



República de Colombia

mrs anus zorosx virLmona
Reporting Magistrate

S'T'C436O-2018

Radlcaclóo o.º 11001-22-O3-000-2018-00319-01

(Approved in session of April four, two thousand eighteen)

Bogotá, D. C., April five (5), two thousand eighteen (2018).

Dismiss the appeal filed against the judgment of February 12, 2018, issued by the Civil Chamber Specialized in Land Restitution of the Superior Court of the Judicial District of Bogotá, in the tutela action filed by Andrea Lozano Barragán, Victoria Alexandra Arenas Sánchez, José Daniel and Félix Jeffry Rodríguez Petra, among others, against the Presidency of the Republic, the Ministries of Environment and Sustainable Development and of Agriculture and Rural Development, the Special Administrative Unit of National Natural Parks and the Governors of Amazonas, Caquetá, Guainía, Guaviare, Putumayo and Vaupés¹, for the "increase of deforestation in the Amazon basin".

1. ANTECEDENTES

1. The promoters plead for the protection of rights the right to enjoy a *'supralegal'* enjoyment of in ambiente

¹ In accordance with the admissory order of January 31, 2018 (fl. 133 IJ, in total there are 27 entities sued.

theano", life y health, allegedly violated by the defendants.

2. They argue as basis of their claim, in synthesis, the following (fls. 1205 to 1226):

2.1. As a first step, the following are identified as

'(...) a group of US children, stifles, adolescents and teenagers (...) between 7 and 26 years of age, living in cities that have the highest risk of climate change. (...) [With] a life expectancy of T8 years on average (T!S years for low men and 80 for women), the reason for which they expect to develop [their] adult life between low years 2041 - 20 TO and [their] old age from the year 2OT1 onwards. In both periods of time, according to the climate change scenario presented by the Jdenm, the average temperature in Colombia is expected to increase by 1.6° C and 2.14° C, respectively (...)'.

2.2. They explain that in the Paris Agreement² and in Law 1753 of 2015*, the government acquired national and international commitments to achieve the *'(...) reduction of deforestation and greenhouse gas emissions in a context of climate change (...)'*, among which, they highlight the obligation to reduce *'net deforestation to zero in the Colombian Amazon by the year 202t7'*.

2.3. In spite of the above, they report that in the *"Early Deforestation Alert Bulletin (AT-D) for the first six months of the year, the Ministry of Environment and Sustainable Development and ²⁰¹⁷ Ideam jointly prepared the "Early Deforestation Alert Bulletin (AT-D) for the first six months of the year"*. The *"Early Deforestation Early Warning Bulletin" (AT-D)* for the first half of the year was prepared jointly by the Ministry of Environment and Sustainable Development and

Ideam,

Filing No. 1 *ION* 1-22-03-000-2018-00319-01

"Approved in Colombia by Law 1844 of July 20, 2007. Diario Oficial 50294 of July 14, 2007.
2017.

* By which the National Development Plan 201 A- 2018 was issued.

it was concluded that "(...) the Amznón is the region with the highest TA-D in the country, with 66.2% of the total (...I)".

Additionally, in the *"Integral Strategy for Deforestation Control and Forest Management in Colombia"*, the aforementioned portfolio reported that [*... the country lost 1 T8.so T liectares in the year 201 6, in other words, deforestation increased by 44% with respect to the figure reported in 201!S [...]. .)*], and, of this number, 70,074 hectares correspond to the Amazon.

They denounce as causes of this phenomenon the "(. . .} land grabbing (öO-ö!S %}, lots of illegal logging (^{20-22oS}}, the illegal extraction of mineral deposits (T-8%}, infrastructure, low agro-industrial production and the illegal extraction of timber (...)'.

2.4. They state that "(...) deforestation in the Amozón has consequences not only on that region but also on the ecosystems of the rest (...)" of the country's territory, among which they list:

"(...) J) The negative alteration of the water cycle, 2) the afterotion of the ca#taF g dreams to absorb water when llueue (and the consequent iriundaciories that this generates); 3) the changes in Í O N Sur/water supplies that reach the pãramos g which in turn proueen aQun for law ciudndes where air[en] occionnntes; [and] 4) the global cnfentamiento global por cauya de lay emissions of carbon dioxide that in conditions of no deforeytación we find stored in loy boyquey (... '.

2.5. According to them, the aforementioned is propitiated because the summoned parties did not adopt the pertinent measures to face this eventuality and, furthermore, this has

harmful implications for the places where they live, altering their living conditions and depriving them of the possibility of "*enjoying a healthy environment*".

Predicate to be part of '(...) *fa generation fiitcira* facing the effects of climate change in the *period 2041 -20T0 ;j 20T1 - 2100 (...)*".

2.6. In their opinion, the present petition is suitable *for the protection* of the invoked guarantees, for which they bring up numerous jurisprudential precedents of the Constitutional Court, specifically, they assure to comply "*with the criteria established for this purpose in judgment SU-1116 of 2001*".

Additionally, they state that '(...) *popufnr fu nction as a means of defense nfternntiro is not :sufficiently suitable and effective ...)*', because "*both fsJndnmentnfes and co/ectiros rights are affected*".

In the alternative, they state that they are filing this injunction as a transitory mechanism.

"(...) *to avoid the occurrence of an irremediab/e damage: the increase of greenhouse gas emissions, the main cause of the carbon dioxide com/motion, as a consequence of the increase of 44% of the de/forestation rate (...) the destruction of the Colombian Amazon, (...)....) fi2OT cause of the recent co/onfzzaciórr, to rctiz ctef/n det convict noted, of territories gz e jDrevictmente were found in state of consemación, paradoxically, by the occupation of the guerifilla of the Farc (...)*".

3. Implore to order:

i) The Presidency of the Republic and the accused ministries to present "(...) *within 6 months, an action plan to reduce the rate of deforestation in the Colombian Amazon to zero by the year 2020 !...*)".

ii) At the head of the executive, '(...)' in conjunction with the shareholders, the members of the fixed generation who will have to face the effects of climate change (...)", elaborate

'(...] on an intergenerational agreement on the measures to be adopted to reduce deforestation and greenhouse gas emissions, including the strategy and adaptation to climate change in each of the country's vulnerable cities and municipalities (...)'.

iii) To the localities located in 'In Amozón cofombinnn", update their P.O.T. to include "(. ...) as a minimum a deforestation reduction plan for mitigation measures to mitigate climate change (...)".

iv) "(...) [T]he moratorium for law principal activities deforestation engines detected by Ideam liasta that. The plan of action to reduce the tax rate of desforestación en fa Amozónía (. . . .)" {sic}.

v) To the Attorney General's Office to investigate '(...) cough octiuidodes ificitas generodoros de deforestación (...)".

And, vi) to the Special Administrative Unit of National Natural Parks to review "(...) the budget of low parks to verify that they effectively have the resources to renew their police action (...)".

1.1. Response of the defendants, summoned and
citizen interventions

1. The Administrative Department of the Presidency of the Republic demanded its dismissal, since "{...} in no way has it affected with its actions the rights of the plaintiffs and, on the other hand, it has nothing to do with the facts and claims of the lawsuit nor does it have the competence to adopt such measures (...)" (fls. 1398 to 1404).

2. The Ministry of Agriculture and Rural Development stated that it lacked '(...) the authority assigned in the law to make decisions within the aforementioned case (sic), therefore (...) the burden of proof with respect to the responsibilities that are attributed to it (...) is borne by whoever alleges (...)' (lts. 1416 to 1419 back).

3. The Portfolio of Environment and Sustainable Development, in general terms, explained the "national strategies for the management of the chemical environment" and those developed to address deforestation (fls. 1503 to 1525).

4. The Delegated Court for the Environment assured to have '(...) developed with the control entities of that delegate, (...) plans, chronographs and projects related to the /?Fob/emóticct raised (...)' (fls. 1404 to 1406 vue1to).

5. The Office of the Attorney General Delegate for Environmental Matters supported the safeguard, demanding to accede to it (fls. 1333 to 1360).

6. Parques Nacionales Naturales de Colombia noted that *it does not work fully with the means available*, because it is

'(...) conserving and protecting the areas that are part of the Colombian Natural National Parks System, which represent a fundamental tool to counteract the impacts of climate change, from the mechanism of mitigation or carbon sequestration and from the mechanism of the adaptation to the change. Likewise, the entity in the action/strategy advances actions to correct the deforestation factors, which are not only counteracted with police work but also by working with the communities and agreements that permit to restore the areas that have been affected [...]' (fls. 1456 to 1463).

7. The Governor's Office of Putumayo emphasized the inappropriateness of this instrument *"for the protection of protected rights"* and argued that it complies *"with its duties and obligations to protect the environment and the Amazon"* (fls. 1408 to 1414).

8. The Department of Guaviare stated that it is undertaking actions aimed *at protecting the environment*" (fls. 1486 to 1491).

9. The Governor's Office of Caquetá claimed to be *'working to create strategies for environmental protection'* (fls. 1493 to 1497).

