Equality and Environmental Protection: a constitutional approach in the Navarro case

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Environmental protection and social justice are often in tension and not infrequently can have contradictory and overlapping objectives. The “Navarro” Case, of the Colombian Constitutional Court, illustrates these tensions and serves as an example of what has been referred to as an environmental justice case or, in this particular case, an “environmental justice case in reverse”. Privileging an environmental justice and a socio-legal approach, the article presents the facts of this interesting case along with an analysis in which it will be argued that environmental policy controversies cannot be separated from power, social and economic rights issues. Environmental regulations should guarantee that individual and social rights are not unreasonable affected, must take into account elements of power, equality and social justice and include the participation of disadvantaged groups in the decisions and implementation of procedures and regulations. The “Navarro” case demonstrates that actions taken to ensure environmental protection are inseparable from social justice and equality.

La protection de l’environnement et la quête de la justice sociale entrent souvent en tension. Il n’est pas rare qu’elles donnent lieu à des objec-tifs contradictoires ou se chevauchant. L’affaire “Navarro”, à la Cour constitutionnelle de Colombie, illustre ces tensions. Cette affaire constitue un exemple de ce que certains appellent la justice environnementale, ou plus particulièrement « la justice environnementale à l’envers ». En privilégiant une approche de justice environnementale et socio-juridique, cet article présentera l’affaire « Navarro » et en fera l’analyse. Il sera argumenté que les controverses de politiques environnementales ne peuvent pas être déliées des rapports de force et des problématiques de droits sociaux et économiques. La régulation de l’environnement devrait garantir que les droits sociaux et individuels ne soient pas affectés déraisonnablement. Elle devrait aussi prendre en compte les relations de pouvoir, l’égalité et la justice sociale, et inclure les groupes désavantagés dans les prises de décision et la mise en œuvre de la régulation. L’affaire « Navarro » démontre que les actions prises pour protéger l’environnement sont indissociables de la justice sociale et de l’égalité.
In 2009, the Colombian Constitutional Court ("the Court") handed down an important decision which validated the claim of a group of recyclers from the city of Cali in order to protect their fundamental rights to work and to a life of dignity. The recyclers initiated a lawsuit against the municipality responsible for closing the Navarro landfill. In order to comment on this judicial decision ("the Navarro case"),¹ we must first discuss the socio-juridical context in which the Court delivered the opinion, with a special focus on the Latin-American region. The Court and its jurisprudence represent a dynamic expression of social and economic rights within the region. The approaches taken by the Court to resolve conflicting social, economic and environmental rights should be of interest to jurists in similar fields around the globe. As constitutional law expert, Roberto Gargarella, has stated:

This Court represents, probably, the most sophisticated example of a Court fully engaged with the application of both social rights and deliberative democracy. The Colombian Court examined numerous cases involving social rights and its decisions have generally respected the deliberative democratic process. The Court has accepted numerous popular complaints (motions for legal protection) directed to the application of the social and economic rights ... The interesting thing about the Colombian Court is the extreme care it has taken in its decisions to ensure that its “activism” remains compatible with its respect for deliberative democracy.²

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¹ Colombia, Constitutional Court, Decision T-291 (2009) [Navarro].
² Roberto Gargarella, “¿Democracia Deliberativa y judicialización de los derechos sociales?” in Roberto Gargarella & Marcelo Alegre, eds, El Derecho a la Igualdad (Buenos Aires: Lexis Nexis, 2007) at 138 [translated by author].
In recent years, Colombia has heard a series of key constitutional cases regarding the social and equality rights of those who have traditionally experienced discrimination, and has seen the judicial implementation of the concept of participatory democracy. In one well-known case, the Court declared that discrimination between same-sex and heterosexual couples is unconstitutional.\(^3\) Other examples include a judgment preventing discrimination due to HIV/AIDS-related leprosy, extreme poverty and old age.\(^4\) The Court has also held that a second re-election of a former president undermined basic constitutional principles\(^5\) and forbade the penalization of abortion.\(^6\)

