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River lives, River movements. Fisher communities mobilizing local and official rules in defense of the Magdalena River

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ABSTRACT

The Magdalena River, Colombia's main river backbone, features multiple tensions and socio-environmental conflicts. They manifest themselves in the river's ecological degradation and negatively impact the riparian communities and artisanal fishermen, whose productive activities and rights of access to water are restricted. For these communities, the river is a means of passing down and exchanging knowledge between generations. However, their knowledge and practices are not recognized in the dominant governance processes over the Magdalena River. In an interview with Juan Carlos Gutiérrez-Camargo, environmental activist, researcher and companion of artisanal fishermen, we illustrate the universe of epistemologies and worldviews of these communities. We discuss, from a legal-pluralism perspective, the contradictions between state norms and authorities, parastatal powers, and the customary rights of fishing communities. We analyze how the simultaneous presence of various authorities and the complex, unequal arena of legal, extra-legal and illegal forces, hinders enforcement of fishermen's customary socio-legal repertoires and also of the Colombian Constitution to protect riverside communities' human rights. The interview reflects on the great complexity of exercising community leadership, environmental protection and defense of artisanal fishing in the midst of a socio-normative political arena permeated by state abandonment and paramilitary violence. For this reason, the interview stresses the importance of recognizing artisanal fisher collectives as political subjects in river co-governance. It also highlights the ambivalent implications of granting rights to nature and rivers: their meaning, functions and impact depend on their political trajectory and mobilization by grassrooted collectives. Finally, Gutiérrez proposes strengthening knowledge networks to bolster river co-governance where the political-cultural and socio-normative frameworks of riverside communities play a preponderant role.

KEYWORDS

Fisher communities;
environmental justice;
legal complexity;
Magdalena River;
Colombia

On the banks of the river

“The Magdalena River is rich and diverse, because it crosses all of Colombia from south to north, almost completely. It runs through about 1600 km from the country’s southern end. It is an inter-mountain-range river, which crosses nearly 12 departments. Here, from where we are working, it begins to be called Magdalena Medio, and runs north to the Caribbean region, down from paramo moors at 4000 meters to the sea in Barranquilla, in Bocas de Ceniza. What happens in this river? It has many tensions and ecological deteriorations, which cause conflicts and major problems. On the one hand, sedimentation and pollution that comes down from the main cities. Thousands of swamps are currently being lost and degraded, the water habitat of fishermen, the ‘water people’, those ‘amphibious communities’ as Orlando Fals Borda (1979) called them. This Colombian researcher told the Colombian nation: ‘Hey, pay attention, there are water people, there are people who have become accustomed to that way of life, and it is changing.’ Already in the sixties, he began to realize that it was under huge pressure. Invading actors and entities began squatting, fencing and privatizing swamps so, by now, islands and bends of rivers and swamps have private owners, even though they are public property.”

The person speaking is Juan Carlos Gutiérrez-Camargo, deputy director of Fundación Alma, environmental activist, a researcher committed to the social and ecological reality of the Magdalena River, a defender and companion of artisanal fishing communities. Before our interviews with Juan Carlos about his perspectives on the fishing communities of the Magdalena River – their daily struggles, their hybrid socio-legal repertoires, and their relationships with state, private, and community authorities in this difficult socio-environmental environment – we met with him as he conversed with artisanal fisherman, Horacio Rodríguez. On the river banks, Horacio complements Juan Carlos’ words:

“The river, for me, is my company, it’s my future. It’s my everything. We fishermen, from a very young age, connect with nature. However, we are losing the water of the Guarinó River, we’re losing the Magdalena River’s connectivity, we have the problem of ploughing in the sewer, but then we got a bigger problem, the Timbo dam. That dam hoards a lot of water upstream and not enough water gets here, so our river can’t have the abundant water it used to have. A lot of water was lost. The river is a fundamental part of us, here in the Guarinó wetlands. The river is essential, because it feeds us with fish, stocking the swamp of Guarinó, the swamp of Guarinocito. All of that was lost. The Magdalena is everyone’s, but with so many dams they are making, with so much crap happening, they are leaving us locked here in Guarinó swamp.”

Such comments get to the bottom of the problems many rivers and riverside communities have around the world. Rivers tamed, dammed, channeled, privatized, polluted, with the rivers’ co-managing peoples and communities being marginalized and silenced. For this reason, beginning the transdisciplinary research and translocal action projects “Riverhood” and “River Commons”¹, we spoke with Juan Carlos to better understand the interaction between customary and official laws in the Magdalena River’s

environments and its fishing communities.² The two projects seek to understand how rivers are understood as socio-natural beings, how they are defended as vernacular territories, as subjects, as entities that travel the world accompanied by movements that demand water justice. The conversations with Juan Carlos focus on approaching the socio-legal repertoires of fishing families and their confrontation with legality and illegality. Through them, we were able to hear about the rights of nature and the rights of the river as a subject, and understand the difficulty of defending the river, keeping it alive, and the threats faced by the communities that live with the river.

Juan Carlos Gutiérrez, the Magdalena river and artisanal fishing communities

“I am the son of a family, let’s say middle-class, a family in economic difficulties during my childhood. My mother was a teacher in public schools, already retired, and my father had projects but had trouble. The family’s livelihood was in crisis and I entered a public school. Education in private schools is usually of better quality than in public schools, but that’s where I studied, which connected me with more real-life Colombia, with most of Colombia. In addition, I got a critical outlook from my mother’s side of the family since I was little—my mother, my grandfather—beyond old-style liberalism, which simply assumes opportunities for everyone to have access to the same rights. I had the firm decision to go studying no matter what happened. Fortunately, I got into the National University of Colombia. It is public, and gives you a broad, deep look at the country.

I majored Anthropology, which I expected would give me more chances to go into the field. I love nature, I love walking. I am still surprised, even today with each plant, with each flower, with each sunrise. You don’t learn that in books, but it makes me feel alive, the world of nature. But I also wanted to know how to put myself better in the shoes of others, under a very strong notion of solidarity, in addition to my interest in different people’s ways of thinking. Anthropology enabled me to connect with other worlds.