10. The Municipality of San Vicente del Caguán demanded that it be released *from all liability*, arguing that it had not incurred in any damage (fls. 1420 to 1442).

11. The Mayor's Office of Solano narrated that "{...} the topic of environmental reforestation was included in the 201 T-2018 plan of action and we have deployed all our gear to work on it, to take measures and mitigate the environmental impact derived from it in relation to the climate (...)" (fls. 1444 to 1448).

12. Corpoamazonía indicated that "(...) in sir Jrisdicción [h] ri ndefnntado all the actions listed in ri protect fo Amazonín colombinna (...)" (fls. 1451 to 155 back).

13. In separate briefs, the National Environmental Forum, the Legal Clinic of Environment and Public Health of the Universidad de Los Andes, the Institute of Environmental Studies of the Universidad Nacional, the *Specialization* in Environmental Law of the Universidad del Rosario, the Universidad Externado de Colombia, the Environment and Society Association and the Traditional Indigenous Associations ACIMA, AIPEA, PANI, ACAIPI, ACIYA and ACIYAVA, requested access to the requested protection (fls. 1464 to 1467, 1470 to 1484, and 1548 to 1555, cdno.

5 and 65 to 79, 101 to 107 and 119 to 136 cdno. Corte, respectively).

14. Daniel M. Galpern, allega un omicus curioe 'o nombre de" James E. Hansen, Director of the Climate Science, Awareness and Solutions Program at the Institute for Climate Science and Technology.

The report states that the scientist supports the safeguarding, arguing that the Earth's climate change is a threat to the Earth's biodiversity:

"(...) Although we are too late to act to stop global warming, the precautionary principle still does not advise acting now to stop the global warming, the precautionary principle does not advise us to act now to stop the flaming climate change before the full extent of this phenomenon is known (or understood). err its tota/ic/ad/. S i m i l a r l y , while the rise in sea level and ocean acidification, which is generated by the regional ca/entamienfo g global induced by the In the same way, while the global and regional climate change induced by deforestation is i n conflict with the fundamental rights and interests of the present generation, it is more severely impacting the rights of future generations.

Consequently, the principle of intergenerational equity requires us to act without further delay so as not to disproportionately overburden young people and future generations. In addition, the principles of solidarity, participation and the best interests of children suggest the consideration of the interests of individuals, beyond those who hold the current political authority. The interests considered, moreover, should not be limited to those within the specific region of this court's usual jurisdiction. Nor should they be limited to those of the octunf Senerntion (. . .)' (fls. 81 to 101 cd.). (fls. 81 to 101 cdno. Corte).

15. The other participants remained silent.

1.2. The challenged sentence

I dismissed the complaint after inferring:

"(...) [N]o is this exceptional remedy constitutional remedy the appropriate mechanism to impart the orders that are the object of the lawsuit, since for this purpose the popular action is consecrated in the law, a judicial means that in the particular case is suitable not only to protect the collective right to enjoy a healthy environment, but also to guarantee the other rights of the people, such as the right to a healthy environment. /The grounds on which protection is claimed (...)"

"Now, the above mentioned *hstn ctquí* does not constitute the only reason *for the subjidariety*, but *two additional reasons* must be *added to such conclusion*, *the first one* has to do with the fact that *the greater suitability is not based on the urgency of the measures that this court is considering, nor on the need to adopt additional measures, the second one*, in that *the irremediable damage that was alleged has not been accredited (...)*" (fls. 1526 to 1536).

1.3. The challenge

The promoters filed the appeal insisting on their disagreements, particularly, they consider that the popular action is not the appropriate *mechanism*" to settle the controversy raised and, furthermore, assuring to have proven the "*irremedinbfe perj teto*" raised (fls. 1625 to 1665). The appeal was supported by the Delegated Prosecutor's Office for Environmental Matters (fls. 49 to 63, Court file).

2. CONSIDERATIONS

1. As a general rule, the tutela does not proceed for the protection of collective rights and interests, since it was conceived as a suitable mechanism for the protection of fundamental prerogatives, since those, as provided in Article 88 of the Political Constitution and Law 472 of 1998, are defended through popular actions.

However, exceptionally, the constitutional jurisprudence has established that the protection of group interests is admissible when the impairment of group interests infringes,

Consequently, individual guarantees. In other words, in the tutela trial it must be demonstrated[^]:

- (i) The connection between the violation of collective rights and the violation of one or others of a primary, fundamental and individual nature, so that the transgression of the former causes contiguously, the affectation of the latter.
- (ii) The plaintiff must be the person directly affected in his essential prerogative, by virtue of the subjective nature of fundamental rights. Of course, these also have an objective character.
The infringement of the fundamental right must not
- (iii) be hypothetical, but fully proven in the course of time, or be virtually threatened, since rule 86 of the Charter provides '(...) *'whenever these are violated; or threatened by the nullity or omission of any public authority (...)'*.
- (iv) The court order must seek, above all, to reestablish individual prerogatives, and not collective prerogatives as such, even when these are implicitly protected in the decision.

2. You touched on the first element, the protection of the environment intrinsically involves the safeguarding of individual guarantees *or supra-legal rights*, in this way,

* See, among others, Constitutional Court rulings T-1451 of 200, SU - 116 of 2001, T-288 of 2007, T-659 of 2007 and T-601 of 2017.

The "conexidncf" acquires by "conexidncf" the quality of fundamental, making it appropriate in a prerelative way the protective request, however, the relevance of the popular action, because, on the one hand, the measures to be adopted to avoid the violation of precepts of constitutional rank, direct and related, are urgent and immediate, and, on the other hand, in practice it is problematic to delimit the scope of application of the two instruments, weighing in which fundamental rights must take precedence.

The Constitutional Court has defined this issue:

'(...) [I]n principle, and as a general rule, the action of tutela is not appropriate for the protection of collective rights and interests. The correlation between the rights of the individual and the rights of the collective.

colectivos, the ownership of which resides in the community, allows the tutela action to be used in occasions to seek protection of collective rights. For the Court, this event is understandable when the violation of the collective right also implies that of the fundamental right, a relationship of connection in accordance with the jurisprudence that has declared the tutela action (...I').

"(...) It should be emphasized that the tutela action and the popular action have points in common, such as the protection of a constitutional right (individual or collective) resulting from the violation or violation by a public or private authority and, even closer, to prevent the occurrence of an irremediable damage. On this last point, the jurisprudence has been extensive, stating that the action of protection proceeds, despite the existence of other protection mechanisms, to prevent the occurrence of a damage, i.e., it is of a preliminary nature. Likewise, the popular action is a preventive mechanism, which means that its exercise or judicial promotion is not subject to or conditioned by the existence of a damage or detriment to the rights and interests sought to be protected. It is sufficient that the damage or the risk of damage is present, so that the mechanism of popular action can be exercised". In this sense, we can say that when in a case there exists a close relationship between

collective rights and individual rights considered fundamental, Tutela's action is appropriate given the impossibility, in most cases, of separating the scope of protection of the two groups of rights (...)"⁵.

The above criterion has been accepted by this Chamber in judgments STC 7630 of June 9, 2016, STC 9813 of nineteen (19) July 20 16, and STC 15985 of three (3) October 2017, where upon weighing the factual and evidentiary situation, it concluded that the tutela action is admissible against the violation of the right to a healthy environment, when it is *prima facie* evident that its transgression inevitably produces "*direct affectation of other prerogatives of Indarrentaf character, among them, life, health and access to water of the tutelantes and their nuclei; famifinreB*"⁶.

By virtue of what has been discussed, it can be predicted that the fundamental rights of life, health, the minimum vital, freedom and human dignity are substantially linked and determined by the environment and the ecosystem. Without a healthy environment, the subjects of rights and sentient beings in general will not be able to survive, much less safeguard those rights for our children or for future generations. Nor will we be able to guarantee the existence of the family, of society or of the State itself.

The increasing deterioration of the environment is a serious threat to life now and in the future and to all other fundamental rights.

⁵ Constitutional Court, judgment T- 362 of 20 14.

⁶ ETC 7630 of nine (9) June 2016.

life and all rights related to it. The impossibility of exercising the fundamental rights to water, to breathe clean air and to enjoy a healthy environment makes living subjects of law sick on a daily basis, increases the lack of fresh water and decreases the expectations of a dignified life.

Therefore, in this case it is sufficiently demonstrated that the exceptional proceeding of the tutelage to solve in depth the problem raised, because the jurisprudential assumptions for this are met, given the connection of the environment with international rights.

3. Article 86 of the Political Charter establishes that the tutela action is a defense mechanism by which any person may claim the immediate protection of his fundamental rights.

Thus, in the case of this special instrument, the age of majority does not constitute a restrictive factor for its exercise, for this reason, children or minors have legal standing to file claims through this safeguard without necessarily requiring to intervene through their parents or legal representatives.

