REPUBLIC OF COLOMBIA

CONSTITUTIONAL COURT
First Review Chamber

Sentence T-123 of 2024

Reference: File T-8.480.624

Protection action brought by José Noé Mendoza Bohórquez and Ana Librada Niño de Mendoza against the Department of Arauca, the Municipality of Saravena, the Administrative Department for Social Prosperity (DPS), the National System for the Prevention and Attention of Disasters, the Unit for Attention and Integral Reparation of Victims (UARIV) and the Ombudsman's Office.

Judge Rapporteur:
NATALIA ÁNGEL CABO

Table of contents

1. BACKGROUND....2

1.1. List of abbreviations or acronyms....2

1.2. Facts....3

1.3. Content of the application for protection....3

1.4. Service of process and response to the tutela action....6

1.4.1. Governorate of Arauca....6
1.4.2. Mayor's Office of Saravena....6
1.4.3. Ministry of the Interior....7
1.4.4. Unit for the Attention and Integral Reparation of Victims (UARIV)....7
1.4.5. Ombudsman's Office....8
1.4.6.National Unit for Disaster Risk Management (Unidad Nacional para la Gestión del Riesgo de Desastres - UNGRD)....8

1.5. Tutela judgments under review....8

1.5.1. First instance....8
1.5.2. Contestation....9
1.5.3. Second instance....10

1.6. Review proceedings....10

2. CONSIDERATIONS....14

2.1. Competence....14

2.2. Case approach....14

2.3. Legal problem to be solved....15

2.4. Forced internal displacement due to environmental factors: context and relevant debates....16

2.5. International instruments applicable to the phenomenon of internal displacement due to environmental factors....17

2.6. Other efforts at the international level to address environmental displacement....22

2.7. Characteristics of internal displacement due to disasters, the adverse effects of climate change and environmental degradation....25

2.7.1. The multi-causal and complex connotation of forced displacement due to environmental factors. 25

2.7.2. Temporariness and internal character....27

2.7.3. The greatest impact on the most vulnerable....28

2.8. Displacement effects due to environmental factors....28

2.9. The correlative obligations of the State....31

2.9.1. Preventive and adaptive obligations that are triggered prior to displacement....31

2.9.2. Obligations during the posting....34

2.9.3. Obligations relating to return, resettlement and reintegration....36

2.10. Current response to environmental displacement....38

2.10.1. National climate change regulation....38

2.10.2. National legal framework on natural disaster risk management....40

2.10.3. The normative response to forced displacement as a result of armed conflict....44

2.10.4. Protection gap for environmentally displaced people....46

3. ANALYSIS OF THE SPECIFIC CASE....47

3.1. The validity of the tutela action....47

3.2. Study of the facts of the present tutela action....51

3.3. The recognition of the actors as IDPs and subjects of special constitutional protection....51

3.4. On the conduct of the authorities concerned....53

3.5. On judicial remedies....61

4. SUMMARY OF THE DECISION....64

5. DECISION....66

Bogotá, D.C., sixteen (16) April two thousand and twenty-four (2024).

The First Chamber of Review of Tutelas of the Constitutional Court, composed of the judges Natalia Ángel Cabo - who presides - and Diana Fajardo Rivera, and the judge Juan Carlos Cortés González, in exercise of its constitutional and legal powers, specifically those provided for in Articles 86 and 241 numeral 9 of the Political Constitution, and in Articles 33 and following of Decree 2591 of 1991, has issued the present decision.

JUDGMENT.

This decision corresponds to the review process of the first instance decision issued by the 33rd Criminal Court of the Bogotá Circuit on 13 July 2021 and

the second instance decision issued by the Superior Court of the Bogotá Judicial District on 25 August 2021.

These decisions were adopted in the tutela action brought by Mr. José Noé Mendoza Bohórquez and Mrs. Ana Librada Niño de Mendoza against the Department of Arauca, Municipality of Saravena, the Administrative Department for Social Prosperity (hereinafter DPS), the National System for Disaster Prevention and Assistance (hereinafter SNPAD), the Unit for Attention and Integral Reparation of Victims (hereinafter UARIV) and the Ombudsman's Office.

The process of reference was chosen by the Sala de Selección de Tutelas Número Doce[1] , by order of 15 December 2021.

To facilitate the reading of the judgment, the following table of contents and list of acronyms and abbreviations used in the decision is provided.

1. BACKGROUND

1.1. List of acronyms or abbreviations

In this judgment, a number of acronyms or abbreviations are used. To facilitate the reading of the decision, a list of these abbreviations is included below.

Table 1. List of acronyms and abbreviations

UNFCCC	United Nations Framework Convention on Climate Change
IACHR Court	Inter-American Court of Human Rights
DPS	Administrative Department for Social Prosperity
E2050	Colombia's Long Term Climate Strategy
ECDBC	Colombian Low Carbon Development Strategy
ECI	unconstitutional state of affairs
GRD	Disaster Risk Management
PMGRD	Municipal Disaster Risk Management Plan
PNACC	National Climate Change Adaptation Plan
PNCTE	National Greenhouse Gas Emission Trading Quota Programme
Deng Principles	Guiding Principles on Internal Displacement

[1] The present case was selected on 15 December 2021 and was assigned to the office of the then judge Alberto Rojas Ríos. On 4 April 2022, Judge Natalia Ángel Cabo began her term as a judge replacing Judge Rojas. At that time, the corresponding registration had not been carried out. For this reason, the judge's office began the process of substantiation of the project. On 12 October 2022, the Universidad de los Andes filed an *amicus curiae* brief and on 11 November 2022, Judge Ángel's office contacted the Public Action Group (GAP) of the Universidad del Rosario.

REDD+	*Reducing emissions from deforestation and forest degradation (Reducing emissions from deforestation and forest degradation*)
RUV	Single Register of Victims
SISCLIMA	National Climate Change System
SNGRD	National Disaster Risk Management System
SNPAD	National System for Disaster Prevention and Response
UARIV	Unit for the Attention and Integral Reparation of Victims
UNGRD	National Unit for Disaster Risk Management (Unidad Nacional para la Gestión del Riesgo de Desastres)

1.2. Facts

1. On 10 September 2020, the plaintiffs filed a petition with the UARIV, requesting information on whether they could be recognised as victims of forced displacement under the terms of Law 1448 of 2011 and, thus, have access to the benefits deriving from such status.

2. On 18 September 2020, the UARIV provided a response to the applicants in which it indicated that in order to resolve their doubts, it was necessary for them to go to the offices of the Public Prosecutor's Office to give a statement on the facts and circumstances that constitute their status as victims. For the applicants, this response did not constitute a substantive reply to their petition.

3. On 27 January 2021, the applicants reiterated their request to the UARIV. In it, they also indicated that because of their age they were at high risk of being infected by Covid-19 and that for this reason they could not approach the Ministry's facilities. The petitioners insisted that their request be answered in writing.

4. On 22 February 2021, the UARIV replied to them in the same terms as the previous reply.

1.3. Content of the application for protection

5. Based on the above-mentioned facts, José Noé Mendoza Bohórquez and Ana Librada Niño de Mendoza filed a tutela action against the above-mentioned entities.

6. In the tutela, on the one hand, they indicated that it is contrary to the right to equality that, despite being forcibly displaced by a natural disaster, they are not given the possibility of accessing the programmes and benefits created by the State for those displaced by violence. In their opinion, those displaced by the armed conflict and those displaced by natural disasters are in the same situation of vulnerability and, therefore, it is unreasonable that there should be two different systems for attending to their needs. The applicants

also argued that, by virtue of the definition of forced internal displacement provided in the Guiding Principles on Internal Displacement (hereinafter the Deng Principles), which also recognises the phenomenon of environmental displacement, they should be considered as forcibly displaced. The applicants insisted that the respondent authorities also violated their right to housing because, due to the floods, they had to leave their home without being offered humanitarian assistance and relocation solutions. The applicants also pointed out that they filed the tutela action because they submitted two rights of petition to the UARIV, but never received a substantive response to their requests.

7. On the other hand, the petitioners considered that their rights to work, to food, to food security and to minimum subsistence had been violated. In this regard, they indicated that the loss of their crops has meant that they are unable to generate income and, therefore, their livelihoods are compromised.

8. Finally, the plaintiffs alleged the violation of their rights to life and personal security, as they have not obtained the required state attention in the face of the serious threat posed by the overflowing of the Bojabá River during the rainy season.

9. Based on the foregoing, the applicants requested the constitutional judge to protect their rights and to issue the following orders to the requested authorities:

> (i) the UARIV to recognise them as forcibly displaced due to environmental factors and provide them with the same guarantees and humanitarian assistance as those forcibly displaced by the armed conflict;
>
> (ii) the department of Arauca, to make them beneficiaries of its support programmes for displaced persons;
>
> (iii) to the municipality of Saravena, to provide them with care as victims of forced internal displacement and to grant them the guarantees that are appropriate for this population;
>
> (iv) the DPS, to take appropriate measures to redress their situation as environmentally displaced persons; and
>
> (v) the SNPAD, to provide them with appropriate post-disaster care measures following the natural disaster that caused their displacement.

10. In support of their application, the applicants attached the following documentary evidence to their application:

(i) deeds to the land "El Paraíso".

(ii) Copy of the minutes of the meeting of the inhabitants of the villages of Caño Negro, Campo Oscuro, Buenos Aires, Islas del Bojabá, El Pescado, Puerto Arturo, Puerto Nariño, Charo Dique and Puerto Rico on 1 June 2017.

(iii) Letter dated 14 June 2017, sent by the president of the Junta de Acción Comunal de la vereda Caño Negro to the secretary general and government, requesting the loan of a backhoe as a matter of urgency.

(iv) Letter dated 16 June 2017, from the municipal ombudsman of Saravena to the municipal mayor of Saravena, requesting intervention in sectors at risk of flooding.

(v) Letter dated 18 July 2017, from the Community Action Boards of the Caño Negro and Campo Oscuro villages, requesting the Municipal Risk Council to accompany them for an inspection of the critical points.

(vi) Oficio of 6 December 2017, issued by the Juntas de Acción Comunal de las veredas Caño Negro and Campo Oscuro requesting the governor of Arauca to carry out the necessary works to prevent flooding.

(vii) Oficio of 15 January 2018, issued by several representatives of the villages affected by the floods, requesting the governor of Arauca to intervene to prevent further catastrophes.

(viii) Oficio of 19 February 2018, issued by several representatives of the affected villages, asking the governor of Arauca to intervene to prevent further flooding, as the works have been aimed at protecting the urban centre, but not the rural area.

(ix) Oficio of 22 February 2018, issued by members of the affected villages, requesting the governor of Arauca to intervene urgently to prevent further flooding before the start of the new winter season.

(x) Oficio dated 3 May 2018, issued by the presidents of the community action boards of the affected villages, in which the mayor of Saravena is requested to respond to the petitions in which they asked to urgently take containment measures in the face of the rising river.

(xi) Petition dated 7 May 2018, signed by Alicia Reyes, requesting a meeting with the governor of Arauca to discuss the departmental government's lack of interest in addressing the problem of the rising river.

(xii) List of people who have been displaced by the Bojabá river.

(xiii) Petition of 10 September 2020 to the UARIV in which the applicants requested information on the possibility of being recognised as victims under the terms of Law 1448 of 2011.

(xiv) Response of 18 September 2020, issued by the UARIV.

(xv) Petition of 27 January 2021 to the UARIV to insist on the possibility of being recognised as victims under the terms of Law 1448 of 2011.

(xvi) Response of 22 February 2021, issued by the UARIV.

(xvii) Photograph of the condition of the bridge that connects the "El Paraíso" estate with the Campo Oscuro hamlet at the date of filing of the tutela.

1.4. Service of the writ of summons and defence to the tutela action

11. By order of 29 June 2021, the 33rd Criminal Court of the Bogotá Circuit admitted the tutela action, ordered the plaintiffs to be notified and transferred the case to the entities involved. In the same order, the judge of first instance ordered the National Unit for Disaster Risk Management (hereinafter, UNGRD) and the Ministry of National Defence to be involved in the proceedings. Within the respective transfer, the following responses were provided.

1.4.1. Government of Arauca

12. The Governor's Office of Arauca, through its legal coordination, requested his dissociation and provided a report from the Departmental Secretariat of Social Development. In it, the Secretariat indicated that in order for a person to be recognised as a victim in light of Law 1448 of 2021, he or she must initiate a process of declaration of the facts before the Public Prosecutor's Office. The person who is recognised as a victim of forced internal displacement due to the armed conflict is entitled to emergency humanitarian assistance once the administrative act of inclusion in the Single Register of Victims (hereinafter RUV) has been issued, which is delivered according to the degree of need and urgency of the person. Thus, from the moment the person is registered as a victim, the assistance route begins, in which the territorial entities begin to deploy the actions within their competence.

13. Next, the Governor's Office insisted that the plaintiffs do not fall into the category of victims of the armed conflict and, therefore, are not covered by the provisions of Law 1448 of 2021. At most, the entity pointed out, the plaintiffs, who are victims of the winter waves in the area, may eventually be beneficiaries of other institutional offers, such as those derived from the legal framework of the SNPAD.

1.4.2. Mayor's Office of Saravena

14. Through an authorised representative, the municipality of Saravena opposed the claims in the lawsuit, arguing that they were of a patrimonial nature. According to the municipality, it is not the responsibility of the municipality to provide the plaintiffs with the guarantees and benefits enjoyed by the victims of forced internal displacement due to the armed conflict, insofar as they are not included in the RUV. The Mayor's Office of Saravena also pointed out that in this case there is a lack of standing because the

municipality did not engage in conduct that threatened or violated the rights of the plaintiffs.

15. Likewise, the Mayor's Office argued that in this case the requirement of immediacy is not met because the facts set out in the tutela action occurred in 2017 and the request is a reflection of collective interests allegedly affected by the ravages produced by the force of nature.

1.4.3. Ministry of the Interior

16. The Ministry of the Interior insisted that it does not have standing as a plaintiff, as there is no "causal link between the alleged violation of the fundamental rights invoked by the plaintiff and the action or omission on the part of this Ministry"[2] .

17. This ministry detailed the functions assigned to it under Article 2 of Decree Law 2893 of 2011 and indicated that, in accordance with the principle of legality, this entity lacks the constitutional and legal powers to recognise the plaintiffs as victims of forced displacement, grant them humanitarian aid and provide them with administrative reparation. The Ministry of the Interior also indicated that although it is responsible for coordinating national efforts to ensure that the territorial entities correctly implement all the components of the public policy for victims of the armed conflict, it is the UARIV which is responsible for the management of the RUV, the delivery of administrative compensation and humanitarian aid.

1.4.4. Unit for the Comprehensive Attention and Reparation of Victims (UARIV)

18. The legal representative of the UARIV, requested the Court to deny the tutela action against him, as the entity did not violate the fundamental rights invoked by the actors, for two reasons. Firstly, because it duly responded to the petitions submitted by the plaintiffs, in which they requested the payment of administrative compensation for the victimization of forced displacement. This response consisted of indicating to the plaintiffs the procedure to be followed and the reasons why it was not possible to accede to their claims without taking the appropriate administrative action. Secondly, it did not violate the rights of the actors, because the UARIV is only competent to include as victims those persons affected by the armed conflict and, therefore, it is not competent to process applications concerning victims of natural disasters.

19. Finally, the UARIV pointed out that in this case, not only is there a situation that has been overcome, but also that the tutela action does not satisfy the requirement of immediacy, due to the fact that there is no urgent situation that justifies the long period of time that has elapsed since the alleged violation and the filing of the request for amparo.

1.4.5. Ombudsman's Office

[2] File T-8.480.624, file "Radicado No. 033-2021-0011-00", p. 2.

20. The Arauca regional Ombudsman's Office argued that it lacked standing and therefore requested their dismissal. However, the entity noted that as this institution is the guarantor of the protection of fundamental rights, it wished to assist the tutela action in the event that it was demonstrated that the rights of the plaintiffs had been violated or were in imminent danger.

1.4.6.National Unit for Disaster Risk Management (Unidad Nacional para la Gestión del Riesgo de Desastres - UNGRD)

21. The UNGRD explained that in May 2015, the Municipal Disaster Risk Management Council of the municipality of Saravena reported an emergency caused by the flooding of several tributaries in the region. This emergency was attended to by the entity, in coordination with the territorial entities, and different types of aid were sent (markets, household goods, hammocks, tarpaulins, cleaning kits) for a value of $342,717,445. In turn, the entity noted that, once the database of the project bank of the Subdirectorate for Risk Reduction was reviewed, it was not evident that any project had been submitted by the municipality of Saravena or the department of Arauca aimed at resolving the situation described above.

22. Likewise, the UNGRD warned that, although it did not oppose the plaintiffs' claims, this entity had not incurred in any action or omission that could generate a violation of their rights. Therefore, it requested to be disassociated from the process because it lacked standing in the cause of action.

23. In this respect, the UNGRD indicated that, in general, this entity acts subsidiarily when a public calamity is decreed by the territorial authorities, or on the occasion of a declaration of disaster decreed by the President of the Republic. However, in this case, it was up to the municipal mayor's office, in association with the Municipal Council for Risk Management, to take the necessary steps and carry out the works to solve the problems that have been occurring in the villages of Saravena. In addition, said the UNGRD, the department must support, in accordance with the competencies of the territorial entities provided for in Law 1523 of 2012.

1.5. Tutela rulings under review

1.5.1. First instance

24. By a judgment of 13 July 2021, the 33rd Criminal Court of the Bogotá Circuit made three determinations. First, it declared the tutela action inadmissible in relation to the applicants' rights to food, food security, minimum vitality, life and personal security. Secondly, it denied the protection in relation to the right to petition the territorial entities. Finally, the court upheld the petitioners' right to petition the UARIV for lack of notification.

25. In support of these determinations, the court held, on the one hand, that the tutela was inappropriate as a mechanism for the protection of the first set of rights because the plaintiffs had ordinary means of defence, such as popular action, group action or direct reparation action. In the court's opinion, tutela, due to its immediacy and informality, is not a suitable or effective mechanism

to discuss the liability of the public administration. Furthermore, it pointed out that in order to determine liability and grant compensation, an exhaustive evidentiary debate must be carried out, which is incompatible with an expeditious means such as the tutela action.

26. On the other hand, the judge of first instance noted that it was not possible to conclude that the territorial entities concerned had violated the applicants' right to petition, as they had not provided copies of the requests that they had allegedly submitted to the Governor's Office of Arauca, the Mayor's Office of Saravena and the Personería of that municipality. Therefore, the judge of instance considered that it was appropriate to deny the amparo in relation to this charge, as the terms of the requests and the date on which they were filed had not been accredited.

27. However, the judge of first instance did grant amparo in order to guarantee the applicants' right to petition the UARIV. The judge observed that what the UARIV had said in the tutela proceedings constituted a substantive response - that is, that it was not viable to include the claimants in the RUV without first making a statement to the Public Prosecutor's Office about the acts of victimisation that had occurred in the context of and during the armed conflict. However, it observed that, insofar as the entity had not accredited having notified the interested parties of such a response, it was necessary to protect the right to petition. Consequently, it ordered the UARIV to proceed to notify the applicants of this response.

1.5.2. Challenge

28. The plaintiffs challenged the judgment of first instance. For them, contrary to the conclusion of the judge of first instance, tutela is indeed appropriate to protect their fundamental rights. This is because, although the facts described in their tutela are part of a social problem, their claim is for the protection of their individual rights, which have been violated due to the lack of recognition of their status as victims of forced internal displacement. As they are not seeking the guarantee of collective rights or compensation, it is not possible to conclude that other ordinary defence mechanisms are available to them.

29. The plaintiffs insisted that the judge of instance should have made a more flexible analysis of the subsidiarity requirement, taking into account that they are people who are in a state of vulnerability due to their advanced age and socio-economic situation. Therefore, they considered that it was appropriate in this case to make a substantive ruling in relation to the affectation of their fundamental rights.

1.5.3. Second instance

30. In a judgment of 25 August 2021, the Criminal Chamber of the High Court of the Judicial District of Bogotá partially overturned the first instance decision regarding the tutela order against the UARIV, and upheld the remainder.

31. Firstly, it pointed out that, contrary to what the plaintiffs claim, they are not elderly, since, according to the Court, the age of old age begins at 72 for men and 78 for women[3] . Secondly, it considered that the plaintiffs, before resorting to tutela, should have approached the authorities of the National System for Risk Management to request the execution of risk mitigation works due to the overflowing of the Bojabá River. In addition, the judge of second instance indicated that the plaintiffs have mechanisms such as popular and group actions, as the cause of the damages suffered is different from that contemplated in Law 1448 of 2011. Therefore, the Court concluded that the protection claimed by the plaintiffs should be sought through a collective action and not through a tutela action.

32. In addition to the above, the Court considered that, if the plaintiffs were complaining about the lack of execution of the works ordered as part of the disaster prevention programme, they should have resorted to a claim for State responsibility before the administrative litigation judge. The need to resort to another action, insists the Court, cannot be obviated by the mere fact that the plaintiffs seek to assimilate forced displacement due to the armed conflict with that caused by environmental factors.

33. Finally, the Court pointed out that the UARIV had provided a screenshot in the proceedings showing that it had indeed sent a timely response to the petitioners, to the email address provided by them in the writ of tutela. For these reasons, the Court indicated that the first instance judgment should be modified, as at no time had the right to petition been violated.

1.6. Proceedings in review proceedings

34. On 17 February 2022, the applicants filed a memorial in which they reiterated the facts that motivated the tutela action and the reasons why they consider that their fundamental rights were violated.