These judicial opinions were all delivered after the Colombian Constitution was adopted in 1991—a constitution which Colombian law professor Daniel Bonilla Maldonado has described as a multicultural constitution.\(^7\) The Colombian Constitution of 1991 recognizes the diversity of identities and realities present in Colombia—\(^8\) from native groups to Afro-Colombians—and includes a series of advanced social and political rights necessary for a participatory democracy. This recognition of diversity has been a key symbol in Colombia’s move towards the advancement of social and multicultural rights.\(^9\)

Environmental law is not immune to the new constitution either. The Colombian Constitution guarantees in Chapter 3, Concerning Collective Rights and the Environment, Article 79, that: “Every person has the right to enjoy a healthy environment.”\(^10\) The right to enjoy a healthy environment and environmental protection are necessary components of the participatory democracy established under the constitution. It follows from the same Article 79 that even laws that guarantee a right to a healthy environment should not disregard participatory imperatives nor, as we will see further on, the social impact on vulnerable groups. The Court reads the constitutional text as requiring that the government facilitate the community’s participation in the decisions that may affect it.\(^12\) Moreover, other articles in the Constitution discuss conceptions of environment rights as a collective right, and the use of natural resources as according to the public interest and in accordance with sustainable development principles.\(^13\)

\(^3\) Colombia, Constitutional Court, Decision C-075 (2007); Colombia, Constitutional Court, Decision T-411 (2000); Colombia, Constitutional Court Decision T-177 (1999).

\(^4\) Colombia, Constitutional Court, Decision C-741 (2003).

\(^5\) Colombia, Constitutional Court, Decision C-141 (2010).

\(^6\) Colombia, Constitutional Court, Decision C-355 (2006).


\(^8\) Constitution of Colombia (1991 Rev Ed), arts 1 and 7 [Constitution of Colombia].

\(^9\) For an interpretation of the application of the Constitution, see Colombia, Constitutional Court, Decision C-030 (2008) [Decision C-030].


\(^11\) Constitution of Colombia, *supra* note 8 at art 79.

\(^12\) Colombia, Constitutional Court, Decision T-595 (2002).

\(^13\) See e.g. Constitution of Colombia, *supra* note 8 at art 82.

\(^14\) *Ibid* at art 80.
Two notable environmental cases have been decided in the past two years. The first is the constitutional invalidation of the Forest Law\(^{15}\) for violating the fundamental constitutional rights of native and Afro-Colombian communities, including their right to prior consultation.\(^{16}\) Article 330 of the Constitution guarantees the right to prior consultation.\(^{17}\) The Forest Law allowed for the exploitation of land but omitted the requirement to consult with indigenous and tribal communities, who were directly affected by such undertakings. The case marks an important judicial development for the legislative processes and guarantees of respect for participatory democracy even in an environmental regulation context. Although it does not directly involve environmental rights, this case is nonetheless interesting for sustainable development, as it further highlights that, as a fundamental constitutional right, the social component of communitarian participation is essential to any environmentally protectionist approaches.

The second case—which I will summarize and comment on in this article—is known as the “Navarro” Case.\(^{18}\) A very interesting and extremely important precedent, it illustrates the contradictory and overlapping nature of the objectives of environmental protection and social justice, as well as the tensions that animate the relationship between equality, social, and economic rights when environmental policies are implemented. The case illustrates a way of viewing environmental protection in light of issues of power and justice, and highlights the vulnerability of socially marginalized and disadvantaged sectors.

In what follows, I will outline the facts of the case, the decision, the legal elements of the case and my comments. I will elaborate on how this case is an example in Latin America of

\(^{15}\) Law 1021/06, Diario Oficial (Colom), 24 April 2006, 46.249.