The Court observes that on this occasion, the minors José Daniel Rodríguez Peña, Claudia Andrea Lozano Barragán, Acxan Duque Guerrero, Antoine Philippart Mann, Ariadna Haydar Chams, Adrián Santiago Cruz Rodríguez, Danna Valentina Cruz Rodríguez, Yuli Maryerly Correa Fonque, Andrés Mauricio Salamanca, Yuli Maryerly Correa Fonque, Andrés Mauricio Salamanca, and Adrián Santiago Cruz Rodríguez, were all victims of a crime against humanity.

Mancera, Aymara Cuevas Ramírez, Candelaria Valencia Arango and Pablo Cavanzo Piiieros, are acting in defense of their prerogatives and interests and not on behalf of a third party, for this reason, in accordance with the foregoing, they have standing to act on their own behalf, since they request the protection of their rights to enjoy a healthy environment, life and health, especially when the threat of environmental degradation, due to the deforestation of the Colombian Amazon rainforest, has a negative impact on them.

4. Due to multiple simultaneous, derived, related or isolated causes that impact the ecosystem negatively, environmental issues occupy a preponderant place in the international agenda, not only of scientists and researchers, but also of politicians, common people and, of course, of judges and lawyers. Day by day, there is an abundance of news, articles and reports from different sectors, highlighting the very serious change in the natural conditions of the planet. There is a growing threat, even to the possibility of human existence.

These imminent dangers are evident in phenomena such as the excessive increase in temperatures, the melting of the poles, the massive extinction of animal and plant species, or the increasingly frequent occurrence of weather events and disasters outside the margins previously considered normal. There are unusual and unforeseen seasons of

rainfall, permanent droughts, destructive, strong and unpredictable hurricanes or tornadoes, tidal waves, drying up of rivers, increasing disappearance of species, etc.

Ecosystems are exposed to extreme situations that prevent their subsistence; this brings with it a depletion of natural resources, whether renewable or not. We are faced with (i) increasing difficulty in obtaining the indispensable means of subsistence for the world population; and (ii) the pollution and mutation of our environment by the irrational colonization of forests and the expansion of urban, agricultural, industrial and extractive frontiers, which increase deforestation.

Humanity is mainly responsible for this scenario, its hegemonic planetary position having led to the adoption of an anthropocentric and selfish model, whose characteristic features are harmful to environmental stability, namely: i) excessive population growth; ii) the adoption of a dizzying development system guided by consumerism and the political and economic systems in force; and iii) the excessive exploitation of natural resources.

5. However, awareness of the obligation to change our behavior has gradually been growing. There is an emergence of movements in favor of a new ecocentric society Ideology.

The "*nrritrópica*", that overcomes the excessive "homomensurn" "artist" anthropocentrism; that takes into consideration the environment within the ideal of progress and the effective notion of sustainable development, to reach '(...) an eqiifibrium *between economic growth, social welfare and environmental protection, under the understanding that the present actions must ensure the possibility of taking advantage of the resources in the future (...)*"⁸.

5.1. In view of *the existence of [the] risks and problems of a planetary nature (...)*". In the Constitutional State, the judiciary must advocate for the effective recognition of rights that, although in principle it may seem '(...) *are oriented to the protection of collective interests and to the satisfaction of generalizable needs (...)*', in substance, they are aimed at the defense of the essential rights of the individual. In essence, they are aimed at the defense of the essential rights of the individual.

The Constitutional State is characterized because it pursues respect for the other as a limit to *supralegal* precepts, under the assumption that all acts that have a negative impact on nature unquestionably imply the undermining of personal fundamental rights, as well as of the environment itself.

⁸ PROTÁGORAS OF ÁBDERA: *'Man is the measure of all your things, of those that exist insofar as they exist and of those that are not insofar as they are not'*. CALVO T. "From the Sophists to Plato. *Política y Pensamiento*". Madrid: Cince I. 1986.

"Constitutional Court, Judgment C-389 of 2016.

"RODRÍGUEZ PALOP, María Eugenia, *Clave para entender los nuevos derechos*".

¹⁰ *Idem*.

¹¹ "(...) *in a society of insolent persons, a community of nations where the lack of care on the part of the one does not echo object of attention on the part of the other is called to the failure moral y social. Solidarity is, above all, an essential moral virtue, whose demands and obligations go beyond the demands and obligations of social relations regulated by justice. Solidarity complements the ideal of justice, compensating the injustices in its realization. But in what does it consist, in a feeling of community, of affection towards the needy, of shared obligations, or of common necessities. All of which fills the*

This means that all individuals of the human species must stop thinking exclusively about self-interest. We are obliged to consider how our deeds and daily conduct also affect society and nature. In the words of Peces-Barba, it is necessary to move from a '*private ethic*', focused on the particular good, to a '*public ethic*', understood as the implementation of moral values that seek to achieve a certain conception of social justice², for this, rights must be redefined, conceiving them as "rights;- *duties*". According to the aforementioned author:

"(...) [T]he holder of the right has at the same time an obligation with respect to those conducts protected by the law of the community. It is not a question of another person having a duty towards the holder of the right, but of the holder of the right himself having a duty. It is a question of rights so highly valued by the community and by its legal system that they cannot be left to the autonomy of the will if the State establishes duties for all, at the same time as it grants them powers over them (...)"¹³.

52. As noted, the scope of protection of the fundamental precepts is each person, but also the other. The "*neighbor*" is otherness; its essence, the other people that inhabit the planet, including also the other animal and vegetable species.

active participation in the recognition and help to the other (...) [Solidarity is basically a personal moral virtue whose objective of application is the social or public economy. Personal, because there is a character or way of being solidary, object of moral learning, representative among many other possible characteristics, of the individual conduct. Public or social, because our solidary conduct is always directed towards the others, as it is understood that time to improve the coexistence (...)]. FERNANDEZ, Eusebio. "En Solidaridad", in ARIAS ROIG, Rafael, "Valores, derechos y Estado a finales del siglo .

¹⁰ PÉCEZ-BARBA, Gregorio, 'ética pública- ética privada', in 'Anuario de Filosofía del Derecho', N° XIV (1997), pgs. 531- 544.

¹³ PÉCEZ-BARBA, Gregorio. "Writings on Fundamental Rights". Eudema Universidad . Madrid 1968. Quoted by the Constitutional Court in sentence T-411 of 1992.

But, in addition, it includes the unborn, who deserve to enjoy the same environmental conditions experienced by us.

In this regard, it has been reasoned:

'(... If we accept that solidarity impels us to widen the circle of the we, by entering into a dialogue with all those affected by our decisions and adopting an impartial point of view that allows us to be truly sensitive to their proposals, what we have is that solidarity requires us, at the very least, to take charge, to assume our responsibilities and to fulfill certain duties.

*"But who are these others to whom we must respond, who are those affected by our decisions? (...) It is interesting to note that when we speak of the inclusion of others, (...) the temporal dimension of the discourse cannot be avoided, a dimension that projects it in time. Solidarity does not only make sense in our spatio-temporal coordinates, but also extends to future generations. This is what we mean when we use the term diachronic solidarity, as opposed to synchronic solidarity, or when we say that we must consider all those affected by the decisions we take and the decisions we make. In other words, the questions that seem to open up with the consecration of solidarity are not only connected with making oneself responsible for the inclusion of the other, but also with the problem of the protection of the younger generations, the responsibility of the present generations towards them and the imposition of certain duties on their behalf (...) "*¹⁴.

53. The environmental rights of future generations are based on the (i) ethical duty of solidarity of the species ¹⁵ and (ii) the intrinsic value of nature¹⁶.

¹⁴ RODRÍG UPZ PALOP, Maria Eugenia, ' *Clans to understand the new rights*'. Bd. Catarata. Madrid. 2011. pp. 54- 85.

* Ruiz de la Peña, J. L., 'Ecología y teología', in Pikaza, X. (ed.), *El desafío ecológico: Ecología. pítumonismo*, Universidad Pontificia de Salamanca, Salamanca, 1995, p. 134.
Munford, L. , *El hombre g su responsabilidad natural*, Mensajero, Bilbao, 1987, p. 102.

The first is explained by the fact that natural goods are shared by all the inhabitants of Planet Earth, and by the descendants or future generations who do not yet have them materially but who are taxpayers, recipients and owners of them, being them, however, contradictorily, increasingly insufficient and limited. In such a way that without the current existence of an equitable and prudent criterion of consumption, the human species could be compromised in the future by the scarcity of resources essential for life. In this way, solidarity and environmentalism are 'refnciónnn hnstn agreeing on the same' ¹⁷

Thus, the foundation of the obligation of human solidarity with nature constitutes the essential content of '*the true values that diorionente te fncifitan the life*'. both in its present and future dimensions. This idea establishes a dynamic and material ethics of environmental values, adjusted and compatible with "(...) *the need to conserve nature in the most favorable sense to maintain (forever) the life of human beings* {...}" ¹⁸.

