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## Implementing Nature's Rights in Colombia: The Arato and Amazon Experiences

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# Implementing Nature's Rights in Colombia: The Atrato and Amazon Experiences

## Implementando los derechos de la naturaleza en Colombia: las experiencias del Atrato y el Amazonas\*\*\*-\*\*\*\*

### ABSTRACT

Nature's rights approaches are being developed as an alternative legal means to enable justice for nature and, oftentimes, humans, too. This study examines Colombia's two seminal court-ordered nature's rights approaches which recognize ecosystems—the Atrato River Basin (2016) and the Colombian Amazon (2018)—as a legal subject with rights to protection, maintenance, conservation, and restoration. Developed as remedies for human rights violations, both cases offer opportunities to explore variations in nature's rights approaches and the relationship between efforts to enable justice for humans and nature. We build on existing scholarly engagement with the cases by contributing a detailed archival study on their implementation complemented by a few

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interviews with key actors, as well as by evaluating implementation of the rulings using environmental and ecological justice frameworks to determine to what degree they have enabled justice for humans and nature to date. We argue that the Atrato River Basin and Colombian Amazon nature's rights approaches currently fall short of their aims to enable justice for both humans and nature. Thus far, interpretation and implementation of the rulings have yet to fulfill court orders and, in some cases, have perpetuated injustices.

#### KEYWORDS

Nature's rights, climate change, ecological justice, environmental justice, strategic litigation, Colombian Amazon, Atrato River, Colombia.

#### RESUMEN

Los enfoques de los derechos de la naturaleza se están desarrollando como un medio legal alternativo para permitir la justicia para la naturaleza y, a menudo, también para los humanos. Este estudio examina los dos enfoques fundamentales de los derechos de la naturaleza ordenados por los tribunales de Colombia que reconocen los ecosistemas, la cuenca del río Atrato (2016) y la Amazonía colombiana (2018), como un sujeto legal con derechos de protección, mantenimiento, conservación y restauración. Desarrollados como remedios para las violaciones de los derechos humanos, ambos casos ofrecen oportunidades para explorar variaciones en los enfoques de los derechos de la naturaleza y la relación entre los esfuerzos para hacer posible la justicia para los humanos y la naturaleza. Nos basamos en el compromiso académico existente con los casos al contribuir con un estudio de archivo detallado sobre su implementación, complementado con algunas entrevistas con actores clave, así como al evaluar la implementación de los fallos utilizando marcos de justicia ambiental y ecológica para determinar hasta qué punto han permitido la justicia para los humanos y la naturaleza hasta la fecha. Argumentamos que los enfoques de los derechos de la naturaleza de la cuenca del río Atrato y la Amazonía colombiana actualmente no alcanzan sus objetivos de permitir la justicia tanto para los humanos como para la naturaleza. Hasta el momento, la interpretación y la implementación de las sentencias aún no han hecho posible la justicia y, en algunos casos, han perpetuado las injusticias. de las sentencias aún no han hecho posible la justicia y, en algunos casos, han perpetuado las injusticias.

PALABRAS CLAVE

Derechos de la naturaleza, cambio climático, justicia ecológica, justicia ambiental, litigio estratégico, Amazonía colombiana, río de Atrato, Colombia.

SUMMARY

Introduction. 1. Theory: to enable justice for humans and nature. 1.1. Environmental justice. 1.2. Ecological justice. 1.3. Coalescing environmental and ecological justice theories. 2. Emergence of nature's rights in Colombia. 2.1. The Atrato River Basin, 2016. 2.2. The Colombian Amazon, 2018. 3. Contributing and impeding factors following the issuance of the rulings. 3.1. Following the Atrato ruling. 3.2. Following the Amazon ruling. 4. Comparative analysis of the Atrato and Amazon cases. 4.1. The Atrato approach as a promising blueprint, if actualized. 4.2. Today's Colombian Amazon approach as a threat multiplier. 5. Discussion: Justice for humans and nature bound in a politics of neglect. Conclusion. References.

INTRODUCTION

Alternative legal approaches to protect nature and humans dependent on its stability have developed out of a sense of urgency as most legislation worldwide has been deemed insufficient<sup>1</sup> to stop rampant ecological deterioration.<sup>2</sup> Many scholars have argued that mainstream environmental law has given (some) humans the right to exploit nature to their sole advantage and ignore ecological limits.<sup>3</sup> Nature's rights approaches recognize nature

1 UNEP. *Environmental Rule of Law: First Global Report*, 2019, 3 y 8.

2 Barcan, R. *The Campaign for Legal Personhood for the Great Barrier Reef: Finding Political and Pedagogical Value in the Spectacular Failure of Care*. In *Nature and Space*. 2019, 1-23; United Nations Environmental Programme (UNEP). *Environmental Rule of Law: First Global Report*. 2019; Earth Law Center. *2016 Update: Fighting for Our Shared Future: Protecting Both Human Rights & Nature's Rights*. 2016; Voigt, C. (ed.). *A Rule of Law for Nature: New Dimensions and Ideas in Environmental Law*. Cambridge: Cambridge University Press, 2013; Falk, R. *The Second Cycle of Ecological Urgency: An Environmental Justice Perspective*. In *Environmental Law & Justice in Context*. Cambridge: Cambridge University Press, 2009.

3 Gordon, G. *Environmental Personhood*. In *Columbia Journal of Environmental Law*. No. 43, 2018, 49-91; Voigt (ed.). *A Rule of Law for Nature*, cit.; Burdon, P. D. *A Theory of Earth Jurisprudence*. In *Australian Journal of Legal Philosophy*. No. 37, 2012, 28-60; Stone, C. *Should Trees Have Standing: Law, Morality, and the Environment*. New York: Oxford University Press, 2010; Wood, M. C. *Nature's Trust: A Legal, Political, and Moral*

as a legal subject of rights so that nature's own interests are defensible, and are one emerging legal means to enable justice for nature and, oftentimes, humans, too.

This study examines Colombia's two seminal court-ordered nature's rights approaches: the Constitutional Court's Atrato River Basin decision (2016) and the Supreme Court's Colombian Amazon decision (2018). Both rulings stem from constitutional challenges where plaintiffs sought to stop human rights violations linked to environmental harms through the *tutela* mechanism, a unique legal tool in Colombia allowing individuals to demand protection of their fundamental rights. Each ruling recognized the respective ecosystem as a legal subject with rights to be protected, maintained, conserved, and restored. In both cases, the High Courts developed orders to remedy such violations, providing an opportunity to explore the development of related but distinct nature's rights approaches and the relationship between efforts to enable justice for humans and nature concurrently.

This study is based on a qualitative analysis using narrative and thematic approaches to examine available materials. The article builds on existing scholarly engagement with the cases by contributing a detailed archival study of official government documentation and hearings reviewing the rulings' implementation, complemented by primary data collected from interviews with those involved in the formation and implementation of the two rulings—particularly, attorneys, judges and other government officials—and gray literature (i.e., media coverage). Notably, this study lacks direct input from plaintiff groups residing in the respective territories, as attempts to reach them during the research window were unsuccessful. While a comprehensive evaluation of environmental and ecological justice conditions is incomplete without their voices, the analysis instead seeks to provide insight by evaluating the degree to which and the manner in which the defendants comply with the rulings to remedy the alleged violations.

Analysis is supported by reference to two fields of academic enquiry: environmental justice (justice between humans in nature) and ecological justice (justice for non-human nature) theories. As such, this study sought to consider the strength of these nature's rights approaches as a means to enable justice for humans and nature simultaneously, in line with the rulings' purported aims—to remedy human rights violations by creating a new

*Frame for Global Warming*. In *Boston College Environmental Affairs Law Review*. No. 34, 2007, 577-603; Emmenegger, S. & Tschentscher, A. *Taking Nature's Rights Seriously: The Long Way to Biocentrism in Environmental Law*. In *Georgetown International Environmental Law Review*. No. VI, 1994, 545-742.

legal tool through which defense of non-human nature and accounting for nature's own interests at a government level is made possible. Finally, the article identifies barriers to enabling justice through the rulings by analyzing the cases within their historical contexts. We argue that operationalization of the Atrato and Amazon rulings currently fall short of their aims to enable justice for both humans and nature and, in some cases, have perpetuated injustices. Both approaches emerged within an incompatible context of impunity, noncompliance, and a militarized extractive complex, which remain significant barriers to enabling justice.

## 1. THEORY: TO ENABLE JUSTICE FOR HUMANS AND NATURE

Justice theories are at the core of all rights issues. As nature's rights approaches generally seek to enable justice for both human and non-human nature, the analysis employs both environmental and ecological justice theories. Both theories are anthropogenic, meaning they review how human actions have justice outcomes for human and non-human nature.<sup>4</sup> However, environmental justice is anthropocentric while ecological justice is eco-centric.<sup>5</sup>

### 1.1. Environmental justice

Environmental justice theory is ultimately concerned with the equitable distribution of environmental 'goods' (benefits) and 'bads' (burdens, risks) across human society considering time, space, and societal dimensions (e.g., current and future generations, race, class, gender, etc.).<sup>6</sup> Distributive

4 Houston, D. *Crisis Is Where We Live: Environmental Justice for the Anthropocene*. In *Globalizations*. No. 10, 2013, 443; Walker, G. *Globalizing Environmental Justice: The Geography and Politics of Frame Contextualization and Evolution*. In *Global Social Policy*. No. 9, 2009, 358.

5 Washington, H. *et al. Foregrounding Ecojustice in Conservation*. In *Biological Conservation*. No. 228, 2018, 367-374; Gudynas, E. *Derechos de la naturaleza: ética biocéntrica y políticas ambientales*. Buenos Aires: Tinta Limón Ediciones, 2015; Baxter, B. *A Theory of Ecological Justice*. London: Routledge, 2005; Schlosberg, D. *Reconceiving Environmental Justice: Global Movements and Political Theories*. In *Environmental Politics*. No. 13, 2004, 517-540; Low, N. & Gleeson, B. *Justice, Society & Nature: An Exploration of Political Ecology*. London & New York: Routledge, 1998.

6 Gudynas. *Derechos de la naturaleza*, cit.; Low & Gleeson. *Justice, Society & Nature*, cit.; Rodríguez, G. A. *Justicia ambiental en Colombia*. Bogotá: Grupo Editorial Ibáñez, 2018, 16; Yang, T. *Towards an Egalitarian Global Environmental Ethics*. In *Environmental Ethics and International Policy*. UNESCO, 2006, 32; Schlosberg, D. *Reconceiving Environmental*

environmental justice relates to the human right to a healthy environment since human actions directly impact the realization of environmental rights.<sup>7</sup>

Equitable distribution of environmental benefits and burdens requires both “recognition of the diversity of participants and experiences in affected communities, and [their] participation in the political processes which create and manage environmental policy”.<sup>8</sup> Recognition promotes distributive and participatory justice and is considered a “precondition of membership in the political community”.<sup>9</sup> Recognition requires investigation of the “social, cultural, symbolic, and institutional conditions underlying poor distributions” to inform the design of distributive remedies.<sup>10</sup>

Participatory environmental justice requires opportunities for those potentially affected by a project with environmental implications to have their interests represented in decision-making processes.<sup>11</sup> Participatory justice relates to the substantive element of three interdependent access rights, i.e. the right to: access information relevant to decision-making, participate in decision-making processes regarding projects which may threaten rights, and defend one’s interests through the justice system.<sup>12</sup> To determine the degree of efficacy of access rights, evaluation of participatory environmental justice should include participants’ influence in decision-making processes.