Even so, because of my economic circumstances, I started working when I was a student. I started with work in archaeology, in one of Colombia’s largest private construction companies. It has even built mega-hydroelectric plants, giant irrigation districts, and highways. My job was to study possible archaeological remains in the areas where a road was going to pass through or where they were going to flood the territory by a dam. That’s how I started to get to know the big megaprojects. I got to know the monster from the inside. There I got to know this perverse system of environmental licensing in Colombia. It was simply cosmetic, and today it’s even worse. Recent research has shown that out of 100 licensing applications, only three are rejected. I worked at that till I graduated, then never again, but I had learned about it. All these evaluations, studies, baseline surveys, characterizations and so on, all that social and cultural information is ignored afterwards. Both by the state and by corporations. They care only about the physiographic, hydrological, biological, economic, and infrastructure designs. So, I was profoundly shocked, generating such raging conflicts that I figured ‘I’m going to keep working on that’. But it was

absolutely functional and useful, to see it from the inside, and then from the outside, to criticize it with insider knowledge.

Then I started a young family; I got married when I was 22. My beloved wife and I we fell in love in college, studying the same profession. We have two wonderful sons. My first job on wetland issues was here in Bogotá, with a public company for environmental management. An agreement was reached with Fundación Alma to make a diploma program in environmental education on the Juan Amarillo Wetland. We taught both community leaders, whom we called “interpreters”, and teachers from schools in the wetland environment.

Why did they choose those areas? Because that is where Ecopetrol, the Colombian oil company, has historically extracted. It had to do with protecting biodiversity in areas of the Magdalena River.”

The Magdalena River is the main water supply for Colombia’s population. It is also home to riverside populations of artisanal fishermen and small farmers. It is usually called the fluvial backbone of Colombia and is navigable from Honda to its mouth at Bocas de Ceniza (886 km out of the total 1540 km). Its basin area is approximately 257,500 km² and in its path it connects with around 500 rivers. Currently, the state, together with private companies, carry out the hydroelectric expansion plan in the Magdalena basin, without taking into account other economic activities, such as artisanal fishing which is communities’ livelihood (Gutiérrez 2016). Similarly, the expanding palm industry has boosted demand for irrigation (Castro 2016). This has impacted the river’s natural hydrodynamics and the quality of its water has deteriorated (Andrade-Pérez and García-Chávez 2016). Open-pit mining projects seriously jeopardize the Magdalena’s mountains and aquifers, increasing the river’s pollution (Rodríguez-Becerra 2015). These activities have transformed and deforested 77% of the river’s original plant cover, fishing has dropped by more than 50%, and silting has increased by 30%. On top of the river’s enormous deterioration in ecological, social and cultural terms, the national Government’s navigability project proposes to make the Magdalena River navigable all year round, 24 hours a day, ignoring this activity’s impacts on the basin (Restrepo 2005). Many argue that all this views the river as a mere water channel, to be tamed, controlled and standardized for capitalist exploitation under the neoliberal system. It contrasts with the ways of life and livelihood of the river people, who inhabit the river, the riverside communities, including fishing families, among others.

“I fell in love with the Magdalena River and its people, a different place and national cultural dynamics. And I got to know the river and its various communities, which opened up a world that I hadn’t known, cultural systems I hadn’t worked with, a group of peoples more associated with the great Caribbean, amphibious peoples, heirs of the stories about ‘alligator man’, about ‘icotea turtle’ man, that Orlando Fals Borda spoke of in the seventies. Then I began to recognize in them a centuries-old cultural tradition that remained alive, though they have been denied, ignored, because artisanal fishing people have been left out of the modern nation. Hence the importance of understanding the dynamics of rivers in those environments, not just as a waterway for shipping or as a water drainage channel, but as a connector of life, as living rivers.”

Local knowledge, customary rules and socio-legal encounters

“We were once in the Momposina Depression, where there is a very nice, very well-organized organization, called FERPAM. There was a woman who said: ‘The swamp has had children,’ because fish had just laid eggs. She said, ‘the swamp is alive’ referring to the schools of thousands, of millions of minnows that hatch from the eggs of a single fish. Clearly, the river at that time seems female to her, a woman giving birth, not just the fish but the river itself. It is the possibility of an organic river, the reality of a living river. It is a river that has movement, a river that is changing, that in the rainy season is a river and in the dry season looks like a different river, but it is still the same one.

How can you map a river that can change its composition, its structure, so abruptly from one month to the next? In one month, you can have three meters water column in one place, in a forest, even a forest completely submerged, but at another time of the year it is a dry beach. Unfortunately, that has been used by many local, regional, and national power holders to appropriate the bends, the savannahs, the beaches. Some encroachers pull in, map it in the dry season, and say ‘the swamp is not all that’ or ‘the river is not all that’, and then begin to illegally appropriate and misuse this public property, which belongs to everyone.

The fishermen have taught me everything about the river. It really is a universe of knowledge, what some call a universe of epistemologies and worldviews, which are astounding. I have begun to meet with groups of artisanal fishermen, populations that have been hidden away in the nation’s historical chronicles. They begin to show me what this thing is, that is called the Magdalena River. For example, I remember a friend named Calixto, there in the El Llanito swamp in Barrancabermeja. He began telling me that the fish, when they migrate, have a guide or pilot out in front, who decides which swamp they enter going up and which swamp they do not, and after the *bocachico* fish come other species, including catfish and other migratory fish. They generate a whole movement with agreements between them, making decisions on the fly: those who go forward decide whether or not to enter a swamp or not, by some culvert or river, or if they keep going a little further upstream.

