bogotá, mars 2001.

SCHNEIDER Elizabeth M., « Feminism and the False Dichotomy of Victimization and Agency », *New York Law School Law Review*, vol. 38, 1993, pp. 387-399.

SCOTT Joan W., « Women and War: A Focus for Rewriting History », *Women's Studies Quarterly*, vol. 12, n° 2, Teaching about Peace, War, and Women in the Military (Summer, 1984), pp. 2-6.

SCOTT Joan W., « Gender: A Useful Category of Historical Analysis », *The American Historical Review*, vol. 91, n° 5 (Dec., 1986), pp. 1053-1075.

VIDAL LÓPEZ Roberto, « El sistema jurídico-institucional para los desplazados internos por la violencia : parte de la solución y parte del problema », in BELLO, Martha Nubia (éd.). *Desplazamiento Forzado. Dinámicas de guerra, exclusión y desarraigo*. Bogotá, UNHCR, Universidad Nacional de Colombia, 2004.

NOTES

1. Colombia is the site of an armed conflict between several armed actors, especially left-wing guerrillas (the most famous being the FARC), paramilitary groups and armed forces of the State. These confrontations, which led to more than 60 years of war, have resulted in terrible human rights violations. Several efforts at negotiation have been made since the 1980s, such as the current peace process between the Santos government and the FARC. The final agreement is now being implemented. However, political, legal and social tensions around the process, as well as the survival of other armed actors, make it difficult to speak about a pacification of the violence.

2. This is the process of progressively building this case, supported by actors as diverse as feminist associations, women's associations, NGOs and lawyers, which I studied as part of my doctoral research between 2008 and 2013. This work relied on a qualitative sociologic survey method and on the reconstitution of archive elements. I especially wanted to understand how, precisely, and at what moment, activists as well as institutional actors had strategically decided to open the door to a line of combat or of understanding of the women's problem in the full sense in the form of law.

3. For the analysis of an emblematic case, see : VERGEL TOVAR Carolina, « Une innovation dans la protection constitutionnelle des femmes déplacées par la force en Colombie », *La Revue des droits de l'homme, Actualités Droits-Libertés*, 2009

4. Alvaro Uribe's (President from 2002 to 2006 and from 2006 to 2010) government policy, regarding the armed conflict, combined three central aspects: first, a political and legal rereading of the war, through the negation of the existence of an armed conflict and the requalification of the armed confrontations as a fight against terrorism; secondly, the implementation of a negotiation process with some of the paramilitary groups, of the Autodefensas Unidas de Colombia (AUC), thanks to the modification of the legal framework for negotiations with armed groups; and finally, the adoption of a policy that called for concepts and mechanisms considered as being part of a "transitional justice", especially with the adoption of Law 975 (2005), known in Colombia as the "law for justice and peace".

