

THE RIGHTS OF NATURE
IN THE COLOMBIAN AMAZON:
EXAMINING CHALLENGES
AND OPPORTUNITIES IN A TRANSITIONAL
JUSTICE SETTING

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ABSTRACT

The 2016 Colombian Final Peace Agreement set up an innovative framework for the transitional justice process in Colombia. The Agreement deals with the relevant environmental dimensions of the Colombian armed conflict, such as the historical struggle for land and its equitable distribution or illicit crops as a root cause of and means for perpetuating the conflict. However, the Agreement says little about other conflict-environment connections, namely, how to deal with ecological degradation or destruction by war—nature as a victim—and how to seize the conservation opportunities that the conflict presented—nature as a beneficiary. These silences were amplified by the environmental crisis triggered by deforestation in the Colombian Amazon after the armed conflict ended. This emergency arguably boosted

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pioneering litigation strategies that mobilized rights-based arguments to protect fragile ecosystems and denounced deforestation as a causal mechanism of climate change. The Justice Supreme Court's historic ruling protects future generations' rights and declares the Amazon a subject of rights. In tandem with a foundational precedent, the Atrato River case, this Article explores how intergenerational equity and the rights of nature—founding ideas of these decisions—may turn into valuable lessons for environmental justice and present precious opportunities to fill environmental gaps in the transitional justice architecture.

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INTRODUCTION

Connections between armed conflict and the natural environment are multidimensional and complex. Natural resources may motivate or contribute to the outbreak of strife (nature as a root cause). In many cases, natural resources also serve as the channels through which violence may be financed or sustained (nature as a means). Unsurprisingly, conflict often leads to abuses of wildlife and natural areas, and in this sense, the environment could be negatively impacted (nature as a victim). However, in some paradoxical cases, warfare represents an opportunity for conservation, and wildlife ends up benefiting from the dynamics of armed conflict (nature as a beneficiary). In Part I, this Article explores how these dynamics have influenced armed conflict in Colombia. Part II discusses how the 2016 Final Peace Agreement (FPA), as a paramount framework of the transitional justice process in Colombia, deals with some of these conflict-environment connections. In particular, the FPA addresses the historical struggle for land and its equitable distribution, both as a root cause of and means for perpetuating the conflict. The FPA also deals with the phenomenon of illicit crops becoming a means for financing and sustaining the unrest. To dismantle the irregular, unjustified, or illegal dynamics through which natural resources have been used for more than fifty years of armed conflict, the FPA sets up environmental justice measures such as land redistribution or the voluntary substitution of the crops. Moreover, it mentions the implementation of other measures, such as demining programs.

Nevertheless, the FPA says little about other conflict-environment connections, namely, how to deal with environmental degradation or destruction by war (nature as a victim) and how to seize the conservation opportunities that the conflict left behind (nature as a beneficiary). In the case of the Colombian Amazon, the armed conflict has had destructive effects on rainforests, which were degraded by land grabbing, extensive livestock production, illicit crops, mining, wood extraction, and the ravages of war. However, paradoxically, the active presence of armed actors in areas with rich biodiversity and their war tactics contributed to the maintenance of relatively static rates of forest cover loss. During the armed conflict, some territories, such as the Amazon region, became “off-limits” and were unreachable by the state, civilians, or companies for the exploitation of natural resources, largescale development projects, or even for human settlements. This reduction in anthropic activity became an opportunity to preserve the ecosystem during the conflict. However, once the armed conflict stopped and

the Revolutionary Armed Forces of Colombia (FARC-EP) combatants were disarmed and demobilized, many “vacuums” were left in territories historically occupied by armed actors. Since institutions did not act promptly and state presence is still precarious, in the years following the FPA, criminal groups, illegal colonizers and businessmen have taken over these territories and deforestation has increased alarmingly.

In this postconflict scenario, the current Article examines the role of climate litigation to halt deforestation and the climate crisis, particularly the Colombian Supreme Court’s landmark decision that protects future generations’ rights and declares the Amazon a subject of rights. The analysis also addresses a foundational precedent, the Atrato River case. Parts III and IV discuss promising aspects of these rulings, and the critiques and challenges of their implementation. This Article argues that foundational notions of the decisions can raise fruitful discussions and potential contributions to the efforts to consolidate peace in Colombia and prevent new conflict.

I. ARMED CONFLICT, THE ENVIRONMENT, AND NATURAL RESOURCES

A. An Overview of Links

Connections between armed conflict, the environment, and natural resources are multidimensional and complex. According to the United Nations Environment Programme, from the 1980s until the beginning of the twenty-first century, there were at least eighteen civil wars and periods of internal unrest that were associated directly or indirectly to natural resources.¹ While it would be a mistaken assumption to reduce armed conflicts to resource wars, considering that political, social, and identity factors remain key, natural resources may nonetheless play a conspicuous role in armed conflict.² Natural resources may motivate or contribute to the outbreak of strife. In many cases, natural resources act as vehicles through which violence may be financed or sustained. Furthermore, conflict has often led to the abuse of wildlife and natural areas, and in this sense, the environment could be deemed vulnerable. However, in some cases, warfare represents an opportunity for conservation, and wildlife ends up benefiting from civil unrest. Simply put,

1. UNEP, FROM CONFLICT TO PEACEBUILDING: THE ROLE OF NATURAL RESOURCES AND THE ENVIRONMENT, at 8, U.N. Doc. DEP/1079/GE, U.N. Sales No. 09.III.D.14 (2009) [hereinafter UNEP].

2. Philippe Le Billon, *The Political Ecology of War: Natural Resources and Armed Conflicts*, 20 POL. GEOGRAPHY 561 (2001).

the environment may not only be a cause, means, or victim of conflict, but also a beneficiary of human violence.³

1. Nature as a Root Cause

The cause-effect dimension is one of the most contested links between natural resources and armed conflict. Conflict is unlikely to have a simple or unique cause. There are concerns regarding the lack of evidence for the proposition that environmental factors are the exclusive drivers.⁴ The literature on the subject provides little or no consensus to support the most commonly cited causal mechanisms,⁵ and some deficiencies in testing hypotheses have been studied.⁶ However, it seems more difficult to assert a complete absence of the resource-conflict correlation, since natural resources may at least influence⁷ or exacerbate the outbreak of strife.⁸ Three main connections can be identified.⁹

First, tensions can emerge from the unfair distribution of wealth derived from high-value extractive resources, and these tensions can initiate new conflicts or revitalize preexisting wars. For instance, in addition to multiple other grievances, the actions of the separatist group Free Aceh Movement during the three decades of civil conflict in the Province of Aceh, Indonesia were linked to the operations and distribution of benefits from the local natural gas facility.¹⁰

Second, discontent may surface, not because of unequal distribution of revenue derived from natural resources, but because of unequal access to or direct use of scarce resources. In these contexts, it is common for local demand for resources like land, forests, water, or wildlife to exceed the available provisions or for some use of the resources to compete with other uses.¹¹ Pressure over natural resources may be

3. This classification follows the proposed in UNEP, *supra* note 1. This has been also followed by UNEP & UNDP, *THE ROLE OF NATURAL RESOURCES IN DISARMAMENT, DEMOBILIZATION AND REINTEGRATION: ADDRESSING RISKS AND SEIZING OPPORTUNITIES*, at 16, U.N. Doc. DEP/1692/GE (2013) [hereinafter UNEP & UNDP], and by César Rodríguez Garavito et al., *La Paz Ambiental: Retos y Propuestas para el Posacuerdo*, DEJUSTICIA 19–20 (Jan. 2017).

4. Michael L. Ross, *How Do Natural Resources Influence Civil War? Evidence from Thirteen Cases*, 58 INT'L. ORG. 35 (2004).

5. *Id.*

6. Michael L. Ross, *What Do We Know About Natural Resources and Civil War?*, 41 J. PEACE RSCH. 337 (2004).

7. Michael L. Ross, *The Natural Resource Curse: How Wealth Can Make You Poor*, in *NATURAL RESOURCES AND VIOLENT CONFLICT: OPTIONS AND ACTIONS* 17 (Ian Bannon & Paul Collier eds., 2003).

8. See Le Billon, *supra* note 2.

9. See UNEP & UNDP, *supra* note 3.

10. See UNEP, *supra* note 1.

11. *Id.*

accompanied by environmental disasters or other factors that may intensify the turmoil, such as droughts, floods, or landslides.¹² In this respect, it is interesting to explore the role of climate change as a “threat multiplier”¹³ for events of the Arab Spring. Although insufficient by itself to cause the upheavals, severe weather, as part of the cause for the food crisis and price inflation, was an aggravating factor of the social, economic, political, and religious drivers of citizen anger.¹⁴ Syria presents another example of how natural events may worsen already unstable situations. Droughts, along with poor governance and unsustainable agricultural policies, were important factors in pushing people towards revolution.¹⁵ Sudan is also a notorious case of a violent competition for natural resources between agriculturalists, nomads, and pastoralists. Water scarcity, climate variability, and the steady loss of fertile land as consequence of overgrazing and deforestation have been determinants of the conflict in a region “where some 75 percent of the [growing] population are directly dependent on natural resources . . .”¹⁶

Finally, political fragility may ensue from an economic model dependent on the extraction of a narrow set of natural resources. In such regimes, institutional arrangements and clientelist networks are established around the resource sector, shaping power politics and thus privileging some groups and marginalizing others. “Resource dependent countries thus tend to have predatory governments serving sectional interests . . .”¹⁷ Citizens with a sense of disenfranchisement may see political change as a pathway to satisfy their aspirations or, at least, express their grievances. Even when the adopted strategy has not necessarily been a violent one, these societies face a greater risk of brutal unrest, being subject to the resource curse.¹⁸

12. See Rodríguez Garavito et al., *supra* note 3, at 20.

13. Sarah Johnstone & Jeffrey Mazo, *Global Warming and the Arab Spring*, 53 SURVIVAL 11, 11 (2011); see CNA CORPORATION, NATIONAL SECURITY AND THE THREAT OF CLIMATE CHANGE 6–48 (2007); *Report on Climate Change and International Security to the European Council*, No. 7249/08 (Mar. 3, 2008).

14. See Johnstone & Mazo, *supra* note 13.

15. Colin P. Kelley et al., *Climate Change in the Fertile Crescent and Implications of the Recent Syrian Drought*, 112 PNAS 3241, 3241–46 (2015).

16. See UNEP, *supra* note 1, at 9.

17. See Le Billon, *supra* note 2, at 567.

18. The “resource curse,” also known as the “paradox of plenty,” refers to the failure of many countries rich in natural resources, particularly minerals and fuels, to benefit fully from their natural resource wealth. In consequence, governments in these countries do not respond effectively to public welfare needs or perform less well economically than countries with fewer natural resources. In other words, resources are an economic curse rather than a blessing. However, this long-established notion has been reassessed in the last years. To review complexities of this idea and the debates that surround it, see generally

2. Nature as a Means

Natural resources can also play a role in financing, perpetuating, and sustaining armed conflict. For armed groups, the availability of high-value resources and the feasibility of their capture and exploitation are a means to directly secure assets for financing their fight. This has been the case with diamonds, timber, minerals, and cocoa in countries like Liberia, Sierra Leone, Angola, and Cambodia.¹⁹ In other cases, when natural resources are not easily exploitable or are less profitable to produce, armed groups may use extortion strategies or illegally impose taxes on those who extract, transport, and control market resources.²⁰ This is the case of rubber plantations in Liberia.²¹ Additionally, in modern wars, which often play out in remote areas, combatants seize wild areas like deep forests, mountains, and other rugged landscapes to hide from enemies and avoid attacks.²² Additionally, these areas provide armed factions with basic supplies such as water, animals, plants, and wood to satisfy their dietary and shelter needs.²³

3. Nature as a Victim

Alongside the roles that natural resources can play in influencing the eruption or persistence of violence, the environment can be seriously harmed by war.²⁴ Nature can be directly and intentionally destroyed for military purposes. This is better known as “ecocide.”²⁵ The Vietnam War, besides being a human tragedy, was also an ecological disaster due to aerial application of Agent Orange and other herbicides by US forces that “defoliated 14% of [Vietnam’s] forest cover and over 50% of its coastal mangroves.”²⁶ Tactical assaults were carried out to deprive the enemy of shelter and sustenance, leading to a severe impact on biodiversity.²⁷ As a consequence of chemical contamination by herbi-

SYED MANSOOB MURSHED, *THE RESOURCE CURSE* (2018); Frederick van der Ploeg, *Natural Resources: Curse or Blessing?*, 49 J. ECON. LITERATURE 366 (2011); Ross, *supra* note 7.

19. See UNEP, *supra* note 1, at 11.

20. See Ross, *supra* note 4.

21. See UNEP & UNDP, *supra* note 3, at 21.

22. Thor Hanson et al., *Warfare in Biodiversity Hotspots*, 23 CONSERVATION BIOLOGY 578 (2009).

23. See Rodríguez Garavito et al., *supra* note 3.

24. Michael J. Lawrence et al., *The Effects of Modern War and Military Activities on Biodiversity and the Environment*, 23 ENV'T REV. 443 (2015).