Fishermen distinguish each action by the fish, including how the fish change mood and decisions, depending on the color of the water, depending on the wind’s movement. I’ve begun to come across fishermen’s knowledge, like animal ethnography. Calixto told me how the *bocachicos* snored and how, from the canoe, they could tell what was happening down there. To me that was magic, wouldn’t you agree? For me that was another world that I did not know about and that I did not understand yet. Fishermen and fish have their own rules and decisions. My teacher is Horacio, and each of the leaders from the upper to the lower Magdalena who, fortunately, I have been getting to know over the years.”

In his conversation with artisanal fisherman Horacio Rodríguez, Juan Carlos listens to what he has learned during these years of living and working with local communities. They discuss whether fish have their own language, make their own decisions, whether they have a voice. Horace replies:

“Of course, fish have a voice. We know when the river is going to rise, we know when there are going to be changes in the weather. Because animals tell us. In the

river there is a thing called the bubble. It begins to beat, and beat and beat when the river is going to rise, when the alligators and the caimans begin to push, when they begin to push very often, it is because suddenly there will be some earth tremor, something unpleasant will happen, so they warn us. An animal sings and I already recognize the sound. So, we feel accompanied by the animals and they stay by our side, both the animals, the birds, the *babilla* caimans when they begin to roar. You won't believe it, but fish also have their song, the fish in spawning time, the female bocachico and the male bocachico, they sing. It is in the only time you hear them making noise, when it is spawning time. You stop at the pipe where they're going to pass and that's just one fish song, that sounds beautiful."

Juan Carlos, how is legal pluralism expressed in the river's swamps? How can you explain the idea of these fishing communities' local and customary rights? What is the position of state authorities and others in the area? How do they combine or clash?

"When we began to do social cartography, we realized how the names and symbolic relationships in places began to show how they deeply, symbolically appropriate a space, which for us in cities are almost inert places. What official maps show as a blue spot are, on the contrary, living, diverse places. Then I began to realize that, for example, they called a corner that the fishermen did not touch 'virgin.' That is like an untouched place, like a virginal place, let's say as a primary place of origin. There they had agreed that they would not intervene or fish. They have a series of rules on fishing that, for instance, indicate that for them particular practices are illegal, while for the national authority it is not. For example, there is a fishing technique they forbid called '*palitear*', and it is like getting into the house of the fish that are sleeping and with a stick take them out while the fish rest. A fundamental problem for them is the problem of wild fishing, or extreme fishing. In this case, for example, back in that swamp, it was forbidden to fish in the 'fishes' house' while they sleep. It's as if they get into your house and they drive you out with a big stick when you're sleeping.

They forbid, for example, fishing at the mouth of culverts. These pipes are the natural, fundamental connectors between rivers and swamps, inside a swamp, and among other swamps on the floodplain. So it is essential to learn the ecological importance that amphibious peoples give to their ecosystems, and the particular function of each part, by talking and working with them. Also, there is a direct relationship between the ancestral knowledge of the elderly, passed down to the new generation, the personal experience of a fisherman who, since childhood, has inhabited an aquatic space, a forest, a biodiverse system, and the array of local knowledge and norms, all of which connect ways and skills to live in the midst of deep-rooted ecologies. Ways to heal in the environment, know-how to pilot in a river or swamp in the middle of a storm, know-how to swim between waters with random currents, cook and eat a meal on a shore, etc. It is a set of norms, rules and functional knowledge, astronomical, material, medicinal, food-related, for fishing, wildlife, housing in constant navigation, dynamics and migration. Then, it also leads them to collectively agree on norms, and rules emerge from their geography on how to manage it, right out of their water dynamics, from their biodiversity. Because they also know that fishing is frankly dwindling. Not only due to overfishing but,

above all, due to other determining causes, such as the loss of connectivity generated by the hydroelectric dams that I have already mentioned, or the sediment and pollution due to deforestation and dumping along the watersheds.

In Colombia, intervention in rivers, in floodplains, has been disastrous. Rivers, wetlands and their management were conceived as ‘problems’, since colonial times, under the Republic, and even today. Territorial plans have been conceived from a totally engineering vision to drain and evacuate water. In Colombia, the water territories have been seen more as a problem to be solved, drying them out. There is a concept here called ‘*adecuación de tierras*’ (‘land adaptation’ or ‘land improvement’), which in practice means ‘drying wetlands’ to have land to farm under the model derived from prairie-building, for agro-industry or urban expansion. Among other actions, this has meant building dikes and levees to prevent rivers from overflowing. And that means plugging culverts, dredging rivers to make navigable channels or simply draining contaminated water. In seasons of natural changes, with much rainfall or drought, these poorly built dikes along rivers impede connectivity and the natural exchange of matter and energy between swamps and the big rivers. In the case of the Magdalena River and the Cauca River, despite the repeated construction of dikes, disastrous floods keep occurring, because those dikes break – the river remembers its shape. The river returns and renews geography.

In terms of authority, regulations and access, the conflict is fundamentally expressed because the state allows private appropriation, dispossession of the wetland itself. How are properties given to landgrabbers and large landowners on the banks, on the forests of the swamps that used to be public land? They appropriate and privatize public property. These appropriation projects end up as monocultures, pastures for livestock, or areas enabled for oil projects. Then the conflict engenders the facing off between fishing people, private stakeholders and other production systems. And the state loses room for governance and dialogue: fishermen are not recognized as political actors. The fundamental issue is non-recognition of fishermen’s rights. Not everyone in Colombia has the same rights, even though we are all Colombians. It’s one thing for you to literally have rights on paper, but you don’t have access to those rights. There are a number of conditions that limit you from accessing or demanding your rights. Worse than peasant smallholders, worse than indigenous peoples, and worse than Afro-descendant communities – communities of artisanal fishermen are in this extreme condition.”

Mobilizing the law and customary rights to defend the living river: environmental justice amidst violence

Colombia is among the countries in Latin America, perhaps in the world, that has the most advanced, elaborate laws to protect indigenous peoples, human rights, and the socio-environmental milieu. At the same time, it is the number one country in terms of violence towards environmental leaders. Why do we have this huge contradiction?