35. On 8 March 2022, Daniela Urosa and Marija Tesla, members of the *International* Human Rights *Protection Practicum* ("IHRP") at *Boston College Law School* (BC Law) submitted an *amicus curiae brief*, which was again sent to the Court on 11 March 2022. In the *amicus brief*, the interveners placed special emphasis on the fact that the condition of internally displaced person does not only respond to a situation of armed conflict, but can also occur due to situations of generalised violence, human rights violations, natural or human-made disasters. In all these situations, the standards of protection for displaced persons are of equal intensity, regardless of the cause of displacement. In support of their assertions, the interveners highlighted the importance of the Deng Principles.

36. The *amicus* also indicated that the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights (hereinafter IACHR) have taken into account the definition of the Deng Principles to characterise forced internal displacement as a continuous and complex human rights violation. Similarly, the interveners pointed out that the UN Refugee Agency (UNHCR) has indicated that the causes of displacement do not follow an exhaustive list, and that in order to determine whether or not a person is

[3] In this regard, the ruling cited judgment T-138 of 2010, according to which old age should be considered in relation to the life expectancy of the country's citizens.

internally displaced, two conditions must be observed: the involuntary departure from the home or place of habitual residence and the fact that the person remains within his or her own country.

37. Finally, the interveners insisted that, in case of doubt as to whether the protection of victims of internal displacement due to natural disasters is or should be equal to that of persons displaced due to armed conflict, the judge, by virtue of the *pro homine* principle, should apply the interpretation most favourable to the protection of human rights.

38. On 11 March 2022, Valentina de los Ángeles Almonacid Bohórquez, David Garzón Gómez, Alejandro Neisa Fuentes and Juan Nicolás Cortés Galeano, as citizens and legal professionals in the exercise of *pro bono* work, filed an *amicus curiae* brief. For these interveners, the failure to recognise the applicants as internally displaced persons due to a natural disaster is a decision that violates their fundamental rights. The interveners considered that this disregard violates the right to equality, not only because the applicants had to leave their homes as a result of the winter emergency, but also because the situation of helplessness in which they find themselves is similar to that of the victims of forced internal displacement due to the armed conflict.

39. Finally, the interveners requested that the Court grant the amparo and order that the applicants be recognised as forcibly internally displaced persons, that they be provided with a permanent housing solution and that they be granted the same guarantees and humanitarian aid that is granted to those forcibly internally displaced by the armed conflict.

40. On 18 March 2022, Andrés Gascón Cuenca, as Co-Director of the Legal Clinic for Social Justice of the Faculty of Law of the University of Valencia (Spain), submitted an *amicus curiae brief*. The intervener insisted that while violence has been one of the major causes of forced internal displacement in Colombia, natural disasters and other environmental phenomena are increasingly leading to a significant number of people being displaced within the territory. Therefore, he considered that, in this case, the applicants should be granted the status of internally displaced persons and extended the guarantees that the legal system contemplates for those displaced by violence.

41. The intervener also called on the Court to adopt a differential approach in its decision, taking into account that, in the light of the Constitution, the elderly, peasants and women are subjects of special protection. In their regard, it is the State's obligation to adopt positive measures to help them overcome their condition of vulnerability.

42. On 22 March 2022, Juliana Bustamante, Federico Isaza, Sara Méndez Niebles, Shakén Moreno and Yuseli Pineda of the Programme of Action for Equality and Social Inclusion (PAIIS), together with Mauricio Madrigal, Silvia Quintero and Daniel Matteo González, of the Environment and Public Health Legal Clinic (MASP), both clinics part of the Legal Clinic of the Faculty of Law of the University of Los Andes, filed an *amicus curiae* brief. The interveners emphasised the fact that the plaintiffs are peasants and older adults, conditions that make them subjects of special constitutional protection. As such, they considered that the State should take affirmative measures to help the plaintiffs overcome their condition of vulnerability, which is

accentuated by the fact that they are victims of a disaster caused by climate change. From this perspective, they insist that the Court's analysis in this case should favour an intersectional perspective. These citizens warned that climate change is the main threat to the guarantee of human rights.

43. In this specific case, the interveners stated that the issue of climate disasters is currently invisible on the public agenda and that the system of prevention and adaptation to climate disaster risks in national regulations and local plans is weak. In addition, the interveners asked the Court to issue orders that would help to provide public policies and projects on the subject with a cross-cutting approach to human rights and bioculturality.

44. On 24 March 2022, Luis Fernando Sánchez Huertas, Germán Ricardo Reyes, Laura María Carvajal, Laura Sofía Ariza, Sebastián Córdoba Puello and Juliana Patiño Ojeda, from the AGERE Constitutional Law Seminar of the Universidad del Rosario, also filed an *amicus curiae* brief. After reviewing the facts that motivated the tutela action in question, and emphasising the fact that the plaintiffs are persons of special protection, the interveners asserted that the plaintiffs' rights have been violated, namely: first, to equality, because despite being displaced persons, they are being treated differently from those internally displaced by violence. Second, to decent housing, since the permanent risk of the overflowing of the river does not allow this right to materialise in conditions of safety and dignity. Third, to work and food security, as the claimants not only lived on the affected property, but also derived their livelihood from it, through different crops.

45. In addition to the above, AGERE members indicated that there is no clear development on the protection and guarantees for victims of internal displacement due to natural disasters. They stated that the understanding of displaced persons in Colombia, tied exclusively to the armed conflict, is restrictive and lacks guarantees. They then asked that the concept be broadened to understand that the reference to internal displacement can also include causes other than violence, such as natural disasters. In this regard, they recalled that the Deng Principles are part of the constitutional bloc and that they contemplate displacement due to natural disasters.

46. On 31 March 2022, María Lucía Torres Villarreal, Angie Daniela Yepes García, Valeria Maldonado Mejía, Laura Marcela Tabares Urrego and Gabriel Andrés Concha Botero, members of the legal clinic "Grupo de Acciones Públicas (GAP)" of the Universidad del Rosario submitted an *amicus curiae* brief. The members of the GAP indicated that for the analysis of this case it is relevant to take into account judgment T-369 of 2021, issued in the review process of the tutela action brought by William de Jesús Gutiérrez Nohava against Empresas Públicas de Medellín ESP and others, in the context of the social and environmental emergency caused by the overflow of the Cauca River in the municipality of Valdivia (Antioquia). For the interveners, this ruling is relevant, as it addressed the case of persons displaced by natural disasters, and indicated that the Deng Principles, as part of the constitutional block in the broadest sense, are applicable to the Colombian State.

47. On the other hand, the interveners pointed out that, in this case, in accordance with constitutional jurisprudence and the special circumstances surrounding the applicants, the examination of the admissibility of the action

should have been more flexible than that carried out by the judges of first instance. They noted that the fact that the plaintiffs are older adults, peasants and internally displaced persons due to natural disasters, places them in an intersectional situation of vulnerability that the tutela judge should not ignore.

48. In this regard, the members of the GAP emphasised that there were no alternative mechanisms that could adequately and effectively protect the plaintiffs' rights. With regard to the immediacy of the action, they expressed that, on the one hand, the violation of the rights to housing, work and dignified life of the plaintiffs is ongoing and current, as they have not been able to return to their home. On the other hand, the plaintiffs are not seeking compensation for damages, as the judges mistakenly understood. In this case there is a threat to the rights of the plaintiffs, because the rains are periodic and for the months of April and May the winter season resumes.

49. Finally, these interveners affirmed that this case is part of a generalised problem that must be remedied, which consists of the lack of recognition of internally displaced persons due to natural disasters. This situation of displacement generates an imminent threat to the rights to equality, to life, to decent housing and to work of hundreds of people in the country.

50. On 12 October 2022, Mauricio Madrigal, professor at the Universidad de los Andes, submitted an *amicus curiae* brief. In his brief, the intervener offered a conceptual framework of climate mobilities and raised the need to adopt a human rights approach to the phenomenon of climate-induced displacement. In this regard, he stated that it is necessary to restructure the risk management process and to move from a rights-based approach to climate adaptation. In relation to the case that is the subject of the tutela action, Professor Madrigal insisted on the need to recognise the connection between mobility, migration and environmental displacement, and recommended that the Court order the integration of human rights into the legal framework on climate change based on an understanding of environmental migration.

51. On 11 November 2022[4] , the office of the examining magistrate contacted one of the coordinators of the Public Actions Group (GAP) of the Universidad del Rosario, Daniela Yepes, by telephone to inquire about possible changes in the situation of the plaintiffs. The reason why the office contacted this group is because, in the tutela, the only notification information given for the plaintiffs is the GAP's email address. Mrs Yepes reported that the petitioners were not receiving any aid, that they had not returned to their property and that they still live in the urban area of the municipality of Saravena, in the house of one of her sons. She also indicated that she was not aware that any new works had been carried out in the village to prevent further flooding.

2. CONSIDERATIONS

2.1. Competition

52. This Review Chamber of the Constitutional Court is competent to hear the ruling handed down in the tutela action of reference, based on the

[4] File T-8.480.624, Secretarial Report Nov.11 2022

provisions of Articles 86, paragraph 3, and 241, numeral 9, of the Political Constitution, in accordance with Articles 33, 34, 35 and 36 of Decree Law 2591 of 1991.

2.2. Case approach

53. In the case under study, Mr. José Noé Mendoza Bohórquez and Mrs. Ana Librada Niño de Mendoza claimed protection of their fundamental rights to equality, decent housing, work, food, food security, the minimum vital, life, personal security and petition, because, after being affected by floods caused by the overflowing of a river, they were forced to leave the rural property where they lived and carried out agricultural and livestock work, without having received the state assistance that they requested in their condition of forced internally displaced persons due to natural disasters.

54. Consequently, the applicants requested the constitutional judge to order: (i) the UARIV, to recognise them as internally displaced persons due to natural disasters and to make them entitled to the same guarantees and humanitarian aid that is recognised for those forcibly displaced internally due to the armed conflict; (ii) the department of Arauca and the municipality of Saravena to extend to them the programmes and support created for the population victims of forced displacement due to violence; (iii) the DPS, as the entity in charge of combating the poverty of displaced persons, to take the pertinent measures to repair their situation; and, (iv) the National System for the Prevention and Attention to Disasters, to provide them with the corresponding measures of attention that it should have given them after the natural disaster that caused their displacement.

55. In response to the above-mentioned claims, some of the respondent authorities objected and others claimed that they were not the ones called upon to attend to the situation of the claimants. In general, the respondent authorities indicated that any person wishing to receive the assistance provided for victims of forced internal displacement must first complete the registration process in the RUV. In this case, these authorities indicated that the applicants did not prove their status as displaced persons, in accordance with the provisions of Law 1448 of 2021. They also insisted that the existing assistance programmes are aimed only at benefiting those who have been forced to be displaced because of the armed conflict and not for other reasons.

56. The decisions of the constitutional judges of first and second instance were adverse to the interests of the plaintiffs. On both occasions, the judges considered that tutela was not the appropriate legal remedy to seek protection of their fundamental rights, allegedly affected by the deficient institutional response to the overflowing of the Bojabá River. Specifically, they indicated that the petitioners had ordinary means to claim their interests, such as the popular action, the group action or the means of control of direct reparation. Although the judge of first instance decided to protect only the right to petition, the Court revoked the protection of the right to petition and concluded that the tutela was inadmissible as it sought the protection of collective rights and interests that could be claimed through other types of actions.

2.3. Legal problem to be solved

57. In the case under review here, the Court must determine whether the fundamental rights invoked by the applicants were violated by the respondent authorities, by not agreeing to provide them with the measures of care and assistance that they claim as victims of forced displacement due to a natural disaster. As indicated above, the applicants consider that, as displaced persons, they should receive assistance similar to that provided to those internally displaced as a result of the armed conflict.

58. In order to answer this question, this Chamber begins by showing why those who are forcibly displaced by a natural disaster should be considered forcibly internally displaced. As the issue of **forced internal displacement due to disasters, events associated with climate change and environmental degradation (hereafter referred to as displacement due to environmental factors)** has been little conceptualised in our context, before addressing the specific case of the present tutela action, the First Chamber of Review will include several contextual considerations on the matter.

59. First, the Chamber will provide an overview of some of the international instruments and initiatives that seek to respond to forced displacement due to environmental factors. This overview will illustrate the international community's growing concern about this phenomenon and its call for States to prioritise an effective response to it. It is important to note that this is no minor concern. For several years now, the international community has been warning about the impact of climate change and environmental degradation on human mobility[5] . Secondly, the Court will address some of the characteristics of displacement due to environmental factors and the effects it has on the enjoyment of the rights of affected persons. Thirdly, the Court will consider the obligations of the State to address displacement due to environmental factors and, finally, it will analyse the specific case.

2.4. Forced internal displacement due to environmental factors: context and relevant debates.

60. Forced internal displacement is a phenomenon of human mobility that intensely and multidimensionally harms the human rights of people who have been forced to leave their habitual residence without crossing the border of their own country. Forced displacement causes uprooting, removes people from their environment, their property and, in general, their way of life. It is a phenomenon that generates a complex threat to and violation of constitutional rights - not only civil and political rights, but also economic, social and cultural rights - and which requires the deployment of coordinated actions to protect the displaced population from a comprehensive perspective.

61. The problem of forced internal displacement is not new in the country. Colombia is, unfortunately, one of the countries with the highest number of internally displaced people, although the figures that are known are related

[5] In this regard, for example, the IOM noted that in 2022, forced displacement due to natural disasters was 41% higher than in the last ten years. Retrieved from: https://www.iom.int/es/news/de-acuerdo-con-informe-del-idmc-en-2022-hubo-una-cifra-record-de-609-millones-de-desplazamientos-internos.

exclusively to the armed conflict. In fact, as of February 2023, the Single Registry of Victims (RUV) reported a figure of more than 8.4 million people displaced by this cause.

62. Precisely because of the humanitarian tragedy of forced internal displacement due to the armed conflict, in Ruling T-025 of 2004, this Court declared an Unconstitutional State of Affairs (hereinafter, ECI) to insist on the need to provide an effective response to the situation of the internally displaced population. Since then, important changes have occurred, such as the expansion of the State's institutional capacity to respond to the population displaced by the conflict, the increase in the budget for this purpose, the strengthening of regulations with the issuance of Law 1448 of 2011 on Victims and Land Restitution, among other transformations.

63. However, it is necessary to recognise that the armed conflict is not the only cause of internal displacement in the country. There are other phenomena that can lead to people having to leave their place of origin, their homes and territories against their will. An example of this, unfortunately increasingly common, is internal displacement due to environmental factors, including those generated by disasters, the consequences of climate change and environmental degradation. Environmental displacement, like that generated by armed conflict, threatens and compromises the exercise of people's rights in complex ways, and is a situation that must also be addressed promptly by the state. However, little has been said about the phenomenon of displacement due to environmental factors in the Colombian context. Although for some time now the international community has begun to pay attention to forced internal displacement due to environmental causes, including climate change, in domestic legislation, the complexity of the phenomenon has not yet been recognised or developed, a situation that must be transformed. As will be insisted throughout this providence, this is a phenomenon that not only merits priority attention, but also the strengthening of the State's response.

64. Indeed, it should be noted that displacement due to environmental factors, including changes in climate, is becoming increasingly frequent. Some may be associated with sudden phenomena, but others with slowly evolving situations (which some authors have, in fact, conceptualised as "slow violence"), which are not instantaneous or visible, but incremental and cumulative. Climate change, deforestation, ocean acidification and a host of other environmental degradations often develop progressively, even imperceptibly at times, but still end up having devastating consequences for people, especially the most vulnerable[6] .

65. Thus, before deciding the specific case, it is relevant to first address different issues related to the concept of displacement due to environmental factors. To this end, in this decision the Court will begin with a brief account

[6] Nixon; Rob. Slow Violence and the Environmentalism of the Poor. Cambridge, Harvard University Press, 2011. The Platform on Disaster Displacement, which is discussed in ground 37 of this ruling, defines disasters due to environmental factors as "disruptions caused by or linked to natural hydro-meteorological or climatological hazards, including hazards linked to climate change, anthropogenic hazards, as well as geophysical hazards". It defines the concept of "sudden-onset disasters" as those that "include hydrometeorological hazards such as floods, hurricanes or landslides, as well as geophysical hazards such as earthquakes, tsunamis or volcanic eruptions". Finally, it indicates that the concept of "slow onset disasters" refers to "environmental degradation processes such as droughts and desertification, increased salinisation or sea level rise, or the melting of permafrost". See: https://www.refworld.org.es/pdfid/60201b814.pdf, p. 4 and 5.

of the emergence and development of the concept at the international level. This account will help to understand why it is important to recognise, make visible and address this phenomenon as a special category of forced internal displacement.

2.5. International instruments applicable to the phenomenon of environmental internal displacement.

66. As mentioned, forced internal displacement is a serious situation of human mobility that intensely and multidimensionally harms the human rights of those who find themselves in this situation. It is a phenomenon that has attracted the attention of intergovernmental human rights bodies. Although there are no international treaties that directly address the issue of internal displacement, a number of international principles and instruments have been issued that constitute guidelines for the interpretation of States' human rights obligations in the face of this phenomenon.

67. Among others, the Deng Principles of the UN Economic and Social Council[7] stand out. These principles define the rights and guarantees of protection for victims of forced internal displacement, and are a reflection of international human rights law and international humanitarian law[8] . The UN General Assembly has recognised the Deng Principles "as an important international framework for the protection of internally displaced persons"[9] and, because of their integral value as a guiding tool, States and other actors have been encouraged to incorporate them as a standard[10] . In fact, in Colombia, the Deng Principles have been taken up as guiding principles by the Constitutional Court in its jurisprudence on forced internal displacement[11] and as part of the bloc of constitutionality[12] in a broad sense[13] .

68. These principles define IDPs as follows:

> "IDPs are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights **or natural or man-made disasters**, and who have not crossed an internationally recognised state border"[14] (emphasis outside the text).

69. As can be seen, the Deng Principles take into account a number of causes that can lead people to move internally against their will. One of these relates to environmental factors. Although in the 1990s, when the Deng Principles were issued, some states objected to the reference to natural or man-made disasters as a cause of displacement, eventually a majority consensus and the insistence of different sectors made their inclusion possible. This was partly because, at the time, the Intergovernmental Panel on Climate

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[7] COMMISSION ON HUMAN RIGHTS. E/CN.4/1998/53/Add.2, 11 February 1998.
[8] Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1997/39. Introductory note to the Principles, paragraph 9.
[9] United Nations General Assembly. A/RES/60/1, 24 October 2005. Paragraph 132.
[10] United Nations General Assembly. A/RES/58/177, 12 March 2004. Paragraph 7.
[11] See among others: Constitutional Court, judgments T-025 of 2004, T-821 of 2007, C-035 of 2016, C-330 of 2016 and T-369 of 2021. As noted, this jurisprudence focuses primarily on forced internal displacement caused by the armed conflict.
[12]. See, among others, judgments C-280 of 2013, C-327 of 2016 and C-330 of 2016.
[13] Ruling T-369 of 2021, which cites the draft, reiterated that the principles on displaced persons such as Deng and Pinheiro are part of the constitutional bloc in the broad sense and allow legal operators to interpret the content and scope of states' obligations vis-à-vis victims in general.
[14] Section 2, Introduction: Scope and Purpose.

Change[15] was warning that one of the main consequences of severe climate change would be migration[16] and that vulnerable communities in developing countries would be the most affected by this phenomenon.

70. Subsequently, the UN Sub-Commission on the Protection and Promotion of Human Rights adopted the Principles on Housing and Property Restitution for Refugees and Displaced Persons (2005), known as the Pinheiro Principles. According to Principle 1 of this instrument, its principles apply to all displaced persons "regardless of the nature of the displacement or the circumstances that led to it".

71. The Pinheiro Principles focus on safeguarding the right of refugees and IDPs to housing and property restitution and, consequently, promote the search for durable solutions for these population groups. At the time of their issuance, the approach advanced by these principles was novel, as the nature of state intervention had hitherto been focused on emergency humanitarian assistance. The change of focus consisted in giving great weight to the idea that state intervention should consist of actions and processes sustained over time for the reconstruction of the life projects of those who have been victims of displacement[17] .

72. Specifically, the Pinheiro Principles contain a series of provisions based on the assumption that in order for displaced persons to be able to return to their previous situation, it is necessary, among many other actions, to guarantee their rights to property, possession and reparation. Based on this premise, these principles provide for the existence of the right of victims to the restitution of all property dispossessed, unless this is factually impossible, in which case fair compensation should be provided.

73. Like the Deng Principles, the Pinheiro Principles accept that forced displacement can occur for reasons associated with the environment. They should therefore be used as a benchmark and guide to prevent the phenomenon, care for those who are displaced for such reasons and ensure durable solutions for them.

74. However, as the former UN rapporteur noted in her 2020 thematic report on displacement "in the context of the adverse effects of slow-onset climate change"[18] , there are other international instruments that are also applicable to responding to environmental internal displacement.

75. The first group is made up of the extensive catalogue of international instruments that form part of **international human rights law**. These instruments contain commitments and obligations on the part of states which,

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[15] "The Intergovernmental Panel on Climate Change (IPCC) is the leading international body for the assessment of climate change. It was established by the United Nations Environment Programme (UNEP) and the World Meteorological Organization (WMO) in 1988 to provide the world with a clear scientific view of the current state of knowledge on climate change and its potential environmental and socio-economic impacts". See: *IPCC - Intergovernmental Panel on Climate Change*.

[16] Supreme Court of Justice of Mexico, United Nations High Commissioner for Refugees (UNHCR), International Committee of the Red Cross (ICRC), Escuela Federal de Formación Judicial (2022). *Manual on Internal Displacement*. P.55.