\(^{16}\) Decision C-030, supra at note 9. For an comprehensive analysis of this case, the documents presented before the Court and the decision of the Constitutional Court, see D. Bonilla, Justicia colectiva, medio-ambiente y democracia participativa (Bogotá: Universidad de los Andes, 2009). See especially Colin Crawford, “Derechos culturales y justicia ambiental: lecciones del modelo colombiano”, in D. Bonilla, *ibid*.

\(^{17}\) Constitution of Colombia, *supra* note 8 at 330

\(^{18}\) *Navarro, supra* note 1.
what has been referred to as an environmental justice case. As readers will note, my analysis will privilege an environmental justice approach over a sustainable development point of view. From this point on, it should be noted that, following Enrique Leff, my approach to environmental issues and environmental legal cases, such as the one I comment on here, is a socio-legal approach, in which I see environmental issues as social and political issues to be examined through the lens of environmental justice.

2. THE NAVARRO CASE: RECICLADORES V. EMPRESA DE SERVICIO PÚBLICO DE ASEO DE CALI

In this case, a group of recyclers from the city of Cali, Colombia, initiated a lawsuit against the municipality responsible for closing the Navarro landfill to protect their fundamental rights to work and to a life of dignity. Since 1976, the Navarro landfill has been used as a landfill for household solid waste. Since then, thousands of Colombian families have derived their basic sustenance by rescuing material inputs such as plastics, papers, glass, steel, among others. Despite the subhuman conditions, this activity has provided a decent income for these families, and in fact their only way to survive in the informal sector. As explained by Rodriguez

19 Succinctly, environmental justice refers to “a just distribution of environmental goods and bads among human populations” (According to the Environmental Protection Agency of the United States, environmental justice is defined as: “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” Environmental Protection Agency, “Environmental Justice” (May 4, 2011), online: <http://www.epa.gov/environmentaljustice/>). In addition, according to an Executive Order emitted by the President of the United States in 1994 environmental justice is defined as “identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States.” Exec. Order 12898 (1996). According to Andrew Dobson, environmental justice means “a just distribution of environmental goods and bads among human populations”, Andrew Dobson, *Justice and the Environment: Conceptions of Environmental Sustainability and Theories of Distributive Justice* (New York, Oxford University Press, 1998) at 20. Beyond this brief definition, Peter Newell explains that “[e]nvironmental justice can be understood both as a discourse of popular mobilization and as a set of principles for analysis and interpretation. It provides a rallying cry for socially marginalized communities disproportionately exposed to polluting industry and destructive investment practices. The analytical frameworks offered by the theory and practice of these movements also serve to highlight key questions of equity, justice, and participation in the study of environmental politics” (Peter Newell, “Contesting Trade Politics in the Americas: The Politics of Environmental Justice” in David V Carruthers, ed, *Environmental Justice in Latin America* (Massachusetts: MIT, 2008) 49 at 50-51).


21 Leff, supra note 20.


23 *Navarro*, supra note 1 at 3.
Garavito, many of the recyclers, previously identified as ‘basureros’, managed to start a series of recycling cooperatives with great success, in the process tackling negative impacts from global markets that directly and indirectly exclude them from formal economic activities.24

As part of their environmental public policy, the Colombian government decided years ago to close open landfills.25 This action was taken, and justified, due to the number of environmental problems open landfills usually cause, including air pollution, soil erosion and adverse effects on the population’s health. Even though this decision had been made years many years earlier, it was only two weeks before the closure of the Navarro landfill that the municipal authorities agreed to meet with the group of recyclers affected by the closure. The newly adopted decision prohibited the recyclers from carrying out their informal work activities. 26 After recognizing the impact such an action would have on the informal sector for recycling activities and the recyclers’ quality of life, the authorities agreed to provide them with, among other things, employment opportunities, training, health, and education.27 However, as the Court fully explains, these commitments were not honored.28 On the contrary, the substitution process for the management of solid waste in the city was awarded to and completed by other private companies and it completely excluding the recyclers from the bidding process. 29 Therefore, the recyclers were left without any type of economic activity, formal or informal, and had no alternative ways to make a living.

