Judgement SU016/20

Reference: Exp. T-6.480.577

Matter: Tutela Action filed by the Botanical and Zoological Foundation of Barranquilla (FUNDAZOO) against the Supreme Court of Justice

PRESIDING JUDGE:

LUIS GUILLERMO GUERRERO PÉREZ

Bogotá, D.C , 23 January 2020.

The Plenary Chamber of the Constitutional Court, composed of Judge Gloria Stella Ortíz Delgado, who presides over it, Carlos Bernal Pulido, Diana Fajardo Rivera, Luis Guillermo Guerrero Pérez, Alejandro Linares Cantillo, Antonio José Lizarazo Ocampo, Cristina Pardo Schlesinger, José Fernando Reyes Cuartas and Alberto Rojas Ríos, in exercise of their constitutional and legal competences, has professed the following:

Judgment

In the review process of the ruling issued on October 10, 2017, by the Criminal Cassation Chamber of the Supreme Court of Justice, which confirmed the protection of due process of the Botanical and Zoological Foundation of Barranquilla, granted on August 16, 2017 by the Labor Cassation Chamber of the Supreme Court of Justice.

1. Factual background

1.1 Chucho is a spectacled bear who was born in the La Planada Nature Reserve in Nariño department, and is currently between 22 and 24 years old.

1.2. Chucho has remained in captivity throughout his life, although he has been moved to different places within the Colombian territory.

After four years in the La Planada Natural Reserve, he was transferred to the Río Blanco Protected Forest Reserve in Manizales, where he remained in the care of Corpocaldas for nearly 18 years.

However, in 2016 the process for his transfer to the city of Barranquilla was initiated, in accordance with the following procedures:

(i) in December 2016, Fundazoo sent written communication to all environmental authorities, in which it informed of its capacity, availability and interest to receive in its facilities at Barranquilla Zoo any spectacled bear that was not a candidate for release.

(ii) in response of such communication, on 24 February 2017 Corpocaldas informed the organisation that it could grant the tenure of Chucho, prior to the submission of a management plan;

(iii) this management plan was sent on 8 March 2017; this document indicates that Barranquilla Zoo has the infrastructure and trained staff, including veterinarians, biologists, zootechnicians, and caregivers, to ensure Chucho's health and well-being, and that they also had extensive experience in the care and tenure of this type of animal since 1979;

(iv) on June 13, 2017 Corpocaldas issued the denominated *"Unique National Safe Conduct for the Mobilization of Specimens of Biological Diversity*" No. 1411718, authorizing the relocation of Chucho from the Río Blanco Protected Forest Reserve in Manizales to Barranquilla Zoo;

(v) the relocation took place in June 2017, being documented in the Act of Disposition No. 16062017, in which Chucho's formal delivery is recorded, and in which the conditions of his tenure are specified; on its part, on June 28, 2017, Fundazoo sent a report on the processes of relocation of the bear to Corpocaldas.

1.3 Once Chucho was relocated in the Barranquilla Zoo, Mr. Luis Domingo Maldonado filed a habeas corpus action in favor of Chucho, considering that his permanence in the said institution would generate his indefinite, permanent and irreversible captivity, a situation that would be incompatible with his right to live in an environment and in conditions appropriate to his species. As grounds for his request, Article 30 of the *Constitución Política* (Political Constitution) was invoked.

1.3.1. On June 17, 2017, the Civil and Family Chamber of the Superior Court of the Judicial District of Manizales declared the action inadmissible.

According to the court, although the plaintiff's request is consistent with the constitutional recognition of the duty to protect animal life, the instrument used by the plaintiff to safeguard the defense of Chucho is inadequate because animals are not entitled of fundamental rights, and, in this order of ideas, the procedural route to ensure the welfare of the bear is not habeas corpus but popular action, in which it is possible not only to collect the evidentiary material to adopt a duly founded decision, but also to adopt precautionary measures until the legal dispute is definitively resolved.

Additionally, the court argued that there was no evidence of the danger alleged by the plaintiff that would require the adoption of immediate measures within the framework of the said process, and that, on the contrary, it seems that due to the current conditions of Chucho, he could not be taken to a natural environment.

1.3.2. Once the ruling was challenged, on July 26, 2017, the Civil Cassation Chamber of the Supreme Court of Justice revoked the previous ruling and granted the action, ordering the Botanical and Zoological Foundation of Barranquilla, the Regional Autonomous Corporation of Caldas, Aguas de Manizales S.A. ESP, the Special Administrative Unit of the National Natural Parks System and the Ministry of Environment and Sustainable Development, to agree and arrange, in a term no later than 30 days from the execution of the Judgment, Chucho's transfer to an area that guarantees his welfare, in conditions of semi-captivity, and as a priority, in the Río Blanco Natural Reserve.

The Supreme Court of Justice held that, although in principle the purpose of habeas corpus is to guarantee the freedom of movement of persons, it could eventually be used to demand the protection of animals that, as sentient beings and subjects of rights, may see their integrity and basic conditions of existence threatened.

2. Request for Constitutional Protection

2.1. In the above factual background, the attorney of the Botanical and Zoological Foundation of Barranquilla filed a tutela action against the judgment of the Supreme Court of Justice, considering that the judicial decision seriously violated the right to due process, since it completely ignored the legal nature of habeas corpus, the evidentiary material that showed the true welfare situation of Chucho and the damage that it would cause by being relocated to another place in semi-captivity, and because it failed to provide the reasons for any judicial decision, in terms of Article 280 of the General Code of Procedure.

All the above would have resulted in the configuration of an absolute, factual and substantive procedural defect that warrants the revocation of the judicial decision.

2.2 Regarding to the absolute procedural defect, the plaintiff argued that the jurisdictional authorities had fully deviated from the *habeas corpus* procedure itself. This, to the extent that under Article 1 of Law 1095 of 2006, *habeas corpus* is a fundamental right that aims to guarantee the personal freedom of those who have been deprived of it, while in this case, better living conditions are claimed for a bear that, at least prima facie, is not entitled to fundamental rights, and that regardless of this debate, it does not seek freedom of movement. In this order of ideas, regardless from the debate over the legal status of animals, the scenario for debating Chucho's living conditions was not habeas corpus, an action that, moreover, did not allow the very complex technical and scientific issues involved in the case to be addressed.

2.3. On the other hand, regarding the factual defect, the plaintiff argued that the ruling had ignored the evidentiary material submitted during the judicial process, which showed both the good living conditions of Chucho at the Barranquilla Zoo, as well as the impossibility of his release.

Of particular relevance was Corporcaldas' technical statement, which speaks of the way in which Barranquilla Zoo guarantees Chucho's welfare conditions: he has direct and permanent care provided by four veterinarians, three biologists and a zootechnician specializing in wildlife, the companionship of a female of his species, an equipped habitat, which is periodically renewed, a balanced diet that takes his nutritional requirements into account, he is permanently monitored, and placed within a warm environment with more availability of oxygen, appropriate for his advanced age.

2.4. Finally, with respect to the substantive defect, the plaintiff argues that the judicial decision departed from the guidelines set out in the Constitution and in the legislation to resolve this dispute. In his view, the judicial decision assimilates the legal status of animals with that of human beings assuming that both are subjects of rights and, in an artificial way, extends the instruments established for the defence and guarantee of the rights of the latter to promote the welfare of the former. In doing so, the ruling ignores the guidelines of Law 1774 of 2016 and of judgment C-467 of 2016 and misrepresents and distors the constitutional actions for the protection of rights.

2.5. Based on these considerations, the plaintiff requests the amparo judge to annul the Judgment of the Supreme Court of Justice, allowing Chucho to remain in the Barranquilla Zoo.

3. Decisions of the lower court judges

3.1 First instance judgment

Through a judgment issued on August 4, 2017, the Labor Cassation Chamber of the Supreme Court of Justice granted the constitutional protection, leaving without effects the decisions adopted in the framework of habeas corpus.

In the opinion of the Court, the ruling incurred in a substantive error of relevance since the judge assumed that habeas corpus is applicable to animals, when in fact it is only attributable to human beings. All this "erodes the real essence of this type of legal action". As a consequence of this basic error, the legal instrument was operated with regulations that are external to it, not related to freedom of movement, a procedure unrelated to its nature was used, and protection was granted to a being that lacks the capacity to be a party to the procedure.

3.2. Challenge to the judgment

The plaintiff reiterated the arguments initially outlined in the tutela action, pointing out that the standards of animal welfare are fully recognised internationally, and that the habeas corpus petition was only intended so that Chucho could live out his last years of life in semi-captivity, and not in a zoo that, like the Barranquilla Zoo, implies a situation of captivity that is incompatible with the natural instincts of spectacled bears, under the pretext that in the place where he previously lived there had been greater neglect.

3.3. Second instance judgment

Through a judgment handed down on September 1, 2017, the Criminal Cassation Chamber of the Supreme Court of Justice upheld the challenged judgment, reiterating the arguments therein on the inadmissibility of habeas corpus to protect the rights of sentient beings, because “although the jurisprudence of the Constitutional Court has proclaimed the existence of a higher mandate for the protection of animal welfare, this does not translate into the existence of a fundamental guarantee for them, nor its enforceability through this type of mechanism.”

4. Proceedings in the review phase

During the review phase, the Constitutional Court carried out three types of actions: (i) on the one hand, different citizen interventions were received that ruled on the merits of the constitutional protection; (ii) secondly, some evidence was requested in order to have the conceptual and technical inputs necessary to resolve the tutela action, among them, those related to the characterization of the species, and the living conditions of the bear Chucho; (iii)

finally, a public hearing was ordered to obtain the conceptual, normative and technical elements of judgment, to adopt a decision.

4.1. Order to produce Evidence

By order of September 3, 2018, different means of evidences were ordered to expand the information that was available. The response obtained will be related below.

On September 12, 2018, the Botanical and Zoological Foundation of Barranquilla -FUNDAZOO-, requested the involvement of the Alexander Von Humboldt Institute for Research on Biological Resources, to make a statement on the matter under study from a scientific perspective.

On 25 September 2018, for its part, the Office of the Attorney General of the Nation requested the extension of the term granted to respond to the Order of September 03, 2018. In response to the requests raised by the Botanical and Zoological Foundation of Barranquilla -FUNDAZOO- and the Attorney General's Office of the Nation, by Order of October 04, 2018, the Alexander Von Humboldt Institute for Research on Biological Resources was linked to the present tutela action and the Attorney General's Office was granted a term of 10 days to comply with the eighth and ninth paragraphs of the Order of September 03, 2018.

4.2 Replies to the Order to produce evidence

4.2.1 By Order No. 11798 of 7 September 2018, the Civil - Family Chamber of the High Court of the Judicial District of Manizales sent the Habeas Corpus file requested as a loan.

4.2.2 The Chamber will then summarize the most relevant points of the replies received.

Intervener	Relevant aspects of the Intervention
Botanical and Zoological Foundation of Barranquilla-FUNDAZOO	The purpose of the tutela action is to open the legal debate on animal rights and the way in which they are exercised. Corpocaldas made four monitoring visits to verify the conditions of Chucho in Fundazoo, always finding good results. Prior to the transfer of the bear to Barranquilla, the environmental authority Establecimiento Público Ambiental Barranquilla Verde granted approval for the transfer. It presented a report on the bear's current condition, concluding that it is generally in good condition and his welfare has improved significantly.

CORPOCALDAS	Chucho was living in a 2.20 m mesh enclosure and had no (ie was not given) medical history or dietary plan. It reviewed the visits made to FUNDAZOO following the arrival of Chucho at his facilities. They concluded that he is in good health and is adapting well to the enclosure, the female bear, and the climatic conditions. FUNDAZOO has sent six reports relating to the first months of Chucho's adaptation to his new conditions.
Ministry of Environment and Sustainable Development	It presented the National Program for the Conservation of the Andean Bear The main threats to this species are the increase in human settlements and the expansion of the agricultural frontier. Between 2016 and 2017, five Andean bears were killed in the departments of Cundinamarca, Valle del Cauca and Nariño, as retaliation for attacks on domestic animals. The release into the wild of animals born in captivity or semi-captivity is often unsuccessful due to errors in the early post-seizure and rehabilitation phases. Release of a captive-born animal creates risks for the ecosystem and the individual
Special Administrative Unit of the National Park System	It is currently implementing the Strategy for the Conservation of the Andean Bear in Colombia's National Parks for the period 2016-2031. The Andean bear is a species vulnerable to extinction. It estimated a population density of three to six thousand individual (bears) in the country.
World Wildlife Fund-WWF	The Andean bear plays an essential role in the vitality and future of the Andean forests because it disperses seeds over large areas; energizes the life of the forests when it knocks down branches and bushes to look for food and benefits the protection of the páramo, cloud forests and dozens of species that inhabit these ecosystems. An absolute release of Chucho without human supervision is not feasible because he is an animal

	that has been in captivity for more than twenty years and cannot survive in the wild by his own means.
Federation of Entities for the Defense of Animals and the Environment in Colombia - FEDAMCO	It requested the revocation of the second instance tutela ruling of October 10, 2017. It considered Chucho's transfer to the Zoo to constitute mistreatment because he is an animal of the Andean páramo and not of warm areas such as Barranquilla.
Program for the Legal Protection of Animals of the University of Antioquia	The Andean bear is part of the Colombian wildlife, its property is owned by the State and, therefore, it is the State's responsibility to provide all the guarantees for its protection and for it being able to live according to its specific conditions or needs. Since there is an absolute legislative omission in relation to the guarantee mechanism for animal protection, habeas corpus is appropriate for those individuals who are unjustly deprived of their freedom. It is necessary to differentiate between the plaintiffs and the beneficiaries of the actions and to explore the traditional legal institutions of representation in favour of others.
Legal Office and Conciliation Center for the Protection of Animals of the Cooperative University of Colombia (Popayán campus).	Habeas corpus is appropriate to protect animals. The jurisprudence of the Constitutional Court has granted rights to nature[4].. Given the importance of the protection of fauna for the very existence of mankind, the protection of the right to freedom of Chucho the bear, which is a sentient and particularly protected being, must be granted.
Animal Observatory of the Pontifical Xavierian University	Chucho's well-being should not depend on whether habeas corpus is granted to him or not. The discussion should not be limited to the possibility or not of granting a "human" right to a being that is not (human), but rather what kind of protective measure should be granted and how to ensure that it is legally valid and operates effectively when required. In this sense, Chucho's case requires review of the constitutional actions that serve to guarantee his protection.

Carlos Andrés Contreras López[5]	It is not possible to file a habeas corpus action in favour of an Andean bear, despite the fact that it is a species under special state protection. Eventually, animals may attain the legal status of a person, but this does not mean that they become entitled of the right to habeas corpus. The protection of the Andean bear can be achieved through a popular action, invoking the right to administrative morality. He considered it necessary to decide whether the bear's welfare and preservation should be safeguarded at FUNDAZOO or whether it should be returned to the Río Blanco Nature Reserve, a measure that should be conditioned by an effective management and care plan for the animal's behaviour.
Carlos Andrés Muñoz López[6]	He requested that actions such as habeas corpus in favour of the freedom of animals in Colombia be considered constitutional, and in the specific case, to grant such protection to Chucho. Animals are protected from constitutional ranking and this does not depend on the positivization of instruments, but on the good use of those that allow the effective realization of protection to them.
Alejandro Gaviria Henao[7] and others[8]	In the case of Chucho, the State has violated constitutional mandates regarding his protection. It was only in 2016 that constant monitoring and tracking of the animal began and subsequently allowed Chucho's shipment to Barranquilla, a city located 18 meters above sea level, when the natural distribution of the species ranges from 250 to 4,500 meters above sea level. The existence of constitutional actions that may eventually be used for the protection of animals allows the expansion of the fundamental right of access to justice for people, as an action of co-responsibility with the environment.
Javier Alfredo Molina Roa[9]	The focus of the current discussion is to ensure that laws recognize certain rights for animals. Although the 1991 Constitution is known as ecological, it has a clearly anthropocentric approach.

	This situation, in his opinion, makes the express recognition of animals as subjects of rights more complex, "but does not nullify the consideration that ultimately the proclaimed duties of humans in relation to animal species can be considered rights in favour of the latter if the same legal fiction and the same line of argumentation that makes it possible to grant recognition and a range of rights to legal persons is applied, especially when animals are already recognized as sentient beings, which gives them a kind of moral status and hierarchy within the political community."[10]
Víctor Manuel Vélez Bedoya[11]	Chucho must remain in Barranquilla because a new transfer would imply subjecting him to a stressful situation, and he cannot be released into his natural environment due to the psychological trauma of his imprinting and behavioural conditioning process. He suggested ordering CORPOCALDAS, Aguas de Manizales and FUNDAZOO a compromise to work together rand improve the housing conditions that allow them to offer decent conditions in accordance with the five freedoms of animals [12] and the principles of bioethics [13]. Although their natural distribution is not at sea level, this can be managed with controlled temperature adjustments that simulate the high Andean climate.
Eduardo Rincón Higuera[14]	It is necessary to change the moral point of view on the obligations towards other animals, since part of the error of many of the current positions "lies in the fact of considering that their value is merely instrumental [15] and overlooking their intrinsic value, that is, the possibility that their own interests count as a legal good above the economic value or use that we give them[16]". There are no legal or moral obstacles to granting protection so that animals have a good life, understood as one that an animal has for itself, developing its own capacities and interests in an adequate environment; these are minimums that are recognized regardless of religion, race, gender, cognitive capacity and species.

	The key to this debate is the moral consideration of the interests of sentient beings regardless of the species to which they belong. Although legal and constitutional mechanisms are designed for humans, the recognition of sentience and animals as subjects of law opens the way to a necessary extension of such legal fictions for the protection of their interests, without the need for reciprocity between those who elaborate the principles of justice and those for whom they are elaborated.
Regional Autonomous Corporation of the Atlantic C.R.A.	Conducted a technical visit to FUNDAZOO in conjunction with the Office of the Attorney General Delegated for Environmental Matters. They submitted a report stating that the bear "has an adequate habitat that guarantees the care of the etiological characteristics" [17] and has adapted in a beneficial way, is in good health, with an adequate diet and an appropriate space for its routine.
Alexander von Humboldt Biological Resources Research Institute	Recommendations to resolve the case of Chucho the bear: To focus conservation proposals on strengthening knowledge and management of captive populations to obtain juvenile specimens for repopulation programs. Prioritize an ex-situ conservation and management program for the species. -. Review the conditions of both sites - Río Blanco Reserve and FUNDAZOO- to identify the space and components that guarantee a better scenario. Evaluate physical and physiological conditions and faecal cortisol levels to identify the animal's stress levels due to the new management conditions. Conduct an ethological or behavioural study of the animal, evaluate the bear's response to the company of other individuals of its species, identify the behavioural and physiological response to climatic and environmental variation at contrasting climatic times of the year; and evaluate the difference in the

	response to exhibition conditions that could enhance stress patterns.
European Association of Zoos and Aquaria -EAZA-	Any potential animal relocation case must be supported by the International Union for Conservation of Nature (IUCN) - Species Survival Commission. It supported FUNDAZOO's position and considered it inappropriate for the spectacled bear Chucho to be taken to a semi-captive or free-ranging area.
Latin American Association of Zoos and Aquariums -ALPZA-.	It reiterated the general aspects of the transfer of Chucho the bear and explained that he would be part of educational programs aimed at connecting visitors with Colombian biodiversity and raising awareness of the challenges for his conservation.

4.3. Public hearing

By Order 381 of 2019, the Full Chamber of the Court convened a public hearing on August 8, 2019. The hearing was divided into three parts which are extensively outlined in Annex II of this Judgment.

4.3.1. In the first hearing, the case was presented and the parties to the tutela action were heard. The habeas corpus plaintiff, Luis Domingo Gómez Maldonado, reiterated that the failures in the care of Chucho the bear by Corpocaldas cannot justify his transfer to Barranquilla, since it is a sentient being that should receive protection. He considered that Chucho should remain in a place similar to his natural environment, where he can take charge of his freedom, accompanied by the relevant veterinary care. In turn, Carlos Andrés Mendoza Puccini, representative of FUNDAZOO, assured that the Zoo has all the benefits that can be granted to Chucho, that the plaintiff's habeas corpus claim lacks legal and constitutional support and that releasing the bear would place him in danger of death.

To conclude the presentation of the case, Adriana Reyes, member of the Foundation for the Investigation, Conservation and Protection of the Andean Bear - Wii, gave a description of the species and its main threats. She explained that the Andean bear is the only bear species in South America, and is known as the gardener of the forest and protector of water sources because "by tearing the branches with fruit on top of the trees, it allows the renewal of the forest by varying the microclimatic conditions of the lower strata, stimulating the growth of the seedlings present (...)"[18] She argued that the main threats to the bear are the loss of its habitat and death by retaliation.

4.3.2. The second part of the hearing was dedicated to the thematic axis called "Public Policy for the Protection and Conservation of the Andean Bear", in which a diagnosis was sought on the implementation of the "National Program for the Conservation of the Andean Bear", prepared in 2001 by the Ministry of the Environment, its progress and the need - or not - to

reformulate the public policy in accordance with the current demands for the conservation of the species. The interventions are summarized in the following table[19].

First topic "Public Policy for the protection and conservation of the Andean Bear".		
Participants	**Policy Implementation**	**Comments on the specific case**
Ministry of Environment and Sustainable Development	The Andean bear conservation program, formulated in 2001, was adopted with little information on the species. Regional environmental authorities and organizations, such as Wildlife Conservation Society Colombia and World Animal Protection, are key to implementing the plan's strategies. Monitoring strategies at the national level generate useful information but have little impact on public policy decisions.	Chucho's stay in the Río Blanco Reserve did not fulfill any of the objectives set forth in the National Andean Bear Conservation Program. The working group created accordance to the second instance ruling that granted habeas corpus concluded that Chucho is currently in apparent good health.
National Natural Parks	It emphasized the work of the Wildlife Conservation Society as one of the main allies in achieving progress in the Andean Bear protection policy. It advised that the National Conservation Program needs to be updated 18 years after it was published. It explained the main axes of the Andean Bear Conservation Strategy in National Natural Parks 2016-2031.	Chucho is not suitable for release into the wild. He should be housed in a place which provides all the welfare conditions, ensuring the provision of a diet according to his nutritional requirements, veterinary care, and an adequate enclosure that guarantees security, as well as environmental enrichment.
Corpoguavio	It explained the main problems for the conservation of the Andean bear[20].	It disapproved of the way Chucho has been handled during his life. It indicated that, to move or relocate the specimen, it is

	It reviewed the Action Plan for the Conservation of the Andean Bear in the Guavio Region It noted that the empowerment of the community as rural environmental promoters has been of great support to study the species.	necessary to carry out technical and scientific studies to establish the ecological conditions of the new site. It considers Chucho's stay in Barranquilla to be inadequate. The facility does not offer him comfort, security, welfare, or health.
Corpocaldas	It reiterated the content of the strategies included in the National Program for the Conservation of the Andean Bear.	Chucho had a veterinarian. His diet consisted of 2 kilos of dog concentrate, occasionally supplemented with vegetables. The transfer of the specimen to Barranquilla sought to improve its animal welfare. The best place for Chucho is FUNDAZOO In Barranquilla his enclosure should be enlarged by 94.5 m.
Spectacled Bear Sanctuary	Civil society has responded to the ex-situ action line for the conservation of the species with the creation of the Sanctuary. It is necessary to incorporate a transversal environmental education component in the formulation of public policy. A real commitment of CAR must be established to assume the care of the species within each jurisdiction	It did not rule on the specific case
Daniel Rodríguez, expert in the conservation of the Andean bear	The PNOA has a mostly indirect implementation, associated with the implementation of other national conservation programs, and the program has yet to be structurally assimilated.	The release of Chucho into the wild is unviable. He should remain in the zoo where he is currently kept The age of the individual and his previous feeding conditions may result in complications for his renal and hepatic health and, in

		the case he is anesthetized again for a subsequent transfer to another site, can have consequences on his life.
Juan Carlos Losada Vargas, Representative to the House	Regardless of existing legal institutions, animal protection is a matter of political will.	The debate transcends the merely legal aspect. Beyond the means used for Chucho's protection, this is a subject that must be protected. It is necessary to evaluate which is the most appropriate place for Chucho to guarantee his rehabilitation.

4.3.3. The third part of the hearing dealt with establishing animal protection in comparative and domestic law. The speakers were asked about the legal mechanisms proposed in the framework of other legal systems to guarantee animal protection and the conditions that had to be met at the legal-normative level to achieve such protection. They were also asked about the determining attributes for defining an individual or entity as a rights holder and the relevance of the concept of sentient beings in this analysis. They were further asked to emphasize the advantages and challenges of channelling animal protection - particularly of vulnerable species such as the Andean bear- through actions based on the ownership of rights (tutela action, habeas corpus), instead of mechanisms for the defense of collective interests (popular action) or general public policy instruments (conservation plans).

To introduce this topic, Steven M. Wise, director of The Non-human Rights Project, began by pointing out that personhood is not synonymous with human being and personhood is not a biological concept. Personhood is the basis for any legal right that in other times was denied, for example, to slaves, indigenous peoples, women, and children. The decision as to whether an entity should be a person, then, is a decision as to whether that entity should count in some fundamental way. He recalled that this type of analysis has allowed entities such as corporations and banks to be recognized as persons, but also animals [21], rivers[22] and national parks. In his opinion, not all animal species should be legal persons; and those that are should not necessarily be holders of the same rights. Therefore, it is not necessary to create a new legal concept to protect the interests of animals. They can be recognized as legal persons, like rivers and national parks, and with that a single right that will depend on the circumstances of each case.

The following table presents the positions of each of the speakers on the main debates that were raised.

Second topic "Animal protection in comparative and domestic law".

Participants	Can Animals be subjects of law	Is habeas corpus for the protection of animal rights appropriate	Must new mechanisms be created for animal protection	Is sentience a relevant aspect for the protection of animals
Iván Garzón[23]	No	No	Yes	Yes
Anne Peters[24]	Yes	Yes	No	Yes
Paula Casal[25]	Yes	Yes	No	Yes
Nadia Espina[26]	Yes	Yes	-	Yes
Jessica Eisen[27]	Yes	Yes	No	Yes
Javie Alfredo Molina Roa[28]	Yes	-	Yes	Yes
Carlos Andrés Contreras[29]	Yes	No	Yes	Yes
Macarena Montes[30]	Yes	-	-	Yes
Natalia Rodríguez Uribe[31]	Yes	No	Yes	Yes
Andrea Padilla Villaraga[32]	Yes	Yes	No	Yes

4.3.4. Finally, several documents were submitted to the process by way of coadjuvancy or intervention, as detailed in the following table:

Coadjutants and other interventions	
Participant	**Relevant aspects**
Ligia Galvis[33]	It is necessary to take the recent concern of judges for the protection of natural resources and the implementation of an intergenerational pact to ensure the well-being of future generations into account.

Andean bear specialists group	Chucho is a bear born in captivity and does not have the skills or immune system needed to survive in the wild. His release would not be convenient nor would it improve his quality of life or contribute to the conservation of bears in Colombia. The resources that would be used for his possible release should be invested in adapting or expanding his enclosure.
Carlos Alberto Chinchilla[34]	The use of the "subject of rights" category in relation to animals is misguided and creates unwise inconveniences within the civil law system. He requested the Court to (i) uphold the judgment of the Supreme Court of Justice handed down on August 16, 2017, (ii) not recognize Chucho as a subject of rights, and (iii) order the State to implement the necessary protection mechanisms to protect animals as objects of special constitutional protection and not as subjects of rights.
Laura Santacoloma	Animals are subjects of law, even if the positivization of that expression is lacking. But habeas corpus is not an appropriate action because the bear was in semi-captivity and, despite the existence of flaws in the transfer procedure, it is not clear in what sense the animal's right to freedom is violated, or even if it has one.
District Institute for Animal Protection	Resorting to habeas corpus is not contrary to the Constitution when it is done to protect the freedom of an animal with characteristics that allow him to feel the suffering caused by deprivation of freedom, and the affectation in his physical and mental health. Since Chucho is a wild animal that is not in his natural environment, that remains confined in the zoo of Barranquilla with sentient capacity to feel, it is possible to recognize his status as a subject of law and, therefore, protect his right to freedom through the aforementioned mechanism.

II CONSIDERATIONS OF THE COURT

1. Competence

This Chamber is competent to review the decision issued in the tutela action of reference, based on Articles 86 and 241.9 of the Political Constitution.

2. Statement of the legal problem and methodology of resolution.

Taking into account the foregoing background, the Court must establish whether the decision of the Civil Cassation Chamber of the Supreme Court of Justice of July 26, 2017 to grant the habeas corpus filed in favour of Chucho, and to order the Botanical and Zoological Foundation of Barranquilla, the Regional Autonomous Corporation of Caldas, Aguas de Manizales S.A. E.S.P., the Special Administrative Unit of the National Natural Parks System and the Ministry of Environment and Sustainable Development to transfer him to an area that better suits his

habitat, constitutes an absolute procedural, factual or substantive defect, for channelling the petition for transfer through a manifestly inadequate procedural device, and, therefore, distorting habeas corpus as a primary instrument to guarantee of personal freedom; for adopting measures that disregard the evidence that shows Chucho's current situation and the consequences of his placement in another place, and for assigning him the status of a person, as entitled to fundamental rights.

For this purpose, the legal status of wild animals in the constitutional order will be established, followed by a brief characterization of the habeas corpus action to finally evaluate the accusations made against the judgment of the Supreme Court of Justice ruling.

3. Legal status of wild animals and, in particular, of spectacled bears

The status of animals in the Colombian legal system is varied and multiform.

Civil legislation establishes, in the place, that animals are a particular kind of goods (arts. 655, 658 and 659 C.C.), and, on this understanding, permits real rights to be established over them, regulated in the civil statute and in private property in particular, and carry out the proper transactions typical of general legal traffic on goods.

At the same time, Laws 84 of 1989 and 1776 of 2016 recognize their status as sentient beings (art. 2 of Law 1776 of 2016), and, because of this qualification, the general prohibition of mistreatment and the imperative of animal welfare were introduced, although with broad exceptions – the scope of which is the subject of profound debates today, such as those related to the limits on the use and exploitation of animals for fur production, experimentation for medical, industrial or scientific purposes, the cosmetics industry, sports or entertainment practices, or circus and bullfighting shows. This general guideline, in turn, has had other developments in the legislation itself, such as, for example, in Law 1638 of 2013, which prohibits the use of wild animals, both native and exotic, in fixed and travelling circuses.

Environmental and health legislation, for its part, contains abundant regulations that serve the objectives of protecting the environment and public health: instruments to regulate international trade in endangered species according to the CITES Convention, international instruments such as the Stockholm Declaration on the Human Environment or the World Charter for Nature, the regime for zoo farms established in Law 611 of 2000, tools for the management and exploitation of wild fauna, or regulations on the operation of slaughterhouses in municipalities and districts or on pest control, are just some of the legal instruments referring to animals.

From this profuse and dispersed framework, it is however possible to extract two relevant categories that serve to establish the legal status of wild animals. In principle and as a general rule, "the wild fauna found in the national territory belongs to the Nation" [35], and therefore its consideration as merchandise is excluded, wild animals are relevant from a constitutional point of view from two perspectives: first, as integral elements of nature, and second, as sentient individuals with their own value, independent of their eco-systemic contribution. In the first

case, wild animals are not recognized as individuals but as specimens of a wild species that fulfill different eco-systemic functions that are protected in accordance with the constitutional duty to protect the environment, but in the second case, they are recognized as beings that have a value of their own.

In this way, these two analytical perspectives allow the definition of the legal status of wild animals.

These are two complementary, but not necessarily peaceful approaches, since they are based on conceptual and theoretical assumptions and different sensibilities that, in certain events, can lead to different solutions and responses to the problems posed by animal protection. Thus, for example, environmentalism calls for consideration of the ecosystem as a whole from a systemic and global perspective, while animalism is based on recognition of the intrinsic value of animals, regardless of their relevance and eco-systemic functions.

These two perspectives are developed below, with special reference to Andean bears.

3.1. Protection of wild animals and Andean bears as an integral part of the environment

3.1.1. As explained above, the general duty to protect the environment established in the Political Constitution and in the legislation that develops it, entails the duty to protect wildlife. The individuals of each species are protected insofar as they are an integral part of the environment, and insofar as they contribute to the functioning of the system in which they are placed.

Therefore, the contours and level of this duty to protect different species vary widely and depend on at least two variables: their importance and eco-systemic functions, and their type and level of vulnerability. In principle, legal protection of species is more robust the greater their eco-systemic contribution and vulnerability to extinction.

3.1.2. Regarding ecosystem functions, the Andean bear provides important ecosystem services.

It is the only bear species in South America inhabiting Colombia, Venezuela, Peru, Ecuador and Bolivia, and is considered the “gardener of the forest” and protector of water sources: it is a seed disperser, since in its diet consists of a high level of fruit consumption and its digestive tract does not destroy or damage the seeds that contain such fruits; the very long trajectories that it undertakes daily serve to disseminate seeds of multiple species of flora typical of the Andean forest; when defecating the seeds that fall to the ground can germinate, and sometimes germination even occurs in the digestive process, all of which promotes the regeneration of vegetation. Likewise, when climbing trees, it often breaks branches that, when falling, create spaces that enable sunlight to enter the ground, activating the development of seedlings and young trees, and renewing vegetation. Its copious fur and permanent mobility allow it to fulfill an important pollination function, collecting pollen in its fur and dispersing it onto plants during its long walks [36].

Furthermore, the care and preservation of the Andean bear constitutes a strategic element within the general objective of promoting other populations and ecosystems in general. For this reason, it has become a focal species for different organizations, since it requires a combination of habitats to survive, normally very extensive landscapes, so that "if its survival is guaranteed, the survival of many other native species in a region would also be ensured by protecting large and well-connected areas". By requiring a mosaic of habitats and ecosystems at different elevations to obtain their food, and because their diet is made up of individually different animal and plant species, their protection equally ensures that of other native species and of the different ecosystems.[37]
Thus, the important role that spectacled bears play in Andean forests necessarily entails a higher level of protection for the individuals that make up this species.

3.1.3. Likewise, the level of protection for wildlife depends on their vulnerability.

The CITES Convention, for example, classifies animal and plant species according to the level of danger of extinction due to international trade and establishes a protection regime for each category. Appendix I of the Convention includes the most endangered species and prohibits international trade in individuals of such species, except when imported for non-commercial purposes, in which case an import and export permit must be obtained. Appendix II includes species that are not necessarily threatened but could become so if trade control measures are not adopted, as well as "look-alike species", i.e., those whose individuals are similar to those of special conservation interest; in these cases, the Convention does not require an export or import permit, although countries may adopt restrictive measures. Finally, Appendix III includes species listed at the request of a State that requires the cooperation of other countries to prevent their unsustainable or illegal exploitation.

The IUCN Red List classifies animal and plant species into seven categories: Extinct (EX), Extinct in the Wild (EW), Critically Endangered (CR), Vulnerable (VU), Near Threatened (NT), Least Concern (LC), Data Deficient (DD), and Not Evaluated (NE).

Following this classification, for the IUCN the Andean bear is a vulnerable species, so that, although it is not currently in imminent danger of extinction, it presents adverse conditions for its development and conservation and therefore requires the implementation of measures aimed at preserving its habitat and eliminating the main dangers that surround it [38]. According to this organization, there are currently between 2,500 and 10,000 bears.

This problem is clearly evidenced by Andean bear populations in the Chingaza Massif, which is one of the most biologically diverse sites in the world, home to endemic species, and a strategic area for the regulation and provision of environmental services such as drinking water, electricity generation, CO2 capture, and landslide prevention, as it is home to vegetation capable of reducing soil degradation and erosion processes.

3.1.4. Based on the environmental importance of the spectacled bear and its relative level of vulnerability, Andean Bear protection policies, embodied in the "National Program for the Conservation of the Andean Bear (Tremarctos ornatus)", have been designed in the document "Advances in the National Program for the Conservation of the Andean Bear in Colombia" and

in the “Strategy for the Conservation of the Andean Bear in the National Natural Parks of Colombia (2016-2031)”.