25. Jeffrey A. McNeely, *Conserving Forest Biodiversity in Times of Violent Conflict*, 37 ORYX 142, 145 (2003).

26. Hanson et al., *supra* note 22, at 584.

27. Arthur H. Westing, *The Environmental Aftermath of Warfare in Vietnam*, WORLD ARMAMENTS AND DISARMAMENT: SIPRI YEAR BOOK 1982 363 (1982), <https://www.sipri.org/sites/default/files/SIPRI%20Yearbook%201982.pdf>. [<https://perma.cc/E263-K45M>].

cides, high-diversity forests were replaced with extensive low-diversity grasslands, highly productive mangroves disappeared, and mudflats dominated the landscape. Significant declines in both freshwater and coastal fisheries also took place.²⁸

In other cases, attacks may not intentionally target nature but still unintentionally cause collateral environmental damage. In 1999, NATO air strikes targeted areas within the former Yugoslav Republics of Serbia and Montenegro.²⁹ One of the sites bombed was the industrial complex of Pančevo, and the bombing released 80,000 tons of burning oil.³⁰ In addition to the black rain reported, a toxic blend of chemicals leaked into the environment. Air, soil, and water were contaminated by thousands of tons of ethylene dichloride, metallic mercury, vinyl chloride monomer, and liquid ammonia, causing severe risks to human health and the natural environment.³¹

Besides this, indirect harms to nature have been documented as consequences of humanitarian crises. It is not reasonable to expect refugees and displaced communities to enact measures to mitigate environmental impacts while they are trying to survive. During the civil war in Rwanda in the mid-1990s, almost one million refugees occupied lands in Virunga National Park.³² In the time the refugees were living there, they deforested some 300 km² of the park in a desperate effort to build encampments and gather food and firewood.³³ As Jeffrey McNeely, member of the UNEP International Resource Panel, stated, “the conclusion is unsurprising: war is bad for biodiversity.”³⁴

4. Nature as a Beneficiary

Despite the fact that nature typically suffers during warfare, it may also benefit from the chaos created by armed conflict. During wartime, due to altered human activity patterns and high levels of insecurity, certain places become “off limits”³⁵ for state intervention, economic activity, and human settlements.³⁶ These buffer zones, created *de facto* and inadvertently, have provided extraordinary conservation opportuni-

28. McNeely, *supra* note 25.

29. See UNEP, *supra* note 1, at 16.

30. Jean-Marie Henckaerts & Dana Constantin, *Protection of the Natural Environment*, in THE OXFORD HANDBOOK OF INTERNATIONAL LAW IN ARMED CONFLICT 469, 475 (Andrew Clapham & Paola Gaeta eds., 2014).

31. See UNEP, *supra* note 1, at 16.

32. McNeely, *supra* note 25, at 146.

33. Hanson et al., *supra* note 22, at 584.

34. McNeely, *supra* note 25, at 146.

35. *Id.*

36. Hanson et al., *supra* note 22, at 579.

ties. Positive environmental impacts of war can be seen in Thailand and Peninsular Malaysia. In the context of emerging insurgencies from the mid-1960s to mid-1970s, the Malaysian military closed the border with Thailand, preventing public access and potential logging activity in the Belum Forest Reserve. This enabled an area of thousands of hectares, abundant in wildlife resources, to remain untouchable by economic and civil pressures.³⁷ Another outstanding example is the demilitarized zone between North and South Korea that created a uninhabited 4 km-wide area, which became a biodiversity sanctuary.³⁸ Furthermore, war's positive impacts may be created intentionally by armed factions. This has been the case with armed groups that set up social rules, including environmental ones, as a mechanism to enhance control over territory.³⁹ This pattern appears in the Colombian case, which this Article discusses below.

B. Conflict and Environment Connections in the Colombian Case

Armed conflict in Colombia has also been governed by these environment-conflict dynamics. Rather than a single and homogeneous period,⁴⁰ the contemporary violence in Colombia could be described as a series of violent outbreaks⁴¹ that emerged during the period known as “La Violencia” in the 1940s–50s, followed by a low-intensity conflict in the 1960s, to finally be transformed into a multidimensional conflict since the 1980s between guerrillas, paramilitary groups, and state armed forces.⁴² Conflict has been significantly characterized by ideological-political differences, including the anticommunist ideas prevalent in some political circles that were highly influenced by the legacy of the Spanish Civil War and pressures of the Western Bloc amidst Cold War tensions.⁴³ However, this hatred between parties has a more deep-rooted cause: the struggle for land. The historical fight for land access and its equitable distribution has been considered the motive for both

37. McNeely, *supra* note 25, at 147.

38. Hanson et al., *supra* note 22, at 584.

39. Carlos Andrés Durán, *Gobernanza en los Parques Nacionales Naturales colombianos: reflexiones a partir del caso de la Comunidad Orika y su Participación en la Conservación del Parque Nacional Natural Corales del Rosario y San Bernardo*, 32 REVISTA DE ESTUDIOS SOCIALES 60, 64 (2009) (Colom.).

40. Adriana Rincón, *Fórmulas de Paz en Colombia (1948-2012)* 10 EXPEDITIO 75 (2012).

41. LAS VIOLENCIAS: INCLUSIÓN CRECIENTE (Jaime Arocha et al. Eds., 1998).

42. MARC W. CHERNICK, *ACUERDO POSIBLE: SOLUCIÓN NEGOCIADA AL CONFLICTO ARMADO COLOMBIANO* (3d ed. 2012).

43. Javier Giraldo Morenjo, S.J., *Aportes Sobre el Origen del Conflicto Armado en Colombia, su Persistencia y sus Impactos*, ESPACIO CRÍTICO (2015).

the outbreak and the persistence of conflict in Colombia.⁴⁴ As such, it is not a coincidence that land grabbing is one of the most prominent manifestations of the conflict.⁴⁵ Even though confrontation for land has been a constant in the war, exploitation and capturing revenue of high-value resources like oil, gold, and coca has boosted the more recent periods of the conflict. In some regions, booms of palm oil and banana production have also fostered hotbeds of violence.⁴⁶

While the conflict has an environmental dimension, this does not qualify the Colombian conflict as a merely environmental conflict. Despite the undeniably close link with land, this prolonged war has also been fueled by several dynamics of political exclusion.⁴⁷

Natural resources in Colombia have also been seized by armed groups to finance and sustain the unrest. This has been the case for illicit crop cultivation and drug trafficking,⁴⁸ emerald exploitation,⁴⁹ and illegal gold mining.⁵⁰ In addition, through extortion strategies,⁵¹ as well as corrupt partnerships with politicians and companies,⁵² legal economic activities have benefited armed actors.⁵³ For example, this has

44. GRUPO DE MEMORIA HISTORIA, ¡BASTA YA! COLOMBIA : MEMORIAS DE GUERRA Y DIGNIDAD (2013).

45. NELSON CAMILO SÁNCHEZ LEÓN, TIERRA EN TRANSICIÓN: JUSTICIA TRANSICIONAL, RESTITUCIÓN DE TIERRAS Y POLÍTICA AGRARIA EN COLOMBIA (1st ed. 2017).

46. See Rodríguez Garavito et al., *supra* note 3, at 22.

47. The monopoly of the system by traditional parties; a political system incapable of integrating social, cultural, and agrarian claims; continuous oppressive strategies against social protest and popular mobilization in tandem with restrictions of freedoms given by an almost permanent state-of-siege during the second half of the last century; and electoral frauds against emerging alternative political forces or physical extermination of the political opponent, have been some documented strategies that illustrate how political marginalization has been a paramount trigger and perpetuating factor in this armed confrontation in Colombia. See Luisa Fernanda Gómez Betancur, *Why Political Participation of Former FARC Combatants Matters in Transitional Justice Process: The Case of Colombia*, MODELOS TRANSICIONALES EN PERSPECTIVA COMPARADA (Forthcoming).

48. Juan Fernando Vargas & Angelika Rettberg, *Costos del Conflicto y Consideraciones Económicas para la Construcción de Paz*, in CONSTRUCCIÓN DE PAZ EN COLOMBIA 239 (1st ed. 2012).

49. Francisco Gutiérrez & Mauricio Barón, *Órdenes Subsidiarios: Coca, Esmeraldas: La Guerra y la Paz*, 67 COLOMBIA INTERNACIONAL 102 (2008).

50. Camilo Echandía Castilla, *Narcotráfico: Génesis de los Paramilitares y Herencia de Bandas Criminales*, 19 INFORMES FIP 25 (2013).

51. Fundación Ideas para la Paz, *El ELN y la Industria Petrolera: Ataques a la Infraestructura en Arauca* (2015), <http://cdn.ideaspaz.org/media/website/document/55411b8a3c-cab.pdf> [<https://perma.cc/TU5E-XQTE>].

52. SABINE MICHALOWSKI ET AL., ENTRE COACCIÓN Y COLABORACIÓN: VERDAD JUDICIAL ACTORES ECONÓMICOS Y CONFLICTO ARMADO EN COLOMBIA (2018).

53. Daniel Quiroga Ángel, *Minería de Carbón y Guerra: Una Mirada a la Economía Política del Conflicto Armado en el Cesar y La Guajira*, in ¿DIFERENTES RECURSOS, CONFLICTOS DISTINTOS? 193 (2018).

been the case with cattle production⁵⁴ and extractive industries.⁵⁵ Separately, armed actors have taken advantage of Colombian geography. Extensive wild landscapes, rugged terrains, deep forests, and impenetrable jungles have been used strategically by guerillas and paramilitary groups for hiding both their camps and illicit activities, such as coca crops and their processing labs, as well as victims of kidnapping.⁵⁶ Certainly, weak governance institutions and, in many cases, a complete institutional void in these regions have also contributed to these groups maintaining control over territory.⁵⁷

As a result of over five decades of war, ecosystems and wildlife in Colombia have experienced significant environmental pressures and damages. Remote zones where armed groups have settled overlap with the most biodiversity-rich areas in the country.⁵⁸ Some investigative reporting indicates that in 2013, the presence of illegal groups was recorded in 40 percent of National Natural Parks, areas designated for conservation purposes.⁵⁹ Camp settlement and the development of illegal activities in these areas involve the usage and processing of resources, which under conflict conditions could not be deemed as sustainable.⁶⁰ According to official statistics, 58 percent of deforestation between 1990 and 2013 took place in war zones.⁶¹ Among the main identified causes of deforestation are illegal mining, crops used for illicit purposes, illegal logging, forest fires, and extensive cattle ranching.⁶² In the mid-2010s, 56 percent of deforested areas were transformed into grass cover for livestock activities.⁶³ Land grabbing and the

54. Carlos Medina, *La Economía de Guerra Paramilitar: Una Aproximación a sus Fuentes de Financiación*, 18 ANÁLISIS POLÍTICO 7 (2005).

55. JORGE GIRALDO & JUAN CARLOS MUÑOZ MORA, INFORMALIDAD E ILEGALIDAD EN LA EXPLOTACIÓN DEL ORO Y LA MADERA EN ANTIOQUIA (1st ed. 2012).

56. See Rodríguez Garavito et al., *supra* note 3, at 25.

57. *Id.*

58. DEPARTAMENTO NACIONAL DE PLANEACIÓN, BASES DEL PLAN NACIONAL DE DESARROLLO 2014–2018 50 (2015).

59. *Los parques: de las balas a la paz*, SEMANA (Sept. 21, 2013, 1:00 AM), <https://www.semana.com/nacion/articulo/los-parques-de-las-balas-la-paz/358371-3> [<https://perma.cc/Y53S-NYWF>].

60. See Rodríguez Garavito et al., *supra* note 3.

61. DEPARTAMENTO NACIONAL DE PLANEACIÓN, CONPES 3850: FONDO COLOMBIA EN PAZ 15 (2015); DEPARTAMENTO NACIONAL DE PLANEACIÓN, DIVIDENDOS AMBIENTALES DE LA PAZ 5 (2016) [hereinafter DEPARTAMENTO NACIONAL DE PLANEACIÓN].

62. ENVIRONMENTAL INVESTIGATION AGENCY, CONDENANDO EL BOSQUE: ILEGALIDAD Y FALTA DE GOBERNANZA EN LA AMAZONÍA COLOMBIANA 6, 16 (2019) [hereinafter Environmental Investigation Agency].

63. See Rodríguez Garavito et al., *supra* note 3, at 29.

development of extractive projects and agribusiness have also accelerated deforestation and degradation of forests.⁶⁴

Mercury dumping, as a consequence of illegal gold mining, has polluted water, soil, and air.⁶⁵ According to the UN Environment Programme in 2018, Colombia is one of the highest emitters of the toxic chemical, after Indonesia and Perú.⁶⁶ In 2011, Colombia had the world's highest per capita mercury pollution.⁶⁷

There is also severe environmental degradation due to attacks on oil pipelines by rebel groups, particularly the National Liberation Army (ELN). Since the 1980s, it is estimated that more than four million oil barrels have spilled over land and water basins, reaching almost 800 rivers and streams between 2009 and 2015.⁶⁸

As a strategy of the fight against drugs, herbicides, whose active component is glyphosate, have been sprayed by air over illicit crops. About two million hectares have been sprayed since the mid-1990s.⁶⁹ Illicit crops are mainly located in biodiversity-rich areas and among legal crops and, since aerial spraying of this chemical is difficult to perform in a controlled manner, wildlife and farming activities suffer destruction too. The Constitutional Court in Colombia has already discussed the negative impacts of these herbicides for human rights.⁷⁰ Moreover, until 2014, about 50 percent of towns in the country were impacted by illegal mining and extractive activities took place in 28 percent of natural protected sanctuaries.⁷¹

64. ENVIRONMENTAL INVESTIGATION AGENCY, *supra* note 62.

65. Lorenzo Morales, *Peace and Environmental Protection in Colombia: Proposals for Sustainable Rural Development*, INTER-AM. DIALOGUE 10–11 (2017), http://www.thediaologue.org/wp-content/uploads/2017/01/Colombia-report-Eng_Web-Res_Final-for-web.pdf [<https://perma.cc/DA38-6FU3>].