[17] United Nations (2007). Handbook on Housing and Property Restitution for Refugees and Displaced Persons. Santiago de Chile: OCHA/DIDI, UN HABITAT, UNHCR, FAO, OHCHR and CNR.

[18] UN General Assembly, Report of the Special Rapporteur on the human rights of internally displaced persons, Cecilia Jiménez-Damary. Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/189/88/PDF/N2018988.pdf?OpenElement

although not expressly mentioned, serve to respond to situations of displacement due to environmental factors. These include instruments such as the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the American Convention on Human Rights (1969) and the African Charter on Human and Peoples' Rights (1981).

76. A second field of international law in which there are duties and obligations applicable to the situation of displacement due to environmental factors is that of **international environmental law**, in which a specific branch related to climate change is particularly relevant. In this field, the 1992 United Nations Framework Convention on Climate Change (UNFCCC), ratified by Colombia in 1994, stands out[19] . In it, the States Parties committed themselves to stabilising greenhouse gas concentrations in the atmosphere and, for the first time, binding commitments were established for the States in relation to climate change. Although the commitments focused mainly on mitigation of the phenomenon (i.e. reduction of greenhouse gases), they also included commitments related to adaptation. For example, Article 4(e)(1) of the UNFCCC states that states shall cooperate in preparing for adaptation to the impacts of climate change and shall develop plans to manage, protect and rehabilitate certain areas that may be affected by drought and desertification, as well as floods.

77. Following the UNFCCC, the Kyoto Protocol (1997) was adopted, which operationalised the Convention and established concrete commitments and binding individual targets to limit and reduce greenhouse gas emissions by industrialised countries. The instrument also created an adaptation fund with the objective of financing projects and programmes to reduce the adverse effects of climate change in developing countries. This protocol was approved in the country through Law 629 of 2000.

78. While the UNFCCC and the 1997 Kyoto Protocol[20] made no specific reference to the effects of climate change on human mobility, the Cancun Adaptation Framework[21] was adopted in 2010, which makes a specific reference to the phenomenon. In this instrument, the Conference of the Parties to the UNFCCC recognised the importance of taking action on climate change-induced displacement, migration and planned relocation of human groups, and called on states to take measures to manage such migration. Specifically, it invited parties to intensify adaptation responses and to take steps to improve understanding, coordination and cooperation "on climate change-induced displacement, migration and planned relocation, where appropriate, at national, regional and international levels"[22] .

79. For its part, the Paris Agreement, signed in 2015, although it did not make explicit reference to human mobility as a consequence of climate change, did include several provisions that oblige states parties to respond

[19] Approved by Colombia through Law 164 of 1994.
[20] Approved by Colombia through Law 629 of 2000.
[21] The Cancun Adaptation Framework is part of the Cancun Agreements reached by the States Parties to the UNFCCC in 2010. See: FCCC/CP/2010/7/Add.1, available at: https://unfccc.int/resource/docs/2010/cop16/spa/07a01s.pdf
[22] FCCC/CP/2010/7/Add.1, p. 5.

effectively to the phenomenon. Thus, for example, in its article 4, the Agreement establishes the areas in which States must act cooperatively to implement measures to combat the effects of climate change. Among other issues, the Agreement refers to: (i) early warning systems; (ii) emergency preparedness; (iii) slow onset events and events that may cause permanent and irreversible loss and damage; and (iv) comprehensive risk assessment and management. This article of the Agreement further establishes that States have a duty to enhance cooperation to strengthen measures and support in respect of loss and damage related to the adverse effects of climate change.

80. A third group of international instruments containing provisions applicable to human displacement associated with environmental factors is related to Disaster Risk Management (hereinafter DRM). Within this group, the Hyogo Framework for Action 2005-2015, adopted in 2005 by the World Conference on Disaster Reduction, stands out. The general objective of this framework was the reduction of natural disaster risks by States and communities, in order to achieve a significant reduction in human, economic and environmental losses. This mechanism established that States should prioritise some actions against climate change, such as, for example, having a proper diagnosis of the situation and strengthening governance to improve disaster risk management.

81. In 2015, the Hyogo Framework was replaced by the Sendai Framework for Action 2015-2030, adopted by the United Nations General Assembly in June 2015[23] , at the Third World Conference on Disaster Risk Reduction. This new framework was issued under the wake-up call that disasters continue to affect the well-being and safety of people around the world. Among other things, the document highlighted that "between 2008 and 2012, 144 million people were displaced by disasters" and that many of these phenomena "are increasing in frequency and intensity"[24] . Thus, the framework states that:

> "it is urgent and essential to anticipate, plan for and reduce disaster risk in order to more effectively protect people, communities and countries, their livelihoods, health, cultural heritage, socio-economic assets and ecosystems, thereby strengthening their resilience"[25] .

82. In light of this vision, the Sendai Framework updated the commitments adopted in Hyogo, with the aim of strengthening the strategies advanced so far. In particular, it emphasised prevention and a vision centred on the inclusion of people's fundamental rights. Thus, the Sendai Framework became a new roadmap for disaster risk prevention, reduction and management and for ensuring the participation of communities in climate change adaptability decisions.[26] This document introduced the concept of "building back better", which aims for States Parties to adopt preparedness and contingency measures for disaster events, ensuring the participation of all affected sectors and actors[27] .

83. Complementarily, in October 2015, 109 governments, including Colombia, endorsed the 'Platform on Disaster Displacement', linked to the Sendai Framework for Action. This platform is the result of a broad

[23] Sendai Framework for Disaster Risk Reduction 2015-2030. Doc. A/RES/69/283.
[24] Ibid, paragraph 4.
[25] Ibid, preambular paragraph 5.
[26] The Court has previously made mention of this instrument in Judgment T-333 of 2022.
[27] Third UN World Conference, Sendai Framework, paragraph 33, p. 21.

consultative process, promoted by the Nansen Initiative[28] , which sought to support states and other stakeholders in their efforts to improve their preparedness and response capacity to address disaster displacement. Among other considerations, the Platform suggests measures to prevent the risk of disaster displacement and provides examples of effective practices that states and other relevant actors could use in the event of displacement. [29]

2.6. Other efforts at the international level to address environmental displacement.

84. In addition to the international instruments mentioned above, there have also been other efforts in the international community to draw attention to and provide frameworks for action to address environmentally induced displacement.

85. One of the earliest efforts is the report submitted in 2010 by the then UN Rapporteur on the Human Rights of Internally Displaced Persons, Walter Kälin[30] . In that report he drew attention to the growing dynamics of displacement due to environmental factors, and some of the challenges he was observing at the time in relation to assisting displaced populations around the world. Among other aspects, the rapporteur insisted that "year after year, more people are displaced by natural disasters and development projects than those fleeing conflict and violence"[31] . In a similar vein, he warned that the effects of climate change would lead to a further increase in the number of people displaced by disasters, which he estimated at between 50 and 250 million people, the majority of whom would be internally displaced.

86. In this landmark report, the UN representative called on states to pay attention to the multiple human rights problems generated by environmental displacement, which are exacerbated by inadequate policies, lack of capacity to respond adequately to disaster and problems in reconstruction. He therefore insisted on a **human rights-based approach to the problem, covering early warning, planning, prevention and efforts to find durable solutions to the situation of the displaced**[32] . This, according to the then Rapporteur, would require: (i) a strong normative framework for the protection and assistance of IDPs; (ii) the political will to fully implement this framework; (iii) the existence at all levels - international, regional, national and local - of the necessary means to do so; and (iv) the capacity to react promptly to emerging problems.

87. Since then, other UN rapporteurs on the human rights of IDPs have issued reports addressing the issue of displacement due to environmental

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[28] The Nansen Initiative is an initiative funded primarily by the governments of Norway and Switzerland. This initiative promotes "bottom-up, state-led consultative processes aimed at identifying effective practices and building consensus on key principles and elements for responding to the protection and assistance needs of people displaced across borders in the context of disasters, including the adverse effects of climate change". See in: Agenda for the Protection of Persons Displaced Across Borders in the Context of Disasters and Climate Change. Available at: https://disasterdisplacement.org/wp-content/uploads/2017/08/16062016_ES_Protection_Agenda_V1.pdf

[29] United Nations High Commissioner for Refugees (UNHCR). Addressing the protection needs of people displaced across borders in the context of disasters and climate change, 31 May 2017. Available at: https://www.refworld.org.es/docid/5d7fd15c5.html

[30] U.N. Doc. A/HRC/13/21, 5 January 2010. Final report of the UN Special Rapporteur on the human rights of internally displaced persons, Walter Kalin. Available at: https://www.acnur.org/fileadmin/Documentos/BDL/2010/7662.pdf?view=1

[31] Ibid.

[32] Ibid.

factors. For example, the report of former Rapporteur Cecilia Jiménez-Damary, who investigated displacement in the context of the adverse effects of slow-onset climate change[33] or the report of former Rapporteur Chaloka Beyani on the human rights of internally displaced persons[34] .

88. Related to other international efforts to raise the visibility of environmental displacement and suggest frameworks for effective responses are the Peninsula Principles on Climate Displacement[35] , promoted by a group of academics, lawyers and experts in international law, human rights, refugee rights and displacement. This is a policy document that seeks to provide a comprehensive framework for states to comprehensively address the rights of people displaced by climate-related displacement. These stipulate fundamental principles that states should take into account in implementing measures against climate change displacement. They (i) invite States to prioritise their national adaptation processes and guarantee the right of communities to remain in their territories; (ii) establish the importance of the informed consent of communities in any relocation process; (iii) provide that States must ensure the full rights of communities once they have been relocated; (iv) indicate that states must make provisions for future resettlement plans; (v) establish that states must provide sufficient humanitarian assistance and ensure family unity; and (vi) indicate that states must ensure the voluntary return of community members who so wish.

89. On the other hand, in 2018, several States signed the so-called "Global Compact for Safe, Orderly and Regular Migration", embodied in UN Resolution 73/195[36] , which establishes a framework for cooperation to deploy an adequate response to contexts of migratory movements. This Resolution recognised that sudden and slow-onset natural disasters, the adverse effects of climate change and environmental degradation are determining factors that need to be taken into account in policies on displacement[37] . The Global Compact can be seen as a guide for states to comply with their human rights obligations when designing migration governance measures. This mechanism aims to reduce the risks faced by migrants and to address the situations of vulnerability in which migrants find themselves. Some of the commitments set out in the Compact include: (i) strengthening evidence-based policy making; (ii) minimising migration-related factors such as poverty and discrimination; and (iii) addressing climate-related displacement and disasters.

90. In a similar vein, in 2021, the International Organization for Migration (IOM) published the "Corporate Strategy on Migration, Environment and Climate Change 2021-2030"[38] , in which the organisation set as one of its

[33] UN General Assembly, Report of the Special Rapporteur on the human rights of internally displaced persons, Cecilia Jiménez-Damary on internal displacement in the context of the adverse effects of slow onset climate change. A/75/207, 20 July 2020, A/75/207. Available at: https://www.refworld.org.es/docid/60d262794.html

[34] UN General Assembly, Report of the Special Rapporteur on the human rights of internally displaced persons, Mr Chaloka Beyani. Available at: https://www.acnur.org/fileadmin/Documentos/BDL/2014/9654.pdf.

[35] The Peninsula Principles on Climate Displacement within States. Available at: https://reliefweb.int/report/world/peninsula-principles-climate-displacement-within-states-2013

[36] United Nations General Assembly. A/RES/73/195, 11 January 2019.

[37] Ibid.

[38] International Organization for Migration (IOM). Institutional Strategy on Migration, Environment and Climate Change 2021-2030. Promoting a comprehensive, rights- and evidence-based approach to address migration in the context of environmental degradation, climate change and disasters, for the benefit of migrants and societies. IOM, Geneva. Available at: https://environmentalmigration.iom.int/iom-strategy-migration-environment-and-climate-change-2021-2030.

main commitments the adoption of a human rights approach to addressing climate-induced migration.

91. Finally, in order to illustrate developments at the international level, the formation of a high-level panel on forced internal displacement, which reported in September 2021, should also be highlighted[39] . The report states that "[d]isasters and the adverse effects of climate change are also important drivers and are responsible for the majority of new internal displacement each year"[40] . The report also warns that the global climate crisis will also have implications for the dramatic increase in internal displacement in the coming decades and that the phenomenon is expected to affect the poorest countries and most vulnerable populations the most[41] .

92. The report insists that such displacement is not merely a humanitarian crisis, but is directly linked to broader governance, development, human rights and peace challenges. In this regard, the high-level panel recommends that: (i) states strengthen political will, capacity and government action to address this phenomenon; (ii) better harness the capacities of the private sector; and (iii) strengthen the quality of protection and assistance to IDPs and host communities.

93. In summary, it can be seen that for several years the international community has warned of the importance of addressing the issue of internal displacement due to environmental factors and, over time, has developed instruments and recommendations for decisive action by states. It has also offered frameworks for action to address displacement due to environmental causes, including factors associated with climate change. These proposals, as illustrated above, are intended to address the phenomenon of environmental displacement from a human rights-based approach to propose durable solutions for those affected.

94. Later on, this ruling will delve into some of the State's obligations in this area and recommendations for action derived from the above-mentioned international instruments. For now, the Court will focus on the characteristics of forced internal displacement due to environmental factors.

2.7. Characteristics of internal displacement due to disasters, the adverse effects of climate change and environmental degradation.

95. When we speak of forced internal displacement, we refer to a situation in which different circumstances concur: (i) the person or group of persons flees or escapes from their home or place of habitual residence; (ii) such flight is forced, not voluntary, that is, it is pressured by circumstances; (iii) the person who is displaced does not cross the state border of their country, but moves within it; and (iv) as has been insisted in this ruling, it is a phenomenon that may be due to different causes, beyond those associated with the armed conflict.

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[39] United Nations, (2021), A Focus on Internal Displacement: The Way Forward. Report of the UN Secretary-General's High-Level Panel on Internal Displacement. Available at: https://www.refworld.org.es/docid/61f8c2df4.html.

[40] Ibid.

[41] In addition to the above, a growing body of litigation is also beginning to emerge at the global level. While most cases deal with climate change in general, some tribunals have recently taken up cases related to human mobility caused by environmental factors. In this regard see the cases: Ioane Teitiota v. New Zealand and Daniel Billy et al v. Australia.

96. However, in addition to these characteristics, as will be described below, forced displacement due to environmental factors has some particularities that distinguish it from other types of human mobility and which should be noted in order for the State to be able to provide an effective response to this phenomenon. Some of the relevant particularities are outlined below.

2.7.1. The multi-causal and complex connotation of forced displacement due to environmental factors.

97. The first point to note is that environmentally induced forced displacement can be caused by a multiplicity of factors. While, when the Deng Principles were issued, only "natural or man-made disasters" were identified as a cause[42] , it is now understood that environmentally induced mobility is a more complex phenomenon than the above-mentioned expressions seem to denote. As some authors have pointed out, it would be wrong and limited to assume that 'natural' is something that happens independently of humans, as well as to assume that environmental displacement is always caused by sudden and immediate disasters, without taking into account that environmental displacement is often caused by environmental degradation factors that occur progressively and develop over time[43] .

98. In other words, it is important to note that such mobilisation can be triggered by a variety of phenomena. For example, environmentally induced displacement may respond to disasters, the adverse effects of climate change or environmental degradation[44] . Environmental forced displacement can be triggered by sudden-onset causes - such as earthquakes, landslides or floods - or by slow-onset situations such as desertification processes, sea-level rise or progressive environmental degradation[45] . As the IOM rightly points out: "[m]igration in the context of climate change and environmental degradation is often multi-causal and most people migrate due to a combination of social, political, economic, environmental and demographic factors"[46] .

99. Thus, for example, unlike in some displacements where it is possible to determine precisely the cause of displacement, in displacements caused by environmental factors it is not always easy to pinpoint the exact reason why a person leaves his or her home and life project. It is therefore **necessary to emphasise the need to recognise the multi-causal nature that environmental displacement can have.**

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[42] Point 2, Introduction, Deng Principles (1998).

[43] Sánchez Mójica, B. E., & Rubiano Galvis, S. (2017). *Territorios en transformación, derechos en movimiento: Cambio ambiental y movilidad humana en Colombia*. Ediciones Uniandes. Pág.16

[44] A very topical discussion is that of not seeing internal displacement due to environmental factors as exclusively caused by climate change. As Professor Sergio Salinas Alcega points out: "climate displaced persons would constitute a subcategory of environmentally displaced persons, so restricting the application of the protection regime would imply leaving out, and so far depriving of protection, all persons who are displaced by environmental conditions that cannot be shown to be a direct result of climate change". In: SALINAS ALCEGA, Sergio (2020). *Desplazamiento ambiental y Derecho Internacional. Consideraciones en torno a la necesidad de un marco regulatorio no exclusivo*. Tirant lo Blanch in Antonio Blanc Altemir, Desplazamiento Medioambiental y Derecho Internacional. Consideraciones en Torno a la Necesidad de un Marco Regulatorio no Exclusivo, 37 Anuario Español de Derecho Internacional 530 (2021).

[45] SÁNCHEZ MÓJICA, B. E., & RUBIANO GALVIS, S. (2017). *Territorios en transformación, derechos en movimiento: Cambio ambiental y movilidad humana en Colombia*. Ediciones Uniandes. Page 13

[46] IOM (2021), Corporate Strategy on Migration, Environment and Climate Change2021-2030.

100. This also leads to a clarification of the forced nature of this type of displacement. As mentioned, forced displacement is a connatural characteristic of the category of internal displacement referred to in the Deng Principles. The fact that it is a form of mobility that is forced implies that there is no voluntariness in the move. Generally, the characteristic of forced displacement is determined by the need to leave one's place of residence in the face of an imminent event; however, in the case of displacement due to environmental factors, this forced character is not so easy to identify, or at least not through a single event[47] . As the former Special Rapporteur on the Human Rights of Displaced Persons argued when referring to internal displacement in the context of the adverse effects of slow-onset climate change:

> "[i]n most cases, movement is not entirely voluntary or forced, but somewhere in between, with varying degrees of voluntariness and compulsion"[48] .

101. With this expression, the Rapporteur wanted to show that the adverse effects of climate change are not always seen from one day to the next, but gradually leave their aftermath until they become a disaster or generate a determining event that forces people to mobilise. This means that forced displacement is sometimes the final consequence after a series of progressively unfolding scenarios, in which not all people have the same capacity to adapt.

102. For example, rising temperatures can decrease the availability of vital resources such as water or food and affect activities such as fishing or agriculture. Thus, when resources are scarce for survival, people are forced to mobilise. This does not necessarily happen overnight and through an event in which a single displacement-generating event can easily be located. People may even mobilise before a disaster occurs, as a precaution. Indeed, this is how the Deng Principles themselves understand it when they note that forced displacement may occur as a result of the event or to avoid its effects, i.e. as a preventive and protective measure in the face of an unfolding or foreseeable event.

103. In summary, what is important to highlight here is that **the forced nature of displacement due to environmental factors is not always the result of an event that occurs at the same time or that is clearly identified as a single event**. Hence, a central premise in responding to this type of displacement is that in the current context, where the effects of climate change, which in turn increase the risks of environmental disasters, are already palpable, a broad and comprehensive view of forced displacement must be taken into account. This broad view should include cases in which people make the decision to migrate because the environmental conditions of their surroundings do not guarantee them a means of subsistence and a dignified life. Sometimes this decision may appear to be voluntary, but in any case, it is not a decision that is taken freely because the person's livelihood is at stake.

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[47] ELIZABETH FERRIS, Protection and Planned Relocations in the Context of Climate Change, in: *Protection and Planned Relocations in the Context of Climate Change* (UN High Commissioner for Refugees UNHCR, Switzerland, 2012). Available at: http://www.refworld.org/docid/5023774e2.html

[48] Doc. A/75/207, 21 July 2020. Report of the Special Rapporteur on the human rights of internally displaced persons, Cecilia Jimenez-Damary Available at: N2018988.pdf (un.org), para 12.

2.7.2. Temporality and internal character

104. However, two other relevant characteristics of this type of displacement are related to its temporality and its internal character. In terms of the former, **factor displacements can be temporary or permanent.**

105. Mobilisations that occur on a limited basis, while the crisis passes, will be temporary. This may occur, for example, when there is a flood, drought or land displacement. In such events, it is possible that the people who have been displaced may eventually be able to return to where they used to live. Conversely, displacement will be permanent if the adverse effect becomes permanent and makes return impossible[49] .

106. The internal character of displacement, on the other hand, refers to the fact that **displacement occurs within the borders of a given country**. In this regard, as indicated above, the Deng principles establish that IDPs are those persons who have been forced or obliged to flee or leave their homes or places of habitual residence without crossing an international border, in particular when this is due to the effects of armed conflict, a generalised situation of violence, violations of human rights, or natural or human-made disasters[50] ....

2.7.3. The greatest impact on the most vulnerable

107. Finally, in this characterisation of environmentally induced displacement, **one of the great complexities of the phenomenon is that it mainly affects the most vulnerable**. Those who are less vulnerable often manage to adapt and mitigate the adverse effects of climate change or environmental degradation, either by remaining in their homes or by making the decision to move before the situation becomes more difficult or turns into a disaster that leads to forced displacement. Meanwhile, the most vulnerable people tend to have the least adaptive capacity, suffering the greatest adverse consequences to their rights to the point where they no longer have any other option but displacement. For them, their options of where to go are often limited or non-existent.

108. On this point, the report of the Second Working Group for the Sixth Assessment Report of the Intergovernmental Panel on Climate Change in 2022 illustrated, through the example of the African continent, how the most vulnerable and poorest people lack opportunities to move and adapt in order to maintain an acceptable standard of living. Among other things, the report illustrated that the most vulnerable are not only negatively affected by economic circumstances but also by other factors such as political marginalisation, land privatisation, decentralisation policies and investment projects for plantations[51] .