### 1.2. Ecological justice

Claims that there is an ecological crisis have motivated justice theory to expand and develop ecological justice theory, which seeks justice for nature

*Justice: Global Movements and Political Theories*. In *Environmental Politics*. No. 13, 2004, 517-540.

7 UNEP. *What are environmental rights?* N. d.

8 Schlosberg, D. *Reconceiving Environmental Justice: Global Movements and Political Theories*. In *Environmental Politics*. No. 13, 2004, 517.

9 Ibid., 521.

10 Ibid., 518.

11 Gellers & Jeffords. *Toward Environmental Democracy?*, cit.; Wesselink, Paavola, Fritsch, & Renn. *Rationales for Public Participation in Environmental Policy and Governance*, cit.

12 UNEP. *Environmental Rule of Law: First Global Report*. 2019; Gellers & Jeffords. *Toward Environmental Democracy?*, cit.; Rodríguez. *Justicia ambiental en Colombia*, cit., 16; Ebbesson & Okowa. *Environmental Law & Justice in Context*, cit.; Yang, T. *Towards an Egalitarian Global Environmental Ethics*. In *Environmental Ethics and International Policy*. UNESCO, 2006, 32; Senecah. *The Trinity of Voice*, cit.

itself.<sup>13</sup> It attempts to heighten human's ethical considerations to prevent further anthropogenic damage against non-human nature.<sup>14</sup>

Arguments for increased ethical consideration for harms against nature tend to follow existentialist and rationalist arguments. Existentialist reasonings often argue that non-human nature's intrinsic value is based on its existence and innate capacities<sup>15</sup> and seek to account for the fact that many ecological injustices can be committed without directly impacting human well-being.<sup>16</sup> Rationalist arguments, like those primarily employed by the Atrato and Amazon cases, tend to urge consideration for what is in nature's best interest. From a rationalist lens, respect for 'nature'—as the grantor of life—is of paramount concern for humankind's survival.<sup>17</sup>

Ecological justice theory has been adapted from environmental justice theory to apply to non-human nature. It seeks the fair distribution of environmental 'goods' and 'bads' across non-human nature considering time, space, and ecological dimensions—including current and future generations, species, natural elements (i.e., atmospheric, hydrologic, etc.).<sup>18</sup> To be considered ecologically just, responsible actors must exercise "precautionary and restrictive measures to prevent human activities from causing species extinction, the destruction of ecosystems or the disruption of ecological cycles".<sup>19</sup>

As Schlosberg<sup>20</sup> emphasized, equitable distribution requires that nature first be recognized as a member of the political community.<sup>21</sup> As a legal

13 Low & Gleeson. *Justice, Society & Nature*, cit.

14 Washington, et al. *Foregrounding Ecojustice in Conservation*, cit.; Baxter, B. *A Theory of Ecological Justice*. London: Routledge, 2005; Low & Gleeson. *Justice, Society & Nature*, cit.

15 Tsing, A. *More-than-Human Sociality: A Call for Critical Description*. In *Anthropology and Nature*. New York: Routledge, 2013.

16 Houston. *Crisis Is Where We Live*, cit.; Baxter. *A Theory of Ecological Justice*, cit.

17 Corte Suprema de Justicia. STC4360-2018. 4 April 2018; Corte Constitucional. T-622/16. 10 November 2016; Roelvink, G. *Rethinking Species-Being in the Anthropocene. Rethinking Marxism: A Journal of Economics*. In *Culture & Society*. No. 25, 2012, 52-69; Stone, C. *Should Trees Have Standing: Law, Morality, and the Environment*. New York: Oxford University Press, 2010.

18 Stone. *Should Trees Have Standing*, cit.; Low & Gleeson. *Justice, Society & Nature*, cit.

19 Global Alliance for the Rights of Nature (GARN), 2010, Art. 3i.

20 Schlosberg. *Reconceiving Environmental Justice*, cit.

21 Gudynas. *Derechos de la naturaleza*, cit.; Burdon. *A Theory of Earth Jurisprudence*, cit.; Baxter. *A Theory of Ecological Justice*, cit.; Low & Gleeson. *Justice, Society & Nature*, cit.; Emmenegger & Tschentscher. *Taking Nature's Rights Seriously*, cit.



subject, nature's interests become valid concerns of the political community and validate nature's 'membership' in said political community.<sup>22</sup>

Nature cannot defend its own interests so participatory ecological justice requires designated representatives to voice nature's interests, for example, through a guardianship or trusteeship.<sup>23</sup> Furthermore, ecological justice requires that nature's representatives can exercise access rights—where nature's representatives have the right to: access information, participate in decision-making processes, and access the justice system to defend nature's interest.<sup>24</sup> Again, evaluation of participatory ecological justice should consider to what degree nature's interest may influence decision-making processes.<sup>25</sup>

### *1.3. Coalescing environmental and ecological justice theories*

From a macro perspective, environmental and ecological justice are two sides of the same coin. “[P]eople, animals, and ecologies are [together] bound up in environmental politics of care and neglect”.<sup>26</sup> Both human and non-human nature have an interest in a healthy environment, and human actions and inactions have justice outcomes for both.<sup>27</sup>

Also, the root causes of injustices against human and non-human nature may be linked, as the rationalist perspective argues.<sup>28</sup> For example, chemicals poured into a river basin harm humans and other non-human natural entities dependent on that water supply and the ecosystem's ecological functioning.

22 Tanasescu, M. *Environment, Political Representation and the Challenge of Rights: Speaking for Nature*. New York: Palgrave Macmillan, 2016; Stone. *Should Trees Have Standing*, cit.; Schlosberg. *Reconceiving Environmental Justice*, cit.

23 Tanasescu. *Environment, Political Representation and the Challenge of Rights*, cit.; Stone. *Should Trees Have Standing*, cit.; Emmenegger & Tschentscher. *Taking Nature's Rights Seriously*, cit.

24 Stone. *Should Trees Have Standing*, cit.; Emmenegger & Tschentscher. *Taking Nature's Rights Seriously*, cit.; Schlosberg. *Reconceiving Environmental Justice*, cit.

25 Senecah. *The Trinity of Voice*, cit.

26 Houston. *Crisis Is Where We Live*, cit., 443.

27 Ibid.; Low & Gleeson. *Justice, Society & Nature*, cit.

28 Ibid.; Weiss, E. B. *Rule of Law for Nature in a Kaleidoscopic World*. In *Rule of Law for Nature: New Dimensions and Ideas in Environmental Law*. Cambridge: Cambridge University Press, 2013, 27-45; Dorling, D. *Opinion: Social Inequality and Environmental Justice*. In *Environmental Scientist*. 2010, 9-13; Chape, S. et al. *History, Definitions, Values and Global Perspective*. In *The World's Protected Areas: Status, Values and Prospects in the 21st Century*. Berkeley: University of California Press, 2008, 1-35; Morris, C. *The Rights and Duties of Beasts and Trees: A Law Teacher's Essay for Landscape Architects*. In *Journal of Legal Education*. No. 17, 1964, 185-192.

Therefore, preventing and remediating pollution may enable justice for both human and non-human nature.<sup>29</sup>

From a micro perspective, one theory implicitly favors one group over the other. While environmental justice theory makes human interests in a healthy environment visible, ecological justice theory highlights non-human nature's interest in maintaining ecological health.<sup>30</sup> On one hand, there are analytical benefits to their separation—e.g., to recognize how anthropogenic harms against human and non-human nature compare, especially when extinction of certain non-human species does not immediately impact human health or survival.<sup>31</sup>

On the other hand, if consideration for one is prioritized over the other, environmental and ecological justice interests become imbalanced, and humans or non-human nature may suffer disproportionately.<sup>32</sup> For example, some human communities may suffer in the name of 'conservation' (e.g., creating exclusionary recreational parks at the expense of those relying on the ecosystem for subsistence).<sup>33</sup>

Since some modern human interests and nature's interests may not be compatible, an ongoing dialogue and compromise between interests must be initiated to try and strike a balance.<sup>34</sup> Rights law requires that any limitation on one's rights must be necessary and proportional to protect the rights and interests of another legal subject and/or the general public.<sup>35</sup> Taken together, both theories are necessary to inform and foster a society where non-human nature's interests are upheld and not routinely discarded for short-term human interests, while long-term human interests are accounted for.

29 Houston. *Crisis Is Where We Live*, cit.; Low & Gleeson. *Justice, Society & Nature*, cit.; Morris. *The Rights and Duties of Beasts and Trees*, cit.

30 Washington, et al. *Foregrounding Ecojustice in Conservation*, cit.; Baxter. *A Theory of Ecological Justice*, cit.

31 Kopnina, H. *The Lorax Complex: Deep Ecology, Ecocentricism and Exclusion*. In *Journal of Integrative Environmental Sciences*. No. 9, 2012, 235-254.; Baxter. *A Theory of Ecological Justice*, cit.

32 Martin, H. M. "Defoliating the World": *Ecocide, Visual Evidence and 'Earthly Memory'*. In *Third Text*. No. 32, 2018, 230-253; Washington, et al. *Foregrounding Ecojustice in Conservation*, cit.

33 Bocarejo, D. & Ojeda, D. *Violence and Conservation: Beyond Unintended Consequences and Unfortunate Coincidences*. In *Geoforum*. No. 69, 2016, 176-183; Chape, et al. *History, Definitions, Values and Global Perspective*, cit., 1-35.

34 Washington, et al. *Foregrounding Ecojustice in Conservation*, cit.; Stone. *Should Trees Have Standing*, cit.

35 Bugge. *Twelve Fundamental Challenges in Environmental Law*, cit.

## 2. EMERGENCE OF NATURE'S RIGHTS IN COLOMBIA

Colombia's emerging nature's rights approaches make unique cases for several reasons. Prior to explicitly recognizing natural entities as legal subjects, Colombian law personified nature. The 2011 Victims and Land Restitution Law named the land as a victim of the armed conflict, granting it the right to restitution alongside human rights to restitution. As such, the law framed nature as analogous to a legal person.<sup>36</sup> However, reports indicate that restitution has hardly been actualized.<sup>37</sup>

One year before formally recognizing nature's rights in the Constitutional Court's 2016 Atrato River Basin ruling, the Colombian Constitutional Court called for a shift toward ecocentrism in a lawsuit over the protection of Colombia's Tayrona Park. The ruling states that nature must be protected because of its intrinsic right to exist—not solely for its limited instrumental value.<sup>38</sup>

The Constitutional Court behind the Atrato decision merged this ecocentric concept with human rights frameworks, drawn from both Colombian jurisprudence and many international conventions, decisions, laws, and treaties.<sup>39</sup> New Zealand's Whanganui River Settlement—which recognized the river as an 'environmental person'—strongly influenced the Court's Atrato decision.<sup>40</sup> Accordingly, there are many similarities between the cases. Both were conceived as a form of restitution for injustices against marginalized communities, crafted co-management schemes between said communities and the government, and indicated that local communities have a history of protecting nature while using it to meet their needs. Perhaps most legally significant, both framed distinct ecosystems as legal subjects.<sup>41</sup>

Within the scope of nature's rights frameworks worldwide, Colombian courts have played a unique role in the proliferation of nature's rights

36 Cortés, P. M. *The Victims and Land Restitution Law in Colombia in Context: An Analysis of the Contradictions between the Agrarian Model and Compensation for the Victims*. Berlin: FDCL, 2013; Congreso de Colombia. Ley 1448 de 2011.

37 Zulver, J. *Feasible Justice: Has Colombia Over-Promised and Under-Delivered Reparations for Its 8.6 Million Victims?* In Justiceinfo.net. 2018; Velez, I. *Law of Victims and Land Restitution: Colombia's Ambitious Law Faces Implementation Challenges*. In *FIU Law Review*. No. 9, 2014, 451-484.