“The National Program for the Conservation of the Andean Bear (Tremarctos ornatus)” was developed by the Ministry of Environment in 2001, taking into account, on the one hand, the important environmental roles of the Andean bear as a seed disperser and promoter of forest renewal processes, as an umbrella species, and as a protector of water resources, and on the other hand, the threats it faces from phenomena such as the expansion of the agricultural frontier and the consequent habitat degradation, manifestations of violence, mining activities and hunting.

Based on this diagnosis, a series of strategies were proposed for the protection of the species, through in-situ and ex-situ conservation, institutional action and environmental education: protection of natural areas occupied by bear populations, research on their environmental characteristics, identification of favourable conditions for the settlement of the species, care of bears in captivity, repopulation programs, implementation of community inclusion schemes in the protection of the species, among others, constitute some of the components of the strategy.

In turn, the document “Advances in the National Program for the Conservation of Andean Bears in Colombia” formulated five lines of action aimed at regional environmental authorities that reflect the strategies previously outlined in the National Program and which incorporates an additional one related to the so-called “sustainable management”, which includes the efficient management of natural populations and the implementation of compensation schemes for damage to the Andean bear’s environment.

As of 2016, Colombia’s Special Administrative Unit of National Natural Parks and the organization “Wildlife Conservation Society” developed the “Strategy for the Conservation of the Andean Bear in the National Natural Parks of Colombia 2016-2031”, oriented to the formation of landscapes composed of a network of protected areas that allow the coexistence of bears and people, facing the threats to the connectivity and size of wild areas, to the quality thereof, and those caused by the deaths of bears due to human activity.

3.2. The protection of wild animals as sentient beings with their intrinsic value

3.2.1. At the same time, wild animals are subject to legal protection as individuals recognised by the constitutional system as having intrinsic value, and because of which there is a prohibition of abuse and an imperative of animal welfare. Thus, within the legal system, animals are protected not only in terms of their eco-systemic contribution, but also as sentient beings, individually considered.

3.2.2. Although normatively this second dimension of the legal protection of animals consists of old data, since already in Law 84 of 1989 animals were recognised as sentient individuals for whom there is a general duty of respect, a prohibition of mistreatment and a duty of the State and caretakers to ensure their welfare, at the jurisprudential level the reception of this approach occurred later and in a gradual and progressive manner.

Jurisprudential developments have been in line with the scientific community's findings on the characteristics of animals, in areas such as level of intelligence, self-awareness, self-control, sense of time, relational capacity and concern for other individuals, communication schemes, control of existence, curiosity, capacity for change, rationality, emotions and idiosyncrasies, intentionality of behaviour, search for rewards and community life.

Regulatory and jurisprudential changes have also been inserted in a political, cultural and intellectual environment in which the problems associated with the recognition of animals as ends themselves have become more important at the legal, doctrinal and jurisprudential levels. In this context, for example, since 1975, authors such as Peter Singer have raised a debate on the need to re-evaluate practices that disregard the capacity of animals to feel pleasure and pain, and, from other conceptual aspects, authors such as Tom Regan, Steven Wise, Martha Nussbaum, Will Kymlicka and Sue Donaldson postulate the intrinsic value of animals and, based on considerations on sentience, advocate positions that go beyond animal welfare and develop in the scope of animal rights.

3.2.3. All the above has been echoed in legal systems, which have sought to incorporate the new categories, either by alluding to the *"dignity of living beings",* as in the Swiss Constitution, or through the broad conceptualization of so-called *"rights of nature"* in the constitutions of Bolivia or Ecuador. In the same way, specific expressions of so-called animal rights have been presented, such as those referred to in the interventions in this process.

3.2.4. In constitutional jurisprudence, this court has differentiated the eco-systemic value of animals from their value as sentient individuals.

In Judgment T-760 of 2007, for example, the validity of the confiscation of a parrot that was in the hands of a woman for whom the animal represented a very important emotional companion in her daily life was discussed. The Court's examination focused on the consideration of the parrot as an integral part of the ecosystem, and, precisely on the basis of the State's duty to protect wild flora and fauna, it was concluded that the confiscation was constitutionally admissible despite the usefulness it brought to the plaintiff. However, marginally, and as a complementary argument, this court held that the suffering of animals in captivity should be considered as a relevant variable of analysis, and that the illegal trade of wild species often involves camouflaging them, drugging them to transport them from their origin to their destination of sale, dyeing their feathers, cramming them in inappropriate packaging such as sacks, cardboard boxes or plastic bags, cutting or injuring their wings and beaks, and above all, depriving them of their natural condition and environment. All this suffering caused to wild animals with their captivity is, in the Court's opinion, an additional reason to validate seizure by environmental authorities. In these terms, the Court began to include some arguments in its analysis, related to animal welfare and their consideration as sentient beings of their intrinsic value, regardless of their ecosystemic contribution.

Progressively, this approach began to take hold when new issues that went beyond the consideration of animals as functional elements of ecosystems were raised, and instead, focused on their condition as individuals and sentient beings. Thus, in judgments C-666 of

2010[39] and C-283 of 2014[40], the Court was called upon to expressly address the question of the constitutional relevance of animal suffering and the status of animals as individuals, as an analytically distinct question from that of the general duty of care for animal species.

In the first case, the Court assessed the constitutionality of the rules of Law 84 of 1989 establish an exception to the general prohibition of animal abuse for bullfighting, coleo, bullfighting heifers, corralejas, calf- and cockfights. Given that the accusations against these regulations were structured in terms of the suffering inflicted on bulls, steers, calves and roosters, the court had to directly face the question of the legal status of animals as individuals, beyond their ecosystemic relevance.

In Judgment C-666 of 2010[41] it was held that, although the Political Charter does not contain a specific mandate from which the recognition of animals as individuals with their own value is directly derived, from the framework of principles, values and rights an implicit obligation to protect animals as sentient beings is inferred, which involves a prohibition of mistreatment: first, as the duty to protect the environment permeates the entire constitutional order, and as animals are part of the natural environment, animal welfare is a constitutional standard. And second, human dignity itself imposes a principle of recognition and respect for other forms of life that have the capacity to feel.

Once the debate on animal abuse was definitively installed, the first consequences of the constitutional prohibition of animal abuse began to be drawn in Judgment C-283 of 2014. In this ruling, the Court declared the constitutionality of the legal norm prohibiting the use of native and exotic wild animals in fixed and travelling circuses, questioned at the time for disregarding the right to work, the right to choose a profession or trade, the right to free development of personality and the private initiative of the circus owners and those who work in them, as well as the children's right to culture and recreation.

3.2.4. In this new context, and in different scenarios, this court has held that the proscription of animal abuse constitutes a constitutional imperative, and has drawn the legal consequences that derive from this recognition, as recorded in judgments T-146 of 2016[42], T-296 of 2013[43], T-436 of 2014[44], C-467 of 2016[45] and T-095 of 2016[46], on issues such as the collection of stray dogs by health institutions, the use of public property for bullfighting shows, animal-drawn vehicles and the competences of national and local authorities in the regulation and control of bullfighting shows.

In Judgment C-467 of 2016[47], for example, assessed the validity of legal provisions that describe certain animals as "movable property", and which at the time were challenged for allegedly disregarding the status of animals as sentient beings. In this judgment, the Court held that the animal prohibition mandate and animal welfare standards have constitutional roots, and that, therefore, legislation and public authorities are bound by these requirements in regard to animals: not to subject them to thirst, hunger and malnutrition, not to keep them in uncomfortable conditions in terms of physical space, environmental temperature and level of air oxygenation, to care for them in the face of pain, illness and injury, not to subject them to

conditions that generate fear or stress, and to allow them to manifest the natural behaviour of their species.

This court concluded, however, that neither from the perspective of the symbolic effects, nor from the perspective of the legal effects of law, did the categorization of animals as movable or immovable property violate the constitutional prohibition of animal abuse. From the perspective of material legal effects, it was clarified that the legal definition of animals as goods is projected exclusively in the civil scenario, an area in which the treatment of animals by humans is not defined, and that the latter matter is regulated by other normative bodies, including Law 1774 of 2016, which reiterates that, in the context of civil relations, the relations between humans and animals must be governed by the imperatives of animal welfare. For its part, from the perspective of symbolic effects, the Court clarified that the legal definition, reasonably understood and interpreted, does not feed or favour animal abuse either, in so far as the definitions in Articles 655 and 658 of the Civil Code are not descriptive statements intended to answer the question about the ontological status of animals, but only to assign to the latter the civil regime of movable and immovable property, a regime that, in turn, refers to the titles and legal operations that can be executed on them, but not the type of bond and relationship that must exist between humans and animals. Thus, the message conveyed by the legislature is not that animals are substantially equivalent to all inanimate beings and that they can therefore be assimilated and treated like a stone or a book, as the plaintiff argues, but that, in the civil sphere, animals have the same legal regime as goods in general, which may therefore be subject to the securities and transactions regulated by civil law.

3.2.5. In these terms, jurisprudence has been directed towards recognition of the constitutional prohibition of animal abuse, in a process whose foundations, content and scope are in the process of construction and expansion.

4. *Habeas corpus as a legal instrument for the protection of freedom*

4.1. Habeas corpus is a legal tool designed to judicially guarantee the individual freedom of persons, against arbitrary, illegal, or unfair detentions or arrests from public or private agents.

The evolution of the figure comprises centuries of history and its modern configuration finds its origins in the first medieval charters that incorporated guarantees against the arbitrary deprivation of personal freedom.

Indeed, the concern for legal instruments to guarantee individual freedom has been a constant in world history. In the Roman Empire, for example, some tools were devised to protect this individual right from possible abuses, albeit only against free citizens. The Magna Carta enacted in 1215 consecrated a general guarantee of freedom and a general prohibition of imprisonment, with the sole exception of a legitimate order for its retention from a competent authority and established the habeas corpus. In this regard, section 39 provided that “no free man may be detained or imprisoned or deprived of his rights or property or placed outside the law or banished or otherwise deprived of his rank, nor shall we use force against him or send others to do so, except by virtue of judicial Judgment of his peers and in accordance with the

law of the kingdom." In 1679, the Habeas Corpus Amendment Act, designed to control arrests ordered by high-powered authorities, such as ministers and sheriffs, was enacted and is still in force today.

4.2. The institute of habeas corpus has been particularly relevant in world history, as evidenced by its significance in the context of contemporary dictatorships and authoritarian regimes.

Thus, an iconic moment of habeas corpus corresponds to the dictatorships of the late twentieth century in Latin America, when this instrument served to guarantee not only individual freedom, but also the life and physical integrity of individuals, and even freedom of expression, and the rights of assembly and protest. It is a simple but powerful instrument through which jurisdictional bodies verify the legality of deprivation of freedom and demand the detainee be brought before a competent court or tribunal. The mere activation of this legal tool fulfills a power rationalizing function, preventing the authorities from making arbitrary or illegal detentions. The fact that in the inter-American human rights system was conceived as an essential legal tool of the rule of law that cannot be suspended during states of emergency, has strengthened this instrument [48].

This model of judicial protection of individual freedom has been projected throughout the Western world, although its scope and spectrum has varied throughout history.

4.3. In both in the international system and the inter-American human rights system, habeas corpus occupies a privileged place.

Article XXV of the American Declaration of the Rights and Duties of Man establishes that "no one can be deprived of his freedom except in the cases and in the forms established by pre-existing laws (...) any individual who has been deprived of his freedom has the right to have the legality of the measure promptly reviewed by a judge and to be tried without undue delay or be otherwise released. He is also entitled to humane treatment during the deprivation of his freedom". For its part, Article 9.4 of the International Covenant on Civil and Political Rights states that "any person who is deprived of his freedom by virtue of detention or imprisonment shall be entitled to take proceedings before a court, in order for the court to decide on the legality of his detention without delay and order his release if his detention is unlawful". In the regional human rights system, Article 7.6 of the American Convention on Human Rights provides that "any person deprived of freedom has the right to recourse before a competent judge or court for them to decide, without delay, on the lawfulness of the arrest or detention and order his release if the arrest or detention is unlawful. In state parties whose laws provide that any person who is threatened with deprivation of freedom shall have the right to appeal before a competent judge or court for them to decide on the legality of the threat, such recourses may not be restricted or abolished and may be lodged by the person himself or by another person".

In this normative context, the Inter-American Court of Human Rights has given a broad spectrum to this instrument, providing it with a preventive role, a restorative role and a corrective role: the first to provide guarantees to those who are threatened to be deprived of their freedom, the second to confer and restore freedom when it has been illegally deprived, and the third to protect the proper treatment and adequate care of detainees (improper habeas

corpus). This agency has even used this instrument not only to prevent forced disappearances, but also to order the location of those who have disappeared, even when significant time has elapsed since their location was lost [49], and to ensure the freedom of groups of persons who have been detained through "collective habeas corpus" [50]. Likewise, the Inter-American Court of Human Rights has understood the deprivations of freedom in broad terms that may be subject to judicial review, without limiting them exclusively to illegal detentions, but also to those that are inequitative, unjustified or disproportionate; in this regard, the court has clarified that illegal arrests are those that have been carried out in violation of the material and formal requirements expressly required by law, while arbitrary arrests are those that, having satisfied these requirements, are unreasonable or inconsistent with the basic actions that give rise to the deprivation of freedom, but which can be protected through the institute of habeas corpus [51].

From a procedural point of view, it has been configured as a highly flexible and informal instrument: it can be interposed by the affected person himself or by another person, even if unrelated to him; must be resolved by a judicial authority with guarantees of independence and impartiality; is not subject to the exhaustion of administrative channels; and must be resolved "without delay".

4.4. These guidelines are replicated in the Colombian legal order.

In this regard, Article 30 of the Constitution provides that "whoever is deprived of his freedom, and believes to be illegally deprived, has the right to invoke habeas corpus before any judicial authority, at any time, by himself or through an interposed person, which must be resolved within thirty-six hours". For its part, Statutory Law 1095 of 2006 provided that "habeas corpus is a fundamental right and, at the same time, a constitutional action that protects personal freedom when someone is deprived of freedom in violation of constitutional or legal guarantees, or when it is unlawfully prolonged".

As can be noted, in Colombia the habeas corpus has the same structural characteristics as in comparative law and in the world and Inter-American human rights systems: (i) first, it is inseparably linked to individual freedom, which is one of the structural axes of the rule of law and contemporary democracies, although it also allows the protection of other interdependent rights, such as the right to life and the right to personal integrity; it even indirectly serves as a tool for the defense of other fundamental rights such as the right to free development of personality, freedom of expression and freedom of assembly, in situations in which the exercise of such rights is repressed through the deprivation of freedom; (ii) secondly, it is a flexible, informal and speedy procedure, which obliges legal operators to resolve applications as promptly as possible and prioritise it over other judicial proceedings: in particular, the action must be resolved within 36 hours of its submission; (iii) thirdly, it is a jurisdictional tool, with the guarantees of independence and impartiality inherent to the judicial function [52]; (iv) finally, the decision and judicial proceedings are solely and exclusively aimed at establishing the legal status of the deprivation of freedom, and, in particular, the legality or arbitrariness of the arrest or detention and of its prolongation over time; it is then an objective check that does not extend to verification of guilt or criminal liability of the person activating the constitutional action, or to its current living conditions.

Normally, habeas corpus is invoked in criminal proceedings where, for example, a detention is made without following the formal requirements, where it extends after the legal term provided for in the criminal legislation has expired, or when house arrest is granted, and the convicted person remains in a prison establishment despite this. However, this mechanism can also be activated outside this context, in cases such as military service, or even against detentions established by indigenous authorities, or against private individuals who detain other persons.

4.5. On the understanding that habeas corpus is the first-order judicial instrument for guaranteeing personal freedom, in principle it displaces the tutela action in those hypotheses, in which the claim aims to the liberation of those who are arbitrarily or illegally deprived of freedom.

Due to the subsidiarity of the tutela action, this court has concluded that it is habeas corpus, and not constitutional protection, that call for resolving such fundamental legal disputes. This was made clear in a case where a minor was granted parole but forced to continue his military service despite having completed the statutory period [53], but especially in the context of criminal proceedings in the event of detention without compliance with legal requirements, denials of requests for release due to expiration of terms, deprivation of freedom without a definition of the legal situation, or prison stay despite having been granted house arrest [54].

4.6. Regardless of the subsidiarity of the tutela action against habeas corpus, this court has acknowledged that the determinations made in the context of this process may be debated in the framework of constitutional protection, in the same terms and under the same conditions of the tutela action against judicial rulings [55]. In this context, the 'amparo' (protection) must satisfy the generic and specific procedural requirements against judicial rulings, being understood that its admissibility is "highly exceptional" and thus only viable where evidence of "manifestly unreasonable or fraudulent judicial actions" exists.

5. Analysis of the case

Based on the foregoing considerations, the Chamber will proceed to evaluate the claims of the tutela action against the challenged judgment. For this purpose, it will be established below, firstly, whether the action satisfies the procedural requirements of the protection, and secondly, whether the defects attributed by the plaintiff to the judicial decision of habeas corpus are likely to succeed.

5.1 Firstly, regarding the fulfilment of the general requirements for the proceedings of the tutela action against judicial rulings, the Chamber considers that the protection indeed satisfies these conditions [56].

The matter has constitutional relevance, since, on the one hand, the present legal dispute has the duty to protect wild animals in captivity and prohibit animal abuse as its background, which are standards rooted in the Political Constitution, as explained in the preceding paragraphs, and, on the other hand, falls on the scope of the institution of *habeas corpus* as a guarantee of personal freedom.

Likewise, the judicial decision that object of the protection action cannot currently be contested in the courts, since this claim concerns a second-instance judgment, adopted by the Civil Cassation Chamber of the Supreme Court of Justice, and Law 1095 of 2006 does not provide for any additional recourse to challenge that decision.

For its part, the requirement of immediacy is also understood to be satisfied, since the tutela action was brought on 2 August 2017 against the judgment delivered on 26 July of that year, with only one week elapsing between one and the other.

In addition, the irregularities invoked by the applicant as the basis for constitutional protection have a direct impact on the content of the judicial decision or are predicated by the same ruling. Indeed, the plaintiff argued that the judgment of the habeas corpus judge was in absolute procedural defect because he had referred to an issue outside the debate on arbitrary, illegal or unjust deprivation of freedom of persons, in a factual defect because he had taken the decision, ignoring the relevant facts and evidentiary material on the living conditions of Chucho that was linked to the judicial process, and in a substantive defect to assimilate animals to humans and grant the former the status of subjects of rights and to frame the legal debate on this basis. As can be seen, the alleged shortcomings of the court proceedings are directly projected in the decision of the habeas corpus judge or attributable to the Judgment itself.

Finally, a tutela Judgment is not called into question.

In this order of ideas, the Chamber concludes that the tutela action of reference raises a question against a judicial decision that is likely to be contested in the scenario of constitutional protection.

5.2. Regarding the absolute procedural defect, the plaintiff argues that the instrument of habeas corpus was used to channel a dispute that exceeds the purpose of this constitutional action, since it was designed exclusively to guarantee the personal freedom of those who have been arbitrarily, unfairly or illegally deprived by a public authority or private individual, while, in this case, the constitutional debate was aimed at determining the viability of Chucho's stay at Barranquilla Zoo, in order to ensure his welfare.

5.2.1. The Court notes that the debate raised in this process is constitutionally relevant and pertinent, since it aims to guarantee the imperative of animal welfare in scenarios that, like zoos, have been questioned for restricting the behavioural manifestations of different wild species, and even, on occasions, for not ensuring adequate food, for keeping individuals in uncomfortable conditions in terms of physical space, environmental temperature and level of oxygenation of the environment, for subjecting them to situations of stress and fear, especially due to the contact they must enter into with humans, and for not having a comprehensive scheme to deal with situations of pain, illness and possible injuries.

In the case of Andean bears, the debate on the conditions of their stay in captivity has full support, since, in natural conditions, individuals of this species travel daily over long distances, climb trees and carry out numerous and complex explorations, so that their confinement to

narrow spaces causes high levels of anxiety that manifest themselves in stereotyped behaviours, aggressiveness, lack of appetite, among many others.

Likewise, the Court notes that the legal system does not currently provide for a judicial mechanism specifically designed to discuss the welfare conditions of animals that are legally in captivity. Although in the administrative bodies there are different mechanisms for the protection of wildlife in illegal captivity, or to monitor compliance with the protocols of wild animals that, under the protection of the law, are in this same situation, this does not occur when the constitutional mandate for animal welfare in intended to be enforced in situations in which public or private bodies hold a wild animal in captivity. Eventually, different judicial instruments may be used, for example, to challenge the legality of the administrative acts by means of which a permit is granted for the individual's holding, but these are non-specialized tools which only tangentially address this problem.

The Court notes that this instrument has been used at worldwide to obtain the release of wild animals in captivity. The emblematic example of the above is the habeas corpus granted in 2016 by the Third Court of Guarantees of Mendoza, in Argentina, in favour of Cecilia, a 30-year-old chimpanzee who remained in a zoo in Mendoza for decades, where her physical and emotional state deteriorated progressively, due to the deplorable conditions of her captivity. The judge considered that these animals, as sentient beings, should be able to live freely in their natural environment and, accordingly, ordered her transfer to a sanctuary in Brazil.

The confluence of these two circumstances, i.e., the existence of a problem of constitutional relevance and interest, and the inexistence of a specific procedural avenue to discuss it, could explain the claim to use habeas corpus to address the legal controversy.

5.2.2 However, in our legal system habeas corpus is a manifestly inappropriate means of resolving the issues raised by the applicant.

As explained above, habeas corpus has as its inescapable presupposition the arbitrary, unjust and illegal deprivation of personal freedom, and fundamentally seeks the immediate recovery of the same. In the hypothesis presented, on the other hand, there are two substantive differences: (i) first, the legal debate does not aim to obtain the freedom of a person who has been arbitrarily deprived of it, but to guarantee the animal welfare standards of an individual who is in legal captivity, and, in particular, so that he can manifest the natural behaviour typical of his species; (ii) and second, the controversy in this case is not centred on the illegality of Chucho's captivity in the Barranquilla Zoo, since his stay there is legally supported and endorsed by competent environmental authorities, but on his current living conditions in view of animal welfare standards.

Regarding to the first of these points, it is clear that habeas corpus seeks the freedom of people, while in this case, the debate is about the desirability of permanence and of the living conditions of a spectacled bear named Chucho at Barranquilla Zoo.

The Court notes that this broad discussion on the welfare of Chucho comprises the analysis of Chucho's limitations in living according to the natural behaviour of his species, and that since spectacled bears naturally roam and explore large areas of land, the habeas corpus filed on his

behalf was aimed at ordering his transfer to a place where he could live in semi-captivity, or even freedom.

This analysis on the convenience of transferring wild animals to other territories cannot be assimilated to the debate on the recovery of personal freedom. The allusion to freedom and Chucho's liberation is only a simile that explains, with anthropological categories, a debate that, in essence, is substantially and qualitatively different from the question of the freedom of people who have been deprived of it.

Likewise, in this case, judicial scrutiny does not focus on the illegality or arbitrariness of a person's detention, which is the basic premise of habeas corpus, since what is under discussion are the conditions of captivity of a wild animal, which are within the regulatory framework, and, at least prima facie, his stay at the Barranquilla Zoo was established after the protocols and legal requirements were satisfactorily met.

These are therefore substantially different issues, with different assessment standards. In one case, in habeas corpus, judicial scrutiny is structured on the basis of fundamentally legal considerations about the legality of a person's deprivation of freedom, while the debate proposed here has a very different spectrum, aimed at establishing whether the Chucho's stay at Barranquilla Zoo is consistent with animal welfare standards.

5.2.3. Moreover, from a procedural perspective, *habeas corpus* is inadequate for addressing the very complex issues surrounding the examination of the welfare of wild animals that are legally in captivity.

This is a procedure that, given the urgency of protecting personal freedom against arbitrary actions, is essentially of a summary nature and must be resolved within 36 hours by any judge of the Republic, who may "decree an inspection of the proceedings that may exist in the matter that gave rise to the petition [and] request from the respective director of the detention centre, and from the authorities deemed relevant, urgent information on everything concerning the deprivation of freedom, [and] interview (...) with the person in whose favour the action is filed" (Art. 5 of Law 1095 of 2006). Once these elements of judgment have been obtained, "the competent judicial authority shall immediately order the release of the person deprived of freedom, by interlocutory order against which no appeal may be lodged" (art. 6 of Law 1095 of 2006).

The simplicity and structure of this judicial procedure, consistent with the need to exclusively verify the legality of the arrests to provide immediate release, normally within the framework of judicial proceedings, is not consistent with the need to evaluate the situation of wild animals in captivity in light of animal welfare standards, and even with the need to identify alternative scenarios for their eventual placement.

Such an analysis requires qualified technical support, including, for example, different expert examinations to determine the living conditions of animals in areas, such as their nutritional requirements, signs or manifestations of stress, anxiety or distress, environmental temperature, the relationship with other individuals of their species or other species, exposure to human

presence, among many others. None of this occurs in habeas corpus, which focuses on specific legal issues whose verification does not require all this evidentiary activity.

Moreover, debates associated with the welfare of animals in captivity normally give rise to broad, open deliberative processes that are of general interest, while habeas corpus only seeks to guarantee the freedom of specific individuals. In fact, the present tutela proceeding aroused the greatest interest in different social and academic circles and called upon the intervention of different public and private entities. In addition to the Barraquilla Botanical and Zoological Foundation as plaintiff, Corpocaldas, the Ministry of Environment and Sustainable Development, the Special Administrative Unit of the National Parks System, the World Wide Fund for Nature (WWF), the Federation of Entities for the Defense of Animals and the Environment in Colombia (FEDAMCO), the Program for the Legal Protection of Animals of the University of Antioquia, the Legal Clinic and the Conciliation Center for the Protection of Animals of the Cooperative University of Colombia (Popayán campus), the Animal Observatory of the Pontifical Xavierian University, the Regional Autonomous Corporation of the Atlantic, the Alexander von Humboldt Biological Resources Research Institute, the Latin American Association of Zoos and Aquariums and the European Association of Zoos and Aquaria (EAZA) and several citizens. In order to have elements judgment, a public hearing was held during the judicial process, in which various public entities, social organizations and academics actively participated.

Thus, the issue raised by the plaintiff in the habeas corpus action is, by its very nature, of public interest, and should be open to broad deliberative processes that are not guaranteed by the referred constitutional action.

5.2.4. Furthermore, decision-making patterns are different in each case. According to Article 6 of Law 1095 of 2006, "once the violation of constitutional or legal guarantees has been demonstrated, the competent judicial authority shall immediately order the release of the person deprived of freedom, by interlocutory order, against which no appeal may be lodged". In the hypothesis put to the judge's consideration, on the other hand, the solution has a great scope and a very high level of complexity, and cannot simply consist in Chucho's release from the Barranquilla Zoo; if the current environment is deemed inadequate, the judge's work would probably include a complex phase of searching for natural reserves, sanctuaries or other places to which Chucho could have access, taking into account his vital background, advanced age, the captivity to which he was subjected all his life, and his current conditions. In addition, the judicial process would probably not end with the transfer order, but some sort of follow-up would have to be carried out. Clearly, habeas corpus does not offer the tools to deploy this copious procedural activity.

5.2.5 In the opinion of the Chamber, this inconsistency between the nature, purpose and structure of habeas corpus and the issues raised in the judicial process constitutes an absolute procedural defect [57].

As determined by this court, the absolute procedural defect occurs when the judicial authority acts outside the procedures established by the legislator, both from the substantive point of view, as well as from the formal and procedural point of view. It is a qualified and unjustified

error that is so serious that it affects the sense of the decision when, for example, a case is processed through a different channel than the one determined by the legal system, when one or more of its structural stages or phases are entirely disregarded, when there is a significant and unjustified delay that prevents a definitive decision, or when the minimum guarantees of the right to due process are disregarded, particularly when the rights of defense and contradiction of the parties to the proceedings are unreasonably limited, or when the determinations are, from a substantive perspective, openly incompatible with the constitutional and legal guidelines [58].

Based on this typology, this court has revoked judicial decisions when the judge refrains from ruling on cases that had been previously joined in a single decision, without having justifiably ordered decumulation [59], when the judicial proceeding is carried out without notification [60], when the judge omits to order and evaluate a test that according to the law is essential to establish the content of the judicial decision, such as the DNA test in paternity proceedings [61], when the opportunity for parties to file an appeal against decisions adopted in the framework of the proceeding that are relevant to resolving the basic legal debate is pretermitted [62], or when the preparatory hearing is omitted in the framework of the criminal proceeding as a decisive instance to exercise the right to defense [63].

In this case, the habeas corpus judge failed because he channelled the debate proposed by the plaintiff through a mechanism that was integrally inadequate from every point of view. A device conceived and designed to provide immediate response to unjust, arbitrary, or illegal deprivations of personal freedom was used to evaluate the situation of a bear living in a zoo under the authorization of the environmental authorities. Moreover, in the specific case of Chucho, the debate was never aimed at releasing him into his natural habitat, since it was clear that his survival was absolutely unfeasible in this scenario, both because of his advanced age and the fact that he had remained in captivity since his birth.

The foregoing results in a breach of the right to due process, since, by using a procedural route manifestly inconsistent with the nature and purpose of the dispute brought before the judge, the guarantees of an informed, considered, and reasoned decision were lost. This circumstance, in turn, affects the rights of the parties involved in the process, especially of the Botanical and Zoological Foundation of Barranquilla, who in the narrow framework of habeas corpus cannot fully exercise its right of defense against the accusation for the alleged deterioration of Chucho due to his stay in the zoo. Above all, the above becomes an obstacle for the achievement of animal welfare, considering the limitations of habeas corpus as a mechanism to adopt an informed and reflexive decision, which, in fact, had to be adopted in the framework of a hasty debate.

5.3. Having configured the absolute procedural defect, there is no room for the analysis of the factual or the substantive defect alleged by the plaintiff, since, having ruled out the viability of the habeas corpus action, it makes no sense to determine whether the decision adopted in the framework of an action that was itself inadmissible, given the proper factual and evidentiary support, and whether it complied with the constitutional and legal norms. Therefore, by subtraction of the matter, the Court omits the analysis of the alleged defect.

5.4. Nevertheless, the Court draws attention to the need to use the existing instruments in the legal system to guarantee the animal welfare mandate in contexts that, as in the present case, involve wild animals held in captivity as the full responsibility of humans. Further progress is also essential in identifying and improving procedural tools to ensure this mandate and to channel discussions on the confinement and captivity of wild animals.

5.5. From this perspective, the conclusions adopted by the Labor Cassation Chamber and the Criminal Cassation Chamber that the decision of the Civil Cassation Chamber of the Supreme Court of Justice should be reversed on the basis of a substantive defect and an absolute procedural defect had occurred when the habeas corpus action was granted, are reasonable and in accordance with the constitutional guidelines on the tutela action against judicial decisions.

Consequently, the Court will confirm the decisions adopted by the Labor Cassation Chamber and by the Criminal Cassation Chamber of the Supreme Court of Justice on 16 August 2017 and 10 October 2017 respectively, by which the decisions adopted by the Civil Cassation Chamber of the same court were declared null and void under the habeas corpus action proposed by citizen Carlos Andrés Mendoza Puccini.

III. DECISION

Based on the considerations set out above, the Second Review Chamber of the Constitutional Court, administering justice in the name of the people and by mandate of the Political Constitution,

RESOLVES

FIRST. - CONFIRM, for the reasons set out in the grounds of this decision, the judgments handed down, in first instance, by the Labour Cassation Chamber of the Supreme Court of Justice on 16 August 2017, and in second instance by the Criminal Cassation Chamber of the Supreme Court of Justice on 10 October 2017, in which the right to due process of the Botanical and Zoological Foundation of Barranquilla was protected.

SECOND.- By Secretary-General, RELEASE the communications referred to in article 36 of Decree 2591 of 1991.

Be notified, communicated and complied with.

GLORIA STELLA ORTÍZ DELGADO

Presiding Magistrate

With explanation of vote

CARLOS BERNAL PULIDO

Magistrate

DIANA FAJARDO RIVERA

Magistrate

With dissenting vote

LUIS GUILLERMO GUERRERO PÉREZ

Magistrate

ALEJANDRO LINARES CANTILLO

Magistrate

With explanation of vote

ANTONIO JOSÉ LIZARAZO OCAMPO

Magistrate

With explanation of vote

CRISTINA PARDO SCHLESINGER

Magistrate

With explanation of vote

JOSÉ FERNANDO REYES CUARTAS

Magistrate

With explanation of vote

ALBERTO ROJAS RÍOS

Magistrate
With partial dissenting vote

MARTHA VICTORIA SÁCHICA MÉNDEZ
General Secretary

Dissenting vote of the Magistrate

DIANA FAJARDO RIVERA
TO THE JUDGMENT SU016/20

"The greatness of a nation and its moral progress can be judged by the way its animals are treated." Ghandi

1. With the usual respect for the decisions of the Full Chamber, I would like to explain the reasons why I dissented from the decision in Judgement SU-016 of 2020. Before undertaking this task, I would like to emphasize the importance for a Constitutional Court that its decisions are jointly constructed in deliberation, based on the vigorous, serious and transparent discussion typical of democratic and plural societies, committed to the principles and rights of their founding norm and with the aim of achieving the greatest possible consensus.

2. With this idea present in each of the matters that fall under the jurisdiction of the Full Chamber of the Constitutional Court, I undertook the substantiation of the presentation of the Chucho case. Aware of the large and difficult debate surrounding the issue, I promoted the opening of the channels established by the Constitution and the law to ensure that the greatest number of voices were heard, which was achieved with the various interventions and in the probationary period during which a public hearing was held.

3. With the contributions of citizens, state entities and specialists on the issues involved in this action, I prepared a presentation to be discussed with the judges of the Plenary Chamber; however, in the discussions that characterizes this instance, the fundamental position I set out in the project was far from achieving consensus and was, to the contrary, not accepted by a large majority.

4. In such circumstances, considering that dissent is also possible and opportune when the reflections of others fail to persuade us, despite the openness and depth of the dialogue, I chose to cede the presentation and submit a dissenting opinion, reflecting a position that, strictly subject to the constitutional order, shows that the Chucho case demanded and allowed the Constitutional Court to move forward in clarifying the place that sentient beings, non-human animals, have in a progressive and guarantor society, with the idea to explore other paths and other questions for public discussion to continue rather than settle debates.

5. I shall then refer (i) to the main objections that I raised to the position of the Full Chamber, (ii) to the lines of argument of the initial paper I presented, explaining the proposed remedy, and finally, (iii) offer some final reflections.

The majority position was lost in the maze of procedural forms

6. The majority in this case considered that it was an irremediable procedural error to use the habeas corpus action to request the freedom of an individual such as Chucho or, at least, to request his transfer from one place of captivity to another, with better conditions for his well-being. In their opinion, the purpose of this action is to protect a person who has been arbitrarily, unjustly or illegally detained, and not to guarantee animal welfare standards, in a context in which the legality of the captivity is presumed.

7. Furthermore, in the opinion of the majority of judges, from a procedural perspective, the study and analysis of the claims behind animal welfare go beyond the configuration of habeas corpus action, to the extent that, if the judge considers the environment of the individual animal to be inadequate, he would have to look for appropriate places for its relocation, while, under the regulation of the referred action, once the violation to the right to freedom is demonstrated, the immediate freedom of the person is imposed without further examination or consideration.

8. In its exposition, Judgement SU-016 of 2020 pointed out that in the Colombian legal system, wild animals, such as spectacled bears, have been valued from two perspectives, which are not always coincidental, (i) as an integral part of the environment and, therefore, sheltered by the general duty that imposes their protection, and (ii) as beings with an intrinsic value, for which it referred to some rulings handed down by this Court, concluding that there has been an orientation "towards a recognition of the constitutional prohibition of animal abuse, in a process whose foundations, content and scope are in the process of construction and elaboration." Then, some reflections were made on the history and scope of the habeas corpus action, to conclude, as already anticipated, its impertinence to decide on the "convenience of the permanence" of Chucho at Barranquilla Zoo.