“The Constitution of 1991 in Colombia is important, because it allows legal platforms for struggles by organizations, movements, peoples, every community that lives anywhere in Colombia that is compromised or has their rights affected.

Guardianship is a tool provided by the Constitution, so that people can claim or demand their fundamental rights. However, it is extremely difficult to apply it to collective processes. A legal action upholding popular action requires technical support for their claim. In general, artisanal fishermen cannot afford to do the research, the fieldwork, and engage lawyers to repeatedly appear in court. At the same time, Colombia is the country that has most assassinations of environmental leaders in the world. There is a very clear difference between raising your voice in a city and raising it in the countryside. In the field, literally, the law of the jungle applies. So, threats, displacement and murder of leaders of people in the countryside significantly limit people's right to a healthy environment, to a decent life, the right to a habitat with dignity.

Colombia has a major background of institution-building, worthy of note. The 1991 Constitution is largely the result of longstanding mobilizations – it was not dreamed up by a few people here in Bogotá but the outgrowth of very insistent mobilizations throughout the 1970s, 1980s and 1990s. It has framework laws that would grant people free exercise of their rights, technical and educational resources, with lawyers to assist them – if they were not at war, under pressures by narcos or illegal armed actors. Here, great leaders have been assassinated in the last 30 years, often with impunity. Paradoxically, the 1991 Constitution also opens up to the full spectrum of neoliberalism – which bankrupted the Colombian countryside and intensified the war. It is curious, it came from a peace process, assembling a Constitution, but at the same time it swept in all the free trade, privatization, and broadened policy of extractivism: oil, coal, legal and illegal gold – everything illegal is legalized here. Historically, consecutive governments, paramilitarism and drug trafficking have joined in alliances. Such alliances prevent transparent legality in Colombia, and deepen systems of corruption.

In addition, it is essential to take into account the concentration of wealth and land in Colombia. It is the third-worst country in the Gini indicator. Although the 1991 Constitution formalizes indigenous peoples' reservations and advances timidly in this process with black communities, Colombia is among the countries with the most displaced people in the world. In a country of about 47 or 48 million people, we have 7 million people displaced. There are also the newly displaced, in a war that persists, with the recent diaspora of Venezuelans in Colombia. The unequal distribution of land is not just from long ago. For instance, no more than 15 or 20 years ago, right in the middle of the Justice and Peace process, former President Uribe installed what was called the 'reincorporation of paramilitarism', between 2002 and 2010. Mafia bosses were given lists to revoke small farmers' land ownership titles, cancel them, and a list of people to whom they had to give the new land titles.

People were displaced from the land they owned, stripped of their belongings, their fruit crops, their cattle, their social and productive systems were violated. The land and property were appropriated by a new family, new owners – for example, a figurehead of these paramilitaries or whatever, and they begin to reorganize that territory, those places. Then, national Justice and Peace came along, telling people 'you can come back because we took these people out'. But when they returned to their lands, the figureheads remained a threat, saying 'the state has no business to tell them this, because here we are in charge'. So what is happening is that here

there are many powers and authorities at once, which control through blackmail and violence.”

This panorama gives a background for the country's gap between, on the one hand, good social and environmental declarations and laws, with the protection of local communities and the balanced recognition of their own regulatory frameworks, and, on the other hand, systematic violence towards environmental defenders. How is this contradiction or paradox expressed in defending rivers? How does this disconnect between the legal and the illegal unfold, and how is it expressed for fishing communities on the Magdalena River?

“Talking about the truth of the conflict goes beyond the subjects we usually point to as those responsible for the war, that is, those who were armed with rifles, in the field. There were some actors who financed them, there were others who legalized them, such as land officials. That is still in force today, they are not processes from the past. In Colombia, there is a peace agreement with a group of guerrillas, but the war in Colombia is going strong. Society is deeply marked by war. Those who govern the Colombian State have had direct alliances with fostering conflict, and that is thoroughly demonstrated by the Truth Commission. This all has to do directly with environmental conflicts in Colombia, and with the breach of the law and agreements.

One of the issues we from the Alma Foundation are working on with fishing communities is reaching agreements to manage wetlands and their forests. When we got there, we saw that, in several swamps, communities had made agreements without formal authorities, to generate sustainable fishing and other common goods. Then they agreed on fishing schedules, established low-impact fishing gear, spaces where fishing was allowed or not, and established self-controlled fishing times and zones. However, in the midst of the war in Colombia, with insurgent and paramilitary groups and so on, these agreements and that intention of self-governance fall apart very easily. Different externalities prevent people from keeping that agreement, because people are threatened or even killed. Or because there are people who give in to the pressures of the illegal economy based on transporting coca, illegal gasoline for war, and so on. One of the cases is the murder of Lucho Arango in Barrancabermeja in the El Llanito swamp.”

Report of the National Center for Historical Memory (CNMH): “The case of Lucho Arango as a community leader, murdered by armed actors, is the epitome of environmental leaders [...] Lucho developed a local leadership as a regional spokesperson, a fact that made him the most representative and significant fisherman among the Mid-Magdalena's environmental struggle and defense of artisanal fishing. ... Lucho was the voice of social forces that defended a notion of territory based on the knowledge of artisanal fishing. Defending those interests, those conditions, that tradition, against private and state interests and even against the interests of criminal economy, was Lucho's death sentence” (Centro Nacional de Memoria Histórica (CNMH) 2014, 27) [...] “Given the constant problem with the use of illicit fishing gear ..., Lucho decided to reach an internal agreement with the presidents of Community Action boards, with rules to respect responsible community fishing” (Centro Nacional de Memoria Histórica (CNMH) 2014, 112) [...] “The murder of Lucho Arango was perpetrated by the illegal group ‘Los Rastrojos’ in 2009, during

the post-demobilization paramilitary period and the rearrangement of illegal armed forces in the area. In the Middle Magdalena region, this illegal group is dedicated to the control of illicit economies, for which the El Llanito swamp and its pipes are highly strategic. Lucho's leadership as a defender of swamp ecology, his fight against the use of trammel (an illegal fishing gear) and his call on the authorities to monitor the swamp and its pipes, put at risk the impunity with which the Rastrojos moved through the area." (Centro Nacional de Memoria Histórica (CNMH) 2014, 14).³