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[49] Doc. A/75/207, 21 July 2020. *Final report of the UN Special Rapporteur on the human rights of internally displaced persons, Cecilia Jiménez-Damary*. Available at: N2018988.pdf (un.org), 12-19.
[50] UN Commission on Human Rights, Guiding Principles on Internal Displacement. E/CN.4/1998/53/Add.2, 11 February 1998. Available at: https://www.refworld.org.es/docid/5d7fbce6a.html.
[51] IPCC, 2022: Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [H.-O. Pörtner, D.C. Roberts, M. Tignor, E.S. Poloczanska, K. Mintenbeck, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem, B. Rama (eds.)]. Cambridge University Press. Cambridge University Press, Cambridge, UK and New York, NY, USA, 2022, p. 1192.

109. The same trend can be observed in the Colombian context. For example, the Ideam, in the Third National Communication on Climate Change[52] , showed that there is an important difference in adaptation to climate change between municipalities and departments, depending on their resources. For example, departments such as Cundinamarca and Antioquia have a greater capacity to adapt to climate change than Chocó or the island of San Andrés. While the former have more favourable conditions to cope with the effects of environmental variations, the latter, in addition to a greater propensity to be negatively affected by climate-related events, have less capacity to respond due to a lack of resources, including infrastructure and institutional means for prevention[53] .

110. In addition, it is important to note how environmental displacement impacts communities whose identity and subsistence are closely linked to land and natural resources. This Court, for example, has shown how indigenous and Afro-descendant peoples suffer more strongly from the deterioration of the ecosystem, insofar as "they have a special vulnerability to environmental degradation due to their spiritual and cultural relationship with their territories and their economic dependence on natural resources"[54] . It has also noted how the effects on ecosystems also have a notable impact on the peasant population due to their special connection with the territory. In fact, Legislative Act 01 of 2023, which recognised peasants as subjects of rights and holders of special constitutional protection, highlighted that peasants have a particular relationship with the land based on "food production as a guarantee of food sovereignty, their forms of peasant territoriality, geographical, demographic, organisational and cultural conditions that distinguish them from other social groups"[55] . The Constitutional Court also recognised the strong link that peasants have with the territory and pointed out that the relationship between peasants and land goes beyond the strictly economic sphere, as it has a series of cultural, social and economic meanings[56] .

111. Environmental displacement therefore significantly affects vulnerable populations, including those whose social fabric and cultural identity are closely linked to the territory. These communities are particularly vulnerable to environmental impacts, as several dimensions of their lives may be altered by these changes in their environment.

2.8. Effects of displacement due to environmental factors.

112. Although the phenomenon of displacement due to environmental factors has been little studied in our country, it is safe to say that those displaced by this cause, as well as those displaced by the armed conflict, tend to see the effective enjoyment of their rights compromised in a very profound way.

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[52] Institute of Hydrology, Meteorology and Environmental Studies - IDEAM. (2017b). Analysis of vulnerability and risk due to climate change in Colombia. Third National Communication on Climate Change. Available at: https://www4.unfccc.int/sites/SubmissionsStaging/NationalReports/Documents/4617350_Colombia-NC3-1-RESUMEN%20EJECUTIVO%20TCNCC%20COLOMBIA%20A%20LA%20CMNUCC%202017.pdf

[53] In this regard, it is interesting to note that the Court has already ruled on the concept of environmental justice, by virtue of which environmental burdens and policies must be applied to all people in the territory, regardless of their socio-economic situation. This postulate seeks to eliminate the discrimination suffered by some communities. On the concept of environmental justice, see, for example, judgment T-021 of 2019.

[54] Sentence T-021 of 2019.

[55] Legislative Act 01 of 2023.

[56] Sentence C-300 of 2021.

113. The jurisprudence of the Constitutional Court, although mainly in the context of the armed conflict, has recognised the impact of displacement on people's human rights. In Ruling T-025 of 2004, which declared the ICS in relation to the rights of the internally displaced population due to the armed conflict, it illustrated that, among the fundamental constitutional rights that are threatened or violated by situations of forced displacement, are the following: (i) the right to life in conditions of dignity[57] ; (ii) the right of persons to choose their place of residence[58] ; (iii) the rights to free development of personality, freedom of expression and association[59] ; (iv) economic, social and cultural rights, including the rights to health, education, decent housing and food security[60] ; (v) the right to family unity and integral protection of the family[61] ; (vi) the right to personal integrity[62] ; (vii) the right to personal security[63] ; (viii) the rights to freedom of movement within the national territory and to remain in the place chosen to live[64] ; (ix) the right to work and the freedom to choose a profession or trade[65] ; (x) the right to legal personality[66] ; and the right to equality and non-discrimination[67] . The Court also emphasised the fact that children and adolescents, women, older persons, persons with disabilities and ethnic groups have greater and differential impacts that need to be noticed and addressed.

114. Although there has not yet been a jurisprudential development comparable to that of the phenomenon of internal displacement due to the armed conflict, there are some decisions of this body that involve people who have had to move due to natural disasters and in which the Court has verified their situation of vulnerability. Although these cases did not explicitly refer to displacement for environmental reasons, they did indicate that victims of natural disasters are subjects of special constitutional protection because they are in a situation of manifest weakness. Thus, for example, in judgment T-530 of 2011, the Court resolved the case of a family that was displaced by a

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[57] According to this judgement, the risk of violation of this right for the displaced population arises from the subhuman circumstances associated with mobilisation and their stay in the provisional place of arrival and the frequent risks that directly threaten their survival.

[58] Meanwhile, people are forced to flee their usual place of residence and work.

[59] According to what was stated in Judgement T-025/04, this occurs *"given the intimidating environment that precedes the displacements"* and the consequences that such migrations have on the materialisation of the life projects of those affected, who must necessarily adapt to their new circumstances of dispossession.

[60]The judgment illustrates that the displaced population has much higher levels of poverty than the average Colombian population. It also indicates that the displaced population: (i) face greater risks to their health due to the difficult living conditions in which they find themselves; (ii) their right to minimum food is unsatisfied, among other reasons due to the very high levels of poverty they face; (iii) especially minors, see their educational processes interrupted; (iv) are not guaranteed the right to decent housing, having to abandon their own places of habitation and often being subjected to inappropriate housing conditions. In addition, displaced persons face many more barriers in accessing health services, education, food security, among other economic, social and cultural rights.

[61] In many cases, displacement involves the dispersal of affected families.

[62] That, as stated in Ruling T-025/04, it is threatened "both by the risks to the health of displaced persons and by the high risk of attacks to which they are exposed due to their very condition of dispossession".

[63] Displacement "entails specific, individualisable, concrete, present, significant, serious, clear and discernible, exceptional and disproportionate risks to a number of fundamental rights of those affected".

[64] This is because the very nature of forced displacement presupposes the non-voluntary nature of migration.

[65] In Ruling T-025, the Court particularly highlighted the case of farmers who are forced to migrate to the cities and, consequently, abandon their usual activities. However, in different rulings following up on this decision, the Court has illustrated how one of the most compromised rights of the displaced population in Colombia has to do with their possibilities of accessing work and generating income.

[66] The aforementioned judgement illustrates that, due to displacement, identity documents are frequently lost, which makes it difficult to register as displaced persons and to access the various forms of assistance.

[67] As indicated in Ruling T-025, the situation of the displaced population compared to the other inhabitants of the territory illustrates that the former are exposed to greater human rights violations. Furthermore, as is clear in the Court's follow-up to this decision, IDPs report that one of the greatest problems they face is discrimination.

landslide caused by the phenomenon of "La Niña" in 2010. In this decision, the Court established that the family was in conditions of manifest weakness having been the victim of a natural disaster and ordered the municipality to relocate the applicants.

115. In a similar vein, in judgments T-295 of 2013 and T-355 of 2013, the Court analysed the situation of people who were affected by the winter and the floods caused by the rain. In both decisions, it ordered the municipal authorities to grant economic benefits to the plaintiffs in order to guarantee their right to decent housing. In particular, in Ruling T-295 of 2013, the Court noted that the principle of solidarity is particularly important for people affected by natural disasters, as they "are often left in conditions of extreme hardship due to the loss or destruction of their means of subsistence, their belongings and their own homes"[68] .

116. Finally, in judgment T-369 of 2021, the Court ruled on a tutela action in which the plaintiff had to evacuate his home due to the rising Cauca River and requested that the respondent entity reactivate the humanitarian aid that had been suspended. In that judgment, the Court mentioned that the victims of natural disasters are subjects of special constitutional protection as they are in a situation of manifest weakness. Based on a reading of the Deng principles and the regulations in force, the Court established that the authorities must adequately guarantee the rights of the victims:

> "(i) provide protection against displacement (prevention phase); (ii) ensure an adequate standard of living in terms of at least the basic components of essential food and potable water, shelter and basic shelter, clothing, medical and sanitation services, and others that respond to the needs of the displaced (protection and humanitarian assistance during displacement phase) and (iii) ensure safe and dignified voluntary return or resettlement, and provide assistance until such time as the returnee or resettled persons recover to the extent possible what they were dispossessed of. If such recovery is not feasible, adequate compensation or reparation (durable solutions phase) shall be provided"[69] .

117. In summary, this Corporation has emphasised the rights of the displaced population, and some decisions show that the issue of displacement due to environmental factors has not only not been alien to it, but has led the Corporation to recognise that those who are forced to move due to disasters, factors associated with climate change and environmental degradation, are in a situation of vulnerability and require special protection from the State.

2.9. The correlative obligations on the State.

118. However, as a consequence of the seriousness and multidimensional effect of the effects of forced displacement, the state has special duties to fulfil. In the Colombian case, these responsibilities have been principally recognised and developed by the legal system in the case of displacement due to the armed conflict, within the framework of the general obligation of the State to protect and guarantee the fundamental rights recognised in the Constitution (arts. 2 and 5 of the Constitution). However, many of these obligations are also applicable to the effects of forced internal displacement due to other causes.

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[68] Judgment T-295 of 2013
[69] Sentence T 369 of 2021.

119. Regarding the obligations of the State in the area of forced internal displacement, this Court has indicated that the State has a constitutional obligation to prevent it in order to guarantee the rights of the population, including the rights to life, liberty and integrity[70] . Likewise, the State has the duty to: (i) keep a registry of those who have suffered displacement[71] ; (ii) provide humanitarian assistance to displaced persons to guarantee their right to the minimum vital right[72] ; and (iii) guarantee the right to voluntary, safe, dignified and sustainable return or relocation aimed at their socio-economic stabilisation[73] . In any case, measures of prevention and attention to displaced persons must take into account the special risks and vulnerabilities of subjects of special constitutional protection, such as women[74] ; children and adolescents[75] , persons with disabilities[76] and indigenous ethnic communities[77] and Afro-descendants[78] .

120. In addition to the above, and taking into account the specificities of displacement due to environmental factors, it is necessary to identify the particular obligations of the State in relation to this phenomenon, derived from constitutional and international norms for the protection of human rights, environmental and climate change law, and regulations on disaster relief. As will be detailed below, this legislation contains specific obligations: (i) for prevention and adaptation, (ii) during displacement, and (iii) post-displacement.

2.9.1. Preventive and adaptive obligations that are triggered prior to displacement

121. Articles 2 and 5 of the Political Constitution establish that the authorities of the Republic are instituted to recognise the inalienable rights and protect all persons residing in Colombia, in their life, honour, property, beliefs, and other rights and liberties. This duty of protection has been materialised at the legal level, in regulations such as Decree 93 of 1998, "[p]whereby the National Plan for Disaster Prevention and Attention is adopted"[79] and Law 1523 of 2012, "[p]whereby the national policy for disaster risk management is adopted and the National System for Disaster Risk Management is established and other provisions are enacted"[80] .

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[70] Ruling T-025 of 2004, orders 008 and 267 of 2009, 200 of 2007, 219 of 2011, 098 of 2012, 321 of 2015 and 894 of 2022.
[71] Judgments T-227 of 1997, T-268 of 2003, T-327 of 2001, T-268 of 2003, T-025 of 2004, T-563 of 2005, T-439, T-599 of 2008, T-1346 of 2001, T-1094 of 2004, T-770 of 2004, T-1076 of 2005, T-496 of 2007, T-787 of 2008 and T-042 of 2009, T-1095 and T-647 of 2008, T-175 of 2005, T-746 and T-169 of 2010, T-473 of 2010, T-458 of 2008, T-265 of 2010, T-821 of 2007, SU-1150 of 2001, C-372 of 2009, orders 008 of 2009, 219 of 2011, 173 of 2012, 119 of 2013, 173 of 2016 and 266 of 2022.
[72] Rulings T-462 of 1992, T-025 of 2004, orders 099 of 2013, 373 of 2016 and 331 of 2019.
[73] Ruling T-025 of 2004, orders 008 of 2009, 383 of 2010, 219 of 2011, 201, 202, 253 and 394 of 2015 and 373 of 2016.
[74] Judgment T-025 of 2004, orders 092 of 2008, 098 of 2013 and 737 of 2017.
[75] Sentence T-025 of 2004, order 251 of 2008, 333 of 2015 and 765 of 2018.
[76] Sentence T-025 of 2004, order 006 of 2009 and 173 of 2014.
[77] Sentence T-025 of 2004, order 004 of 2009 and 266 of 2017.
[78] Sentence T-025 of 2004, order 005 of 2009 and 266 of 2017.
[79] For example, Article 3 of the Decree states that the Plan seeks: (i) risk reduction and disaster prevention; (ii) effective disaster response; and (iii) rapid recovery of affected areas.
[80] For example, Article 6 of this law states that one of the objectives of the National Risk System is prospective intervention, i.e. intervention focused on prevention.

122. The Deng and Pinheiro principles provide scope for state protection obligations. For example, the Deng Principles require states to take all necessary measures to prevent and avoid the occurrence of conditions that may lead to displacement[81] . These include specific reference to measures to protect against displacement of indigenous peoples, minorities, peasants, pastoralists and other groups who experience a special dependency on land[82] .

123. In the case of environmentally induced displacement, prevention measures must first and foremost take into account the cause of displacement and how to mitigate the risk of displacement. For this reason, any public policy that seeks to structurally address the problem must take prevention seriously in order to reduce the risk as much as possible. In this regard, the UN High Level Panel recommended that states ensure that disaster management laws incorporate displacement risks and explicitly and proactively address the issue in disaster risk reduction plans[83] .

124. Second, prevention measures must be informed by technical and participatory assessments of disaster displacement risks, whether due to degradation or environmental variability. The Cancun Adaptation Framework provides guidelines for this purpose, as does the Paris Agreement.

125. Third, prevention policies must take into account that in many cases there is an intersection between displacement caused by environmental factors and other causes. As recognised by the UN Special Rapporteur on the Human Rights of Displaced Persons, slow-onset environmental phenomena aggravate community realities that also cause forced displacement, such as violence and armed conflict. When these causes come together, they hinder people's ability to adapt, increase the risk of displacement, delay planning and prevention, and can lead to successive displacement for reasons other than environmental factors. A good example of this is when armed conflict causes environmental damage resulting in displacement due to diffuse or mixed causes[84] . Consequently, a comprehensive prevention policy must take into account the confluence of factors that can lead to internal displacement.

126. Fourthly, as part of the prevention obligations, States must design and implement measures that enable people and communities to adapt and develop resilience to climate change. As stated in the Paris Agreement, this obligation must be fulfilled on the basis of a human rights approach that also takes into account differential approaches, is transparent and ensures the participation of communities. Decisions in this regard should be based on the best available scientific information and, where appropriate, on traditional, indigenous or local knowledge[85] . Accordingly, States should especially protect the most vulnerable communities that have the least capacity for resilience and adaptation. Adequate attention should also be given to communities that are more deeply rooted in the territory, such as indigenous, Afro-descendant or

[81] Principle 5. Deng Principles.
[82] Principle 9. Deng Principles.
[83] United Nations, (2021), *A Focus on Internal Displacement: The Way Forward. Report of the UN Secretary-General's High-Level Panel on Internal Displacement*, available at: https://www.refworld.org.es/docid/61f8c2df4.html. p. 51.
[84] Doc. A/75/207, 21 July 2020. *Final report of the UN Special Rapporteur on the human rights of internally displaced persons, Cecilia Jiménez-Damary*. Available at: N2018988.pdf (un.org), paragraphs 20-23.
[85] Art. 7.5. of the Paris Agreement.

peasant communities, even if it means allocating additional resources to existing ones[86] .

127. In some situations, however, displacement may be unavoidable. In such cases, the state must ensure conditions to protect communities from displacement. To this end, early warning systems, contingency plans and preparedness plans should be implemented. Likewise, evacuation drills should be carried out, land should be made available for relocation, and planned relocation mechanisms should be put in place[87] with the participation of the communities[88] .

128. In this regard, the Deng Principles illustrate the conditions that must be met in order to carry out relocation processes. In particular, they indicate that it must be verified that it is the only possible alternative and that all measures must be taken to minimise displacement and its adverse effects. In particular, these principles indicate that conditions of security, food, health and hygiene and family unity must be guaranteed, under principles of participation and voluntariness for those who have to be displaced[89] .

129. In conclusion, for the Court it is clear that, in the face of displacement caused by disasters, factors associated with climate change or environmental degradation, the State must at least address the following measures as part of its prevention and adaptation obligations: (i) design and implement policies to prevent and mitigate the risks associated with such factors; (ii) include criteria that recognise and address the confluence of causes of displacement within prevention and adaptation policies; (iii) establish plans and programmes for adaptation and development of resilience conditions with a differential approach; and (iv) develop early warning mechanisms, evacuation drills and, when necessary, advance planned relocation processes with the participation of those affected.

2.9.2. Obligations during travel

130. In addition to obligations of prevention, states have obligations when displacement occurs. The obligations of the state *during* displacement also find their basis in the Constitution. Thus, Article 1 of the Constitution establishes that dignity and solidarity are the foundations of the social rule of law and Article 2 states that the authorities of the Republic are established to

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[86] United Nations, (2021), *A Focus on Internal Displacement: The Way Forward. Report of the UN Secretary General's High Level Panel on Internal Displacement*, available at: https://www.refworld.org.es/docid/61f8c2df4.html, recommendation 8. On this point, in terms of peasants, it is worth highlighting Legislative Act 01 of 2023, which recognised that in Colombia peasants are subjects of rights and holders of special constitutional protection.

[87] According to the "Toolkit: Planned Relocations to Protect People from Disasters and Environmental Change" developed by UNHCR, IOM, the Brookings Institution, the World Bank, Georgetown University and UN University, planned relocation can be understood as: "a planned process in which individuals or groups of individuals are moved, or assisted to move from their homes or places of temporary residence, settle in a new location, and are provided with conditions for rebuilding their lives. Planned Relocation is carried out under the authority of the State, within national borders, and is undertaken to protect people from the risks and impacts related to disasters and environmental change, including the effects of climate change. Planned Relocation can be undertaken at the individual, family and/or community level". Brookings Institute, Georgetown University and UNHCR, Guidance on Protecting People through Planned Relocation in the Face of Disasters and Environmental Change, 2015. https://georgetown.app.box.com/s/98ui68izc9roidczrkryyh0qjksxceln. Page 6.

[88] United Nations, (2021), *A Focus on Internal Displacement: The Way Forward. Report of the UN Secretary-General's High-Level Panel on Internal Displacement*, available at https://www.refworld.org.es/docid/61f8c2df4.html, recommendation 8.

[89] Principle 7. Deng Principles.

protect life, property, rights and liberties and to ensure the fulfilment of the social duties of the state and of individuals.

131. By virtue of these obligations, for example, the Court has called for the State, in cases of disasters, to respond in a timely manner to the humanitarian needs of the affected population and to take decisive action to promote their recovery[90] . Likewise, the Court has insisted that attention to those affected must be carried out in accordance with the principle of a differential approach, that is, taking into account the particular characteristics and conditions of the population[91] .

132. The Deng Principles also help to interpret these obligations. Thus, these principles establish a general obligation to respect and guarantee the human rights of those on the move. In this regard, as noted above, the rights to life[92] , dignity, integrity[93] , liberty and security of person[94] , the right to seek safety in other countries and seek asylum[95] , family life and the desire to remain with one's family[96] , the right to health[97] , education[98] , property[99] and recognition of legal personality[100] must be protected.

133. The aforementioned principles also establish that displaced persons have the right to an adequate standard of living. This means that the authorities, in addition to humanitarian assistance[101] , must provide those who are displaced with at least: (i) food and potable water; (ii) shelter and basic housing; (iii) adequate clothing; and (iv) medical and sanitation services.

134. To meet these obligations, regardless of the causes, it is essential that states establish an administrative registry of displaced persons. Registration helps to have a better diagnosis, and to organise access to care and satisfaction of the rights to which they are entitled. In fact, and although in the framework of the registration of persons displaced due to the armed conflict, this Court has recognised that denying the registration of the displaced population is equivalent to automatically limiting access to their rights, as this is the gateway to measures of humanitarian assistance, employment, return or relocation, among others. Therefore, the Court has indicated that access to registration is a fundamental right of displaced persons[102] .