9. In this regard, I believe that the above decision, while making an effort to reconstruct the jurisprudential discussion on the interests of non-human animals in the Colombian constitutional order, has serious drawbacks (i) by failing to establish a connection between the reconstruction and the resolution of the case, a situation evident from the very moment when the conclusion of that paragraph merely affirmed that there was an orientation towards the duty of animal protection and that this was an ongoing process, refraining from at least stating what is clear so far; and, (ii) when speaking of an intrinsic value of individuals such as Chucho without deriving from it any specific/concrete consequence for his defense, despite acknowledging that there are no available legal actions in the system for that purpose. [64] In this regard, I believe that the constitutional judge cannot simply take note of a situation to be protected and the absence of an action to enforce a legal and jurisprudential guarantee, but it is up to the constitutional judge to adapt existing ones and even to promote the creation of new guarantees, to ensure the effectiveness of all legal interests relevant to the system and, with this, the normative value of the Constitution prevails.

10. The majority position is also questionable (iii) in considering that the performance of a duty can be diluted in considerations of convenience, a conclusion that, in my view, is due to the fact that duties do not appear to be read in binding terms; and, (iv) by arguing that a constitutional action such as habeas corpus has an unalterable procedural essence, leading to its petrification, even when the judge is aware of changes in substantial law and of the principles and duties of protection that were unknown, or in an embryonic state at the time of the initiation of the action. This essentialization is not in line with the constitutional judge, who is responsible for determining the appropriate remedies for situations of threat or violation of legally protected interests, and not merely defending the unchangeable nature of each judicial protection mechanism.

11. In my opinion, constitutional judges have the duty to apply not only the Constitution, but also, strictly subject to their canons, the empathy or capacity to identify with non-human animals as sentient beings, that is, the other "I" with subjective experiences in the world,[65] as has occurred with some judges in other normative contexts, such as Argentina, who granted the right to habeas corpus to the chimpanzee Cecilia [66] and to the orangutan Sandra. [67] The same obligation applies to the constitutional judges of the tutela action, as in this case was

the Constitutional Court, who refrained from considering the possibility of intervening, in the absence of an effective action, to establish whether it should adopt at least some measure in defense of the animal welfare of Chucho the bear.

12. The need for a ruling in this direction, despite the fact that the object of the tutela was to question a judicial decision, was derived from what was even warned by Judgment SU-016 of 2020, that is, the inexistence of a procedural avenue to discuss what was proposed in the habeas corpus action, [68] uncertainty that demanded from this Court a pronouncement that clearly evidenced what actions can be used in these cases or, upon verification of their absence, to propose remedies, require the authorities to make the necessary adjustments, among many other possibilities. This debate, however, was ignored by the majority of the Plenary Chamber, which, in the end, only affirmed that the captivity of Chucho t was presumed to be legal.

13. And, finally, (v) the majority simply continued to presuppose the classic meaning of the concept of person and derived the other consequences easily from there, even though the habeas corpus decision challenged in the tutela action and the discussion raised throughout this proceeding provided elements that allowed the Constitutional Court to make effective the protection of non-human animals such as Chucho the bear. If the purpose of the tutela action was to question a judicial decision that had made argumentative efforts to justify the reason for the opening of a constitutional action, the way to affirm that such pronouncement was incorrect and, therefore, incurred in a defect, was to assume a sufficient burden of justification, which did not occur in this case, since Judgement SU-016 of 2020 evaded the substantive debate.

14. For the above reasons, Judgment SU-016 of 2020 petrified constitutional procedural instances; verified situations of injustice and gaps in the defense of the interests of nonhuman animals with intrinsic value, and yet, overlooked the relevance of defending the supremacy of the Constitution; and omitted to have a dialogue with those who participated throughout the constitutional process, silencing its own voice in a public debate that requires clear positions and the exploration of lines of action that will allow the construction of more respectful and conscious relationships with the value of the different forms of "being" that are present in nature. For these reasons, I did not agree with the majority position.

A presentation in defense of greater constitutional sensitivity to non-human animals [69]

Accuracy of the starting point

15. The definitive rapprochement between the community and the Law or, more specifically, the language of rights and principles that the 1991 Constitution intended as a fundamental challenge of a more just and peaceful society, generates and promotes the participation of its members in claiming what they consider valuable in each time and place. In changing societies, of course, many of these demands do not find a clear answer in the normative institutions already delineated, that is, the reading of some realities from the Law seems blurred. However, when, from a reasonable constitutional understanding, there are issues that show real dilemmas between what is fair and what is not, the institutions the judge, must try to promote the best understanding, which, without transferring competences, allows dynamize legal practices.

16. The task of the constitutional judge, before whom, with increasing insistence, petitions similar to those at issue in the present tutela are presented, is to try to find a solution to the situation of violation with existing legal tools, considering the possibility of taking some of

them “as if” [70] they were in fact covered, at least while regulatory changes are promoted that specifically take them into account, if this is deemed necessary. The presentation I submitted to the Full Chamber, which, as I noted, was not accepted, was part of this task, although there is no doubt that the utmost caution must be exercised so as not to trivialize the categories that have allowed us to build a clear legal system.

17. As a starting point for this presentation, then, it is necessary to indicate that in the draft that I presented and was debated by the Plenary Chamber, I did not equate human beings with animals; I did not argue that dignity was the justification for the legally protected interests, as rights, of animals; nor did I consider that the rights of animals were fundamental, nor that the dimensions of appropriate freedom for animals had the same scope as the right to freedom for persons; I did not affirm that there was an interest in the animal freedom of each and every species existing on the planet; nor did I suggest that the Judge could establish, in a sort of list, which interests should be ascribed to animals; and, much less did I pretend to order the freedom of Chucho to take him to an environment, in which he could not survive without human accompaniment.

18. Next, I will indicate the main lines of the report, for the construction of which, I reiterate, the contributions of those who intervened both in the evidentiary period and in the public hearing that took place were fundamental, interventions that were mentioned in Judgment SU-016 of 2020 and that are attached as an annex to this dissenting opinion so that they may be widely known.

Main lines of analysis in the presentation

19. In this regard, I will refer to (A) animals in the jurisprudence/case law of the Colombian Constitutional Court; (B) the constitutional jurisprudence on the duty to protect animals; (C) the consideration of animals in the theoretical debate; (D) the discussions surrounding the status of animals in the law; (E) some comparative law experiences; (F) certain evidence of the capabilities of animals; and (G) habeas corpus as a legal instrument for the protection of freedom.

Animals in the jurisprudence of the Colombian Constitutional Court

20. The 1991 Political Constitution, an expression of a society that longed for reconciliation and peace, is a democratic, participatory and pluralistic pact committed to the configuration of a just political, economic and social order, the materialization of which is linked to several cross-cutting approaches, including one linked to the early recognized idea,[71] of the Ecological or Green Constitution.[72].

21. The content of such an approach has been determined on the basis of a systematic reading of various provisions,[73] taking as a presupposition for its construction the potential of the principles, rights, and duties provided in the fundamental text - or derived from it - to account for the requirements of a changing society, which faces variations in the perception of different issues relevant to community life and must assume novel dilemmas that reflect typical discussions about what justice demands.

22. Moreover, prior to 1991, the world community expressed its concern for the care and protection of the richness and diversity of the environment, as evidenced by the Stockholm

Declaration on the Human Environment [74] and the World Charter for Nature.[75] Also worth mentioning is the Convention on International Trade in Endangered Species of Wild Fauna and Flora, CITES.[76]

23. Thus, based on (i) a Constitution committed to the environment, (ii) international normative instruments and criteria prior and subsequent to 1991 on its protection - binding or not - and (iii) an indisputable reality - which is all the more our responsibility - and which has to do with the existence of a megadiverse country, [77] the Constitutional Court has been consolidating a jurisprudential line in different environmental scenarios, among them, in relation to the prohibition of maltreatment of animals, as members of the fauna resource of ecosystems, [78] and whose consideration is necessary and imperative in the framework of the ecological Constitution.

24. Thus, an anthropocentric vision, that is, one in which the human person is the centre and the raison d'être of the universe, with unlimited power to dispose of that which surrounds him, is not correct, [79] nor is the appreciation of the environment, and the struggle for its conservation and the maintenance of its diversity, as a mere instrument - a utilitarian vision - for the satisfaction of various purposes. In this sense, in Judgment C-123 of 2014[80] it was stated that the elements that make up the environment "can be protected per se and not, simply, because they are useful or necessary for the development of human life";[81] for its part, in Judgment C-032 of 2019,[82] it was warned that, from the duties towards the environment, it is derived that its protection "not only arises from its relationship with individuals, but that these are goods that may even be the object of safeguarding by themselves." This statement, of course, does not ignore the fact that our legal system and the very existence of the State base their purposes on the human being and on the dignity that is the basis of his inalienable rights.

Constitutional jurisprudence on the duty of animal protection

25. Since the beginning of its activity, this Court has resolved issues that, in concrete or abstract review of constitutionality, involve the fate of different species of animals. Recurring issues include (i) food production and associated health measures; [83] (ii) the use of animals in different activities, such as transportation, [84] circus shows, [85] bullfighting and similar cultural practices [86], and sports hunting, [87] and (iii) their possession - and mobilization - by natural persons, in which the guarantee of the rights to free development of personality, privacy, and health has been invoked.[88]

26. The individual and joint analysis of these decisions, which due to their length is not reproduced here, makes it possible to conclude that the constitutional jurisprudence that has been built in this area shows that: (i) there is a duty to protect animals and, therefore, a prohibition of mistreatment, which is based on the defense of the environment, human dignity and the ecological function of property; (ii) this duty not only involves acts that have the potential to jeopardize the diversity and balance of the ecosystem, but also reaches animals as individual and sentient subjects; or, in other words, it is clear that this Court has recognized, far from an anthropocentric conception, the intrinsic value of the environment and, in particular, of animals individually considered; (iii) the protection is also different according to the type of species involved, domestic or wild animals, with more restrictions on the latter and a more decisive statement on the possession of the former by individuals given their relationship with the rights to free development of personality and privacy; and, (iv) the duty to protect animals has an indisputable binding normative content, whose application, both for

the Legislator and for the judges, requires exercises of assessment of reasonableness and proportionality.

The consideration of animals in the theoretical debate

27. Animal protection and their status in law is a matter which is currently highly debated on the basis of political, philosophical, moral and legal conceptions, which address the related dilemmas from different angles, among others aspects, to (i) the extension of rights to individuals traditionally subject to the system of things; (ii) the possibility of understanding the granting of rights without subjection to a system of obligations; and, crucially, (iii) the adequacy of the foundation of human rights in the Kantian construction of dignity.

28. Ruling, then, on a matter such as the one before the Chamber, demanded the responsibility to seriously address the objections raised, in a constitutional framework that, as previously stated, allows channelling claims that invoke the rule of justice, with the sole purpose/aim of providing greater consistency to its framework of principles, rights and duties. In this regard, I will make some considerations on (i) the general state of the discussion, which has been mentioned to a large extent on several occasions by this Court; (ii) comparative law experiences; and (iii) some evidence of animal capabilities.

Discussions around the status of animals in law - Some relevant positions

29. Since ancient times, the existence of links, their scope and content, between human beings and other living beings, such as animals, has captured the attention of different areas of knowledge. Behind these disquisitions lies a fundamental need to identify and justify the role of humans vis-à-vis other members of their community and also in relation to everything that surrounds them.

30. In essence, for the Greeks Socrates, Plato and Aristotle, and the stoic Zeno, as well as for the Roman Stoics Cicero and Seneca, it was clear that there was a divine plan, in the framework of which some individuals -inferior ones- served for the good of other individuals located at a higher level, given their capacities. [89] In the words of Aristotle: "animals existed for the good of man, the domesticated ones for work and food, the wild ones, if not all, at least a large part, for food and the provision of clothing and various instruments. If nature creates something incomplete, and nothing is in vain, the conclusion is that it has created animals for the sake of man." [90]

31. This conception subsequently permeated the Judeo-Christian tradition, [91] to which modern Western philosophy is heir, "philosophers writing from the modern Western tradition, however, and irrespective of their religious beliefs, have been profoundly influenced by the Judeo-Christian tradition, which proclaims that human beings have been granted dominion over animals and plants." In this scenario Descartes is pivotal. From his rational construction of I think, therefore I am, animals are nothing more than machines, without a soul, that only obey and act by their instincts, [92] so that their place was reaffirmed as that of one to be dominated/mastered, that is, that of things. Later, Immanuel Kant insisted on this status, considering that animals were not holders of the attribute of dignity, which emanates/stems from the rational capacity of the human person and his agency to act autonomously; therefore, only human beings are ends in themselves, receivers of moral consideration.

32. It should be noted, however, that, for example in the case of Kant, such a position did not imply denial of the existence of indirect duties towards animals, as they benefit mankind as a whole/complete.[93]

33. On the other side of Kantian deontologism, the utilitarian Jeremy Bentham suggested that animals should not be denied the possibility of holding interests of their own, arguing in one of his speeches that: "[t]he day may come when the rest of the animals will acquire rights which only the hand of tyranny could have denied them. The French have already discovered that black skin is no reason for a human being to be abandoned to the whims of his tormentor. We may one day come to recognize that the number of legs, the fur of the skin or the end of the 'os sacrum' (sacred bones) are equally insufficient reasons for abandoning a sentient being to the same fate." Along these lines, for Bentham, the question was not whether an animal could reason or speak, but whether it could suffer.[94]

34. In the field of sanctions, some judicial practices reflect that relations between animals and human beings have not been a matter in black and white terms. Thus, although it may seem an exotic and novel matter today, throughout history there have been times when animals were the protagonists of trials, and even enjoyed a kind of due process, including legal advice.[95] Especially in the Middle Ages and even the Renaissance in Continental Europe - 13th and 17th centuries - two types of criminal proceedings against animals were common: (i) secular proceedings against pigs, horses, cows and other domesticated animals accused of committing murder or causing injury to humans; and, (ii) ecclesiastical processes against rats, [96] weevils, locusts and other species considered as pests, responsible for damaging crops and vineyards, and exposed, depending on the gravity of the case, to excommunication. [97]

35. A proper interpretation of such practices, however, requires affirming that the position granted to animals to participate in a trial was not really a form of emancipation and granting of a status similar to that of a human person, at least in terms of liability, but a mechanism to prosecute them as causing serious offenses to the law [98] and thus prevent reproach from other humans or even princes or divine authority, further reaffirming the strength of legal mandates.[99]

36. As expected, in most cases the animals involved were found guilty and sentenced to terrible punishments in trials that mimicked human trials. In this regard, the 1386 trial of a pig in the town of "Falais" in northern France is well known. The animal was accused of having attacked and killed a child, so its body was lacerated in a similar manner to that of the attack - in a recreation of talion law - and hung in the central/town square. For the image of justice to be complete, the animal's body was dressed in human clothes at the time of execution.[100] Even when an animal was acquitted, the standard of reference to what is noble, just, or innocent was based on humans. [101]

37. After such practices, devoid of any justification from a modern conception of responsibility, animals entered the world of law through prohibition of animal abuse that spread from England [102] in the nineteenth century through Europe. The discussion among criminal law dogmatists about who was the holder of the protected legal good was nurtured and divergent and continues to be so. Various justifications have been given among those who consider it invalid to assign ownership of protection to animals. In this sense, the type of sanction has been associated with the need to (i) guarantee public morality and good customs; (ii) protect the community from future aggressions/attacks against its own members; and (iii) defend the environment as a necessary resource for human life. Faced with such a position, penalists like Alberto Friederich

Berner [103] in his time, and currently Raúl Eugenio Zaffaroni, have argued - in minority - that the ownership of the protected legal good does fall on the animal.

38. According to the latter, [104] the explanation based on public morals and good customs leaves, in an atypical scenario, those acts of cruelty that are committed in private;[105] the justification given in terms of the future defense of the members of the community themselves, insofar as it prevents acts of ill-treatment against humans,[106] converts an offense into a type of "suspicion, because it does not actually harm any legal good, but rather creates a suspicion that it may harm it. It would be protecting a pious pedagogy, something like the pretence of fostering a pious human model, an interest of public morality in this regard, so as not to risk humans extending cruelty to other humans." [107] And, finally, to mistreat the environment has on the one hand, the inconvenience that urban domestic fauna would probably not strictly fall into this category, and on the other hand, refer to a similar matter to the one it pretends to account, ownership of environmental rights.

39. In addition to the above normative context of sanctioning animal mistreatment, the rights associated with the environment have fueled discussions in the law about the appropriate consideration in relation to animals. At present, and against the background of a long history of ideas in which animals have been predominantly considered as things, as opposed to human beings qualified as persons, the subject of animals has been approached from welfare positions, focused on the prohibition of unjustified mistreatment, to that of rights, in which animals are not considered as mere natural resources but as holders of protection. This discussion has also been led by environmentalists, for whom the animal is functional as it contributes to maintaining the cycles of nature, and animalists, for whom the animal continues to be relevant regardless of its contribution.[108]

40. Within this broad and varied framework, the ideas mentioned by the utilitarian Jeremy Bentham have been relevant and gave way to Peter Singer's "Animal Liberation". [109] This author stresses that, despite the differences that can be found scientifically between men and women, blacks or whites, for example, equality of consideration is a prescriptive moral idea. For Singer, then, not considering the capacity of other species to feel pleasure and pain is an ethically untenable argument, although, from his ethical stance, he does not go so far as to argue for the existence of rights for animals. [110]

41. The recognition of rights, for its part, was one of the proposals made by Tom Regan[111] who, based on his conception of moral agents and moral patients, considers animals to be entitled to the basic right to respectful treatment, in view of the intrinsic value of each subject, associated with the special qualities or capacities of certain species.[112] His thesis, however, has been questioned in some scenarios insofar as the intrinsic value would be restricted only to some animals. Regan's thesis seems similar to that put forward by Steven Wise in the context of the guardianship process,[113] whereby, based on the shaking of an unbreakable wall between the person/thing duality, seeks to grant ownership of basic fundamental rights, such as physical freedom and bodily integrity to some animals, great apes (especially chimpanzees and bonobos), elephants, whales, dolphins and some birds.[114]

42. In a more expansive sense and based on a theory with broad precision, Martha Nussbaum [115] affirms the existence of rights for animals that in justice, should be recognized. To support her position, she begins by exposing three issues that, in her opinion, cannot be adequately explained from rationalist social contract theories, of which Rawls' proposal is paradigmatic.[116] Among these issues is the exclusion of animals from the social contract.

[117] Thus, for example, she argues that at the basis of the foundation of the social contract is an idea of social cooperation, based on mutual benefit, which is not adequate to capture the asymmetrical relations between humans and animals. [118] She adds that, although for Rawls, for example, there are duties towards animals, these simply involve ideas of charity or compassion, [119] but not justice.

43. On the other hand, unlike a Kantian position on human dignity, Nussbaum adopts an Aristotelian idea, according to which all lives are worthy of respect, subject to variations in their needs, and in the context of which there is no idealized rationality in human beings who oppose animality. In this sense, she uses the conception of capacities, [120] within which we are all "temporary and needy animals, born as infants and often ending up in other forms of dependency." This approach, therefore, "[s]upposes drawing attention to these areas of vulnerability, and insisting that rationality and sociability are themselves temporary, and subject to growth, maturation and (time permitting) decay." [121]

44. To this approach of capacities she adds the notion of flourishing, based on Aristotelian dignity, achieving a conjunction of elements that allow her to affirm that, after social cooperation, a community would formulate political principles of animal-human relations by virtue of which "no sentient animal would be deprived of the opportunity to lead a flourishing life -a life endowed with the dignity relevant to its species- and that all sentient animals would enjoy certain positive opportunities to flourish." [122] In accordance with the latter, for Nussbaum the moral threshold that grounds animals as rights-bearers is sentience-an idea borrowed from utilitarianism. In this regard, she states that:

> "Is there a threshold below which capability degradation does not constitute harm? Killing a mosquito would seem to be an act of minimal evil because, in principle, the mosquito does not feel pain. It would be easy for Singer to reach this conclusion, but for the capability theorist it is more complicated, since, in their view, the good lies in opportunities to flourish and not just in sentience. Why wouldn't the mosquito's capacity to continue living be one of those that it is wrong to interrupt? This is where I think the capabilities approach should accept the good judgment of utilitarianism. Sentience is not the only thing that matters for basic justice, but it would be well within the realm of possibility to consider the possession of sentience as a `threshold' condition for admission into the community of justice-based rights-bearing beings." [123]

45. Therefore, it would be essential to conduct a study to guide political and legislative authorities on the particular capabilities of each species for the flourishing of their lives.

46. From a communitarian author such as Will Kymlicka, working on this precise issue with Sue Donaldson, it is considered that the discussion of animal rights has omitted to talk about their positive rights, as vulnerable selves. Under the idea that animals have different types of relationships and rejecting an absolutist position that tends to eliminate all types of bonds between humans and animals, they structure their theory on degrees of relationship. Thus, domestic animals would be entitled to membership rights that are equivalent to a kind of citizenship; wild animals to rights of sovereignty and autonomy; and liminal animals - in an intermediate state between domestic and wild animals - to rights of residence, all based on their capacity to feel and, therefore, to have subjective experiences of their world.

47. The foregoing considerations, of course, are only intended to give some account of the sense or general lines of a debate to which the main thinkers have contributed, from the ancient world to the present, from different positions and areas of knowledge, with the aim of highlighting what lies behind the position of animals in the law. Although at present, for example, their appearance in court is an exceptional scenario, [124] what has not changed, at least not in a broad sense, is the estimation of the human being as a parameter of reference for the ownership of rights and obligations; the point of measurement over other things.

48. Law, especially in its Western tradition, is based on a restricted conception of the concept of rights holder; a category that has been constructed from the attributes of the human being, from which the characteristics of ownership, obligations and rights are defined. Although this concept has been progressively expanded throughout history to include population groups that had initially been excluded from the category of the fully human, for different reasons (sex, race, nationality, religion, social status), discussions to understand the place that non-human animals should occupy within this structure persists.

49. These discussions are universal and, consequently, have not only confronted the ideas that exist in countries such as Colombia about justice, its limits and scope; on the contrary, they have been addressed by judges from other countries, with similar or different legal traditions to ours. Their study and analysis are considered as an important tool for a better understanding of what the law should deal with, bearing in mind that the practices from which this system is nourished are not static – because communities are not static either- so I will refer to some of these decisions below.

Experiences in Comparative Law

50. Comparative law, as stated above, shows a large-scale discussion about animals' legal status, bringing together different disciplines – from both natural and social sciences- and characterized by a growing concern for their welfare. This shift in the conception of animals [125] is neither a uniform nor a peaceful proposal, but it has as a common minimum the gradual recognition of animals as beings in themselves, whose life experiences matter in moral, social, environmental and, therefore, legal terms. The Inter-American Court of Human Rights seems to point in the same direction when it recently warned of: "a tendency to recognise juridical personality and, therefore, rights to nature not only in judicial Judgements [126] but even in constitutional orders.[127]"

51. I will focus my attention on a summary of some of the most representative cases in this shift towards a redefinition of the animal in the legal world. As with any exercise in comparative law, it is important to begin by noting that the legal institutions cited are not automatically comparable, since they are part of different legal, cultural, and even religious systems and traditions. However, I believe that it is legitimate to undertake a search for alternative solutions to legal problems that confront different societies in similar ways.

52. The differences between the various legal and social systems are obvious. Indeed, it is not the same thing to study the legal ownership of animals in India, where there is a provision that elevated the citizen's duty to "have compassion for all living creatures" [128] to constitutional status and where one of its major religions - Hinduism - recognizes the soul in all living creatures; [129] as in the United States, whose Constitution contains no clause that even approaches this level of engagement with the natural world.

53. The German Constitution, for its part, did include the protection of nature and animals, although it did so in terms of human rights and as a form of responsibility toward future generations.[130] Nevertheless, in some decisions, the German Constitutional Court has vindicated the direct protection of animals as living beings.[131] The Swiss Constitution went even further by expressly enshrining the "dignity of living beings" [132] without restricting it to humans, as is usually done. This recognition of the intrinsic value of all living beings is similar in our continent to the recently enacted constitutions of Bolivia and Ecuador, which echo the narratives and worldviews of the native peoples of the Americas and their harmonious relationship with nature. This second text, in particular, not only celebrates the "Pacha Mama", where "life reproduces and realizes itself"; it also recognizes its right to be "integrally respected [in] its existence and the maintenance and regeneration of its vital cycles, structure, functions and evolutionary processes." [133] It even provides for a sort of universal jurisdiction so that any person, people or nationality can demand from the authority the fulfillment of the rights of nature.[134]

54. These normative and cultural differences are relevant; and, of course, require caution when conducting a comparative law exercise that seeks to transplant from legal institutions. But what was more interesting - and relevant to this case - is that, irrespective of such differences, all these legal systems and many additional ones not mentioned above are looking into the animal issue and have been forced to reconsider legal categories that seemed immovable. In New Delhi, a judge had to rule on the fundamental right of birds to fly and not be locked in cages; [135] in Argentina, the right to habeas corpus of a chimpanzee named Cecilia was recognized for the first time; [136] but also in New York, the Courts are discussing whether "Happy", the elephant of the local zoo, has the right to be released. [137]

55. In Spain, a judge ordered a dog to attend as a witness in a trial for animal abuse of which she had been a victim.[138] The judge in charge ordered that Milagros -the assaulted dog- be present in the courtroom. Although it was obvious that the animal could not communicate in the language of humans, the provincial Environmental Prosecutor made it clear to the attendees that they were going to do it on her behalf, both the accusing body and a forensic doctor exposed the injuries that Milagros had suffered to the judge and how she was at that time. [139]

56. In Switzerland, the need for an official spokesperson for animal interests took on greater relevance and became an official public policy. In the Canton of Zurich, the figure of the Public Defender of Animals was created, who handled between 150 and 200 cases annually for alleged animal abuse, and exclusively looked after the interests of his non-human clients.[140] However, this initiative was repealed through a popular consultation in 2010.[141] As already mentioned, Switzerland is one of the most advanced countries in animal legislation, which has also had an impact on its judicial pronouncements. The Federal Supreme Court, for example, upheld in 2009 the government's decision to ban certain scientific experiments on primates. In addition to considering the intrinsic value of animals within the proportionality analysis, this decision is relevant for concluding that: "Even if it [the dignity of animals] cannot and should not be equated with human dignity, it does require that the creatures of nature, at least to a certain degree, be understood and valued as beings of a similar stature to humans."[142]

57. In the following and to conclude this chapter, I will examine three specific cases that are relevant in that they deal with judicial decisions relating to the animals' entitlement, and because they represent milestones in the animal turn to which reference has been made

(i) Argentina: Cecilia the chimpanzee

58. In November 2016, the Third Court of Guarantees of Mendoza (Argentina) issued a landmark decision: for the first time it recognized that an animal could be the subject of rights, and in particular of the writ of habeas corpus to obtain its release. [143] According to the plaintiffs, Cecilia - a 30-year-old female chimpanzee - had been arbitrarily deprived of her right to freedom and to a dignified life by the authorities of the Mendoza City Zoo, where her physical and psychological health deteriorated rapidly due to the deplorable conditions of her captivity.

59. In the framework of the legal institution of habeas corpus, the office recognized that, in principle, this action had not been conceived to deal with cases involving animals deprived of their freedom. Like many other countries, Argentina has enacted laws against animal abuse, without implying a right of animals not to be mistreated, which in its opinion demonstrates "the clear incoherence of our legal system that, on the one hand, holds that animals are things to then protect them against animal abuse, legislating for it even in the criminal field."

60. However, the Third Court of Appeal of Mendoza went on to point out that "societies evolve in their moral conduct, thoughts and values as well as in their legislation". In particular, it gathered two theories about animals that justify making this qualitative leap in the definition of rights holder. Firstly, the doctrine of sentient beings, whose origin dates back to the English philosopher Bentham, who postulated that anyone capable of feeling pleasure or pain is a moral subject, including those belonging to the animal kingdom, especially primates, whose physical and emotional attributes have been sufficiently documented. Secondly, and of special relevance to our continent, it highlighted the work of Eugenio Raúl Zaffaroni, who conceives nature (or Pacha Mama) as a living and complex subject of rights, made up of interrelated beings, including humans of course. The latter theoretical approach allows us to affirm that the protected good in this case was Cecilia's well-being, which in turn, is a collective value, since Cecilia is part of the natural patrimony, to which we humans are also inscribed.

61. Faced with the many questions and criticisms that this change in the paradigm could raise, the Court itself took the responsibility to clarify the scope of its decision, stating that it is not a question of completely equating human beings with other natural living organisms, but rather of recognizing minimum rights, among which is the possibility of living freely in the natural environment, as appropriate to each species:

> "... at present, the intention is not an attempt to equal sentient beings with human beings, or to attempt to elevate all existing animals or flora and fauna to the category of persons, but to recognize and affirm that primates are persons as subjects of non-human rights and that they hold a catalogue of fundamental rights that must be studied and listed by the corresponding state bodies [...] Here it is not about granting them the rights that humans possess, but about simultaneously accepting and understanding that these entities are sentient living beings, subjects of rights and have, among other things, the fundamental right to be born, to live, to grow and die in the environment that is their own according to their species. Neither animals nor great apes are subject to exposure as a man-made work of art." [144]

62. However, given that neither the procedural regulation of the province nor the national law of Argentina specifically contemplates a procedural avenue to evaluate the situation of animals in confinement, the judge considered that the habeas corpus action was the appropriate avenue.

But this posed an additional difficulty: the simple order for Cecilia's release was incompatible with her situation or specific needs, especially considering that no appropriate animal sanctuary existed in Argentina for her to continue her life. Therefore, the court decided to order her transfer to a sanctuary in the neighbouring country of Brazil, trusting that the distance did not expunge Cecilia's belonging to the community of Mendoza, and that the search for her welfare was, in the end, an opportunity to be truly more humane:

> "In these particular circumstances, the transfer beyond our border appears to be the ideal means for those who today integrate "our" heritage to be able to continue their lives in better conditions [...]. The spiritual bond that links a community with the elements of its heritage does not depend on physical proximity but on the intensity with which the relationship is lived and strengthened over time, regardless of the dominion status of the element or the jurisdiction to which it is subject. Thus, Cecilia may continue to be part of "our" environmental heritage if we, as a community, so propose [...]. If we take care of her well-being, it will not be Cecilia who will be indebted to us, but we will have to thank her for the opportunity to grow as a community and to feel a little more human." [145]

63. The Cecilia trial has become a landmark in comparative jurisprudence on the protection of animals, not only in the regional but also in the international context due to the scope given to the concept of habeas corpus.

64. The next case takes us to the other end of the globe, to a country where the law against animal abuse has been reinterpreted and systematized by the judicial authorities as a true statute on animal rights.

(ii) India: the tradition "Jallikattu"

65. As already mentioned, the Republic of India has a constitutional provision prescribing the citizen's duty to "have compassion for all living creatures",[146] as well as a prohibition on the slaughter of livestock.[147] Similarly, it has had legislation against animal cruelty since 1966, which mandates measures in favour of animal welfare and prohibits any unnecessary suffering caused to animals.[148]

66. In 2014, the Supreme Court of India issued a landmark decision on the scope of animal rights, and how to harmonize them with other human rights. [149] On this occasion, the Court analysed the legality of a tradition practiced for more than three centuries called "Jallikattu", common in Tamil Nadu, a state in southern India. In short, it is an event in which several contestants decide to run, jump and harass bulls that are previously subjected to stressful conditions so that they charge and chase the participants. This practice was banned with this decision of the Supreme Court.

67. In the opinion of the magistrates, the duties enshrined in the 1966 Statute against Animal Cruelty derive correlative rights for animals, which also entails recognition of their intrinsic dignity. In the words of the Supreme Court of India:

> "Sections 3 and 11 [of the 1966 Animal Cruelty Statute], as noted above, do not confer rights on the organizers of Jallikattu, but only duties, responsibilities and obligations; but they do recognize animal rights. Sections 3 and 11, together with

> other similar provisions, must be understood and interpreted in harmony with article 51(A) of the Constitution, which establishes elementary duties of compassion for living creatures on every citizen [...] All living beings possess inherent dignity and a right to live peacefully, as well as a right to be protected in their well-being, including defense against beatings, excess burdens, torture, pain and suffering. It is often said that human life is not like animal life, which reflects a deep anthropocentric bias that ignores the fact that animals are also worthy of intrinsic recognition and value. Section 3 has recognized these rights and together with Section 11 imposes a universal duty to care for animals, to take reasonable steps to ensure their well-being and to prevent the infliction of unnecessary suffering. [150]

68. Following on from the above, Indian jurisprudence has adopted the standard of the "best interest of the species." [151] This parameter requires making decisions based on the specific animal welfare of the threatened species, unless strict human needs have greater weight in a specific case, for example, in the case of scientific experiments to prolong life or combat diseases in humans, plants and animals. However, in this specific case, the practice of "Jallikattu" did not fit into the strict concept of human need, as it was a mistreatment of the bulls with the sole purpose of generating a certain type of pleasure in the spectators. It is noteworthy how the Court found that: "the frustration of the bulls is evident in their vocalization; and their facial expression easily conveys a sense of suffering to both biologists and the common person, a sense of suffering." [152]

69. This judgment is not only relevant for having recognized the intrinsic value of animals and attempting to harmonize their rights with human interests. It is also a significant step forward in proposing a basic catalogue of rights that any animal should enjoy,[153] consisting of the following five elements: (i) the right to be free from hunger, thirst and malnutrition; (ii) the right to be free from fear and distress; (iii) the right not to suffer physical discomfort; (iv) the right not to be subjected to harm, injury and disease; and the (v) the freedom to express natural patterns of behaviour. [154]

(iii) United States: orcas, primates and elephants

70. This account ends with the United States, a country whose Constitution does not enshrine any animal protection clause, not even for human beings, and whose standards against animal abuse are not as strict as in other parts of the world. Despite this, it is an enriching object of study, given the high level of activism promoted by some organizations [155] that, in association with civil society and interdisciplinary academic experts, are gradually helping to expand the frontiers of animal entitlement through jurisprudence.

71. One of the first precedents is a lawsuit on behalf of a group of orcas that were confined in a recreational park in California, where they had to comply with entertainment routines for visitors.[156] According to the plaintiffs -who acted as unofficial agents of the cetaceans- the confinement in artificial tanks affected their normal development in multiple ways, creating a serious affront to their natural welfare. To support their argument, the plaintiffs referred to Amendment XIII of the North American Constitution, which safeguarded the prohibition of slavery.[157]

72. The California Court rejected the request on the basis that the legal provision invoked had arisen in a very particular historical context in the mid-19th century and was aimed solely at

humans. For the Court: “Unlike other constitutional clauses, the Thirteenth Amendment points to a single objective: the abolition of slavery within the United States. Its language and scope are clear, concise and not subject to any degree of interpretation.” [158] Even so, the ruling did not completely close the door to a resignification of the position of animals before the law, as it also concluded that, although the claim could not be dealt with through the Thirteenth Amendment, “this does not mean that animals have no rights, since several federal statutes have enshrined judicial tools for their redress, including sanctions for those who fail to perform animal protection duties. [159]

73. The legal strategy was then redirected towards another constitutional clause, much older than the prohibition of slavery, and which was also expressly included in the text of the Constitution of 1787: habeas corpus.[160] The first non-human client on whose behalf this figure of liberation was invoked was Tommy, a chimpanzee who had been taken to the United States at a young age, where through beatings and negative incentives, was forced to act in films at the end of the last century. After his time before the cameras, Tommy ended up confined in a cement cage, accompanied by a television set, and where the only vestige of nature were the walls painted with jungle motifs.[161]

74. In the first instance, a New York Court [162] rejected the habeas corpus petition, arguing that there was no legal norm or precedent at the regional or national level designed to protect animals as subjects of rights. It considered that despite the cognitive and linguistic functions that this primate species has been shown to have, “they do not translate into the chimpanzee’s ability to, as they do in humans, have obligations and be responsible for their actions.” According to this ruling, the ownership of rights necessarily implies also being subject to obligations; an argument that was controverted by the appellant, on the understanding that every human being is a subject of rights, irrespective of the fact that for reasons of age, health or other particular conditions, he cannot assume legal obligations.