"He was killed for starting to interfere with paramilitaries' illegal trade routes. Those routes were by the water, they were the fishing areas. And in addition, the illegality of drug trafficking begins to be combined with illegal fishing, for example unsustainable fishing by some sectors of the population. Illegal fishing uses illegal fishing gear, such as '*trasmallo*' (gill nets) in this area. So, what happened was that in El Llanito, the community's fishermen demanded that the other fishermen stop using illegal methods but they had to do it without any institutional support, without any backing from the National Authority of Agriculture and Fisheries, much less from the police. So, parastatal forces ended up threatening them, killing them, as happened to Lucho Arango for opposing the gill nets. They called him to a meeting, he came over, and they didn't return him alive."

As one fisherman explains to the National Center for Historical Memory: "Look, state institutions have always been totally absent [...] No one was with us. In fact we didn't care about criminal economies; but we wanted them to not destroy our food supply, our means of subsistence, which is fishing [...] The only thing that we care about is to stop the gill nets, to care for the fish" (2014, 42). Newspapers in the area tell how the fishermen, unaided, confronted all the dominant powers in the area, to protect their living river: "His death report states that Arango denounced the disrespect for the river by African palm growers, by planting up to the Magdalena River bank; large cattle ranchers' changing canals to expand their paddocks; using external means to flood land used to raise buffaloes; and fishing with gill nets, which harms the ecological balance and has been used by armed groups to make quick money ..." (newspaper *Vanguardia* 17-01-2010). In addition, "Arango criticized companies such as Ecopetrol, which polluted streams, rivers and swamps, and oil exploration with dynamite in the swamps ..." (newspaper *Verdad Abierta* 28-08-2009). In fact, "although Lucho's concern was not their trafficking illegal goods along canals, indirectly his work against gill nets made those illegal trafficking routes visible. When the agreement among fishing communities was signed, Lucho pressured the Navy and Police to enforce it in the swamp and in the canals of El Llanito. This level of institutional presence was resented by the gill net fishermen and by los Rastrojos, who finally executed Arango" (Centro Nacional de Memoria Histórica (CNMH) 2014, 36).

"And that's how it goes in the Zapatosa swamps. And that's how it goes in the swamps of Magangué. The President of Colombia's artisanal fishermen has been threatened. Fishermen lead the swamp's defense. What I am getting at is that the Colombian State is very weak and negligent in the territory. On the one hand, it has scanty resources and high levels of corruption. The lack of resources means

that, for example, the state's culture and fishing authority has one or two people to patrol the entire swamp of Zapatosa. It means nothing, it's only ornamental, and someone might grab someone there and makes some seizure. In my opinion, the central conflict is in how to harmonize a 'community – public' management system, where the real weakness is in the 'public'. It is key to fill this governance gap for public property, and to repair that broken bridge between what happens at the local community level and the management of national policies to protect ecosystems, to safeguard nature.”

Recognition of customary rights

The Political Constitution of Colombia declares that indigenous territories shall be governed by councils formed and regulated according to their customs. Their authorities can enforce legal rules on using land in their territories. The Constitutional Court recognizes that indigenous communities have the power to administer justice in their own territories. Thus, the legal framework formally recognizes indigenous judicial authorities' power to define autonomous rules and procedures. In addition, the Constitution includes the stipulation that natural resources shall be extracted without weakening communities' cultural, social and economic integrity. How does the Law support territorial claims and defenses in daily practice?

“Fishermen have not been the most vociferous group to defend that. There are other, more belligerent groups. Fishermen are much calmer, and have their way of adapting. In addition, you have to understand that the many generations of these communities are descendants of the Palenques. The *palenque* is where people who escaped from the violent colonial slave system took refuge. At that time, these black communities met indigenous communities, also stripped of their lands. Everyone marginalized went to the riverbanks, among forests and wetlands. The Spaniards were not interested in these areas; they wanted solid ground to plant their sugar cane, to raise their livestock, their agro-industrial and mining enclaves. The Magdalena River Valley, especially, was a corridor for traffic of all kinds, along the main route of the river. It is an alternative territory, where many things flow, with fishermen as the bottom rung in the ladder of their rights. What is key, is that to organize, protest and defend your rights of access and representation, you need to have minimum conditions to meet your basic needs. These dispossessed people, however, literally had nothing at all. A small farmer has some cows and sheep, some chickens that he is raising, and he knows that, in six months, he has some capital there walking around on four legs, on two legs. He has a crop that he will harvest after a year. A fisherman, if he does not go out to fish, or if there are no fish, has no food in his house. So, if the fisherman goes to union or association meetings, he has nothing. The fisherman lives by fishing, even if he has a kitchen garden. At his house there is nothing else, because he has no land. To mobilize ideas and demand of their rights, it is usually very complicated to call them to meetings, because they harm their livelihood if they organize.”

The 1991 Constitution approves International Labor Organization Convention 169: indigenous and tribal peoples have the right to preserve their own customs and institutions. Likewise, the law establishes that these rights are transferred to the entire Colombian

population. In other words, do artisanal fishing communities already have legal recognition and support?

“But it’s recognition on paper. There are no direct policy instruments that bring it down to earth. There are no collective lands for artisanal fishermen. There are no management instruments that transfer resources for managing the ecosystems they inhabit. There is no kind of transfer of resources from the state, which depends largely on politicking and corruption to get a mayor to finance some project for 5000 or 3000 dollars to clean a canal, to plant three trees. In Colombia, we are very good at signing national, even international, agreements and conventions. However, for marginalized populations, there is no regulation or investment of strategic environmental and fisheries management plans.