66. UNEP & AMAP, TECHNICAL BACKGROUND REPORT TO THE GLOBAL MERCURY ASSESSMENT 2018 3–34 (Oct. 2, 2019).

67. Paul Cordy et al., *Mercury Contamination From Artisanal Gold Mining in Antioquia, Colombia: The World's Highest Per Capita Mercury Pollution*, 410–11 SCI. TOTAL ENV'T 154, 155 (2011).

68. DEPARTAMENTO NACIONAL DE PLANEACIÓN, *supra* note 61, at 12–13.

69. MINISTERIO DE JUSTICIA Y ODC, REPORTE DE DROGAS DE COLOMBIA 75–79 (2015).

70. See Corte Constitucional [C.C.] [Constitutional Court], mayo 13, 2003, Sentencia SU-383/03; Corte Constitucional [C.C.] [Constitutional Court], febrero 7, 2017, Sentencia T-080/17; Corte Constitucional [C.C.] [Constitutional Court], abril 21, 2017, Sentencia T-236/17; Corte Constitucional [C.C.] [Constitutional Court], mayo 8, 2017, Sentencia T-300/17 (documenting many harms and human rights violations resulting from the aerial application of herbicides whose active component is glyphosate).

71. DEPARTAMENTO NACIONAL DE PLANEACIÓN, *supra* note 61, at 19.

In terms of indirect impacts, almost 8 million internally displaced people (IDPs)⁷² have migrated mainly towards cities,⁷³ putting pressure on the access and use of resources.⁷⁴ Along with this, the economic boom from illicit crops and illegal mining has led some populations to move towards these areas of cultivation which are often highly biodiverse, bringing more unintended environmental impacts.⁷⁵

Due to the most biologically diverse sites in Colombia, such as the Amazon and the biogeographical Chocó and Catatumbo zone,⁷⁶ being violent and unsafe, conservation activities have become virtually impossible.⁷⁷ Armed actors have used strategies such as the placement of landmines,⁷⁸ killings, and threats against rangers in natural sanctuaries⁷⁹ to discourage institutional presence.⁸⁰ Additionally, the government's interests are focused on ending armed struggle, so the military budget is often prioritized above conservation efforts.⁸¹ In 2019, military expenditure was more than 14 times the budget for environmental protection in Colombia.⁸² In 2020, it increased to almost 17 times.⁸³

72. U.N. HIGH COMM'R FOR REFUGEES, GLOBAL TRENDS: FORCED DISPLACEMENT IN 2018 6, 35 (June 20, 2019).

73. CENTRO DE MEMORIA HISTÓRICA, UNA NACIÓN DESPLAZADA: INFORME NACIONAL DEL DESPLAZAMIENTO FORZADO EN COLOMBIA 229–32 (2015); Sebastián Albuja & Marcela Ceballos, *Desplazamiento urbano y migración en Colombia*, 34 MIGRACIONES FORZADAS REVISTA 10 (Mar. 2010).

74. CENTRO DE MEMORIA HISTÓRICA, *supra*, at 231–32.

75. Lorena Carrillo González, *Consecuencias sociales del cultivo de la coca en comunidades afrocolombianas del Caquetá: Análisis de la relación entre la economía ilícita, las prácticas campesinas tradicionales y su papel en la seguridad alimentaria*, 14 AGORA U.S.B. 203 (2014).

76. See Rodríguez Garavito et al., *supra* note 3, at 12–13.

77. María D. Álvarez, *Forests in the Time of Violence: Conservation Implications of the Colombian War*, 16 J. SUSTAINABLE FORESTRY 47, 63 (2003).

78. Jorge Eduardo Espinosa, *Adiós a las Minas en Colombia*, N.Y. TIMES (Dec. 20, 2018), <https://www.nytimes.com/es/2018/12/20/espanol/opinion/opinion-desminado-colombia.html> [<https://perma.cc/4ZFW-AY6C>].

79. InfoAmazonía, *Guardaparques de la Amazonia Salen de áreas Protegidas por Amenazas*, EL ESPECTADOR (Feb. 24, 2020), <https://www.elespectador.com/noticias/medio-ambiente/guardaparques-de-la-amazonia-salen-de-areas-protegidas-por-amenazas-articulo-906118> [<https://perma.cc/87DR-MDYH>].

80. This phenomenon is identified in McNeely, *supra* note 25, at 148.

81. This phenomenon is identified in Hanson et al., *supra* note 22.

82. According to the budget classification showing types of activities or services in which national funds will be allocated (“Clasificación Funcional”), in 2019, COP 11,620 thousands of millions (mm) was expended in the defense sector while COP 788 mm was expended in environmental protection services. Ministerio de Hacienda y Crédito Público, *Presupuesto Ciudadano 2019 24* (2018), <http://www.pte.gov.co/WebsitePTE/Documentos/PresupuestoGeneralNacion2019.pdf> [<https://perma.cc/4R37-762H>].

83. In 2020, the above trend remains. Only COP 750 mm is invested in conservation efforts while COP 12,349 mm is devoted to defense purposes. MINISTERIO DE HACIENDA Y CRÉDITO PÚBLICO, *PRESUPUESTO CIUDADANO 2020 22* (2019), <http://www.pte.gov.co/WebsitePTE/>

Almost invariably, armed conflict has severe and negative impacts on nature. Although the significant environmental degradation in Colombia is evidence of this pattern, paradoxically, violence has also had a protective effect on the environment.⁸⁴ The active presence of armed actors in biodiversity-rich areas and the dynamics of war fostered the conservation of certain ecosystems. As examined above, these territories became “off limits,” being unreachable by the state, civilians, or companies to exploit natural resources, develop largescale projects, or even establish human settlements.⁸⁵ This has been the case in the Amazon. Violence contributed to the imposition of *de facto* limits that lessened environmental damage and degradation in some areas. Parallel to these inadvertent or accidental benefits, illegal armed groups also set rules linked with conservation practices as part of their social control over territory. For example, through the “gunpoint conservation” approach,⁸⁶ armed groups have limited wood extraction, hunting, and fishing, as well as the expansion of the agricultural frontier in forest areas.⁸⁷ In some cases, noncompliance with the rules brought sanctions, ranging from public scorn to extrajudicial execution.⁸⁸ These intentional conservation dynamics were identified in La Serranía de La Macarena, a site in the Amazon region where many National Natural Parks converge. For the last twenty years, La Macarena was a guerilla-controlled area and, while it was a target of several environmental pressures like aerial bombing by the government and the use of anti-personnel landmines⁸⁹ by illegal armed groups like the ELN,⁹⁰ it was also protected from agriculture, livestock, and extractive activities by the rebel actors.⁹¹

In the Amazon region, before the 2016 FPA was signed by the Colombian government and the guerilla of FARC-EP, deforestation rates were almost invariable: in 2013, 68,725 ha were deforested; in 2014, 63,280 ha disappeared; in 2015, rates dropped to 56,962 ha; and in 2016, increased slightly to 70,074 ha.⁹² Despite the fact that the Ama-

Documentos/PresupuestoGeneralNacion2020.pdf [https://perma.cc/FV69-QEMH].

84. N. Clerici et al., *Deforestation in Colombian Protected Areas Increased During Post-Conflict Periods*, 10 SCI. REPS. 1, 1 (2020).

85. *Id.*

86. Álvarez, *supra* note 77, at 57–58.

87. See Rodríguez Garavito et al., *supra* note 3, at 37.

88. Durán, *supra* note 39.

89. Cf. Imtiaz Ahmed, *Landmines: A Threat to Sustainable Development*, 19 IOSR J. HUMS. & SOC. SCI. 1, 3–5 (2014).

90. Álvarez, *supra* note 77, at 57; McNeely, *supra* note 25, at 148.

91. McNeely, *supra* note 25, at 148.

92. IDEAM COLOMBIA, RESULTADOS MONITOREO DE LA DEFORESTACIÓN 2018 (2018),

zon has been the zone in the country most affected by deforestation, during the war between FARC-EP and Colombian military forces, the rates of forest cover loss in the area were relatively static. However, with the signing of the FPA and the cessation of the armed conflict in most places where FARC-EP was situated, deforestation numbers increased alarmingly to the point of doubling. In just one year, between 2016 and 2017, the deforestation of the Amazon jungle increased from 70,074 ha to 144,147 ha.⁹³ In 2018, deforestation rates decreased just slightly to 138,176 ha.⁹⁴

Undoubtedly, armed conflict had destructive effects on forests in the Amazon, which were degraded by land grabbing, cultivation of illicit crops, illegal mining for minerals, deforestation, and the ravages of war.⁹⁵ However, peace time has been, so far, proven to be even worse. As biologist Thor Hanson put it, “The implications of war for biodiversity conservation are complex, multiscale, and not limited to conflict zones or the time period of active hostilities.”⁹⁶ Once armed conflict concluded and FARC-EP combatants were disarmed and demobilized, many voids were left in territories historically inhabited by these armed actors such as the Amazon region. In this sense, the end of hostilities became an opportunity for other criminal groups and illegal colonizers to capture these territories, which lack institutional or governmental presence. Of course, this does not mean warfare is positive, nor does it mean that the incalculable merits of the transition to peace should not be supported or defended. Rather, this discussion seeks to highlight the possibility that ending armed conflict could enable socio-environmental conflicts in former war zones. Thus, the urgency of environmental governance should be heeded, and governments should explore not only mechanisms to halt these conflicts, but also to prevent new harms against nature that can arise after initial peace is achieved.

The unprecedented deforestation of the Amazon region today and all illicit activities behind it (gold mining, coca processing, or land grabbing for extensive livestock production) are fertile ground for creating new conflicts or exacerbating existing ones. It is not a novel

<http://www.ideam.gov.co/documents/24277/91213793/Deforestaci%C3%B3n/6a0a48b5-b5cb-4683-823a-3352be9b2700> [https://perma.cc/UA7P-ENZG].

93. *Id.*

94. *Id.*

95. From 2013 until 2019, a set of official reports has suggested these are some of the causes of deforestation in Colombia. See IDEAM COLOMBIA, BOLETÍN DE DETECCIÓN TEMPRANA DE DEFORESTACIÓN 2013, 2014, 2015, 2016, 2017, 2018 Y 2019, <http://smbyc.ideam.gov.co/MonitoreoBC-WEB/reg/indexLogOn.jsp> [https://perma.cc/9HEG-DG4S].

96. Hanson et al., *supra* note 22, at 579.

idea that if sustainable livelihoods continue to be degraded or damaged, it becomes increasingly difficult to maintain a stable or durable peace⁹⁷ and to prevent a relapse into conflict.⁹⁸ Thus, the reconstitution of environmental governance is a powerful tool that can consolidate peace, but if this governance is simply neglected or disregarded, it could hamper any peacebuilding effort.⁹⁹ In fact, some preliminary research has shown that, in the first five years postconflict, unrest linked with natural resources are twice as likely to engage in new waves of violence and prevent the consolidation of peace than unrest without environmental dimensions.¹⁰⁰ Can the Colombian postconflict setting break these cycles of violence? Does its transitional justice architecture envisage mechanisms to address environmental degradation as a consequence of war and anticipate pressures that the postconflict period has brought about in the most biodiversity-rich areas? Given that socio-environmental conflicts often trigger or play a key role in the outbreak of conflicts, will they bring a new wave of violence after the peace agreement?

II. ENVIRONMENTAL DIMENSIONS IN COLOMBIA'S TRANSITIONAL JUSTICE PROCESS

Broadly speaking, transitional justice has attempted to assist the transformation of war-affected and authoritarian societies by addressing the abuses of the past through mechanisms like trials, truth commissions, reparations, and institutional reforms.¹⁰¹ Because the injustices in the Colombian armed conflict have been highly influenced by environmental dimensions, it is reasonable to ask to what extent and through which mechanisms the transition to a peace framework in Colombia deals with environmental topics.

In any case, mainstream notions of transitional justice that have placed civil and political rights at their core have often struggled with the issue of incorporating broader views. While including economic, social, and cultural (ESC) rights in the range of transitional

97. See Ken Conca & Jennifer Wallace, *Environment and Peacebuilding in War-torn Societies: Lessons from the UN Environment Programme's Experience with Post-conflict Assessment*, 15 GLOBAL GOVERNANCE 485, 485–86 (2009).

98. Daniëlla Dam-de Jong, *Building a Sustainable Peace: How Peace Processes Shape and Are Shaped by the International Legal Framework for the Governance of Natural Resources*, 29 REV. EUROP. COMPAR. & INT'L ENV'T L. 21, 22 (2020).

99. *Id.* at 21–24.