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[90] Judgment T-198 of 2014.
[91] For example, regarding the disaster management system, the Court in Ruling T-246 of 2023, indicated that, although Law 1523 of 2012 does not speak textually of an ethnic differential report, this follows from its general principles that speak of participation and respect for cultural diversity. Ruling T-235 of 2011 indicated that disaster prevention and response measures are insufficient if the differential characteristics of the affected population are not taken into consideration.
[92] Principle 10. Deng Principles.
[93] Principle 11. Deng Principles.
[94] Principle 12. Deng Principles.
[95] Principle 15. Deng Principles.
[96] Principle 17. Deng Principles.
[97] Principle 19. Deng Principles.
[98] Principle 23. Deng Principles.
[99] Principle 21. Deng Principles.
[100] Principle 20. Deng Principles.
[101] Principle 24-27. Deng Principles.
[102] The Court based this right on the duty to protect persons, according to article 2 of the Constitution, and held that the factual situation that constitutes displacement generates the legal obligation of the state to recognise the person as displaced. That is to say, if the person is objectively in a situation of displacement, the State does not have the prerogative to declare or not declare the person as displaced, but rather, on the contrary, the displaced person has the right to be recognised as such as a means to access the rights to which he or she is entitled. Cf. Judgments T-227 of 1997, T-327 of 2001, T-025 of 2004, T-1094 of 2004, T-1076 of 2005 and T-496 of 2007, T-787 of 2008, T-169 of 2010, orders 119 of 2013 and 373 of 2016.

135. Consequently, in the case of forced displacement due to environmental factors, as in the case of displacement caused by the armed conflict, **the State has the obligation to provide for an administrative registration mechanism that allows people to have their situation recognised and guarantees the constitutional rights to which they are entitled as individuals. In** line with the above, and as part of the measures to attend to the displaced population, the state must have adequate information systems on the situation of the displaced population[103] .

136. In addition to the above, the obligations that are activated during displacement also include those that the State has with respect to those persons who cannot be displaced, but who bear the effects of the causes that motivate displacement. These cases are referred to in the doctrine as situations of "emplacement" and tend to occur in particular in the case of populations with an extreme degree of vulnerability or who have special roots in the territory they inhabit (such as peasants and indigenous peoples) [104] . In these cases, the State also has the obligation to guarantee the right to assistance and care, as their extreme lack of protection and inability to confront the risk leads them to remain in extreme conditions.

2.9.3. Obligations relating to return, resettlement and reintegration

137. Finally, the state has obligations regarding the *return, resettlement and reintegration* of displaced persons. This duty is based on several constitutional principles, such as the fundamental right to integral reparation[105] (Article 90 of the Political Constitution), the right to decent housing[106] (Article 51 of the Political Constitution) and the principle of solidarity[107] (Articles 1 and 95 of the Political Constitution).

138. Although in the context of the armed conflict, this Court has referred to the above obligations, indicating that the State must guarantee the comprehensive protection of the rights of persons in the context of return or relocation through the adoption of durable solutions[108] . In fact, in Ruling T-369 of 2021, the Court stated that, in order to guarantee a minimum level of protection for victims of displacement, the following must be done

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[103] Orders 011 of 2009 and 373 of 2016.

[104] In this sense, it has been pointed out that: "communities with a high level of rootedness to the territory - such as many indigenous, Afro-Colombian or peasant groups - tend to resist leaving the territory, even when the environmental disaster has caused a high degree of destruction (...) In the same way, marginal communities are more fragile in the face of the effects of these events, and consequently, are more exposed to the affectation of their members' freedom of movement". LAVELL, ALLAN AND MASKERY ANDREW (2013) *The future of Disaster Risk Management: an ongoing discussion.* FLACSO and UNISIDR. Page 27 in: Sánchez Mójica, B. E., & Rubiano Galvis, S. (2017). *Territorios en transformación, derechos en movimiento: Cambio ambiental y movilidad humana en Colombia*. Ediciones Uniandes.

[105] Rulings T-821 of 2007 and C-035 of 2016 established that the Deng principles are part of the constitutional bloc in the broad sense because they allow for the integration of the fundamental right to comprehensive reparation for the harm caused in the context of forced displacement.

[106] In judgments T-502 of 2019, T-585 of 2008 and T-865 of 2011, the Court mentioned that the duty of resettlement for people living in risk areas is directly linked to the right to decent housing.

[107] Rulings T-1125 of 2003, T-530 of 2011, T-009 of 2012 and T-369 of 2021 stated that in the context of displacement due to natural disasters, the principle of solidarity acquires a singular importance. Consequently, in disaster situations, solidarity takes the form of a pattern of behaviour in accordance with which both the State and society must act.

[108] Ruling T-025 of 2004, orders 008 of 2009, 383 of 2010, 219 of 2011, 201, 202, 253 and 394 of 2015 and 373 of 2016. As stated in ground 80 of this ruling, the concept of durable solutions advanced by the United Nations implies that the States should carry out sustained actions and processes over time to rebuild the life projects of those who have been victims of forced internal displacement.

> "ensure safe and dignified voluntary return or resettlement and provide assistance until such time as returnees or resettled persons recover to the extent possible what they have been dispossessed of. If such recovery is not feasible, adequate compensation or reparation (durable solutions phase) shall be provided"[109] .

139. This obligation can also be read in light of the Deng Principles. For example, Principle 28 states that the authorities should ensure "conditions and provide the means for the voluntary, safe and dignified return of IDPs to their homes or places of habitual residence, or their voluntary resettlement elsewhere in the country (...)". Principle 29 provides that the competent authorities have the obligation to "assist IDPs who have returned or resettled elsewhere to recover, to the extent possible, property or possessions they abandoned or were dispossessed of when they were displaced" and that, if such recovery is not possible, the competent authorities should provide "adequate compensation or other form of just reparation" or assist them in obtaining such compensation or reparation.

140. In relation to obligations regarding return, resettlement and reintegration, the concept of ensuring durable solutions needs to be emphasised. As the then UN Rapporteur Walter Kälin rightly stated, a durable solution "is achieved when persons formerly in a situation of internal displacement no longer require specific assistance or protection linked to their displacement and are able to enjoy their human rights without being discriminated against on that basis"[110] . To that extent, the mere physical relocation of the person (whether in the place of origin or elsewhere) does not constitute a durable solution, as it must be analysed whether there are continuing human rights needs or concerns arising from the displacement. For example, displaced persons who return to their place of origin and find that it is impossible to restore destroyed houses or reclaim their land because the disaster that forced them to move "undermined the security of living on that land or others have occupied it"[111] would not be guaranteed a durable solution. Nor would a durable solution be available to those who return and "need food assistance until the next harvest season, as they were unable to cultivate the land during the displacement"[112] .

141. Thus, achieving a durable solution to displacement requires a gradual and protracted process, which must be organised around a rights-based approach. Such an approach, as indicated by the aforementioned former Rapporteur, must ensure that IDPs are involved in the planning of durable solutions, so that they respect their rights and consult their needs. With regard to voluntary choice, the framework for durable solutions recommends that the authorities provide IDPs with all the information necessary to make a choice. The information should "include a realistic description of the risks of further displacement to areas of return, local integration or settlement elsewhere in the country" [113] . Objective information on existing protection and risk reduction mechanisms (e.g. for disasters) should also be provided"[114] .

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[109] Sentence T 369 of 2021.
[110] A/HRC/13/21/Add.4, par. 8.
[111] A/HRC/13/21/Add.4, par. 11.
[112] A/HRC/13/21/Add.4, par. 14.
[113] A/HRC/13/21/Add.4, par 25.
[114] Ibid.

142. However, it is important to note that, in some cases, conditions are too unsafe to allow return to a particular location, and return may be prohibited where the lives or health of people may be at serious risk. As the same Rapporteur notes: "for example, an area may become uninhabitable or very unsafe when disasters recur, even if all necessary and reasonable risk reduction measures are taken"[115] .

143. In addition to the durable solutions framework, the Pinheiro Principles also help to identify the obligations of states once displacement has occurred. These principles elaborate in broad and detailed detail on the protection of the right to housing and property restitution for displaced persons. Broadly speaking, these principles establish that displaced persons have the right to have their property restituted or to be compensated for the loss of their property.[116]

144. Thus, by way of conclusion, in relation to the obligations of the state that arise after displacement, it is clear that the intervention must be ambitious and comprehensive, so that sufficient means are guaranteed so that the population that was the victim of displacement can, in the near future, overcome the condition of vulnerability generated by displacement and cease to need state assistance as a consequence of this phenomenon.

2.10. Current response to environmental displacement

145. In light of this framework of obligations and good practices in the area of displacement, we will now analyse the Colombian state's current response to the phenomenon of forced displacement due to environmental factors. Although, as has been emphasised in this ruling, the country does not have special legislation that addresses this phenomenon, there are some regulations that relate to climate change adaptation and disaster risk management. It is worth evaluating these norms, as well as those relating to attention to victims of displacement due to the armed conflict, in order to determine whether they comprehensively cover victims of displacement due to environmental factors, as required by the analysis made in this decision.

2.10.1. National climate change regulation

146. In Colombia, concern for climate change mitigation and adaptation is relatively recent. Law 1450 of 2011, which corresponds to the National Development Plan 2010 - 2014, adopted the first measures in this regard. This law ordered the creation of four mechanisms for adaptation to climate change: the National Plan for Adaptation to Climate Change, the Low Carbon Development Strategy (ECDBC hereinafter)[117] , the National Strategy for Reducing Emissions from Deforestation and Forest Degradation (REDD+) and the Financial Strategy to reduce the fiscal vulnerability of the State in the event of a natural disaster. Subsequent to this law, Conpes 3700 of 2011 was adopted, which designed the institutional strategy for the articulation of policies and actions on climate change in Colombia. In addition, the legislative

[115] A/HRC/13/21/Add.4, par 31.
[116] Section II, 2.1.
[117] Government of Colombia. *Colombian Low Carbon Development Strategy*. Available at: https://www.car.gov.co/uploads/files/5ade3a8222934.pdf

and regulatory development has incorporated other instruments related to the subject.

147. The instruments adopted in the domestic legal system in relation to climate change can be classified according to two types of objectives: on the one hand, mitigation and, on the other, adaptation to its effects. The first type of instrument includes the ECDBC, the Financial Management Policy Strategy for Natural Disaster Risk, the National Greenhouse Gas Emission Trading Quotas Programme (PNCTE)[118] , and Law 2169 of 2021, which promoted the country's low-carbon development. There are also other instruments that focus on the development of plans, strategies and actions aimed at reducing the impact of human activity on climate change, such as those that establish the control of greenhouse gas emissions or provide for measures to combat deforestation. However, none of these instruments particularly address the issue that the Court is examining on this occasion, that is, the attention, protection and reestablishment of the rights of persons displaced by environmental factors.

148. In turn, there are other instruments that focus on adaptation (although they also include prevention and care measures). However, as will be seen, these instruments, which mainly prioritise information, institutional and planning measures in economic, biodiversity and infrastructure matters, do not include specific and effective measures aimed at restoring the rights of those who have already been affected by the effects of climate change, such as victims of displacement due to environmental factors.

149. Thus, for example, the National Plan for Adaptation to Climate Change (PNACC) can be considered. Since 2012, this plan has been advancing an adaptation process and strategy that has been strengthened over the years. Thus, in 2016, three objectives were set for the adaptation process in the country: (i) manage knowledge about climate change and its potential impacts; (ii) incorporate adaptation to this phenomenon in environmental, territorial and sectoral planning; and (iii) promote the transformation of development for resilience. Likewise, the PNACC established priority lines of action for its implementation, in line with these three objectives[119] . However, despite its importance, the plan does not comprehensively address the situation of people who may experience the different impacts of climate change, nor how their rights should be restored. Although the document foresees different actions to take into account possible impacts of climate change, including droughts, landslides and floods, it does not examine in detail the effects of these phenomena on people and their livelihoods. Much less is there a detailed analysis of how these phenomena affect human mobility and how to respond to guarantee the rights of the population displaced by environmental factors.

150. Another example is Decree 298 of 2016, which created the National Climate Change System (SISCLIMA), to coordinate, articulate, formulate and monitor and evaluate policies, standards and strategies for climate change adaptation and greenhouse gas mitigation. Within the framework of this system, the main allocation of resources and the main lines of action are aimed at coordinating efforts between national, regional, local and international

[118] Created by Law 1931 of 2018.
[119] Government of Colombia (2016). *National climate change adaptation plan.* Available at: https://colaboracion.dnp.gov.co/CDT/Ambiente/PNACC%202016%20linea%20accion%20prioritarias.pdf

bodies to adapt to climate change and promote sustainable development plans. However, this provision did not propose any specific mechanism to restore the rights of people affected by events associated with climate change, including those who must be displaced due to these circumstances.

151. For its part, Law 1931 of 2018 established a series of guidelines for the management of climate change, including the obligation to adopt "Integrated Sectoral Climate Change Management Plans" at the national level and "Integrated Territorial Climate Change Management Plans" at the territorial level to adopt, among other purposes, measures to adapt to climate change. In this law, the legislator set out the objective that the authorities should contribute to reducing the vulnerability of the country's population and ecosystems to the effects of climate change. However, as with the previous laws, none of its provisions address the situation of people forcibly displaced by environmental factors.

152. However, in the framework of the international commitments assumed in the Paris Agreement, the so-called "Long-term Climate Strategy of Colombia" (E2050) was issued, aimed at promoting resilience in the face of climate transformations. For its implementation, nine commitments were foreseen, corresponding to strategic lines of action[120] . However, while the E2050 consists of guidelines, it does not establish specific obligations for the state to attend to the population displaced by environmental factors, nor does it include concrete strategies to guarantee the rights of this population.

153. In summary, as can be seen, the country's climate change regulations focus mainly on mitigating the causes of climate change and adapting the population and the territory. In terms of adaptation, however, the response is insufficient in relation to the care of those who have already suffered these effects. Particularly with regard to the victims of displacement due to environmental factors: (i) there is no explicit recognition of the phenomenon of forced displacement due to environmental causes; and (ii) adaptation measures do not provide for specific policies or actions in relation to the restoration of their rights.

2.10.2. National legal framework on natural disaster risk management

154. However, another type of regulation that is relevant for the analysis of the present tutela action is disaster risk management. It is worth remembering that in 1989, prior to the issuance of the Constitution, the so-called "National System for Disaster Prevention and Attention -SNPAD-" was created following the eruption of the Nevado del Ruiz volcano in Armero, Quindío. This system was modified by Law 1523 of 2012, which in turn enshrined the "National Policy for Disaster Risk Management" and established the "National System for Disaster Risk Management" (hereinafter SNGRD). This norm, in addition to disaster management, focused on knowledge and risk reduction. It establishes, at the national level, the rules and guidelines related to the attention of catastrophes and natural disasters, and adopts measures for their prevention. The SNGRD provides for the development of tools and actions guided by three main objectives: (i) knowledge of risk; (ii) risk reduction; and

[120] Javier Eduardo Mendoza et al. *Colombia's long-term climate strategy E2050 to comply with the Paris Agreement.* Bogotá, 2050 Facility et al,, n.d.

(iii) disaster response. The system is governed by several principles, including precaution, gradualness, coordination and timeliness of information, and establishes the obligation of permanent, coordinated and timely actions for risk management in the different phases.

155. The organisation of the SNGRD envisages a general management through leadership bodies. Thus, the President of the Republic is the system's conductor at the national level, while the governors and mayors are the conductors at the territorial level. As the jurisprudence of this Court has indicated, in this system: "the local level is consolidated as the main sphere of intervention"[121] . Likewise, the system has a series of national and territorial authorities in charge of its functioning and articulation, among which the National Unit for Disaster Risk Management (hereinafter, UNGRD) is worth mentioning[122] .

156. However, it should be noted that the SNGRD regulation does not explicitly refer to the phenomenon of forced displacement for environmental reasons. However, some plans and actions could constitute measures for the care and protection of the victims of this phenomenon. In particular:

(i) the SNGRD foresees different instruments such as the National Disaster Risk Management Plan, which should include actions for recovery (including rehabilitation and reconstruction). For its part, the response strategy must optimise the provision of basic services related to health and sanitation, search and rescue, shelter and food, public services, and security and coexistence, among others.

(ii) The SNGRD also establishes that disaster risk management must be carried out through territorial planning. In this sense, it specifies that municipalities, districts and departments must take into account the provisions of Law 9 of 1989 and Law 388 of 1999, which include the inclusion of: (i) mechanisms for the inventory of settlements at risk; (ii) the identification, delimitation and treatment of areas exposed to hazards arising from natural, socio-natural or unintentional anthropogenic phenomena including mechanisms for the relocation of settlements; (iii) the transformation of the use assigned to these zones to prevent high-risk resettlement; (iv) the constitution of land reserves for possible resettlement; and (v) the use of legal mechanisms for the acquisition and expropriation of real estate necessary to achieve the relocation of populations at high risk[123] .

(iii) The SNGRD establishes the obligation of the UNGRD - at the national level - and of the governors' and mayors' offices - at the territorial level - to draw up and implement specific action plans for the rehabilitation and reconstruction of affected areas when a disaster or public calamity situation is declared.

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[121] Sentence T-269 of 2015.
[122] The UNGRD is then the specialised entity in charge of leading the implementation of disaster risk management. Its competencies include: (i) articulating the national and territorial levels of the SNGRD; (ii) articulating private actors, social organisations and non-governmental organisations in the SNGRD; and (iii) elaborating and enforcing the internal regulations of the SNGRD.
[123] Law 1523 of 2012. Article 40.

(iv) The SNGRD points out that in the recovery stage, which includes rehabilitation and reconstruction, the authorities must adopt actions to re-establish normal living conditions for the affected population[124] . This implies offering solutions for the relocation and resettlement of the affected population.

157. Likewise, Law 1523 of 2012 develops a special regime that activates different powers for the attention of disaster and public calamity situations. This special regime entails a series of broader measures and prerogatives for the authorities, which are provided for in articles 65 to 89 of this law.

158. Based on the regulation of the SNGRD, the existence of an institutional framework and tools for the knowledge and reduction of risk, as well as for the attention of disaster situations, which include measures for the attention of the affected populations, can be seen. However, in relation to the problem that concerns the Court in this tutela, it is clear that these provisions: (i) do not directly recognise the phenomenon of forced displacement due to environmental factors; (ii) are mainly focused on immediate or emergency care for affected persons; (iii) the restoration measures are limited to victims of disaster or catastrophe situations, which leaves aside the protection and restoration of rights of persons affected by environmental situations that are configured in a slow and progressive manner; and (iv) given the weakness of the system in practice, definitive protection measures are not offered. Some of the problems of this system in responding to the phenomenon of displacement due to environmental factors in practice are described below.

159. First, although Law 1523 of 2012 designed a mitigation and prevention component, the system's strongest measures are only activated when a disaster occurs. This means, for example, that the system does not contemplate attention to displaced persons whose forced displacement is generated by environmental situations that develop slowly or progressively.

160. Secondly, empirical studies show that the SNGRD's actions have prioritised reaction over prevention[125] , despite the fact that with the issuing of Law 1523 of 2012 the legislator sought to strengthen prevention and mitigation[126] . The reactive rather than preventive nature of the system in practice, which has in fact been recognised by the UNRGD itself[127] , is due, among other things, to problems of coordination and management between

[124] This stage comprises "actions for the re-establishment of normal living conditions through the rehabilitation, repair or reconstruction of the affected area, the interrupted or deteriorated goods and services and the re-establishment and promotion of the economic and social development of the community. The central purpose of recovery is to avoid the reproduction of pre-existing risk conditions in the affected area or sector". Law 1523 of 2012. Article 4, numeral 20.

[125] Oswaldo José Rapalino Carroll, Mireya del Carmen Jiménez Díaz. 2014. Gestión Integral del Riesgo de Desastres Fundamentos y alternativas. In: Política pública de gestión del riesgo de desastres en Colombia. Analysis of Law 1523 of 2012 in Caribbean territories affected by winter disasters. Organized by Ávila-Toscano, José Hernando (Editor); Barranquilla: Ediciones Corporación Universitaria Reformada, 2014 and José Ávila-Toscano, Mireya Jiménez, Oswaldo Rapalino, Ana Herrera, Ailed Marenco. Analysis from the contextualised application of Law 1523.

[126] See, Mireya Jiménez, Oswaldo Rapalino, Nicolás Salinas, Eduardo Polo, Vilma Solano. 2014. In: Política pública de gestión del riesgo de desastres en Colombia. Analysis of Law 1523 of 2012 in Caribbean territories affected by winter disasters. Organized by Ávila-Toscano, José Hernando (Editor); Barranquilla: Ediciones Corporación Universitaria Reformada, 2014.

[127] See, José Ávila-Toscano, Mireya Jiménez, Oswaldo Rapalino, Ana Herrera, Ailed Marenco. Analysis from the contextualised application of Law 1523. In: In: Política pública de gestión del riesgo de desastres en Colombia. Analysis of Law 1523 of 2012 in Caribbean territories affected by winter disasters; Bustamante González, K., & Gómez Vélez, M. I. (2015). Disaster risk management in Colombia: a way of generating forced population displacement? Revista Indisciplinas, 1(2), 75-102. Retrieved from https://publicaciones.unaula.edu.co/index.php/indisciplinas/article/view/709

national and local entities and budget cuts[128] . In addition, the system is insufficient in the fulfilment of its legal obligations in terms of prevention and definitive solutions for those affected by calamities or catastrophes, due to the country's high vulnerability to disasters due to its climate and geography[129] . This high vulnerability means that regular risk management mechanisms tend to focus their resources primarily on the immediate response to disaster events. In the face of limited resources, previous phases of risk awareness and mitigation, and definitive measures to restore rights, have been sacrificed.

161. Thirdly, Law 1523 of 2012 is committed to a decentralised, delegated, co-responsible and solidarity-based model of risk management. However, empirical studies that have studied the operation of the system show that the implementation of this model faces important challenges that result in ineffective actions[130] . On this same issue, evidence indicates that in the face of phenomena such as La Niña or El Niño, risk management is hindered by the lack of preparedness at the local level and the unavailability of sufficient resources to deal with extreme events[131] .