The second; transcends the anthropocentric perspective, and focuses on the "ecocentric - *niltropic*" criterion, which places the human being on a par with the *ecosystemic* environment, whose purpose is to avoid overbearing treatment,

¹⁷ Roszak, T., "Persona/Pfneto. *Hacia vnuo paradigma ecológico*", Kairós, Barcelona, 1985, p. 89.
Jaquenod de Zsógón, S., '*El Derecho ambieritol iy muy principios rectores*', M.O. P. U, Madrid, 1989, p.29.
Ibid.

Anders, J. and Meadows, D., '*The carrying capocii y of our global environmenfi*, in Daly, H. {ed.J, Economics, *ecology*, ethics, W . H . Freeman, San Francisco, 1980, p. 283.

The environmental resource, and its entire context, is used to satisfy materialistic ends, without any protectionist or conservationist respect¹.

The foundation of the obligation of direct solidarity with nature is built on a value, in itself, of the latter, by affinity with the cognizing subject or external "object" by which it is defined, inasmuch as the human being *'is part of the natural being', in turn, nature*².

This conception is the main essence on which the concept of intrinsic value of the environment is based: respect for itself implies, in itself, *'et respect for that part of itself which is composed of nature, and of which, in turn, all generations are a part.*

The above then, formulates a juridical relation obligatory of the environmental rights of the future generations, as the performance of *"not-doing", which effect is translated in a limitation of the present generations' freedom of choice, at the same time that this demand implicitly attributes to them new burdens of environmental commitment, to such an extent that they assume an attitude of "nullity" and "non-compliance".* *in the natural goods of the human world futuro*²⁴.

¹ Alfonso, C. *Proceso al Siglo XX. 'El progreso y sus paradojas'*, Mensajero, Bilbao, 1976, p. 114.

² Jaquenod de Zsógón, S., *'El Derecho ambiental y sus principios rectores'*, M.O.P. U, Madrid, 1989, p.29.

²⁴ Kormody, E., *'Concepts of ecology'*, Alianza, Madrid, 2001, pp. 237 and 238.

²⁵ - *Idem.*

6. In view of the above, in the international sphere, numerous regulations have emerged, both hard and soft, which constitute a worldwide ecological public order and serve as a guiding criterion for national legislations, as well as to resolve citizen complaints about the destruction of our habitat, in order to protect the subjective rights of people, present and future generations.

The most important legal instruments are the following:

61. The International Covenant on Economic, Social and Cultural Rights of 1966 in its canon 12 granted individuals the prerogative to enjoy the highest *attainable* standard of physical and mental *health*, and in order to guarantee such mandate, assigned to the States the duty to strive for the '(...} *tnejoYment, in all its aspects, (...) of the environment (...)*'.

62. In international humanitarian law, there are two relevant documents, on the one hand, the 1976 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification ^{Techniques}²⁵ and, on the other hand, the Additional Protocol I to the Geneva Conventions *for the Protection of Victims of International Armed Conflicts*, in both of which the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, of 1976,²⁶ and the Protocol I Additional to the Geneva Conventions *for the Protection of Victims of International Armed Conflicts*, in both of which the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, of 1976,²⁷ have been ratified.

25 -(.. *Each State Party to this Convention undertakes not to use environmental modification techniques for military or other hostile purposes which have long-lasting, lasting or severe effects, as a means of producing destruction, damage or injury to another State Party.*

'2. *Each State Party to this Convention undertakes not to assist, attempt or incite any State or group of States or international organizations to engage in any activity contrary to the provisions of paragraph 1 of this Article (...).*

articles 35.3 and 55 prohibits the unjustified attack of the nature²⁶

63. The Stockholm Declaration of 1972:²⁷ This document introduced the environmental dimension into the global political agenda as a conditioning factor in the traditional model of economic growth and the use of natural resources. Under this approach, 26 guiding principles were established and, in addition, the United Nations Environment Program (UNEP) was created.

In that sense, he proclaimed himself there:

"(...) We have reached a point in history where we must take a more careful look at our actions around the world and be more aware of the consequences they may have on the environment. Through ignorance or indifference, we can cause immense and irreparable damage to the earth's environment on which our survival and well-being depend. On the other hand, with deeper knowledge and more prudent action, we can achieve for ourselves and our posterity better environmental conditions in an environment more in tune with man's needs and expectations. The prospects for improving the quality of the environment and creating an satisfactory life are great. What is needed is enthusiasm, but, at the same time, serenity of mind, hard but systematic work. To reach the fullness of his freedom within the news, man must apply any knowledge to forge, in harmony with it, a better environment. The defense and improvement of the

"The use of methods or means of warfare which are designed to cause, or which may be expected to cause, external, lasting damage to the natural environment (...) is prohibited (...)"

' ... j Art. OSS: Protection of the natural environment. 1. In the conduct of war, care shall be taken to protect the natural environment against extensive, harsh and severe attacks. This provision includes the prohibition of the use of methods or means of warfare which are designed to cause or may be expected to cause such damage to the natural environment as to endanger the health or survival of the population.

'2. It is forbidden and the attacks against the natural environment as reprisals (... i)".

* Document available at:

http://www.ordenjuridico.gob.mx/TratInt/Derechos*20Humanos/INST%2005.pdf, accessed 20 February 2017.

The humane environment for present and future generations has become an imperative goal of humankind, to be pursued in tandem with, and in harmony with, the already established goals of peace and economic and social development throughout the world.

To reach this goal, it will be necessary that all communities, companies and institutions, at all levels, accept the responsibilities that lie ahead and that all of them participate equally in the common work. Man and of all conditions and organizations of different natures, with the contribution of their own values [j the sum of their own values, the environment of the future. Local and national administrations, within their respective jurisdictions, bear most of the burden in terms of setting standards and implementing measures to protect the environment, and international cooperation is also required to provide resources to help developing countries meet their commitments in this area. And there are an increasing number of environmental problems which, because they are regional or global in scope or have an impact on the international commons, require full cooperation among nations and action by international organizations in the interests of all. The Conference urges governments and peoples to join efforts to preserve and improve the human environment for the benefit of mankind (...)'⁸.

64. The United Nations Conference on Environment and Development held in Rio de Janeiro in 1992: Agreed with the objective of '(...} *developing strategies to halt and reverse the effects of environmental degradation in the context of efforts to achieve sustainable and environmentally balanced development, both at the international and national levels (...)'².*

⁸ Proclamations 8 and 9 *idem*.

-- BARREI RA, Ana and others, '*Medio Ambiente g derecho /ntemocionof: Una i:guia pr3ctica*'. Ed. Caja Madrid, 2007. P3g. 5.

The event was attended by 176 States and, as main results, the United Nations Commission on Sustainable Development was formed and the following instruments were elaborated: (i) the Rio Declaration on Environment and Development; (ii) the Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests; (iii) the Convention on Biological Diversity; and (iv) the United Nations Framework Convention on Climate Change³⁰.

65. The 2015 Paris Framework Convention on Climate Change*': After several unsuccessful attempts to adopt a binding document for States that would reflect current environmental needs, this was achieved in Paris, where the participating countries agreed to

"(...) maintain and promote regional and international cooperation with a view to mobilizing more vigorous and ambitious action to address climate change, by all Parties and non-Party stakeholders, including civil society, the private sector, financial institutions, cities and other subnational authorities, local communities and indigenous peoples (...)".

Never before has such a tool established binding measures to mitigate climate change, requiring countries to make concrete commitments to reduce pollution and the rise in global temperatures.

Ibid., p. 6.

'' <http://unfccc.int/resource/docs/2015/cop21/spa/109s.pdf>.

7. Eu Colombia, the Constitution of 1991 updated our environmental order, from it a national ecological public order was built, because in its articles several precepts on the subject were established, such as: the prevalence of the '*general* interest' (art. 1); the duty to protect the '*natural wealth of the Nation*' (art. 8); environmental sanitation (art. 49); the '*ecological* justice' of private property (art. 58); the classification of the '*natural parks*' as '*inoffensive, unseizable and unseizable*' (art. 63); the purpose of education was set as '*(...) to train Colombians in (...) the protection of the environment (...)*' (art. 67); the fundamental right to '*(...) a clean environment and the protection of the diversity and integrity of the environment (...)*' (art. 79); the imposition on the State of the mandate to '*(...) plan the management and conservation of the environment (...)*' (art. 79); and the imposition on the State of the mandate to '*(...) plan for the protection of the environment (...)*' (art. 79.) *to plan the management and use of natural resources, in order to guarantee their sustainable development (...)*" (art. 80); the creation of the popular action as a suitable judicial mechanism for the safeguarding of "*collective rights and interests;*" (art. 88); the adoption of the imperative for citizens to "*(...) [p]rotect the resources (...)*" (art. 95-8); the possibility for the President to decree a state of emergency in the event of an ecological threat (art. 215); the obligation of the "*(...) State [to] promote (...)* the internationalization of *(...) ecological (...)* reserves *(...)*" (art. 226); and the assignment to the control entities and territorial dependencies of the function of protecting environmental reserves (art. 226) (art. 227)....) *ecological (...)*' (art. 226); and the assignment to control entities and territorial agencies of the function of

protecting environmental reserves (arts. 268-7, 277-4, 289, 300-2; 310, 311 and 313-9), among other rules.