Confronted with this situation, the recyclers asked the Constitutional Court to recognize their fundamental rights and to grant a specific relief against the governmental agencies following the principle of legitimate expectations.30 Finally, the defendants asked the Court to strike down the prohibition of their recycling activities, their only source of income.

The government denied any violation of the recyclers’ fundamental rights. In summary, they presented three arguments: (1) that their actions were taken following general rules in order to protect the environment; (2) that they had not prevented the recyclers to participate in recycling as an economic activity; and (3) that they have only established general and abstract rules. They further claimed that they were not obligated to take positive actions towards the recyclers of Navarro, because there was no a contractual relationship between them.31

Furthermore, in this case, the municipal officials presented one of most common arguments offered by government agencies when confronted with the social impact of environmental policies. They argued that because their government agency’s competence and expertise are exclusively in the domain of environmental matters and exclusively related to “environmental issues”, they are not obligated to solve other social problems that may result from the adop-

25 Navarro, supra note 1 at 6.
26 Ibid at 6.
27 Ibid at 60-61.
28 Ibid at 63.
29 Ibid at 67-68.
30 Ibid at 34.
31 Ibid at 42.
tion of environmental public policy. In this way, the agency attempted to shirk responsibility for the social impact caused by the closure of the landfill. In this view, environmental policy is fragmented and is seen as something detached from any other social issues. Instead of promoting sustainable development policies that incorporate awareness and appreciation of social consequences, the agencies adopted a sort of ecological or conservationist approach that ignored and consciously excluded the consideration of social issues such as the vulnerability of certain social sectors, as well as the relationship between their decision, social inequality, and poverty. I will contend that this case differs from other environmental justice cases because it relates to a decision to improve the environment that disproportionately affected a vulnerable community, rather than a situation in which a community suffered the disproportionate burden of environmental degradation. This situation illustrates the various ways in which the concept of environmental justice can be challenged. It is an “environmental justice case in reverse”. I elaborate on this idea below.

As Carruthers notes, environmental justice is mostly recognized as “the rallying cry raised against environmental racism in United States communities of color from the mid 1980’s onwards”. In the United States, the term is usually used in reference to the resistance of African American, Latino and Native American populations to disproportionate threats against their communities. However, “narratives of social justice and environmental well-being also come together in many other forms and in many other places”. That is, environmental justice in Latin America will not necessarily share “hypotheses, assumptions, images, or political ramifications that would be most familiar to US activists and analysts”. When I speak of an environmental justice approach, I will use it in the way it has been used in the Latin American context, as it considers important questions about Latin American inequality and concerns for social justice. In this sense, it is different from the term “sustainable development”, as the former has been a way for grassroots and academics worldwide to fuse environmental concerns into struggles for social justice.

It is also important to highlight that environmental justice issues can raise questions related to two types of inequity: distributional inequity and procedural inequity. The first refers to the way in which a particular community or group is disproportionately exposed to environmental damage or impact. The latter refers to a request for greater political participation. In other words, we can identify an environmental justice case when a particular group has been disproportionately exposed to or is vulnerable to an environmental hazard, but also when par-