75. In the second instance, the New York Court of Appeals upheld the decision, but not before warning of the shortcomings of the current legal system in responding to some of the most difficult ethical dilemmas of our time.[163] Even the concurrent opinion of Judge Fahey denounced this lack of legal development as a “manifest injustice”, since the denial of legal entitlement of animals is ultimately based on a speciesist argument (membership of the human species as an enabling condition of entitlement of rights) that surely will not stand the test of history for long.

76. The trial is still pending further proceedings, and although Tommy is not yet free, his case raised serious questions about the legal conceptions on which ownership of rights are based and the concept of legal person. This discussion also took place in the case of Hercules and Leo, two chimpanzees at the disposal of the anatomy department of a university during the last decade, where they were forced - through anesthesia and fine wire electrodes - to participate in research to understand how humans evolved and learned to walk on two limbs. The decision of the court was not in their favour, social and media pressure on the case were decisive in finally having them transferred to a sanctuary for primates [164].

77. Although the case was settled out of court, it is interesting to review the decision of the Supreme Court of New York. [165] The judgment summarily concluded that habeas corpus was not appropriate, since the existing precedent is still framed within a narrow definition of a legal person. But beyond the decision, it is in the reasoning that the complex debates generated by these cases are best evidenced. In the words of the Court, legal personality should not be

restricted to the human condition, which in itself has been the subject of controversy throughout history:

> "Legal personality is not necessarily synonymous with being human. Nor is it true that autonomy and self-determination have always been considered as necessary assumptions for conferring rights. In any case, the plaintiff does not seek to grant all human rights to chimpanzees; rather, what he seeks is for the law to make use of a legal fiction so that chimpanzees are rights holders solely for purposes of habeas corpus; just as the law has also resorted to legal fictions in other contexts so that non-human entities -such as corporations- can be understood as legal persons, with certain types of rights [...]. The very concept of legal personality, that is, who or what can be considered a person in the eyes of the law and for what purposes, has evolved significantly since the founding of the United States. Not so long ago, only Caucasian men and property owners enjoyed the full catalogue of legal rights under the Constitution. Tragically, until the 13th Amendment, enslaved African-Americans were sold, bought and treated as property, with few or no rights. Women were also regarded as the property of their husbands or their families."[166]

78. The Court of Appeals ends with a reflection that seems premonitory of the intense legal, moral and social debates we currently witness: "The similarities between humans and chimpanzees inspire the empathy felt towards the beloved pet. Efforts to extend legal protection to these animals are understandable; someday they may even succeed. The Courts are, however, slow to embrace change, and at times reluctant to engage in more inclusive interpretations of the law." [167]

79. Having presented this brief review of comparative law in animal legislation and jurisprudence, in my opinion it is important to formulate some ideas by way of recapitulation:

a. There are multiple and diverse legal solutions that countries have resorted to address claims of justice towards nonhuman animals. Such solutions, of course, have not ignored the foundations of a long tradition of thought that has placed the human being as the measure of all things and, consequently, has left other living beings, including animals, on subordinate levels. Many countries already have specific legislation against animal abuse, and a few have even elevated the dignity of all living beings to constitutional rank, convinced of their intrinsic value.

b. Regardless of the legal framework and social and cultural differences between countries, the various legal systems are investigating the animal issue and have been forced to rethink legal categories that seemed unchangeable. Countries such as Argentina and India have taken a decisive first step in treating animals as subjects of at least some minimum rights. Many other countries are still looking for the best way to deal fairly with animal welfare claims.

c. There is no uniform solution or single legal instrument to address the complex moral, social and legal dilemmas that nonhuman animals present. But what does seem to be building consensus is the insufficiency of the classic binomial of people/things to solve complex legal, judicial and moral dilemmas that arise daily in the relationship with our natural environment and the other living beings with whom we inhabit this world. The distinction between persons and things imposes a deep conceptual gap that at times seems unbridgeable and whose consequences resonate as manifest injustices before the collective conscience. [168]

Some evidence of animal capabilities

80. Under the paradigm of dignity, the capacities of rationality and moral autonomy distinguish us from other subjects on earth. In this regard, for example, Judgment T-556 of 1998 [169] held that: "[t]he dignity of the person is based on the incontrovertible fact that human beings are, as such, unique in relation to other living beings, endowed with rationality as its own, differential and specific element, so it excludes it from becoming a means of achieving state or private ends, because, as repeated by jurisprudence, the person is "an end in itself." The certainty, therefore, that something, immanent and special, divides human beings from other beings and therefore makes us worthy to enjoy what we ourselves have shaped seems to be an unquestionable position of origin.

81. Without disregarding the particularities of the human being, from the realm of the natural sciences, Charles Darwin stated that "[t]he mental difference between man and higher animals, although great, is certainly not of scale but of type. [170] "In the context of the hearing promoted in this tutela process, Professor Paula Casal emphasized that, for philosophy, a person is a "thinking and intelligent being with reason and reflection, who can see himself as the same thinking being at different times." In this regard, she referred to several qualities of such a condition: (i) minimum intelligence, (ii) self-awareness, (iii) self-control, (iv) sense of time (future and past), (v) ability to relate to others, (vi) concern for others, (vii) communication, (viii) control of existence, (ix) curiosity, (x) change and ability to change, (xi) rationality and emotion combined, (xii) idiosyncrasies, and (xiii) function of neocortex. [171]

82. In 2012, a group of cognitive and computational neuroscientists, among others, met at Cambridge University to assess the neurobiological substrates of conscious experience and behaviours in nonhuman animals, concluding with a Statement on Animal Consciousness in which, among other aspects, it was stated that "from the absence of neurocortex it does not seem to conclude that an organism does not experience affective states... nonhuman animals have the neuroanatomical, neurochemical, and neurophysiological substrates of states of consciousness along with the capacity to exhibit intentional behaviours." They stated that mammals, birds and other individuals, such as octopuses, also had such neurological substrates as humans. They warned of the existence of experiential feelings related to punishments and rewards. In experiments with mirrors on self-recognition, great apes, dolphins and elephants also displayed similarities to humans. [172]

83. For their part, several studies on animal behaviour report, for example, that some anthropoids [173] solve problems before implementing the solution; [174] that elephants [175] and magpies [176] have self-perception in the mirror; that macaques are aware of what they do not know and try to discover it to obtain rewards; that planning skills (forward time vision) are evident, [177] as well as evidence many species experience their life in a community.

84. These and other examples that have been carried out do not, of course, lead to the conclusion that animals and, within their category, all animals, possess capacities, identical or similar to those that relate to humans, let alone that the studies carried out and the provisional findings are irrefutable or free of contradictions. But what is realised is a state of science that is moving forward, and that seems to notice that only a questioning view of our own nature admits to disregarding animals' capabilities and abilities - however different they may even be to us - and that it is thus our responsibility to take them into account with a view to determining the courses of action proposed in this field.

85. Having made the above general considerations on the state of the discussion from different perspectives, I will now present some considerations on the scope and evolution of the protection of freedom through habeas corpus, since it is the constitutional action that was resolved through the ruling that was questioned in the tutela proceeding.

Habeas corpus as a legal instrument for the protection of freedom

86. Habeas corpus is a concept deeply rooted in the history of universal law, designed to protect one of the most important personal guarantees: freedom. The Latin word [178] still used today to designate this institution attests to its long history.

87. Since ancient Rome, a number of instruments were devised to protect individual freedom from possible abuses by other citizens or private individuals; it is clear that not all persons were beneficiaries of this right, but only those considered as free citizens.[179] The Magna Carta enacted in 1215 in the British Islands established a general guarantee of freedom in favour of men, unless a legitimate order for retention was issued, [180] and thus gave habeas corpus a broader scope. But it would take several centuries for a King's Court Judge to admit in 1772 that James Somerset, a slave held in London against his will, could also benefit from the writ of habeas corpus. [181]

88. In a way, the history of habeas corpus is also the history of our societies, of their conflicts, disputes and agreements about freedom and who can invoke it. Throughout time, this action has served as the guarantor of the most elementary and universal freedom, by granting a judicial space for beings that the law does not (yet) recognize as entities with full entitlement to rights and responsibilities. [182]

89. This section does not intend to provide an exhaustive account of the legal evolution of this action, an aspect that the Court has already previously addressed,[183] but rather to draw attention to how the broad and universal formulation enshrined in Article 30 of our Political Constitution is the result of a long and difficult process that has made it possible to progressively widen the boundaries of the category of "rights holder," thus offering every person a space to demand justification when they consider that they have been unjustly deprived of their freedom, even when they cannot be fully considered a subject of rights

90. To continue, I will focus on two historical moments to explain this development, and the debates that arose around the scope of habeas corpus: (i) the gradual abolition of slavery; and (ii) the protection of the population from dictatorial practices in Latin America. Then, (iii) I will address the legal and jurisprudential landscape of habeas corpus in Colombia, evidencing its potential to expand its protection beyond the human species.

(i) Habeas corpus and the problem of slavery

91. The United Kingdom has a rich history in relation to habeas corpus. Some consider, not without reason, that the first legal enshrinement of this figure occurred with the Magna Carta of 1215, which prohibited unlawful imprisonment; a clause that was first used in 1305. [184]

92. Subsequently, in 1679, the Habeas Corpus Amendment Act was enacted. This was a more detailed regulation to deal with arbitrary detentions by certain authorities, such as ministers,

sheriffs or other persons. [185] This body of law has been in force ever since and has influenced the legislation of other countries, suspended briefly in exceptional times of war or threats of internal revolution.

93. It was under this legal framework that the famous case of James Somerset was resolved.[186] James was captured and enslaved in Africa in 1749, after which he was forced to work in the North American colonies. After 22 years he managed to buy his freedom; but enjoyed it for only a month before some of his former owner's men found him, deprived him of his freedom and took him to a ship that arrived in London in 1771, where he was meant to stay for a few days before sailing back to the new world to be sold in Jamaica. [187] However, after becoming aware of the story of his captivity, free citizens initiated a process of habeas corpus on his behalf which forced the Captain of the ship to explain about the man kept in chains on his vessel.

94. At that time, the slave trade had not been formally prohibited in the British Empire. Hence, the social and economic consequences of filing a writ of habeas corpus on behalf of an enslaved "negro" were immense. It was estimated that at that time there were 15,000 enslaved persons in England, each worth at least 50 pounds. In addition, there was the fear that the proceedings would mean that in the near future the slightest mistreatment would give rise to a claim for freedom. Aware of the repercussions of the case, the judge in charge of the Court of the King's bench, Lord Mansfield, urged the parties to reach an amicable settlement that would halt the proceedings. But James' owner was adamant in reclaiming what he considered to be his property. And so it was that Lord Mansfield uttered one of the most famous phrases of the proceedings, "if the parties desire a trial, fiat justitia ruat coelum," "let justice be done, though the heavens fall." [188]

95. Then, in settling the merits of the case, the Captain of the Ship alleged that the enslavement of Africans was a widespread custom and that there were still many Negros available in Africa for such purposes. He also explained that their trade was authorized by the laws of Virginia and Jamaica, to which the vessel was bound. In his opinion, these people were nothing more than "personal goods and chattels, and as such objects of trade." In this sense, the detention on the Ship Anne and Mary, anchored in the River Thames, was legal. However, Lord Mansfield arranged for James' release in the following terms:

> "The state of slavery is of such a nature that it is not possible for it to enter into any reason, moral or political, except through positive law (...). It is so despicable that it cannot be tolerated to support it, only through positive law. Whatever inconveniences this decision may entail, I cannot say that this state is permitted or approved by law in England, and consequently, the negro must be released" [189]

96. James regained his freedom and the heavens did not fall on London that morning in 1772. Lord Mansfield himself ruled a few years later, in 1785, that the black slaves still remaining in the United Kingdom were not entitled to any remuneration for their labour. [190] The trial of James Somerset was not the end of slavery within the British Empire; for that the mankind would have to wait a few more decades until the Abolition of the Slave Trade Act of 1807 which finally banned the slave trade. Although abolition was postponed and slaves clearly did not have the same legal recognition as the free population - in many ways they were not even entitled to rights - James Somerset's process was pioneering in recognizing, through habeas corpus, the most basic protection an individual could have: freedom.

(ii) *Habeas corpus* and Latin American authoritarian regimes

97. At the end of the 20th century, in a regional scenario marked by dictatorial regimes and violations of fundamental rights, habeas corpus regained relevance in Latin America. It became an important right not only to protect the physical freedom of individuals but also "a means to protect their physical integrity and life, since historical experience has shown that in dictatorships the deprivation of freedom is the first step to later torture and disappearance of those who do not enjoy the sympathy of the regime in power." [191]

98. In this context, the Inter-American Court of Human Rights held that the writ of habeas corpus is one of the judicial guarantees that, according to the final part of Article 27(2) of the Convention, may not be suspended by a State Party, not even in extraordinary situations of internal conflict or terrorist threat. [192] Habeas corpus thus fulfills a simple function, but one that has a profound impact on the defense of rights. Its purpose is the "judicial verification of the legality of the deprivation of freedom, [and] requires the presentation of the detainee before the competent judge or court under whose disposition the person concerned is placed." [193] It is an essential means of challenging the authorities or entities that have deprived an individual of his freedom, and thus ensure respect for the life and integrity of the person; and even prevent his disappearance or the indeterminate location of his place of detention, or protect him against torture or other cruel, inhuman, or degrading treatment or punishment.

99. The history of Latin America is full of testimonies of violent acts committed by authoritarian governments that, in their fight against the "internal enemy" dehumanized the "other", showing such disregard for his life that they denied his identity as a holder of rights. These were criminal acts that began by disregarding the freedom of citizens and nullified de facto the usefulness of habeas corpus.

100. The case of Mr. Anzualdo Castro v. Peru, decided by the Inter-American Court in 2009, is a case in point.[194] Kenneth Ney Anzualdo Castro, a 25-year-old economics student, went missing in December 1993 while on his way home, allegedly by agents of the Peruvian Army Intelligence Service (SIE). [195] In February 1994, his father filed a habeas corpus action to identify the place where he was being detained. The Sixth Criminal Court of Lima declared the action inadmissible because "it [was] not possible to determine evidence that directly points to the defendants as those responsible" for the disappearance. For the IACHR Court, on the contrary, the authorities failed in their decisions by imposing disproportionate obstacles on the petitioner, ignoring that habeas corpus is "the ideal means both to guarantee the freedom of the person and to control the respect for life and protect the personal integrity of the individual." [196]

101. Unlike James Somerset, Mr. Anzualdo Castro was not denied his most basic rights because of his race, but because of his alleged political affiliations that linked him to subversive groups. However, both cases coincide in the disregard of their entitlement of rights by legal regimes in which they did not fully fit as rights holders, but as "other" entities, outside the law and objects of exploitation or elimination.

(iii) *Habeas corpus* in the Colombian context

102. Article 30 of the Constitution provides: "Whoever is deprived of his freedom, and believes to be illegally deprived, has the right to invoke before any judicial authority, at any time, by himself or through an interposed person, habeas corpus, which must be resolved

within thirty-six hours". For its part, Statutory Law 1095 of 2006 defined that: "Habeas Corpus is a fundamental right and, at the same time, a constitutional action that protects personal freedom when someone is deprived of freedom in violation of constitutional or legal guarantees, or this is prolonged illegally." [197]

103. Regarding jurisprudence, the Constitutional Court has had the opportunity to rule on the habeas corpus action in different areas: (i) in abstract control of constitutionality, against the norms that have developed or regulated its exercise; (ii) when applying the principle of subsidiarity of the tutela action because there was another suitable and effective means of judicial defense; and (iii) when reviewing tutela actions against judicial rulings. The following are the Court's considerations in each area.

104. In the abstract control of constitutionality, the Court has specified the content and scope of the fundamental right to habeas corpus, as well as some aspects in relation to its exercise, [198] as a public constitutional action. In this regard, it has held that the main purpose of habeas corpus as an action is to guarantee the inviolability of personal freedom, since it functions as a reaction against arbitrary detentions or arrests by public or private agents. [199] The Court has also warned that it is a fundamental right rooted in the Constitution, and therefore "does not simply inform the procedures and application of the law but imposes on the authorities and private individuals a specific behaviour of strict compliance with what it represents and is derived from its essential core." [200] In line with the above, it has highlighted its important role in the protection of freedom, noting that it is a right that is not suspended in states of exception or abnormality, as "it not only protects the physical freedom of individuals but is also a means of protecting their physical integrity and life, since historical experience has shown that in dictatorships the deprivation of freedom is the first step toward later torturing and disappearing those persons who do not enjoy the sympathy of the regime in power (...). [201] Therefore, habeas corpus is understood as the ultimate tool for guaranteeing individual freedom against arbitrary, illegal or unjust limitations perpetrated by any authority or individual.

105. In Judgment C-187 of 2006[202], the Court conducted a preliminary review of the constitutionality of Statutory Bill No. 284/05 Senate and No. 229/04 House of Representatives, "Whereby Article 30 of the Constitution is regulated". On that occasion, it recalled that habeas corpus is the most important guarantee for the protection of the right to freedom enshrined in Article 28 of the Constitution; it is also an intangible fundamental right of immediate application that is recognised in international norms that form part of the constitutionality block. [203] On the other hand, it reiterated that the current concept of habeas corpus is not exhausted with the exclusive protection of the right to freedom, but "expands to cover the other fundamental rights intimately related to it, and which support it, such as the rights to life and personal integrity." [204]

106. On the other hand, in the review of tutela rulings, the Court has developed a line on the application of the subsidiarity requirement when the claim is aimed at protecting the freedom of a person who is considered illegally restricted. In this regard, it has recalled that each institution of the legal system has a specific purpose established by the Constituent or the Legislator, hence habeas corpus, and not the tutela action, is the mechanism indicated to guarantee personal freedom in the aforementioned terms. It thus ruled in a case in which a minor had been granted provisional release, but was forced to continue doing military service, despite having completed the statutory period. [205] It has also done so in the context of disputes in which the plaintiffs were deprived of their freedom while awaiting the resolution

of the investigation into whether or not they had committed the crimes with which they were charged [206]; in cases involving the denial of requests for release due to expiration of time limits in the context of criminal proceedings, [207] or following the issuance of an arrest warrant; [208] in resolving tutelas filed by persons who, after several days of deprivation of freedom, did not have their legal situation defined [209], or who, having been sentenced to imprisonment, had been granted house arrest and were nonetheless being held in a prison establishment. [210]

107. The third case in which the Court has examined habeas corpus is in the context of tutela actions filed against judicial decisions that denied such recourse. In these cases, it has specified the scope of habeas corpus as a fundamental right and as a judicial remedy. Thus, it has ruled that "[t]he logical structure of the right of habeas corpus assumes that once the corresponding petition is filed, the judge verifies certain objective conditions - legality of the arrest and lawfulness of the prolongation of the deprivation of freedom - and concludes on whether or not to order immediate release. In the event that the illegal detention is proven on any of the above grounds, the granting of the guarantee is necessary and compliance with the order for immediate release is obligatory." [211]

108. In Judgment T-1315 of 2001,[212] the Court systematized the jurisprudential rules on the matter as follows: (i) whoever is legally deprived of freedom must formulate the petitions for release within the criminal proceeding, and these must be resolved immediately, or before the deadline indicated in the procedural law, since they directly affect the fundamental right to personal freedom; (ii) if the petition is not resolved within the legal term, the habeas corpus action is appropriate as a constitutional guarantee of the right to freedom and (iii) "if the habeas corpus action is not resolved in a timely manner and the legitimacy or illegitimacy of the deprivation of freedom remains in the shadows, the tutela action is appropriate, but not as a supplementary mechanism of this protective action of the fundamental right to freedom but as a defense mechanism of the rights to petition, due process and material access to the administration of justice. In this case, the tutela action protects the right of the plaintiff to have the legitimacy or illegitimacy of his detention considered by a judge in such a way that, if there is room for it, his immediate release is ordered." [213]

109. In sum, habeas corpus is an intangible fundamental right of immediate protection that cannot be limited in states of exception, and a preferential and summary constitutional action that seeks the protection of the freedom, life and personal integrity of those who have been illegitimately deprived of their freedom and is especially important -as the IACHR Court has explained- because it prevents the consolidation of forced disappearances. It is therefore a judicial means of immediate application - it has to be resolved within 36 hours at the most, which displaces the tutela action for the protection of the fundamental rights mentioned above; whose content can be reviewed by the appeal judge only in the framework of the tutela action against judicial decisions, to determine whether or not the corresponding decision incurred in one of the defects established by this Court as affecting the due process of citizens.

110. So far, the habeas corpus action has been addressed by the Constitutional Court only in relation to the human being, so it is clear that the considerations have had a markedly anthropocentric orientation, according to which: "every person deprived of freedom has the right to be treated humanely and to be guaranteed by the State the rights to life and personal integrity" [214]. The human constitutes then the subject of protection and the referent of justice.

111. The foregoing, however, was not an obstacle to understanding that the essence of the habeas corpus remedy is to promote the inquiry into the legality of a deprivation of freedom, for which a legitimate justification must be offered considering the constitutional order, under penalty of incurring in illegal detention. “The deprivation of freedom, of whatever nature, provided that it affects its essential core, whether by a public or private agent, justifies the invocation of this special technique for the protection of fundamental rights.” [215] The Court has also stated that the habeas corpus action may be invoked in any context in which there is evidence of an unlawful deprivation of freedom. In this sense, the recourse may be invoked, for example, against decisions issued by the indigenous jurisdiction that order custodial sentences, since this is a right and an action that is available to anyone who considers that he has been deprived of his freedom without the due constitutional guarantees. [216]

112. Hence, this legal action also requires summary and immediate action. The appeal must be resolved within 36 hours of filing. [217] This is understood in terms of habeas corpus only establishing the legality of the deprivation of freedom, not the possible innocence or guilt of the interested party. In this regard, the Supreme Court of Justice has explained that “it is not an alternative, supplementary or substitute mechanism for debating the specific issues inherent in the proceedings in which punishable conduct is investigated and judged; on the contrary, it is rather an exceptional action to protect freedom and any possible violation of fundamental rights.” [218]

113. The legal system recognizes that every person is born free, so that no one may be disturbed in his freedom “except by virtue of a written order from a competent judicial authority, with the legal formalities and for reasons formerly defined by law.” [219] It is the justification for such detention that is for the judge to assess on a case-by-case basis, since it is also true that freedom is not an absolute right, and that, for example, the loss of freedom is justified when a person has been convicted in the context of a due criminal process. [220]

Basic questions in this case and proposal of answers

114. Based on the above lines of study, the proposal raised was to establish whether or not the judicial decision to grant habeas corpus to Chucho was reasonable under the current constitutional framework, taking two fundamental aspects into account: (i) the reasons provided by the Supreme Court of Justice - Civil Cassation Chamber [221] for granting such an appeal and (ii) the arguments which, according to the Botanical and Zoological Foundation of Barranquilla "FUNDAZOO", made such determination arbitrary.

115. To this extent, the study of the shortcomings proposed by the tutela foundation, i.e., factual, substantive and absolute procedural, led the Chamber to question whether it was reasonable to consider Chucho as the recipient of a good called “freedom” but, prior to this and inevitably, to answer the following question: are animals, like Chucho, rights holders?

116. In my view, animals do have interests that are legally relevant to our system, interests that can be called rights. This position was based on (i) existing jurisprudential construction, based on the affirmation of animals as sentient beings with an intrinsic value; (ii) the legislative developments in democracy, such as the issuance of Act No. 1774 of 2016, which welcomes the status of sentience and incorporates animal welfare mandates; (iii) comparative law experiences, such as habeas corpus granted in Argentina to the orangutan Sandra and the chimpanzee Cecilia; (iv) the human commitment to environmental conservation, expressed in various international instruments such as the Convention on International Trade in

Endangered Species of Wild Fauna and Flora (CITES); and, (v) theoretical, philosophical and scientific contributions which show, on the one hand, that legal categories should allow understanding and responding to real constitutional problems, such as the treatment we owe to animals; and on the other hand, the wealth found in other species, their own life experiences and even the similarities to some human capacities exhibited by several animals.

117. Considering the above, and taking the specific case before the Chamber into account, in my opinion the question that should be addressed next was: is Chucho the holder of the right to freedom? And if so, to what extent? I considered Chucho to be the holder of the right to animal freedom, understood as conditions in which he is better able to express his vital behavioural patterns.

118. To this end, I proposed to take into account that Chucho (i) belongs to a wild species, that is, that his prevailing status is that of freedom; and that (ii) the freedom, in natural parks - for example - is relevant for the conservation of the environment, as Andean bears play an important role in reforestation and care of water sources. Therefore, given his intrinsic value and, in addition, the function of bears like Chucho in the environment, this species can claim an interest such as that which we freely identify within the specific framework of animal consideration.

119. Now if it were possible to note that Chucho, as a subject of rights, is the holder of the right to animal freedom, the question to be resolved next was as follows: is it reasonable to argue that a mechanism such as habeas corpus is adequate to protect Chucho's interest, given the specific conditions of his species and his life, in the absence of effective judicial mechanisms for animals in the legal system?

120. Before stating my position on this matter, I consider it relevant to take two elements into account. First, as stated in Judgment SU-016 of 2020 and in this brief, the legal system does not expressly provide for a solution to the matter brought before the habeas corpus judge, but it does contain mandates that allow a constitutional approach, with a view to ensuring that the public service of administering justice is satisfied. And secondly, there is understandable concern to preserve the effectiveness of habeas corpus as the main recourse to protect human freedom, in consideration of its historical journey and role in the fight against authoritarianism; but this does not imply that this action cannot be adapted to the protection of vulnerable beings, with reasonable adjustments.

121. Taking the foregoing into account, in my opinion, the answer to the question of whether habeas corpus was appropriate is affirmative. I proposed to the Chamber that habeas corpus is a remedy that acts "as if" it was designed for this case, based on the history of this instrument and its inseparable relationship with overcoming situations of injustice. The procedural aspects that characterize the granting of freedom to a human should be adapted to the needs of an animal species like Chucho, without this adaptation becoming a definitive obstacle to achieving satisfaction of the interests of an animal such as Chucho.

122. As an additional reason given such background, I argued that this recourse allowed for the speedy resolution of matters that deserve a timely response, considering that the damage that may be caused to an animal with a short life expectancy, must be dealt with promptly.

123. Therefore, in my opinion, the judicial decision to grant habeas corpus to Chucho did not constitute a substantive or absolute procedural defect, since under the current constitutional framework, the reading of entitlement of legally protected interests in favour of animals was

admissible, as was access to such defense mechanisms in the case analysed by the Full Chamber of the Constitutional Court. Having affirmed the above, it was necessary to determine whether there was a factual defect in the habeas corpus decision by ordering Chucho's transfer to a reserve.

124. In order to advance this analysis, it should first be mentioned that the habeas corpus application [222] was not intended to leave Chucho in absolute freedom, nor to generate an abstract discussion about his welfare, but focused on protecting his animal freedom, that is, the best conditions to guarantee his mobility needs, as he moved from a space of more than 2,500 m2, in the Rio Blanco Reserve of Manizales to a cage of approximately 200 m2 at Barranquilla Zoo. In the light of this request, the habeas corpus judge ordered the evidence he deemed pertinent and, with the evidence submitted in due time, decided that cannot be considered arbitrary, which is why the factual defect invoked was not established.

125. However, with the evidence submitted to the file in the tutela proceeding and particularly in the review, the proposal that I presented to the Full Chamber implied a variation in the orders given in the habeas corpus, a possibility that I considered correct given the informality of the tutela action that was being resolved. This proposal took two approaches into account. The first consisted of inquiring about the best situation for Chucho, given his age (approximately 24 years old) and his life history, that is, that he was born in captivity and, because of this, depended on human intervention for his survival. And the second aimed at establishing the reason why Chucho remained in captivity all his life, starting from the fact that he and his sister were confined in the Río Blanco Reserve for breeding purposes.

126. From the first point of view, given the uncertainties generated by a possible transfer, it was suggested in the initial report that I presented to the Chamber, to order the establishment of a technical committee that, with the participation of delegates from various entities and organizations, would conduct a comprehensive ethological study on Chucho's conditions to determine whether a transfer to a reserve or his permanent stay in the zoo was advisable and, if so, whether some improvements were required

127. From the second point of view, it was proposed to order the Ministry of Environment and Sustainable Development to initiate, together with other competent entities and the public, the study of the public policy for the conservation of the Andean or spectacled bear, since it was evident that Chucho's captivity, for unfeasible purposes, had been the result of a defective and precarious application of that policy and, therefore, it was imperative that similar situations were not to be repeated in the future.

Final Considerations

128. In the case of Chucho the majority of the Plenary Chamber, blocked in the formalist maze of procedural law, was not able as a constitutional judge to advance animal protection even though it had the necessary elements to do so. In my opinion, this was a historic moment to consolidate national standards of protection, not only under the parameters of sentience and the prohibition of unjustified mistreatment, which is why I promoted a broad deliberation in this process.

129. In this direction, the majority should have committed to continue with this collective reflection, to involve state authorities and civil society with the aim that, human beings, as an

animal species, in a clear demonstration of moral height, would recognize the intrinsic value of each species. Thus, following John Stuart Mill, who affirmed that the greatest changes in society pass "through three phases: ridicule, polemic and acceptance", I consider that the discussion then continues in the polemic, and that it will correspond to the deliberation of society and of the institutions, among which is the Legislator, to pass to a phase of acceptance.

130. On this occasion, the current discussions were noted and the absence of protection mechanisms confirmed, yet it was not decided to take a step forward. However, in the future, society, and probably institutions, will have to take on similar debates again and then, with the integration of other knowledge, other directions will be outlined, in which the others, in this case the animals, will probably have a voice and a recognition of their own rights, in accordance with their own nature, both in society and in the law.

DIANA FAJARDO RIVERA
Magistrate

Annex

I. Responses to the Order to produce Evidence.

1. By order No. 11798 of 7 September 2018, the Civil - Family Chamber of the Superior Court of the Judicial District of Manizales sent the Habeas Corpus file requested as a loan. [223]

Botanical and Zoological Foundation of Barranquilla

2. Through its legal representative, the Botanical and Zoological Foundation of Barranquilla - FUNDAZOO- responded to the Order of 3 September 2018. In its brief, it stated that the parties had not been informed of the reasons that led to the selection of the tutela for review or of the legal discussion to be conducted, taking into account that "much of the evidence requested is intended to open a debate on the well-being of 'Chucho', of the spectacled bear species [224] and, in his view, the purpose of the tutela action writ of protection is to open up the legal debate on animal rights and how they are exercised. It then pointed out that the Foundation was fully able and willing to provide all the information requested relating to the current state of 'Chucho' the spectacled bear, but stressed that the aspects of care for the bear are not matters to be resolved through constitutional action, aimed at safeguarding the fundamental rights of human beings.

3. Regarding the information requested in the abovementioned order, it indicated that CORPOCALDAS made four monitoring visits to verify the condition of Chucho the spectacled bear since his arrival at the Zoo [225], annexed a table specifying the dates, commissioners, objectives and achieved results, [226] which were generally favourable on all visits: "the animal was found to be in good condition". It also pointed out that six reports on the conditions of Chucho the spectacled bear had been submitted to CORPOCALDAS [227]: the first on his transfer and arrival at Barranquilla Zoo; the second on Chucho's adaptation process at the Zoo; the following four in reference to the bear's management by FUNDAZOO. It clarified that

prior to the bear's arrival at the facility, he presented a general report on the management of the spectacled bear species to CORPOCALDAS, which was taken into account when issuing the technical concept and handing the animal over to the Foundation. It also argued that the *Green Barranquilla* P*ublic Environmental Institution*, an environmental authority with jurisdiction in the Barranquilla district, granted approval for Chucho bear's transfer and possession prior to his arrival at FUNDAZOO.

Regarding Chucho bear's current conditions [228], it began with a recount of the bear's history since birth and under the care of the La Planada Nature Reserve in the municipality of Ricaurte, Nariño; his transfer to the Río Claro Reserve in Manizales, Caldas, as part of an conservation programme for the species; and finally his arrival at the Foundation. He listed a total of nine technicians and professionals who are responsible for the care of the spectacled bears at the Zoo, and are part of the Biology, Conservation and Veterinary Department; he described the animal's habitat [229]; the tests carried out on Chucho the bear, along with results and medical interpretation; at the behavioural level he stated that the bear has behaved calmly, without aggression towards staff [230]. He also explained the care he receives in detail, comparing it to that provided to him in his previous habitat, which the Chamber summarises in the table below:

Aspect	Río Claro Reserve	Barranquilla Zoo
Nutrition	The largest percentage of food given was dog food concentrate. Occasionally carrot molasses and fruit once a week.	60% of the total weight of the diet includes fruit and vegetables, 4.1% meat, and the rest is divided between oat flakes, Mirrapel Pets supplement, and only 14% dog concentrate
Veterinary Care	Sporadic and non-specialised veterinary monitoring	He is permanently monitored by 3 veterinarians with experience in wildlife. He has been treated for skin lesions and has undergone dental check-ups.
Behaviour	He escaped twice from the enclosure where he was kept. He had no contact with other bears of his species.	The enclosure is secure. He has contact with a female of his own species, for which a protocol for bringing the two together was followed.
Environmental Enrichment		The Zoo has an environmental enrichment program that is carried out through diet and the introduction of novel elements.
Conditioning		In June 2018 Chucho started a learning process for his conditioning management training [231], which facilitates "routine and/or medical handling procedures that allows for the welfare of animals under human care (...), and reduces work time and stress, by getting an animal to perform behaviours voluntarily."

4. With the report he attached: (i) certificate of registration of the animal collection of Barranquilla Zoo issued by the Alexander Von Humboldt Institute for Research on Biological Resources; (ii) ZIMS registration of the spectacled bear specimen "Chucho" indicating basic information about the animal; and (iii) certificate of health of the specimen issued by the Animal Health Coordinator of the Botanical and Zoological Foundation of Barranquilla - FUNDAZOO [232].

CORPOCALDAS

5. By email of 10 September 2018, the Autonomous Regional Corporation of Caldas – CORPOCALDAS – responded to each point of the Order of Reference, through the following report by the Biodiversity and Ecosystems office of the entity:

(i) It noted that before sending the bear to Barranquilla, it assessed his condition and found that the bear lived in a 2.20 m mesh enclosure, "made short trips around the enclosure, (...) was inactive, overweight and with dull fur" [233]; it indicated that it had a concrete platform "to sleep on in poor condition" and deteriorated metal sheet doors that presented a risk for the animal. [234] It maintained that CORPOCALDAS did not have a clinical history of the spectacled bear, a structured sanitary plan, or a balanced and specific diet, in addition to having veterinary attention only when the animal displayed a change that could be a manifestation of a sanitary problem.

(ii) It detailed with date and professional in charge [235], the visits made to FUNDAZOO, including the one made before 'Chucho' the spectacled bear's transfer, in order to verify the environmental conditions, enclosures and management plans of the bear. It made a total of four visits, concluding that the bear is in good health and is well-adapted to the enclosure, to the female bear and to the environmental conditions at Barranquilla. In general, he noted that FUNDAZOO has good infrastructure and equipment for the safe management of wildlife, has facilities to deal with all types of medical and biological events and adequate protocols of action. [236] He concluded by stating that "his condition at that time reflected a much better condition than the one from which he had been referred." [237]

(iii) It indicated that he received six reports from FUNDAZOO [238] since the arrival of the spectacled bear 'Chucho' at the Zoo in relation to the first six months of adaptation. [239] Each report included technical information on the personnel who had contact with the bear, biological and management aspects, nutritional guidance, and the veterinary and preventive medical care the animal received. [240]

6. The entity again annexed the report of 5 April 2017 on the technical concept of Chucho the spectacled bear's transfer, provided in the response to the tutela action [241].