There is communal land for small farmers, for black communities there are reservations. There are indigenous reserves and councils. There is no such thing for artisanal fishermen. There is some rights recognition when there are fishermen on community councils of black communities; when on indigenous reserves there are fishermen. But all the rest of the fishing population, the vast majority, have only 6% with an ethnic description of artisanal fishermen in Colombia. Most do not have a recognized ethnic identification, so they have no governance over space, over the socio-ecological system they inhabit. They have no financing to manage that territory, much less for education or passing down that knowledge from generation to generation. Knowledge accumulated over decades and centuries about handling seeds, how fish move around, navigating by the stars, that could be part of a program about fishermen, taught by fishermen. Not by me or other colleagues – of course, when they invite us as special guests we could go and talk – but they must head it themselves, as the leaders, as the indigenous people do and as the Afro university chairs do in Colombia.”

Law 21 of 1991 orders that people must be consulted, through legitimate and appropriate procedures, on any legislative or administrative measures that affect them. The Law legalizes and legitimizes prior consultation. How does this official regulation materialize in practice for fishing communities?

“There is no prior consultation for fishermen. An example: the multimodal port of Andalusia it was made at Capulco harbor, a fishing village nearly 100 years old, and now it is a port without fishermen. The environmental authority has authorized building a port and people were removed, after living there for a century. They displaced and relocated everyone, paying them for their land improvements, without recognizing that the land belongs to them. They value two cows, a mango tree, and count them. So, they took everyone out without any prior consultation, only with the typical workshops that these companies usually hold in Colombia. That is, they come, they tell people ‘look, we’re going to do this’, get a leader on their side by giving him more things and buttering him up, to split up the people and get going with their projects. There is no prior consultation for artisanal fishing communities.

Indigenous communities are supposed to get public consultations, for black communities as well. But not so for fishing communities, since they are not part of an

ethnic grouping in Colombian jurisprudence. It does not exist in the law. Obviously, the question of identity and ethnicity also has to do with how people define themselves, but it must be formally recognized by the Ministry of the Interior. There is a procedure for proving self-recognition. A fisherman cannot say 'I am from an ethnic people because I am a fisherman' nor can a small farmer say 'I have a history of ethnicity, and therefore I declare myself an ethnic farmer'. For the officialdom, a long process must be completed. The 1991 Constitution declares that Colombia is a multi-ethnic, multicultural state. For some rural peoples, heirs of indigenous traditions, they organize, they join in these processes, go to the Colombian Institute of Anthropology, go to the Ministry of the Interior and begin a procedure to say 'we are a community with ethnicity'.

It is curious, because this ethnicity [formulated and accredited by state attorneys] also begins provoking conflicts in the countryside. Some were recognized as indigenous peoples, with their reservation, and their *cabildo* council. Then they started saying 'we are indigenous, we are not small *campesino* farmers'. And other peasant groups start saying 'we are *campesino* farmers and we are not indigenous'. This began to generate distinctions that were not so marked before, with major implications, such as differential access to rights, for example, to land; groups complaining 'they gave more land to you than to us'. Or, for example, 'they allowed prior consultations to you and not for us'. So, this has generated conflicts also between the peoples, in the regions, such as in the Cauca Valley, in Putumayo, in the Sierra Nevada de Santa Marta, and other places.

These conflicts are intense. They themselves realized that this was intensified by the national state when it began to put this all together. At the same time, it is important to say that there are also other experiences with very interesting agreements, of inter-ethnic spaces. There is a very large social movement called the Congress of the Peoples in Colombia. It proposes that, in addition to indigenous or *campesino* reserves, there are other classes of territories reflecting inter-ethnic and multicultural arrangements, and shared spaces."

You have explained how, in legal battles and formal, institutionalized processes, the dominant groups have more power, they predominate. Wouldn't fishing communities have more strategic weight if they waged their normative battles right in the countryside, in their own socio-legal environments?

"They are doing both at once, in fact, and in the countryside they have always done that. With the haciendas they have their everyday conflicts and, at the same time, legal negotiations, for control over their land. Or, for example, they are already sitting down at the negotiating table with the mayor to tell them 'hey, come, let's reach fisheries agreements'. That is to say, the process is already working. But there is a vacuum in terms of recognizing them as special rights-holders, as subjects who can carry out and effectively manage on the basis of legal rights, in a balanced manner, with other social groups who have greater formal power in Colombia.

For example, there is the declaration of forest reserves – there is a very large one, for the Magdalena – and for rivers and seas as national assets. The problem? It was done ignoring the pre-existing social, cultural, historical reality. They declare them as assets of the state, which are public, but fishing villages, small farmers, and

Afro-descendants lived there and still do. Centuries ago, black people began to make palenques and escape from colonial enterprises, on the banks of rivers and in those forests. And those zones are then declared national territory, taking away their right to use and have tenure and self-determination. The state says ‘that is national property’, but they could set up a usage grant, co-management, collective tenure or use agreements, under consensus-based conditions. Today, the people who live in that area, children, grandchildren and great-great-grandchildren of the people who originally settled there, with their own rules, now do not have ownership rights over it. Again, it’s not necessarily about granting them private property in the middle of the swamp, no. Families can be given public community agreements to live there. Let us organize and legalize their possession, under conditions of social function and ecological function.”

Rights of nature and the rights of Rivers

The Constitutional Court established, in 2011, that the legal system has the obligation to restore and guarantee the rights of nature. It defines nature as a rights-holder, which must be protected. It also declares the principle of humility, which dictates that human beings depend on nature. Nature cannot be defined as a mere human-dominated source of resources, since it is a complex system with which humans interact. Then, in 2016, the Constitutional Court said it was adopting an ecocentric approach and established the biocultural rights of Colombian communities, and defined the Atrato River as a rights-holder. To protect and maintain the Atrato River, a mixed-guardian commission was established, among local authorities and communities and state entities. They pointed out that the Earth does not belong to humans. What is your perspective on nature’s rights and river rights in Colombia?