32 Ibid at 42.
33 David V Carruthers, “Introduction” in Carruthers, supra note 19 at 1-2 (like Carruthers, I will use the term “environmental justice” here in the amplest sense—in relation to social justice claims to which the environmental elements are added—although, as he also explains, I recognize the term was coined as part of the context of social mobilization of minority sectors in the United States). See Richard J Lazarus, “Pursuing Environmental Justice: The Distributional Effects of Environmental Protection” (1993) 87 NW UL Rev 787. On the discursive and symbolic use of this term in Puerto Rico, see Érika Fontánez Torres, “Primera Jornada Ambiental 2006: Una agenda Académica y de acceso a la Justicia” (2006) 75 Rev Jur UPR 465. It has also been called environmentalism of the poor in the Latin-American context (See Joan Martínez-Alier, The Environmentalism of the Poor (Cheltenham: Edward Elgar Publishing Ltd, 2002) at 10-11).
34 David V Carruthers, “Introduction” in Carruthers, supra note 19 at 2.
ticular environmental policies, deregulation procedures, environmental permits, concessions or regulations are adopted through the deliberated exclusion of socially and economically disadvantaged groups. Paradoxically, such environmental justice cases usually arise when the government is reluctant to take environmental protection measures in order to protect the most vulnerable groups, perhaps due to social and political pressure from powerful interest groups who would be negatively affected by such regulation. In the Navarro case, on the contrary, the public service agents, in fact, adopted an environmentally-sound measure by closing a polluted landfill. The problem is that this decision negatively affected the living conditions and basic needs of a disadvantaged group, and essentially excluded the social justice ramifications on this group from the analysis. Additionally, this disadvantaged group was excluded from participating in either the decision-making process or any efforts to mitigate the negative impact on their livelihoods. This is why I call the Navarro case an “environmental justice case in reverse”.

Having said this, I will argue that, neighborhood and other popular movements (such as those of shanty town dwellers in the Latin American region) as well as environmental controversies cannot be separated from issues of social and economic rights, such as the struggle for education, land titles, public services and full political participation as equal citizens. In other words, environmental issues and social justice issues should not and cannot be analyzed in isolation. The Constitutional Court adopted this integrated approach in the Navarro decision. Therefore, I celebrate its decision.

The Court ruled that the case before it should be analyzed primarily under Article 13 of the Colombian Constitution. This article states:

**Article 13.** All individuals are born free and equal before the law and are entitled to equal protection and treatment by the authorities, and to enjoy the same rights, freedoms, and opportunities without discrimination on the basis of gender, race, national or family origin, language, religion, political opinion, or philosophy.

The State will promote the conditions necessary in order that equality may be real and effective will adopt measures in favor of groups which are discriminated against or marginalized.

The State will especially protect those individuals who on account of their economic, physical, or mental condition are in obviously vulnerable circumstances and will sanction any abuse or ill-treatment perpetrated against them.

Broadly speaking, the Court came to the conclusion that in the decision concerning the closure of the Navarro landfill and the bidding process for the management and utilization of the solid waste from the city of Cali, the government not only engaged in discriminatory treatment by excluding the recyclers from participating in the gainful economic activity of recycling, but also failed in its duty to take affirmative actions to compensate and mitigate the marginalization of the affected citizens. It further concluded, that the breach of the commitments made with the recyclers infringed the principle of legitimate expectations.

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36 Navarro, supra note 1 at 1.
37 Constitution of Colombia, supra note 8 Article 13.
38 Navarro, supra note 1 at 34.
39 Ibid.
40 Ibid.
As I have said before, this Court’s opinion becomes particularly relevant to any approach that seeks to address environmental controversies in light of sustainable development policies, but especially from an environmental justice approach. The Court sees the issue as more than just a policy taken to deal with the problem of solid waste management. The Court asks itself three fundamental questions: (1) Is the right to equality violated when the government takes measures, establishes a program or promotes a public policy, in this case environmental policy, and impacts disproportionately a marginalized group without taking affirmative action steps to mitigate the negative impact? (2) Is the right to equality violated when general and abstract rules are established, but have the effect of preventing the development of a productive activity by a group (in this case marginalized) and the very affected group is in a position of particular vulnerability as a result of such rules? (3) Are the legitimate expectations of these groups frustrated when, days before the closure of the Navarro landfill, governmental agencies undertook a series of commitments for the creation of new jobs, training, education and health, which later were breached using the argument that the agencies’ environmental responsibilities and limited public policy competence do not endow them with social obligations to these groups? The Court answered all three questions in the affirmative.