38 Corte Constitucional, Sala Sexta de Revisión. T-606/15.

39 T-622/16, cit., 27-78, 104, 107-109; Macpherson, E. J. *Rivers as Subjects and Indigenous Water Rights in Colombia*. In *Indigenous Water Rights in Law and Regulation: Lessons from Comparative Experience*. Cambridge: Cambridge University Press, 2019, 131-160.

40 Macpherson. *Rivers as Subjects and Indigenous Water Rights in Colombia*, cit.

41 Ibid.; T-622/16, cit.

nationally. In 2018, the Colombian Supreme Court followed suit by recognizing the Colombian Amazon as a legal subject of rights.<sup>42</sup> These two rulings by Colombia's High Courts signaled to other Colombian courts that legal recognition of ecosystems as rights-holders is an appropriate remedy for human rights violations associated with environmental conflicts. Since, Colombian courts have recognized at least fifteen more ecosystems as rights-holders.<sup>43</sup>

### 2.1. The Atrato River Basin, 2016

In November 2016, Colombia's Constitutional Court recognized the megadiverse Atrato River Basin (including its tributaries and surrounding territories) in the northwest region as a subject of rights. The Atrato decision was the first time a designated ecosystem was recognized as a rights-holder in Colombia. These rights include the right to be protected, conserved, maintained, and restored.<sup>44</sup> The ruling came in response to a *tutela* against government agencies filed by the Colombia-based Center for Social Justice Studies (Tierra Digna) on behalf of an alliance of Chocó resident organizations, including Afro-descendants, Indigenous and mestizo campesino communities who have special constitutional protections though are routinely victimized by extractivist projects nationwide.<sup>45</sup>

The action sought to hold the agencies accountable for violating Atrato communities' constitutional rights—including the fundamental right to life, and rights to health, a healthy environment, freedom of movement, water, food security, and specially protected rights to territory, culture and autonomy—due to government inaction to halt well-documented, ongoing illegal mining. The *tutela* sought to confront the permeation of mechanized gold mining which uses heavy machinery and toxic chemicals, such as cheap and portable mercury and cyanide, to easily extract gold from the riverbed.<sup>46</sup> Since the influx of this type of gold mining in the 1980s, high impact illegal

42 Corte Suprema de Justicia. STC4360-2018. 4 April 2018.

43 UNEP. *What Are Environmental Rights?*, cit.

44 T-622/16, cit.

45 Richardson, W. & Mcneish, J. A. *Granting Rights to Rivers in Colombia: Significance for Extractivism and Governance*. In *Our Extractive Age*. London: Routledge, 2021; Restrepo, D. I. & Peña, C. A. *Territories in Dispute: Tensions between 'Extractivism', Ethnic Rights, Local Governments and the Environment in Bolivia, Colombia, Ecuador and Peru*. In *International Development Policy*. No. 9, 2017, 269-290; Ng'weno, B. *On Tiling Collective Property, Participation and Natural Resource Management: Implementing Indigenous and Afro-Colombian Demands. A Review of Bank Experience in Colombia*. September 2000.

46 T-622/16, cit.

mining here has increased exponentially. According to 2011 data, 99.2% of the 527 registered Mining Production Units in Chocó had no mining titles, making it the nation's highest concentration of illegal mining operations.<sup>47</sup>

Contamination from high impact illegal mining has resulted in grave socio-ecological consequences, including rampant child deaths, impaired child development, miscarriages, malaria outbreaks, cutaneous diseases, dehydration and malnutrition. It also destroyed water sources and habitat. Even after mining has ceased, toxic contamination can persist for decades at minimum. By the ruling's issuance, ecological damages resulting from illegal mining covered hundreds of thousands of hectares.<sup>48</sup>

The Court's investigation detailed many factors behind environmental and ecological injustices, including a colonial history of gold extraction reliant on slave labor. Indigenous communities had a long pre-colonial history of subsistence gold mining. In the 1500s, Spain colonized Chocó, trafficking and enslaving Africans and forcing Indigenous to extract gold for the Spanish crown. At this time, Chocó was the largest gold producer in the world yet no resulting wealth was reinvested in Chocó.<sup>49</sup> After Colombia gained independence and abolished slavery, Afro-descendants settled along the Basin's coastal regions alongside many Indigenous groups. Mining continued as the primary economic activity.<sup>50</sup> The Court connected this history to modern forms of corruption, where authorities continue granting mining concessions for royalties without reinvesting locally, evidenced by Chocó's high rate of unmet basic needs and deteriorating ecological conditions.<sup>51</sup>

The Atrato ruling contains ten mandates designed to remedy the socio-ecological crisis and, thus, enable justice for humans and nature basin-wide. Mandates 1 through 3 find that government inaction violated plaintiffs' rights.<sup>52</sup> The remaining seven outline ongoing actions assigned to government authorities to remedy the conflict: recognize the Atrato River Basin as a legal subject with rights to be protected, maintained, conserved, and restored; establish a co-guardianship management model between the Colombian state (represented by the Ministry of the Environment and Sustainable Development) and local communities, including a Commission of River Guardians to participate directly in the ruling's implementation; and include

47 Ibid., 146-147.

48 Ibid., cit.

49 Ibid., 81-82.

50 Ibid., 82.

51 Ibid., 8-9, 80, 83-84, 89, 93, 118, 128.

52 Ibid., 161.

the Panel of Experts to assist the Guardians and ensure their participation is guaranteed in all processes.

Mandate 5 requires collaboratively developed and implemented short-term, medium-term, and long-term plans to decontaminate and restore the Basin. Mandate 6 requires the collaborative development and implementation of a comprehensive plan to neutralize and eradicate illegal mining in the region. Mandate 7 requires the collaborative development and implementation of a comprehensive plan to recuperate the traditional livelihood models of plaintiff communities. Mandate 8 requires the design and operation of epidemiological and toxicological studies of the Atrato to inform action plans. Mandate 9 establishes a Follow-Up Committee responsible for evaluating and informing implementation. Mandate 10 requires the State to ensure the Intersectoral Commission for Chocó complies with the Ombudsman's 2014 Resolution 064,<sup>53</sup> ordering a local authority to comply with a neglected mandate. Each mandate names all actors responsible, mandatory measures, and timeframes required for compliance.<sup>54</sup>

While the Atrato decision marked a significant point in the development of nature's rights jurisprudence in Colombia, the decision builds off Colombia's constitutional order. The 1991 National Constitution was seen as one of the first in Latin America to embody support for modern and robust democratic institutions, stronger human rights guarantees, and a framework to address violence and inequality.<sup>55</sup> The Constitution also includes a chapter on collective rights and the environment, earning it the nickname "Ecological Constitution". The constitutional text contains thirty provisions that enshrined a series of principles, mandates, and obligations focused on upholding and protecting the environment and guaranteeing sustainable development. In fact, environmental protection and biodiversity is characterized as a "higher interest".<sup>56</sup> These provisions have been drawn upon, cited, and interpreted in jurisprudence to recognize nature's rights and the interdependence between human rights and environmental integrity. The Atrato decision itself recognizes that "[i]n effect, nature and the environment are a transversal element of the Colombian constitutional order" and draws from the constitutional

53 Ibid., 161-165; Macpherson. *Rivers as Subjects and Indigenous Water Rights in Colombia*, cit.

54 T-622/16, cit., 161-165.

55 Lemaitre. *El derecho como conjuro*, cit.

56 T-622/16, cit., 31.

order to emphasize the principle of cultural and ethnic pluralism as it relates to environmental protection".<sup>57</sup>

## 2.2. *The Colombian Amazon, 2018*

In 2018, the Supreme Court applied similar ecocentric reasoning. Ruling on a constitutional challenge against rampant deforestation in the Amazon rainforest, the Court issued a landmark decision recognizing the Colombian Amazon as a subject of rights. The case was filed with the support of the Center for the Study of Law, Justice, and Society (Dejusticia) on behalf of 25 plaintiffs, including children and young people from the Colombian regions most vulnerable to climate change. Through a *tutela* action, plaintiffs claimed that deforestation in the Amazon exacerbated the effects of climate change and, thus, violated their constitutional right to a healthy environment and threatened their fundamental rights to life, health, food, and water, as well as the intergenerational rights of future generations. Defendants included the President of Colombia, the Ministry of Environment, the Ministry of Agriculture, the National Parks, the regional autonomous corporations (the entities in charge of environmental governance by region), and local mayors and governments.<sup>58</sup>

The order consisted of four parts directing defendants to (1) formulate an Action Plan to halt deforestation in the Amazon in the short, medium and long term; (2) develop an Intergenerational Pact for the Life of the Colombian Amazon, with plaintiff participation, anyone whom the ruling would impact and theoretically open to the participation of others toward drafting an agreement to protect the Amazon and those dependent on its ecological health; (3) update and implement local zoning and land governance plans; and (4) ensure that regional environmental agencies Corpoamazonia and Cormacarena formulate an action plan to reduce deforestation in their respective regions.<sup>59</sup>

Using national statistics, the region has a low population density. Available data suggests there are 1,125,582 registered inhabitants: about 2% of the national population.<sup>60</sup> Indigenous groups are a minority population.<sup>61</sup>

57 Ibid., 142.

58 STC4360-2018, cit.

59 STC4360-2018, cit.

60 DANE. Proyecciones de población por Departamento Colombia, 2017.

61 CEPAL, et al. *Amazonia posible y sostenible*. Report. 2013; SIATAC. *Región: Amazonia colombiana*.

Though, over 60 different indigenous groups live in 183 distinct indigenous reserves, covering over 50% of the region.<sup>62</sup>

Over several centuries, waves of migration have led to the colonization of new territories due to many factors, including forced displacement in other regions, draw of new economic opportunities, and colonization by missionaries and foreigners.<sup>63</sup> During the 1980s and 1990s, more land in the Amazon was cleared for settlements due to violence-induced migration, the FARC insurgency, and forced displacement.<sup>64</sup> Accordingly, a large peasant (*campesino*) population spans the region today.<sup>65</sup> Armed conflict and illicit economies in the Amazon have often encouraged the agricultural frontier's expansion.<sup>66</sup>

By 2018, the Colombian Amazon had the highest rate of deforestation nationally, at 66.2% of total deforestation. After the 2016 Peace Deal, deforestation here increased by 44%, occurring in areas the FARC guerilla previously controlled.<sup>67</sup> The FARC left behind illegal roads and airstrips (appealing infrastructure for covert networks).<sup>68</sup> Regional deforestation is tied to illegal land grabbing (60-65%), illicit crops cultivation (20-22%), illegal mining (7-8%), timber removal and extraction, building infrastructure (i.e., oil exploration and roads for agroindustry), and agroindustry crop and livestock

62 Moloney, A. *Colombia's Amazon Forest Gets Boost with \$366 Million Protection Fund*. In *Reuters*. 11 December 2019.

63 CEPAL, *et al. Amazonia posible y sostenible*, cit.; Santoyo, M. J. *Colombia amazónica*. Bogotá: Universidad Nacional de Colombia, 1987.

64 Ramírez, M. C. *Militarism on the Colombian Periphery in the Context of Illegality, Counterinsurgency, and the Postconflict*. In *Current Anthropology*. No. 60, 2019; Castro-Nunez, A., *et al. Land Related Grievances Shape Tropical Forest-Cover in Areas Affected by Armed Conflict*. In *Applied Geography*. No. 85, 2017, 39-50.

65 Castro-Nunez, *et al. Land Related Grievances Shape Tropical Forest-Cover in Areas Affected by Armed Conflict*, cit.; Álvarez, M. D. *Forests in the Time of Violence: Conservation Implications of the Colombian War*. In *Journal of Sustainable Forestry*. No. 16, 2003, 47-68; Santoyo. *Colombia amazónica*, cit.