100. See UNEP, *supra* note 1, at 5.

101. See Louise Arbour, *Economic and Social Justice for Societies in Transition*, 40 N.Y.U. J. INT'L L. & POL. 1, 5 (2006).

justice mechanisms has been widely debated, addressing environmental dimensions for consolidating the end of the conflict has been almost unexplored.¹⁰² Traditional transitional justice perspectives were shaped by the historical context from which they emerged in the late twentieth-century.¹⁰³ Since its intellectual origins are heavily influenced by international human rights history, transitional justice was also affected by the general bifurcation of human rights. One quintessential example was the 1966 adoption of two human rights covenants rather than of a single treaty guaranteeing human rights without any categorization. This ideological bias has tended to emphasize civil and political rights and obscure ESC rights.¹⁰⁴ This tendency was also anchored by the nature of transitions from authoritarian to democratic regimes in Eastern Europe and the Southern Cone in the 1980s and 1990s, which emphasized Western-style democracy through liberal rights, namely civil and political ones.¹⁰⁵ Of course, these transitions were accompanied by Cold War tensions, communism's collapse, and the left's decline, which also discredited redistributive ideas of justice and any legal formula for justiciability of ESC rights.¹⁰⁶ However, in the last twenty years, criticism of transitional justice has surfaced due to its inattention to socioeconomic injustices, structural violence, and environmental inequalities.¹⁰⁷ These contemporary discussions have sought not only to examine the paradigm under which the field originated and transitional justice's maladjustment for conflict situations, but also to call for expanding transitional justice concerns to fields such as ESC rights,¹⁰⁸ positive peace,¹⁰⁹ or development.¹¹⁰ Since historical injustice

102. Karen Hulme, *Using a Framework of Human Rights and Transitional Justice for Post-Conflict Environmental Protection and Remediation*, in ENVIRONMENTAL PROTECTION AND TRANSITIONS FROM CONFLICT TO PEACE: CLARIFYING NORMS, PRINCIPLES, AND PRACTICES 119, 119 (Carsten Stahn et al. eds., 2017).

103. Lars Waldorf, *Anticipating the Past: Transitional Justice and Socio-Economic Wrongs*, 21 SOC. & LEGAL STUD. 171, 173 (2012).

104. *Id.*

105. Dustin Sharp, *Addressing Economic Violence in Times of Transition: Toward A Positive-Peace Paradigm for Transitional Justice*, 35 FORDHAM INT'L L.J., 780, 782–83 (2012).

106. See Arbour, *supra* note 101, at 6–10.

107. Hulme, *supra* note 102.

108. Arbour, *supra* note 101, at 14–21.

109. “Negative peace” is a term that refers to the absence of direct or physical violence, and it stands in contrast with the notion of “positive peace.” The latter includes the absence of both physical and indirect violence, including various forms of “structural violence” such as poverty, hunger, and other forms of social injustice. See Sharp, *supra* note 105, at 807 (2012); Johan Galtung, *Violence, Peace, and Peace Research*, 6 J. PEACE RSCH. 167, 183 (1969).

110. Roger Duthie, *Transitional Justice, Development, and Economic Violence*, in JUSTICE AND ECONOMIC VIOLENCE IN TRANSITION (Dustin N. Sharp ed., 2014) <http://link.springer>.

and socio-environmental issues featured the outbreak and maintenance of the conflict in Colombia, more comprehensive approaches gained traction during the last peace process. As a consequence, the FPA addressed relevant environmental issues that this Article will discuss in the following subpart.

A. Tracing Environmental Dimensions in the Final Peace Agreement

Environmental dimensions and issues related to natural resources are mainly addressed in the FPA in Chapters I and IV.¹¹¹

1. Nature as a Root Cause: Comprehensive Rural Reform

Chapter I contains the agreement on “Comprehensive Rural Reform,” intended to support structural change in the countryside and create conditions of wellbeing for the rural population.¹¹² In particular, the rationale behind this pact is to alleviate the effects of the conflict and to change the conditions that have enabled persistent violence in Colombia. In other words, the agreement seeks to resolve some of the root causes of the conflict: the issue of land access and use, the unfair concentration of land with agricultural potential, and the exclusion of the rural population from land ownership.¹¹³ In order to tackle this last issue, several mechanisms were created to guarantee access to land, including a Comprehensive Rural Reform Land Fund for the free distribution of land (three million hectares of land available during its first twelve years of existence),¹¹⁴ comprehensive purchase subsidies, and special purchase credits.¹¹⁵ Additionally, the FPA noted that land restitution and land titling programs would combat unlawful possession and ownership,¹¹⁶ as well as restore land rights to local communities and victims of the armed conflict.¹¹⁷ Furthermore, to implement the Comprehensive Rural Reform, many national projects would be carried out, such as infrastructure, land improvement, and social development. Among other purposes, these national plans seek to enhance roads, irrigation, electricity, and connectivity solutions, and to provide health

com/10.1007/978-1-4614-8172-0_7 [https://perma.cc/GU68-Z98H].

111. Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace, Colom.-FARC-EP, Nov. 24, 2016, <http://especiales.presidencia.gov.co/Documents/20170620-dejacion-armas/acuerdos/acuerdo-final-ingles.pdf> [https://perma.cc/LF8X-ZR8N] [hereinafter *Final Agreement*].

112. *Id.* at 10.

113. *Id.*

114. *Id.* at 14.

115. *Id.* at 15.

116. *Id.* at 16.

117. *Id.* at 18.

services, rural education, and decent living conditions.¹¹⁸ It is worth noting that these infrastructure plans should take into account “preparatory measures to mitigate the risks of climate change.”¹¹⁹ Interestingly, climate change is mentioned in the FPA. However, it is an isolated reference without further development and does not lay out approaches to address the climate crisis in a postconflict setting.

The FPA’s negotiators emphasized the appropriate use of land in “accordance with the criteria of environmental sustainability, land suitability, territorial planning and community participation.”¹²⁰ As a corollary, the parties agreed on the implementation of an “environmental zoning plan” to delimit the agricultural frontier and protect reserve areas by characterizing their use and proper environmental management. The environmental zoning plan encompassed forest reserve areas, areas of high biodiversity, fragile and strategic ecosystems, watersheds, moorlands (*páramos*) and wetlands, and other water-related sources and resources.¹²¹ With this purpose in mind, the FPA addresses the need to support rural communities currently living alongside or within these reserve areas by structuring plans for their development, “including re-settlement programmes or programmes for community rehabilitation of forests and the environment, which are compatible with and contribute to the objectives of closing the agricultural frontier and preserving the environment.”¹²² Among these programs, other strategies for sustainability coming from rural population organization could be introduced, such as the provision of environmental services, sustainable food production and silvopasture systems, and reforestation.¹²³ Undoubtedly, land access policies for marginalized rural populations and environmental zoning plans are important starting points to confront phenomena such as deforestation. If communities located in biodiversity-rich spots have access to adequate land for living and agriculture, they may, first, have less incentive to take part in deforestation activities linked to expanding agriculture or livestock industry in pristine rainforest, and second, be less vulnerable to participating in the vigorous and lucrative trade in land that is behind deforestation in former conflict zones, such as the Amazon region. In this sense, rural reform epitomizes an opportunity to reduce pressure on biodiversity-rich spots

118. *Id.* at 24–28.

119. *Id.* at 25.

120. *Id.* at 14.

121. *Id.* at 15, 20–21.

122. *Id.* at 20–21.

123. *Id.* at 21.

and strategic ecosystems whose conservation is necessary for a genuine attempt to confront and mitigate the climate crisis.

Finally, the Development Programmes with a Territorial-Based Focus, National Plans for Comprehensive Rural Reform, and Peasant Enterprise Zones are additional mechanisms that the FPA created with the aim of closing the gap between rural and urban areas by transforming the countryside and the conditions of communities living there—including small-scale farmer, indigenous, black, Afro-descendent, *raizal*, and *palenquero* communities.¹²⁴

2. Nature as a Means: Solution to the Illicit Drugs Problem

Chapter IV includes the agreement on the “Solution to the Illicit Drugs Problem.” On this issue, the parties agreed on a multifaceted approach, stating that a definitive solution to this problem requires not only criminal law but a deeper understanding of phenomena associated with drug trafficking and money laundering.¹²⁵ First, this issue requires understanding that the continued cultivation of illicit crops is linked to the existence of conditions of poverty and marginalization, and the weak presence of institutions in those territories where they are produced. In this sense, the structural transformation of the countryside contained in Chapter I, with its measures aimed at improving the wellbeing and quality of life of the rural populations affected by the illicit drug industry behind these crops,¹²⁶ also serve to promote Chapter IV’s objectives.

Additionally, a new National Comprehensive Programme for the Substitution of Crops Used for Illicit Purposes was instituted to prioritize voluntary substitution of these crops, rather than continued aerial spraying of herbicides, such as glyphosate, to clear illicit fields. The use of this chemical agent has been contested not only by those who claim it fails to eradicate coca cultivation but also by local communities that have had to suffer from the risks and harmful effects of the indiscriminate spraying of these herbicides.¹²⁷ By polluting subsistence crops, water supplies, and ecosystems in general, this fumigation method has brought devastating consequences to the environment and human rights of communities. Moreover, the design of this aerial spraying policy did not consider communities’ viewpoints, which means that those who do not participate in decisionmaking are those who have undergone its

124. *Id.* at 11, 19, 22.

125. *Id.* at 104.

126. *Id.* at 104–08.

127. *Id.* at 108–23.

worst effects.¹²⁸ Clearly, this neglects basic principles of environmental justice. The Programme for the Substitution of Crops Used for Illicit Purposes of the FPA includes a participatory approach, through which substitution alternatives and new legal activities will be defined together with the communities.¹²⁹ In municipalities bordering areas of particular environmental interest, or in cases where illicit crops are within National Natural Parks,¹³⁰ substitution programs have a special component relating to sustainable and environmental regeneration, supporting rural productive projects as long as they are compatible with protection policies and mitigation of ecological impacts. These special components are examples of how Chapter IV of the FPA aligns more with the basic principles of environmental justice than the aerial spraying policies.

B. Other Environmental Dimensions

Because the role of community leaders is crucial to the implementation of these measures, the FPA also anticipates throughout its text, in Chapters I and IV, and particularly in Chapters II and III, the need to provide security guarantees for leaders of social movements, human rights defenders, and persons taking part in the implementation of the FPA. This guarantee covers land and environmental defenders. However, these defenders, who are protecting ecosystems and supporting rural reform as well as other alternatives for eradicating coca crops, are being killed in startling numbers. According to records from the Office of the High Commissioner for Human Rights, in 2019 alone, at least 108 human rights defenders were killed,¹³¹ and in the first 13 days of 2020, 10 others met the same fate.¹³² Since the signing of the FPA until March 2020, more than 440 human rights defenders have been

128. In the last two decades, the Colombian Constitutional Court has protected several communities who have filed rights-based legal actions (*tutelas*) against the state. Communities have claimed that governmental decisions to use glyphosate to clear illicit crops in their territories without their consent amount to a violation of the right of participation and prior consultation. See Corte Constitucional [C.C.] [Constitutional Court], mayo 13, 2003, Sentencia SU-383/03; Corte Constitucional [C.C.] [Constitutional Court], febrero 7, 2017, Sentencia T-080/17; Corte Constitucional [C.C.] [Constitutional Court], abril 21, 2017, Sentencia T-236/17; Corte Constitucional [C.C.] [Constitutional Court], mayo 8, 2017, Sentencia T-300/17.

129. *Final Agreement*, *supra* note 111, at 109.

130. *Id.* at 122.

131. OHCHR, Rep. on the Situation of human rights in Colombia, ¶ 16, U.N. Doc. A/HRC/43/3/Add.3 (2020).

132. UN Colombia, *Colombia: 'Staggering Number' of Human Rights Defenders Killed in 2019*, UN NEWS (Jan. 14, 2020), <https://news.un.org/en/story/2020/01/1055272> [<https://perma.cc/UGD9-45AX>].

killed.¹³³ These crimes are “unacceptable and constitute[] an assault against democracy,”¹³⁴ as the United Nations stated, and at the same time they undermine peace promises like land restitution, rural reform, and illicit crop substitution programs.

Despite the lack of a specific section or part for demining, negotiators of the FPA agreed that after its signing, a “programme for demining and clearing the areas of the national territory that have been affected by the laying of anti-personnel mines and unexploded ordnance” should be established.¹³⁵ Seven months later, the program for gradually clearing the regions most affected by the placement of landmines was set up.¹³⁶ This program has been important in cleaning up regions highly affected by war, preventing more human tragedies as well as further damages to nature, and fostering the return of communities and victims of the armed conflict to the countryside. By its very nature, in many cases, demining can be the baseline for the success of Chapter I and IV of the FPA.

Undoubtedly, the FPA addresses environmental aspects of the Colombian armed conflict and sets up mechanisms to deal with the struggle for land, the issue of crops used for illicit purposes, and the placement of landmines. In these scenarios, natural resources have contributed to the outbreak of the conflict or played a role in financing, perpetuating, or sustaining the strife—but have also been negatively impacted by war. The FPA sought to set up measures to dismantle the irregular, unjustified, and illegal practices through which nature and its resources have been exploited for more than fifty years of armed conflict. In doing so, progressive environmental justice mechanisms were enshrined, such as land redistribution, demining programs, and the prioritization of voluntary substitution instead of aerial spraying methods. However, except for demining, the FPA says little about how to deal with environmental degradation or destruction by war, or how to seize the conservation opportunities that conflict has provided in terms of anticipating and preventing harms to nature in a postconflict setting.