Ministry of Environment and Sustainable Development and Special Administrative Unit of the National Park System

7. The Ministry of Environment and Sustainable Development and the Special Administrative Unit of the National Park System responded to the information requested in the Order of 03 September 2018 through its Legal Process Group Coordinator and Head of Legal Advisory Office respectively.

8. Regarding programmes for the protection and/or conservation of the spectacled bear, [242] the Ministry of the Environment and Sustainable Development referred to the "National Programme for the Conservation of the Andean Bear (Tremarctos Ornatus)" [243] and issued environmental regulations aimed at the conservation of native wild species. In turn, the Special Administrative Unit of the National Parks System stated that it currently implements "The Strategy for the Conservation of the Andean Bear in the National Parks of Colombia" [244] for the period 2016-2031[245] and pointed out four zones that have established the population density of the spectacled bear, managing its protection through prevention, surveillance and control actions.

9. About the current spectacled bear population in the country, [246] the Ministry of the Environment and Sustainable Development explained that it has no exact statistics on this [247] and gave an account of the animal's nutritional characteristics, habitat and dangers to which it may be exposed in relation to its anatomical and feeding characteristics. It held that "due to the increase in human settlements, the expansion of the agricultural frontier and the development of other productive activities in the ecosystems inhabited by the Andean bear, [...] have triggered habitat loss and transformation processes [...]" [248]. This habitat transformation has led to the fact that, despite being an animal that prefers to consume plants, fruits, roots and fungi, occasionally consumes livestock and domestic animals, being an "opportunistic species by consuming the remains of carcasses found". He indicated that between 2016 and 2017, five Andean bears were reported killed in the departments of Cundinamarca, Valle del Cauca and Nariño, in retaliation for attacks on domestic animals. Therefore, actions to conserve the species must be the product of coordinated work between environmental authorities, research institutes, academia, the private sector and society in general.

10. On the other hand, the Special Administrative Unit of the National Parks System reiterated the characteristics set out by the Ministry of Environment and Sustainable Development regarding the animal's diet, habitat and vulnerability. Regarding the Andean bear population in the national territory, they recalled that it is classified as vulnerable to extinction by the International Union for Conservation of Nature and part of Columbia's threatened population according to Resolution 1912 of 2017 of the Ministry of Environment and Sustainable Development. A table of 22 protected areas was annexed, with presence of the spectacled bear [249], estimating a population density of three to six thousand individuals in the country.

11. Finally, in relation to specimens in captivity or semi-captivity [250], the Ministry of Environment and Sustainable Development indicated that it is currently aware of three Wildlife Care and Assessment Centres [251] with Andean bears and that the results of release processes to the natural environment are not usually successful, due to errors made in the early post-seizure phases and the beginning of the rehabilitation process, as they are taught conduct and behaviour difficult to reverse [252]; and in cases where the animal was born in captivity, release represents risks for the ecosystem [253] and the individual [254]. The Special Administrative Unit of the National Parks System stated that it had no knowledge of the number of specimens in captivity or semi-captivity, but pointed out that with care, valuation and rehabilitation centres, in whose jurisdiction zoos operate, the environmental authorities must have the

requested information, as they are the competent authorities to decide on the final destination of each individual.

World Wildlife Fund - WWF Colombia

12. WWF-Colombia offered its opinion on the case through a normative and jurisprudential account of the protection of animal rights and its evolution in Colombian legislation, as well as a study of the applicable international legislation. It emphasised that the Andean bear plays an essential role in the vitality and future of the Andean forests as it disperses seeds over large areas; energises forest life by tearing off branches and bushes in search of food and benefits the protection of the páramo, cloud forests and dozens of species inhabiting these ecosystems. It coincided with the dangers and threats to the species mentioned by the Ministry of Environment and Sustainable Development, related to changes in habitat due to the expansion of the agricultural frontier, and the need to consider a framework of cooperation for the conservation of the Andean bear, since efforts are so far carried out in isolation and therefore have limited impact. It considered that Chucho's absolute release, without human supervision, is unfeasible because he is an animal that has been in captivity for over twenty years, and cannot survive on his own in the wild for more than eight years. It invited this Court to examine the evidence in the assistance of an expert biologist to determine the most adequate place for the bear.

Federation of Animal and Environment Defenders in Colombia -FEDAMCO-

13. The Federation of Animal and Environment Defenders in Colombia - FEDAMCO- requested the revocation of the second instance tutela ruling of 10 October 2017. It considered that Chucho bear's transfer to the Zoo constitutes mistreatment because he is an animal from the Andean páramo and not from warm areas such as Barranquilla. It emphasised that the reasons for Chucho's transfer are not admissible, as not having a spectacled bear at the Zoo to educate children does not justify his confinement.

Legal Protection Program for Animals at the University of Antioquia

14. The Animal Legal Protection Programme of the University of Antioquia pointed out the importance of distinguishing the different legal categories assigned to wildlife in Colombia: wild, domestic and exotic; each of which has different regulatory protection. It emphasised that the difference between wildlife and domestic wildlife enables, among other things, to determine over whom property rights may be exercised: "domestic animals may be within the orbit of private property of individuals, but not wildlife, which according to the CNRN is State hands [...]" [255]. The Andean bear is part of the Colombian wildlife, its ownership is in the hands of the State and, therefore, it is up to the State to provide all the guarantees for its protection, and for it to be able to live according to its specific conditions or needs.

15. It argued that since Law 84 of 1989 and Law 1774 of 2016, animal welfare is a principle of animal protection. "Animal welfare is a technical concept composed of five freedoms, which could be summarised as: i) freedom from hunger and thirst, ii) freedom of movement, iii) freedom from fear and stress, iv) freedom from suffering and pain and, v) freedom to behave according to their biological conditions" [256]. All of these must be protected by the State,

however, there is currently no constitutional action intended for this purpose. It noted that this constitutes an absolute legislative omission, [257] which highlights the need for legislation on the matter, and which allows the figure of Habeas Corpus to be extended to animals to protect individuals who are unjustly deprived of their liberty. Finally, it cautioned that the argument that such action is not viable in cases such as the one under study is a fallacy, as it ignores the difference between the actors and the beneficiaries of the actions, as well as the traditional legal institutions representing others.

Legal Office and Conciliation Center for the Protection of Animals of the Cooperative University of Colombia (Popayán campus)

16. The Legal Office and Conciliation Centre for the Protection of Animals of the Cooperative University of Colombia (Popayán campus) considered habeas corpus compatible with the protection of animal rights, as a mechanism to demand the protection of their physical integrity put at risk in captivity. It recalled that with the issuance of Law 1774 of 2016, the protection of animals against suffering and pain caused directly or indirectly by humans was extended, based on the principles of social solidarity and animal welfare. The latter refers to the way an animal copes with the conditions in which it lives, as defined by the World Health Organisation. It concluded pointing out that the jurisprudence of the Constitutional Court has granted rights to nature [258], so that, in view of the importance of the protection of fauna for the very existence of humanity, the protection of the right to freedom of Chucho bear, who is a sentient and specially protected being, must be granted.

Animal Observatory of the Pontifical Xavierian University

17. The Animal Observatory of the Pontifical Xavierian University offered its opinion on the case in question, through an analysis of animal rights in Colombia [259]. It considered that Chucho's welfare should not depend on whether he is granted habeas corpus. In its opinion, the discussion should not be limited to the possibility or not of granting a "human" right to a non-human being, but what type of protection measure should be granted and how to ensure that it is legally valid and operates optimally when required. In this sense, Chucho's case requires reviewing constitutional actions that can serve to guarantee his protection. [260] It concluded that the decisions made regarding Chucho's life, described as unfortunate, should be reviewed. It emphasised that his initial transfer was made in pursuit of "conservation objectives that contributed nothing to that effect but left a pair of spectacled bears - Chucho and his sister - exposed to live practically abandoned lives in captivity, where the main food was dog food" [261]. Finally, it requested a public hearing from this Court to discuss the case in question.

18. In the Order of 3 September 2018, House representatives Juan Carlos Lozada, Carlos Andrés Contreras López, Carlos Andrés Muñoz López, Luz Elena Henao Isaza, Alejandro Gaviria Henao, José Fernando Maya González, Javier Alfredo Molina Roa, Víctor Manuel Vélez Bedoya, Gloria Elena Estrada, Eduardo Rincón Higuera and Luis Gabriel Chica were also requested to offer their opinions regarding : (i) the use of constitutional actions for the protection of animals; (ii) the current state of the debate on animal rights; and (iii) the protection of animal rights or animal welfare in our Constitution [262]. In this regard, the following was said:

Carlos Andrés Contreras López[263]

19. For the intervener, the use of habeas corpus for Chucho, while reasonable, should be rejected, given the special conditions of protection this species should receive. He argued that granting habeas corpus in favour of an animal grants it legal personality, which is not the responsibility of the judiciary but the legislator. In this regard, he explained that by establishing this action, the legal system protects the human person as the exclusive holder of the right to freedom; what is protected is a personal and very special right based on the pro homine principle. He affirmed that animals could eventually attain the legal status of person, however, this does not mean that they become holders of the right to habeas corpus because "just as foreigners do not have the same rights as nationals of a country, or even minors do not have the same rights as adults, an animal subject of rights would not have the same rights or actions as human subjects of rights." [264] He argued that through popular action, invoking the right to administrative morality, which according to the Council of State allows to request respect for the hegemonic cultural, moral and ethical parameters shared and accepted by the community [265], the protection of the Andean bear can be achieved. He argued that animals are currently immersed in the concept of the environment, which means that constitutional actions aimed at safeguarding the environment and biodiversity are not the most appropriate for protecting the interests of animals as sentient beings, since they are focused as anthropocentric actions that effectively protect collective human interests. However, he considered it necessary to decide whether the bear's welfare and preservation are safeguarded at the Botanical and Zoological Foundation of Barranquilla – FUNDAZOO - or return him to the Río Blanco Nature Reserve, a measure that must be conditional on an effective management and care plan for the animal's behaviour.

Carlos Andrés Muñoz López[266]

20. The intervener requested to consider it constitutional to invoke actions such as Habeas Corpus for the freedom of animals in Colombia, and in the specific case, to grant such protection to the bear 'Chucho' as long as the postulates of a *test* he created in the framework of a theoretical and practical investigation on the matter are fulfilled [267]. He supported the fact that constitutional actions are not necessarily exhaustive, since article 94 of the Political Constitution provides for unnamed rights, which, in his opinion, can be extended to a theory of unnamed guarantees. In this sense, he pointed out that animals are protected at a constitutional level, and this does not depend on the regulation of legal instruments, but rather on the proper use of those that allow for the effective materialisation of the protection of the life and physical and emotional integrity of animals.

Alejandro Gaviria Henao[268] ***and others***[269]

21. The group of interveners noted that, in the case of Chucho, the State has violated constitutional mandates [270] regarding his protection. They reminded that, in the Río Blanco Nature Reserve, the bear was under the custody of Aguas de Manizales and the supervision of CORPOCALDAS, entities that did not guarantee adequate space for the needs of the species and fed it with dog food, a diet far from its nutritional recommendations. It was only in 2016 that constant monitoring and follow-up of the animal began and, subsequently, allowed Chucho to be sent to Barranquilla, a city located 18 metres above sea level, when the natural distribution of the species ranges between 250 and 4500 metres above sea level. In its management "only

economic criteria have prevailed, seeking less investment to generate more profit, as well as repeated omission of the legal functions attributed to Corpocaldas in the conservation of natural resources in the specific case of the fauna represented in Chucho" [271]

22. They indicated that there is no constitutional action in the country aimed at defending animals, however, this does not prevent reviewing analogous cases in comparative law such as (i) the Argentinean case of an orangutan that had been illegitimately and arbitrarily deprived of its freedom by the authorities of a zoo and a judge ordered its transfer to a primate sanctuary in Sao Paulo, Federative Republic of Brazil, and (ii) three cases in New York in which different chimpanzees have been considered sentient animals with legitimate rights [272].

23. They expressed that despite protecting animal welfare, constitutional jurisprudence continues with an approach from the value-based conception of man, conditioning its materialisation on the fundamental rights of humans. This understanding implies that, "even when there are jurisprudential advances, people continue to claim defence of the rights to privacy and private property as a sphere that allows them to act in favour of animals, without any kind of control [...]. This scenario is sentimental humanitarianism, where animals are infantilised, but are adrift from their owners." [273] Finally, they affirmed that the existence of constitutional actions that can eventually be used to protect animals allows the fundamental right of access to justice for people to be expanded as an action of co-responsibility with the environment, without it being necessary to have "the effective guarantee of the plenitude of their rights to bring them together as it exclusively depends on the liberality and moral evolution of each human being to determine the extent to which to be concerned about these matters." [274]

Javier Alfredo Molina Roa [275]

24. The intervener argued that the use of tutela, popular and complementary actions to protect animal rights is based on indirect protection by considering animals as part of the State's ecological heritage [276], unlike international cases, such as the "Acción de Protección" in Ecuador and Laws 071 of 2010 and 300 of 2012 [277] in Bolivia, in which a biocentric philosophy [278] is put forward. Regarding the current state of the debate on animal rights, he considered that this discussion focuses on the recognition of non-humans as sentient beings and therefore subjects of rights, which has already occurred in countries such as Switzerland, Germany, Austria, Czech Republic, Portugal, France, Spain and reiterates the case of the orangutan of Buenos Aires, Argentina. However, he believes that the focus of the current discussion is to ensure that the laws recognise certain rights for animals. Finally, he stated that although the 1991 Constitution is known as ecological, it has a purely anthropocentric approach, developed in various judgments such as C-666 of 2010 [279], C-283 of 2014 [280] and T-436 of 2014 [281], in which the protection of animal welfare was understood as the implicit protection of a higher constitutional value corresponding to the environment. This situation, in his opinion, makes the express recognition of animals as subjects of rights more complex, "but does not nullify the consideration that ultimately the proclaimed duties of humans in relation to animal species can be considered rights in favour of the latter if the same legal fiction and the same line of argumentation is applied that makes it possible to grant recognition and a range of rights to legal persons, especially when animals are already recognised as sentient beings, which gives them a kind of moral status and hierarchy within the political community."[282]

Victor Manuel Vélez Bedoya[283]

25. Victor Manuel Vélez Bedoya provided a technical concept on the measures to be implemented for the management and welfare of Chucho. In this regard, he considered it appropriate to leave the animal where it currently is, as a new transfer would mean subjecting it to a stressful situation, and it cannot be released into its natural environment due to the psychological trauma that its imprinting and behavioural conditioning process has caused. He suggested ordering CORPOCALDAS, Aguas de Manizales and FUNDAZOO to join efforts to improve the conditions in which he is housed to offer him dignified conditions in accordance with the five freedoms of animals [284] and the principles of bioethics [285]; because, although his natural distribution is not at sea level, this can be managed with controlled temperature adjustments that simulate the high Andean climate.

Eduardo Rincón Higuera[286]

26. Eduardo Rincón Higuera presented the philosophical basis that underpin the different positions on whether animals should be recognised as subjects of rights. In his opinion, it is necessary to change the moral point of view on obligations towards other animals, as part of the error of many of the current positions "lies in the fact of considering that their value is merely instrumental [287] and overlooking their intrinsic value, that is, the possibility that their own interests count as a legal good above the economic value or use that we give them [288]". He argued that there are no legal or moral obstacles to granting protection to the good life of animals, understood as one in which an animal has a life of its own for itself, developing its own capacities and interests in a suitable environment, as these are minimums that are recognised regardless of religion, race, gender, cognitive capacity and species. He emphasised that the non-human membership of animals is relevant from a biological and evolutionary point of view, but not morally. "Not belonging to the human species says nothing morally relevant about justifying the exploitation, abuse, mistreatment, isolation, etc., of other non-human animals, nor does it imply that we cannot use moral deliberation to take their own interests into account." [289] In accordance with the above, he warned that, although animals are not agents of moral or political deliberation, this does not prevent their inclusion within the common good insofar as they are, at least, passive political subjects whose basic interests can be protected institutionally, without the need to grant them the status of person or citizen.

27. For this intervener, the key to this debate is the moral consideration of the interests of sentient beings, irrespective of the species to which they belong. "Thus, what is relevant is sentience, insofar as sentient individuals possess a well-being of their own that can be included in our moral deliberation: 'The extent to which we identify an individual as sentient, we must consider how our decisions may affect them. To refuse to do so is to unjustifiably exclude certain harms and benefits that we may cause from our moral deliberation' (Paez, 2017, p.6)" [290] He pointed out that the concept of personhood can serve as an instrument for overlooking the most basic interests of a sentient being without assessing how significant they may be to it; he recalled that, based on this concept, exclusions have been created - indigenous people, women, among others - and grey areas - pseudo or quasi persons - that leave the fate of the lives of specific beings in the hands of a political will. It is therefore necessary to question 'personhood', which "would imply placing the debate not only in animalistic terms, but also in ecological, non-anthropocentric terms. Much more immanent rights are required that do not distinguish between persons and non-persons and cannot be suspended in any situation, but

rather continuously adapted according to transformations in the very fabric of life (according to the emergence of new actors, according to the emergence of new struggles, etc.)." [291] Finally, he argued that although legal and constitutional mechanisms are designed for humans, the recognition of sentience and animals as subjects of law opens the way to a necessary extension of such legal fictions for the protection of their interests, without the need for reciprocity between those who elaborate the principles of justice and those for whom they are elaborated.

Autonomous Regional Corporation of the Atlantic C.R.A.

28. In response to the requests for verification of the current conditions of the spectacled bear Chucho made to the Autonomous Regional Corporation of the Atlantic and the Office of the Attorney General Delegated for Environmental Matters [292], a technical visit to the Botanical and Zoological Foundation of Barranquilla was made with a report that indicated that the animal "has an adequate habitat that guarantees the care of the etiological characteristics" [293] and has beneficially adapted, he is in good health, with an adequate diet and appropriate space for its routine.

29. As documentary support, the Autonomous Regional Corporation of the Atlantic attached: (i) official minutes of the visit; (ii) the request for technical information on the management of the spectacled bear 'Chucho' to the Botanical and Zoological Foundation of Barranquilla -FUNDAZOO- and its respective response [294]. For its part, the Office of the Attorney General Delegated for Environmental Affairs attached a report made on 17 September 2018 and the report made by the Botanical and Zoological Foundation of Barranquilla -FUNDAZOO- for this Court in response to the Order of reference, which was previously outlined in numeral 6.2.2.

30. The report of 17 September 2018 [295] refers to the technical follow-up visit carried out on 14 September 2018 by officials of the Environmental Management Sub-Directorate of the C.R.A. in the company of the 14th Judicial Environmental and Agrarian Prosecutor. This referred to the following aspects: (i) habitat, it is an enclosure that underwent general maintenance and roof replacement in 2016. It has an external area visible to the public that simulates the natural habitat, and an internal handling area to which only authorised Zoo personnel have access; which is suitable for the specimen and "guarantees the care of the ethological characteristics of the animal by having adequate vegetation to provide shade, a hydration area and elements to stimulate the animal's habits" [296]; (ii) food and veterinary care, the bear receives food twice a day and more than 60% of the total weight of the diet includes fruits and vegetables, in addition, it is permanently monitored by 3 veterinarians; (iii) behaviour and routine, since its arrival at the Zoo, the bear has displayed calm behaviour, without aggression towards the staff, as it was accustomed to interacting with humans. He concluded that the individual is in good condition.

Alexander Von Humboldt Biological Resources Research Institute

31. In response to the summons issued by Order of 4 October 2018 [297], the Alexander Von Humboldt Institute for Biological Resources Research made the following recommendations to be taken into account when ruling on the situation of the spectacled bear 'Chucho': (i) direct conservation proposals towards strengthening the knowledge and management of captive

populations in order to obtain juvenile specimens for repopulation programmes [298]; (ii) prioritise an ex situ management and conservation programme for the species; (iii) review the conditions of both sites - Río Blanco Reserve and FUNDAZOO - to identify the space and components that guarantee a better scenario; (iv) evaluate the physical and physiological conditions and faecal cortisol levels to identify the animal's stress levels under the new management conditions; (v) conduct an ethological or behavioural study of the animal; (vi) evaluate the bear's response to the company of other individuals of its species; (vii) identify the behavioural and physiological response to climatic and environmental variations in contrasting climatic periods of the year; and (viii) evaluate the difference in the response to exhibition conditions that could enhance stress patterns. All the above should take the international standards that zoos or responsible authorities should employ for the management of species in controlled conditions into account.

32. Likewise, three non-governmental entities offered its opinion on their position in the specific case to this Court. On the one hand, the Executive Director of the European Association of Zoos and Aquaria - EAZA- considered that any potential case of relocation of an animal should be supported by the provisions of the International Union for Conservation of Nature (IUCN) -Species Survival Commission [299]; supported the legal case of the Botanical and Zoological Foundation of Barranquilla - FUNDAZOO- and considered it inappropriate for the spectacled bear 'Chucho' to be taken to a semi-captive or free-ranging area. On the other hand, the Executive Director of the Latin American Association of Zoos and Aquariums - ALPZA- reiterated the general aspects of the relocation of 'Chucho' and explained that the animal would be part of educational programmes aimed at connecting visitors with Colombian biodiversity and raising awareness of the challenges for its conservation. Finally, the Merly Mozo Foundation offered its opinion and a speech,[300] developed by the former State Councillor Enrique Gil Botero at the First International Congress Colombia Free of Animal Abuse Academy and Legislation Unas por los Animales and First Forum Interdisciplinary Contribution to the Regulations on Animal Solidarity, Protection and Welfare, held on 16, 17 and 18 May 2018 in Bogotá.

II. Public Hearing

33. By Order 381 of 2019, the Full Chamber of the Court convened a Public Hearing for 8 August 2019. The hearing was divided into three parts. In the first part, the case was presented and the parties to the tutela action were heard. Two thematic axes were then presented: the public policy for the protection and conservation of the Andean Bear and the protection of animals in comparative and domestic law. The interventions presented are summarised below:

Intervention by the parties

- **Luis Domingo Gómez**[301]**, habeas corpus applicant**

34. The Habeas Corpus applicant began his speech by setting out the living conditions that Chucho Bear has had, having largely lived in environments similar to his natural one, first in the Planada Reserve, then in the Rio Blanco Reserve. He emphasised that under the care of Aguas de Manizales, the animal was completely neglected, and it was for this reason that CORPOCALDAS issued administrative action to donate Chucho Bear to Barranquilla Zoo [302]. He questioned the decision made by CORPOCALDAS, given that the omissions on the part of the entities in charge of Chucho's care cannot be a basis for making a decision on behalf of a sentient being. This ignores the social State of Law, characterised by a strong ecological

sense, which consequently protects the diversity of fauna and flora that exists in Colombia. He pointed out that although the Habeas Corpus action is a tool for the defence of human freedom, in comparative law this instrument has transcended its origins and classic purposes to benefit non-human species. Contrary to what was expressed by Barranquilla Zoo, this mechanism guarantees animal welfare considering international standards and domestic law. He pointed out that there is an ethical consensus on animal welfare in Colombian society, as derived from the national regulatory framework, through which it is possible to affirm that domestic and wild animals enjoy personality with consequential rights and the guarantee of appearing before the Courts. He therefore reiterated the need to move forward to win the race against the threat of extinction and to improve our current relationship with animals.

35. He requested that, by virtue of the principle of animal protection that imposes the eradication of captivity, the tutela decisions be revoked and the authorities ordered to comply with the Habeas Corpus in the bear's favour, in accordance with the terms set out in the judgment of 26 July 2017 issued by the Supreme Court of Justice; in order to allow Chucho the Spectacled Bear to preside over his freedom and live in a place similar to the one in which he naturally belongs, accompanied by the veterinary medical care he requires.

- **Carlos Andrés Mendoza Puccini**[303] **- Botanical and Zoological Foundation of Barranquilla**

36. The representative of FUNDAZOO assured that Chucho has all the benefits at the Zoo that can be granted to an animal born under human care and that, due to his life history, must remain in a safe environment that provides him with the necessary attention to survive, including adequate nutrition and a balanced diet, permanent veterinary care, preventive medicine and an environment with stimuli that allows him to express diverse behaviours typical of his nature. He then pointed out that although the habeas corpus plaintiff claimed that the objective he was pursuing was the protection of the spectacled bear and his freedom, there is no evidence in the proceedings "that indirectly or directly leads us to conclude that the best thing for the spectacled bear would be to return it to the reserve where it was, nor is there any statement from the invited experts or public entities to indicate that the animal should not be at Barranquilla Zoo; On the contrary, absolutely all the opinions offered both at the hearing and in the reports presented by the experts on the species during the proceedings indicate that the spectacled bear should remain at Barranquilla Zoo, because that is where he is provided with all the veterinary and biological care required for his wellbeing." [304]

37. He reiterated the arguments which he considered to contain errors in the judgment granting habeas corpus to the bear and concluded that the case posed a tension between certain rights held by FUNDAZOO and the philosophical possibility of recognizing rights to animals, which not only lacked legal and constitutional support in the country but would also be contrary to the administrative structure created for animal conservation and the environment in Colombia. In the specific case, he argued that releasing the spectacled bear would put it in mortal danger. This is therefore a demonstration of the risk generated by the indiscriminate use of actions, in favour of animal rights, since habeas corpus was filed without consulting experts "and without even knowing the specific situation of this bear (asking for the) protection of rights that, if they exist as such, have never been violated, on the contrary, the result was that of an absolutely irresponsible action whose success would result in the animal's likely death." [305]

- **Adriana Reyes - Foundation for the Investigation, Conservation and Protection of the Andean bear - Wii**

38. She began by pointing out that the Andean bear is an important species in the shaping of Colombian society with its own significance in original indigenous cultures. She explained that this bear is the only species of bear in South America, "considered as an umbrella species for conservation (Jogerson & Sandoval, 1999; Rodríguez et al., 2002, Restrepo et al, 2014) and landscape species (WCS, 2002) because it uses different habitats and a single specimen can occupy large tracts of land due to its nutritional requirements." [306] She further stated that the bear is a gardener of the forest and protector of water sources because "by clearing branches with fruit from treetops, it enables forest renewal by varying the microclimatic conditions of the lower strata, stimulating the growth of the seedlings present (...)" [307] She argued that the main threats to the bear are loss of habitat and death by retaliation. It is therefore necessary to modify extensive cattle raising practices, avoid opening new areas for cultivation, strengthen agricultural practices and consider that mining and oil exploitation are becoming risk factors for spectacled bear populations, due to loss of habitat connectivity and water and soil contamination.

First topic "Public Policy for the Protection and Conservation of the Andean Bear"

39. In the first thematic block a diagnosis of the implementation of the "National Programme for the Conservation of the Andean Bear" was sought, drawn up in 2001 by the Ministry of the Environment; its progress and the need, or not, to reformulate this public policy for the current needs of Andean Bear conservation. The institutional articulation in the implementation of the mentioned public policy was inquired about, aimed, among other aspects, at evaluating the programme's progress. A further request was to explain and justify the variation in the number of places where Chucho has been kept throughout his life, based on the public policy for the conservation and management of this species and the objectives pursued with his permanence - ex situ - in the Botanical and Zoological Foundation at Barranquilla - Fundazoo. Finally, questions were asked about the most suitable place for Chucho, according to the conditions of his species, experiences throughout his life and his current state, to enjoy a situation of well-being.

- **Ricardo José Lozano Pícon - Minister for Environment and Sustainable Development**

40. He began by explaining that the main objective of the "National Programme for the Conservation of the Andean Bear (Tremarctos ornatus)", formulated in 2001, was to promote knowledge of the species and the ecosystems it inhabited, and to formulate measures aimed at the recovery and maintenance of existing populations. At that time, very little information was available on the ecology, distribution and population status of the species, and for this reason, activities were proposed aimed at gaining knowledge of the species, such as in situ [308] and ex situ [309] conservation, and environmental education [310]. In 2006, the document "Achievements of the National Program for the Conservation of the Andean Bear in Colombia (Tremarctos ornatus)" was published, according to which the Andean bear populations and their ecosystems were healthy, ensuring the long-term existence of the species. Therefore, five lines of action [311] were formulated, with clear goals and activities that currently serve as a reference point for the regional environmental authorities in the management of the species.

All these measures are implemented by the regional environmental authorities in their jurisdiction, as well as in National Natural Parks where the species is naturally distributed. He also referred to several strategies that have been developed in conjunction with the regional environmental authorities, and organisations such as Wildlife Conservation Society Colombia and World Animal Protection, which support workshops to socialise some principles for resolving conflicts between the Andean bear and people, which are mainly related to damage to maize and passion fruit crops and attacks on domestic animals, especially cattle and goats. This situation has led to hunting activities, the control of which requires greater resources to guarantee their permanence over time, because while monitoring strategies at the national level generate useful information, they have little impact on public policy decisions. [312]

41. Regarding Chucho's situation, the Ministry emphasised that, while he was in the Río Blanco Reserve, none of the objectives set out in the National Andean Bear Conservation Programme were being met, given that he was alone and locked up under the care of workers from the Aguas de Manizales company, who were responsible for providing him with food. He indicated that, in following the second instance ruling of the Civil Cassation Chamber of the Supreme Court of Justice, a working group was set up with technical and legal representatives of FUNDAZOO, CORPOCALDAS, Aguas de Manizales S.A. E.S.P., National Natural Parks and the Ministry of Environment and Sustainable Development, which had so far held two sessions to review the background of the case, the conditions of the animal prior to its transfer to Barranquilla, and the different alternatives to place it in the area that best suits its habitat, concluding that it is currently "in apparent good health, presenting good body condition, normal physiological constants and paraclinical examinations (haemogram and coprological) without any significant alteration for the species." [313]

- **Julia Miranda Londoño - General Director Natural National Parks**

42. Regarding the National Conservation Programme for the Andean Bear, published in 2001 by the Ministry of the Environment, Housing and Territorial Development, she pointed out that the same authority produced a document in 2006, in which it presented the Programme's Action Plan, projected for the period 2002-2016; the monitoring of which is the responsibility of the aforementioned Ministry. She emphasised that, within the framework of the actions aimed at PNN's mission [314], actions had been implemented for the conservation of the species, its habitats and the reduction of threats within its protected areas. She highlighted the work of the Wildlife Conservation Society (WCS) as one of the main allies in achieving progress and cautioned that an update of the National Conservation Programme for the Andean Bear is needed, 18 years after it was published. She argued that today "there are better tools that have made progress in diagnosing the conservation status of the species, knowledge of its current distribution, which differs from the distribution proposed in 2001, diagnosis of the landscape of conflict and current threats, advances in research, are elements to be taken into account for the implementation of conservation actions on the species in an updated version of the programme." [315]

43. She went on to outline the main lines of the Conservation Strategy for Andean Bears in National Parks 2016-2031, which established five core conservation units, "which are territories selected according to technical criteria that exceed an area of 3,800 km2 and contain territories with potential habitat for the species immersed in areas of the SPNN, SINAP and other areas with undeclared conservation opportunities, in order to ensure the long-term viability of the species in the national context". She assured that this Strategy has allowed a

strong articulation between instances such as the Ministry of Environment, the Regional Autonomous Corporations and PNN. Finally, she pointed out that Chucho is not suitable for release into the wild because he was born in captivity and is totally dependent on human care. Therefore "the individual should be housed in a place that has all the welfare conditions, where its technical management can be carried out efficiently, guaranteeing the supply of a diet according to his nutritional requirements, veterinary care, personnel to care for the specimen, adequate enclosure that has all the safety guarantees, in addition to the relevant environmental enrichment, among other aspects".

- ***Autonomous Regional Corporation of Guavio - CORPOGUAVIO***

44. Oswaldo Jiménez Díaz, Director General of CORPOGUAVIO, noted that, as environmental authority, he has carried out research and monitoring of wild fauna since 2001, particularly the Andean bear. The main problems he has encountered for the conservation of the species are (i) expansion of the agricultural frontier, which generates fragmentation of the forests in which wild animals live and encourages interaction between man and fauna; (ii) hunting: he reported two deaths of Andean bears in the municipalities of Junín and Fómeque; (iii) manipulation of the bear's behaviour: in some places where there have been sightings of the species, people offer them food in order to take photographs; (iv) approaches to farmers' habitats, which occurs as a result of the fragmentation of the bear's natural habitat and the difficulty of finding ecosystems that allow it to meet all its needs for food and shelter; (v) changes in the behaviour of the species as it loses its natural fear of people; and (vi) interaction of Andean bears with humans. In addition, he explained that in 2014 an Action Plan for the Conservation of the Andean Bear in the Guavio Region was adopted, which has four goals: increase habitat quality and availability; increase forest cover and reduce pressure on the páramo; increase interconnections between wild populations; and improve livestock management conditions to reduce conflict.

45. He stressed that CORPOGUAVIO pioneered the implementation of the figure of Rural Environmental Promoters, who are people from the community who have received training by specialized personnel in monitoring and tracking fauna and wildlife. He detailed that "it is the promoters who monitor Andean bears in the sectors with the greatest presence of the species, in order to obtain accurate information on the patterns of movement and the habitat use of adult Andean bears to shed light to their management, by installing cameras, which have become an important tool in studying aspects of the ecology and behavior of the species in the wild." [316] Finally, in relation to Chucho, he declared the handling he has been given to be regrettable; he warned that prior to any transfer or relocation process, it is necessary to conduct technical and scientific studies to establish the ecological conditions of the new place. He further assured that reviewing FUNDAZOO's report on the bear's current state "is not considered appropriate for an individual listed in vulnerable threat state (VU), to have a space of merely 175.04 square meters and 12 meters high, with concrete walls, glass and without vegetation cover to offer comfort, safety, well-being and health (...). Likewise, the conditions provided for the Andean bear 'Chucho' in the Rio Blanco Protective Forest Reserve (Manizales - Caldas) are not considered adequate because they are counterproductive for his physical and biological development (...)" [317]

- ***Autonomous Regional Corporation of Caldas - CORPOCALDAS***

46. Oscar Ospina Herrera [318] began his presentation by explaining the competences of the administration and control of wildlife in Colombia under Law 99 of 1993, with emphasis on the functions granted to the Regional Autonomous Corporations. He then explained the strategies included in the National Programme for the Conservation of the Andean Bear, mentioned above in other interventions. Regarding the specific case, he assured that Chucho "had a veterinarian who provided technical support to the equines of the reserve, such as checking the bear, taking samples of its faeces to determine the need for deworming. Likewise, the remaining collaborators in the reserve reviewed their body condition, mood and behaviour on a daily basis, to corroborate animal welfare, such as changing the shavings daily and disinfecting with hypochlorite every 8 days. Regarding alimentation, a balanced serving consisting of two (2) kilos of dog food was supplied, supplemented with bread and snacks, and occasionally carrots and apples, and a leg of beef every 20 days. Food recommended by some experts on the subject. The enclosure in which he was confined is approximately 2720 square metres with an electric fence system." [319]

47. He maintained that the main objective of Chucho's stay at Barranquilla Zoo is to improve his animal welfare. He assured that his adaptation to the place has been positive, which is reflected in his physical and behavioural appearance. He therefore concludes that the best available site in the country is FUNDAZOO, because "Chucho is perfectly adapted to the conditions set out in this document, as confirmed in the various visits made by Corpocaldas staff." [320] He concluded by stating that the conditions in which the bear is kept are optimal, although they could be improved. In particular, he referred to the area available, which is currently 205.5 m2 with a water mirror area of 19.7 m2, "in accordance with the technical recommendation of the group of specialists in Spectacled Bears, it is appropriate to extend the enclosure by 94.5 metres to guarantee a minimum area of 150 square metres per individual." [321]

- ***Orlando Feliciano, Director of the Spectacled Bear Sanctuary***

48. The Spectacled Bear Sanctuary is a non-profit organisation whose purpose is to research, conserve, protect, maintain and sustainably use the Spectacled Bear and the other species of wild fauna and flora that live alongside it. It manages spectacled bears that have been illegally removed from the wild and seeks to "return them to the wild through systematic processes of rehabilitation, release and monitoring, in collaboration with civil society, private companies, government agencies and volunteers". The Sanctuary is located in the department of Cundinamarca, municipality of Guasca, vereda la Concepción Piedra de Sal, in an altitudinal range that oscillates between 2,850 and 2,990 above sea level. [322]

49. The Director of the Bear Sanctuary began his speech by indicating that the presence of this species in forests is an indicator of habitat quality, and a sign that ecosystems are healthy and productive. He pointed out that the environments in which the Andean bear lived were of great importance as they constitute strategic ecosystems for water production, so the relationship between the species and these environments must be optimal. However, he considered that the conflict that arises from the bears' departure from wildlife into captivity had not been dealt with in the best way.