66 Graser, M., *et al. Peacebuilding in Rural Colombia: A Collective Perception of the Integrated Rural Reform in the Department of Caquetá (Amazon)*. In *Land*. No. 9, 2020; Hermann, L. J. *The High Price of Peace in Colombia: Deforestation in the Amazon*. In *Lifegate*. 2019; Castro-Nunez, *et al. Land Related Grievances Shape Tropical Forest-Cover in Areas Affected by Armed Conflict*, cit.; Álvarez, M. D. *Forests in the Time of Violence: Conservation Implications of the Colombian War*, cit.

67 STC4360-2018, cit., 3.

68 Botero-García, R., *et al. Áreas protegidas amazónicas y sus funcionarios como víctimas del conflicto armado*. Bogotá: Fundación para la Conservación y el Desarrollo Sostenible, 2019; Regjerengen. *Colombia Steps Up the Battle against Amazon Deforestation*. In *Government*.no. 2017.



production.<sup>69</sup> Massive deforestation in the region has reduced the forest's capacity to act as a carbon sink, increasing greenhouse gas emissions and contributing to climate change. Deforestation has also impaired hydrological cycles, reduced groundwater capture, increased flooding, degraded water supplies which have provided water to the plaintiffs' cities, and resulted in habitat and endemic biodiversity loss.<sup>70</sup>

Plaintiffs were motivated by a sense of urgency when filing the *tutela* to prevent potentially irreversible damage. Deforestation rates had rapidly increased despite Colombia's multiple commitments to tackle deforestation, and scientific reports emphasize that actions to mitigate climate change must occur within a short timeframe.<sup>71</sup> The *tutela* sought to swiftly hold government authorities accountable to their commitments and minimize climate change impacts.

Similar to the Atrato decision, the Amazon ruling draws from the constitutional doctrine on environmental protection to further develop nature's rights for the Amazon. Both the complaint filed and the Court's opinion build on numerous jurisprudential precedents from the Constitutional Court recognizing the nexus between guaranteeing constitutional rights and environmental integrity.<sup>72</sup> The decision itself cites the Constitution's construction of a "national ecological public order" and several principles enshrined across constitutional provisions in the "Ecological Constitution"—"the prevalence of the "general interest" (Article 1); the duty to protect the "natural assets of the nation" (Article 8); public health (Article 49); the "ecological dimension" of private property (Article 58); the qualification of "natural parks" as property that is "inalienable, imprescriptible and not subject to seizure" (Article 63); one function of education was defined as "train the Colombian when it comes to [...] the protection of the environment" (Article 67); the fundamental right to "enjoy a healthy environment" and duty of the state "to protect the diversity and integrity of the environment" (Article 79); the imposition upon the State duty to "... plan the handling and use of natural resources, to guarantee their sustainable development".<sup>73</sup> The Amazon ruling

69 Botero-García, *et al.* *Áreas protegidas amazónicas y sus funcionarios como víctimas del conflicto armado*, cit.; STC4360-2018, cit., 22.

70 STC4360-2018, cit., 3.

71 IPBES. *Summary for Policymakers of the Global Assessment Report on Biodiversity and Ecosystem Services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (Global Assessment Report)*. Bonn: Germany, IPBES Secretariat, 2019; IPCC. *Global Warming of 1.5 °C (Special Report)*, 2018.

72 STC4360-2018, cit., 4.

73 *Ibid.*, 26.

recognizes that the Ecological Constitution has been interpreted to elevate the environment into the category of fundamental rights.

### 3. CONTRIBUTING AND IMPEDING FACTORS FOLLOWING THE ISSUANCE OF THE RULINGS

This section discusses the implementation process of the Atrato and Amazon rulings, identifying factors which contribute to or impede justice efforts for humans and nature.

#### 3.1. *Following the Atrato ruling*

Overall, available reports indicate low government compliance with the orders, and illegal mining and armed conflict continues, presenting new and continued risks for Atrato communities.<sup>74</sup>

Risk of assassination and violence against Atrato communities remains a top concern since the ruling's issuance.<sup>75</sup> Early on, defense authorities conducted several operations to seize and destroy illegal mining equipment throughout the Basin.<sup>76</sup> As appears to be the historical norm,<sup>77</sup> security forces vacated the region after carrying out the operations.<sup>78</sup> Armed actors linked to illegal mining commonly use the security vacuum to retaliate against locals.<sup>79</sup> In this case, armed actors sought to retaliate against those confronting illegal mining directly—not necessarily because they were identified as

74 Comité de Seguimiento. Cuarto Informe de Seguimiento Sentencia T-622 de 2016. June 2019; Comité de Seguimiento. Tercer Informe de Seguimiento Sentencia T-622 de 2016. 2018; Comité de Seguimiento. Segundo Informe de Seguimiento Sentencia T-622 de 2016. 2018.

75 Redacción Colombia 2020. “¿Nos van a matar a todos por defender el río Atrato?”: líder social del Chocó. In *El Espectador*. 26 February 2019; Friedman, J. “The Only Protection Is God”: Negotiating Faith and Violence in Chocó. In *The Pulitzer Center*. 4 December 2018; Comité de Seguimiento. Segundo y Tercer Informe de Seguimiento T-622 de 2016, cit.; Volckhausen, T. *Colombian Land Defenders: “They’re Killing Us One by One”*. In *Amazon Watch*. 9 March, 2018.

76 Comité de Seguimiento. Segundo y Tercer Informe de Seguimiento T-622 de 2016, cit.

77 Justicia para la Paz, 2017.

78 Ibid.

79 Dixon, L. “In Many Ways, the Conflict Never Ended.” *Ongoing Violence Threatens Colombia’s Peace*. In *World Politics Review*. 29 April 2020; Granada, S., et al. *El agotamiento de la política de seguridad: evolución*. In *Guerra y violencias en Colombia: herramientas e interpretaciones*. Bogotá: Pontificia Universidad Javeriana, 2009.

River Guardians.<sup>80</sup> Some community leaders have been assassinated and many remain under threat.<sup>81</sup>

As a protective measure, the State issued cell phones and bulletproof vests to some under threat. Yet many already have cell phones and lack someone to call when in danger, and certain areas lack service. Furthermore, the weight of bulletproof vests can cause drowning when navigating the river.<sup>82</sup> So, these measures have proven inadequate. Chocó lacks a reliable security presence to defend communities against direct attacks by armed groups, anti-personnel mines, and shootouts between armed groups.<sup>83</sup>

However, accounts about ongoing violence post-date the Follow-Up Committee's 2018 progress reports, which demanded that defense authorities swiftly initiate necessary, proportional responses to combat illegal mining and address security concerns for residents. They also emphasized viewing the illegal mining phenomenon in the context of armed conflict.<sup>84</sup>

The mid-2018 report discussed additional dimensions of the ongoing armed conflict: territorial expansion of the National Liberation Army (or ELN, a left-wing armed group) and the United Self Defense Forces (or AUC, a far right-wing paramilitary group); illegal mining links to drug cartels; emergence of dissident combatants in the process of disarmament and reincorporation of the FARC; and continued forced displacement and confinement as methods of war.<sup>85</sup>

With this in mind, the Follow-Up Committee ordered the defense sector to develop a comprehensive protocol to eradicate illegal mining which accounts for the intertwined nature of illegal mining and the armed conflict, and goes beyond militarization and criminalization of illegal mining. The Committee also indicated that the protocol requires local input to prevent collateral damage from military operations.<sup>86</sup> Accordingly, the Committee urged defense authorities to target other links along the illegal mining supply

80 Lawyer for Tierra Digna. Personal communication, July 2019.

81 Redacción Colombia 2020. “¿Nos van a matar a todos por defender el río Atrato?”, cit., 1, 10-11, 13.

82 Ibid.; Lawyer for Tierra Digna, cit.

83 Redacción Colombia 2020. “¿Nos van a matar a todos por defender el río Atrato?”, cit.; Restrepo, J. S. *Civil Society Faces Deadly Threats in Colombia's Chocó Region. Advocacy for Human Rights in the Americas*. In WOLA. 8 August 2019; T-622/16, cit.

84 Comité de Seguimiento. Segundo y Tercer Informe de Seguimiento T-622 de 2016, cit.

85 Comité de Seguimiento. Segundo Informe de Seguimiento T-622 de 2016, cit., 27-28.

86 Ibid., 65 y 68.

chain (i.e., transport of inputs used by operations and points of commerce).<sup>87</sup> They also urged defense authorities to support efforts to recuperate traditional livelihoods – e.g., by collaborating with Atrato communities and the Ministry of the Environment (MADS) to certify ancestral practices, uses, and customs and protect them from criminalization during eradication efforts.<sup>88</sup>

Dredging barges continue to operate openly on Río Quito, one of the Atrato's main tributaries. While defense authorities indicated that two were granted permission by Quibdó's mayor to dredge the river, their operation went against MADS's directive prohibiting the use of all mining machinery in the tributary.<sup>89</sup> Other dredging barges which authorities 'eradicated' had been repaired and operationalized again by illegal mining operations.<sup>90</sup> Others had been left behind or fell into the river, causing serious illness and contamination.<sup>91</sup> Despite demands to adapt eradication methods, defense authorities have continued taking the same actions which were "consider[ed] unsuccessful, such as the [military] operations and bombings [of equipment]".<sup>92</sup>

The Follow-Up Committee also noted noncompliance by other authorities. For example, the National Authority of Environmental Licenses and the Ministry of Mining continued to grant problematic mining concessions, and the National Mining Agency had issued a proposal supporting the exploration for non-renewables in the region.<sup>93</sup> The Committee condemned the proposal indicating, "To intervene in a territory, offering its reserves of another resource under irregular conditions and administrative difficulties, exacerbates unresolved problems".<sup>94</sup> Also, all government authorities had failed to include the River Guardians.<sup>95</sup>

87 Ibid., 68

88 Comité de Seguimiento. Segundo y Tercer Informe de Seguimiento T-622 de 2016, cit. 65 y 69.

89 Comité de Seguimiento. Tercer Informe de Seguimiento Sentencia T-622 de 2016, cit., 20.

90 Ibid.

91 Comité de Seguimiento. Cuarto Informe de Seguimiento Sentencia T-622 de 2016, cit., 12,42,45; Comité de Seguimiento. Tercer Informe de Seguimiento Sentencia T-622 de 2016, cit., 9.

92 Lawyer for Tierra Digna, cit.

93 Comité de Seguimiento. Tercer Informe de Seguimiento Sentencia T-622 de 2016, cit.; Comité de Seguimiento. Segundo Informe de Seguimiento Sentencia T-622 de 2016, cit., 68.

94 Comité de Seguimiento. Segundo Informe de Seguimiento Sentencia T-622 de 2016, cit., 68.

95 Comité de Seguimiento. Segundo y Tercer Informe de Seguimiento Sentencia T-622 de 2016, cit.

By late 2018, the Follow-Up Committee warned agencies that, if insufficient compliance continued, disciplinary action would be taken.<sup>96</sup> At that time, some Expert Panel members suggested the Committee file contempt of court for insufficient compliance a year and a half after the ruling's issuance.<sup>97</sup> However, no disciplinary actions have been reported.<sup>98</sup> A lawyer for Tierra Digna stated<sup>99</sup>, "Until now [...] [the Committee's] 'demands' [have been] merely 'calls, please' or 'requests.' We already believe sanctions should be passed [...] Right now, there are no penalties for noncompliance. If we don't get to the point, the institutions are going to see this as a joke, like a game that happens with many rulings where nothing happens."