133. SOMOS DEFENSORES, LA CEGUERA: INFORME ANUAL 2019 : SISTEMA DE INFORMACIÓN SOBRE AGRESIONES CONTRA PERSONAS DEFENSORAS DE DERECHOS HUMANOS EN COLOMBIA—SIADDDH (2020), <https://drive.google.com/file/d/1jYXd8GjrDjOERyTOJG-5gDA4A55UEqYVN/view> [<https://perma.cc/R2HC-TCLY>]; *Agresiones Contra Personas Defensores de Derechos Humanos en Colombia Enero—Marzo 2020*, SOMOS DEFENSORES (Mar. 2020), <https://drive.google.com/file/d/1bLrNtwcUCn8tfWvd4LrJjQFpQRdt5y2/view> [<https://perma.cc/RS36-YBXG>].

134. UN Colombia, *supra* note 132.

135. *Final Agreement*, *supra* note 111, at 113.

136. L. 1195/17, julio 11, 2017.

1. Nature as a Victim and Nature as a Beneficiary: Silent Remains

First, the FPA contains some attempts to deal with conflict-caused environmental degradation or destruction and attempts to anticipate and prevent these harms. However, the limitations of these attempts immediately come to light. First, Chapter V of the FPA creates the “Comprehensive System for Truth, Justice, Reparations and Non-Recurrence” and establishes measures to guarantee victim’s rights.¹³⁷ It establishes that FARC-EP ex-combatants, as part of their concrete contributions to reparations, may participate in infrastructure rebuilding work in the areas most affected by the conflict and in programs to clear such regions of anti-personnel mines or explosive remnants. They are also able to take part in projects to substitute illicit crops and engage in programs to repair environmental damage, namely reforestation.

Although these mechanisms may grapple with the negative impacts of warfare on nature, the endeavor seems to be insufficient to address the environmental damage caused by armed conflict. Considering the dimensions of the unrest in Colombia, it seems unrealistic that just 13,000 FARC-EP¹³⁸ ex-combatants would be able to redress the environmental damage left by more than a half century of war, particularly when they have to ensure comprehensive reparations for many more serious human rights violations and breaches of international humanitarian law. Also, stating that the responsibility to redress environmental damages rests exclusively on the former FARC-EP population ignores that during the conflict, there were many more actors, armed and nonarmed, who jeopardized natural resources—including paramilitary groups, companies, and the state itself through its military and security forces and, in some cases, corrupt politicians.

137. Overall, the “Comprehensive System for Truth, Justice, Reparations and Non-Recurrence” (Sistema Integral de Verdad, Justicia, Reparación y No Repetición), seeks to guarantee the rights to justice, truth, reparations and nonrepetition by “contribut[ing] to the fight against impunity, using a combination of judicial mechanisms that allow for the investigation and sanctioning of serious violations of human rights and serious infringements of international humanitarian law, with supplementary extra-judicial mechanisms aimed at clarifying the truth of what happened, searching for loved ones who have disappeared and providing reparations for the harm and injury caused to individuals, groups and entire territories.” *Final Agreement*, *supra* note 111, at 9.

138. According to official records, from the 2016 Peace Agreement until April 2019, 13,190 FARC-EP ex-combatants have engaged in disarmament demobilization and reintegration (DDR) process. See *ARN en Cifras*, AGENCIA PARA LA REINCORPORACIÓN Y NORMALIZACIÓN (Apr. 30, 2019), <http://www.reincorporacion.gov.co/es/agencia/Documentos%20de%20ARN%20en%20Cifras/ARN%20en%20cifras%20corte%20abril%202019.pdf> [<https://perma.cc/9BZ9-6Q9C>].

While the system is in place, FARC-EP former combatants will likely contribute to reparations and some of their actions will bring benefits to nature. However, this seems more like an unintentional outcome of the system than a planned measure to redress nature as a real victim of the conflict.

Second, as examined above, Chapter IV of the Programme for the Substitution of Crops Used for Illicit Purposes prioritizes the policy of voluntary substitution rather than continued aerial spraying of herbicides such as glyphosate to clear fields. This is a remarkable achievement in terms of environmental justice since rural communities and ecosystems will not be affected anymore by the risks and harmful effects of the indiscriminate spraying of these herbicides. However, this is a forward-looking policy. Despite the devastating consequences for the environment and human rights of the aerial spraying of glyphosate, the FPA does not contemplate any environmental reparation measures in connection with glyphosate spraying. The FPA does set up the need for “environmental regeneration of the areas affected by [illicit] crops”¹³⁹ in itself, but this is very different from setting up measures to redress harms caused by the herbicide. In any case, establishing reparations for this is quite controversial. First, because voluntary substitution would be prioritized but not be the only practice to eradicate the crops, and second, because, the aerial spraying of glyphosate remains a lawful public policy to combat drug trafficking with certain restrictions in its implementation.¹⁴⁰

Third, one might argue that environmental zoning plans, enshrined by rural reform in Chapter I, may play an important role in mitigating deforestation and will thus create new conservation opportunities and prevent new threats to nature in the postconflict setting. These plans may effect positive change, as their aim is to support rural communities currently living alongside or within these reserve areas by structuring plans for their development and avoiding the expansion of the agricultural frontier. Therefore, high biodiversity and fragile areas and strategic ecosystems can be protected.

The scope of these plans nonetheless remains partial and uneven. Although these plans may discourage communities to participate in deforestation activities, it might not have the same effects for other actors. Behind a complex phenomenon such as deforestation, there are many more actors other than rural communities, who effectively drive

139. *Final Agreement*, *supra* note 111, at 108.

140. Corte Constitucional [C.C.] [Constitutional Court], abril 21, 2017, Sentencia T-236/17.

the lucrative and illegal business that has led to the environmental crisis of the Amazon rainforest. Clearly, the environmental zoning plan is not a comprehensive mechanism suitable for confronting the power dynamics behind deforestation.

These observations evidence some of the gaps in the Colombian transitional process mainly concerning two conflict-environment dimensions: nature as a victim and nature as a beneficiary.

III. EXAMINING CLIMATE LITIGATION OUTCOMES IN THE POSTCONFLICT SETTING

The FPA certainly fell short in addressing remedies for natural degradation caused by conflict and the conservation opportunities that conflict left behind. Regarding conservation opportunities, once the conflict ended, several voids were left in former conflict territories. Regrettably, the state did not fill this resulting governance gap. Without the wartime conservation dynamics, there has been no functioning political intervention that has seized these war-related preservation opportunities during the transition and the postconflict setting. This has been the case with the deforestation crisis in the Amazon.

In this environmental crisis scenario, domestic rights-based claims, which attempt to alleviate the effects of war and halt the ravages against nature in the postconflict setting, have played a key role in raising the conversation about environmental protection and addressing the climate crisis.

In this Part, the Colombian Supreme Court's landmark decision to protect the Amazon (the Amazon ruling) is examined. However, for a better understanding of the Amazon ruling's scope and outcomes, this Part also discusses a similar and previous judgment by another domestic court, the Constitutional Court decision to protect Atrato River (the Atrato River ruling).

A. The Amazon Ruling¹⁴¹

Two years ago, 25 children and youth from different regions of the country filed a rights-based legal action (*tutela*) with the support of a Colombian nongovernmental organization, claiming that deforestation in the Amazon, the main source of greenhouse gas emissions driving climate change in the country, was threatening their constitutional rights

141. Corte Suprema de Justicia [C.S.J.] [Supreme Court], Sala. Civil abril 5, 2018, M.P.: Luis Armando Tolosa Villabona, STC4360-2018, Expediente 11001-22-03-000-2018-00319-01 [hereinafter *Decision STC4360-2018*].

to a healthy environment, life, health, food, and water.¹⁴² The plaintiffs stressed that they, as part of the future generation, will suffer the worst climate change effects. Therefore, they argued on the basis of domestic legal tools and certain environmental principles that the government must stop deforestation and create participatory mechanisms in order to guarantee zero deforestation for future generations. The plaintiffs noted that, in 2013, the government agreed to reduce net deforestation in the Amazon to zero by 2020 and renewed this commitment at the 2015 Paris Climate Change Summit through its nationally determined contributions.

Tutela is a legal mechanism in Colombia to protect fundamental rights.¹⁴³ Through this mechanism, the children argued that the omissions of the Colombian government in protecting the Amazon region from deforestation resulted in the increase of greenhouse gas (GHG) emissions.¹⁴⁴ Using official statistics, claimants showed the main cause of GHG emissions in the Colombian Amazon region is deforestation.¹⁴⁵ In turn, with publicly available and official information,¹⁴⁶ plaintiffs demonstrated that this type of emissions could alter climate indicators, such as by causing changes in temperature and precipitation. This disruption is the manifestation of climate change. Consequences of climate change affected not only the plaintiffs' right to a healthy environment,¹⁴⁷ but also their rights to life, to human health, and to food and water. Thus, the plaintiffs displayed how interconnected dynamics of deforestation in the Amazon, GHG emissions, and consequential phenomena of climate change could impact other regions at the national level in the future, through natural disasters like droughts and floods, effects on agriculture and livestock industries, water and food availability, and human diseases.

It is worth noting that the plaintiffs sued as the current and future generations affected by climate change. They declared that they will be adults during the period 2041–2070, when the annual temperature

142. *Id.*; see Tribunales Superiores [T.Sup.] [Appellate Court], Sala Civil enero 29, 2018, <https://www.dejusticia.org/wp-content/uploads/2018/01/TutelaCambioClim%C3%A1tico.pdf> [<https://perma.cc/5B4A-8X8F>] (Spanish text of lawsuit).

143. CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] art. 86.

144. *Inventario Nacional y Departamental de Gases Efecto Invernadero*, IDEAM COLOMBIA (Nov. 2016), <http://documentacion.ideam.gov.co/openbiblio/bvirtual/023634/IN-GEI.pdf> [<https://perma.cc/FP24-LYQZ>].

145. *Id.*

146. *Nuevos Escenarios de Cambio Climático para Colombia 2011–2100*, IDEAM COLOMBIA (Mar. 2011), http://documentacion.ideam.gov.co/openbiblio/bvirtual/022964/documento_nacional_departamental.pdf [<https://perma.cc/M3L3-8X2Z>].

147. CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] art. 79.

of country will increase by 1.6°C.¹⁴⁸ They consequently asserted that they are living the same collective experience and would be the next generation that will face the harmful effects of climate change. In order to give strength to the concept of future generations, they pointed to international instruments, such as the Stockholm Declaration of 1972,¹⁴⁹ Declaration of 1972,¹⁵⁰ Brundtland Report,¹⁵¹ Rio Declaration of 1992,¹⁵² and the Paris Agreement of 2015,¹⁵³ in addition to Colombian constitutional jurisprudence on the topic.

These allegations were founded on several principles, most of them developed by international environmental law: the precautionary approach;¹⁵⁴ *in dubio pro natura*;¹⁵⁵ solidarity with other human beings, other living beings¹⁵⁶ and other nations;¹⁵⁷ intergenerational equity,¹⁵⁸ environmental participation;¹⁵⁹ and the best interests of the child.¹⁶⁰

The court of first instance refused the lawsuit.¹⁶¹ However, on appeal, the Colombian Supreme Court granted the petition.¹⁶² The Supreme Court acknowledged the global and transnational effects of the Amazon deforestation and emphasized that the paramount ignorance

148. *Tercera Comunicación Nacional de Colombia: A la Convención Marco de las Naciones Unidas Sobre Cambio Climático*, IDEAM, PNUD, MADS, DNP, CANCELLERÍA & FMAM (2017), http://documentacion.ideam.gov.co/openbiblio/bvirtual/023732/RESUMEN_EJECUTIVO_TCNCC_COLOMBIA.pdf [<https://perma.cc/WF63-ZBJP>].

149. G.A. Res. 2994, Declaration of the United Nations Conference on the Human Environment (Dec. 15, 1972).

150. *Id.*

151. World Comm'n on Env't & Dev., Rep. of the World Commission on Environment and Development: Our Common Future, U.N. Doc. A/42/427 (1987).

152. U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I), annex I (Aug. 12, 1992) [hereinafter *Rio Declaration*].

153. U.N. Framework Convention on Climate Change, *Paris Agreement*, U.N. Doc. FCCC/CP/2015/10/Add.1 (Jan. 29, 2016) [hereinafter *Paris Agreement*].

154. *Rio Declaration*, *supra* note 152, princ. 15.

155. Corte Constitucional [C.C.] [Constitutional Court], julio 16, 2015, Sentencia C-449/15.

156. Corte Constitucional [C.C.] [Constitutional Court], noviembre 10, 2016, Sentencia T-622/16, translated in *The Judgement for River Atrato (Colombia) Is Now in English!*, GARN (July 2, 2019), <https://delawarelaw.widener.edu/files/resources/riveratratodecisionenglishdrpdellaw.pdf> [<https://perma.cc/AN2K-9KCX>] [hereinafter Sentencia T-622/16].