50. He referred to the many threats to the spectacled bear on a daily basis: deforestation, habitat reduction, mega-mining, irresponsible tourism, hunting, and misunderstood traditional cultural uses. He drew attention to specific cases, such as that in municipalities in Cundinamarca, where

the use of bear fat to heal wounds and injuries is still encouraged and pointed out that these issues should be addressed with communities through environmental education. On the other hand, he emphasised the so-called ex situ line of action for the conservation of the species, which covers all individuals that leave the wild and must go to another place where they will be treated or rehabilitated, to be returned to the ecosystem, if possible. He indicated that civil society has responded to this situation by creating the bear sanctuary, which has been in operation for about twenty years. He noted that on average, with the help of the Police, National Parks, and environmental authorities, the Sanctuary has recovered more than twenty individuals in approximately fifteen years. However, he noted that there is a wildlife removal rate of about 1.6 bears per year, and the Foundation does not have the capacity to receive and rehabilitate this percentage.

51. He said that the recovery of the Andean bear required the help of all, with the assurance that a healthy habitat existed, to which the bears could return. He stressed that there were no longer pristine habitats, i.e. those in which there was no relationship with humans, so that threats to the species had increased; the human population continued to grow within protected areas, the animals had to leave in search of new areas and in that transit they encountered communities, which were partly responsible for the problem because they did not make adequate use of their land. For this, he pointed out, the incorporation of a cross-cutting environmental education component is required.

52. In conclusion, the Director of the Sanctuary put forward a series of recommendations, considering that, although progress in this area had been made, it was not sufficient; the problem had increased in recent years, and there was more encroachment on ecosystems. He suggested that a real commitment be made by the Regional Autonomous Corporations to take care of the species within their jurisdiction. He proposed the creation of lines of action for environmental education that are specific to the species, given that there is currently a general block, but no specialised work on the Andean bear and its relationship with ecosystems. He also considered it important for the State to prioritise administrative and financial actions for the protection of the bear, bearing in mind that the progress made had required a great deal of effort on the part of civil society. Finally, he raised the need to generate co-responsibility and good communication between territorial entities, given that, even though these are the beneficiaries of ecosystem resources, they do not return the benefits to the sites of origin.

- Daniel Rodríguez, expert in the conservation of the Andean bear

53. Daniel Rodríguez presented a general analysis of the implementation of the National Programme for the Conservation of the Andean Bear in Colombia (PNOA), within 26 Regional Autonomous Corporations. First, he pointed out that the PNOA had a mostly indirect implementation, associated with the implementation of other national conservation programmes; these were temporary actions that showed that the programme had not yet been structurally assimilated. Having reviewed the level of compliance in detail, with each of the Programme's lines, and in relation to the specific case, he concluded that he does not consider it feasible that Chucho should be released into the wild but should remain in the zoo where he is currently kept. "The above is motivated by the fact that Colombia does not have a site that can be called a semi-captivity for bears, as well as the age of the individual, which is already in a deteriorating condition, which, when added to his previous feeding conditions, could result in complications to his renal and hepatic health, which have not been monitored at any time in

his life and could have consequences on his life in the event of subjecting him again to a anesthesia for an eventual transfer to another place." [323]

- **Juan Carlos Losada Vargas**[324] **- Representative to the House**

54. The Representative to the House began by pointing out that since 2007, the Court has built a jurisprudential line, in which it has progressively recognised animals as sentient beings that deserve special protection from humans and the State; however, for political reasons, neither jurisprudence [325] nor the law [326] have taken the step to recognise animals as subjects of rights. He argued that there are no legal grounds for not recognising animals as subjects of rights, even more so when pronouncements by the High Courts have recognised the rights of nature - referring to the cases of the Atrato River, the Cauca River and the Amazon. On the other hand, he assured that he does not intend to equate human beings with other species, as it is clear that there is a difference in the rights, recognition and protection of one and the other. Therefore, affirming that animals are subjects of rights does not in itself imply a questioning of various human customs related to their clothing, food or scientific advances; what cannot be ignored is that animals, as living beings, "have the right to at least have a painless, instantaneous death without anguish. They also have the right to manifest their natural behaviour; to be free from neglect and exploitation; to receive veterinary care or necessary assistance from man, if required; and not to be kept in captivity for the purpose of human entertainment. Animals have the right, when their captivity is for laudable purposes such as the protection of the species, to be kept in appropriate conditions. As is the case before us today." [327]

55. Regarding existing legal institutions, he pointed out that this is also a matter of political will, since what is needed is to give them scope and to recognise them as true instruments for the protection of life, freedom and dignity, in all their forms of expression, not only in the human form. He acknowledged that to differentiate human rights from animal rights, the creation of specialised protection tools could be convenient, but in the face of guarantees of equal importance such as life or freedom, it would not be worthwhile to create differentiated mechanisms, "while the existence of alternative mechanisms would imply recognising that there is something like a hierarchy of the right to life." [328] He emphasised that in accepting the applicability of constitutional mechanisms such as tutela or habeas corpus, it should be remembered that no right is absolute, and that there is always a judicial weighing up to resolve each specific case. In sum, he argued that, as a manifestation of human dignity and the principle of solidarity, a reasoning human being should use the available legal institutions to protect and vindicate the rights of those who also feel, as no animal can directly file a legal action, and often official and environmental entities lack experience, or are overworked and fail to represent a position that is in the best interests of animal welfare.

56. Finally, with regard to the specific case of Chucho, he maintained that the debate transcends the purely legal - the appropriateness of a habeas corpus action for the protection of an animal's right to liberty, the existence or not of a de facto violation - since the decision adopted will have effects on a living being, "and it is the duty of the Court to ensure that, beyond the legal tool used for its protection (...), the subject that it seeks to protect is effectively protected (...)". [329] In this sense, it is considered necessary to evaluate the most appropriate place to guarantee the rehabilitation of wildlife reproduced in captivity or removed from its habitat, to determine where Chucho should remain and avoid condemning him to live in undignified conditions due to human negligence.

- **Steven M. Wise**[330] **- Director of "The Non-human Rights Project"**

57. Professor Wise began by explaining that the legal status of any entity has been binary in the West since Roman times. Thus, something can be a person or a thing and if it is a person it has the capacity for one, one hundred, or an infinite number of legal rights. He pointed out that while persons have inherent value and exist for their own sake, things have instrumental value and exist for the sake of persons; however, "person has never been synonymous with human being, nor has personhood ever been a biological concept. The decision as to whether an entity should be a person, then, is a decision as to whether that entity should count in some fundamental way." He maintained that this approach has allowed the recognition as personhood of entities such as corporations and banks, but also animals [331], rivers [332] and national parks. "Unfortunately, over the last 2000 years, it has also led to African slaves, indigenous peoples, women, children, and Jews sometimes being considered things. Much of the civil rights work of the last few centuries has slowly recognized the dignity and personhood of every human being, painfully removing one human group after another, one at a time, from the category of legal thing to legal person. Legal personhood, then, is the basis for every other legal right, and the minimum necessary for any human being to flourish."

58. Instead, he pointed out that there are a million species of animals including oysters, ants, spectacled bears as Chucho, elephants and chimpanzees. It is therefore worth considering whether all species should be legal persons and bearing in mind that those that are given such an attribute should not generally have the same legal rights. The judge must determine, "with good scientific evidence, moral and legal principles, such as freedom and equality, and public policy, whether any particular species should be designated as a legal person." However, he stated that the attribute of personhood is an indeterminate concept, as it simply means that someone has the capacity to be the holder of some rights. It allows legal rights to be granted but does not necessarily grant a person any of the infinite number of legal rights to which he or she could theoretically be entitled. An animal can be granted legal personhood and thus only one right, which will depend on the circumstances of each case, in some cases it may be autonomy, in others freedom; the important thing, in his opinion, is to consider that it is not necessary to create a new legal concept to protect the interests of animals, as they would never cease to be subordinate to even the smallest of human interests.

Second topic "The protection of animals in comparative and domestic law"

59. The speakers of this section were asked about the legal mechanisms proposed in the framework of other legal systems to guarantee animal protection, the conditions that had to be met at the legal-regulatory level to achieve such protection and the results obtained. Another inquiry was about the determining attributes for defining an individual or entity as a rights holder and the relevance of the concept of sentient beings within this analysis. They were further asked to emphasise the advantages or challenges of channelling animal protection - particularly of vulnerable species such as the Andean bear - through actions based on the ownership of rights (tutela, habeas corpus), instead of mechanisms for the defence of collective interests (popular action) or general public policy instruments (conservation plans).

Iván Garzón Vallejo[333] **– Associate Professor of University of La Sabana**

60. He declared the first question to be addressed in this debate is whether animals can be subjects of law. “And the answer is no, animals cannot be subjects of law: because such ownership can only be predictable of humans, since they have a difference in degree and not of species with the former and are therefore the only ones with the capacity for symbolic representation, language, communicative rationality, freedom, will and other characteristics that far exceed sentient capacity.” [334] He added that while it is true that some human characteristics can be seen in some animals, this is due to an instinct of “survival or a way of encoding external stimuli, but not to a reasonable and free exercise of voluntarily adapting to a pattern of conduct whose purpose transcends, most of the time, mere sentient subsistence.” [335] Along these lines, he warned that caution should be exercised in extending catalogues of rights to non-human animals or to nature, because this would generate an excessive burden of enforceability for others, and because it would denaturalise and even trivialise the rights already recognised. However, taking the sentient nature of animals into account, he considers it logical that legal protection mechanisms should focus on ensuring an existence free from mistreatment and unjustified pain.

61. He proposed to develop the *pro-animalium* principle jurisprudentially and a special administrative mechanism to ensure greater protection of animals in danger of extinction. The above, based on article 8 of the Constitution, which enshrines the obligation of the State and of individuals to protect the Nation’s cultural and natural wealth, and the international treaties referring to this issue, such as the Protocol of San Salvador and the American Convention. He raised the following as characteristics of the protection mechanism: (i) the competent authority must be the Ministry of Environment and Sustainable Development; (ii) it must be expeditious, to be resolved in the shortest possible procedural time, taking analogous actions such as habeas corpus or tutela as examples; (iii) it must be the primary mechanism, not requiring any prior administrative procedure; (iv) free of charge; and (v) it must be decided under the *pro-animalium* principle. “When authority is faced with the decision of the proposed animal protection mechanism, preference should be given to the measure seeking to protect animals in danger of extinction.” [336]

Anne Peters[337] **(video conference) – Director of the “Max Planck Institute for Comparative Public Law and International Law” (Germany)**

62. First, she pointed out that it is desirable and recommended to grant rights-holder status to nonhuman animals to ensure adequate protection and welfare, at least for those that are sentient without any reasonable doubt. This is because (i) rights empower. Although animals will always need someone to speak for them, a right expresses an inherent value of the holder and therefore “the political and symbolic message of representing a rights holder before a judge is more powerful than a lawyer alone alleging violations of animal welfare laws”; (ii) by being a rights holder, there is a legal remedy that confers standing before judges; (iii) rights are dynamic and open to the future. “This means that protection created through rights can become stronger (or weaker) depending on the circumstances. If we accept an animal right to physical freedom, the requirements to confine the animal, such as the size of the cage, will be dynamic and may change, for example in response to new scientific understandings”; and (iv) if an animal is a rights holder, the justification for its limitation shifts. For example, “without a right to freedom, the animal can be detained if there is no special rule prohibiting this. With a right to freedom, legal analysis must take this right as starting point. And this then triggers an obligation to justify limitation to the law”. To all of the above, an important consideration must be added: no right is absolute. Neither for humans nor for animals. Therefore, by recognising them as rights holders does not make the uses to which animals are generally

subjected impossible (food, pets, scientific experiments), it only increases the burden of justification.

63. She further held that, through a legitimate interpretation of the existing law and without the need for parliamentary action, the Court can adjust the legal concept of personhood about animals. In this regard, she argued that personhood "in law is best understood as a concept-set rather than an 'essentialist' concept. This means that personhood does not depend on a single property or on a group of definite properties that would be necessary and sufficient." She then referred to 'artificial' personhood, often granted by legal systems to e.g. commercial companies, and also to animals, rivers and regional ecosystems. She warned that species membership alone, without considering the specific needs of each species, should not make a difference legally. The criterion that works best, in her view, is sentience. "Sentience in a broad sense means experiencing an affective state. Philosophers call this 'phenomenal consciousness'. An animal is sentient in the narrower sense when it feels certain experiences as attractive or adverse ('good' or 'bad'). The Andean bear is undoubtedly sentient in the broad sense and in the strict sense".

64. Finally, she concluded, regarding legal personhood understood as a concept-set, that "we should not seek necessary or sufficient conditions, but rather factors whose presence or absence places an actor or entity more at the centre or more at the margins of personhood. To be fair, the factors must be relative to the reasons (which are also the purposes) of the specific right under study. We have seen that specifically human rights express that the holder has an inherent value, but that the rights of other actors (legal persons, rivers, animals) may serve different purposes. I see three possible purposes of Chucho's rights. The first purpose of rights may be to avoid suffering. So, the factor to consider is the physical needs of the animal for its welfare, as confirmed by science. Second, the purpose of an animal's right may also be to better protect the species to which it belongs. So, the factor to consider is the vulnerability of the group. Here, Chucho's membership as an "endangered species" in Appendix I of the Convention on International Trade in Endangered Species is a relevant factor. Third, the purpose of a natural entity's right may also be to highlight the intrinsic value of the ecosystem."

Paula Casal[338] **– Professor at the Pompeu Fabra University (Spain)**

65. Paula Casal began her presentation by distinguishing between legal and philosophical approaches to the concept of subject of rights. Thus, "while legally a river can have rights, provided they have been granted them by competent institutions, the idea that a river can have rights is not accepted in philosophy. Philosophically, it is normal to speak of the rights of an animal, but not of a river. [339] For this intervener, it is strange that a country should recognise the rights of a river basin, but not those of its inhabitants, because when analysed from a philosophical perspective, this only makes sense if it is understood as an abbreviated way of referring to the subjects who live there, i.e., only if it is accepted that Colombians have rights could it be understood that a forest or a river basin has rights as a consequence of the pre-existing moral rights of its inhabitants. She recalled that in biology there are two types of species: R and K. "An R species can lay thousands of eggs, of which all but one will normally die, without the parents ever getting to know their offspring or developing emotional bonds. K animals have very few offspring but invest a great deal in each one, care for them and are affectionately attached to them." [340] Based on this difference, she explained that species already accepted as people are, like humans, extreme K (they are large, mothers spend a lot of time observing their children to understand their needs, they share food, there is mutual help,

they have rules in groups that precede morality and law, and they suffer when a loved one dies, (among other things). She said that if chimpanzee rights are defended, all the more reason to defend human rights. According to the speaker, "understanding humans as species K helps us to understand, as we will see later, the reasons why humans have the many rights that the 1948 Universal Declaration grants them. And to say, as the zoo representative asserts, "that there is nothing more anthropocentric than recognising animal rights" is as absurd as saying that there is nothing more sexist or racist than recognising rights for women or for those of other races." [341]

66. Regarding the specific case, she noted that the Andean bear was a species K, which was constantly exploited by zoos and circuses, because its intelligence, memory, need for affection and capacity for learning allowed it to be trained to impress the public. She emphasised that the rights to life, liberty and avoidance of suffering are very different rights and one can take precedence over the one and not necessarily the other. She gave some examples to explain this: "Pregnant women are expected to endure a lot of pain to spare their foetus the slightest discomfort. But when doctors cannot save both, they always save the mother, because the priority for suffering is not linked to the priority for life. The same is true in the military. All painkillers are given to one who has lost his legs and loved ones and suffers more than the other soldiers. But when not everyone can be saved, this soldier has no priority over the interest of continuing to exist. (...) That is why magistrate Tolosa Villabona, who accepted habeas corpus, did not contradict himself when he said that accepting habeas corpus has nothing to do with vegetarianism. Habeas corpus has to do with the freedom of certain species with an interest in freedom. Vegetarianism is about the right to life of all species." [342]

67. Finally, she pointed to the rationale of the right to life [343], to freedom [344] and to be free from suffering [345]; from which she concluded that it is possible that companionship and improved food, as well as the passage of time, may have improved some aspects of Chucho (weight, coat and emotional state). "But this is what usually happens with anyone who is admitted to hospital for illness or depression, without meaning that they have to live in that hospital cell for the rest of their lives. And, frankly, it is hard to believe that in a country as big as Colombia and with so many sanctuaries, there cannot be a single place for Chucho, the country's most emblematic and well-known animal, that is better than Barranquilla Zoo. (...) A zoo cage is not suitable for such an intelligent K animal, which normally travels 7 km a day. If the problem with his previous situation in Manizales was the lack of a bear or a poor diet of dog food, this could be solved by returning him to the place in the company of a bear and improving his diet there. Such changes seem feasible, whereas a cage at Barranquilla will always remain a cage at Barranquilla, even if a few metres are added to it." [346]

Nadia Espina (video conference) – Professor at the University of Buenos Aires, Argentina[347]

68. The professor began her intervention by noting that historically, the legal status of animals has been that of an object owned by humans, and it is from there that they have been granted legal protection. Nowadays, she argued, this protection arises from different branches of the legal system, such as constitutional, criminal, civil and administrative law. In criminal law, the crime of animal cruelty or mistreatment is generally typified, and "the question is debated between those who maintain that criminal protection against this crime is based on dependence on humans, and those who consider that the non-human animal is itself its true owner. Although the first sector represents the majority doctrine and the second the minority, there is

no shortage of authors who maintain a delegitimising position." [348] After explaining the doctrine on the subject, which dates to the 19th century, and exposing the theses of authors such as Hommel, Beccaria, and Birnbaum, she pointed out that currently the thesis with the most followers is the one that considers the health and welfare of animals as an object of protection, but insofar as they represent a moral interest of the community. This theory then recognises that animals are guaranteed welfare; "however, the position is halfway because, while based on the idea that non-human animals are sentient beings, they merely remain an object of protection, since they are not recognised as subjects of rights." [349]

69. She maintained that the arguments for denying the protection of the life and integrity of the animal as a living being are mainly twofold: (i) the lack of procedural representation during a criminal trial, and (ii) that recognition as a passive subject of the crime of animal abuse would imply assigning it the role of active subject in other criminal offences. In her opinion, the two premises are rebuttable insofar as recognising rights to non-human animals makes them holders of some prerogatives, but does not confer obligations on them, as occurs with a newborn child who can be a passive subject of crimes but lacks the capacity to commit them. In the same sense, she held that the lack of procedural representation "does not seem to be an admissible ground today when there is a tendency towards the criminal liability of legal persons." [350] However, she stated that treating animals as a collective legal good owned by society, where ecological balance is protected to safeguard current and future human generations, is a theory that needs to be advanced. If the non-human animal is recognised as a sentient being, capable of experiencing pain and pleasure, "the need arises to specify that the legal good in the crime of animal abuse is the right of the animal itself not to be the object of human cruelty, for which it is necessary to recognise it as a subject of rights."

70. In constitutional law, the rise in the discussion of animal rights began in the 1970s. In Latin America, during the 1980s and 1990s, environmental reforms took place in almost all South American countries, as evidenced, for example, in the recognition of the right to a "healthy" environment in the constitutions of Argentina and Colombia. Subsequently, during the 21st century, other countries such as Ecuador, in 2008, and Bolivia, in 2009, had constitutional reforms that marked an important change in the recognition of rights to nature. Thus, the Ecuadorian Constitution expressly recognises Pachamama as a subject of rights, while the Bolivian Constitution, "while it does so tacitly, also seems to be in line with deep ecologism. In both countries, the effects are the same, any person can claim for the rights of nature." [351] On the other hand, she pointed out that in civil law the influence of the Code of Napoleon is still in force in Latin America, considering non-human animals as movable and immovable things. In contrast, several states of the European Union have modified their civil codes and constitutions to recognise animals. She cited cases from Austria, Germany, Switzerland, France, Portugal and Catalonia. She then referred in detail to the cases of the chimpanzees Sandra and Cecilia, whose rights were protected in Argentina through the habeas corpus action and concluded that the legal classification of animals as movable property in the Argentine Civil Code has not been an obstacle for different national courts to declare non-human animals as subjects of rights.

71. Finally, she referred to the determining attributes for granting ownership of rights. After a brief historical review on the subject, she argued that, from a constitutional perspective, it is possible to assert that non-human animals are entitled to certain basic rights, "as long as a dynamic interpretation is made together with the remaining provisions of the local legal system (...). A relevant aspect is the consideration of animals as sentient beings. Once the

anthropocentric visions based on rationalism and intelligence have been overcome, the entitlement to rights of non-human animals gains strength in the ethical and legal field." [352]

Jessica Eisen[353] **(video conference) – Professor at the University of Alberta (Canadá)**

72. She began her presentation by stating that constitutional courts, including the Colombian Constitutional Court, are currently holding on to the reality of animal subjectivity and understand animals as sentient beings, with their own experiences of the world [354]. She noted that in recognising them as sentient beings, and "how profoundly the lives of animals are shaped by human laws and institutions, the imperative to find ways to protect animals through the law, including constitutional law, becomes apparent." Thus, formal legal institutions have a profound impact on the lives of animals even though animals do not participate in them and cannot beseech lawyers to initiate proceedings; thus, representation of an animal under a writ of habeas corpus "is perhaps the most direct and immediate way to bring the interests of animals before constitutional courts." In relation to the qualities or attributes that should be considered to qualify an animal as a rights holder, she proposes to reflect on two aspects: the interest in its own freedom and whether this has been unlawfully infringed.

"The first step in these questions, of whether an animal has an interest in its own freedom, arises directly from the increased attention that courts around the world have given to animal subjectivity and experience. In Cecilia's case, the Argentinean Court considered behaviours, social relationships and freedom of movement, factors of major relevance to chimpanzees, in assessing habeas corpus as a solution to Cecilia's confinement. In Chucho's case, the Court has wisely sought evidence regarding the physical, social and emotional life of Andean bears and Chucho in particular. If, as I hope is the case, this evidence demonstrates that Chucho has a subjective interest in his own liberty, the Court can then consider whether that liberty has been unlawfully infringed." The second step, that is, determining whether liberty was unlawfully infringed, should establish the scope of the protected liberties and under what circumstances they could lawfully be restricted. "In this way, securing habeas corpus concerns in the subjective interests of animals, relating to their own liberty, and the legality of the infringement of that liberty, allows for progressive change in a rapidly changing area of law and society." She concluded by noting that an approach to habeas corpus along these lines would, in her view, allow for the possibility of building on and expanding Colombia's law and jurisprudence holding that animals are sentient beings.

Javier Alfredo Molina Roa – Researcher at the Externado University of Colombia

74. The intervener reiterated the arguments set out in the brief he submitted in response to the Order of Evidence of 3 September 2018, outlined above in section 6.2.14. He added, in relation to the determining attributes to adjudicate the ownership of rights, that for the civil law tradition, only those who can acquire rights and contract obligations can have legal personality. However, several authors - Singer, Regan, Wise, Donaldson & Kymlicka, among others - have warned that the argument that animals are irrational beings who cannot make decisions for themselves is easily rebuttable if one considers the legal fictions created by legal systems to grant legal personality to, for example, a newborn child or a mentally or physically incapable person, who are entitled to full rights without having to assume obligations. Finally, he proposed a normative development regarding figures such as proxies or guardians of animals, which make it possible to avoid procedural or bureaucratic obstacles when using administrative

and constitutional actions with the aim of guaranteeing compliance with the obligations of the State and private individuals in this matter. He argued that examples of this progressive thinking exist in comparative law, in judgments such as that handed down by the Uttaeakhand and Nainital Court in January 2017, which recognised the Ganges and Yaminba rivers as legal persons.

Carlos Andrés Contreras (video conference) - Expert in animal and environmental law

75. The intervener reiterated the arguments he put forward in his letter in response to the Order of Evidence of 3 September 2018.

Macarena Montes (video conference) - Expert in animal law

76. The intervener argued that the concept of person was not synonymous with human. She recalled that in ancient times this notion responded to the role or status that human beings represented within society; it was John Locke who structured this concept, considering that a person is a rational being who recognises himself as such and who has a sense of time, as well as having a minimum IQ, among other characteristics. She emphasised that for law, a person is subject of rights and obligations, including fictions recognised as persons to be able to take part in legal life, such as companies and foundations. Similarly, legal systems often recognise as persons certain beings who do not have the capacity to bind themselves and will never have the capacity to do so, such as humans with intellectual disabilities or who are in a vegetable state, as well as children who are recognised as persons, as they are vulnerable beings which the law must protect. Therefore, she considered it right to protect certain sentient animals by recognising them as persons, remembering that they are also vulnerable beings who are continually abused and exploited by humans. Finally, she stressed that the case of Chucho the bear could be recognised as a non-human person through jurisprudence, as it is a sentient animal that has the capacity to be the subject of certain basic rights due to the affective, emotional, cognitive and social capacities it has developed.

Natalia Rodríguez Uribe, Director of the Master's Degree in Law, ICESI

77. Natalia Rodríguez Uribe began her intervention by highlighting the need to address the issue not only from the perspective of animal law, but also from the perspective of protecting the interests of biodiversity in Colombia. She pointed out that it is clear that animals are sentient beings, and that, in the specific case, Chucho is in a category that deserves special protection due to his similarity to humans. She indicated that the question now is to determine how this protection should be exercised. She stated that legally [356] there are two axes of animal protection, the first refers to physical and mental wellbeing; the second, to the freedom of animals to manifest their natural behaviour, which implies the protection of their ecosystems.

78. She remarked on the value of the tutela action in Colombia, and welcomed the fact that in the country, the freedoms of human beings enjoy a privileged status; however, she stated that there may be a risk in extending the legal standing of the tutela action. In this regard, she posed the following question: if it is established that animals will have certain fundamental rights, who would be legitimised to bring actions on their behalf? The answer to this question seems to be everyone, she said. In this sense, the speaker called for caution and restraint, warning that, although animal rights activists do not share this position, it is an environmentalist position.

She pointed out that there must be a body responsible for the protection of animals, but it cannot be all citizens who carry out these actions, since opening the door to protecting the rights of any animal could lead to damage to ecosystems. She argued that, although the Court can issue specific orders in the specific case, it is necessary to strengthen the institutional framework and regulation of animal protection, a task that also falls on Congress and other authorities. Finally, she reiterated the need to address the problem correctly, as risking biodiversity and the ecosystem through an action in favour of individual animals may not be the most appropriate thing to do.

Andrea Padilla Villaraga –Spokeswomen in Colombia of AnimaNaturalis International

79. Andrea Padilla Villaraga developed her intervention in five arguments. She argued that the legislative law formulas for animal protection pose several problems because the exceptions to the duty of regulatory protection include the worst forms of animal exploitation; they have a short scope of prohibited conducts that are limited to vital minimums or yield to conditions under which they disappear; and the concept of "unnecessary suffering" is too ambiguous and is often broadly interpreted for the benefit of humans. Therefore, citizens have used constitutional law to seek guarantees of protection for animals, which have resulted in several judicial pronouncements questioning the theoretical foundations of the exclusive ownership of rights by human beings. [357] In this regard, she explained that two positions have generally been adopted: one that defends the constitutional duty to protect animals, and another that recognises the existence of the ownership of certain basic rights by some animals [358]. She argued that recent animal rights jurisprudence "has been refining the moral criterion or categorical attribute by virtue of which animals would be subjects of rights. This attribute is sentience, which is defined as the capacity that empowers an individual to experience what is good or bad for himself in his own being. (...) Of course, defending the ethical position in favour of sentience does not imply ignoring that although all sentient animals are susceptible to harm and suffering, some may suffer additional or aggravated harm because of their mental capacities". The above is not because of a "hierarchy of merit or value, but because they impinge on what may be a good or harm for each given creature."

80. Finally, she pointed out that channelling animal protection through actions based on the ownership of rights, such as habeas corpus, provides greater guarantees for the effectiveness of the rights of non-human animals. She added that the penalties enshrined in Law 1774 of 2016 have a very short scope in practice "and only apply to conduct that seriously harm the life or integrity of animals, as in fact this Court specified in 2017"; popular actions, for example, "dilute sentient individuals in the conglomerate of collective environmental rights"; and the general instruments of public policy, "not only go to the whim of each government, but are limited to some 'charismatic' species -for example, the so-called companion animals - or considered instrumentally valuable, as is the case with conservation plans. And if we recognise, as the Court has done since 2010, in its judgment C-666, that sentience is the attribute that establishes limits to human conduct causing suffering to animals, as well as the basis of the animal protection mandate, it would be logical that this attribute be taken with the utmost seriousness to safeguard the fundamental interests derived from it."

Footnotes

[1] This constitutional proceeding was prosecuted by Judge Diana Fajardo Rivera, whose report was not approved by the majority of the Full Chamber of this Court. Consequently, the process transferred

to the current presiding, who used some fragments of the report originally submitted for consideration of the Chamber, especially regarding the summary of the public hearing and the technical concepts presented throughout the judicial proceedings.
[2] It is not possible to establish Chucho's exact age, due to the lack of documentation of his birth. The age was estimated by technicians close to the bear.
[3] It consists of three books of 31, 73 and 184 pages.
[4] It uses as references the constitutional Judgements of the Atrato River, Amazon River and the Pisba Paramo.
[5] Lawyer from Pontifical Xavierian University and Law Degree from University of the Basque Country. D. in Animal Law; Master's in commerce and Contracting Law; Diploma of Advanced Studies in Roman Law from the Autonomous University of Barcelona and founding partner of Murlá & Conteras Advocats.
[6] Master in Bioethics from the Pontifical Xavierian University; Lawyer and Philosopher in training from the Free University of Colombia; Professor and University Researcher and Director of Abogato Jurídico.
[7] Lawyer for the Secretary of Security and Coexistence of the Mayor's Office of Medellín; specialist in Environmental Law and Development and specialist in Criminal Procedural Law and new litigation techniques.
[8] Gloria Elena Estrada Cely, Veterinary Medician PhD; María Posada Ramírez, Lawyer MsC; Jorge Kenneth Burbano Villamarín, Director of the Constitutional Citizen Intervention Observatory of the Law School of the Free University of Colombia; Jorge Ricardo Palomares García, Professor of the Public Law Area of the the Free University of Colombia and Javier Enrique Santander Díaz, Research Assistant of the Law School of the Free University of Colombia.
[9] Lawyer, member of the Environmental Law Research Group of the Externado University of Colombia.
[10] Folio 370, review book.
[11] Marine Biologist; Master's Degree in Science - Wildlife Management and Conservation from the National University of Colombia, Bogotá and Technician in Animal Health with emphasis on Wildlife from SENA.
[12] (i) Free from thirst, hunger and malnutrition; (ii) Free from discomfort; (iii) Free from pain and disease; (iv) Free to express oneself and (v) Free from fear and stress.
[13] He indicates four principles of Bioethics: (i) beneficence; (ii) non-maleficence; (iii) autonomy; and (iv) justice.
[14] University Professor; Doctorate in Philosophy from the Autonomous University of Madrid; Master in Philosophy from the Rosario University; Philosopher and Bachelor in Philosophy; Researcher and professor of the Master in Ethics and Contemporary Moral Problems of the Ethics Unit and the Philosophy Department of the Minuto de Dios University, Bogotá. Researcher in topics of Hellenistic Philosophy, Applied Ethics, Animal Ethics, and Discourses of Ecosocial Transition.
[15] He explained, in detail, why utilitarianism, understood as the decrease of suffering or pain and the maximization of pleasure or bliss; total, non-individual bliss or suffering, is problematic, because the individual would only be a bearer of pleasure and pain, but not a limit for the action of the other. This justifies, in terms of animal ethics, the moral possibility that an individual can be sacrificed for the sake of happiness or general utility, as occurs in animal experimentation, animal husbandry and traditional bullfighting, among others.
[16] To support this argument, he resorted to Martha Nussbaum's thesis that combines moral theory with politics to establish that "being beings with interests, such as not feeling pain, and with capacities, such as affective filiation or play, among others, animals are susceptible to enter a framework of justice that allows them the possibility of developing their lives in accordance with what they pursue, so they are included in the strict scope of justice" (Folio 374, reverse side). (Folio 374, reverse, review book).
[17] Technical Report of the Regional Autonomous Corporation of the Atlantic. Folio 451, review book.
[18] Folio 798, reverse, review book.
[19] For a more extensive version of each, see Annex II.
[20] Expansion of the agricultural frontier, hunting, manipulation of the bear's behaviour, approaches to the habitation sites of the peasants, changes in the behaviour of the species as it loses its natural condition of fear of people, and interaction of the Andean bear with human beings.

[21] He cited cases from the Supreme Court of India and Argentina.