While significant problems remain, some progress has been identified. In early 2019, Colombia's Administrative Department of Science, Technology and Innovation (COLCIENCIAS) awarded \$3M in grant funding to begin the required toxicological and epidemiological studies.<sup>100</sup> This study is a precondition required toward restoring the Basin and local public health.

The ruling has also generated a unique opportunity for collaboration. Participants involved in the ruling's implementation indicate that, despite challenges and shortcomings, collaboration across sectors and the involvement of local communities is a necessary step toward enabling justice regionally.<sup>101</sup> While evidence suggests collaboration has been insufficient, the Follow-Up Committee has consistently emphasized that the Guardians' influence in all decision-making processes is mandatory.<sup>102</sup> By 2019, improved communications between MADS and the Guardians had been observed.<sup>103</sup>

Also, while the *tutela* and ruling targeted illegal mining, the Follow-Up Committee has recommended that all legal development be reviewed

96 Comité de Seguimiento. Tercer Informe de Seguimiento Sentencia T-622 de 2016, cit.

97 Ibid.; Contempt of Court. *Contempt of Court*. In *The Free Legal Dictionary*.

98 La Procuraduría. Personal communication. March 2020; Lawyer for Tierra Digna, cit.

99 Lawyer for Tierra Digna, cit.

100 Drouet, J. *\$3 Million Grant Funds Study of Colombian River Contamination, Effects on Locals*. In *Florida International University News*. 13 February 2019.

101 Representative from MADS. Personal communication. July 2019; Lawyer for Tierra Digna, cit.; Comité de Seguimiento. Cuarto Informe de Seguimiento Sentencia T-622 de 2016, cit.

102 Comité de Seguimiento. Segundo y Tercer Informe de Seguimiento Sentencia T-622 de 2016, cit.

103 Lawyer for Tierra Digna, cit.; Comité de Seguimiento. Cuarto Informe de Seguimiento Sentencia T-622 de 2016, cit. 11 Lawyer for Tierra Digna, cit.

for their impacts on the Basin and residents.<sup>104</sup> It is possible, then, that the ruling's reference to threats imposed by legal extractive projects has had some influence.<sup>105</sup>

So far, the ruling's *inter pares* framing has led other communities to seek judicial justice.<sup>106</sup> Additional Chocó residents have called to recognize two other 'Chocoano' rivers—the San Juan and Baudó Rivers—as legal subjects, arguing that they depend on these rivers' integral functioning just as the Atrato plaintiffs rely on the Atrato, and that the rivers are currently threatened.<sup>107</sup>

Atrato communities and their supporters continue to attempt to guide and implement the Atrato approach, despite barriers. To restore the Atrato in a manner that restores guaranteed rights will take years, or “generations” as a lawyer for Tierra Digna described.<sup>108</sup> The restoration plan with MADS has a 20-year time horizon.<sup>109</sup> However, due to low levels of compliance and no disciplinary actions on record, the approach continues to live more on paper than in practice.<sup>110</sup> Table 1 summarizes what remains the same and what has changed since the ruling's issuance in 2016.

TABLE 1. SUMMARY OF WHAT REMAINS THE SAME AND WHAT HAS CHANGED SINCE THE CONSTITUTIONAL COURT'S 2016 ATRATO RIVER BASIN RULING'S ISSUANCE

<i>Same</i>
• Low levels of government compliance and accountability
• Lack of dedicated funding for environmental and social protection
• Ongoing armed conflict and threats of violence
• Ongoing interest in extractive projects
• Ongoing illegal mining

104 Comité de Seguimiento. Cuarto Informe de Seguimiento Sentencia T-622 de 2016, cit., 50.

105 Comité de Seguimiento. Segundo, Tercer y Cuarto Informe de Seguimiento Sentencia T-622 de 2016, cit.; T-622/16, cit.

106 Comité de Seguimiento. Cuarto Informe de Seguimiento Sentencia T-622 de 2016, cit., 64; Tierra Digna. *Risas, sueños y lamentos del río*. Bogotá: Tierra Digna, 2019.

107 Comité de Seguimiento. Cuarto Informe de Seguimiento Sentencia T-622 de 2016, cit., 64.

108 Lawyer fo Tierra Digna, 2019.

109 Ibid.; Comité de Seguimiento. Segundo y Tercer Informe de Seguimiento Sentencia T-622 de 2016, cit.; T-622/16, cit.

110 Multiple sources. Personal communications. July 2019 through April 2020.

• Ongoing socio-environmental harms linked to the above factors
• Zero-to-low levels of environmental justice enabled for Chocoanos
• Zero-to-low levels of ecological justice enabled for the Atrato River Basin
<i>Different</i>
• Increased 'potential' for future actions, including:
• Heightened legal standing of the Atrato River Basin
• Heightened voice for Chocoanos, particularly River Guardians
• Heightened legal standing of other ecosystems under inter pares framing
• Increased political representation of Atrato River Basin's interests
• Increased participatory influence of Chocoanos
• Increased channels for funding
• Increased channels to hold government accountable for inaction
• Increased attention to the socio-ecological crisis in Chocó

### 3.2. Following the Amazon ruling

In April 2018, the Supreme Court ruling sought to stop rampant illegal deforestation to enable intergenerational environmental justice and ecological justice.<sup>111</sup> Since then, available data suggests an overall decline in illegal deforestation: by 10% in 2018 compared to 2017 and 17.8% in the first quarter of 2019.<sup>112</sup>

However, the data's overall validity is questionable. In 2018, when the national government shifted from President Santos to Duque, the new administration decreased the national deforestation goal—changing it from a fixed to a variable goal. According to officials, this made the goal more attainable, arguing the previous administration's goal was too high to be accomplished. Naturally, this made the goal less ambitious, and no reports were available to convey how deforestation at the new rate would effectively

111 STC4360-2018, cit.

112 IDEAM. *Detección Temprana de Deforestación*. 2019; MADS. *Continúan disminuyendo las alertas de deforestación en la Amazonia colombiana*. 2019; Moloney, A. *Colombia's Amazon Forest Gets Boost with \$366 Million Protection Fund*, cit.; Morales, C. *Deforestación en Amazonía tuvo reducción durante primeros meses de 2019*. In *La FM*. 2019; *Visión Amazonía. La deforestación en Colombia se redujo 10% en 2018 en comparación con el año 2017, y 17% respecto a la tendencia de crecimiento estimada para 2018*. 2019.

halt deforestation at the level required by the ruling.<sup>113</sup> Moreover, recent data indicates deforestation increased 8% in 2020.<sup>114</sup>

Further, multiple interpretations without clear guidelines or coordination have generated significant challenges.<sup>115</sup> Notably, the 25 plaintiffs “went to Court knowing how climate change would affect them”.<sup>116</sup> They knew rampant deforestation in the Amazon contributed to this and that the government was not meeting their commitments to stop deforestation fast enough to protect them, “but they hadn’t had previous contact with the indigenous communities and farmers in the Amazon that are negatively impacted by this ruling [...] Then there is a challenge because a case that began with young people on climate change ended up affecting communities who were not really brought into the lawsuit”.<sup>117</sup>

So far, interpretation and implementation of the ruling has harmed *campesinos*. By late 2018, reports surfaced indicating that special defense units led by the Prosecutor (*Fiscalía*, in charge of prosecuting crimes) had begun conducting military operations to halt illegal deforestation and criminalize offenders, purporting to enforce the ruling. The operations have disproportionately targeted and criminalized vulnerable *campesinos*, and destroyed their property.<sup>118</sup> Military operations, referred to as the Artemisa Campaign (Operación Artemisa or Campaña Artemisa), have occurred in National Parks, including La Paya National Park (Putumayo), Cordillera de Los Picachos National Park (Caquetá), and La Chiribiquete National Park (Caquetá).<sup>119</sup>

113 Public Audience for STC4360-2018. Personal communication. October 15, 2019.

114 Luque, S. *Crece la deforestación en Colombia: más de 171 mil hectáreas se perdieron en el 2020*. In *Mongabay*. 2021; IDEAM. *Detección Temprana de Deforestación*. 2021.

115 Public Audience for STC4360-2018. Personal communication. October 15-November 19, 2019.

116 Researcher Eslava. Personal communication. July 2019.

117 Ibid.

118 Dejusticia. *Campaña Artemisa en Serranía de La Macarena no puede atropellar los derechos del campesinado*, cit.; Hernández. *La deforestación va a un ritmo exagerado con o sin pandemia*, cit.; Actualidad. *Lo bueno, lo malo y lo feo en las audiencias de la sentencia de la Amazonía*, cit.; Dejusticia, 2019; Marandúa Stereo 100.7 FM. *Campesinos convocan manifestación este sábado en Puerto Cachicamo (Guaviare)*, cit.; Procuraduría General de la Nación. *Directiva No. 004*, cit.; Public Audience for STC4360-2018. Personal communication. October 15, 2019.

119 Dejusticia. *Campaña Artemisa en Serranía de La Macarena no puede atropellar los derechos del campesinado*, cit.; Dejusticia. *La jornada de activismo creativo Days of Hope llega este 21 de septiembre a Caquetá*, cit.; Medio Ambiente. *Guardianes del Yuruparí presentan tutela contra el uso de mercurio en la Amazonía*, cit.; Procuraduría General de la Nación. *Directiva No. 004*, cit.; Public Audience for STC4360-2018. Personal communication. October 15-November 19, 2019; Volckhausen. *Colombian Land Defenders*, cit.; Dejusticia.



According to reports, the Prosecutor stated defense forces were responding to a complaint by the Parks regarding illegal deforestation activity. They identified some actors involved in deforestation, issued arrest warrants, and captured some of those identified. However, the authorities failed to initiate required judicialization processes, making the operations illegal.<sup>120</sup> A few of those captured were released while others were charged with environmental crimes (e.g., invading special ecological zones, aggravated ecological damage, and initiating fires).<sup>121</sup>

By November 2018, the plaintiffs condemned the approach, emphasizing that *campesinos* already suffer from historical forced displacement and dispossession, and that many engage in forest-clearing activities because they lack alternative livelihoods. Furthermore, because *campesinos* are the lowest links on the criminal deforestation chain, these operations have not decreased deforestation nor disrupted large-scale criminal chains. Higher links on the chain profit most from forest-clearing activities, rely on *campesino* labor, and are often tied to armed groups.<sup>122</sup>

On April 5, 2019, the Attorney General (*la Procuraduría*) issued a directive to all public and private servants responsible for protecting the Colombian Amazon, reminding them they are also responsible for the welfare of vulnerable communities and that the government has largely neglected them.<sup>123</sup> The Attorney General then named the many legal mechanisms and initiatives developed to protect the Colombian Amazon but stated that these efforts have been ineffective, too fractured, too slow, and disproportionate to the

*Estrategia del Estado para frenar la deforestación no debe centrarse en medidas represivas contra campesinos*, cit.

120 Procuraduría General de la Nación. Directiva No. 004, cit.; Dejusticia. *Estrategia del Estado para frenar la deforestación no debe centrarse en medidas represivas contra campesinos*, cit.

121 Dejusticia. *Estrategia del Estado para frenar la deforestación no debe centrarse en medidas represivas contra campesinos*, cit.