157. Treaty for Amazon Cooperation, art. 1, July 3, 1978, 1202 U.N.T.S. 51.

158. *Paris Agreement*, *supra* note 153; IUCN, DRAFT INTERNATIONAL COVENANT ON ENVIRONMENT AND DEVELOPMENT: IMPLEMENTING SUSTAINABILITY art. 5 (5th ed. 2015).

159. *Rio Declaration*, *supra* note 152, princ. 10.

160. CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] art. 44.

161. Tribunal Superior del Distrito Judicial de Bogotá [T. Sup.] [Appellate Court], Sala Civil Especializada en Restitución de Tierras febrero 12, 2018, M.P.: Jorge Eliécer Moya Vergas, Radicación No. 11001-22-03-000-2018-00319-00 (Colom.).

162. *Decision STC4360-2018*, *supra* note 141.

and inefficiency of the State in tackling the problem affected not only the rights of the plaintiffs, but also the rights of the global population at large. Because the plaintiffs argued they will be the ones to suffer disastrous climate effects, the high court not only stressed the necessity to set up a multi-institutional group (hereafter, the group ruling)¹⁶³ to stop deforestation for present generations, but also created the “Intergenerational Pact for the Life of the Colombian Amazon” (hereafter, the pact ruling). The latter aims to reduce deforestation to zero and to mitigate GHG emissions with an eye towards the future. One might say that the pact ruling is an assignment to present generations to protect the rights of future generations. The pact ruling must also be integrated by plaintiffs, affected communities, as well as research and scientific organizations. Moreover, the Court ordered the municipalities of the Amazon to update their Land Management Plans within a five-month period and to develop an action plan to reduce deforestation to zero with measurable strategies. At the regional level, the Colombian Supreme Court also ordered environmental authorities to issue an action plan to reduce regional deforestation.

Among these orders, the “Intergenerational Pact for the Life of the Colombian Amazon” is at the core of the Supreme Court’s judgment. The precautionary approach, environmental participation, *in dubio pro natura*, and solidarity principles contributed to this ruling. However, the failure of the government to fulfill its obligations to reduce net deforestation in the Amazon under the 2015 Paris Agreement, and the resulting negative effects on human rights in connection with intergenerational equity principles, are the strongest premises underpinning the pact ruling.

Along with creating the pact ruling and recognizing the rights of future generations, the high court also ordered enhanced protection for the Colombian Amazon, recognizing it as an “entity subject of rights.”¹⁶⁴ The Supreme Court justified this declaration on the basis of the lack of protection of the Amazon by the government, in spite of how essential this ecosystem is for the global future and for facing the serious threats of climate change. This ruling represents a movement away from an anthropocentric approach to nature towards a biocentric or ecocentric one. As a consequence, the high court declared

163. Made up of the Presidency of the Republic, Ministry of Environment and Sustainable Development; Ministry of Agriculture; Environmental National System; the plaintiffs; affected communities, and community concerned.

164. *Decision STC4360-2018*, *supra* note 141, at 45.

the Amazon's rights "must be protected, conserved, maintained, and restored."¹⁶⁵

B. Behind the Scenes: The Amazon as a Subject of Rights and the Atrato River Ruling¹⁶⁶

Acknowledgement of some ecosystems or natural phenomena as "subjects of rights" is not a novelty in the Colombian legal system, and this idea did not originate with the Amazon case. Despite some close domestic antecedents of the rights of nature, it was in 2016 when an ecosystem was first effectively acknowledged as a "subject of rights." Through Judgment T-622 of 2016, the Constitutional Court of Colombia declared the Atrato River, located in Chocó, had "rights that imply its protection, conservation, maintenance and . . . restoration."¹⁶⁷ A *tutela* lawsuit, filed by ethnic communities of the Atrato River, showed evidence that government entities had violated their fundamental rights to their territory and culture. According to the plaintiffs, the lack of institutional control over illegal mining activities in the river that overlapped with their ancestral territories was threatening their traditional ways of life. In the judgment, the Court highlighted the temporal correlation between the rise of illegal mining in the Atrato River Basin and armed conflict: "the rise of illegal mining of gold and other precious metals [in the Basin of the Atrato River and its tributaries] has opened up alarmingly—as a financier of the armed conflict—which is generating worrying socioenvironmental conflicts that materialize in an indiscriminate struggle for the control of territories and natural resources."¹⁶⁸ As a result, the region and its communities endured forced displacement, the degradation of ecosystems, the reduction of forests, extinction of endemic species and pollution of rivers, among other factors that place the natural and cultural heritage of the country at high risk.¹⁶⁹ Along with these harms caused by illegal phenomena, the high court pointed out that "policies and legislation have emphasized access for economic use and exploitation to the detriment of the protection of the rights of the environment and of the communities."¹⁷⁰ The Court recognized that the government failed to recognize the river as not only an ecosystem but also the territory that enabled communities to develop their cultural rights. Accordingly, it failed to understand that there was a

165. *Id.*

166. Sentencia T-622/16, *supra* note 156, ¶ 9.31.

167. *Id.* ¶¶ 9.27, 9.31–9.32.

168. *Id.* ¶ 9.35.

169. *Id.*

170. *Id.* ¶ 9.31.

“biocultural” relationship between the river and local communities worthy of constitutional protection. The legal solution was to recognize the river as a subject of rights and to declare that it will be represented by a Guardians Council, made up of one member of the plaintiff communities and one delegate of the Colombian State.¹⁷¹

The Guardian’s Council represents and protects the river in all scenarios. This ruling is a creative solution to socio-environmental problems. For years, the Atrato River’s territories have been neglected and its neighboring communities have been marginalized by the government.¹⁷² Thus, by creating a Guardian’s Council with decisionmaking power, a novel forum that ordinary law does not envision, community participation is strengthened, and an innovative form of environmental governance is set up. Interestingly, this governance is put in place by the local population, whose on-the-ground experiences and knowledge could provide valuable perspective about more appropriate and sustainable interaction with the Atrato River ecosystem.

IV. THE AMPLIFIED EFFECTS OF CLIMATE LITIGATION WITHIN COLOMBIAN TRANSITIONAL JUSTICE: A SPECIAL FOCUS ON THE RIGHTS OF NATURE

A. The Principle of Intergenerational Equity

One of the most interesting aspects of the Amazon ruling is that the Court endowed with concrete consequences the principle of intergenerational equity, whose conceptual and practical contours are still blurred and debated.¹⁷³ With the establishment of the Intergenerational Pact, the principle of intergenerational equity moved from being an abstract notion to an idea applied by judges with protective effects on human and environmental rights. The Pact ruling puts in the foreground the debate about our duties towards future generations’ rights and how present generations must shape policies to reduce deforestation and confront climate crisis to distribute quality and availability of nature’s contributions to the coming generations. In other words, the Intergenerational Pact inaugurated a participatory environmental mechanism with an innovative mandate. In the Colombian legal system, despite the administrative, judicial and political environmental participation

171. *Id.* ¶ 9.32.

172. *Id.* ¶ 9.5.

173. PIERRE-MARIE DUPUY & JORGE E. VIÑUALES, *INTERNATIONAL ENVIRONMENTAL LAW* (2nd ed. 2018).

mechanisms available,¹⁷⁴ the Pact and its mission—to discuss and articulate the concrete rights of future generations and correlated duties of the present generation—is exceptional.

Applying international law principles to bring solutions at the national and local level is part of the convergence of domestic and international law in the last years to safeguard the environment. International protection of the environment has faced problems of articulation and enforcement. Against this background, creating domestic environmental rights has been the alternative.¹⁷⁵ Many values and principles of international law have been increasingly adopted by domestic constitutional practice. The Amazon ruling is an example of how inter-generational equity, a principle fundamentally coming from international law, was absorbed and interpreted by Colombian judges. National tribunals worldwide are proving to be better guardians of environmental rights and to advance energetically through local constitutional law. The Intergenerational Pact is a concrete attempt to do so. Domestic courts are uniquely situated to elaborate interpretations of international principles according to the context of each country. Also, they are more able to provide impactful decisions and strive for culturally more appropriate constitutional remedies.¹⁷⁶

Also, the Amazon ruling opens the door to intergenerational standing, which for May and Daly “is useful in cases where the environmental damage is longterm and grows over time such that future generations are more threatened by irreversible and irremediable damage than the present one, even for actions taken presently.”¹⁷⁷ The climate crisis, a systemic and multiscale threat for life on the planet, displays its consequences over time. This unprecedented environmental crisis “constitute[s] [one] of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.”¹⁷⁸ In this scenario, the very idea of intergenerational standing is consistent with intergenerational ethics and necessary from a climate litigation perspective.

174. See generally GLORIA AMPARO RODRÍGUEZ & LINA MARCELA MUÑOZ ÁVILA, *LA PARTICIPACIÓN EN LA GESTIÓN AMBIENTAL: UN RETO PARA EL NUEVO MILENIO* (Universidad del Rosario 1. ed) (2009).

175. Erin Daly & James R. May, *Comparative Environmental Constitutionalism*, 6 *JINDAL GLOBAL L. REV.* 1, 9–30 (2015).

176. *GLOBAL JUDICIAL HANDBOOK ON ENVIRONMENTAL CONSTITUTIONALISM* (3rd ed. 2019).

177. *Id.* at 36.

178. OHCHR, General Comment No. 36: Article 6 (International Covenant on Civil and Political Rights, on the Right to Life), adopted 30 October 2018, CCPR/C/GC/36.

B. The Rights of Nature

By itself, the Amazon ruling is a landmark judicial decision because it urges the safeguarding of the Amazon rainforest's functionality, whose repository of ecosystem services and processes is critical at local and global scales. Interestingly, declaring the Amazon rainforest a subject of rights spotlights the "rights of nature," an alternative approach framed in the emerging mosaic of Earth-centered law, also known as Earth jurisprudence. It is not the aim of this Article to explore in depth the very valuable philosophical, political, and economic debates that are behind these approaches; however, it is worthwhile to discuss more briefly these approaches.

The rights of nature align with environmental philosophies such as deep ecology and other biocentric approaches that react critically to that modern anthropocentric perspective. This posture is also analogous to others found in several ethnic views and indigenous perspectives of living well (*Buen Vivir*).¹⁷⁹

By recognizing the Colombian Amazon as a legal subject, the Court harnesses at least two approaches. First, there is an urgency to "restor[e] humanity's broken relationship with the land and with Nature as a whole,"¹⁸⁰ and second, there is the need to transform traditional law responses and render extraordinary decisions given the environmental extraordinary challenges we face.

Far from being romantic, unreal, or mystical conceptions, views on the rights of nature challenge the human exceptionalism paradigm and classical Western dualism, both of which separate society from nature. These dualistic perspectives attempt to obscure the idea that both approaches are interlinked; "one contains the other, and they are not separable."¹⁸¹

One of the consequences of this dualism is the objectification of nature, and thus, its marketization.¹⁸² According to this understanding, human wellbeing and prosperity have come at the Earth's expense. The rights of nature challenge this predatory human relationship with the planet. Additionally, it reveals that environmental law has been incapable of safeguarding the basic structure and integrity of essential

179. G.A. Res. 68/216, U.N. Doc. A/69/322 (Aug. 18, 2014).

180. G.A. Res. 74/224, U.N. Doc. A/75/266 (July 28, 2020).

181. Eduardo Gudynas, *Buen Vivir: Today's Tomorrow*, 54 DEVELOPMENT 441, 441-447 (2011).

182. G.A. Res. 68/216, *supra* note 179.

ecosystems that both humans and nonhumans rely upon.¹⁸³ The crisis of protection of the Amazon rainforest is an example of this failure.

Possibly, its lack of effectiveness lies in the fact that environmental law is anthropocentric. In the 1960s and 1970s, when this field of law emerged, it added environmental duties to private property rights.¹⁸⁴ In other words, environmental law's weakness is directly linked to the fact that private law defines its contours.¹⁸⁵

Thus, recognizing nature as a subject of law engenders making a claim for the dissolution of the dualism between society and nature, a demand to implement alternatives to the fatigued discourse of development, and a vindication for regenerative systems instead of the dominant growth economic model. Undoubtedly, the rights of nature expose the anthropocentric perspectives of the environmental law and emphasize the need to imagine and create litigation strategies that advocate for the indivisible and interrelated links between people and nature.

Despite these promising implications of the Amazon ruling, at present, it is not easy to make a comprehensive assessment of the impact that this decision has had on the ground. Until now, national institutions have not taken sufficient action, there is an absence of coordination between national and regional environmental authorities, and local governments, on their own, lack the capacity to confront the problems behind the complex phenomenon of deforestation.¹⁸⁶

However, the fact that the Amazon ruling has not triggered the expected governmental actions does not signify that its outcomes are modest. The judicial reasoning in the Atrato River and Amazon cases have been echoed by other judges, who have recognized as subjects of

183. *Id.*

184. G.A. Res. 72/224, *supra* note 180.

185. GONZALO SOZZO, DERECHO PRIVADO AMBIENTAL [PRIVATE ENVIRONMENTAL LAW] (2019).

186. Santiago Ardila Sierra, *The Colombian Government Has Failed to Fulfill the Supreme Court's Landmark Order to Protect the Amazon*, DEJUSTICIA (April 5, 2019), <https://www.dejusticia.org/en/the-colombian-government-has-failed-to-fulfill-the-supreme-courts-landmark-order-to-protect-the-amazon> [https://perma.cc/38SK-CZEZ].

law more than nine rivers,¹⁸⁷ two national parks,¹⁸⁸ and other ecosystems such as wetlands (*páramos*).¹⁸⁹ Indeed, this is a promising “ripple effect,” presenting climate litigation as one of the possible environmental governance tools.