5. The adoption and implementation of the law for justice and peace sparked many debates and problems. For instance, it only recognized victims of confessed or proved crimes against the AUC. In response to these drawbacks, a group of parliamentarians promoted a project to adopt “a general law for victims”. The project failed under Uribe’s last government, and was finally promoted and adopted during Santos’ term (Law 1448 (2001)).
6. In relation to this topic, see: Michael MCCANN, “Law and Social Movements” in: SARAT, Austin (ed). *The Blackwell Companion to Law and Society*. Blackwell Publishing, 2004, pp. 506-522.
7. The editorial of *Nouvelles Questions Féministes* (NQF) on this issue sums it up quite well : « Entre contrainte et ressource : les mouvements féministes face au droit » : BERENI Laure, DEBAUCHE Alice, LATOUR Emmanuelle et REVILLARD Anne, in : NQF, vol. 29, No 1 / 2010, p. 6-15.
8. Cynthia Cockburn, [The Continuum of Violence. A Gender Perspective on War and Peace” in *Sites of Violence. Gender and Conflict Zones*. GILES Wenona, HYNDMAN Jennifer (ed.), University of California Press Berkeley, Los Angeles, California, 2004. 373 p., pp. 24-44.
9. Defined as the process that leads to a general phenomenon according to which “the discourse of law is absorbed by the political discourse”, See Jacques COMMAILLE et Laurence DUMOULIN, « Heurs et malheurs de la légalité dans les sociétés contemporaines. Une sociologie politique de la « judiciarisation » », in *L'Année sociologique*, 2009/1 vol. 59, pp. 63-107.
10. Beatrice FRAENKEL, « Actes écrits, actes oraux : la performativité à l’épreuve de l’écriture », in : *Études de communication* [En ligne], 29 | 2006, uploaded on 29 October 2011, last consulted on 13 July 2012. URL : / index369.html Citation : \$43.
11. Gérard LOPEZ, Serge PORTELLI, Sophie Clément, *Les droits des victimes. Droit, auditions, expertise, clinique* (2e édition). Paris, Dalloz, 2007, 411 p.
12. Mary G. DIETZ, “Current Controversies in Feminist Theory”, in *Annual Review of Political Science*, 6, 2003, pp. 399-431. Starting with this definition, J. Jenson and E. Lépinard specified that “its objectives can be diverse (overthrow masculine domination, put an end to discrimination, ensure women’s sexual liberation, bring about awareness or feminize democracy) and are stated on behalf of normative principles just as diverse (equality, rights, liberties, autonomy, dignity, recognition, respect, justice...).” Jane JENSON and Éléonore LÉPINARD, « Penser le genre en science politique. Vers une typologie des usages du concept », in : *Revue française de science politique*, 2009/2 vol. 59, pp. 183-201.
13. “Mobilizing as victims of a dramatic event supposes giving up, at least temporarily, always partially, in any case publicly, other highlights of social identity, such as political affiliation”, Stéphane LATTE, « La ‘force de l’événement’ est-elle un artefact? » Les mobilisations de victimes au prisme des théories événementielles de l’action collective, in *Revue française de science politique*, 2012/3 vol. 62, pp. 409-432. (p. 420).
14. Cynthia Cockburn, *op. cit.*
15. Daniel PÉCAUT, « Brouillage de l’opposition « ami-ennemi » et « banalisation » des pratiques d’atrocité. À propos des phénomènes récents de violence en Colombie », *Problèmes d’Amérique latine* 2012/1, (n° 83), pp. 9-32.
16. CORPORACIÓN HUMANAS – CENTRO REGIONAL DE DERECHOS HUMANOS Y JUSTICIA DE GÉNERO, *Guía para llevar casos de violencia sexual. Propuestas de argumentación para enjuiciar crímenes de violencia sexual cometidos en el marco del conflicto armado colombiano*. Bogotá, Ed. Ántropos, July 2009, p. 13. (179 p.)
17. We adhere, in theory, to a broad concept of the word “gender”, inspired by the – already classic – article by Joan Scott, especially the emphasis she places on the issue of power (an obvious issue during war) in social gender relations. According to J. Scott, gender is a constitutive element of social relations and constitutes at the same time the main means to signify power relations. These ideas also operate thanks to other elements (symbolic, normative, political and of identity), Joan W. SCOTT, “Gender : A Useful Category of Historical Analysis”, in *The American Historical Review*, vol. 91, No. 5 (Dec., 1986), pp. 1053-1075.