122 Hernández. *La deforestación va a un ritmo exagerado con o sin pandemia*, cit.; Olaya. *Un doble rasero en la lucha contra la deforestación*, cit.; MADS. *En este gobierno, la falta de agua, la pérdida de la biodiversidad y la contaminación ambiental, se convirtieron en una preocupación de seguridad Nacional, gracias a la nueva política de defensa y seguridad para la equidad*. 2019; Procuraduría General de la Nación. Directiva No. 004, cit.; Public Audience for STC4360-2018. Personal communication. October 15-November 19, 2019; Volckhausen. *Colombian Land Defenders*, cit.; Dejusticia. *Estrategia del Estado para frenar la deforestación no debe centrarse en medidas represivas contra campesinos*, cit.; Medio Ambiente. *Las preguntas incómodas por el "Operativo Picachos"*, cit.; Telesur/MRS-LJS. *Colombia: Millions Demand Investigation of Environmental Crimes*, cit.

123 Procuraduría General de la Nación. Directiva No. 004, cit., 1.

enormous problems posed by deforestation. The Attorney General demanded that, given the urgency of the problem, authorities unify all initiatives seeking to halt deforestation in the Amazon and confront climate change.<sup>124</sup> It also condemned the military operations as illegal arrests, demanding defense authorities take corrective measures immediately.<sup>125</sup>

By late April 2019, President Duque declared deforestation a national security issue.<sup>126</sup> This decision appears to have formalized the Artemisa Campaign, authorizing the use of further military intervention to confront illegal and armed actors, implement productive alternatives, strengthen information regarding rural land adjudication, and monitor anticipated threats.<sup>127</sup> However, the declaration did not 1) claim the campaign will course-correct from criminalizing vulnerable groups, 2) acknowledge that earlier efforts failed to reach higher links on the criminal chain, nor 3) acknowledge how it may confront impunity for armed actors threatening violence. It did call for the formation of a National Council to Combat Deforestation (CONALDEF) and related environmental crimes, which includes the Attorney General's participation.<sup>128</sup>

That same month in April 2019, Dejusticia filed a complaint evidencing noncompliance, demanding that progress be reviewed by judicial authorities.<sup>129</sup> From October 15 until November 19, 2019, the District Court of Cundinamarca hosted a 10-day public hearing inviting plaintiffs, stakeholders, and relevant government authorities to discuss progress in a public forum.<sup>130</sup>

During the hearing, authorities justified their level of progress in front of the court, while plaintiffs and impacted communities presented their concerns, observations, and questions. Most agencies alleged progress had begun but gave various reasons for insufficient action. Many sent officials

124 Ibid., 3.

125 Ibid., 1-2.

126 Presidencia de la República. *Declaración del Presidente Iván Duque*, cit.

127 Ibid.; MADS. *En este gobierno, la falta de agua, la pérdida de la biodiversidad y la contaminación ambiental, se convirtieron en una preocupación de seguridad Nacional, gracias a la nueva política de defensa y seguridad para la equidad*, 2019.

128 Ibid.; Presidencia de la República. *Declaración del Presidente Iván Duque*, cit.; Public Audience for STC4360-2018. Personal communication. October 15, 2019.

129 Dejusticia. *La jornada de activismo creativo Days of Hope llega este 21 de septiembre a Caquetá*, cit.; La Procuraduría. Personal communication. March 2020.

130 ACTUALIDAD. *Lo bueno, lo malo y lo feo en las audiencias de la sentencia de la Amazonía*, cit.; Dejusticia representative. Personal communication. November 2019; La Procuraduría. Personal communication. November 2019; Public Audience for STC4360-2018. Personal communication. October 15-November 19, 2019.

who were not responsible for implementation. Some government agencies said they lacked the required expertise or claimed halting deforestation was outside their range of duties.<sup>131</sup> Some agencies even failed to show up.

Authorities who accepted halting deforestation as part of their responsibilities also demonstrated insufficient progress. At the national level, MADS had created deforestation alerts but had not released them. At the regional level, regional autonomous corporations indicated they lacked the necessary resources to advance. Municipalities had not updated land management plans or begun developing required climate action plans.<sup>132</sup>

During the hearings, the government claimed that the Intergenerational Pact for the Life of the Colombian Amazon—one of the ruling’s mandates—was in progress as part of the Amazon Regional Working Group, a pre-existing group. Though, as a pre-existing initiative, discussions at the Working Group hardly addressed the ruling’s particulars. Furthermore, government officials indicated that a Pact draft was in circulation, but plaintiffs had not been included despite their attempts to contact MADS and having convened their own Pact meeting with local communities.<sup>133</sup>

The Ministry of Agriculture indicated that anyone convicted of environmental crimes, such as illegal deforestation, would not be eligible for land restitution through the National Land Agency.<sup>134</sup> One plaintiff representative questioned this policy: “One of the causes of the expansion of the agricultural frontier in the Amazon is the absence of economic alternatives for campesinos, and that is why they end up in the deforestation chain [...] if they deforest [...] they will not have access to the programs of the National Land Agency, and the measure will end up concentrating [ownership of] the land in the hands of a few”.<sup>135</sup> Plaintiffs also asked the Ministry of Agriculture if they saw advancing *campesino* reserve areas promised by the 2016 Peace Deal as a strategy against deforestation.<sup>136</sup> This went unanswered.<sup>137</sup>

131 ACTUALIDAD. *Lo bueno, lo malo y lo feo en las audiencias de la sentencia de la Amazonía*, cit.; Public Audience for STC4360-2018. Personal communication. October 15, 2019.

132 ACTUALIDAD. *Lo bueno, lo malo y lo feo en las audiencias de la sentencia de la Amazonía*, cit.; Public Audience for STC4360-2018. Personal communication. October 15, 2019.

133 Dejusticia. *La jornada de activismo creativo Days of Hope llega este 21 de septiembre a Caquetá*, cit.; Public Audience for STC4360-2018. Personal communication. October 15, 2019.

134 Ministry of Agriculture representative at the Public Audience for STC4360-2018. Personal communication. October 15, 2019.

135 Public Audience for STC4360-2018. Personal communication. October 15, 2019.

136 Plaintiff representative at the Public Audience for STC4360-2018. Personal communication. October 15, 2019.

137 Public Audience for STC4360-2018. Personal communication. October 15, 2019.

A significant gap in monitoring implementation is that hardly any data on legal deforestation exists and is publicly accessible, and no formal review on the impacts of legal deforestation in the Colombian Amazon have been attempted.<sup>138</sup> Despite ongoing deforestation and environmental harms caused by legal extractive projects,<sup>139</sup> government authorities continue to justify legal deforestation. “Let’s say that, although it is true that these companies generate impacts, those impacts are controlled through an instrument of command and control that are granted by environmental authorities”.<sup>140</sup>

Upon the hearing’s culmination, the district court concluded that no concrete actions had been taken toward compliance, and they rejected the authorities’ excuses for insufficient progress. The court stated that the relevant agencies must mobilize and obtain the required expertise necessary to achieve the orders.<sup>141</sup> The court also indicated that actions taken to halt deforestation have been conducted in bad faith and should not jeopardize *campesinos*.<sup>142</sup>

Still, in February 2020, media coverage surfaced on the convergence of large fires in the National Parks and military operations, which continued targeting *campesinos*.<sup>143</sup> Despite widespread condemnation, government actions have demonstrated overreliance on militarization and criminalization, failing to incorporate alternative measures that address problems faced by vulnerable residents while failing to dismantle criminal networks and halt deforestation.<sup>144</sup>

138 IDEAM. “Detección Temprana de Deforestación”, cit.; IDEAM, MinAmbiente & Prosperidad para Todos. *Boletín Forestal 2011*. Report; Public Audience for STC4360-2018. Personal communication. October 15-November 19, 2019.

139 Hill. “*Defending Our Existence*”, cit.; FOSPA. *Protection of the Amazon Is Incompatible with the Oil Mining and Extractive Model*, cit.

140 MADS representative for Public Audience for STC4360-2018. Personal communication. October 15, 2019.

141 Actualidad. *Lo bueno, lo malo y lo feo en las audiencias de la sentencia de la Amazonía*, cit.; Public Audience for STC4360-2018. Personal communication. October 15-November 19, 2019.

142 Ibid.

143 Dejusticia. *Campaña Artemisa en Serranía de La Macarena no puede atropellar los derechos del campesinado*, cit.; Impacto. *Crece tensión en Meta y Caquetá por operativo en el parque Tinigua*, cit.; Nación. *Confrontación entre campesinos y Ejército en parque natural Los Picachos, Meta*, cit.; Paz Cardona, A. J. *Colombia: incendios, amenazas de muerte y operativos militares desatan nueva crisis en la Amazonía*. In *Mongabay*. 26 February 2020; Vélez & Garzón. *La chispa que prende los incendios de La Macarena*, cit.

144 Comité Cívico por los Derechos Humanos del Meta – CCDHM. *Declaración Pública Comité Cívico por los Derechos Humanos del Meta*, cit.; Dejusticia. *Campaña Artemisa en Serranía de La Macarena no puede atropellar los derechos del campesinado*, cit.; Hernández. *La deforestación va a un ritmo exagerado con o sin pandemia*, cit.; Impacto. *Crece tensión*

Other reports from then suggested that FARC dissidents ordered officials from at least ten Amazon Parks to leave within 48 hours.<sup>145</sup> Many environmental authorities and those believed to be involved with environmental protections in the region remain at risk of assassination and violence by a convergence of illegal armed groups.<sup>146</sup>

In December 2020, the Tribunal Superior de Bogotá again acknowledged that insufficient progress had been made.<sup>147</sup> The tribunal issued an order creating one Technical Committee composed of the governmental entities responsible for implementing the decision and a Monitoring Committee to monitor the implementation of the Court's orders, including a Panel of Experts belonging to organizations like Fundación Gaia Amazonas and Sinchi Foundation, which met in May and August 2021. Responding to a submission from indigenous organization OPIAC (National Organization of Indigenous Peoples of the Colombian Amazon), the district court ordered that the implementation of the ruling integrates a differential approach to include specially protected communities.<sup>148</sup>

As to the implementation of the Intergenerational Pact, the President's Office reached out to plaintiffs and other groups (Afro-Colombians, indigenous peoples, campesinos, and others) to help develop the methodology guiding participation in the Pact.<sup>149</sup>

Meanwhile, in August 2021, Duque declared that the Artemisa Campaign would become a permanent method of combating illegal deforestation in the region, despite strong disapproval. Dejusticia characterized the Campaign as unjust and unnecessary, suggesting instead that *campesinos* be brought in

*en Meta y Caquetá por operativo en el parque Tinigua*, cit.; Nación. *Confrontación entre campesinos y Ejército en parque natural Los Picachos, Meta*, cit.; Paz Cardona. *Colombia: incendios, amenazas de muerte y operativos militares desatan nueva crisis en la Amazonía*, cit.; Vélez & Garzón. *La chispa que prende los incendios de La Macarena*, cit.; Botero-García, et al., *Áreas protegidas amazónicas y sus funcionarios como víctimas del conflicto armado*, cit.; Procuraduría General de la Nación. Directiva No. 004, cit.; Public Audience for STC4360-2018. Personal communication. October 15, 2019; Volckhausen. *Colombian Land Defenders*, cit.; Dejusticia. *Estrategia del Estado para frenar la deforestación no debe centrarse en medidas represivas contra campesinos*, cit.; Medio Ambiente. *Las preguntas incómodas por el "Operativo Picachos"*, cit.; Telesur/MRS-LJS. *Colombia: Millions Demand Investigation of Environmental Crimes*, cit.

145 Paz Cardona. *Colombia: incendios, amenazas de muerte y operativos militares desatan nueva crisis en la Amazonía*, cit.