[22] Parliament and tribunals of New Zealand.
[23] Associate Professor of the University of Sabana.
[24] Director of the Max Planck Institute for Comparative Public Law and International Law, Germany.
[25] Professor of the Pompeu Fabra University, Spain.
[26] Professor at the University of Buenos Aires, Argentina.
[27] Professor at the University of Alberta, Canada.
[28] Researcher at the Externado University of Colombia.
[29] Expert in animal and environmental law
[30] Expert in environmental law.
[31] Director of the Master's Degree in Law, ICESI.
[32] Spokeswoman in Colombia by AnimaNaturalis Internacional.
[33] Lawyer at the Externado University of Colombia and PhD in philosophy at the University of Leuven.
[34] Professor in the department of civil law at the Externado University of Colombia.
[35] Article 248 of the National Code of Renewable Natural Resources and Environmental Protection.
[36] Iván Mauricio Vela Vargas, Guillermo Vásquez Domínguez, Jorge Galindo González and Jairo Pérez Torres, "The South American Andean Bear and its Importance and Conservation", in Revista Ciencia, Academia Mexicana de Ciencias, Vol. 62 Num. 2, April 2011. Document available at: https://www.revistaciencia.amc.edu.mx/images/revista/62_2/PDF/09_OsoAndino.pdf
[37] Daniel Rodríguez, Ecoregional Strategy for the Conservation of the Andean Bear, Tremarctos ornaturs, in the Northern Andes, Cali, World Wide Fund for Nature (WWF), Wildlife Conservation Society (WCS), Ecociencia and WII Foundation, 2003.
[38] In this regard cfr. IUCN Red List for the Bear of Glasses in: https://www.iucnredlist.org/es/species/22066/123792952.
[39] M.P. Humberto Antonio Sierra Porto.
[40] M.P. Jorge Iván Palacio Palacio.
[41] M.P. Humberto Antonio Sierra Porto.
[42] M.P. Luis Guillermo Guerrero Pérez.
[43] M.P. Mauricio González Cuervo.
[44] M.P. Jorge Ignacio Pretelt Chaljub.
[45] M.P. Luis Guillermo Guerrero Pérez.
[46] M.P. Alejandro Linares Cantillo.
[47] M.P. Luis Guillermo Guerrero Pérez.
[48] IHR Court, Durán and Ugarte vs Perucase, judgment of August 16, 2000, Serie C No. 68; document available at: https://www.corteidh.or.cr/docs/casos/articulos/Seriec_68_esp.pdf//IDH Court, Hermanos Paquiyauri vs Peru, judgment of 8 July 2004, Series C No. 110; document available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_110_esp.pdf.// Corte IDH, Consultative Opinion No. 8, 1887, par. 35.
[49] IHR Court, Hermanas Serrano Cruz vs Salvador case, judgment of 1 March 2005, Series C No. 120. Document available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_120_esp.pdf. Likewise, IHR Court, Blake vs Guatemalacase, judgment of January 24, 1998, Serie C No. 36. Document available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_36_esp.pdf.
[50] IHR Court, Institute of Re-Education of minor vs Paraguay, judgment of September 2, 2004, Series C No. 112.Document available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_112_esp.pdf.
[51] IHR Court, Case of Gangaram Panday v. Suriname, Judgment of January 21, 1994, Series C No. 16. Document available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_16_esp.pdf.
[52] About the nature and functions of habeas corpus in cfr constitutional jurisprudence. judgments C-010 of 1994 (M.P. Fabio Morón Díaz) and C-187 of 200 (M.P. Clara Inés Vargas Hernández).
[53] Judgement T-242 of 1992 (M.P. Alejandro Martínez Caballero).
[54] Judgements T-459 of 1992 (M.P. José Gregorio Hernández Galindo), T-324 de 1995 (M.P. Alejandro Martínez Caballero), T-659 of 1998 (M.P. Carlos Gaviria Díaz), T-724 of 2006 (M.P. Álvaro tafur Galvis), T-518 of 2014 (M.P. Jorge Ignacio Pretelt Chaljub), T-320 of 1996 (M.P. Carlos Gaviria

Díaz), T-1705 of 2000 (M.P. Jairo Charry Díaz), T-223 of 2002 (M.P. Clara Inés Vargas Hernández), T-527 of 2009 (M.P. Nilson Pinilla Pinilla) and T-735 of 2014 (M.P: María Victoria Calle Correa).
[55] In this regard cfr. T-491 of 2014 (M.P. Mauricio González Cuervo) and T-487 of 2019 (M.P. Carlos Bernal Pulido).
[56] The first systematization of those conditions is in judgment in C-590 of 2005 (M.P. Jaime Córdoba Triviño).
[57] A characterization of the absolute procedural defect is found in the judgment in SU-061 of 2018, M.P. Luis Guillermo Guerrero Pérez
[58] In this regard cfr. SU-061 of 2018 (M.P. Luis Guillermo Guerrero Pérez).
[59] Judgement T-008 of 2019 (M.P. Cristina Pardo Schlesinger).
[60] Judgements T-025 of 2018 (M.P. Gloria Stella Ortiz Delgado) and T-181 of 2019 (M.P. Gloria Stella Ortiz Delgado).
[61] Judgements T-352 of 2012 (M.P. Jorge Ignacio Pretelt Chaljub) and T-249 of 2018 (M.P. José Fernando Reyes Cuartas).
[62] Judgement SU-041 of 2018 (M.P. Gloria Stella Ortiz Delgado).
[63] Judgement T-385 of 2018 (M.P. Carlos Bernal Pulido).
[64] The Court also notes that the legal system does not currently contemplate/provide for an instrument of a judicial nature specifically designed to discuss the welfare conditions of animals that are legally in captivity. Although there are different devices in administrative bodies for the protection of wildlife in illegal captivity, or to monitor compliance with the protocols of wild animals that, under the law, are in this same situation, the same is not true when the constitutional mandate for animal welfare is intended to be enforced in those scenarios, in which public or private bodies hold a wild animal in captivity." Legal basis No. 5.2.1., paragraph 3, page 31.
[65] Sue Donaldson y Will Kymlicka refer to “yoes," in “Zoópolis, an Animalistic Revolution.” Errata Naturae editors, 2018
[66] Third Court of Guarantees of Mendoza (2016). Case file: P-72.254/15. Judgment of November 03, 2016. Available at en https://www.nonhumanrights.org/content/uploads/2016/12/Sentencia-de-Habeas-Corpus-de-Cecilia.pdf
[67] This was illustrated by some participants in the Audiencia Publica, in particular Andrea Padilla Villarraga.
[68] “The confluence of these two circumstances, i.e. the existence of a problem of constitutional relevance and interest, and the absence of a specific procedural route to discuss it, could explain the claim to use habeas corpus to address the legal dispute." Legal basis No. 5.2.1., paragraph 5, page 31
[69] From now on, when I refer to animals, I mean non-human animals.
[70] The understanding of law - and its institutions - with such an expression was derived from the work "Philosophie des Ais Ob" or “Philosophy of the As If”, Hans Vaihinger.
[71] Judgment T-411 of 1992 (M.P. Alejandro Martínez Caballero) is a milestone in that regard. See also, inter alia, judgments in C-495 of 1996. M.P. Fabio Morón Díaz; C-126 1998. M.P. Alejandro Martínez Caballero; C-431 of 2000. M.P. Vladimiro Naranjo Mesa; C-750 2008. M.P. Clara Inés Vargas Hernández; C-915 2010. M.P. Humberto Antonio Sierra Porto; C-035 2016. M.P. Gloria Stella Ortiz Delgado; C-389 2016. M.P. María Victoria Calle Correa; C-032, 2019. M.P. Gloria Stella Ortiz Delgado.
[72] Concern for the environment was clear within the National Constituent Assembly, in which it was held that its protection was “one of the purposes of the Modern State, therefore the entire structure of the State must be illuminated for this purpose and must tend to its realization. The environmental crisis is, likewise, a crisis of civilization and rethinks the way of understanding the relationship between men. Social injustices result in environmental mismatches and these in turn reproduce the conditions of misery.” Presentation Report Constitutional Gazette No. 46, pp. 2-3. Appointment made, inter alia, in judgments in T-254 of 1993. M.P. Antonio Barrera Carbonell and C-750 of 2008. M.P. Clara Inés Vargas Hernández.
[73] The preambles and the articles 2, 8, 11, 44, 49, 58, 66, 67, 78, 79, 80, 81, 82, 215, 226, 268.7, 277.4, 282.5, 294, 289, 300.2, 301, 310, 313.9, 317, 330.5, 331, 332, 333, 334, 339, 340 y 366 of the 1991 Constitution
[74] Adopted by the United Nations Conference on the Human Environment on 16 June 1972

[75] Adopted and proclaimed by the United Nations General Assembly in its Resolution 37/7 of 28 October 1982
[76] Signed in Washington on March 3, 1973 and approved in Colombia by Law 17 of 1981. As recognized by the Constitutional Court in judgment C-012 of 2004 (M.P. Clara Inés Vargas Hernández), this Convention aims to promote international cooperation to prevent the excessive exploitation of fauna and flora through international trade
[77] In this regard, in Ruling C-519 of 1994 (M.P. Vladimiro Naranjo Mesa), which studied the constitutionality of the laws approving the Convention on Biological Diversity of Rio de Janeiro - 1992, the following was held: "Colombia is one of the countries that should have the greatest interest with respect to international agreements on biodiversity. The reason is, moreover, simple: our country has been recognized worldwide as one of the biological centres of greatest diversity. In this regard, we need only refer to the explanatory memorandum [...] when the Bill corresponding to the abovementioned Diversity Convention was submitted to Congress: countries such as Colombia, classified as 'mega-biodiverse' cannot afford to cancel one of the most critical comparative advantages in international relations and the economy of the 21st century: genetic resources and biological diversity. In many cases this advantage is absolute when it comes to endemic species, i.e. unique and not repeated anywhere on the planet (...)". "Colombia is one of the 13 countries on the planet that concentrate 60 percent of the world's biological wealth. [...] Our country gathers approximately 10% of all animal and plant species in the world, although it represents less than 1% of terrestrial surface. This characteristic places the country in one of the primary places in diversity of species per unit area, and total number of species. "One third of Colombia's 55,000 plant species are endemic, which is considered an unparalleled richness, equivalent to 10% of the total identified (Bundestag, 1990). The country has, for example, 15% of the species of orchids classified worldwide; more than 2,000 identified medicinal plants and a large number of commercial fruits species, wild or only locally cultivated, which are edible or can be used for the genetic improvement of cultivated species." In the country, 338 species of mammals have been classified, which represents 8% of the total known species on the Planet; 15% of the living primate species; 1,754 species of birds (18%); and almost 3,000 terrestrial vertebrates."
[78] In Decision C-666 of 2010 (M.P. Humberto Sierra Porto), it was held that (i) the elements that make up the environment and (ii) the protection provided by the legal system, are two matters that have clear limits in the Political Constitution and in international instruments. Regarding the first element, it specified that: "[i]n relation to its integration... an integral conception of the environment forces to conclude that within the elements that compose it, animals must be understood as included, which are part of the concept of fauna, which, in turn, has been understood as part of the natural resources or, in other words, of nature as a protected concept, whose guarantee is contemplated by the Constitution of 1991".
[79] Several decisions of this Court have referred to the different conceptions under which the relationship between human beings and nature can be understood, noting a marked (i) anthropocentrism. In addition to the latter, they have referred to (ii) biocentrism and (iii) ecocentrism. The former "refers to the pre-eminence and dominance of human beings over other beings existing on planet Earth; an ethic of the relationship with nature centred on the human being and the satisfaction of the needs of this species. From this perspective, natural resources are seen in an instrumental manner as providers of food, energy, recreation and wealth for humanity and for this reason they must be conserved, protected and conveniently exploited to guarantee the survival of the human species." Citation 117, Judgement C-644 of 2017. M.P. Diana Fajardo Rivera. The second, that is, biocentrism "involves a moral theory that considers the human being as part of nature, conferring value to both, since they are living beings that deserve the same respect. It advocates that human activity should have the least possible impact on other species and the planet. It vindicates the primordial value of life" Citation 118, ibidem. And, finally, ecocentrism "points to the intrinsic value of nature integrated by ecosystems and the biosphere on planet earth, independently of its value for man" Citation 119, ibidem.
[80] M.P. Alberto Rojas Ríos.
[81] In this sense, the World Charter for Nature stated the following: "Convinced that: // a) Every form of life is unique and deserves to be respected, whatever its usefulness to man, and in order to recognize the intrinsic value of other living beings, man must be guided by a code of moral action...."
[82] M.P. Gloria Stella Ortiz Delgado.

[83] Judgement T-622 of 1995. M.P. Eduardo Cifuentes Muñoz; T-115 and T-614 of 1997. M.P. Hernando Herrera Vergara; and, T-863A of 1999. M.P. Alejandro Martínez Caballero.
[84] Animal drawn vehicles: judgements C-355 of 2003. M.P. Marco Gerardo Monroy Cabra; C-475 of 2003. M.P. Jaime Córdoba Triviño; C-481 of 2003. M.P. Alfredo Beltrán Sierra; C-981 of 2010. M.P. Gabriel Eduardo Mendoza Martelo; and T-514 of 2014. M.P. Alberto Rojas Ríos.
[85] Judgement T-725 of 2003. M.P. Jaime Araújo Rentería; C-283 of 2004. M.P. Jorge Iván Palacio Palacio; and T-436 of 2014. M.P. Jorge Ignacio Pretelt Chaljub.
[86] Judgement C-1192 of 2005. M.P. Rodrigo Escobar Gil; C-367 of 2006. MP. Clara Inés Vargas Hernández; C-666 of 2010. M.P. Humberto Antonio Sierra Porto; C-041 de 2017 and C-133 of 2019. MM.PP. José Fernando Reyes Cuartas y Antonio José Lizarazo Ocampo.
[87] Judgement C-045 of 2019. M.P. Antonio José Lizarazo Ocampo.
[88] Among others, JudgmentsT-760 of 2007. M.P. Clara Inés Vargas Hernández; C-439 of 2011. M.P Juan Carlos Henao Pérez; and, C-059 of 2018. M.P. José Fernando Reyes Cuartas.
[89] In the ancient Western world, there was also evidence of certain positions justifying, for example, vegetarianism. In this regard, Martha Nussbaum argues that of the Greco-Roman schools the least inclined to animal consideration was that of the Stoics; she adds that, in any case, for example, the late Platonic authors "defended an elaborate ethic of vegetarianism and respect for animal life", based on "metaphysical doctrines." The Frontiers of Justice. Paidos, 2016, p. 324.
[90] Taken from Wise, Steven. "Rattling the Cage. Towards Animal Rights." 2nd edition, editorial Tirant lo Blanch, Valencia, 2018, p. 34. Despite the fact that they shared such an idea, it is noteworthy that among them there are nuances. Aristotle considered that there were five types of soul, in the framework of which not all human beings had in an equal proportion the rational soul (that of children, women and slaves was deficient); on the other hand, although Aristotle denied all rational capacity to animals, he did grant them some capacities, such as feeling pleasure and pain and remembering; in addition, and it is for this reason that this author provides some basis for positions such as Martha Nussbaum's in favour of granting rights to animals, he considered that all animals were objects of admiration: "In Parts of Animals, Aristotle gives his students a lesson on why they should not `begrudge' the idea of studying animals, including those that do not seem to occupy a very high position...all animals are related in the sense that they are composed of organic materials, and, therefore, humans should not boast that they are special. If anyone thinks that to study animals is ignoble, he should then have the same opinion of himself'. All animals are objects of admiration for the person interested in understanding." Nussbaum, Martha; "The Frontiers...," p. 343.
The Stoics, on the other hand, began the path to equate in natural capacities all human beings, however, "of all the Greco-Roman currents, it was the least prone to the idea of animals having ethical status." Nussbaum, Martha; "The Frontiers; p. 324.
According to Zaffaroni, in "Pachamama and the human", in the Epicureans with Lucretius, "De rerum natura", human beings are additional participants in nature, so that nature would not be at their disposal. Martha Nussbaum also points out that some late Platonic authors defended vegetarian positions, but from metaphysical doctrines, p. 324, ibid.
[91] In this context, St. Augustine of Hippo wrote that "do not kill" was a commandment that did not protect animals - nor plants - even if they were alive, "for they are dissociated from us by not reasoning and are subject to us by the simple design of the Creator, to kill them or keep them alive according to our own use." Wise, Steven; "Rattling……," p. 43
[92] "It is also a very remarkable thing that, although there are various animals which show more dexterity than we do in some of their actions, yet it is seen that these same animals show no dexterity in many others, so that what they do better than we do does not prove that they have wit, for, in that case, they would have more than any of us and would do all other things better; rather, it proves that they have none, and that it is nature that works in them according to the disposition of their organs, as we see that a watch, composed only of wheels and springs, can count the hours and measure the time more accurately than we can with all our prudence". Descartes, René. "The Discourse of the Method," paragraph 59.
[93] Kant, Immanuel; "Lessons in Ethics". Of Duties to Animals and Spirits, p. 287 et seq: "... when someone orders his dog to be put down because he can no longer earn a livelihood, he does not in any way contravene any duty towards the dog, in view of the fact that the dog is not capable of judging such a thing, but he does thereby infringe upon affability and humaneness as such, things which he ought to

practice in attention to human duties." For Kant, the engravings comprising "The four Stages of Cruelty" or "The four Stages of Cruelty" by William Hogarth, give an account of how the cruelty of children that begins as a game becomes and degenerates into more violent acts in adulthood, in front of the same fellow human beings. He also refers to why in England it is not possible for butchers, doctors or surgeons to sit on a jury, since they are accustomed to death; he adds that: "Is it not a cruel act for vivisectors to take live animals for their experiments, even if their results are then profitably applied; of course, such experiments are admissible because animals are considered as instruments in the service of man, but it can by no means be tolerated that they are practiced as a game. When a master throws away his donkey or his dog because they can no longer earn their bread, he shows the meanness of his spirit."

[94] In the 19th century, another type of research, for example in the area of natural sciences by Charles Darwin, questioned the idea that living beings had a unique and immutable place in the world (and therefore, that there would be some species called only to serve the purposes of others), based on his theory of the evolution of species.

[95] For an interesting review on this issue see Sykes, Katie (2011). Human Drama, Animal Trials: What the Medieval Animal Trials Can Teach Us About Justice for Animals. Animal Law Review, Vol. 17, No. 2, p. 273, 2011. Available at SSRN: https://ssrn.com/abstract=1999081 Although the most complete account of animal trials is credited to Edward Payson Evans in his 1906 work entitled "The criminal prosecution and capital punishment of animals," available at http://www.gutenberg.org/files/43286/43286-h/43286-h.htm.

[96] In 1522, the peasant population of Autun - France filed a formal lawsuit against the rats that were destroying their crops. Solemnly the ecclesiastical court appointed the lawyer Barthélemy de Chasseneus (lawyer who wrote the work Consilia, which contained the formal requirements for the animals to be brought to trial) as defender of the animals. The first challenge was to determine the proper way to notify the rats in order to ensure their appearance. After several attempts, upon failure to appear for the fourth consecutive time, the rats were convicted. Taken from Wise, Steven. "Rattling……," pp. 67-68.

[97] Sykes, Katie (2011). Op. cit., pág. 281.

[98] Sykes, Katie (2011). Op. cit., pág. 281. Also see Woodburn, Walter. The Prosecution and Punishment of Animals and Lifeless Things in the Middle Ages and Modern Times. University of Pennsylvania Law Review and American Law Register, Vol. 64, No. 7 (May, 1916), pp. 696-730.

[99] For Zaffaroni, sanctions against animals prevented reproaches from being directed at other humans, assigning them the role of true "scapegoats". Thus, in cases in which, for example, a sow injured a child, "the punishment did not fall on the negligent mother who had left the child within the sow's reach and who already had enough natural grief with the horror she had to live through"; while in the case of the excommunication of pests, "the formal and public act showed that the power did everything possible to punish those responsible and, in this way, prevented the unrest of the devastated crops and the consequent famine from being directed against the lord or the princes. The latter reaffirmed their authority even over the animals and at the same time avoided the danger of vengeance falling upon them." "La Pachamama...", p. 31

[100] E.P. Evans (1906). Op. cit., pág. 140. In England, unlike the practice followed in Continental Europe, animals linked to injuries to humans were not judged or punished but offered to God since their injury altered the divine hierarchies, such offering being made through the King, who was their representative on earth. See Wise, Steve; "Rattling...", pp. 73-78.

[101] In 1750 a particular case occurred in Vanvres, France, after a man was found having sexual relations with his donkey. The man was sentenced to death, but the animal was acquitted. The verdict of acquittal was determined by the testimonies given by the local parish priest and some inhabitants, who assured, in favour of the donkey, that "they had known her for four years, and that she had always shown herself virtuous and well-behaved both at home and in the public space and had never caused any scandal." E.P. Evans (1906). Op. cit., p. 150.

[102] An Act to prevent the cruel and improper treatment of Cattle, Ley to prevent cruelty and improper treatment of livestock, of 1822. The first known prosecution for violation of the animal protection law dates back to 1838, for acts of violence committed by Bill Burns against his donkey.

[103] Tomado de Zaffaroni, Eugenio; "La Pachamama…", pág. 50.

I cannot utter the expression “animals have no rights” without a voice inside me telling me: You must not falsely testify as a witness. First of all, animals also have certain rights. Humans may, insofar as humanity permits, use them for their own ends. When he exceeds these ends, exceeds his right, he not only sins against the creature, but also violates the animal right, which Herder, as well as the older representatives of the theory of evolution, have already called the elder brother of mankind.

[104] Ibídem; págs. 45 y ss.

[105] In fact, he reports that, in order to avoid falling into this problem, some laws stipulated as a condition for the configuration of the offence that they be practiced in public. He cites, for example, the French Grammont Law of 1850 and the German STGB of 1871.

[106] This idea is clearly linked to Kant’s idea of indirect duties towards animals, mentioned above.

[107] Zaffaroni; ibídem, pág. 53.

[108] As has been highlighted in the constitutional jurisprudence of this Court, inter alia, in judgment C-467 of 2016

[109] Publicado en el año 1975.

[110] Singer’s thesis has been challenged by those who advocate a rights position for animals, since they consider that his utilitarianism precludes the rooting of invulnerable guarantees in both humans and nonhumans. According to Sue Donaldson and Will Kymlicka: “[t]he arguments for better treatment of animals are thus based on empirical claims that almost all of the harm we inflict on animals does not actually serve the greater good, rather than on the rights-based claim that it is wrong to harm animals even when it contributes to the greater good.” Zoopolis - An Animalist Revolution; Errata Natura Editores, 2018, p. 460, note 24. In the same vein see Martha Nussbaum’s proposed criticisms of Singer’s “preference utilitarianism,” in “The Frontiers...,” pp. 333ff.

[111] “ In defense of animal rights ”. Fondo de Cultura Económica and others.

[112] “Thus, an argument has been made in defense of animal rights. If this argument is sound, then, like us, animals have certain basic moral rights, which include in particular the fundamental right to be treated with the respect which, as possessors of inherent value they deserve as a matter of strict justice...Therefore...they must never be treated as mere receptacles of intrinsic values (e.g., pleasures or satisfaction of preferences) and any harm done to them must be consistent with recognition of their equal inherent value and their prima facie equal right not to be harmed.” Ibid, pp. 368-369.

[113] His comprehensive position on this issue can be found in “Rattling the Cage - Towards Animal Rights”, already cited. In a recent work by Martha Nussbaum, “Working with and For Animals: Getting the theoretical framework right”, she precisely questions Wise’s thesis, among other arguments, for considering that it does not abandon the natural ladder, in which animals are considered relevant to the extent that they have those capacities enjoyed by human beings.

[114] Steven Wise builds his theory of rights on Hohfeld’s categories, embracing the idea of dignity rights as fundamental immunities. From his considerations, although not only chimpanzees and bonobos should have dignity rights to bodily integrity and freedom, the possibility of others joining in such consideration depends on their capacities. In this regard, he states: “[I] did not mean that chimpanzees and bonobos are the only nonhuman animals that could have the fundamental legal rights of bodily integrity and freedom. Judges should determine the dignity rights of any nonhuman animal in the same way they determine the rights of chimpanzees, bonobos, and humans, according to their autonomy. Autonomy, of course, arises from the mind. Nonhuman animals lacking minds are little more than animated versions of MIT 3...and the possibility of their having legal rights will be seriously questioned.”, in “Rattling the Cage...”, pp. 389-390.

[115] “Frontiers of Justice".

[116] In her position, Nussbaum recognizes the invaluable contribution of the social contract theory to account for the organization of societies based on the recognition of rights. Therefore, her interest is none other than to provide a complementary vision, which, based on her approach to capabilities and drawing on some elements from the utilitarian and Aristotelian traditions, allows her to consistently affirm the justice of granting basic rights to animals.

[117] The other two correspond to (i) justice for persons with physical and mental disabilities; and (ii) the extension of justice to the citizens of the world.

[118] For Nussbaum, contractualism fuses the questions of who signs the social contract and for whom is the social contract signed? This, according to his conception, is a mistake.

[119] “The emotion of compassion involves thinking that another creature is suffering appreciably and that it is little (if any) to blame for that suffering. What it does not involve is believing that someone is to blame for that suffering. One can have compassion for the victim of a crime, but one can also have compassion for someone who is dying of disease (vulnerability to disease is no one’s fault)” Ibid. p. 331.
[120] “The capability approach is a political doctrine about basic rights, not a comprehensive moral doctrine. It does not even pretend to be a complete political doctrine, but merely specifies some necessary conditions for a minimally just society, in the form of a set of fundamental rights for all citizens. // The capability approach...takes a look at the world and asks how to achieve justice in it.” Ibid, pp. 163-345.
The capabilities approach has been expanded by Amartya Sen in the economic arena and by Nussbaum herself in matters of philosophy. The idea behind this approach for Nussbaum is that rights must start from recognising the needs and capabilities of the subjects - being possible to achieve a cross-cutting consensus - and, after this, elevate them to basic guarantees predictable of any subject, as an end in itself.
[121] Ibídem, pág. 167.
[122] Ibídem, pág. 346.
[123] Ibídem, pág. 356.
[124] It occurs in some cases where they have been brought to trial, but, for example, as witnesses. See the next section.
[125] Some authors categorize it as an animal turn. See Eisen, Jessica. Animals in the constitutional state. International Journal of Constitutional Law, Volume 15, Issue 4, October 2017, Pages 909-954, available at : https://academic.oup.com/icon/article/15/4/909/4872588
[126] See, for example, Constitutional Court of Colombia, Judgment T-622-16 of 10 November 2016, paras. 9.27-9.31; Constitutional Court of Ecuador, Judgment No. 218-15-SEP-CC of July 9, 2015, pp. 9 and 10, and Superior Court of Uttarakhand At Naintal (High Court of Uttarakhand At Naintal) of India. Decision of 30 March 2017. Petition Letter (PIL) No. 140 of 2015, pp. 61-63.
[127] The preamble of the Political Constitution of the State of Bolivia states that: “In time immemorial mountains were erected, rivers moved, lakes were formed. Our Amazonia, our Chaco, our altiplano and our plains and valleys were covered with greenery and flowers. We populated this sacred Mother Earth with different faces, and since then we have understood the current plurality of all things and our diversity as beings and cultures”. Article 33 of the same Constitution provides that, “People have the right to a healthy, protected and balanced environment. The exercise of this right must allow individuals and communities of present and future generations, as well as other living beings, to develop in a normal and permanent manner.” Likewise, Article 71 of the Constitution of the Republic of Ecuador states that: “Nature or Pacha Mama, where life is reproduced and realised, has the right to full respect for its existence and the maintenance and regeneration of its vital cycles, structure, functions and evolutionary processes. Any person, community, people or nationality may demand the fulfilment of the rights of nature from the public authority. In applying and interpreting these rights, the principles established in the Constitution shall be observed, as appropriate. The State shall encourage natural and legal persons and collectives to protect nature and shall promote respect for all the elements that make up an ecosystem”.
[128] Constitution of India (1976), Article 51A. The original text says “It shall be the duty of every citizen of India […] g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.”
[129] Ver Kansal, Vishrut (2016) The Curious Case of Nagaraja in India: Are Animals Still Regarded as “Property” With No Claim Rights?. Journal of International Wildlife Law & Policy, 19:3, 256-267.
[130] Constitution of the Federal Republic of Germany, Article 20A “Protection of the natural foundations of life and animals: Mindful also of its responsibility towards future generations, the state shall protect the natural foundations of life and animals by legislation and, in accordance with law and justice, by executive and judicial action, all within the framework of the constitutional order.” Disponible en https://www.btg-bestellservice.de/pdf/80201000.pdf
[131] In a case concerning regulations on chicken production, the Court protected animal welfare beyond its impact on humans, and expressly held that animals must be protected in themselves as "living

beings". 2 BvF 1/07 (Oct. 12, 2010) BVerfGE 127, 293-335 (Ger.), At 121. See translation and analysis in Eisen, Jessica (2017). Op. cit.
[132] Constitution of Switzerland, Article 120, paragraph 2. The original text states "The Confederation shall legislate on the use of reproductive and genetic material from animals, plants and other organisms. In doing so, it shall take account of the dignity of living beings as well as the safety of human beings, animals and the environment, and shall protect the genetic diversity of animal and plant species." https://www.admin.ch/opc/en/classified-compilation/19995395/index.html
[133] Constitution of Ecuador, see articles 71 to 74.
[134] Constitution of Ecuador, Article 71.
[135] Delhi High Court (2015). People For Animals vs Md Mohazzim & Anr. Decisión de Mayo 15 de 2015. Disponible en https://indiankanoon.org/doc/163664556/
[136] Third Court of Guarantees of Mendoza (2016). Case file: P-72.254/15. Judgment of November 03, 2016. Available at https://www.nonhumanrights.org/content/uploads/2016/12/Sentencia-de-Habeas-Corpus-de-Cecilia.pdf
[137] See the case "Happy", the elephant at the Bronx Zoo, promoted by the NGO Non-Human Rights Project. Information available at https://www.nonhumanrights.org/client-happy
[138] The events occurred in October 2012 in Santa Cruz de Tenerife, when the dog was subjected to a vicious attack by other dogs also owned by the defendants, and was seriously injured by bites to the neck, torso, paws and other parts of the body. According to the prosecution report, the two defendants preferred to dispose of the dog rather than take her to a veterinarian.
[139] See the note published in El País (2019). A judge takes a dog as a witness in a trial for animal abuse. 08 May 2019. Disponible en https://elpais.com/sociedad/2019/05/08/actualidad/1557313692_014235.html - See note published in El País (2019). A judge takes a (female) dog/ bitch as a witness in an animal abuse trial. May 8, 2019
[140] See the article published in The Guardian (2010). The lawyer who defends animals. Disponible en https://www.theguardian.com/world/2010/mar/05/lawyer-who-defends-animals
[141] Antoine Goetschel was the last official to hold this position. An interview about his daily work can be found in the Swissinfo newspaper. Available at https://www.swissinfo.ch/eng/lawyer-lends-his-voice-to-the-animals/979670 - Antoine Goetschel was the last official to hold this position. An interview about his daily work can be found in the Swissinfo newspaper. Available at:
[142] X und Y gegen Gesundheitsdirektion des Kantons Zürich und Mitb., Swiss Federal Supreme Court (Oct. 7, 2009) BGE 135 II 384 (Switz.) at 403, as translated in Michel & Kayasseh. Original quote: "Even if it [the dignity of animals] cannot and should not be equated with human dignity, this indeed requires that natural creatures, at least to a certain degree, be regarded and valued as being of equal stature with humans." Disponible en Eissen, Jesica (2017). Op. cit.
[143] Third Court of Guarantees of Mendoza (2016). Case file: P-72.254/15. Judgment of November 03, 2016. Available at https://www.nonhumanrights.org/content/uploads/2016/12/Sentencia-de-Habeas-Corpus-de-Cecilia.pdf
[144] Ibíd.
[145] Ibíd.
[146] Constitution of India (1976), Article 51A. The original text states "It shall be the duty of every citizen of India […] g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures."
[147] This prohibition should be read in light of the religious beliefs of this country. For an introductory article on the subject, see Vishrut Kansal (2016) The Curious Case of Nagaraja in India: Are Animals Still Regarded as "Property" With No Claim Rights?. Journal of International Wildlife Law & Policy, 19:3, 256-267.
This prohibition must be read from the religious beliefs of this country. For an introductory article on the subject, see Vishrut Kansal
[148] Prevention of Cruelty to Animals Act 1960 ("PCA"), Section 3: "Duties of persons having charge of animals.- It shall be the duty of every person having the care or charge of any animal to take all reasonable measures to ensure the well-being of such animal and to prevent the infliction upon such animal of unnecessary pain or suffering."
[149] Supreme Court of India (2014). Animal Welfare Board Of India vs A. Nagaraja & Ors on 7 May, 2014. Disponible en https://indiankanoon.org/doc/39696860/

[150] Ibíd. Translation of the following quote: "Sections 3 and 11, as already indicated, therefore, confer no right on the organisers of Jallikattu or bullock-cart race, but only duties, responsibilities and obligations, but confer corresponding rights on animals. Sections 3, 11(1)(a) & (o) and other related provisions have to be understood and read along with Article 51A(g) of the Constitution which cast fundamental duties on every citizen to have "compassion for living creatures". Parliament, by incorporating Article 51A(g), has again reiterated and re-emphasised the fundamental duties on human beings towards every living creature, which evidently takes in bulls as well. All living creatures have inherent dignity and a right to live peacefully and right to protect their well-being which encompasses protection from beating, kicking, over-driving, over-loading, tortures, pain and suffering etc. Human life, we often say, is not like animal existence, a view having anthropocentric bias, forgetting the fact that animals have also got intrinsic worth and value. Section 3 of the PCA Act has acknowledged those rights and the said section along with Section 11 cast a duty on persons having charge or care of animals to take reasonable measures to ensure well- being of the animals and to prevent infliction of unnecessary pain and suffering."
[151] "Species Best Interest".
[152] Ibíd. Translation of the following quote: "Jallikattu and other forms of Bulls race, as the various reports indicate, causes considerable pain, stress and strain on the bulls. Bulls, in such events, not only do move their head showing that they do not want to go to the arena but, as pain is being inflicted in the vadivasal is so much, they have no other go but to flee to a situation which is adverse to them. Bulls, in that situation, are stressed, exhausted, injured and humiliated. Frustration of the Bulls is noticeable in their vocalization and, looking at the facial expression of the bulls, ethologist or an ordinary man can easily sense their suffering."
[153] Taking for this purpose documents developed by international organizations such as the World Organisation for Animal Health (OIE).
[154] Ibíd. Translation of the following quote: "Chapter 7.1.2 of the guidelines of OIE, recognizes five internationally recognized freedoms for animals, such as: i) freedom from hunger, thirst and malnutrition; ii) freedom from fear and distress; iii) freedom from physical and thermal discomfort; iv) freedom from pain, injury and disease; and; v) freedom to express normal patterns of behaviour."
[155] One of the best known is the Non-Human Rights Project, whose principles and litigation can be found at https://www.nonhumanrights.org/
[156] United States District Court. Southern District Of California. February 8, 2012. Tilikum and other orcas vs. Sea world.
[157] https://www.archives.gov/espanol/constitucion
This clause was introduced in 1865 and states: "1. Neither in the United States nor anywhere subject to its jurisdiction shall there be slavery or forced labour, except as punishment for a crime for which the person responsible has been duly convicted. // 2. Congress shall be empowered to enforce this article through appropriate laws." Spanish translation is available at: https://www.archives.gov/espanol/constitucion
[158] Translation of the following quote: "- Unlike the other constitutional amendments relied upon by Next Friends, the Thirteenth Amendment targets a single issue: the abolition of slavery within the United States. The Amendment's language and meaning is clear, concise, and not subject to the vagaries of conceptual interpretation."
[159] Translation of the following quote: "Even though Plaintiffs lack standing to bring a Thirteenth Amendment claim, that is not to say that animals have no legal rights; as there are many state and federal statutes affording redress to Plaintiffs, including, in some instances, criminal statutes that "punish those who violate statutory duties that protect animals."
[160] Constitution of the United States of America, Ninth Section, paragraph 2°: https://www.archives.gov/espanol/constitucion
"The privilege of habeas corpus will not be suspended, except where public safety requires it in cases of rebellion or invasion." Translation available at https://www.archives.gov/espanol/constitucion
[161] For further information see: https://www.nonhumanrights.org/client-tommy/
[162] Appellate Division First Department, June 8, 2017. In the Matter of Nonhuman Rights Project, Inc., on Behalf of Tommy, Appellant, v Patrick C. Lavery et al., Respondents.
[163] State of New York. Court of Appeals. Concurring Fahey. Motion No. 2018-268. Decided May 8, 2018. Disponible en http://www.nycourts.gov/ctapps/Decisions/2018/May18/M2018-268opn18-