However, it is difficult to conceive how solutions to address environmental issues at a global scale, such as the climate crisis, will come from the judiciary on a case-by-case approach. This global phenomenon needs intricate, systemic, and multidimensional actions. Nevertheless, the increasing number of cases that recognize rights of nature show judicial activism and emerging environmental citizenship vindicating access to justice and, particularly, to climate justice. In this sense, landmark decisions such as in the Amazon and Atrato River cases may have “destabilizing effects.” As César Rodríguez, plaintiffs’ attorney in the Amazon case, drawing on scholarship from Professor Charles Sabel and William Simon, stated, “rights and legal action may well be effective instruments to destabilize a dysfunctional status quo and catalyze change in this area of public policy.”¹⁹⁰ This is particularly true in governments such as Colombia’s, where it is necessary to disrupt traditional

187. Tribunal Administrativo [T. Admtivos.] [Quindío State Superior Tribunal], Sala Cuarta de Decisión Quindío marzo 15, 2019, N. 2019-00024, Tribunal Administrativo del Quindío [T.A.Q.] (Colom.). (*Quindío River case*); 3rd Juzgado de Ejecución de Penas y Medidas de Seguridad [Juzg. Circ.] [Third Tribunal of Execution for Penalties and Security], Cali, Valle del Cauca julio 22, 2019-00043 (Colom.) (*Pance River case*); Sala Cuarta Civil Medellín [T. Superiores] [Medellin State Superior Tribunal], Civil Court No. Four June 17, 2019, N. 2019-076 (Colom.). (*Cauca River case*); Personeria Municipal de Ibagué Ministerio de Medio Ambiente y otros, Tribunal Administrativo de Tolima [T. Admtivos], Administrative Tribunal of Tolima 2019 (Colom.) (*Tolima Rivers case*); Luz Marina Diaz y otros v. Empresa de Servicios Públicos del Municipio de La Plata–Huila, Corte Constitucional [C.C.] [Constitutional Court], No. 2019-114 (Colom.) (*La Plata Huila River case*); 4th Juzgado de Ejecución de Penas y Medidas de Seguridad [Juzg. Circ.] [Fourth Tribunal of Execution for Penalties and Security], Pereira, Risaralda Tutela 2019, 036-2019 (Colom.) (*Otún River case*); Andres Felipe Rojas Rodriguez y Daniel Leandro Sanz Perdomo v. Ministerio de Ambiente y Desarrollo Sostenible y otros, Juzgado Primero Penal del Circuito de Neiva Huila [Juzg. Circ.] [First Criminal Tribunal of the Circuit of Neiva Huila] 2019, 41001-3109-001-2019-00066-00 (Colomb.) (*Magdalena River case*).

188. Juan Felipe Rodriguez Vargas v. Presidencia de la República y otros, Tribunal Superior [T. Sup.] [Ibagué State Superior Tribunal], Sala Quinta Laboral Ibagué 2020, N. 2020-000091 (Colomb.) (*Los Nevados National Natural Park case*); Corte Suprema de Justicia [C.S.J.] [Supreme Court], Sala de Casación Civil 2020, STC3872-2020 (Colomb.) (*Isla Salamanca National Natural Park case*).

189. Corte Constitucional [C.C.] [Constitutional Court], Tribunal Administrativo de Boyacá Augusto 9, 2018, 15238-3333-002-2018-00016-01 (Colom.) (*Páramo de Pisba case*).

190. César Rodríguez-Garavito, *Climate Change, and Human Rights: Lessons from Litigation for the Amazon*, OPEN GLOBAL RIGHTS (April 25, 2019), <https://www.openglobalrights.org/climate-change-and-human-rights-lessons-from-litigation-for-the-amazon> [https://perma.cc/L98K-3VC6].

bureaucracy. This disruption may already be occurring. On July 15, 2019, the Department of Nariño, in the southwest of Colombia, became the first in the country to recognize nature as a subject of rights through the signing of Decree 348.

Countless challenges remain about the scope of recognizing the rights of nature. In particular, challenges remain surrounding the implications of the recognition and the establishment of who represents nature.

C. Scope of the Rights of Nature

Examination of the case law shows that there is no unique, standardized, or uniform content of the rights of nature. Sometimes it involves the rights of protection, conservation, restoration, and maintenance of the new subject of law. This legal formula emerged in the Atrato River case, and it was replicated by the Amazon ruling and other subsequent judicial decisions, such as the Magdalena River or Páramo de Pisba cases. However, in the Isla Salamanca National Park case, the Supreme Court of Justice recognized the Park as a subject of rights, but it did not specify what its rights actually entailed. The Court merely ruled that national and local authorities must prepare a plan to combat deforestation. In other countries, there are even more varying interpretations of what the rights of nature grant specifically. For example, in June 2020, the General Council of the Nez Perce Tribe of Idaho passed a resolution in which “it recognizes the Snake River as a living entity that has rights, including the right to exist, flourish, evolve, flow and regenerate and the right to restoration.”¹⁹¹

Each recognition of the rights of nature involves different wording and protection regimes. But this Article argues that even when a similar legal formula is adopted, namely, the “rights of protection, conservation, restoration, and maintenance”—used both in the Amazon and Atrato River cases—the meaning of these rights remains unknown. The judges do not define these rights, and the communities involved do not always have certainty about the significance of the “rights of nature.”

For example, the guardians coming from the plaintiff communities in the Atrato River case state that even if they acknowledge that the river may have features and qualities as a legal subject, similar to a human being, it is difficult for them “to imagine the river in absolute autonomy with respect to the human lives that depend on it.” For these guardians, “the damages suffered by the river are so insofar as they

191. G.A. Res. 74/218, U.N. Doc. A/75/266 (28 July 2020).

affect the riverside communities It is not a merely instrumental relationship in which the river is reduced to a mere set of resources at the entire disposal of human life, but neither is it a symmetrical relationship between the river and communities.”¹⁹²

This community’s account draws attention to an important point: essentialist ecocentric approaches, founded in the idea that the “environment possesses rights derived from its own intrinsic value, separate and distinct from human use of the environment,”¹⁹³ may end up obscuring the rights of local communities and their role in governance over the territory.¹⁹⁴ Thus, if the rights of nature mean a pure conservationist model, this model would again propose an antagonistic view between “Man and Nature,”¹⁹⁵ a sort of conservationist dualism “nurtured by specific beliefs according to which natural sites had to be preserved as, or restored to, their pristine wilderness.”¹⁹⁶ This conservationist dualism found resonance in the early conservation model in the US, bringing ideas that “protected areas had to be freed from human presence, regardless of the existence of human settlements present on these lands for centuries.”¹⁹⁷ Consequently, many “indigenous peoples were forcefully evicted through the creation of so-called human free zones.”¹⁹⁸

In other words, ignoring the historical presence of local communities in the land (indigenous people, as well as Afro communities), the rights of nature approach leads towards the “dualism trap” again—the same Western dualism, or separation between society and nature, that other environmentally conscious approaches have attempted to combat.

The risk of returning to dualism was downplayed in the Atrato River case through the “biocultural rights” approach,¹⁹⁹ which high-

192. Diego Cagüñas et al., *El Atrato y sus Guardianes: Imaginación Ecolítica para Hilar Nuevos Derechos* [The Atrato and its Guardians: Ecopolitical Imagination to Spin New Rights], 56 REVISTA COLOMBIANA DE ANTROPOLOGÍA 169, 189 (2020).

193. Luis Rodríguez-Rivera, *Is the Human Right to Environment Recognized Under International Law? It Depends on the Source*, 1 COLORADO J. INT'L ENVTL. L. & POL'Y 1, 13 (2001).

194. Elizabeth Macpherson et al., *Constitutional Law, Ecosystems, and Indigenous Peoples in Colombia: Biocultural Rights and Legal Subjects*, 9 TRANSNATIONAL ENVIRONMENTAL LAW 521 (2020).

195. GEORGE MARSH, *MAN, AND NATURE OR, PHYSICAL GEOGRAPHY AS MODIFIED BY HUMAN ACTION* (1864).

196. Marie-Catherine Petersmann, *Narcissus' Reflection in the Lake: Untold Narratives in Environmental Law Beyond the Anthropocentric Frame*, 30 JOURNAL OF ENV'T L. 235, 237 (2018).

197. *Id.*

198. *Id.*

199. Macpherson, *supra* note 194.

lights the “profound unity between nature and the human species.”²⁰⁰ Nevertheless, the Amazon ruling obscures the local and ethnic communities living in the rainforest, most of them ancestrally. According to the Amazon ruling, individual plaintiffs, institutions, and other unspecified “affected communities” should compound the commissions to protect Amazon. However, Amazon ethnic communities were not included appropriately. In contrast to the Atrato River, local communities and indigenous peoples did not play a substantial role in the Amazon case. They were not called to testify during the process. In the judgment, although one might infer they are “affected communities,” their voice has been largely ignored during the implementation period of the decision.²⁰¹

The Court overlooked that far from being an unspoiled wilderness, the Amazon region is a cultural landscape, and it has been so for centuries. Thus, communities and rainforest in the Amazon are not separable; they are intimately interlinked. The myth of pristine nature, as mentioned, might be risky because it may result in practices of forced eviction of local populations in the name of nature conservation. Unfortunately, as in other regions of the world,²⁰² a militarized approach of conservation has been started to implement in the Colombian Amazon.²⁰³

D. Who Speaks for Nature?

Based on the prior, it is critical to begin a conversation about who “represents” Nature. “Who can speak for the river?”²⁰⁴ asked some of the leaders of Atrato riverside communities. Although local people in this judicial decision played a central role, in contrast to the Amazon case, the Constitutional Court fell short in the solution. The tribunal ruled that the Atrato river will be represented by two guardians, one representative from the government and one from the plaintiffs’ com-

200. Sentencia T-622/16, *supra* note 156, ¶ 9.31.

201. Medio Ambiente, *Indigenas Dicen Que la Sentencia Que Otorga Derechos a la Amazonia los Deja por Fuera*, ESPECTADOR (Dec. 2, 2019, 11:01 PM), <https://www.elespectador.com/noticias/medio-ambiente/indigenas-dicen-que-la-sentencia-que-otorga-derechos-a-la-amazonia-los-deja-por-fuera> [<https://perma.cc/4C28-WCKV>].

202. In 1904, the creation by the British colonial power of several Game Reserves in Kenya on the land of the Maasai led to the forced eviction of the pastoralists from their ancestral land. See LOTTE HUGHES, *MOVING THE MAASAI: A COLONIAL MISADVENTURE* (2006).

203. Juan Carlos Garzón et al., *Fuerzas Militares y la Protección del Ambiente: Roles, Riesgos y Oportunidades* [Military Forces and Environmental Protection: Roles, Risks, and Opportunities], FUNDACIÓN IDEAS PARA LA PAZ (2020), http://ideaspaz.org/media/website/FIP_NEST_MilitaresMedioAmbiente_web.pdf [<https://perma.cc/NC9W-9EBD>].

204. Cagüañas, *supra* note 192, at 177.

munities. This concept was borrowed from the model used for the Whanganui River in Aotearoa in New Zealand.²⁰⁵

However, the guardianship approach was alien to the ways in which Afro communities in the riverside govern their ancestral territories. “Just one guardian from communities would not know the whole river,”²⁰⁶ they said. “The River that is born in the Carmen del Atrato is not the same that flows into the Gulf of Urabá. The river weaves many webs, it changes, as do the people who inhabit its basin.”²⁰⁷ Based on that, communities made their “own interpretation”²⁰⁸ of the ruling and chose fourteen guardians coming from different populations along the river. Also, to account for the fact that women and men have different views and relationships with the river, half of the guardians were to be women and the other half men.²⁰⁹

This experience with the Atrato river shows that the conversation about who “speaks” for Nature should start at *the heart of the territories* with the people living there. This conversation with the Amazon rainforest people is pressing. The Amazon rainforest is a cultural landscape. That Indigenous Reservations are one of the top effective conservation models is not in vain.²¹⁰ Engaging in a conversation *with* the territory is engaging in a dialogue with communities that have built up centuries of knowledge about rainforest governance. In sum, any present and future effort to protect the Amazon must not leave behind local communities; therefore, alongside an intergenerational pact, we need an *intercultural* one.

These lessons learned from the Amazon and Atrato River cases have tremendous potential under transitional justice and postconflict lenses.

E. Nature as a Victim and Subject of Reparations

Given the recognition of “the rights of nature” for the Amazon rainforest, one may question whether there is any possibility for

205. Elizabeth Macpherson & Felipe Clavijo Ospina, *The Pluralism of River Rights in Aotearoa, New Zealand and Colombia*, 25(6) J. WATER L. 283 (2015).

206. Cagüañas, *supra* note 192, at 177.

207. *Id.*

208. *Id.*

209. *Id.* at 178.