162. Finally, actions to re-establish normal conditions for populations affected by disasters or catastrophes have not been effective, especially in terms of recovery or resettlement measures. For example, in the Mocoa avalanche, which caused more than 229 deaths[132] and 15,500 people who had to be displaced from their homes, the challenges in the reconstruction work were multiple[133] and after seven years, it has not been possible to provide a

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[128] See, Mireya Jiménez Díaz, Oswaldo Rapalino Carroll, Nicolás Salinas Carrascal, Eduardo Polo Mendoza & Vilma Solano Vega. 2014. Una contextualización territorial para el análisis de la política de gestión del riesgo en Colombia: el caso del cono sur del departamento de Atlántico In: Política pública de gestión del riesgo de desastres en Colombia. Analysis of Law 1523 of 2012 in Caribbean territories affected by winter disasters. Organized by Ávila-Toscano, José Hernando (Editor); Barranquilla: Ediciones Corporación Universitaria Reformada, 2014; Oswaldo José Rapalino Carroll, Mireya del Carmen Jiménez Díaz. 2014. Gestión Integral del Riesgo de Desastres Fundamentos y alternativas. In: Política pública de gestión del riesgo de desastres en Colombia. Analysis of Law 1523 of 2012 in Caribbean territories affected by winter disasters. Organized by Ávila-Toscano, José Hernando (Editor); Barranquilla: Ediciones Corporación Universitaria Reformada, 2014; Cárdenas, K. (2018). General analysis of flood risk management in Colombia. Revista Científica En Ciencias Ambientales Y Sostenibilidad, 4(1). Retrieved from https://revistas.udea.edu.co/index.php/CAA/article/view/335841.

[129] See, Ávila-Toscano, José Hernando, 2014. Public policy for disaster risk management in Colombia. Analysis of Law 1523 of 2012 in Caribbean territories affected by winter disasters. Organized by Ávila-Toscano, José Hernando (Editor); Barranquilla: Ediciones Corporación Universitaria Reformada, 2014; Bustamante González, K., & Gómez Vélez, M. I. (2015). Disaster risk management in Colombia: a way of generating forced population displacement? Revista Indisciplinas, 1(2), 75-102. Retrieved from https://publicaciones.unaula.edu.co/index.php/indisciplinas/article/view/709; Lampis, A. (2010). "Poverty and environmental risk: a problem of vulnerability and development". Retrieved from http://www.desenredando.org/public/varios/2010/2010-08-30_Lampis_2010_Pobreza_y_Riesgo_Medio_Ambiental_Un_Problema_de_Desarrollo.pdf; Cardenas, K. (2018). GENERAL ANALYSIS OF FLOOD RISK MANAGEMENT IN COLOMBIA. Revista Científica En Ciencias Ambientales Y Sostenibilidad, 4(1). Retrieved from https://revistas.udea.edu.co/index.php/CAA/article/view/335841.

[130] Bustamante González, K., & Gómez Vélez, M. I. (2015). Disaster risk management in Colombia: a way of generating forced population displacement? Revista Indisciplinas, 1(2), 75-102. Retrieved from https://publicaciones.unaula.edu.co/index.php/indisciplinas/article/view/709.

[131] See, Cárdenas, K. (2018). General analysis of flood risk management in Colombia. Revista Científica En Ciencias Ambientales Y Sostenibilidad, 4(1). Retrieved from https://revistas.udea.edu.co/index.php/CAA/article/view/335841;

[132] See Medicina Legal report entitled "229 people identified in Mocoa by INMLCF. Friday 7 April. 6:00 a.m.", https://acortar.link/pNdPH8. Other reports speak of 315 people dead. See the UGRD repository, http://repositorio.gestiondelriesgo.gov.co/handle/20.500.11762/30192.

[133] More conservative government figures put the number of people affected by the loss of homes at 15,500. See https://www.mininterior.gov.co/noticias/gobierno-atendera-a-damnificados-de-la-avalancha-en-mocoa-putumayo/. Other sources such as the Procuraduría report a figure of 22,000 people affected. https://www.procuraduria.gov.co/Pages/obras-reconstruccion-mocoa-procuraduria-mantiene-7-alertas.aspx.

definitive solution to the housing needs of those affected[134] . In other words, today this system has several weaknesses to be able to respond adequately to forced displacement due to environmental factors[135] .

163. In conclusion, despite the fact that Colombian legislation provides for measures that allow for some type of assistance to victims of forced displacement for environmental reasons, they are limited in terms of identifying the multidimensional effects that such displacement has on people, and are insufficient to guarantee comprehensive, adequate and effective assistance to the affected population. As has been shown, it is a regulation that: (i) does not expressly recognize the phenomenon of forced displacement for environmental reasons; (ii) does not provide for comprehensive regulation of this phenomenon; (iii) defines partial or limited assistance measures, for example, through the prioritization of the initial or emergency reaction to situations of calamity or catastrophe; and (iv) lacks effective definitive protection measures. In addition, the disaster-oriented approach excludes the protection of people who are victims of displacement due to slow-onset phenomena or environmental factors other than disasters.

2.10.3. The policy response to forced displacement due to armed conflict

164. Finally, for the matter before the Court, a final examination must be made. In particular, it must be established whether the special normative framework for the attention and reparation of victims of forced displacement due to the armed conflict or violence covers victims of displacement due to environmental factors.

165. In this regard, it should be recalled that the Colombian legal system has a special regulatory framework and institutional framework for the care of victims of forced displacement as a result of the armed conflict or violence. This framework was established in recognition of and in response to the State's obligations in relation to one of the worst humanitarian tragedies generated by the armed conflict in Colombia. As indicated above, the country registers nearly 8.2 million victims of forced displacement as a result of the armed conflict[136] , a phenomenon that has extended over six decades[137] .

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[134] For this reason, the Attorney General's Office has seven alerts on projects of the Mocoa Reconstruction programme. In this regard, see: https://www.procuraduria.gov.co/Pages/obras-reconstruccion-mocoa-procuraduria-mantiene-7-alertas.aspx and
https://www.procuraduria.gov.co/Pages/procuraduria-seguimiento-para-avanzar-entrega-mas-900-viviendas-retraso-reconstruccion-mocoa.aspx

[135] This is also predicated on the provisions of Law 715 of 2001, which grants municipalities the competence to "prevent and attend to disasters in their jurisdiction [and] adapt urban and rural areas in high-risk zones and relocation (sic) of settlements, with co-financing from the Nation and the departments" and Law 1537 of 2012, which establishes, within the framework of the general housing subsidy regime, some criteria related to the population affected by disasters. These regulations have not only had problems of practical implementation, but are also limited in their provisions when it comes to addressing the phenomenon of forced displacement due to environmental factors.

[136] UNHCR. UN Refugee Agency (2021), Internally Displaced Persons. Available at: https://www.acnur.org/personas-desplazadas-internas.html, accessed on 06/06/2021.

[137] UNHCR. UN refugee agency (2018). Current situation of the armed conflict in Colombia. Available at: https://eacnur.org/es/blog/situacion-actual-del-conflicto-armado-en-colombia-tc_alt45664n_o_pstn_o_pst#:~:text=During%20its%20six%20d%20d%20C3%A9cadas%20de,in%20other%20parts%20of%20the%20pa%C3%ADs.

166. The special regulatory framework for the care of victims of forced displacement due to the armed conflict is composed, among other provisions, of laws 387 of 1997 and 1448 of 2011. In addition, the system provides for a series of specific obligations on the authorities that relate, among other things, to: (i) planning for the articulated management of this phenomenon; (ii) information management; (iii) prevention of forced displacement by violence; (iv) guarantees of emergency humanitarian care; (v) support for the return and promotion of measures for the socio-economic stabilisation of the displaced population; (vi) the allocation of resources for the financing of victim assistance programmes; (vii) comprehensive response measures, through the National System for the Comprehensive Attention and Reparation of Victims (SNARIV); (viii) a particular institutional framework, in which at least thirty national and territorial entities and programmes and participation roundtables converge.

167. Note, however, that all of the above provisions are clear in indicating that the beneficiaries are exclusively persons displaced by violence and armed conflict.

168. Indeed, Law 1448 of 2011, "[p]roviding for measures of attention, assistance and comprehensive reparation to the victims of the internal armed conflict and other provisions", establishes the following as the object of the law in its article 1°:

> "The purpose of this law is to establish a set of judicial, administrative, social and economic, individual and collective measures for the benefit of the victims of the violations referred to in article 3 of this law, within a framework of transitional justice, to enable the effective enjoyment of their rights to truth, justice and reparation with a guarantee of non-repetition, so that their status as victims is recognised and dignified through the realisation of their constitutional rights".

169. Article 3, to which reference is made, provides that:

> "For the purposes of this law, victims are considered to be those persons who individually or collectively have suffered harm as a result of events occurring on or after 1 January 1985**,** as a consequence of breaches of international humanitarian law or serious and gross violations of international human rights law, which **occurred as a result of the internal armed conflict** (emphasis added).

170. In particular, in relation to forced displacement, paragraph 2 of Article 60 of Law 1448 of 2011 states that a victim of forced displacement is considered to be*:* "any person who has been forced to migrate within the national territory, abandoning their place of residence or habitual economic activities, because their life, physical integrity, personal security or freedom have been violated or are directly threatened", due to violations of international humanitarian law or serious and gross violations of international human rights law, which **have occurred during the internal armed conflict**.

171. For its part, Article 1 of Law 387 of 1997, which is still in force[138] , stipulates that a displaced person is a person who has been forced to migrate within the national territory due to any of the following situations:

> "Armed conflict, internal disturbances and tensions, generalised violence, massive violations of human rights, breaches of international humanitarian law or other circumstances arising from the above situations that may drastically alter public order".

172. Thus, it is clear that the scope of protection of the aforementioned laws - which, incidentally, were issued in compliance with a constitutional obligation and with the aim of enabling Colombia to move towards peace - is limited to the victims of violence and the armed conflict and not to those who are forcibly displaced for other reasons[139] .

2.10.4. Protection gap for people displaced by environmental factors

173. From this normative review, several conclusions emerge that are relevant to the matter under consideration by the Court in the present tutela. First, the system of attention and comprehensive reparation for victims of forced displacement due to armed conflict and violence does not include those who have been displaced by disasters, events associated with climate change or environmental degradation. However, this regulation demonstrates the need for a comprehensive approach to care and restoration of rights for those displaced by environmental factors, due to the compromise of their fundamental rights.

174. Second, some measures in climate change legislation and in the regulation of the disaster risk management system can be used to assist victims of forced displacement for environmental reasons. However, they are limited in that they do not recognise the phenomenon of forced displacement for environmental reasons and therefore do not comprehensively understand or address this phenomenon.

175. Third, there is no specific legal framework in Colombia for the comprehensive care, protection and guarantee of the rights of environmentally displaced persons.

176. By virtue of the above, it is clear to the Court that **the victims of forced displacement due to environmental factors face a constitutional protection deficit**. For example, (i) there is no registration system that allows such persons to be recognised as displaced; (ii) there is no comprehensive attention to displacement due to environmental factors, which provides not only for immediate or emergency measures, but also for durable solutions; and (iii) there is no response that recognises, attends to and restores the different

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[138] In Ruling C-208 of 2013, the Constitutional Court indicated that the definition of displaced person in paragraph 2 of Article 60 of Law 1448 of 2011 was executory "on the understanding that the definition contained therein cannot be a reason to deny the attention and protection provided by Law 387 of 1997 to victims of forced displacement.

[139] In any case, as indicated above, this normative and institutional framework is useful to illustrate the need to adopt policies of prevention and attention to displacement and specific measures for the care of the victim population. It also serves to alert us to the need to ensure comprehensive care for those who have to be displaced for reasons other than the armed conflict, under a rights-based approach.

fundamental rights that are affected in the context of this phenomenon. With regard to the latter, as has been insisted, it is necessary that institutional strategies to address the phenomenon of forced displacement due to environmental factors have a human rights approach and recognise the multidimensional effects that this situation of displacement entails.

177. It should not be forgotten that all persons are indistinctly covered by the guarantees provided for in the Constitution and international human rights law. This includes, of course, all persons who have been forced to move within the national territory against their will, regardless of the cause. The fundamental rights to which displaced persons are entitled preserve their full validity and effectiveness and it is the State's responsibility to safeguard them, especially in the case of persons in a situation of special vulnerability.

178. Consequently, and although the Court, as highlighted, considers the existence of a special and differentiated regime for those who are forcibly displaced for reasons linked to the internal armed conflict to be justified, this does not imply that those displaced for other reasons, including those associated with environmental factors, lack effective constitutional protection. This protection is justified on the basis of constitutional norms and the international commitments that Colombia has assumed in the area of human rights and in relation to climate change mitigation and adaptation.

179. Thus, the lack of protection in which environmentally displaced persons find themselves places the State in a situation of non-compliance with its constitutional duties to guarantee the fundamental rights of displaced persons. Hence, the attention of the State authorities to the environmentally displaced population is urgent and should be prioritised because, as stated above, displacement due to environmental factors is an issue that is already having a significant impact on the Colombian population, especially those in the most vulnerable conditions.

180. Therefore, for this Court it is clear that there is a need for the country to adopt a comprehensive public policy that specifically addresses the phenomenon of displacement due to environmental factors, recognising its multi-causal nature and adopting effective measures for prevention, mitigation and attention.

3. ANALYSIS OF THE SPECIFIC CASE

181. In view of the above, the Court will now analyse the specific case. To do so, the first thing the Court will do is to determine whether the requirements for the tutela proceeding have been met. If this step is passed, it will continue with the analysis of the merits at .

3.1. The validity of the tutela action

182. In order to determine whether a tutela action is admissible, the Court must assess whether the following requirements are met: (i) standing to bring the action, (ii) standing to bring the action, (iii) immediacy and (iv) subsidiarity.

183. In this case, in relation to the requirement **of standing to bring an action,** which refers to the ownership of the rights whose protection is claimed, it is observed that this requirement is met. Those bringing the tutela action and those seeking protection of their fundamental rights are, directly, José Noé Mendoza Bohórquez and Ana Librada Niño de Mendoza.

184. Mrs. Lored Camila Cáceres Mendoza, granddaughter of the plaintiffs, also subscribes to the tutela, in her capacity as ex officio agent. In this regard, the initial document states the following:

> "Due to the difficult conditions we have had to access the internet in our place of residence and taking into account that the Judicial Branch is operating through virtual means and the speed with which the tutela actions must be dealt with, in the present case Lored Camila Cáceres, who is our granddaughter and is in the city of Bogotá, will act as our ex officio agent. Lored appears in the present tutela as a signatory and will act as our unofficial agent foreseeing any type of difficulty and impossibility that may arise to protect our rights due to connectivity problems".

185. Article 10 of Decree 2591 of 1991 provides that "other people's rights may be taken up when the holder of those rights is not in a position to promote his or her own defence" and that when this circumstance occurs, "it must be stated in the application". In this case, it should be noted that the accreditation of the plaintiffs' standing to sue is not compromised by the authorisation given to their granddaughter to facilitate the process and communications during the proceedings.

186. Although such a situation does not strictly fit within the characteristics of the figure of informal agency, insofar as there does not appear to be a circumstance that prevents the actors from acting on their own[140] , there is nothing to prevent communication with the granddaughter from constituting a subsidiary channel of information if necessary. In fact, the informal nature of the tutela implies an interpretation aimed at guaranteeing access to constitutional justice, when it is clear that those directly concerned approve of their relative collaborating in the defence of their rights, regardless of the name given to their action. For this reason, the granddaughter will be taken as an unofficial agent, and standing in the case will be deemed to have been established with respect to the plaintiffs.

187. Regarding the requirement of **standing,** which refers to the tutela being filed against the person who may cause the violation of the fundamental right or rights alleged or who has the legal capacity or the possibility of restoring the fundamental rights in the specific case, the Chamber finds that the requirement is only satisfied with respect to some of the entities being sued, as will be explained below.

188. One of the central claims of the plaintiffs is directed against the UARIV for not having recognised them as internally displaced persons. With regard to this claim, it is noted that one of the functions of the UARIV is to implement

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[140] In this regard, in judgment T-072 of 2019 it was stated: "In numerous pronouncements, this Corporation has established that there are two requirements for a person to be constituted as an unofficial agent:
"The presentation of the application for amparo through an unofficial agent takes place, in principle, when the latter manifests to act in that sense and when from the facts and circumstances on which the action is based, it is inferred that the holder of the fundamental rights allegedly violated is in physical or mental circumstances that prevent him/her from acting directly".

the Single Registry of Victims[141] and, as a consequence, to establish, within the framework of its competences, who can be considered victims of forced displacement due to the conflict and who can access the benefits derived from this situation. It is also noted that one of the claims of the applicants is that they should be recognised as forced internally displaced due to environmental factors and be given the same humanitarian aid as those forcibly displaced by the armed conflict.

189. Therefore, it can be inferred that the UARIV complies with the legitimacy by passive insofar as: (i) it was the entity that allegedly did not respond in substance to the petitioners' request and to that extent contributed to the possible violation of their fundamental rights; and (ii) it could become the entity that could eventually satisfy the claims raised by the plaintiffs in the tutela action.

190. In a similar sense, the DPS also has standing to bring the case, as one of the objectives of this entity is to implement policies and projects in relation to the care and reparation of victims of the armed conflict[142] , as referred to in Article 3 of Law 1448 of 2011. Given that what the plaintiffs are seeking is related to accessing the same assistance measures that exist for the displaced population who are victims of the conflict, as with the UARIV, the DPS also has standing to sue.

191. On the other hand, the tutelantes' objections are based on alleged deficiencies in disaster risk management by the competent authorities. According to Law 1523 of 2012, the entities with competencies to direct and conduct the SNGRD are the National Unit for Disaster Risk Management (UNGRD), at the national level, and the governor and the district or municipal mayor in their respective jurisdictions. Therefore, for the specific case it is clear that the governor of Arauca, the mayor of Saravena and the UNGRD have standing to act, as their roles in the field of disaster risk management give them responsibilities in situations such as the one described in the tutela action.

192. On the other hand, the standing of the other entities involved, i.e. the Ombudsman's Office and the Ministries of the Interior and National Defence, has not been demonstrated.

193. In relation to the Ombudsman's Office, the Court concludes that it does not have standing. Although the plaintiffs include this entity among the defendants, there is no evidence in the case file that the Ombudsman's Office has failed to respond to a request made by the plaintiffs or that its actions could have influenced the alleged violation of the plaintiffs' rights. However, this does not mean that the Ombudsman's Office cannot play a relevant role in the event that an order is issued in favour of the applicants, in order to contribute, within the framework of its mission, to the restoration of their rights.

194. In a similar vein, the Court also concludes that the Ministries of the Interior and National Defence also lack standing. These entities were not directly involved in the alleged violation of the rights of the plaintiffs, nor

[141] In this regard, see articles 166 and 168 of Law 1448 of 2011.
[142] See Decree 2049 of 2016, article 1 and 3.

would they be able to directly restore their rights, should the tutela action be granted. This is because these ministries do not have the power to deliver the benefits requested by the plaintiffs in their claims[143] . Furthermore, as far as the Ministry of National Defence is concerned, the complaint does not even mention any fact attributable to this entity. Consequently, these entities will be ordered to be removed from the tutela proceedings.

195. On the other hand, in this case the requirement of **immediacy** is met. The alleged violation, which is specified in the last response of the UARIV to the request of the actors to be recognised as victims of forced displacement under the terms of Law 1448 of 2011, is dated 22 February 2021[144] . The tutela, in turn, was filed on 28 June 2021. This means that just over four months have elapsed, which is considered a reasonable and proportionate period of time to bring the case before the constitutional judge.

196. In any event, the Chamber must note that, although the events that triggered the situation described in the tutela action date back to 2016 - the year in which, after facing the flooding of the Bojabá River for the second time, the plaintiffs decided to leave their farm to settle in the urban area of the municipality of Saravena - the fact that the situation of helplessness of the plaintiffs persists today means that it is a current and permanent affectation. Indeed, to date, the applicants have not been able to return to their property, and continue to live in the urban area of the municipality thanks to the solidarity of some acquaintances.

197. Finally, the tutela complies with the requirement of **subsidiarity,** in the absence **of** suitable ordinary mechanisms to protect the rights in the particular case. For example, mechanisms such as direct reparation or collective action would not be relevant in this case, as these actions have a different objective than the claims of the plaintiffs. In this case, compensation is not being sought for alleged State responsibility for damages suffered as a result of the natural disaster, nor is the protection of collective interests being sought. As detailed above, the core of the plaintiffs' request lies in: (i) the situation of lack of protection in which they find themselves as a result of the natural disaster they had to face, and (ii) in an apparent legal vacuum that does not allow them to be considered victims of forced internal displacement for a cause other than the armed conflict. In this sense, the contentious-administrative mechanisms referred to could not offer a complete and comprehensive solution to the plaintiffs' requests and this would compromise effective judicial protection.

198. In addition to the inadequacy of the ordinary judicial remedies, there are other circumstances that cannot be ignored in this case. Specifically, the fact that the plaintiffs are peasants, older adults[145] , victims of an environmental disaster and, by the same token, dispossessed of the land that was their home and livelihood. In other words, these are people who are in a situation of special vulnerability, which makes it imperative for the tutela judge to be more flexible in the analysis of subsidiarity.

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[143] As for the Ministry of the Interior, it should be noted that Decree Law 2893 of 2011 modified the objectives, organisational structure and functions of this ministerial agency, and transferred disaster risk management and the direction and coordination of the National System for Disaster Prevention and Response to a new administrative entity: the aforementioned UNGRD, created by Decree Law 4147 of 2011.

[144]

[145] According to article 3 of Law 1251 of 2008, an *older adult* is a person who is sixty (60) years of age or older.