“In general, in Colombia, nature’s rights are yet to be finalized and applied in practice. This entails controversy. There are even many environmentalists here who disagree. One reason is because the declaration is being made on a case-by-case basis, from river to river, jungle to jungle, ecosystem to ecosystem, particular cases that are won because there was (or was not) a group of lawyers who went to court and won the declaration of the X River. They started with the Atrato River, then rivers in Tolima, then the Cauca River, then the Magdalena River and the Amazon jungle. Surely later it will be the Chocó jungle and others. Another dilemma obviously is that humans are given the role as the voice for the entire ecosystem. The commission of spokespersons for the river includes the state, headed by the Ministry of Environment, and a group of delegates and spokespersons for each declared ecosystem. Now there are debates about who was delegated.

But, well, I am not criticizing this institutional arrangement, because it does not take anything away from the ecosystem. On the contrary, it can give you something extra. It must be understood in this framework: one thing is state rhetoric and another thing is institutions and how they actually work. And this state is extremely fragile in exercising its institutions. River rights could add something to co-managing ecosystems; this depends on political will in each particular case and its social, ecological and political environment.

Perhaps the more existential debate is whether rivers have personalities. For example, a river at one time is charged and full of energy, then it comes down with all its strength, at another time it is calm, and rests on its banks. What is going on then? What is the personality, for example, of the Amazonian rivers? I would say that it's a meandering personality, it's a curved personality, it's a forest personality, it's an exchanging personality. What is the personality of the rivers of the inter-Andean mountains? It is a more unstable personality, which sometimes has torrential rains and suddenly rising levels. Then we have to learn to know the personality and recognize the spirit of rivers, in dialogue with their people, who know them and hold their memory. It is the people of the land, precisely small farmers, indigenous people, fishermen, people who live in the middle of the Chocó jungle, who know how the river behaves, what affects them, when it changes, depending on the movement of the winds, they know how it will behave in the next crescent phase of the moon; they remember what it was like 20 years ago, what their grandparents told them, what it was like 80 years ago...

It is fundamental to recognize that we are river, *somos río*. We are that system. These ecological systems are a subject and organism of which we are all part. We must think about it in that changed logic, different thought, shifted paradigm. On a trip down the river, I was talking to a fisherman, Juan, and his friends talked about the '*mohán*'. The *mohán* is a mythological being for us, but for them it is very real, for those who have seen, lived and felt it. For some, it is a river being, for others, the river's very spirit, which appears and disappears, bearded, naked, hairy, usually smoking a big cigar. People respect him and leave an offering, so that he won't hurt them: a cigar or some brandy. Especially the elders, the grandparents. For the river people, the river has spirit, it is the energy of nature itself. Who shall we ask for permission? Ultimately, we ask the spirit of the place.

Does nature have, or should it have rights? Of course, nature has non-human rights. It is not modern liberal law, it is the right to freely express its personality, its freedom of spirit. May it have freedom – to be free rivers, to be living rivers, to be connected to other rivers and seas, to rest in its meanders and plains, to bathe its forests. Rivers are not a drainage ditch, let alone a cement container, rivers have a complex body, made of forests, slopes, islands, wetlands and people. They are not rivers without people who know how to move, and adapt to their dynamics. That high water is not only a risk: it is a risk when we are poorly adapted to the risk; when we do not have information about its dynamics and behavior it is a risk; when we do not have the resources to generate a habitat adapted to that condition. Then it becomes a risk, but it is not a risk per se. Look how many people exist on Earth, who live in the middle of the water without being threatened by floods? They are in the middle of the river or in the middle of the lake or in the middle of the mangrove wetland. So, the thing is when those dynamics and understandings break down, right? Those adaptive dynamics of knowledge, learning, of being able to generate the right infrastructure. Living next to a river became a risk because they displaced people who then went to live here next to unknown rivers, and didn't know that the unknown river was subject to flooding suddenly. It is a risk when memory and history are cut off. When you cut off the history of a tradition, of a relationship of biocultural systems."

In 2019, the Magdalena River was recognized as a rights-bearer. The rights of protection, maintenance and restoration of its basin and tributaries were established: overseen by the Enel-Emgesa hydro-electric plant, a private capitalist company, and ‘the community’. In addition, the creation of a ‘commission of guardians’ for the Magdalena River was promoted: comprising the National Government, the Ministry of Environment, Cormagdalena and the Corporation of Upper Magdalena. The guardianship would be in favor of future generations, fundamental rights of water, a life of dignity and ‘good living’. However, what functionality does the status of ‘the river as a subject and rights-holder’ have if it is installed from above, legalistically, with a commission headed by the entities of the state and private corporations?

“Just as there is a commission of guardians of the Atrato River, then, here they also tried to do something similar. But look, I’m in the Magdalena River, I know the fishermen’s organizations of the upper, middle and lower river. None of them is involved, nor have they been invited to a commission to make a River Plan as a rights-holder. This should be called ‘green washing.’ Look, that green makeup is not anything new. They surely have the environmental discourse. The Ministry of Environment and President Duque were gathered here just now, because there was going to be the international meeting on climate change, at a forum, sitting in an easy chair, with the indigenous people lining up on a bench: showing that they were working for the Amazon people’s rights. It’s cosmetic. Why? At the same time, they continue to hand over the people’s territories for mining. Is it more makeup? Yes. They do it so they can say, ‘here we have protocols and there are institutions.’ Rivers, at the end of the day, have no authority. So, rivers are more or less no-man’s land. There is no coherent, clear governance.”

The communities and organizations of artisanal fishermen on the Magdalena River have not been part of this initiative to declare the river as a subject rights-holder. That, then, would be one of the great risks inherent in the recent processes of declaring the ‘Rights of Nature’, when it is considered as an end in itself. Whether it is administrative-institutional or biocentric. Either way, it is not a bottom-up process, which must necessarily be rooted in social, cultural and historical mobilizations. What’s your perspective on this?