210. See *Resguardos Indígenas: La Clave Para Proteger los Bosques en la Amazonía*, GAIA AMAZONAS (Nov. 5, 2019), https://www.gaiaamazonas.org/noticias/2019-11-05_resguardos-indigenas-la-clave-para-proteger-los-bosques-en-la-amazonia [<https://perma.cc/OTK9-4CUT>]; see also *Lanzamiento de la Colección 2.0: Colección 2.0 de Mapas Anuales de Cobertura y uso del Suelo de la Amazonía (1985–2018)*, MAPBIOMAS AMAZONIA, <http://amazonia.mapbiomas.org/lanzamiento-de-la-coleccion-20> [<https://perma.cc/HZ6C-5BCD>].

ecosystems that endured negative impacts of war, such as the Amazon, to be acknowledged as victims of the armed conflict? If so, could the Amazon be redressed and restored as a consequence of the harm suffered? Since the Amazon is not only a subject of rights but has also been severely impacted by the dynamics of war, as examined above, there seems to be no hurdle to declaring the Amazon a victim of armed conflict and, consequently, entitled to reparations. Viewing the Amazon as a victim who is entitled to reparations may bring expanded environmental protections to the territory. First, it would address all adverse impacts that the ecosystem endured during the armed conflict, and not only those focused on one specific harm or threat, such as deforestation. Second, it would entail reparations for more than fifty years of war—in other words, it would be a backward measure. This could complement the forward-looking mandate to reduce deforestation of the intergenerational Pact and the multi-institutional group that ordered the Court. These reflections might resonate even more in the transitional justice architecture, and beyond reparations, transitional mechanisms could be adapted to guarantee justice, truth, and nonrepetition for nature.

To begin with, the Truth, Coexistence, and Non-Recurrence Commission is mandated to disclose a comprehensive truth of the armed conflict, including that related to environmental dimensions of the conflict.²¹¹ Since its inception, the Truth Commission has carried out local workshops with communities and associations that advocate for the rights of nature.²¹² These are key sources in the Truth Commission final report.

Additionally, in recent years, the Investigation and Prosecution Unit of the Special Jurisdiction for Peace declared the environment as “a silent victim of the armed conflict” in the framework of an investigation carried out in the south of the country (Nariño Department). The Unit asserted “to be seeking [environmental] reparation mechanisms and guarantees of non-repetition.”²¹³

211. Decreto 588 de 2017, Presidencia de la República de Colombia (April 5, 2017), <https://comisiondelaverdad.co/images/decreto-588-de-2017-comision-verdad-manda-to-funciones.pdf> [<https://perma.cc/ZM5T-VSKW>].

212. See, e.g., Encuentro, *La Naturaleza: una Víctima Silenciada del Conflicto Armado*, COMISIÓN DE LA VERDAD (Oct. 8, 2019), <https://comisiondelaverdad.co/actualidad/noticias/la-naturaleza-una-victima-silenciada-del-conflicto-armado> [<https://perma.cc/CZ4C-WJ8X>].

213. See Press Release, JEP, Unidad de Investigación y Acusación de la JEP, “reconoce como víctima silenciosa el medio ambiente,” Comunicado 009 (June 5, 2019), <https://www.jep.gov.co/SiteAssets/Paginas/UIA/sala-de-prensa/Comunicado%20UIA%20-%20009.pdf> [<https://perma.cc/9RCF-AH35>].

The rights of nature have already been mentioned in other sections of the Special Jurisdiction for Peace.²¹⁴ But remarkably, transitional judges have recognized the malfunction of antagonism or dualism between society and nature and have instead promoted a more intertwined conversation between these worlds. They have emphasized the notion of territory as a victim.²¹⁵ Territory refers to “a living whole and sustenance of identity and harmony.” In accordance with the indigenous ontologies, “territory” denotes no separation between the material, the cultural, and the spiritual spheres, and human and nonhuman are interrelated and interdependent.²¹⁶

Based on that, the Special Jurisdiction for Peace, one of the most diverse tribunals in the world regarding gender and ethnicity,²¹⁷ has issued several decisions recognizing territories as victims of the armed conflict.

According to recent decisions, the Katsa Su and the Cxhab Wala Kile territories of the indigenous Awá and Nasa peoples, respectively,²¹⁸ as well as territories of the Afrocolombian communities from Tumaco, Ricaurte and Barbacoas²¹⁹ municipalities, are subjects of rights. These

214. JEP et al., *DIVERSIDAD ÉTNICA Y CULTURAL, PLURALISMO JURÍDICO Y CONSULTA PREVIA: INSTRUMENTOS DE COORDINACIÓN Y ARTICULACIÓN ENTRE LOS PUEBLOS INDÍGENAS Y EL SISTEMA INTEGRAL DE VERDAD, JUSTICIA, REPARACIÓN Y NO REPETICIÓN (SIVJRNR)* 11 (2019), <https://www.jep.gov.co/DocumentosJEPWP/protocolo.pdf> [<https://perma.cc/5E8L-246W>].

215. The idea of nature as a victim was referenced by Decree-Law 4633 of 2011, known as the Law of Victims for Indigenous Communities. This legislation, a political victory for the indigenous peoples' organizations, establishes that indigenous peoples have “special and collective ties” with “Mother Earth” (Article 3) and have the right to “harmonious coexistence in the territories” (Article 29). In addition, it recognizes that the territory is “a living whole and sustenance of identity and harmony” and that it “suffers damage when it is violated or desecrated by the internal armed conflict” (Article 45). “Spiritual healing” is part of the integral reparation of the territory (Article 8). Belkis Izquierdo & Lieselotte Viaene, *Decolonizing Transitional Justice From Indigenous Territories*, ICIP (2018), http://www.icip-perlapau.cat/numero34/articles_centrales/article_central_2 [<https://perma.cc/VX78-KC9R>].

216. Izquierdo & Viaene, *supra* note 215.

217. See Santiago Pardo Rodríguez, *A Second Chance on Earth: Understanding the Selection Process of the Judges of the Colombian Special Jurisdiction for Peace*, 10 NOTRE DAME J. INT'L & COMPAR. L. 209, 261–62 (2020).

218. Jurisdicción Especial para la Paz [JEP] [Special Jurisdiction for Peace], Sala de Reconocimientos de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas [SRVR] noviembre 12, 2019, Auto SRVBIT 079; Jurisdicción Especial para la Paz [JEP] [Special Jurisdiction for Peace], Sala de Reconocimientos de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas [SRVR] diciembre 3, 2019, M.P.: B. F. Izquierdo Torres, Auto SRVBIT 099; Jurisdicción Especial para la Paz [JEP] [Special Jurisdiction for Peace], Sala de Reconocimientos de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas [SRVR] enero 17, 2020, M.P.: R. Sánchez, Auto SRVBIT 002.

219. See Jurisdicción Especial para la Paz [JEP] [Special Jurisdiction for Peace], Sala

decisions have been accompanied by other recent ones in the cases of Eperara Euja territory of Eperara Siapidaara people and other nine indigenous people and communities.²²⁰

F. Nature as a Beneficiary and Guarantees of Nonrepetition

Certainly, in some regions in Colombia, like the Amazon, access to nature was limited due to the dynamics of war, and this lack of access created a strong barrier that promoted biodiversity protection. However, this narrative of nature as protected by conflict might miss the point and be unsustainable. “Although conflict obstructs land development and prevents illegal usage, it cannot guarantee security for biodiversity; it ultimately is dysfunctional and emblematic of more systemic and deep-rooted problems.”²²¹ Right after FPA was signed, a sense of protection ended, and deforestation and forest degradation escalated. Thus, it is not a surprise that, in this scenario, when the Amazon ruling was issued, it was viewed as a hopeful mechanism with which to confront these environmental harms. But much remains to be done.

Deforestation is a complex socio-environmental issue in the Amazon with several and intricated dynamics behind it. Powerful legal and illegal activities are encouraging land grabbing for different purposes: mining, logging, infrastructure projects, irregular expansion of agricultural and livestock industries. Some of these activities allow criminals to engage in land speculation.

Some documented cases have shown that illegal actors and traders manipulate the local population by offering them essential goods such as food, school supplies, or power generators in exchange for access to their lands and forests.²²² According to the Environmental Investigation Agency, taking advantage of the lack of institutional and community marginalization, people accept the deals, but they also recognize the deals’ injustice.²²³ National government’s systematic weakness, an ongoing

de Reconocimientos de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas [SRVR] enero 24, 2020, M.P: B. F. Izquierdo Torres, Auto SRVBIT 018; *see also* Jurisdicción Especial para la Paz [JEP] [Special Jurisdiction for Peace], Sala de Reconocimientos de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas [SRVR] octubre 21, 2019, M.P: B. F. Izquierdo Torres, Auto SRVBIT 067.

220. *See* Jurisdicción Especial para la Paz [JEP] [Special Jurisdiction for Peace], Sala de Reconocimientos de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas [SRVR] junio 10, 2020, M.P: B.F. Izquierdo Torres, Auto SRVBIT 094.

221. N. Clerici et al., *supra* note 84, at 4.

222. ENVIRONMENTAL INVESTIGATION AGENCY, *CONDENANDO EL BOSQUE: ILEGALIDAD Y FALTA DE GOBERNANZA EN LA AMAZONÍA COLOMBIANA* 32–33 (2019).

223. *Id.*

“militarized” approach in conservation, disputes for control over lands, and tensions between local communities and traffickers are fertile ground for relapsing into conflict or triggering new waves of violence.

It is positive that the Amazon ruling proposes measures that attempt to prevent further deforestation, or at least destabilize the dysfunctional status quo and catalyze change. Understanding that one of the causal mechanisms of deforestation is land grabbing for different purposes, and precisely the historical struggle for land and its equitable distribution has been the root cause of the Colombian conflict, as Professor Armenteras, geographer and biodiversity conservation expert, stated, “this [moment] can represent a precious opportunity for an exercise of land formalization, which would re-establish the role of the government over the illegal actors that are grabbing public land.”²²⁴ In doing so, it might deescalate potential conflicts and guarantee nonrecurrence.

Nevertheless, deforestation is part of an even bigger challenge to solve the climate crisis. The effects of climate emergency are changing the living conditions radically on the planet. Communities will have to choose between starvation and migration—likely creating competition for resources and a high risk of community discontent about growing inequality. As the Special Rapporteur on extreme poverty and human rights states, this context may stimulate “nationalist, xenophobic, racist and other responses” resulting in dramatic tensions.²²⁵ In other words, the climate crisis is in many ways exacerbating social and political conflicts. The core and global purpose of the Amazon ruling is to contribute in mitigating the effects of the climate crisis. Insofar as judicial decisions create instruments for preserving the integrity of the Amazon rainforest, it is a window of opportunity to safeguard a valuable ecosystem to confront the crisis and all the devastating consequences for human rights. Climate litigation should also trigger a conversation about overlapping realities: an unstable postconflict setting and the climate emergency. This conversation cannot keep obscuring local ontologies, nor can it keep equating territorial peace with territorial pacification.²²⁶ Crystalizing peace should be a process with territories, not over them. Territories and their cultural landscape are where peace begins.²²⁷

224. N. Clerici et al., *supra* note 84, at 6.

225. Philip Alston (Special Rapporteur on Extreme Poverty and Human Rights), *Rep. on Climate Change and Poverty*, UN Doc. A/HRC/41/39, ¶ 67 (2019).

226. See generally María Carolina Olarte-Olarte, *From Territorial Peace to Territorial Pacification: Anti-Riot Police Powers and Socio-Environmental Dissent in the Implementation of Colombia's Peace Agreement*, 67 *REVISTA DE ESTUDIOS SOCIALES* 26 (2019).

227. For instance, in land and rural reform envisaged in Chapter I of the FPA. *Final*

CONCLUSION

An environmental crisis in postconflict settings may threaten precious ecosystems, biodiversity-rich spots, or natural resources even more than the preceding war did. However, in Colombia, this crisis has boosted imaginative litigation strategies at the domestic level that have mobilized rights-based arguments to protect fragile ecosystems and address climate change by denouncing deforestation and illegal mining.

The Supreme Court's historic ruling that protects future generations' rights and declares the Amazon a subject of rights is an example of one such creative litigation strategy. This judicial decision is a foundational precedent that recognized the rights of nature in Colombia, the Atrato River, for the first time. In the last years, important lessons learned have been taken from both litigation strategies, judicial reasonings, and implementation on the ground. Beyond the environmental and climate justice agenda, the ideas and experiences distilled from both cases represent precious opportunities for transitional justice in Colombia.

Furthermore, the 2016 Final Peace Agreement has been considered one of the most comprehensive in the international sphere of transitional justice. However, many environmental dimensions were ignored at this stage, such as the victimization of nature and the anticipation for environmental governance in the postconflict. We were told Colombia would be a transitional justice lab. Now, with the amplified effects of rulings like the Amazon and Atrato River cases, we have turned into a rights of nature lab too. From these cases, we have determined that environmental peace is a pressing task, and, more importantly, it must be intergenerational, intercultural, and territory based. Despite the slow implementation of environmental dimensions of the FPA, peace itself is an opportunity for change. It is an unfinished task, constantly under construction. Peace is a dialectic process, fueled by crisis and setbacks, and progressive, transformative, and imaginative initiatives. In this era of unpredictable climate crisis,²²⁸ the rights of nature could either be a threat multiplier or fertile ground to build on peace.

Agreement, *supra* note 111, at 10–33.

228. Hulme, *supra* note 102, at 140.