199. In these circumstances, the First Chamber of Review concludes that the tutela action in question satisfies the minimum procedural requirements, and will therefore examine the merits of the case.

3.2. Study of the facts of the present tutela action.

200. As described in the background, the plaintiffs claim protection of their fundamental rights to equality, decent housing, work, food, food security, minimum subsistence, life, personal security and petition. The plaintiffs insist that, as a result of the floods caused by the rising waters of the Bojabá River, they had to leave the rural property where they lived and carried out agricultural and livestock work. However, they state that they have not received state assistance that responds to their condition as "forcibly internally displaced persons due to natural disasters". In the course of the tutela proceedings, the plaintiffs also emphasised that they are elderly peasants and that they were economically dependent on agricultural activities on their land. Furthermore, the applicants confirmed that they have not been able to return to it.

201. It is then up to the Court to determine, first, whether the actors are forcibly internally displaced and, therefore, whether they should receive a state response that addresses this circumstance. Second, and if they are, whether the state response should be that which is derived from Laws 387 of 1997[146] and 1448 of 2011[147] . Finally, the Court must assess the conduct of each of the respondent authorities in order to determine whether the amparo should be granted and, if so, what measures should be adopted to protect the rights of the plaintiffs.

3.3. The recognition of the actors as internally displaced persons and subjects of special constitutional protection.

202. As mentioned earlier in this judgment, the criteria for forced internal displacement are: (i) that a person or group of persons flee or escape from their home or place of habitual residence, (ii) that this movement is forced or involuntary, and (iii) that it occurs within the borders of the country. As also detailed above, displacement can occur for a variety of reasons, which are not limited to violence and armed conflict. Environmental factors, including disasters, those associated with climate change or environmental degradation, can also cause internal forced displacement.

203. Taking this into account, for the Court there is no doubt that Mr. José Noé Mendoza Bohórquez and Mrs. Ana Librada Niño de Mendoza **are internally displaced due to environmental factors**, because: (i) they had to leave their home due to an environmental disaster; (ii) they were forced to abandon their home, given the devastation of their home and property and the danger that it represented for their integrity and well-being to remain there; and (iii) they moved from the rural area to the urban area of the municipality of Saravena, and were therefore displaced within the national borders. In other

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[146] "By which measures are adopted for the prevention of forced displacement; the care, protection, consolidation and socio-economic stabilisation of those internally displaced by violence in the Republic of Colombia".
[147] "By which measures of attention, assistance and integral reparation to the victims of the internal armed conflict are dictated and other provisions are issued".

words, there is no doubt that the applicants' case is one of forced internal displacement for environmental reasons.

204. Given this situation, and the fact that in addition to displacement there are other factors of vulnerability[148] **, the Court must conclude that the State has a reinforced duty to guarantee the rights of the plaintiffs, which were violated by the events that gave rise to the present tutela action.**

205. However, and contrary to the petitioners' request, this guarantee cannot be given on the basis of laws 387 of 1997 and 1448 of 2011, since, as indicated in **grounds 171 to 179,** these norms exclusively cover the victims of violence and the armed conflict. They are particular norms issued in response to certain state obligations in the context of the armed conflict and it is not possible for the tutela judge to extend their scope.

206. To the extent that the plaintiffs abandoned their place of residence due to the overflowing of a river during the rainy season, the cause, at least in this case[149] , does not fall within the assumptions established in Laws 387 of 1997 and 1448 of 2011. However, and as will be developed below, this does not mean that just because the plaintiffs are not covered by the aforementioned norms, the State can excuse itself from their protection and care, especially when they are subjects of special constitutional protection.

207. In fact, one of the first issues that illuminates this case, as previously mentioned in this ruling, is that in Colombia there is a lack of legal protection for persons displaced by environmental factors, which is not the case for those displaced by the armed conflict. For this Court, there is no doubt about the need for the Congress of the Republic to urgently resolve this vacuum and consequently issue a legal regulation that allows for compliance with the constitutional obligations of the State with regard to persons who have had to be forcibly displaced due to events associated with climate change, disasters or environmental degradation. Therefore, this Chamber will urge Congress to design and enact such a regulation.

208. In any case, in the present case, it is clear to the Court that the responsible authorities cannot excuse themselves from providing attention and protection to the actors, as subjects of special constitutional protection, with the argument that there is a lack of legal protection in the face of displacement due to environmental factors. As has been insisted, the plaintiffs are peasants, older adults, who find themselves in a situation of internal displacement due to environmental factors. As displaced persons, the plaintiffs are genuine holders of the guarantees that, based on constitutional norms and international instruments, should be recognised for victims of forced displacement. To that extent, in the case under study, the responsible authorities should have guaranteed at least the minimum standards of protection and satisfaction of the

[148] There are factors that significantly exacerbate the risk to the applicants. In particular, the fact that they are elderly and peasants makes them even more vulnerable to the effects of displacement. Moreover, as indicated earlier in this decision, the Court has recognised that displaced persons, as well as the elderly and peasants, are subjects of special protection. In this regard, see, for example, judgments T-198 of 2014, T-066 of 2020 and C-644 of 2012.

[149] It is emphasised that this statement applies to the specific case, as environmental displacement can sometimes coincide with situations of armed conflict.

rights and needs of those who find themselves, regardless of the cause, in a situation of forced internal displacement.

3.4. The conduct of the authorities concerned

209. Having clarified that José Noé Mendoza Bohórquez and Ana Librada Niño de Mendoza are entitled to receive special constitutional protection, the Chamber must assess the conduct of the respondent entities, which in this decision were recognised as having standing to sue.

210. Firstly, and in relation to the UARIV, the Court finds that it is not responsible for the violation of the applicants' rights, as the scope of competence of this entity is framed within Law 1448 of 2011 which, as explained above, revolves around the victims of violence and the armed conflict.

211. Thus, for the Court, the response provided by the entity to the petitions presented by the petitioners is in accordance with the provisions of Article 61 of the aforementioned law. Indeed, this provision states that a person who considers himself to be a victim of forced displacement must give a statement before any of the institutions that make up the Public Prosecutor's Office. In this sense, the action of having asked them to approach the Public Prosecutor's Office to initiate the relevant route for recognition as victims is in accordance with the law.

212. On the other hand, it is also impossible to attribute responsibility to the UARIV for the fact that it did not recognise the applicants as victims of displacement under the terms of Law 1448 of 2011, as a prerequisite for receiving the same guarantees and humanitarian aid provided to those forcibly displaced internally by the armed conflict. This entity is subject to the principle of legality - in accordance with Article 6 of the Constitution - and, therefore, could not ignore the conditions defined in that law for the purposes of providing special measures of attention, assistance and comprehensive reparation to the plaintiffs. As has been insisted, the situation of the applicants does not fall within the scope of 1448 of 2011 (also known as the Victims Law).

213. For the same reasons, a similar conclusion is reached with respect to the accusation against the DPS. The plaintiffs claim that this entity, being in charge of combating the poverty of persons in conditions of displacement, should have taken the relevant measures to redress their situation. However, as with the UARIV, the mandate of the DPS in this area is limited. According to Article 3 of Decree 2094 of 2016, that scope of competence is limited to "formulating, adopting, directing, coordinating and executing the policies, plans, programmes and projects **in relation to the attention and reparation of victims of the armed conflict referred to in Article 3 of Law 1448 of 2011** (...)" (emphasis added). This means that the DPS cannot be reproached for acting in accordance with its competences, especially if this entity has not been involved in the facts surrounding the specific situation of the applicants. Consequently, it is not possible to conclude that the entity has discriminated or acted against the applicants' rights.

214. However, and in contrast to what has been said in relation to the UARIV and the DPS, the same conclusion cannot be reached with regard to the conduct of the entities linked to the process that play a role within the SNGRD, i.e. the department of Arauca, the municipality of Saravena and the UNGRD.

215. The plaintiffs indicated in their complaint that their rights were also affected by the corresponding authorities of the municipality of Saravena and the department of Arauca, since, despite having made repeated requests for the adoption of measures to prevent and respond to the floods, these authorities failed to respond. For their part, the respondent territorial entities argued that no violation of fundamental rights could be attributed to them, since anyone who wishes to benefit from the measures for internally displaced persons must follow the institutional route and be recognised as a victim in the RUV. Although these entities admitted that the plaintiffs were affected by the effects of the winter wave affecting the region, they considered that, as long as the plaintiffs did not prove that they were included in the RUV, it was not possible to provide them with the assistance claimed.

216. In relation to these assertions, it is insisted that, despite the fact that the plaintiffs do not meet the requirements to be beneficiaries of the measures provided for in Law 1448 of 2011, this does not mean that the respondent territorial entities can ignore their obligations to protect and assist those who are in a situation of vulnerability and are subjects of special constitutional protection. In other words, as indicated above, by not being able to extend to the plaintiffs the programmes and support created for the victims of forced displacement by violence, the authorities are not exempted from their commitments to them as forced internally displaced persons as a result of an environmental disaster.

217. For the Court, it is a fact that the Mayor's Office of Saravena and the Government of Arauca sought to divert attention to the issue of recognition of their status as victims of the armed conflict, and failed to respond to the claims regarding their general duty to protect. This, even though they recognised that the applicants were victims of the winter waves and that they could be beneficiaries of the institutional offer.

218. It should be recalled that the legal system has assigned a number of key responsibilities to local authorities in guaranteeing the rights of persons affected by natural disasters. These responsibilities also apply to those who have been forced to abandon their environment and their way of life due to such causes. These obligations must be materialised not only through the SNPRD, but in general, through the territorial planning and development of each entity.

219. Although the Court recognises that the municipality of Saravena and the Governorate of Arauca have taken some steps to implement risk management measures to prevent the repeated damage caused by the overflowing of the Bojabá River, the problem has not been confronted in a forceful manner. This leads to the reestablishment of the fundamental rights of the plaintiffs, and in fact of the other inhabitants of the area, being compromised. Thus, it is noted that, since March 2018, the governor of Arauca demanded that the Ministry of Environment and Sustainable

Development and the UNGRD define the type of intervention to be made in the department of Arauca to address the difficulties and possible catastrophes[150] . Regarding the Bojabá River, the governor stated the following:

> "We were emphatic in pointing out that we are exposed to a possible catastrophe, because there is an occupation, especially in the course of this river. We as the Departmental Government are willing to put the money that is required as long as we are authorised, because we cannot continue to expose our peasants and farmers to water that every winter the water wipes out their crops, the crops are part of strengthening the local economy and we must strengthen it, as well as the security of the environments of the sector"[151] .

220. A month later, the president called on the Regional Autonomous Corporation of Orinoco, within the framework of its competencies, to support the actions of the territorial body in mitigating the risk to the population living on the banks of the Bojabá River.[152] However, the fact remains that the risk situation in the municipality, and specifically in the hamlet of Campo Oscuro, where the plaintiffs' property is located, persists and there is no information that it has improved.

221. In May 2021, through Decree 041, the Mayor's Office of Saravena decreed a public calamity in the municipality in order to mitigate, reduce and recover from the effects of the rains. On 16 August 2022, a red alert was declared in the municipality (Decree 079 of 2022), partly due to the floods registered since the beginning of the month due to the overflowing of the Bojabá river, among other events. A few days later, Decree 084 of 23 August 2022 again declared a public calamity in the municipality for six months. In the considerations of the decree, it was stated that "according to the community action report, the existence of points with imminent risk and flooding events in the villages mentioned in table 1 has been confirmed"[153] , including the village of Campo Oscuro.

222. After the second declaration of public calamity, on 6 September 2022 the Municipal Council for Disaster Risk Management of Saravena, led by the Secretary of Government Mercedes León, met to build and approve the Action Plan in response to the Public Calamity declared by the municipal administration. In this plan, issues such as emergency attention to critical points, support for families in a state of vulnerability as a result of flooding and the mass movement in the Calafitas area were raised. The most urgent needs were also analysed and the following were identified: mitigation works, intervention with machinery, supply of resources for fuel, maintenance of equipment and logistical support.[154]

223. Based on the above, it is evident that the actions of the entities with regard to the people affected by the floods have focused mainly on dealing

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[150] Government of Arauca. (2018) SOS launched by the Departmental Government due to the lack of attention to the situation of the Bojabá, Caranal, El Tigre and Arauca rivers. Website of the Government: https://arauca.gov.co/con-maquinaria-se-intervendran-puntos-criticos-de-los-rios-bojaba-cusay-tigre-y-caranal/

[151] Ibid.

[152] Ibid.

[153] Decree 084 of 2022, "By which public calamity is decreed in the municipality of Saravena - Department of Arauca".

[154] Piedemonte Noticias (6 September 2022). News on Facebook profile. Url: https://www.facebook.com/watch/?v=616877199953997

with the emergency and guaranteeing basic needs in the short term. However, there has not been a long-term and structural solution to restore the rights of the people displaced by the flooding of the river. To that extent, the Court concludes that, despite having deployed a series of efforts from the perspective of risk management, there is no evidence that the measures adopted have meant a guarantee of the rights of the plaintiffs as displaced persons. Thus, the measures implemented have not ensured a medium and long-term accompaniment that would guarantee lasting solutions for the claimants. Nor is there evidence of the implementation of preventive measures to avoid new displacement events or the perpetuation of their impacts over time.

224. The foregoing is consistent with what the UNGRD stated in its response to the tutela action, insofar as it reported that in the database of the project bank of the Subdirectorate for Disaster Risk Reduction it was not found that the municipality of Saravena or the department of Arauca had submitted any project aimed at resolving the situation described above. In fact, according to the plaintiffs, the only actions taken by the territorial authorities have been the construction of some gabions and the loan of machinery to the community so that, on their own, they can carry out some reconstruction works. None of these actions, of course, have been effective and sufficient given the scale of the natural disaster in question.

225. However, upon analysing the Municipal Disaster Risk Management Plan of the municipality of Saravena - hereinafter, PMGRD Saravena - issued in 2019, which is available on the municipality's website[155] -, it is clear that the problem that affected the plaintiffs is not unrelated to the territorial entities involved. This document recognises that in the municipality "there have been emergencies caused by floods which, every year in winter, hit the inhabitants of the riverbanks of some of the municipality's rivers"[156] . The plan also indicates that since 2015 it has been necessary to declare a public calamity in the municipality due to flooding on five occasions[157] . Thus, in the PMGRD Saravena it is clear that 29.75% of the area of the municipality is highly threatened by flooding, especially due to the increase in the flow of the Arauca, Bojabá, Banadia, Satocá and La Pava rivers.

226. The PMGRD of the municipality develops, in its programmatic part, the objectives, policies, strategies, programmes and actions that are part of municipal risk management. Among other issues, it mentions, for example, the need to draw up hazard, exposure, vulnerability and flood risk zoning maps, taking into account as a priority the tributaries of the Bojabá river[158] . The document also mentions that relocation studies of settlements located in risk zones, and specifically relocation studies of settlements due to flooding, should be carried out[159] .

227. Regarding the municipal response to flood emergencies, the Saravena PMGRD indicates that risk awareness and attention measures have been

[155] Available at: http://www.saravena-arauca.gov.co/planes/plan-municipal-de-gestion-del-riesgo-de-desastres-2019. Last accessed: 18/05/2022.
[156] See PMGRD Saravena 2019, p. 35.
[157] The following municipal decrees are mentioned in the document: decree No. 055 of 11 June 2015, decree N o. 151 of 26 November 2015, decree No. 11 of 18 January 2017 and decree 054 of 7 May 2018 (p. 36)
[158] PMGRD Saravena - 2019, p. 100-101.
[159] PMGRD Saravena - 2019, p. 102.

adopted. In this regard, the plan indicates that the municipality has a detailed flood risk study which classifies the risk and the areas in which it can or cannot be mitigated[160] . It also states that efforts have been coordinated with the department of Arauca, Ecopetrol and other national entities to respond to these risks in the best possible way. Although the document speaks of the relocation of 78 houses that were located on the banks of the Arauca River, there is no mention of a relocation plan for the settlements located on the banks of the Bojabá River.

228. The PMGRD Saravena identifies the following measures as intervention measures for the flood risk scenario, related to the area where the plaintiffs' property is located:

- as a risk awareness measure: "(i) [e]work on hazard, exposure, vulnerability and flood risk zoning maps taking into account as a priority the following tributaries: Bojabá river, Banadias river, caño negro stream, la pava stream, caño claro stream and madre vieja river; and (ii) Elaborate relocation studies of settlements located in risk zones.″ [161]
- As structural measures for the reduction of the threat*:* "(i) Canalisation of the Bojabá (sic) river in the Campo Oscuro sector (ii) Construction of a dike in the sector of the piedrones vereda Campo Oscuro (sic)". [162]

229. Likewise, the actions formulated for flood risk include, in the first place, the elaboration of studies for the relocation of settlements due to flooding. In this regard, it specifies that:

> "In accordance with the effects caused by the already known emergencies such as the floods registered in past years, in the sector of Charo Island and the Cobalongos and Monte Adentro villages, there is a need to design and implement studies for the relocation of families at high risk, especially those in the Calafitas, Puerto Lleras and La Playa villages, which will improve the living conditions and well-being of the affected communities and at the same time, develop actions for the relocation of the areas".[163]

230. Thus, it is clear that the risk situation in the hamlet of Campo Oscuro, located in the sector of Isla del Charo, is widely known by the municipal authorities, to the extent that measures have been foreseen, at least in the aforementioned plan, to have a greater knowledge of the risk and reduce the threat it generates. However, the evidence before the Court shows that the structural measures that the municipality of Saravena has foreseen for risk mitigation are still pending implementation. For this reason, the plaintiffs have not been able to return to the property where they had their house and crops. In addition, the claimants have not had access to the institutional offer in terms of risk management, much less to permanent relocation solutions. In fact, the claimants still continue to live in the urban area of the municipality and depend on the solidarity of their relatives.

231. Thus, it is clear that the territorial entities concerned have not demonstrated compliance with their obligations as responsible for disaster risk management within their jurisdiction. As a consequence, the plaintiffs have

[160] PMGRD Saravena - 2019, p. 45.
[161] PMGRD Saravena - 2019, p. 48.
[162] PMGRD Saravena - 2019, p. 49.
[163] PMGRD Saravena - 2019, p. 116-117

had to face the situation of forced displacement caused by the effects of the natural disaster on their homes and other property, without the institutional support and accompaniment necessary to guarantee their rights in the aftermath of the catastrophe.

232. However, the Chamber must specify that, in the specific case, not only is there a disregard for the legal duties that the territorial authorities have towards the claimants as victims of a natural disaster. There is also evidence of a failure to comply with the standard of constitutional protection to which the plaintiffs are entitled in their condition as forced internally displaced persons, the elderly and peasants, as set forth in the Constitution, constitutional jurisprudence and international human rights law.

233. In the face of a disaster, such as the one suffered by the plaintiffs, a primary duty of the State to provide relief during the emergency and to provide protection and humanitarian assistance is triggered. Likewise, and in light of the international standards mentioned in this ruling, in such cases a State duty is also triggered to restore housing, guarantee the integration of persons and support them in progressively recovering the material conditions of existence that they have lost. In other words, there is a primary duty of the State to help them obtain a durable solution.

234. In the case under study, these mandates have not been observed, as it is only proven that those affected by the overflowing of the Bojabá River - and among them, the applicants - were provided with immediate and basic humanitarian aid, and on a single occasion when the first flooding event occurred. However, they were not offered any response to the subsequent floods, nor were they supported in the progressive recovery of their material conditions of existence.

235. The above conclusion is reaffirmed when analysing the UNGRD's response to the complaint. It noted that only in May 2015 did the Municipal Council for Disaster Risk Management of the municipality of Saravena report an emergency caused by flooding in several tributaries in the region. Furthermore, in response to this situation, the unit, in coordination with the territorial entities, responded to the emergency by sending different types of aid (markets, household goods, hammocks, tarpaulins, and cleaning kits) to the value of $342,717,445.

236. It is true that the municipality and the department have the responsibility to take actions to guarantee the effective enjoyment of the fundamental rights of the plaintiffs, and that the role of the UNGRD is to provide support in this mission. However, in the opinion of the Chamber, the UNGRD, as the body in charge of directing the implementation of disaster risk management and coordinating the functioning and continued development of the SNGRD, cannot dissociate itself from the efforts of the local authorities. At the very least, it is called upon to monitor disaster situations. In fact, the effective solution to the problems caused by an environmental disaster goes beyond the immediate reaction to the crisis and requires a joint and sustained institutional effort in this area.

237. As the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons has rightly stated, the duty of the authorities

implies obligations of *foresight, care and recovery.* In this sense, it must be insisted that the State's obligation is not limited to temporary palliatives and immediate response to the emergency, but that it continues in order to guarantee the recovery of the victims over time.

238. In summary, after analysing both the responses of the territorial entities and the UNGRD, as well as the respective measures they have adopted for disaster risk management, it is clear that the risk situation in the area where the plaintiffs' property is located is widely known. It is also clear that structural actions have been foreseen, at least on paper, to prevent the recurrence of such events. However, such actions have not been effectively implemented, so that there is still a threat to the applicants being able to return to the property that they abandoned permanently in 2016.

239. In addition to this, the applicants only received support from the entities concerned through the humanitarian aid given after the flood of May 2015, but they have not received any other type of humanitarian or emergency assistance in response to the events of the following years, nor have they been granted access to measures for their return or relocation. Similarly, there is no evidence that the authorities have made progress in the flood resettlement studies or that the applicants have been included in censuses, studies or programmes aimed at guaranteeing, eventually, access to permanent housing.