The Constitutional Court has played an important role with its pronouncements, designing a line of jurisprudence based on the concepts and advances that have arisen on the subject in the international and academic scenario.

In this sense, it has analyzed the constitutional postulates from a "green" perspective, cataloguing the Political Charter as an "*Ecological Constitution*" and elevating the "environment" to the category of fundamental right.

In Ruling T-411 of 1992, the question was raised of the environmental problem as follows:

(...) The legal protection of the environment is today a universally recognized need, a socially felt need, to give a forceful response to the intolerable aggressions against the environment".

The unplanned development and scientific advances have considerably reduced the industrial impact on the environment.

"The ecological problem and all that it implies is nowadays a universal clamor, it is a problem of super iuencict".

'(. ..) [T]he protection of the environment is not a "platonic love of Mother Nature", but a response to a problem which, if it continues to worsen at the present rate, will end up being a matter of death or death: the contamination of rivers and seas, the progressive depletion of fauna and flora, the unbreathable atmosphere of many large cities due to pollution, the disappearance of the ozone layer, the greenhouse effect, rust, deforestation, erosion, the use of chemicals, industrial wastes, the lack of oxygen, nuclear melons, the

impoverishment of the L'ancos genetics of the #Íaneta, etc., are vital issues that deserve a firm and unanimous decision of the world's population. And it is at the national/heritage patrimony of a country, as happens with the historical-artistic one, belongs to the people who live there, but also to the future generations, since we have the obligation and the duty to hand over the legacy that we have received in optimal conditions to our descendants".

"This immense challenge has a moral and spiritual dimension. The past era has shown us a very good lesson: the man cannot rule over the wind and the water".

Man is not the omnipotent master of effort, with the right to do with impunity what he desires or what he conceives at a given moment. (...) [T]he world in which we live is made of an immensely complex and mysterious world about which we know very little and of which we must speak with humility (...)' (emphasis added).

In decision C-43 1 of 2000, the '(...) defense of the environment [as] a priority objective within the actual structure of our Social State under the rule of law (...)', since:

"[...] the duty to face part of the environment of man, indispensable against his superiority and that of the generations.

*The environment is found under the protection of what jurisprudence has called the "Ecological Constitution", formed by a set of superior provisions that establish the premises on the basis of which **the** relations of the community with the environment must **be regulated** and which, to a large extent, **advocate its conservation and protection (...)**".*

'(...) While on the one hand it recognizes the environment as a right to which all people are entitled - who are entitled to participate in the decisions that may affect it and must collaborate in its conservation - on the other hand it imposes on the State the corresponding duties of: 1) protect its diversity and integrity, 2) safeguard its rich natural resources of In Notion, 3) conserve the areas of special ecological importance, 4) orient the.

5) plan the management and use of natural resources in order to ensure their sustainable development, conservation, restoration or replacement, 6) prevent and control the factors of environmental deterioration, 7) impose legal sanctions and demand the reimbursement of damages caused to the environment, 8) cooperate with other authorities in the protection of natural resources, 9) cooperate in the protection of natural ecosystems, and 10) cooperate with other authorities in the protection of natural resources, 7) to impose legal sanctions and to demand reparation of damages caused to the environment and 8) to cooperate with other authorities in the protection of the ecosystems located in the border areas (...)" (sublines out of text).

8. The environment constitutes a right of constitutional rank, contained in Chapter III of the Magna Carta, regulating '*derechos colectivos and the environment*', in canons 79 and 80:

"(...) Art. 79. Todas las personas tienen derecho a gozar the use of the sort. The law guarantees the participation of the community in the decisions that may affect it".

"It is the duty of the State to protect the environment, consent to the respect of the ecological and environmental education part of the achievement of these ones (...)"

"(...) Art. 80. The State shall promote the use of natural resources, to guarantee its sustainable development, its conservation, restoration or protection".

"Therefore, the State and the Government shall impose the necessary legal measures to ensure the restoration of the environment".

"Likewise, it will cooperate with other nations in the protection of ecosystems located in the border areas (...)" (emphasis added).

Regarding the legal nature of the rights related to the environment, the Constitutional Court has expressed that they are of a fundamental and collective nature:

"(...) [T]he *defense of a healthy environment* constitutes a (...) *It is a constitutional principle that has a triple dimension, since it is a principle that irradiates the entire legal order and it is incumbent upon the State to protect the natural wealth of the Nation and a constitutional right (individual and collective) enforceable by all persons through various means.*

It is an *obligation of the authorities, society and individuals, as it implies qualified duties of protection. In addition, the Consfituciñn provides for the 'sanitation*

ombientnf" as a *public vice g purpose Jndomentní of state activity (arts. 49 and iS66 superior) ()*³² (emphasis added).

9. In view of the foregoing, it is insisted that in the present case this residual and exceptional action is appropriate to protect the individual and collective guarantees, threatened, due to the connection of the healthy environment with prerogatives such as life, health or human dignity.

For the Court, the "question" raised here is framed within those in which it is viable for the tutela judge to hear the case on its merits, since the requirements for this are satisfied, in the understanding that the situation described is fully proven and directly affects individual fundamental rights not only of the managers, but of all Colombians; this allows concluding the ineffectiveness of the popular action, as will be explained hereinafter.

10. The conservation of the Amazon is a national and global obligation, it is the main environmental axis existing on the planet, for this reason it has been catalogued as the "*lungs of the world*":

^{3°} Constitutional Court. Decision C-449 of 2015, reiterated in decision C-389 of 2016.

representing 6% of the planet's surface and occupying 40% of the territory of Latin America and the Caribbean. It has 38, 7 million inhabitants correspond to 10% of the population of the eight countries in the Amazon".

"Its dimensions between S. 1 g 8. 1 million square kilometers impress. Its rivers transport approximately 20% of the planet's fresh water in the oceans, a quantity greater than the Missouri-Mississippi, Nile and Yangtze rivers combined. Its basin has 215 million kilometers of rivers and navigable. The Amazon River is 6, 9 million kilometers long and is the largest in the world. It has more than 100 tributaries and about 220 thousand cubic meters of water per second.

"It contains an exceptionally high diversity of species, about one hundredth of those found in the world. It has been estimated that it contains 30 thousand species of vascular plants, including from 5 thousand to 10 thousand species of trees. Of the total, 2,000 have been classified for their usefulness for food, medicine and other purposes (...) "³".

The international community has generated different commitments to achieve its conservation, with the Amazonian Cooperation Treaty (OTCA)⁴, whose main objective is the '(...) prohibition of the harmonious deforestation of the Amazon, and the incorporation of these territories to the national economy, which is essential to maintain the balance between economic growth and environmental preservation'.

() "³⁵

[^] RAM ÍREZ, Socorro (Ed.), "En Cooperación Amazónica. Desafíos y Oportunidades de la Cooperación Amazónica a través de la OTCA", Bogotá, 2012. pp. 45 and 46. Document accessed March 9, 2018, available at:

<https://www.cancilleria.gov.co/sites/default/files/otca-libro-socorro-ramirez.pdf>. "^{*} Approved by Colombia through Law 74 of 1979.

"^{*} MINISTERIO DE RELACIONES INTERNACIONALES DE COLOMBIA, "Organización del Tratado de Cooperación Amazónica (OTCA) fl fl, document consultado el 9 de marzo de 2018 y disponible en: <http://www.cancilleria.gov.co/en/node/10412>.

Likewise, in the aforementioned 2015 Paris Framework Convention on Climate Change, where Colombia, Among other responsibilities, he acquired the one of reducing "deforestation in *the Amozonín Cofombiann*³⁶\$ with this purpose he promoted the "Cofombin *!Sootenible* initiative" and the '*Viyión Amozonín Fund* "³⁷\$ for which he built the following pillars:

"(...) I. *Mejorar lo admiriistrociórt, vigilance y/ control of the forests for their sustainable use*".

'2. Pfont/cotion *sectoral long-term, green infraestnicWra, responsible mining and hydrocarbons*".

'3. Trnnsformation *ogropecunrio regional for stop the expansion of the agricultural frontier*".

"4. *Financing of the indigenous protection of the boyquey*". 'S.

Accurate and timely forest monitoring (...)^{o^}.

11. Under the aforementioned assumptions, the Court will consider whether the safeguard is appropriate, establishing, for this purpose, whether the infringement of the collective right to enjoy a healthy environment leads to the violation of the following rights

³⁶ MINISTRY OF ENVIRONMENT AND SUSTAINABLE DEVELOPMENT OF COLOMBIA, '*Colombia*

launches in Paris the initiative Colombia !Sostenible g firma innouodor auerdo para reconocer la reduoeión de la deforestacion en la Amozonía Colombiana", document consulted on March 9, 2018 and available at: <http://www.minambiente.gov.co/index.php/noticias/2151-colombia-lanza-en-paris-la-iniciativa-colombia-sostenible-y-firma-innovador-acuerdo-para-reconocer-la-reduccion-de-la-deforestacion-en-la-amazonia-colombiana>.