146 Botero-García, et al. *Áreas protegidas amazónicas y sus funcionarios como víctimas del conflicto armado*, cit.

147 Radicación 110012203-000-2018-00319-00, 2021.

148 Ibid.

149 Personal communication with government. 2021.

to help combat illegal deforestation efforts as opposed to being harmed in the process, “harmonizing environmental protection and peasant rights”.<sup>150</sup>

At another follow-up hearing in October 2021, the district court held the mayors of the Amazonian region in contempt of the ruling. The court warned officials that if they do not prove compliance with the mandate to create short, medium and long-term climate action plans, they will impose sanctions.<sup>151</sup> Meanwhile, illegal deforestation in the Colombian Amazon continues at unprecedented levels.<sup>152</sup> Table 2 summarizes what remains the same and what has changed since the ruling’s issuance in 2018.

TABLE 2. SUMMARY OF WHAT REMAINS THE SAME AND WHAT HAS CHANGED SINCE THE SUPREME COURT’S 2018 COLOMBIAN AMAZON RULING’S ISSUANCE

<i>Same</i>
• Low levels of government compliance and accountability
• Lack of funding for environmental and social protection
• Ongoing armed conflict and high threat of violence
• Ongoing interest in extractive projects
• Ongoing illegal economies, including logging and mining
• Ongoing socio-environmental harms linked to the above factors, including current and future, local and nonlocal harms
• No environmental justice enabled for plaintiffs or others affected
• No ecological justice enabled for the Colombian Amazon
<i>Different</i>
• Increased ‘potential’ for justice:
• Increased dialogue surrounding what constitutes ‘justice’ as it applies to human communities and the Colombian Amazon
• Increased channels to hold government accountable for inaction
• Increased ‘actual’ injustice:
• Ecological justice for the Colombian Amazon undermined by government’s manipulation of statistics
• Environmental justice for plaintiffs, Amazon residents undermined by unjust implementation harming <i>campesinos</i> and failing to dismantle illegal deforestation

150 Bautista, A. J. *Artemisa: Operación anticampesina vestida de verde*. In *Dejusticia*. 5 April 2022. Available from: <https://www.dejusticia.org/column/artemisa-operacion-anticampesina-vestida-de-verde/> [Accessed 17 July 2022].

151 Radicación 110012203-000-2018-00319-00, 2021.

152 Redacción Ambiente. 2022.

#### 4. COMPARATIVE ANALYSIS OF THE ATRATO AND AMAZON CASES

This section discusses and compares how each approach currently measures against its aims to enable justice for humans and nature. Recognizing that both approaches have fallen short, we highlight factors contributing to and impeding justice. We also argue that the Atrato approach preemptively presents a stronger framework to enable environmental and ecological justice.

##### *4.1. The Atrato approach as a promising blueprint, if actualized*

Implementation of the Atrato approach continues to fall short of the ruling's aims to enable environmental and ecological justice. Ensuring the physical and cultural survival of Chocoanos is a central aim of the ruling, but evidence suggests that on-the-ground realities have continued to move in the opposite direction. Ongoing violence and escalating armed conflict scenarios undoubtedly pose the biggest barrier to environmental and ecological justice in the region.<sup>153</sup>

The disabling factors appear to be the convergence of a permeating practice of impunity and noncompliance, as well as a militarized extractive complex which fails to protect and reinvest in both human groups and nature. If this complex continues uninterrupted, then no attempt to enable justice for humans and nature can succeed.<sup>154</sup> With that said, analysis of the Atrato approach has identified some important factors to enable a more comprehensive, balanced justice for humans and nature.

First, both the ruling and the Follow-Up Committee have emphasized the need for a comprehensive approach to eradicate illegal mining by

<sup>153</sup> Hernández. *La deforestación va a un ritmo exagerado con o sin pandemia*, cit.; Comité de Seguimiento. *Cuarto Informe de Seguimiento Sentencia T-622 de 2016*, cit.; La W. *El escolta Jairo Rendón fue encontrado muerto a orillas del río Atrato*, cit.; Procuraduría General de la Nación. *Directiva No. 004*, cit.; Redacción Colombia 2020. “¿Nos van a matar a todos por defender el río Atrato?”, cit.; Restrepo, J. S. *Civil Society Faces Deadly Threats in Colombia's Chocó Region. Advocacy for Human Rights in the Americas*, cit.; Comité de Seguimiento. *Segundo, Tercer y Cuarto Informe de Seguimiento Sentencia T-622 de 2016*, cit.; Friedman. “*The Only Protection Is God*”, cit.; T-622/16, cit.

<sup>154</sup> Human Rights investigator. Personal communication. May 2020; Hernández. *La deforestación va a un ritmo exagerado con o sin pandemia*, cit.; Comité de Seguimiento. *Cuarto Informe de Seguimiento Sentencia T-622 de 2016*, cit.; Tierra Digna. *Risas, sueños y lamentos del río*, cit.; Redacción Colombia 2020. “¿Nos van a matar a todos por defender el río Atrato?”, cit.; Restrepo. *Civil Society Faces Deadly Threats in Colombia's Chocó Region*, cit.; Comité de Seguimiento. *Tercer y Cuarto Informe de Seguimiento Sentencia T-622 de 2016*, cit.; T-622/16, cit.; Friedman. “*The Only Protection Is God*”, cit.

implementing alternatives to criminalization, drawing from all three elements of environmental justice. Emphasis on these alternatives began with the ruling, which recognized that: 1) the phenomenon of illegal mining has increasingly displaced persons and livelihoods, and many civilians engaged in illegal mining activities have done so due to a lack of alternatives; 2) criminalization and militarization have resulted in collateral damage on both humans and nature; 3) illegal mining operations have long supply chains, requiring that multiple links be targeted to dismantle these operations; 4) restoring traditional livelihoods and subsistence models is key to enable a just transition for local communities and nature itself; and 5) civic participation in the planning, decision-making, and restoration process is key to the approach's success.<sup>155</sup>

Second, both the ruling and the Follow-Up Committee emphasized that Atrato communities are equals in decision-making processes, seeking to advance the participatory and recognition elements of environmental justice.<sup>156</sup> While most progress updates by the Follow-Up Committee indicate that government implementation efforts have insufficiently integrated Atrato communities in planning processes, improved communications between the River Guardians and MADS has been observed.<sup>157</sup>

Third, the Atrato approach has enabled development of a transversal legal approach that requires all public, administrative, and private interests to account for nature's interest in ecological health.<sup>158</sup> If actualized, such an approach could help secure an ecocentric governance paradigm towards a more balanced justice for humans and nature, both of which require consideration for and protection of nature for interests beyond economic productivity.<sup>159</sup> This underscores ongoing attempts to advance all three ecological justice dimensions.

In the meantime, the Follow-Up Committee has begun urging a comprehensive review of the social and ecological impacts of all legal development projects in the region.<sup>160</sup> Also, the Follow-Up Committee has begun to legally operationalize the Atrato River Basin as a 'victim', which relies on

155 Comité de Seguimiento. Segundo, Tercer y Cuarto Informe de Seguimiento Sentencia T-622 de 2016, cit.; T-622/16, cit.

156 Ibid.; Macpherson. *Rivers as Subjects and Indigenous Water Rights in Colombia*, cit.

157 Comité de Seguimiento. Cuarto Informe de Seguimiento Sentencia T-622 de 2016, cit., 11; T-622/16, cit.

158 La Procuraduría. Personal communication. March 2020.

159 Villavicencio. *A Paradigm Shift in Courts' View on Nature*, cit.; T-622/16, cit.

160 La Procuraduría. Personal communication. March 2020; Comité de Seguimiento. Cuarto Informe de Seguimiento Sentencia T-622 de 2016, cit.



an existing conception within Colombian law. As a victim, the Atrato may access the criminal justice system to seek restitution from high-impact perpetrators.<sup>161</sup> Importantly, the transversal figure proposed by the Follow-Up Committee has consistently emphasized that the Atrato's protection cannot supersede protections for Atrato communities, protecting against exclusionary conservation practices.<sup>162</sup>

Lastly, the *inter pares* status of the ruling has permitted new groups to pursue remedies offered by the ruling. This permits increased access to justice for both humans and nature, allowing them to advocate for comparable applied protections when comparable rights have been threatened and/or violated.<sup>163</sup>

#### 4.2. Today's Colombian Amazon approach as a threat multiplier

First, the Colombian Amazon Court decision was an important advance for climate litigation worldwide.<sup>164</sup> The decision affirmed that protecting the rights of future generations to a stable climate is imperative, and that these rights are being compromised by extractive activities which must be stopped to prevent potentially irreversible damage.<sup>165</sup> Though, as currently implemented, the Colombian Amazon nature's rights approach has been weaponized against vulnerable groups, becoming a threat multiplier creating new complications while failing to mobilize necessary systemic changes to remedy the harms alleged in the plaintiff's complaint and enable environmental and ecological justice.<sup>166</sup>

Furthermore, making the Colombian Amazon a rights-holder has not yielded a review of legal extractive projects contributing to the region's deforestation. While government authorities acknowledge that legal activities have negative socio-ecological impacts, they justify these impacts because they are under a 'controlled' system. Still, the relevant agencies deny requests

<sup>161</sup> Ibid.

<sup>162</sup> La Procuraduría. Personal communication. March 2020; Comité de Seguimiento. Segundo, Tercer y Cuarto Informe de Seguimiento Sentencia T-622 de 2016, cit.; T-622/16, cit.

<sup>163</sup> Tierra Digna. *Risas, sueños y lamentos del río*, cit.; Comité de Seguimiento. Cuarto Informe de Seguimiento Sentencia T-622 de 2016, cit.

<sup>164</sup> Osofsky. *The Geography of Emerging Global South Climate Change Litigation*, cit.; Abate. *Climate Change and the Voiceless*, cit.; Setzer & Byrnes. *Global Trends in Climate Change Litigation*, cit.; Acosta Alvarado & Rivas-Ramírez. *A Milestone in Environmental & Future Generations' Rights Protection*, cit.

<sup>165</sup> Abate. *Climate Change and the Voiceless*, cit.; Acosta Alvarado & Rivas-Ramírez. *A Milestone in Environmental & Future Generations' Rights Protection*, cit.

<sup>166</sup> Personal communications with Committee members. 2022; Public Audience for STC4360-2018. Personal communication. October 15-November 19, 2019; STC4360-2018, cit.

to quantify and make these impacts known.<sup>167</sup> This indicates that the legal figure's development does not reflect what the legal theory of nature's rights intends<sup>168</sup> and contrasts with the Atrato nature's rights figure.<sup>169</sup>

From the beginning of the Amazon ruling's formulation, complex social dynamics behind forest-clearing went unexamined.<sup>170</sup> The ruling's interpretation and implementation were left entirely up to government authorities, which have historically demonstrated negligence and scapegoating of vulnerable groups under the guise of justice.<sup>171</sup> Accordingly, government implementation demonstrated willful negligence of justice concerns for humans and nature. The Artemisa Campaign could serve as a textbook example of exclusionary so-called conservation attempts. An unjust implementation process has further undermined the Court's orders.<sup>172</sup>

Overall, justice for humans and nature has been disabled and illegal deforestation continues unabated.<sup>173</sup> A more holistic evaluation of the problem may help guide implementation efforts toward more just conditions for the complex web of humans and nature dependent on the Colombian Amazon's integral functioning.<sup>174</sup>

##### 5. DISCUSSION: JUSTICE FOR HUMANS AND NATURE BOUND IN A POLITICS OF NEGLECT

Both approaches sought to remedy human rights violations by enabling justice for nature through recognizing nature's rights. Both approaches employed the

167 MADS representative at Public Audience for STC4360-2018. October 15, 2019.

168 Gordon. *Environmental Personhood*, cit.; Stone. *Should Trees Have Standing*, cit.

169 Comité de Seguimiento. Cuarto Informe de Seguimiento Sentencia T-622 de 2016, cit.

170 Schlosberg. *Reconceiving Environmental Justice*, cit., 518.

171 Bocarejo & Ojeda. *Violence and Conservation: Beyond Unintended Consequences and Unfortunate Coincidences*, cit.

172 Procuraduría General de la Nación. Directiva No. 004, cit.; Public Audience for STC4360-2018. Personal communication. October 15-November 19, 2019.