18. COMITÉ INTERINSTITUCIONAL DE JUSTICIA Y PAZ, « Informe Matriz ». Bogotá, March 2012, p. 2 (11 p.)
19. An aspect put forward in theory by historical research. See Joan W. SCOTT, “Women and War : A Focus for Rewriting History” in *Women's Studies Quarterly*, vol. 12, No. 2, Teaching about Peace, War, and Women in the Military (Summer, 1984), pp. 2-6.
20. We conducted up to 60 interviews, including 23 with feminist activists. In the research leading to these developments, we organised six groups within the people interviewed : activists, trade unionist, researchers, human rights defenders, public agents and judges. For more details on the world of the activists, as well as on the methodology used, see the complete thesis : Carolina VERGEL TOVAR, *Les usages militants et institutionnels du droit à propos de la cause des femmes victimes du conflit armé en Colombie*, Thesis in law defended in July 2013 at *Université de Paris Ouest Nanterre La Défense*.
21. Namely, the criterion that requires that we may attribute direct responsibility for the violence to State actors: Hilary CHARLESWORTH, « Méthodes féministes en droit international » in *Sexe, genre et droit international*, op. cit., p. 212 (pp. 193-219).
22. The Colombian system, like the French one, does not accept “punitive, exemplary, vindictive damages”. On the legal and probation regime of prejudice, see Juan Carlos HENAO, *El Daño. Análisis comparativo de la responsabilidad extracontractual del Estado en derecho colombiano francés*. Bogotá, *Universidad Externado de Colombia*, 1st ed, 1998 : p. 45 (346 p.).
23. Roberto Vidal LÓPEZ, « El sistema jurídico-institucional para los desplazados internos por la violencia : parte de la solución y parte del problema » in *Desplazamiento Forzado. Dinámicas de guerra, exclusión y desarraigo*, op. cit., pp. 389-393.
24. Pilar RUEDA, « Documento Marco Conceptual ». Observatorio de los derechos humanos de las mujeres en Colombia “en situaciones de conflicto armado las mujeres también tienen derechos”, *Confluencia nacional de redes de mujeres - Corporación Sisma Mujer*, Bogotá, March 2001, 19 p.
25. Observatorio de los derechos humanos de las mujeres en Colombia “en situaciones de conflicto armado las mujeres también tienen derechos. « Boletines del Observatorio ». *Confluencia nacional de redes de mujeres - Corporación Sisma Mujer*, IEPALA, ATELIER.
26. Elizabeth M. SCHNEIDER, “Feminism and the False Dichotomy of Victimization and Agency” in *New York Law School Law Review*, vol. 38, 1993, p. 387-399.
27. Ratna KAPUR, “The Tragedy of Victimization Rhetoric: Resurrecting the “Native” Subject in International/Post-Colonial Feminist Legal Politics” in *The Harvard Human Rights Journal*, vol. 15, Spring 2002, p. 37.
28. Kristin BUMILLER & al., « Victimes dans l'ombre de la loi. Une critique du modèle de la protection juridique », in : *Politix*, 2011/2 n° 94, p. 134.
29. This corresponds to the transition to the “reproach” phase from the “demand” phase, according to the analysis of the litigation management process by Richard L. ABEL, William L. F. FELSTINER, Austin SARAT, “The Emergence and Transformation of Disputes: Naming, Blaming, Claiming...” in: *Law & Society Review* vol. 15, n° 630, pp. 630-649.
30. Luis Camilo was a district attorney between July 2001 and 2005. Following this, he was appointed as ambassador in Italy and Mexico. At the time, a total of 47 trials are underway before the Accusatory Commission of the *Camara de Representantes* (National Colombian Assembly), which are questioning his management, especially the closing of investigations on the connections between the army and the paramilitary.
31. Interview carried out in his office, Bogota, August 2008.
32. The solidarity funds, with the victims of the judicial system (Fasol) have reported 270 murders and 38 disappearances, generally workers in the judicial system, between 1989 and 2008. The *Cuerpo Técnico de Investigación* (CTI) or the judicial police has reported 145 murders of State agents between 1989 and 2008, because of their work.

33. A protection programme for victims and witnesses of the justice and peace law was put in place. Moreover, the constitutional court ordered that it be adapted to the special needs of victims of forced displacements. T-496 de 2008, *M.P. Jaime Córdoba Triviño*.

34. “This third order in full development is based on an opinion highly receptive to any tragedy capable of modifying the course of events by its pressures on states, international institutions or private networks of interference. However, the compassionate capacity of this opinion must be activated or targeted to a particular situation of victimization in order to be effective”, Guy Nicolas in *Cultures & Conflits, Les conflits après la bipolarité*, no. 8 (Winter, 1992), p. 9.