One of the main elements of this Court opinion is the holistic approach taken by the Court to address the issues of the implementation of environmental policies. The Court interprets the authorities’ environmental duties under the light of the fundamental right of equality guaranteed by the Colombian Constitution. The Colombian Constitution recognizes equality beyond the classic formula of equal protection of the laws, and the Court highlights that this fundamental right guarantees and promotes the conditions for material equality. The Court holds that a clear and central purpose of the equality clause is the protection of groups traditionally discriminated against or marginalized. In a social welfare State, this protection is articulated on two dimensions: (1) as a mandate to abstain from or a prohibition of discriminatory treatments (a negative liberty) and (2) as a mandate of intervention, where the State is obligated to undertake actions aimed at overcoming the material conditions of inequality faced by these groups (positive liberty).

Therefore, Article 13 of the Colombian Constitution seeks to do more than simply prevent the State from implementing a measures, program or policy (a ‘State action’ in a traditionally constitutional way of speaking) that is openly discriminatory against two or more individuals. From this broader understanding of equality, the justice implications arising from the adoption of environmental policies do not only concern questions around how a governmental regulatory mechanism interacts with private property, as has largely been the case in countries like the United States and Puerto Rico. The right to equality must also include the guaran-

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41 Ibid at 42-43.
42 Ibid at 43.
43 Ibid.
tee that State actions—even if they are in favor of environmental protection-- should not, in reality, disproportionally impact marginalized or discriminated-against groups. In other words, environmental regulations should not only guarantee that individual rights are not unreasonably affected, but they should also address social justice concerns by ensuring that they do not negatively impact the equality, social, and economic rights of those suffering from both the environmental hazard and from a lack of a stable livelihood.

What is the broader implication of this case? When formulating public policy, the government has a duty to protect the property rights of affected individuals and sectors. According to Colombian constitutional law, the State also has a duty to demonstrate that, if its policy disproportionately affects a marginalized group, the policy fulfills constitutionally-mandated conditions of reasonableness and proportionality. Furthermore, the government should guarantee that its implementation has been accompanied by affirmative actions aimed at countering the adverse effects that will be generated for a marginalized or discriminated group. This is what integrated and sustainable development is in all cases and this is what an environmental justice approach seeks when it claims to add a dimension of justice to the environmental inquiry.

One of the main elements of this opinion is that although government authorities have the power to advance environmental policies and programs and orient measures towards environmental protection, these measures should not be advanced in a way that disproportionally injures the rights of the most vulnerable and poor sectors of the population. Nor should it deprive those without economic opportunities in the formal sector to the only lawful means of subsistence at their disposal.45

However, just as the Court did, it is important to ask who should be considered as a marginalized or discriminated group. The Court endorses the proposition that a “disadvantaged group” has at least three characteristics. It is (1) an organized social group with its own identity, so that it is possible to speak of the group, with no need to make particular reference to each one of the members that compose it; (2) a group that has been in a situation of prolonged subordination; (3) a group to which political power is severely limited.46

As the Court explains, many of the recyclers in Colombia—particularly those who work in landfills, called disdainfully “basureros”—live in conditions of extreme poverty, marked by high levels of discrimination and exclusion.47 The prejudices against recyclers are of such magnitude that the Court has stated that efforts to get rid of them have effectively escalated into campaigns of social cleansing.48 Therefore, in order to guarantee equal treatment for these citizens, the authorities must not only abstain from aggravating the situation further, but they also have the obligation to adopt positive measures to improve the recyclers’ conditions of life and to guarantee social rights and equal opportunities for them.

We also see the Court taking an integrated approach to environmental protection. The environmental norms, the Court explained, pursue a common objective: to guarantee that the correct management of solid waste is not only efficient, but that it does not put human

45 Navarro, supra note 1 at 49.
46 Ibid at 54.
47 Ibid at 57.
48 Ibid at 58.
health in danger or adversely affect the environment.⁴⁹ The Court found that although most of government’s decisions are of a general nature and occasionally make explicit reference to the recyclers with the purpose of at least formally promoting their participation, other seemingly-neutral measures have a disproportionate impact on the recyclers, depriving them of their livelihood.