“I have not heard anything about it from fishing families. A court did it, by ruling on a guardianship. I have data on the person who made the guardianship. He is a person interested in the river and felt that this could be an arrangement that would help protect it. So, he took a lawyer with him, and they won, so to speak, with the court there, the Court of Neiva. But it is not the result of a collective agreement. It is not the outgrowth of a history of social movement, of an organized alliance that said, ‘ready, then assessing all the possible arrangements, we are going to go for this strategy because it is the one that will enable us to fight, and get things done for the river.’ No, not with the Magdalena River. Perhaps the Atrato River was different, with a very different process.

In the case of the Magdalena River, it is more like an instrumentalistic, technical-economic productivity process. Recent governments have been pushing this river navigability project – it is one of the ten largest infrastructure projects in Latin America. It is part of the strategy for free trade and multimodal transport in the Americas. They are looking for ways to make the river a thoroughfare or a passageway, a route to transport merchandise. River transport costs only a quarter

as much as air transport and half as much as land transport. So, it's very economical, according to what they see on their bottom lines. It's transporting oil, it's transporting coal. Recovering navigability is very functional for one Colombian economic sector, which is extractivism.

The river is not seen as a large ecological corridor connecting the north with the south. A great cultural corridor, impressive, interconnected by these fishing villages from top to bottom, from bottom to top. No, in a country like Colombia, fundamentally, the Magdalena River is business, period. It's a big deal for those who win, to keep dredging the river. The business is also in building dikes along the river, disrupting its connectivity again, but for business it is better if the levies break, because then they make another contract. That is the core objective. Not even navigation. They are selling a false idea of a navigable river 24 hours a day, 365 days a year. That is not possible on the Magdalena River. On most rivers there are navigation seasons, there are seasons, depending on the reality of the weather, the rains, high water, and so on. So they want to make a navigable canal, at the expense of all the rest of the river. Because you end up changing a river, according to your vision of a single navigable canal. River branches will be disconnected and peoples will be cut off whose histories were related to the river."

Mobilizing the river's vernacular networks

In our discussion with Juan Carlos and artisanal fisherman Horacio Rodríguez, the latter explains the river's meaning for local communities, for their existence: "Can you imagine when this pond will dry up? Can you imagine if all this were to end? For me, this is my company, it is my source of work and life. Right now, as a fisherman, it's what I love most, the Magdalena River, the Guarinó pond. That's the future for us fishermen." We end the last interview with Juan Carlos with this same question:

How is the Magdalena River governed? What are the prospects for an environmentally more sustainable, socially fairer, politically more democratic governance? What is the path to a future that recognizes, respects and strengthens social and environmental rights for fishing and river families?

"In Port Boyacá, Magdalena River Valley, the El Llanito swamp collapsed 20 years ago due to an oil-spill by Ecopetrol, Colombia's main oil company. So far, no ruling has come out in favor of the lawsuit brought by the fishermen. There you have Colombia's environmental institutions. We are full of rules. Although environmental standards in Colombia and the institutional legal system are very important, what there is none of, is governance. What there is, is a generalized mis-governance, preventing these norms from doing anything for communities' local realities.

This occurs not only in *páramo* moors (Andean wetlands), but also in forest reserve areas. They are conceived as if they were places without people, as if they were empty spaces. Protected areas are declared without properly assessing the impacts on local communities. They could perfectly well generate measures and life plans in relation to their environments, in relation to their condition as a swamp. Our challenge is what we can call '*river commons*'. How do we talk about common

forests? How do we talk about common fish? How do we talk about beaches and common waterways? How do we make ‘government’ be more than just the state or megaprojects, but really the object or subject of management by local communities in alliance with public and private entities? But the agenda must be public-community management.

Now, how do we make sure that the river’s forms of co-governance are not just on paper? The declaration of the Magdalena river as a rights-subject was made by lawyers only. But it is essential for organizations to do this; we are knocking on the municipalities’ door and we are knocking at the Ministry’s and companies’ doors – at different scales and public and community levels. We need to balance traditional knowledge systems with scientific knowledge systems, balancing them by getting them talking to each other, to generate scenarios and methodologies that integrate them. That’s what we would call knowledge networks.

This network of knowledge is what Fundación Alma has been doing, to postulate that this system of techniques, knowledge, lore, the artisanal fishermen’s way of life on the Magdalena River be recognized as cultural, intangible heritage of Colombia as a nation. Just now, we are making a Safeguarding Plan, a set of measures built with fishermen and women from the river, people like Horacio, with María Benítez, with Libia Arciniegas, with Reinaldo Rico, with Wilfrido García, with Johnny Estrada, with Omar Guarín. I am talking about leaders along the river, different people, Alirior up there in the upper Magdalena, Juan Tercero, Calixto. I want to name them for you because they are flesh and blood beings who at this moment are giving their lives to struggle and not lose this river, which is their life.”

Notes

1. The first interview with Juan Carlos Gutiérrez-Camargo and fishermen from the Magdalena River was an audiovisual meeting we held with assistance from Makmende, the partner organization of River Commons, in November 2020 (see <https://vimeo.com/492459864/b7ec3adce4>). Subsequent discussions among this article’s four authors were held in September, October and November 2021. This article results from research in the project Riverhood which has received funding from the European Research Council (ERC) under the European Union’s Horizon 2020 programme (grant agreement No. 101002921). It is also part of the INREF-WUR funded transdisciplinary research, training and action River Commons program.
2. See also Boelens and Claudin (2015), Roth et al. (2015), Bavinck, Jentoft, and Scholtens (2018), Scholtens and Bavinck (2018).
3. See also Molano-Bravo (2009), Roa-Avendaño and Duarte-Abadía (2012), Duarte-Abadía, Boelens, and Roa-Avendaño (2015), and Shah et al. (2021).

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