^{o^} In this regard, see: MINISTRY OF THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT OF

COLOMBIA, '*Visiõn Amazoní* ', document revised on March 9, 2018 and available at: http://www.minambiente.gov.co/images/Atenciony participacion al ciudadano/ consu ltas p ublicas_2015/viceministerio/ Resumen-VisionAmazonia-WEB.pdf.

³⁷ MINISTRY OF WELFARE AND SUSTAINABLE DEVELOPMENT OF COLOMBIA, '*In 2020 we will have zero deforestation in fo Arnazonid*', document revised on March 9, 2018 and available at.

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<http://www.minambiente.gov.co/index.php/component/content/article?id=1667:en-2020-tendremos-cero-deforestacion-en-la-amazonia-minambiente>.

the fundamental guarantees invoked as violated by the plaintiffs.

In the present case, the actors consider that the current problem of deforestation in the Colombian Amazonian territory, specifically in the municipalities of San Vicente del Caguán, Cartagena del Chairà, San José del Guaviare, Calamar, La Macarena, Puerto Leguizamo, Solano, Uribe, El Retorno, Puerto Guzmán, Puerto Rico, Miraflores, Florencia and Vistahermosa, and the lack of measures by the national government and other public authorities to counteract this situation, violate the prerogatives of life and health, as well as the environmental rights of the communities; and the lack of measures by the national government and other public authorities to counteract this situation, violate the prerogatives to life and health, as well as the environmental rights of the *generations fort ram'*.

In this regard, the Court must determine, in the venue of the appeal, whether there is in fact a causal link between the climate change generated by the progressive reduction of the forest cover, caused by the expansion of the agricultural frontier, drug crops, illegal mining and logging, The Court will then have to establish whether the uncontrolled degradation of the jungle forests directly undermines the rights to life with dignity, to water and to food of the plaintiffs.

In the opinion of this court, in accordance with the evidence in the file and, in particular, with the study of the '*Control Strategy*', it is necessary to consider that the

Deforestation and *Forest Deforestation*" carried out by the Ministry of Environment and Sustainable Development³⁹ it can be concluded that between 2015 and 2016, deforestation in the Amazon region increased by 44%, going from 56,952 to 70,074 hectares damaged. This information was validated by the IDEAM in the report "*Sistema de monitoreo de Bosques y Carbono para Colombia*

-SMBYC° of 201740.

The main causes of forest degradation, according to the aforementioned ministerial report, are: i) illegal land grabbing (60-65%); ii) illicit crops (20-22%); iii) illegal extraction of mineral deposits (7-8%); iv) infrastructure works; v) agro-industrial crops; and vi) illegal logging.

The above-mentioned factors directly generate the deforestation of the Amazon, causing in the short, medium and long term, an imminent and serious damage to children, adolescents and adults who resort to this action, and in general, to all the inhabitants of the national territory, both for present and future generations, because it uncontrollably unleashes the emission of carbon dioxide (CO₂) into the atmosphere, producing the greenhouse effect, which transforms and fragments ecosystems,

³⁹ Governmental initiative led by the Ministry of Environment and Sustainable Development, with the support of the GIZ Forests and Climate program, the Forest Carbon Partnership Facility, which is implemented by the Accion Fund and the World Bank, and the UN REDD Colombia Program implemented by FAO, UN Environment and UNDP. Information available at: <http://www.minambiente.gov.co/index.php/noticias/3292-estrategia-integral-de-control-a-la-deforestacion-y-gestion-de-los-bosques-una-busqueda-de-opportunidades-legales-economicas-y-productivas>.

⁴⁰ IDEAM, "*Sistema de Monitoreo de Bosques y Carbono para Colombia - SMBYC*", 2017, web document accessed March 12, 2017, available at: <http://documentacion.ideam.gov.co/openbiblio/bvirtual/023708/boletinDEF.pdf>.

altering the water resource and with it, the supply of water for the water from population centers and soil degradation⁴¹.

To this must be added the threat that deforestation poses to the region's native flora and fauna species, as highlighted by various reports from expert organizations⁴², which state that nearly 57% of tree species are endangered, as are animals such as the jaguar or the Andean bear, for example.

The above reality, contrasted with the environmental legal principles of (i) precaution; (ii) intergenerational equity; and (iii) solidarity, leads to the following conclusions:

11.1. Regarding the first of the above principles, there is no doubt that there is a danger of damage, since, according to the IDEAM⁴³, the increase of the emissions from GHG⁴⁴ emissions with the deforestation from the jungle forest, would generate an increase in temperature in Colombia of between 0.7 to 1.1 degrees Celsius between 2011 and 2045⁴⁵ while for the period between 2041 and 2070, is calculated an increase of 1.4 to 1.8 degrees

• IDEAM, PNU D, MADS, DNP, Ministry of Foreign Affairs. *Inventario Nacional and Departamental de Gases de Efecto Invernadero-Colombia. Tercer Informe Nacional de Cambio Climático* - gta, D.C. 2016.

** In this regard, note the report *'Living Amazon Report 2016. A Regional Approach to conservation in the Amazon'*, accessed March 20, 2018 and is available at: http://d2onvy59p0d9fik.cloudfront.net/download/s/wwflivingamazonreport_2016mid_re spreads.pdf.

⁴¹ IDEAM, PNU D, MADS, Ministry of Foreign Affairs. *New climate change scenarios for Colombia 2011-2100* (2015).

⁴² Greenhouse Gases.

⁴³ IDEAM, PNU D, DNP, MADS, Chancellery. *New climate change scenarios for the Colombia 2011-2100* (2015).

centigrade, to reach up to 2.7 degrees centigrade "in the period from 2011 to 21^{0W46},

Likewise, the reduction of the Amazon forest masses would break the ecosystemic connectivity of the Amazon with the Andes, causing the probable extinction or threatening the subsistence of the species that inhabit this corridor, generating "damage to *their* ecological integrity "⁷.

Likewise, according to IDEAM, GHG emissions from deforestation would cause two types of consequences with respect to rainfall⁴⁸. The first, an increase in several regions of the country, a situation that would trigger an increase in the levels of watercourses and, therefore, runoff, generating the spread of water-derived pollutants⁴. And the second, a deficit in other departments of the country, causing a decrease in water resources, as well as prolonged droughts.

With respect to the irreversibility of the damage and scientific certainty, additional components of the precautionary principle, these are evident, since the GHG released as a result of deforestation constitutes a

^o *Idem*.

^{4*} Morales, Caroly. Connectivity between the Andes and the Colombian Amazon is being developed.

losing. Available at <http://www.rcnradio.com/medioambiente/conectividad-entre-los-los-andes-y-la-Amazonia-colombiana-seesta-perdiendo/>

⁸ IDEA M, PNU D, DNP, MADS, Can cillería. *New scientific change scenarios for Colombia 2011-2020* (2015).

^o World Health Organization (2002) *Environment health in emergencies and disasters*. In:

World Health Organization. Geneva. In: http://www.who.int/water_sanitation_health/hygiene/emergencies/em2002intro.pdf

36%^{S0} of the forestry sector, which is a factor in the uncontrolled release of CO₂; information supported, in detail, by studies conducted by IDEAM, the Foreign Ministry, the Ministry of Environment and Sustainable Development, and UNDP, among many others.

112. As for the criterion of intergenerational equity, its transgression is obvious, since the temperature increase forecast for the year 2041 will be 1.6°, and in 2071 to 2.14°, being future generations, among them, the infants who interpose this safeguard, those who will be directly affected, unless the present ones reduce the rate of deforestation to zero.

113. The principle of solidarity, for the specific case, is determined by the duty and co-responsibility of the Colombian State to stop the causes that provoke the emission of GHG caused by the abrupt reduction of forests in the Amazon, being imperative to adopt immediate mitigation measures, protecting the right to environmental welfare, both for the plaintiffs and the other people who inhabit and share the Amazonian territory, not only the national, but the foreign, along with all the inhabitants of the globe, including ecosystems and living beings.

*IDTAM, PN UD, DNP, MA DS, Ministry of Foreign Affairs. *New scenarios of climate change for Colombia 2011-2100* (2015).

¹ *Íbid.*

11.3. The above reality, in addition to transgressing the regulations pertaining to the national Environmental Charter, and the international instruments that integrate the world ecological policy order, constitutes a serious disregard for the obligations acquired by the State in the Paris Framework Convention on Climate Change of 2015, where Colombia, among other responsibilities, committed itself to reduce *deforestation* in the *Cofombinrinrin Amazon* "52 , whose objective was to reduce deforestation in that region to zero by the year 2020, since if this is achieved, according to the Ministry of Environment and Sustainable Development⁵ , '{...} 44 megatons of greenhouse gases would not enter the atmosphere, and 100 thousand hectares of agricultural land in areas of high deforestation would become more environmentally friendly (...) "5^.