Decision.pdf Translation of the following quote: “The inadequacy of the law as a vehicle to address some of our most difficult ethical dilemmas is on display in this matter… The question will have to be addressed eventually. Can a non-human animal be entitled to release from confinement through the writ of habeas corpus? Should such a being be treated as a person or as property, in essence a thing?”.
[164] For further information see: https://www.nonhumanrights.org/hercules-leo/
[165] Supreme Court of the State of New York. The Non-Human Rights Project, on behalf of Hercules and Leo v. University of New York at Stony Brook. Julio 29 de 2015. Disponible en https://www.nonhumanrights.org/content/uploads/Judge-Jaffes-Decision-7-30-15.pdf
[166] Translation of the following quote:“-Legal personhood is not necessarily synonymous with being human. Nor have autonomy and self-determination been considered bases for granting rights. In any event, petitioner denies that is seeks human rights for chimpanzees. Rather, it contends that the law can and should employ the legal fiction that chimpanzees are legal persons solely for the purpose of endowing them with the right of habeas corpus, as the law accepts in other contexts the “legal fiction” that nonhuman entities such as corporations, may be deemed legal persons, with the rights incident thereto. P.21-22 // […] // - And yet, the concept of legal personhood, that is, who or what may be deemed a person under de law, and for what purposes, has evolved significantly since the inception of the United States. Not very long ago, only Caucasian male, property owning citizens were entitles to the full panoply of legal rights under the United States Constitution. Tragically, until passage of the 13th Amendment of the Constitution, African American slaves were bought, sold, and otherwise treated as property, with few, if any rights. Married women were once considered the property of their husbands, and before marriage were often considered family property, denied the full array of rights accorded to their fathers, brothers, uncles and male cousins. P.23 “If rights were defined by who exercised them in the past, then received practices could serve as their own continued justification and new groups could not invoke rights once denied.” (Obergefell v Hodges, US, 135 S Ct 2602 [2015]).”
[167] Translation of the following quote: “The similarities between chimpanzees and humans inspire the empathy felt for a beloved pet. Efforts to extend legal rights to chimpanzees are thus understandable; some day they may even succeed. Courts, however, are slow to embrace change, and occasionally seem reluctant to engage in broader, more inclusive interpretations of the law, if only to the modest extent of affording them greater consideration. As Justice Kennedy aptly observed in Lawrence v. Texas, albeit in a different context, “times can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress.””
[168] New York Court of Appeals (2018), Estados Unidos. Voto concurrente del Juez Fahey (State of New York. Court of Appeals. Concurring Fahey. Motion No. 2018-268. Decided May 8, 2018). Translation of the following quote: “The reliance on a paradigm that determines entitlement to a court decision based on whether the party is considered a “person” or relegated to the category of a “thing” amounts to a refusal to confront a manifest injustice. Whether a being has the right to seek freedom from confinement through the writ of habeas corpus should not be treated as a simple either/or proposition. The evolving nature of life makes clear that chimpanzees and humans exist on a continuum of living beings.”
[169] M.P. José Gregorio Hernández Galindo.
[170] Taken from "Do we have enough intelligence to understand the intelligence of animals?" Frans de Waal, Tusquets Editores, first edition April 2016, p. 13. Quote referring to "The Descent of Man". Crítica, Barcelona, 2009.
[171] Taken from J. Fletcher, “Indicators of Humanhood”, J. Walter & T. Shannon, Quality of Life, (NY: Paulist Press, 1990). - (Taken from) J. Fletcher
[172] Frans de Waal reflects on this Conference as follows: “There is solid evidence that the mental processes associated with consciousness in our species also occur in other species. Strictly speaking, this does not demonstrate animal consciousness, but science increasingly favours continuity over discontinuity.” (p. 266).
[173] . https://dle.rae.es/antropoide -m.
Said of an animal, and especially of an anthropomorphic monkey: that because of its external morphological characters it resembles a human being. https://dle.rae.es/antropoide.
[174] American primate expert Robert Yerkes: “I have often seen a young chimpanzee, after trying in vain to get his reward for a method, sit down and re-examine the situation as if taking stock of his previous efforts and trying to decide what to do next... The most surprising thing by far, without the

rapid passage from one method to another, the determination of acts or pauses between attempts, is the sudden solution of problems". Frans de Waal, 80 and 81
[175] "Pepsi was the star of a recent study with Asian elephants, this male, still an adolescent, passed a mirror test..., in which he persistently touched a white x painted on the left side of his forehead with his trunk. He never paid attention to the x drawn with invisible paint on the right side, nor did he touch the mark until he stood in front of a mirror in the middle of a clearing. The next day the visible and invisible marks were exchanged, and Pepsi again concentrated on the white x". Frans de Waal, p. 267.
[176] German psychologist Helmut Prior subjected his magpies to a mirror test at least as well controlled as any of those applied to anthropoids and children. The mark, a small yellow sticker on the black pectoral feathers, was conspicuous, but the bird could only see it with the aid of the mirror. The magpies had not been trained, a major difference from the highly trained pigeons once used to discredit mirror research. Placed in front of a mirror, the magpies kept scratching with their own claws until the mark was removed. They never scratched frantically if there was no mirror to look into, and they ignored an "invisible" mark (a black sticker on black plumage). Frans de Waal, p. 277
[177] The idea that animals are anchored in the present is as old as the consideration that their status is that of being instruments for the satisfaction of human needs. In this respect, Seneca considered that: [t]he stupid animal grasps through his senses what is present. It remembers the past when it encounters something that alerts its senses. Thus the horse remembers the road by being led to its beginning. But in its stable it has no memory, however much it may have trodden that same path. For the third time I say, the future does not concern stupid animals. Taken from Wise, Steven; "Rattling……," p. 39.
[178] Translates to "...you have the body".
[179] Judgement C-187 of 2006. M.P. Clara Inés Vargas Hernández.
[180] Paragraph 39: "No free man may be detained or imprisoned or deprived of his rights or property, either taken out of law or banished or otherwise deprived of his rank, nor will we use the force against him or send others to do so, but by virtue of a court judgment of his peers and in accordance with the law of the kingdom."
[181] The Case of James Sommersett, a "Negro", on a Habeas Corpus King's-Bench: 12 George III. A.D. 1771-72. Available in english at http://www.nationalarchives.gov.uk/pathways/blackhistory/rights/slave_free.htm
[182] Translation of the following quote: "Throughout history, the writ of habeas corpus has served as a crucial guarantor of freedom by providing a judicial forum to beings the law does not (yet) recognize as having legal rights and responsibilities on a footing equal to others." Del Amicus Curiae presentado por el profesor Laurence H. Tribe ante el Tribunal de Nueva York en el caso del Chimpancé "Tommy".
[183] Sentencia C-187 de 2006. M.P. Clara Inés Vargas Hernández.
[184] British Library. Available in English at: British Library, https://www.bl.uk/learning/timeline/item104236.html
[185] Judgement C-187 of 2006. M.P. Clara Inés Vargas Hernández.
[186] Also written Sommersett.
[187] For a detailed overview of this case, see Wise, Steven (2006). Though the Heavens May Fall. Da Capo Press: 2006.
[188] Translation. Original quote in: Finkelman, Paul (1994). Let Justice Be Done, Though the Heavens May Fall: The Law of Freedom, 70 Chi.-Kent L. Rev. 325 (1994).
Available at: https://scholarship.kentlaw.iit.edu/cklawreview/vol70/iss2/2
[189] Cita original disponible en https://www.nationalarchives.gov.uk/pathways/blackhistory/rights/slave_free.htm Translation avalaible at Wise, Steven (2018). Sacudiendo la jaula. Valencia: Tirant lo blanch (2a Ed), 2018. pág.88.
[190] Ver http://www.nationalarchives.gov.uk/pathways/blackhistory/rights/slave_free.htm
[191] Judgement C-620 of 2001. M.P. Jaime Araujo Rentería.
[192] This conclusion is based on the experience suffered by several populations in our hemisphere in recent decades, particularly in relation to disappearances, torture and killings committed or tolerated by some governments. This reality has demonstrated time and again that the right to life and personal integrity are threatened when habeas corpus is partially or totally suspended. As the President of the Commission stated at the hearing on this consultation: "the Commission is persuaded that, just as in the recent past thousands of enforced disappearances would have been avoided if the writ of habeas corpus had been effective and judges had endeavoured to investigate the detention by personally attending the

places of detention that were denounced as places of detention, such a remedy now constitutes the most suitable instrument not only for promptly correcting abuses of authority in terms of arbitrary deprivation of freedom, but also an effective means of preventing torture and other physical or psychological constraints, such as banishment, perhaps the worst punishment, which has been so abused in the subcontinent, where thousands of exiles make up veritable exoduses." IACHR Court. Advisory Opinion OC-8/87 of 30 January 1987. Habeas corpus under suspension of guarantees (Arts. 27.2, 25.1 and 7.6 American Convention on Human Rights). Paragraph 36.

[193] Ibíd. Paragraph 35.

[194] IACHR Court, Case of Anzualdo Castro v. Peru (2009). Judgment of September 22, 2009. (Preliminary Objection, Merits, Reparations and Costs).

[195] From that date his family did not hear from him or his whereabouts again. It is thought that the day he was kidnapped or arrested, he would have been taken to the basements of the Army headquarters, where he would have been eventually executed and his remains cremated

[196] Ibíd. Paragraph. 72. According to the report of the Peruvian Truth and Reconciliation Commission, disappearance was a counter-subversive mechanism used systematically by state agents between 1988 and 1993, in a large part of the national territory, which became even more important when the Executive Power decided that the Armed Forces should replace the Police Forces in the tasks of internal control and combating subversion. This instrument of repression became a macabre strategy that dehumanised "certain sectors of the population considered to be subversive or terrorist, or in some way opposed or opposed to the government and therefore not covered by the most minimal guarantees of freedom and due process".

[197] Law 1095 of 2006. Article 1.

[198] Judgment C-010 of 1994 (M.P. Fabio Morón Díaz), studied the constitutionality of Decree No, 2700 de 1991 By which the rules of Criminal Procedure are issued, which in article 431 established the guidelines for public action of habeas corpus.

[199] Judgement C-301 of 1993. M.P. Eduardo Cifuentes Muñoz.

In this ruling, the Court resolved the constitutionality challenge against Law 15 of 1992, whereby Articles 1, 3 and 4 of Decree 1156 of 1992 are adopted as permanent legislation, which regulated in its Article 2 the habeas corpus action, stating that "Petitions for the freedom of a person legally deprived of freedom must be formulated within the respective process". The article was declared constitutional.

[200] Ibídem.

[201] Judgement C-620 of 2001. M.P. Jaime Araujo Rentería. In this ruling, the Court studied the constitutionality of articles 382 to 389 of Law 600 of 2000, the Code of Criminal Procedure, which were declared unconstitutional after noting that, as they dealt with an integral and complete regulation of the fundamental right of habeas corpus (substantial and procedural aspects related to the core of the right), they had to be dealt with through a statutory law.

[202] M.P. Clara Inés Vargas Hernández. It is worth mentioning that in a previous ruling, C-1056 of 2004 (M.P. Clara Inés Vargas Hernández), the Court declared this same bill unconstitutional because the procedural flaw noted in Auto No. 170 of 2003 issued by the Constitutional Court had not been rectified.

[203] Universal Declaration of Human Rights, Articles 8 and 9; International Covenant on Civil and Political Rights, approved by Law 74 of 1968, Article 9; American Convention on Human Rights, approved by Law 16 of 1972, Article 7 and the American Declaration of the Rights and Duties of Man, Article XXV.

[204] Judgement C-187 of 2006. M.P. Clara Inés Vargas Hernández.

[205] Judgement T-242 of 1992. M.P. Alejandro Martínez Caballero.

[206] Judgement T-459 of 1992. M.P. José Gregorio Hernández Galindo.

[207] Judgements T-324 of 1995. M.P. Alejandro Martínez Caballero; T-659 of 1998. M.P. Carlos Gaviria Díaz; T- 724 of 2006. M.P. Alvaro Tafur Galvis y T-518 of 2014. M.P. Jorge Ignacio Pretelt Chaljub.

[208] Judgements T-320 of 1996. M.P. Carlos Gaviria Díaz y T-1705 of 2000 M.P. Jairo Charry Díaz (E).

[209] Judgements T-223 of 2002. M.P. Clara Inés Vargas Hernández y T-527 of 2009. M.P. Nilson Pinilla Pinilla.

[210] Judgement T-735 of 2014. M.P. María Victoria Calle Correa.

[211] Judgement T-046 of 1993. M.P. Eduardo Cifuentes Muñoz. On this occasion, the Court studied the case of a woman who had filed a habeas corpus appeal that had been ruled in her favour, but a new arrest warrant had been issued against her on the basis of non-existent measures restricting her freedom - because they were issued after the habeas corpus petition had been filed. The Court found that with this, the judicial official sought to prevent the defendant's freedom at all costs, even ignoring clear legal provisions, so it overturned the rulings of the lower court and granted the request. For the Court, measures restricting freedom issued after the habeas corpus application, which seek to legalise an irregular deprivation of freedom, must be considered non-existent. Decision T-260 of 1999. M.P. Eduardo Cifuentes Muñoz. In this case, a tutela action was filed by a person who served as a criminal judge who had favourably resolved a habeas corpus, after considering that the measure of deprivation of freedom in question had been adopted after the legal terms to resolve the legal situation of the defendants had expired; and for this reason he was faced with a criminal proceeding, in which he was accused of prevarication by action.
[212] M.P. Jaime Córdoba Triviño. The judgment resolved the charges brought against a ruling that resolved a habeas corpus case seeking the release of a person who had been placed under preventive detention, who was later granted provisional release because 6 months had passed since the execution of the indictment without the public trial hearing having been held. In the criminal proceedings, the plaintiff ended up being sentenced to 90 months in prison, which is why, in the conviction, the provisional release was revoked and his arrest was ordered. In his opinion, the arrest could not be ordered until the appeal lodged against the conviction against him had been resolved. See also Judgment T-334 of 2000 (M.P. Eduardo Cifuentes Muñoz), which resolved a case in which the plaintiff had requested provisional freedom due to the expiration of the term to qualify the merits of the case without obtaining any response from the judicial authority. Therefore, he resorted to the habeas corpus action, which was unfavourably resolved for the plaintiff.
[213] Ibídem. Those criteria have been reiterated, inter alia, in judgments in T- 1081 of 2004. M.P. Jaime Araujo Rentería and T- 693 of 2006. M.P. Jaime Araujo Rentería. In both cases, the decisions of habeas corpus issued in the context of criminal proceedings, in which the legal term for resolving the legal status of the shareholders would have expired were reviewed
[214] Judgement C-187 of 2006. M.P. Clara Inés Vargas Hernández.
[215] Judgement C-301 of 1993. M.P. Eduardo Cifuentes Muñoz.
[216] JudgementT-491 of 2014 (M.P. Mauricio González Cuervo), which analysed the habeas corpus rulings handed down against a sentence handed down by the Superior Indigenous Court of Tolima CRIT, in the context of a process of disturbance of the property of others against the plaintiff, in which he was sentenced to 180 days imprisonment.
[217] Article 3, Law 1095 of 2006.
[218] Supreme Court of Justice. Order of August 31, 2017. Fernando Alberto Castro Caballero. No. 51.064, Citing in turn the ruling of March 13, 2007. File No. 27.069.
[219] Judgement C-187 de 2006. M.P. Clara Inés Vargas Hernández. In the same sense, the Criminal Cassation Chamber has held that: "In short, this is the most important guarantee for the protection of the right to freedom, enshrined in Article 28 of the Political Charter, which expressly recognises that everyone is free, that no one may be disturbed in their person or family, nor reduced to prison or arrest, nor detained, nor have their home searched, except by virtue of a written order from a competent judicial authority, with the legal formalities and for reasons previously defined by law". Order of 10 June 2011. M.P. José Luis Barceló Camacho. File No. 36.712
[220] "Persons deprived of freedom face a tension over their rights, given their dual position/ status. They are accused of being criminals, or have been convicted of being criminals, and to that extent, the limitation of their fundamental rights, beginning with freedom, is justified. However, taking into account, at the same time, the relationship of subjection in which persons deprived of their freedom find themselves, reasons and motives arise for special protection of their rights. This constitutional tension between being subject to special restrictions on their fundamental rights and, at the same time, being subject to special protections of their fundamental rights, leads to contradictory attitudes and policies. A criminal and prison policy that respects human dignity must achieve an adequate balance between the two conditions that meet in persons deprived of their freedom". Judgement T-388 of 2013. M.P. María Victoria Calle Correa. See also Judgment T-151 of 2016. M.P. Alberto Rojas Ríos
[221] In a unitary chamber of Justice Luis Armando Tolosa Villabona.

[222] Presented by Luis Domingo Gómez Maldonado.
[223] It consists of three volumes of 31, 73 and 184 pages.
[223] Consists of three books - 31, 73 and 184 folios.
[224] Folio 135, review book.
[225] Order of September 3, 2018, numeral second, (i) If CORPOCALDAS has made monitoring visits to check the conditions of the bear 'Chucho' since arrival at the Zoo. If so, please indicate the dates and results of such visits.
[226] Folios 145 a 147, review book.
[227] Ob. Cit., numeral second, no 2 - (ii) The date and content of the reports you have submitted to CORPOCALDAS on the conditions of the spectacled bear 'Chucho' since his arrival at the Zoo.
[228] Order 03 September 2018, numeral second, (iii) On the conditions in which the spectacled bear 'Chucho' is currently located in the Zoo, specifically, description of habitat, food supplied, veterinary care, behaviour and routine.
[229] The report highlights that in general, the management of bears in semi-captivity is contraindicated (Resolution 2064 of 2010 "By which the measures following the preventive apprehension, restitution or confiscation of specimens of wild species of terrestrial and aquatic fauna and flora are regulated, and other provisions are issued". Article 21); it ensures that the spectacled bear enclosure was refurbished in 1999 and subsequently underwent general maintenance in 2016. The habitat is described as a covered enclosure divided into two areas, an internal one for handling the animal and an external one that allows the public to see it. The external area "is an enclosure delimited by concrete walls, a mesh roof and a viewing platform with safety glass in the front". The internal or handling area "is composed of a corridor and three pens with areas of 16.4 square metres, 8.6 square metres and 14.1 square metres, interconnected by gates and mesh to facilitate movement between places and approaches (...)".
[230] Annexed photographs showing 'Chucho' bear interacting with a spectacled bear both inside and outside the enclosure and information tables setting out enrichment activities carried out with the bear together with the bear's response.
[231] Conditioning was defined by the Zoo as the use of techniques to facilitate routine and/or medical handling procedures, which reduces work time and stress by getting an animal to perform behaviours voluntarily. "As a learning technique we only use the method called operant conditioning. Through a command, which is a visual or vocal stimulus, we try to get the animal to perform the desired behaviour." Folio 185, review book.
[232] Folios 195 to 202, review book.
[233] Folio 209, review book.
[234] Order 03 September 2018, third numeral, (i) The conditions under which the glass bear "Chucho" was located in the Rio Blanco Nature Reserve. Specifically, description of habitat, food supplied, veterinary care, behaviour and routine.
[235] Order 03 September 2018, third numeral, (ii) If you have made monitoring visits to check the conditions of bear glasses "Chucho" since its transfer to the Bontánica and Zoological Foundation of Barranquilla – FUNDAZOO-. If yes, please indicate the dates and results of such visits.
[236] CORPOCALDAS summarized the visits carried out, without annexing the corresponding reports.
[237] Folio 211, review book.
[238] Order 03 September 2018, third numeral, (iii) The date and content of the reports that the Botanical and Zoological Foundation of Barranquilla (FUNDAZOO) has referred to CORPOCALDAS related to the conditions of the bear "Chucho" since his arrival at the Zoo.
[239] CORPOCALDAS clarified that from the last report received by FUNDAZOO, corresponding to the 6th month of adaptation of the spectacled bear "Chucho", FUNDAZOO is obliged to send an annual report provided that extraordinary events that affect the bear do not occur.
[240] Folios 218 a 274, review book.
[241] Folios 212 a 217, review book.
[242] Order 03 September 2018, fourth and fifth numeral, (i) If you advance any program of protection and / or conservation of the spectacled or Andean bear. If so, report what it is and how it controls the existing bear population in our country.
[243] Stated that the programme began in 2001 and progress was published in 2006 and strategies were established to ensure conservation through 5 lines of action.

[244] It has as its vision "by 2031 the units of conservation core, are consolidated as landscapes ordered and managed, achieving coexistence between bears and people, maintaining viable populations of Andean bear (...)" Folio 279, review book.
[245] Annexed a CD containing the above-mentioned Strategy.
[246] Order 03 September 2018, fourth and fifth numeral, (ii) If you know the current population of spectacled or Andean bears in our country and the conditions of their habitat, food, veterinary care, behaviour, routine among others.
[247] Explains that there is no population census to establish the number of individuals in the national territory and there is no information on the death of the species because wildlife management does have intervention measures on individuals or their populations.
[248] Folio 277, review book.
[249] Folios 280 and 281, review book.
[250] Order 03 September 2018, fourth and fifth paragraph, (iii) Whether it is possible to determine how many specimens are in captivity or semi-captivity, who determines that status or when they are eligible for release.
[251] Regional Autonomous Corporation of the Frontera Nororiental -CORPONOR-, Regional Autonomous Corporation of Guavio -CORPOGUAVIO- and Regional Autonomous Corporation of Nariño -CORPONARIÑO.
[252] "These errors are due to inappropriate handling of the animal during the prolonged captivity to which these animals must be subjected when seized from pups, characterised by the creation of a physical, affective and security dependency of the animals on the keeper". Folio 278, review book.
[253] It bases the risk on a release of pathogens acquired in captivity, caused by stressful situations experienced by the released animals.
[254] "Having developed its entire life in captivity makes the individual totally vulnerable to the environment where it is released and the natural populations found there. ...] [A]s it has had no need to search for food, it lacks the instincts and skills that guarantee it can obtain food, a situation that can lead it to die of starvation". Folio 278, review book.
[255] Folio 312, review book.
[256] Folio 317, reverse, review book.
[257] Supports judgment C-173 of 2010. M.P. Jorge Ignacio Pretelt Chaljub and the statement by the jurists Canotilho and Fernández Segado.
[258] It uses as references the constitutional judgment on the Atrato River, Amazon River and the Pisba Paramo.
[259] He annexed a document in the process of publication of the proceedings of the I International Congress of Debate on Nonhuman Animals "Resisting is Speciesism: Towards More Animal Communities", held on 5 and 6 November 2018 at the Faculty of Law of the University of Buenos Aires, Argentina.
[260] Folio 654, review book.
[261] Ibídem.
[262] Order of 3 September 2018, number 7 (i), (ii), and (iii).
[263] Lawyer from the Pontificia Pontifical Xavierian University and Law Degree from the University of the Basque Country. Doctor in Animal Law; Master in Commercial and Contract Law; Diploma of Advanced Studies in Roman Law from the Autonomous University of Barcelona and founding partner of Murlá & Contreras Advocats.
[264] Folio 555, review book.
[265] Folio 549, review book.
[266] Master in Bioethics from the Pontifical Xavierian University; Lawyer and Philosopher in training from the Free University of Colombia; University lecturer and researcher and Director of Abogato Jurídico.
[267] The intervener referred to a test that he created as part of a theoretical and practical research on animal law in Colombia, which raises seven postulates aimed at establishing: (i) that the action be brought by any natural person; (ii) the type of animal as established by Law 1774 of 2016; (iii) the place where it is located be assessed by an expert in ethology and not be suitable for its full development; (iv) that under the principle of reasonableness there is an immediate possibility of transfer; (v) a veterinary diagnosis of the animal's physical and emotional injuries is carried out; (vi) it is established that at that

moment the animal is NOT being subject to preventive material apprehension; (vii) a decision is made to recognise the action in accordance with the concept of Constitutional Animal Protection. (Folio 354, review book).
[268] Lawyer of the Secretary of Security and Coexistence of the Mayor's Office of Medellín; specialist in Environmental Law and Development and specialist in Criminal Procedural Law and new litigation techniques.
[269] Gloria Elena Estrada Cely, Veterinary Doctor PhD; María Posada Ramírez, Lawyer MsC; Jorge Kenneth Burbano Villamarín, Director of the Observatory of Constitutional Citizen Intervention of the Faculty of Law of the Free University of Colombia; Jorge Ricardo Palomares García, Professor of Public Law of the Free University of Colombia, and Javier Enrique Santander Díaz, Research Assistant of the Faculty of Law of the Free University of Colombia
[270] States that constitutional mandates for animal protection under the principle of solidarity are supported by judgments C-666 of 2010. M.P. Humberto Antonio Sierra Porto, T-622 of 2016, M.P. Jorge Iván Palacio Palacio and Law 1774 of 2016.
[271] He raised several questions about the shortcomings in the care of the bear 'Chucho' in the Río Blanco Nature Reserve under the supervision of CORPOCALDAS, which he considered should be resolved in the light of a disciplinary process by CORPOCALDAS officials. Folio 362, review book.
[272] Folios 360 and 361, review book.
[273] Folio 361, review book.
[274] Folio 362, reverse, review book.
[275] Lawyer, member of the Environmental Law Research Group of the Externado University of Colombia.
[276] Ecocentric philosophy: Protection of biocultural rights of communities, to safeguard their close relationship with the natural environment.
[277] Indicates that in these laws Mother Earth is raised as a subject of rights.
[278] Explains that this philosophy establishes a new or legal value from the highest hierarchy to nature.
[279] M.P. Humberto Antonio Sierra Porto
[280] M.P. Jorge Iván Palacio Palacio
[281] M.P. Jorge Ignacio Pretelt Chaljub
[282] Folio 370, review book.
[283] Marine Biologist; Master's Degree in Science - Wildlife Management and Conservation from the National University of Colombia, Bogotá and Technician in Animal Health with emphasis on Wildlife from SENA.
284] (i) Free from thirst, hunger and malnutrition; (ii) Free from discomfort; (iii) Free from pain and disease; (iv) Free to express oneself; and (v) Free from fear and stress.
[285] Indicates four principles of Bioethics: (i) charity; (ii) non-maleficence; (iii) autonomy and (iv) justice.
[286] University Professor, PhD. in Philosophy from the Autonomous University of Madrid; Master in Philosophy from the Rosario University; Philosopher and Philosophy graduate; Researcher and lecturer in the Masters in Ethics and Contemporary Moral Problems of the Ethics Unit and the Philosophy Department of the Minuto de Dios University, Bogotá; Member of the Latin American Institute of Critical Animal Studies, and of the Transdisciplinary Research Group on Socio-ecological Transitions in Madrid, Spain; Researcher in the fields of Hellenistic Philosophy, Applied Ethics, Animal Ethics, and Discourses of Ecosocial Transition.
[287] He explained, in detail, why utilitarianism, understood as the reduction of suffering or pain and the maximisation of pleasure or bliss; total, non-individual bliss or suffering, is problematic, because the individual would only be a bearer of pleasure and pain, but not a limit to the action of the other. This justifies, in terms of animal ethics, the moral possibility that an individual can be sacrificed for the sake of happiness or general utility, as occurs in animal experimentation, animal husbandry and traditional bullfighting, among others.
[288] To support this point, he resorted to Martha Nussbaum's thesis, which combines moral theory with politics to establish that "as beings with interests, such as not feeling pain, and with capacities, such as affective filiation or play, among others, animals are susceptible to entering a framework of

justice that allows them the possibility of developing their lives in accordance with what they pursue, so they are included in the strict sphere of justice".Folio 374, reverse, Revision book
[289] Folio 337, review book.
[290] Folio 378, review book.
[291] Folio 378, review book.
[292] Order of 03 September 2018. Eighth and ninth paragraphs. To request the Autonomous Regional Corporation of the Atlantic and the Office of the Attorney General Delegated for Environmental Matters to carry out a visit to the Botanical and Zoological Foundation of Barranquilla – FUNDAZOO -, with the purpose of making a report in which the current conditions of the spectacled bear 'Chucho' are verified, especially the description of its habitat, the food provided, the veterinary care, its behaviour and routine.
[293] Technical Report of the Autonomous Regional Corporation of the Atlantic. Folio 451, review book.
[294] The response to the request made by the Autonomous Regional Corporation of the Atlantic corresponded to that received by this Corporation in response to the reference order, sent by the Botanical and Zoological Foundation of Barranquilla -FUNDAZOO
[295] Folios 449 to 454, review book.
[296] Folio 451, review book.
[297] Order of 04 October 2018, paragraph one. To inform the Alexander Von Humboldt Institute for Biological Resources Research of the present tutela action, so that it may submit its opinion on the case in question.
[298] According to the "National Program for conservation in Colombia of Andean Bear, Tremarctos Ornatus", developed by the Ministry of Environment, Housing and Territorial Development in 2006.
[299] Document reviewed by European Association of Zoos and Aquaria -EAZA-:"Guidelines on the Use of Ex Situ management for Species Conservation (2014)".
[300] Discussion: "In Search of Limits for the Supremacy of Man: A Reflection on Animals" Folios 499 to 532.
[301] Lawyer of the Rosario University, specialist in Constitutional Law at the Rosario University, and in University Teaching of the Center for Military Studies – CEMIL. He is pursuing a master's degree in Animal Law and Society from the Autonomous University of Barcelona (Spain).
[302] He stated that the reasons for this transfer were: (i) that the diet of the Andean Bear in the Río Blanco Reserve consisted of dog food, ignoring that its diet was fundamentally based on vegetables; (ii) as a consequence of the death of its sister Clarita, Chucho was plunged into a deep depression, a circumstance that was aggravated by not being able to share or interact with other individuals of the same species. Likewise; (iii) in the reserve where he was found, he only had the assistance of a veterinarian who had no experience in wildlife and (iv) the animal escaped on several occasions from the place where he was kept.
[303] Lawyer of the University of the North, Specialist in State Procurement of the Externado University of Colombia, LLM of Northwestern University with specialized studies in business administration of the IE. Executive Director and Partner of the firm AMT Legal Consultants based in Barranquilla.
[304] Folio 855, reverse, review book. Bold within text
[305] Folio 859, reverse, review book.
[306] Folio 797, review book.
[307] Folio 798, reverse, review book.
[308] Strengthen the study of environmental conditions that have allowed the permanence of specimens of the species.
[309] Strengthen knowledge and management of bear populations maintained in zoos, through which repopulation programs can be generated.
[310] Implementation of regional education programmes for environmental action, aimed at the communities so that they themselves can propose solutions to their environmental problems, in order to determine how these affect the survival of the bear populations still present and at the same time learn about the role of the species in the ecosystem.
[311] (i) in situ conservation, maintaining landscape units that contain viable populations of Andean bears in the long term; (ii) ex situ conservation, studies of the biology and physiology of bears in

captivity; (iii) sustainable management, a model for the use and management of priority natural populations for the conservation of the species, and management plans for their recovery; (iv) environmental education, which seeks to ensure that the actors involved in human-bear relations are involved in a positive way; and (v) institutional strengthening, to train and educate personnel, and to have scientific, technical, administrative and economic support that allows for the development of the different lines of action of the plan.
[312] Information submitted to the Humboldt Institute.
[313] Folio 795, reverse, review book. Quote from a report submitted in June 2019 by CORPOCALDAS.
[314] Conservation of protected areas of the System, leading the System and promoting other conservation strategies with the participation of various actors, promoting governance models
[315] Folio 1009, review book.
[316] Folio 866, reverse, review book.
[317] Folio 867, review book.
[318] Veterinary Physician and Zootechnist, with a Master in Agroecology, has served as Specialized Professional in Biodiversity and Ecosystems of CORPOCALDAS, for 25 years, in which he has led the process of protection of wildlife in the Corporation.
[319] Folio 777, review book.
[320] Folio 778, review book.
[321] Ibídem.
[322] Information obtained from: https://www.santuarioosodeanteojos.org/.
[323] Folio 796, review book.
[324] Representative to the House of Congress of the Republic for the constituency of Bogotá, elected by the Liberal Party. He is a member of the First Permanent Constitutional Commission.
[325] In his opinion, Judgment C-467 of 2016, which declared the articles of the Civil Code that granted animals the status of semi-movable movable property and immovable property by destination, is an example of the political reason that has prevented the recognition of animals as subjects of rights: "we do not want to assume the need for a change (...) such recognition would generate a conflict with the production of raw materials (meat, dairy and fur), research and experimentation for scientific and industrial purposes, the use of animals as a work force or public spectacles and the keeping of domestic and wild animals". Folio 827, review book. Bold and underlined within the text.
[326] He highlighted the importance of the entry into force of Law 1774 of 2016, which modified the conception of animals as movable semi-moving goods to sentient beings, a situation that ended up turning the life and welfare of animals into legal goods of greater entity, introducing a new title to the Criminal Code called "Crimes against the life, physical and emotional integrity of animals".
[327] Folio 828, review book.
[328] Folio 830, review book.
[329] Folio 832, review book.
[330] Lawyer from Boston University School of Law with a degree in chemistry from the College of William and Mary. He is the founder and president of The Non-human Rights Project. The Non-human Rights Project has been litigating the issue of the personhood and fundamental legal rights of non-human animals in US courts by filing, to date, nine habeas corpus cases on behalf of chimpanzees and elephants incarcerated since 2013 in New York State and Connecticut.
[331] He cited cases from the Supreme Court of India and Argentina.
[332] Parliament and Courts of New Zealand.
[333] PhD in Political Science from the Pontifical Catholic University of Argentina (Buenos Aires). Lawyer at the Pontifical Bolivarian University (Medellin), where he also studied Philosophy. He is currently an associate professor at the University of La Sabana.
[334] Folio 848, reverse, review book.
[335] Folio 849, review book.
[336] Folio 850, reverse, review book.
[337] Director of the Institute of Public Comparative Law and International Law in Heidelberg, Germany. She has been a professor at different universities, such as the University of Heidelberg, Freie University Berlin, Basel University in Switzerland, and the University of Michigan.

[338] Research professor at the Catalan Institution for Research and Advanced Studies in the Department of Law at Pompeu Fabra University, where she conducts research in the field of the philosophy of law. She holds a PhD in Philosophy from the University of Oxford and has focused her research on issues of ethics and moral philosophy linked to global and environmental justice, such as the relationship between climate change, social inequalities and animal ethics.
[339] Folio 877, review book.
[340] Folio 882, review book.
[341] Folio 886, review book.
[342] Folio 890, review book. Emphasis on text
[343] (i) how much is lost in death "(K-animals with long lives, rich in learning experiences, exploring vast territories in the company of our loved ones, we have to lose in losing our lives)"; (ii) the suffering of loved ones in loss; and (iii) the attachment they have to their future. Folio 891, review book.
[344] K-animals have a strong interest in freedom independent of its effect on welfare. “We, for example, would never prefer someone to control our lives, even if it would improve our health and longevity. A shrimp, on the other hand, cannot distinguish the pond in which it lives from the one in which it is imprisoned (...)”.
Folio 893, review book.
[345] “When an animal or a child, even an intelligent one, cannot understand why it is alone or locked up, its suffering is greater than that of an adult who understands the situation. And in philosophy, we have not yet found any reason why suffering of the same type, intensity and duration has greater moral significance because it is part of the life of a human or non-human. If the suffering is identical, its significance is also equal.” Folio 893, Revision book
[346] Folio 894, review book.
[347] Lawyer from the National University of Rosario in Argentina. She holds a Master’s degree in Criminal Law from the Austral University, her thesis is entitled “The legal right in the crime of animal abuse” supervised by E. Raúl Zaffaroni. She teaches Criminal Law at the University of Buenos Aires and the National University of Rosario. She is Coordinator of the Commission of Young Penalists of the Argentinean Association of Professors of Penal Law. She is an official at the Prosecutor’s Office Nº4 before the Federal Chamber of Criminal Cassation.
[348] Folio 836, review book.
[349] Folio 837, review book.
[350] Folio 387, reverse, review book.
[351] Folio 840, Revision book
[352] Folio 845, review book.
[353] Assistant Professor at the Faculty of Law of the University of Alberta. Her research focuses on animals and law, constitutional law and comparative constitutional law, equality and anti-discrimination law, feminist legal theory, intergenerational justice, and law and social movements.
[354] She mentioned the constitutional texts of Brazil, Egypt, Germany, India, and Switzerland that explicitly protect animal rights.
[355] She referred to the bear’s episode of depression after his sister Clarita’s death, as evidenced by veterinary reports.
[356] Law 1774 of 2016, “amending the Civil Code, Law 84 of 1989, the Penal Code, the Code of Criminal Procedure and other provisions”.
[357] Here she referred to "more than twenty relevant constitutional rulings in ten Latin American countries, including actions of unconstitutionality (e.g. Colombia, Brazil and Peru), appeals for amparo (e.g. Costa Rica), collective actions (e.g. Bolivia) and indirect amparo trials (e.g. Mexico). The habeas corpus action has also been used. The first case was in 2005 in Brazil. In Argentina it has recently been successful twice - in 2016 and 2017 - securing semi-freedom for two primates called Cecilia and Sandra, who, after living for more than 30 and 20 years confined in zoos, now finally have the opportunity to participate with other individuals of the same species, move around, climb, play, explore and develop their natural abilities in the protected environments of the sanctuaries".
[358] She explained the premises on which this theory is based: (i) there is considerable scientific evidence that some species have cognitive, mental, self-awareness and moral capacities, attributes not possessed by all people - for example by people with some types of disabilities; (ii) recognising animals as subjects of rights does not imply assigning them, reciprocally, duties; (iii) recognising basic rights to

animals does not pose any threat to the rights of human beings; (iv) the lack of material and legal capacity to claim their rights, does not mean that they should not be guaranteed.