As the Court explains, the State must demonstrate that in spite of the effects being disproportionate, the adopted measures or policies are reasonable and proportional, and are accompanied by other directed actions to mitigate the adverse effects from which the marginalized group suffers.⁵⁰ Furthermore, the authorities have the obligation to actively promote the participation of the recyclers in the solid waste recovery activities and its market.⁵¹

For the Court, there is no doubt that the decision to close the Navarro landfill fulfills an urgent constitutional demand: to guarantee environmental and health conditions. However, it is also an unquestionable fact that the decision to close the landfill had a negative impact on great proportions of the marginalized people who depended on recycling to survive. As a result, the Court found that the decisions on the handling of solid waste had to be thought of, not only in terms of efficiency and suitable environmental handling, but also in terms of its social impact.⁵² This is exactly what I referred to and explained before when I contended that the Court adopted an environmental justice approach in this decision.

The facts of this case illustrate what can happen when a government adopts a sustainable development agenda that promotes the protection of the environment does not also take into account the social aspects of its programs and their impacts on marginalized groups. From an academic and an activist point of view, however, this is a classic environmental justice issue, and the Court addresses it in this case. The Court makes it clear, through this decision, that under the Colombian Constitution, any environmental approach or policy must take into account the issues of power and social justice. It is impossible, even legally speaking, to turn a blind eye to the vulnerability of the groups who not only suffer disproportionate negative environmental impacts⁵³, as proponents of environmental justice movements have warned, but paradoxically are also directly disadvantaged when policies in favour of the environment are adopted. Often, economically disadvantaged groups are skeptical of environmental policies because their implementation can leave the groups more socially and environmentally vulnerable. In many cases, governments refrain from regulating economically powerful sectors for political reasons, instead adopting “neutral” environmental measures that adversely impact mostly vulnerable and marginalized populations without taking into account or ameliorating the worsened social inequality.

⁴⁹ Ibid at 61.
⁵⁰ Ibid at 64.
⁵² Ibid at 81.
⁵³ See e.g. Carlos Reboratti, “Environmental Conflicts and Environmental Justice in Argentina” in David V Carruthers, ed, Environmental Justice in Latin America (Massachusetts: MIT, 2008) 101 at 102
In this sense, the Colombian Constitution facilitates what many groups and environmental scholars have called for—an environmental policy approach that incorporate social justice perspectives into the decision-making process. In many ways, environmental controversies and decisions can be explained by race, class and other power variables. As David Harvey explains, environmental and social issues are often inseparable. Therefore, environmental justice approaches reaffirm the need to establish new power relations, and emphasize environmental inequality as yet another issue that should be analyzed through the lenses of equality and social justice.

Finally, as explained above, the Court found that the authorities violated the recyclers’ right to equality, as well as their legitimate expectations that the recyclers had based on representations made to them by the government after the agreement to close the landfill. It also concludes that although the closing of the garbage dump is consistent with the environmental and technical obligations as well as the general powers of the government, the municipality was nevertheless further obligated to diminish the impact that the closing would have on recyclers and to adopt positive measures to alleviate the adverse effects on this marginalized group.

There is no doubt this judicial decision is a noteworthy one in more than one sense. However, for the purposes of environmental equality and social justice, the most outstanding aspect of this case is that the Court explicitly applied the important principle that actions in favor of protecting the environment must also take into account elements of power, equality and social justice. It is absolutely necessary to provide for the inclusion and participation of disadvantaged groups. This incorporation should be seen not as an additional layer or an additional framework to be added to “the environment”, but rather, it should be viewed as an intrinsic part of environmental issues and policies. If not, as Aledo Tur has stated, environmental or ecological measures and discourses are inexorably driven towards complete failure. In summary, what I see as the most important contribution from this Court—not only for the Colombian context but also for the entire region—is precisely that endeavours that seek to protect the environment is something inseparable from social justice and equality.

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