It is up to the authorities to respond effectively to the issues raised by the problems identified, including the urgent need to adopt corrective and mitigating measures for i) the uncontrolled expansion of illicit crops and illegal mining that irrationally destroy the Amazon forest; ii) filling the vacuum left by the FARC and paramilitaries to make the State an active presence for the conservation of Amazonian territories that in the context of the armed conflict were reconquered by insurgent groups, ruthless predators and colonizers; iii) the need for the State to take an active role in the conservation of Amazonian territories that in the context of the armed conflict were reconquered by insurgent groups, ruthless predators and colonizers.

*° <http://www.minambiente.gov.co/index.php/news/2151-colombia-launches-in-paris-the-sustainable-colombia-initiative-and-signs-innovative-agreement-to-recognize-reduction-of-deforestation-in-amazonia-colombia>.

° http://www.minambiente.gov.co/images/EICDGB_1.0_AUGUST_9_2017.pdf.

-- *Ibid.*

(iii) preventing and mitigating the growing fires, deforestation and the irrational expansion of the agricultural frontier; (iv) the lack of prevention of the consequences inherent to the opening of roads, the granting of land titles and mining concessions; (v) the expansion of agro-industrial crops and large-scale cattle ranching; (vi) the preservation of this ecosystem because of its importance in regulating the world's climate; (vii) the lack of scientific calculations of the increasing release of tons of carbon due to burning and the loss of biomass, which constitutes a major source of greenhouse gas emissions; and (viii) the lack of scientific calculations of the increasing release of tons of carbon due to burning and the loss of biomass, which constitutes a major source of greenhouse gas emissions; vi) the preservation of this ecosystem because of its importance in regulating the world's climate; vii) the absence of scientific calculations of the increasing release of tons of carbon from burning and the loss of biomass, which constitutes the vegetation cover; and viii) addressing climate change due to the destruction of the Amazon rainforest in the national territory.

12. Therefore, the excessive intensification of this problem is evident, showing the ineffectiveness of the governmental measures adopted to deal with it and, from this perspective, the granting of the protection due to a clear violation of legal guarantees such as water, air, life with dignity and health, among others, in connection with the environment.

In this regard, this Chamber following the thesis sustained by the Constitutional Court in judgment T-622 of 2016, related to the recognition of nature as an authentic

subject of rights, a position in accordance with the relevance of the environment and its conservation, from the ecocentric perspective defined in preceding paragraphs. In this pronouncement, the high court conceptualized:

'(.. .) [T]he *greatest challenge* facing contemporary constitutionalism in environmental matters consists of *safeguarding and protecting nature, the cultures and forms of* nsocindos n efln J In biodiuersidod, not only *because of the simple material, genetic or productive utility that they may represent for the human being*, but *because, being an inherent entity composed of other multiple forms of life and cultural representations, they are subjects of inalienable rights, which makes them an imperative subject of integral protection and respect by States and societies. In synthesis, only from an attitude of deep respect jj i'tumildad with nature, its members and its cu/ftJFrt, it is possible to enter to relate to them in fair g equitable terms, leaving aside all concept that is limited to the simply uti/itarian, economic or e/icientist"*.

Indeed, the nnturnfeza and ef ombiente are a tranzueryal element to the Colombian constitutional order. Its importance lies, of course, in the attention to the human beings that inhabit it and the need to have a healthy environment to fulfill a dignified life and in conditions of well-being, but also in relation to the other organisms with whom the planet is shared, understood as existences deserving of protection in their own right. It is a matter of being aware of the interdependence that connects all other beings on earth; that is, to recognize them as integral parts of the global ecosystem -biosphere-, rather than from normative categories of domination, exploitation or utility. This position has special reference in the Colombian constitution, taking into account the principle of cultural and ethnic pluralism that supports it, as well as the zaberey, uyoy and anceytraleB customs bequeathed by the indigenous peoples and tribes (...)".

"(...) In this comment, for the Chamber it is necessary to advance in the interpretation of the applicable law and in the forms of protection of the Jndnmentofes rights and their subjects, due to the great degree of degradation and omenozo in which it found the Atroto river basin. Fortunately, a new juridical approach called biocultural rights, whose central premise is the relationship of profound unity and interdependence between nature and the human species, and which has as a consequence a new socio-legal understanding in which nature and its environment must be taken seriously, has been developing at the international level (as I understand from the Jnment S. 1 1).

and with full rights. This in, as a full-fledged rights holder.
(...)”.

"(...) [L a/ustfco cort la naturofeaa <fe6e ser apHeada más allt del escenarto ftumono y <fe6e permftfr qzce fo naturaleao puede ser su/etc cfe derechos. Ufo this compz°ezcsfórt is qzce ta ffiata eoztslcferxs zteaesaz-to zgar zzzt posa o4efonte in fo /urtsprs'cfencfo hacta la proteccfón constttuctonaf ffe one of nueatros /üerttes de 6focfft'erafzfad más tmportortorttes: ef rio Atrato. This interpretation finds its fullest expression in the superior interest of the environment, which has been widely developed by constitutional jurisprudence and which is con(ormed by numerous constitutional clauses that constitute what has been called the "Ecological Constitution" or "Green Constitution". This set of provisions allows us to affirm the transcendence of the environment and its interdependence with human beings and the State".

From the foregoing we derive a series of obligations of protection and guarantee of the environment in charge of the State, which in the first place is responsible for its protection, maintenance and achievement, which it must materialize through sound environmental public policies (sustainable governance), the issuance of CONPE!S documents, of legislation in the matter and of Development Plans, among others; therefore, without prejudice to the duty of protection and care that also attends to the civil society and to the communities themselves to take care of the natural resources and biodiversity. In this sense, the Chamber considers it pertinent to call the attention of the ethnic communities that inhabit the Atrato river basin to protect, within the exercise of their customs, theirs and traditions, the environment of which they are the first guardians and responsible (...)"⁵ (emphasis added).

13. It is clear that, despite the existence of numerous international international commitments, regulations and jurisprudence on the matter, the Colombian State has not efficiently confronted the problem of deforestation in the Amazon.

*Constitutional Court, judgment T-622 of 2016.

131. At In fact, the three regional autonomous regional autonomous corporations with jurisdiction in the

In effect, the three regional autonomous corporations with jurisdiction in the Amazonian territory have not made efforts to reduce the concentrated area of deforestation, which registers 47.23% of the total deforestation in the Amazonian territory.

47.23% of the AT-D56q distributed, for the Corporation for the Sustainable Development of the South of the Amazon -Corpoamazonia, by 24.47%; the Corporation for Sustainable for the Sustainable Development of the North ythe East Amazon -CDA, at 11, 10%; y the Corporation for the Development Development of the La Macarena Special Management Area -Cormacarena, by 11.67%⁵⁷

Thus, the aforementioned environmental authorities⁵⁸ are not fulfilling their functions of evaluating, controlling and monitoring natural resources and imposing and executing sanctions in the event of a violation of environmental protection regulations within their competence, and may even, if they do not have the necessary resources, request support from other entities at the national and local levels, with the objective of protecting natural resources.

132. Deforestation in the Colombian Amazon is also occurring in the also at places under the under
of Parks

Deforestation Alerts.
IDEAM, PNU D, DNP, MADS, Cancilleria. *Nuevos escenarios de cambio climático para Colombia 2011-21* OO (2015).

* The Regional Autonomous Corporations were created by Law 99 of 1993 and their functions include the following: 'E|Exercise the function of maximum environmental authority in the area of its jurisdiction, in accordance with the norms of superior character and in conformity with the criteria and guidelines established by the Ministry of the Environment',- 'fE}Exercise the functions

of evaluation, control and environmental monitoring of the use of water, soil, air and other renewable natural resources" and "Impose the regulation of the use of water, soil, air and other renewable natural resources" and "Impose the regulation of the use of water, soil, air and other renewable natural resources" and "Impose the regulation of the use of water, soil, air and other renewable natural resources", the air and the other renewable natural resources" and "Impose to execute at preuencióri g and without prejudice of iris coinpetencias otribuidns by the laws or other authorities, the measures of police and the snnciones foreseen in the law and, in case of uiolación to the norms of environmental protection and of management of renewable natural resources g exiyir, with *subjection to the pertinent requirements, the reparation of the caused damages".

National Parks of Colombia -PNNN, specifically in the Sierra de la Macarena, Nukak, Tinigua and La Paya parks, *which occupy the third, fifth, ninth and ninth places, respectively, of the Parks with AT-D's cortcentrnciññ timor in the 201 W*⁹.

Deforestation in the national natural parks is proof of the omission in the fulfillment of the legal functions assigned to the National Natural Parks of Colombia (PNNN), taking into account that the reduction of the forest mass in protected areas is a situation that by normative disposition⁶, must be controlled and sanctioned by this authority, being empowered, in case of not having the capacity to fulfill this task, to demand the collaboration of other authorities of the national, departmental and municipal order.