240. As many international agencies and organisations have pointed out, in a context of climate crisis we are facing other types of human mobility, beyond those produced by violence and conflict, which demonstrate the need to understand forced internal displacement more broadly. This does not imply that exactly the same guarantees and prerogatives should be applied to those who are victims of the armed conflict, but it does imply that their status as forcibly displaced persons should be recognised and that an effective response should be found for them. In this sense, the plaintiffs should be recognised as forcibly displaced by environmental factors and the rights that derive from this recognition should be protected.

241. In particular, this implies a state response that goes beyond the emergency humanitarian aid provided for in the regulatory framework for disaster risk management. Fundamental to this, as noted above, is the development of a public policy that understands human mobility also as a climate change adaptation strategy.

242. In conclusion, for the Court, the entities that have standing to act violated the rights of the plaintiffs by not adopting structural and effective measures to address the recurrent flooding caused by the overflowing of the Bojabá River and by failing to provide a comprehensive and lasting response to restore the rights of the plaintiffs, who are subjects of special constitutional protection.

243. In particular, the Court observes, firstly, that the applicants' **right to decent housing was** violated, because the aforementioned entities did not implement measures to guarantee this right, a situation that has led to the applicants, persons of special constitutional protection, still not having a fixed place to live. None of the respondent authorities, which were recognised as having standing to act, implemented short-term measures, such as shelters,

rental subsidies or the adaptation of a building for temporary housing. Nor did these entities adopt long-term measures, such as directly including the victims in any of the municipal programmes in force.

244. Secondly, there is evidence of a violation of the **right to work** of José Noé Mendoza Bohórquez and Ana Librada Niño de Mendoza. As the plaintiffs are a peasant couple who depend on access to land and agricultural activities for their livelihood, the impossibility of returning to their land and being able to exploit it economically compromises the effective enjoyment of this right. In addition to this, the petitioners, who are older adults, face additional barriers to satisfy their vital needs autonomously, through their work.

245. Thirdly, and in line with the above, there is also evidence of an affectation of the **right to the minimum vital**, **to food and to food security**, since, as already stated, the claimants depended on agricultural activities to subsist economically and to guarantee their food subsistence.

246. Finally, the **right to life and personal security** was violated. The applicants cannot return to their property, as this constitutes a risk to their life and personal integrity. The failure to adopt effective risk prevention measures placed the applicants in a situation of threat that violated their right to personal security.

247. In conclusion, based on the foregoing, this Review Chamber will protect the fundamental rights to housing, work, minimum subsistence, food and food security, personal safety and life of José Noé Mendoza Bohórquez and Ana Librada Niño de Mendoza. It will then adopt the measures necessary to put an end to the violation.

3.5. On judicial remedies

248. In this decision, the Court has shown that there are no legal norms to properly address forced internal displacement due to environmental factors, which places persons displaced by this cause in a deficit of constitutional protection of their fundamental rights. Although the regulatory framework for disaster risk management offers some tools (which, in this case, should have been used) for the protection of this population, these are not sufficient to guarantee the totality of their rights.

249. Specifically, disaster risk management legislation includes provisions to ensure the relocation of people located in settlements under threat, the availability of temporary shelters in the emergency response phase and subsequent relocation. However, there are no clear and specific guidelines on how relocation processes should be carried out, nor what are the basic guarantees and duties to be taken into account to ensure durable solutions that effectively restore violated rights in the long term. Likewise, as evidenced in the first part of this providence, it is a limited framework, as it only covers those who are victims of disasters, but not those who must be displaced due to complex factors such as environmental degradation or slow-onset phenomena.

250. In other words, although there is legal protection, there is still a legal and regulatory vacuum with respect to the phenomenon of forced

displacement for environmental reasons that needs to be resolved. Therefore, the legal remedies defined by the Court in this case are adopted in light of this deficit, but also in consideration of the constitutional guarantees and the protection that international law offers to forcibly displaced persons, including those displaced for environmental reasons.

251. Thus, for this Chamber it is clear that the authorities must provide humanitarian attention to the applicants, which is not exhausted with immediate attention after the emergency. It is the duty of the State to offer measures to guarantee the rights of the applicants in the meantime, in order to reach a lasting solution for them. In this sense, the State must guarantee the minimum vital needs of the applicants and contribute to adequately satisfy their needs for food, drinking water, shelter and basic housing, adequate clothing, medical services and basic sanitation, as established in Principle 18 of the Deng Principles and the constitutional framework set out above.

252. In addition to the above, the authorities concerned must include the claimants in the respective resettlement or relocation plans that they have and, if they do not have them, they must design them. To this end, it is essential that they carry out an adequate risk study and guarantee the participation of the claimants in the construction of the respective solution offered.

253. For all of the above reasons, the decisions adopted by the constitutional judges of first instance, who considered that the tutela action was inadmissible, will be reversed. In their place, while the protection against the actions of the UARIV and the DPS will be denied, it will be granted against the municipality of Saravena and the department of Arauca. This protection will be granted in the following manner:

254. In the first place, it is the responsibility of the Mayor's Office of Saravena, with the subsidiary support of the Government of Arauca and the UNGRD, to verify the current situation of access to food, drinking water, basic shelter and housing, adequate clothing, and medical and basic sanitation services of the applicants. If any shortages are observed, they should be addressed through humanitarian assistance.

255. Secondly, the municipality of Saravena will be ordered, within the framework of the actions foreseen in the PMGRD, with the support of the UNGRD, to determine, by means of a detailed study, the level of risk and vulnerability of the El Paraíso property, located in the village of Campo Oscuro, and to establish whether this risk can be mitigated through the actions of the plan. If so, the execution of the mitigation measures will be ordered after the presentation of the study. Both the risk study and the implementation of the mitigation plan must begin no later than one year from the date of notification of this judgment and must have an accelerated implementation schedule, duly agreed between the entities in question and with the participation of the plaintiffs and the affected communities.

256. In addition to the above, the municipality will be ordered to guarantee, if possible, the voluntary, safe, dignified and sustainable return of the applicants to their land, and to ensure that the housing has appropriate conditions of habitability and security. Likewise, and with a view to guaranteeing the right to work, food security and minimum subsistence, the

municipality will be ordered to provide the necessary assistance so that the claimants can re-establish the crops and food that they had on the property and which were lost as a result of the floods and subsequent abandonment.

257. In the event that safe return is not possible, as a consequence of the risk assessment or due to the duly founded decision of the claimants not to do so, their relocation should be guaranteed under the same conditions foreseen for return. Relocation should take place under conditions of voluntariness, dignity, security and sustainability. In this context, the applicants shall be ordered to be provided with the necessary support for their economic livelihood and to take into account, as far as possible, the work in which they were engaged before displacement and from which they derived their livelihood. Decisions taken to ensure relocation should involve the informed participation of the applicants. In any case, the municipality must give the applicants priority access to programmes aimed at guaranteeing decent housing within the criteria of prioritisation, gradualness and progressiveness referred to in this judgment. This housing solution may be framed within the urban development projects for housing construction and relocation of human settlements referred to in Article 81 of Law 1523 of 2012.

258. The Court must specify that, although the right to housing has a progressive and beneficial nature that does not imply the guarantee of immediate access to housing, in the particular case of the applicants, due to their special conditions of vulnerability, a relocation must be ordered that not only guarantees that they have a safe roof over their heads, but also a lasting solution that reestablishes the rights that were violated by the displacement. A provision that is entirely reasonable in light of the obligations of the territorial entities and the national government in this area.

259. Likewise, this decision will order the UNGRD, in its capacity as the governing and coordinating body of the SNGRD, to provide permanent support and advice to the territorial entities for compliance with the orders given here and for their institutional strengthening in disaster risk management and attention to forced displacement for environmental reasons. Likewise, a call will be made to the Orinoco Autonomous Corporation - Corporinoquia, the Department of Social Prosperity and the Ministry of Housing to accompany the responsible entities in risk management and in the possible relocation processes that may occur as a result of this process.

260. The Ombudsman's Office - Arauca Regional - will also be invited, in the development of its constitutional functions in the protection and promotion of human rights, to actively and continuously monitor the case of the plaintiffs and other persons who find themselves in a similar situation of displacement due to environmental factors.

261. Now, in line with the above, the Court recognises that there may be persons in a similar situation to that of the applicants, i.e. other persons displaced as a result of the flooding of the Bojabá River. Therefore, the Court will extend the measures of this decision, through *inter comunis* effects. The Court observes that in this case the assumptions established in the

constitutional jurisprudence[164] have been accredited in order to be able to extend the effects of this judgement. In effect, on the one hand, it was demonstrated that several people living in the communities bordering the Bojabá River - that is, the villages of Caño Negro, Campo Oscuro, Buenos Aires, Islas del Bojabá, El Pescado, Puerto Arturo, Puerto Nariño, Charo Dique and Puerto Rico - met and asked the authorities of the Municipality of Saravena and the Government of Arauca to take protective and care measures as a result of the overflowing of the river[165] . On the other hand, it was evidenced that in the minutes of these meetings the population expressed the urgency of adopting decisive measures due to the situation of risk in which they find themselves.

262. Therefore, it is clear that the other inhabitants of these areas are also in an urgent situation, and some of them may also be in a situation of displacement and in need of similar protection for the restitution of their rights. For this reason, in order to safeguard the principles of equality and in view of the seriousness of the matter under analysis by this Corporation, the legal formula adopted in this decision will be extended to benefit the entire population displaced by the flooding of the Bojabá River.

263. Finally, as a general measure, the Chamber will urge the Congress of the Republic, together with the national government and the Ombudsman's Office, to regulate through a law the response and approach to be taken to forced internal displacement due to environmental factors. This regulation should take into account the multidimensional impact that forced displacement due to these causes generates, in order to remedy the constitutional protection deficit that has been identified.

4. SUMMARY OF THE DECISION

264. In this case, a peasant farmer couple aged 66 and 63 were displaced from their land, located in the rural area of the Municipality of Saravena, following the flooding of the Bojabá River in 2015 and 2016. Since then, the claimants stated that they have not been able to return and live on their land because the actions taken by the responsible authorities have been minimal and insufficient.

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[164] The Constitutional Court stated, in judgment SU 180 of 2022, that *inter comunis effects* are adopted when it is noted that, although there is a group of people who have not requested the protection of their rights, as they are in common or similar circumstances to those of the plaintiff, they must be treated on an equal basis. Thus, the decision, issued in the framework of the tutela action, also covers them. In the same sense, Judgment SU-1023 of 2001, stated that the *inter communis* effects "are those that, exceptionally, extend to third parties who are equally affected by the factual or legal situation that (...) motivated [the amparo action], as a result of the actions of the same authority or individual, justified by the need to give all members of the same community equal and uniform treatment that ensures the effective enjoyment of their fundamental rights".

[165] Digital file T8480624, document entitled: DEMANDA_25_6_2021 16_56_13.pdf. In fact, among the documents provided by the plaintiffs are, among others: copy of the minutes of the meeting of the inhabitants of the villages of Caño Negro, Campo Oscuro, Buenos Aires, Islas del Bojabá, El Pescado, Puerto Arturo, Puerto Nariño, Charo Dique and Puerto Rico on 1 June 2017. Oficio dated 14 June 2017, sent by the president of the Junta de Acción Comunal de la vereda Caño Negro to the secretary general and government, requesting the loan of a backhoe as a matter of urgency. Oficio dated 16 June 2017, from the municipal ombudsman of Saravena to the municipal mayor of Saravena, requesting intervention in sectors at risk of flooding. Letter dated 18 July 2017, from the Community Action Boards of the villages of Caño Negro and Campo Oscuro, requesting accompaniment from the Municipal Risk Council for an inspection of critical points.

265. For this reason, on 10 September 2020, the plaintiffs filed a petition with the Unit for Attention and Integral Reparation for Victims (UARIV) to be recognised as victims of forced displacement under the terms of Law 1448 of 2011 and, in this way, to access the benefits that derive from such status. The UARIV indicated that in order to resolve their doubts it was necessary for the plaintiffs to come to the offices of the Public Prosecutor's Office to make a statement on the facts and circumstances that constitute their status as victims.

266. The plaintiffs considered that the response provided by the entity was not substantive and for this reason they filed a tutela action. In their writ, they stated that the respondent entity violated their right to equality because, despite being displaced by a natural catastrophe, they were not given the possibility of accessing the programmes and benefits created by the State for those forcibly displaced by violence. The plaintiffs insisted that the respondent authorities also violated their right to housing, work, food, food security, and minimum subsistence. Based on the above, they requested that the UARIV recognise them as forcibly displaced due to environmental factors and provide them with the same guarantees and humanitarian aid as those forcibly displaced by the armed conflict. They also asked the municipality of Saravena and the Governorate of Arauca to provide them with attention as victims of forced displacement and to grant them the same guarantees as this population.

267. To resolve the legal problem posed, the Court, first, provided an overview of international instruments and initiatives on forced internal displacement due to environmental factors. Second, it included a characterisation of internal displacement for environmental reasons, including its multi-causal nature and the fact that it most severely affects the most vulnerable populations. Third, the Court included some of the State's obligations with regard to this phenomenon, which are derived from the Constitution, constitutional jurisprudence and international instruments to attend to those who are in a situation of special vulnerability. Fourth, the ruling studied the current regulations in Colombia in the areas of climate change, disaster management and forced displacement due to armed conflict or violence.

268. Based on this analysis, the Court concluded that the victims of forced displacement due to environmental factors face a constitutional protection deficit. In effect, the Court found that the current legislation does not establish clear and specific guidelines on how the relocation processes of those displaced by environmental factors should be carried out, nor how to offer them durable solutions. It also concluded that the regulations only protect those who are victims of natural disasters, but not those who must be displaced by complex factors such as environmental degradation or slow-onset phenomena.

269. In analysing the specific case, the Chamber examined both the objective and subjective aspects of the applicants' case. Thus, it concluded that objectively, the case of the applicants is framed within the context of forced internal displacement due to environmental factors and that they have the right to have the State protect their fundamental rights that have been violated. In the subjective analysis, it was noted that, in addition to their condition of forced internal displacement, the petitioners were also affected by other

factors that significantly exacerbate their conditions of risk, such as the fact that they are peasants and older adults.

270. On examining the actions of the respondent entities in detail, it concluded that the UARIV and the DPS were not responsible for violating any of the applicants' rights, since in matters of forced displacement, their competences are limited to responding to the victims of the armed conflict, according to the provisions of Law 1448 of 2011.

271. On the contrary, the Court considered that the Mayor's Office of Saravena, the Governor's Office of Arauca and the National Unit for Risk Management did violate the rights of the applicants. In analysing the efforts made by these entities, it was concluded that the applicants (and others affected by the overflowing of the Bojabá River) were only provided with immediate and basic humanitarian aid during the first flooding event. However, they were not offered any response to the following floods, nor were they supported in the progressive recovery of their material conditions of existence.

272. The Chamber then decided to revoke the decisions adopted by the judges of first instance who considered that the tutela action was inadmissible. Instead, it denied the protection action against the UARIV and the DPS, but granted it against the municipality of Saravena and the department of Arauca, with the support of the National Unit for Disaster Risk Management, for violation of the fundamental rights to decent housing, work, minimum subsistence, food security and personal security of the plaintiffs.

273. The Court also extended *inter comunis* effects to benefit all persons in a similar situation to that of the plaintiffs, that is, all persons displaced by the flooding of the Bojabá River.

274. Finally, the Court urged Congress to develop a comprehensive regulatory framework to address the phenomenon of forced internal displacement due to environmental factors.

5. DECISION

In the light of the foregoing, the First Review Chamber of the Constitutional Court, administering justice in the name of the people and by mandate of the Political Constitution,

RESOLVES:

First. REVOK the judgment of 25 August 2021, handed down in the second instance by the Criminal Chamber of the Superior Court of the Judicial District of Bogotá, which confirmed and partially modified the decision of 13 July 2021 handed down by the 33rd Criminal Court of the Bogotá Circuit. In its place, **DENY** the tutela against the Unidad de Atención y Reparación Integral a las Víctimas (UARIV) and the Departamento Administrativo para la Prosperidad Social (DPS); and, **PROTECT** the fundamental rights to decent housing, work, minimum vital, food and food security, personal safety and life of José Noé Mendoza Bohórquez and Ana Librada Niño de Mendoza against

the actions of the Mayor's Office of Saravena and the Governor's Office of Arauca.

Second. ORDER the Mayor's Office of Saravena, with the subsidiary support of the Government of Arauca and the National Unit for Disaster Risk Management, to verify the current situation of access to food, drinking water, basic shelter and housing, adequate clothing, and medical and basic sanitation services of José Noé Mendoza Bohórquez and Ana Librada Niño de Mendoza and, in the event of any shortage, to offer, within two (2) months of notification of this decision, the humanitarian assistance they require to guarantee these rights.

Third. ORDER the Mayor's Office of Saravena and the Government of Arauca, with the support of the National Unit for Disaster Risk Management and within the framework of the National System for Disaster Risk Management, to determine, through a detailed study, the level of risk and vulnerability of the El Paraíso property, located in the village of Campo Oscuro, and to establish whether this risk can be mitigated through the actions provided for in the Municipal Plan for Disaster Risk Management or other actions. Both the risk study and the execution of the mitigation plan must be carried out no later than one year from the date of notification of this judgment and must have an accelerated implementation schedule, duly agreed between the responsible entities and guaranteeing the participation of the plaintiffs and the affected communities.

In the event that the municipality establishes that the risk is mitigable, the study with the level of risk and the mitigation works plan should be made available to the applicants so that they can make an informed decision as to whether or not they wish to return to that property. In the event that they decide to do so, the municipality shall be **ORDERED to** ensure the voluntary, safe, dignified and sustainable return of the applicants to their property with adequate and habitable housing, according to an accelerated implementation schedule to be agreed with the applicants. Likewise, the Mayor's Office will be **ORDERED to** provide them with support and accompaniment for the development of crops and agricultural activities similar to those they had on the property before the emergency that led to its abandonment.

Fourth. ORDER the Mayor's Office of Saravena and the Government of Arauca, in the event that it is not possible to mitigate the risk of flooding on the El Paraíso property, or in the event that the claimants present well-founded reasons why they do not wish to return to the property, to identify the housing programmes that exist in the municipality and to offer the claimants options for priority access to them, so that, within a reasonable period of time and within the prioritisation criteria, they may offer the claimants options for priority access to them, identify the housing programmes that exist in the municipality and offer the applicants options for priority access to them, so that, within a reasonable period of time and within the criteria of prioritisation, gradualness and progressiveness referred to in this judgment, they are guaranteed the right to decent housing. Likewise, the Mayor's Office of the municipality of Saravena is **ORDERED to** guarantee a source of income that is adapted to the needs and cultural identity of the petitioners, while the relocation is being carried out, through the inclusion of the petitioners in the offer of social programmes.

Fifth. PREVENT the Corporación Autónoma de la Orinoquía - Corporinoquía, the Department of Social Prosperity and the Ministry of Housing, City and Territory to provide the necessary support to the municipality of Saravena and the department of Arauca in the framework of the disaster risk management process, as well as in the possible relocation of settlements that should be carried out as a result of this process.

Sixth. URGE the Ombudsman's Office - Arauca Regional - in the development of the functions that the Constitution and the law have conferred upon it in terms of the protection and promotion of human rights, to actively and continuously accompany the case of José Noé Mendoza Bohórquez and Ana Librada Niño de Mendoza throughout the process aimed at the progressive restitution of their rights as forced internally displaced persons due to natural or human-caused disasters.

Seventh. WARN the Mayor's Office of Saravena, the Governorate of Arauca and all state authorities involved in the implementation of risk management policies that it is necessary to integrate a human rights-based approach into these processes. In line with this approach, sustainable accompaniment should be guaranteed, with monitoring strategies that allow for the participation and guarantee of the rights of the affected populations in a permanent and lasting manner, and that respond to differential perspectives, in accordance with the considerations set out in this judgment.

Eighth. WARN the entities that make up the National Disaster Risk Management System that they must implement planned strategies aimed at preventing forced displacement due to environmental factors, in accordance with the considerations set out in this judgment.

Ninth. EXTEND the legal formula adopted in this decision and the route established to resolve this case, through the *inter comunis* effects to the entire population displaced by the flooding of the Bojabá River.

Tenth. DISMISS the Ministry of the Interior and the Ministry of National Defence from the tutela proceedings.

Eleventh. EXHORT the Congress of the Republic and the national government to develop a regulatory framework to address the phenomenon of forced internal displacement due to environmental factors with a differential approach and that addresses the obligations of the State as set out in the grounds of this judgment. Likewise, a public policy should be implemented that, in a progressive manner, allows all State actors to address this phenomenon in accordance with the considerations set out in the grounds of this judgment. While this regulation is being issued, the authorities in charge of dealing with the phenomenon of forced internal displacement due to environmental factors must, as a minimum, comply with the following guarantees: (i) provide protection against displacement (prevention phase); (ii) guarantee those affected an adequate standard of living, at least in the basic components of indispensable food and drinking water, shelter and basic accommodation, clothing, medical and sanitation services, and others that respond to the basic needs of the displaced; (iii) ensure, where possible, safe and dignified voluntary return or resettlement; and (iii) provide the required

assistance until such time as the returned or resettled persons recover to the extent possible what they were dispossessed of.

Twelfth. URGE the Ombudsman's Office, in exercise of its legislative initiative enshrined in Article 282.6 of the Constitution, to present a bill to address forced displacement due to environmental factors. .

Thirteenth. By the Secretary General's Office, the communications provided for in Article 36 of Decree 2591 of 1991 **shall be DRAFTED.**

Notify, communicate and comply.

NATALIA ÁNGEL CABO
Magistrate

DIANA FAJARDO RIVERA
Magistrate

JUAN CARLOS CORTÉS GONZÁLEZ
Magistrate

ANDREA LILIANA ROMERO LOPEZ
Secretary General