133. The departments with jurisdiction in Amazonian territory, such as Amazonas, Caquetà, Guaviare and Putumayo, are also failing to comply with the duties imposed by law with respect to the environmental protection of the Colombian Amazon. Although it is true that they have the duty to assist the Regional Autonomous Corporations with authority in their territories, the percentages of the population of the Amazon region are not sufficient.

** Eleventh TADBulletin, IDEAM.

** The National Natural Parks Unit was created by Decree 3572 of 2011, which establishes among its functions that of *'[exercising] police and sanctioning functions under the terms established by law'*.

The responsibility to mitigate deforestation is incumbent upon them to mitigate in concert

with CAR61,

134. As for the municipalities that have Amazonian area, according to the AT-D bulletin, in particular La Macarena, Valle del Guamuez, Puerto Asís, San Vicente del Caguán, Vistahermosa, San José del Guaviare, Puerto Guzmán, Orito, Puerto Rico, Mapiripán Cartagena del Chairà, Calamar, Uribe, Solano, Puerto Leguízamo, El Retorno, Miraflores and Florencia, concentrate high levels of deforestation in 2017^{6a} without, as far as could be ascertained, the see at the reports reports a this the situation.

The foregoing violates the fulfillment of its legal and regulatory powers, established by Article 3 of Law 1551 of 2012, which assigns municipalities to "*ensure the proper management of resources and the environment, in accordance with the Constitution and the law*".

Likewise, the *ejusdem* regulation obliges the aforementioned local authorities to *formulate and adopt land-use plans, specifically regulating land use* in urban, expansion and *rural areas*.

⁶ The environmental functions of the departments, which in accordance with article 64 of the Law 99 of 1993, consist of. "[P]roinouer and execute national, regional and sectorial programs and policies in relation to the environment and renewable natural resources", they must also coordinate and direct, with the advice of the Regional Autonomous Corporations, the activities of intermunicipal environmental control and supervision, which are carried out in the territory of the department with the support of the public, in relation to the mobilization, processing, use, exploitation and commercialization of renewable natural resources". "* IDEAM. Tenth Deforestation Early Warning Bulletin (AT-D), First Quarter 2017, Second Quarter 2017, Third Quarter 2017. 2017.

The obligation has not been fulfilled, in *accordance with the laws and taking into account the instruments defined by the Unidad de Planeación Rural Agropecuaria -UPRA for the planning and efficient use of the rural land.*

The aforementioned omission is further evidenced by the answer given by the National Planning Department to the right of petition formulated by the plaintiffs, which was attached to the present proceedings, wherein it was specified that 'the formulation, revision and adjustment of the POTs in the direct competence of the Municipal Administrations is carried out within the framework of the provisions of Law 388 of 1997 (modified in the pertinent part by the relevant provisions of Law 388 of 1997), *revision and adjustment of the POT in direct competence of the Municipal Administrations is carried out within the framework of the provisions of Law 388 of 1997 (modified in pertinent part by Laws 507 of 1999 and 902 of 2004), regulated by Decrees 2079 of 2003 and 4002 of 2004; 2079 of 2003 and 4002 of 2004, compiled in Decree 1077 of 2015 and in article 91 of Law 153 of 2015.*

14. Therefore, in order to protect this vital ecosystem for the global future, as the Constitutional Court declared the Atrato River, the Colombian Amazon is recognized as an entity, "subject of rights", entitled to protection, conservation, maintenance and restoration by the State and the territorial entities that integrate it.

Consequently, the relief will be granted, and the Presidency of the Republic, the Ministry of Environment and Sustainable Development, and the Ministry of Agriculture

and Rural Development will be ordered, in coordination with the sectors of the National Environmental System, and the participation of the

The petitioners, the affected communities and the interested population in general, within four (4) months following the notification of this decision, formulate a short, medium and long term action plan to counteract the rate of deforestation in the Amazon, in which the effects of climate change are addressed.

The purpose of this plan will be to mitigate early warnings of deforestation issued by IDEAM.

Likewise, the Presidency of the Republic, the Ministry of Environment and Sustainable Development, and the Ministry of Agriculture and Rural Development shall be ordered to formulate within five (5) months following the notification of this decision, with the active participation of the plaintiffs, the affected communities, scientific organizations or environmental research groups, and the interested population in general, the construction of a 'P2VAC', where measures aimed at reducing deforestation and greenhouse gas emissions to zero are adopted, which shall include national, regional and local implementation strategies, of a preventive, mandatory, corrective and educational nature, aimed at adapting to climate change.

All the municipalities of the Colombian Amazon are also ordered to update and implement, within five (5) months following the notification of this ruling, the Management Plans for the Colombian Amazon.

Territorial, as appropriate, shall contain an action plan for zero deforestation reduction in its territory, which shall include measurable preventive, mandatory, corrective, and educational strategies aimed at climate change adaptation.

The Corporation for the Sustainable Development of the Southern Amazon -Corpoamazonia, the Corporation for the Sustainable Development of the Northern and Eastern Amazon -CDA, and the Corporation for the Sustainable Development of the Special Management Area La Macarena -Cormacarena shall be ordered, to carry out within five (5) months from the date of notification of this ruling, as far as their jurisdiction is concerned, an action plan to counteract through police, judicial or administrative measures, the deforestation problems reported by IDEAM.

Additionally, at its powers, the respondent organizations will have to, within forty-eight hours (48) hours after learning of this ruling, increase actions to mitigate deforestation while the modifications contained in the above mandate are carried out. Within the powers assigned, is to present with urgent message the complaints and claims before the corresponding administrative and judicial entities.

3. DSCISIÓX

In merit of the foregoing, the Supreme Court of Justice, in Civil Cassation Chamber, administering justice in the name of the Republic and by authority of the Constitution and the Law,

RESOLVED :

FIRST: REVERSE the judgment of date and place of origin noted above and, in its place, grant the protection requested.

Consequently, the Presidency of the Republic, the Ministry of Environment and Sustainable Development, and the Ministry of Agriculture and Rural Development are **ORDERED**, in coordination with the sectors of the National Environmental System, and the participation of the plaintiffs, the affected communities and the population in general, to formulate a short, medium and long term action plan within four (4) months following the notification of this decision, the affected communities and the interested population in general, within four (4) months following the notification of this decision, formulate a short, medium and long term action plan to counteract the rate of deforestation in the Amazon, in order to face the effects of climate change.

The purpose of this plan will be to mitigate early warnings of deforestation issued by IDEAM.

Likewise, it is **ORDERED that** the Presidency of the Republic, the Ministry of Environment and Sustainable Development, and the Ministry of Agriculture and Rural

Development, formulate in

within five (5) months following the notification of this decision, with the active participation of the plaintiffs, the affected communities, scientific organizations or environmental research groups, and the interested population in general, the construction of an "interpenetration ghetto by Ri tela cfel nrnozono *eolomóiano -PPVAD*, where measures are adopted to reduce deforestation and greenhouse gas emissions to zero, which should have national, regional and local implementation strategies, preventive, mandatory, correct and pedagogical, aimed at adapting to climate change.

Likewise, ORDER all the municipalities of the Colombian Amazon to update and implement, within a period of five (5) months following the notification of this decision, the Territorial Management Plans, as appropriate, must contain an action plan for zero deforestation reduction in their territory, which will include measurable strategies of a preventive, mandatory, corrective and educational nature, aimed at climate change adaptation.

Finally, ORDER the Corporation for the Sustainable Development of the Southern Amazon - Corpoamazonia, the Corporation for the Sustainable Development of the Northern and Eastern Amazon -CDA, and the Corporation for the Sustainable Development of the Macarena Special Management Area - Cormacarena, to carry out within a period of five (5) months from the date of notification of this decision,

in terms of its jurisdiction, an action plan to counteract, through police, judicial or administrative measures, the deforestation problems reported by the IDEAM.

In addition, in the exercise of their powers, the respondent agencies stated that, in the forty-eight days of the (48) hours after the date of this ruling, increase actions to mitigate deforestation while the modifications contained in the above mandate are being carried out. One of the powers assigned to the company is to urgently file complaints and lawsuits with the corresponding administrative and judicial entities.

SECOND: Communicate telegraphically what is resolved in this decision to the interested parties and opportunely send the file to the Constitutional Court for its eventual review.

NOTIFÍ

E Y CÚMPLASE

AROLDO **WILSON QUIROZ MONSALVO**

•
Presiderte de Sala

MARGARI CABELLO BLANCO

HH
ÁLVARO FERNANDO GARCÍA RESTREPO
con salvamento de voto

Alonso
LUIS ALONSO RICOPUERTA
CON SALVAMENTO DE VOTO

Salvo voto
ARIEL SALAZAR RAMÍREZ

ST
OCTAVIO AUGUSTO TEJEIRO DUQUE

Lu, Lu, Lu
LUIS ARMANDO TOLOSA VILLABONA