173 Redacción Ambiente. *La Amazonia colombiana fue la cuarta con más deforestación durante 2021*, cit.

174 Dejusticia. *Campaña Artemisa en Serranía de La Macarena no puede atropellar los derechos del campesinado*, cit.; Impacto. *Crece tensión en Meta y Caquetá por operativo en el parque Tinigua*, cit.; Nación. *Confrontación entre campesinos y Ejército en parque natural Los Picachos, Meta*, cit.; Paz Cardona. *Colombia: incendios, amenazas de muerte y operativos militares desatan nueva crisis en la Amazonía*, cit.; Vélez & Garzón. *La chispa que prende los incendios de La Macarena*, cit.; Procuraduría General de la Nación. Directiva No. 004, cit.; Public Audience for STC4360-2018. Personal communication. October 15-November 19, 2019.

logic that protecting nature's interest in maintaining ecological health is a precondition to guarantee human rights contingent upon a healthy, functioning environment.<sup>175</sup> However, analysis of both rulings and their subsequent implementation in their contexts highlighted some of the approaches' shortcomings and barriers to enabling justice for the plaintiffs and the ecosystems in question – namely, the incompatible context of impunity, noncompliance, and militarized extractive complex in which they emerged.<sup>176</sup>

First, both approaches emerged within a broader crisis of impunity, in which assassinations and acts of violence go unpunished<sup>177</sup> and within regions lacking a sustained security presence.<sup>178</sup> In both cases, the rulings neglected to acknowledge the complex dangers this imposes onto human rights and environmental defenders across Colombia.<sup>179</sup> Increasing the participation of local leaders in efforts to protect human rights and nature, without sufficient security measures, may risk violence against them.<sup>180</sup>

Second, both approaches have emerged within a context of noncompliance.<sup>181</sup> While both rulings sought to confront inaction by government authorities, their implementation has evidenced ongoing noncompliance by relevant agencies—many who have continued to shirk responsibility over four

175 STC4360-2018, cit.; T-622/16, cit.

176 Graser, *et al. Peacebuilding in Rural Colombia*, cit.; Botero-García, *et al. Áreas protegidas amazónicas y sus funcionarios como víctimas del conflicto armado*, cit.; Martin. “Defoliating the World”: *Ecocide, Visual Evidence and “Earthly Memory”*, cit.; Bocarejo & Ojeda. *Violence and Conservation*, cit.; McNeish. *Extracting Justice?*, cit.

177 Graser, *et al. Peacebuilding in Rural Colombia*, cit.; Botero-García, *et al. Áreas protegidas amazónicas y sus funcionarios como víctimas del conflicto armado*, cit.; Global Witness. *Enemies of the State?*, cit.; Human Rights. *Colombia: ‘Terrible Trend’ of Rights Defenders Killed, Harassed*, cit.; Oxfam International. *Defensores de derechos agrarios, territoriales y medioambientales en Colombia*, cit.; McNeish. *Extracting Justice?*, cit.

178 Dejusticia. *Campaña Artemisa en Serranía de La Macarena no puede atropellar los derechos del campesinado*, cit.

179 *Ibid.*

180 Redacción Colombia 2020. “¿Nos van a matar a todos por defender el río Atrato?”, cit.; Friedman. “*The Only Protection Is God*”, cit.; Graser, *et al. Peacebuilding in Rural Colombia*, cit.; Gigova. “*Staggering Number*” of Human Rights Defenders Killed in Colombia, the UN Says, cit.; Botero-García, *et al. Áreas protegidas amazónicas y sus funcionarios como víctimas del conflicto armado*, cit.; Global Witness. *Enemies of the State?*, cit.; Human Rights. *Colombia: ‘Terrible Trend’ of Rights Defenders Killed, Harassed*; UN Calls for ‘*Significant Effort*’ to Tackle Impunity, cit.; Oxfam International. *Defensores de derechos agrarios, territoriales y medioambientales en Colombia*, cit.; Redacción Colombia 2020. “¿Nos van a matar a todos por defender el río Atrato?”, cit.; Friedman. “*The Only Protection Is God*”, cit.

181 García-Villegas. *Disobeying the Law*, cit.; Peña Huertas. *From Transitional Justice to Post-Agreement Rural Reform*, cit.; Langbein & Sanabria. *The Shape of Corruption*, cit.

years after the rulings' issuance and failed to make the necessary changes to comply with its orders. Furthermore, evidence suggests that sanctions have yet to be issued in either case.<sup>182</sup>

Ongoing noncompliance begs an in-depth review of conflict of interests, power dynamics, and resource allocation between authorities. In the Atrato approach's case, the government is not mandated to finance the initiatives of River Guardians.<sup>183</sup> Similarly, while the MADS has been tasked with operationalizing inter-institutional collaboration in both cases, MADS continues to receive less funding than extractive agencies.<sup>184</sup> Unfortunately, available progress reports demonstrate that authorities continue to propose and approve extractive projects in both regions, which continue to generate socio-ecological problems in the zones.<sup>185</sup>

Third, both approaches have emerged within a broader militarized extractive complex. Militarized approaches and 'legal' extractive interests continued to be prioritized nationally, despite known socio-ecological impacts. Indeed, it appears that military operations have often forcibly protected legal extractive projects while disproportionately targeting and criminalizing individuals engaged in illegal extractive projects due to a lack of viable economic alternatives and prevention from being able to legally engage in a livelihood activity, such as collecting wood.<sup>186</sup> Meanwhile, defense operations claiming

182 Lawyer for Tierra Digna. *Risas, sueños y lamentos del río*, cit.; Comité de Seguimiento. Segundo, Tercer y Cuarto Informe de Seguimiento; Public Audience for STC4360-2018. Personal communication. October 15-November 19, 2019; T-622/16, cit.

183 Ibid.

184 Díaz Parra. *Extractivismo a la brava en el Plan Nacional de Desarrollo del gobierno de Duque*, cit.; Pardo. *El Plan Nacional de Desarrollo profundiza el modelo extractivista*, cit.; Public Audience for STC4360-2018. Personal communication. October 15, 2019; Paz Cardona. *Colombia: incendios, amenazas de muerte y operativos militares desatan nueva crisis en la Amazonía*, cit.; Morales. *Peace and Environmental Protection in Colombia*, cit.

185 Tierra Digna. *Risas, sueños y lamentos del río*, cit.; Comité de Seguimiento. Segundo Informe de Seguimiento Sentencia T-622 de 2016, cit.; Hill. "Defending Our Existence", cit.; Public Audience for STC4360-2018. Personal communication. October 15- November 19, 2019; FOSPA. *Protection of the Amazon Is Incompatible with the Oil Mining and Extractive Model*, cit.

186 Graser, et al. *Peacebuilding in Rural Colombia*, cit. Hermann, L. J. *The High Price of Peace in Colombia: Deforestation in the Amazon*; Hernández. *La deforestación va a un ritmo exagerado con o sin pandemia*, cit.; Nación. *Confrontación entre campesinos y Ejército en parque natural Los Picachos, Meta*, cit.; Hermann. *The High Price of Peace in Colombia*, cit.; Procuraduría General de la Nación. Directiva No. 004, cit.; Public Audience for STC4360-2018. Personal communication. October 15, 2019; Volckhausen. *Colombian Land Defenders*, cit.; Dejusticia. *Estrategia del Estado para frenar la deforestación no debe centrarse en medidas represivas contra campesinos*, cit.; T-622/16, cit.

to stop illegal extractive activities have continuously failed, disregarding calls to course-correct.<sup>187</sup>

While implementation of rulings granting rights to nature still model the environmental law compliance gap,<sup>188</sup> legal approaches that recognize nature's rights may have enabled some necessary legal conditions which have not existed previously by making nature's interest in maintaining ecological health visible and defensible, creating opportunities to restore nature, and correcting power imbalances between legally protected interests known to harm humans and nature.<sup>189</sup>

A just nature's rights approach has to overcome significant barriers and requires mobilizing a politics of care, evidenced by firm divestments from the military extractive complex, practiced commitments to dismantling impunity and noncompliance, and reinvestment in the well-being of both humans and nature.<sup>190</sup> Much work remains to dismantle barriers and enable just transitions to prevent potentially irreversible damage.

## CONCLUSION

Nature's rights have emerged as an experimental legal approach to enable justice for nature, by helping to make nature's interest in maintaining ecological

187 MADS. *En este gobierno, la falta de agua, la pérdida de la biodiversidad y la contaminación ambiental, se convirtieron en una preocupación de seguridad Nacional, gracias a la nueva política de defensa y seguridad para la equidad*. 2019; Comité de Seguimiento. Segundo, Tercer y Cuarto Informe de Seguimiento Sentencia T-622 de 2016, cit.; Hernández. *La deforestación va a un ritmo exagerado con o sin pandemia*, cit.; Nación. *Confrontación entre campesinos y Ejército en parque natural Los Picachos, Meta*, cit.; Paz Cardona. *Colombia: incendios, amenazas de muerte y operativos militares desatan nueva crisis en la Amazonía*, cit.; Graser, et al. *Peacebuilding in Rural Colombia*, cit.; Botero-García, et al. *Áreas protegidas amazónicas y sus funcionarios como víctimas del conflicto armado*, cit.; Martin. "Defoliating the World": *Ecocide, Visual Evidence and "Earthly Memory"*, cit.; Bocarejo & Ojeda. *Violence and Conservation*, cit.; Hill. "Defending Our Existence", cit.; MADS representative for Public Audience for STC4360-2018. Personal communication. October 15, 2019; Ministerio del Ambiente y Desarrollo Sostenible. *En este gobierno, la falta de agua, la pérdida de la biodiversidad y la contaminación ambiental se convirtieron en una preocupación de seguridad nacional, gracias a la nueva política de defensa y seguridad para la equidad*, cit.; Procuraduría General de la Nación. Directiva No. 004, cit.; Public Audience for STC4360-2018. Personal communication. October 15-November 19, 2019; McNeish. *Extracting Justice?*, cit.; Abadía et al. *Extractivismo, conflictos y resistencias*, cit.

188 UNEP. *Environmental Rule of Law: First Global Report*. 2019, 3 y 8.

189 Gordon. *Environmental Personhood*, cit.; Martin. "Defoliating the World": *Ecocide, Visual Evidence and "Earthly Memory"*, cit.; Voigt, C. (ed.). *A Rule of Law for Nature*, cit.; Stone. *Should Trees Have Standing*, cit.

190 Martin. "Defoliating the World": *Ecocide, Visual Evidence and "Earthly Memory"*, cit.; Rojas-Robles. *Ambiente y Post-acuerdo en Colombia*, cit.

health visible and legally defensible. Many proponents for nature's rights argue that human rights, contingent on nature's integral functioning, cannot be met until nature's interest in maintaining ecological health is legally protected.

Having internalized this understanding, Colombia's seminal nature's rights court rulings sought to protect the Atrato River Basin and Colombian Amazon as legal subjects—with the rights to be protected, conserved, maintained, and restored—in response to human rights violations linked to environmental degradation, environmental crimes, and government inaction. For this reason, both cases provide a unique opportunity to examine two distinct approaches against their shared goals to enable justice for both humans and nature. Using environmental and ecological justice theories, this article sought to consider the strengths and weaknesses of these two approaches and the extent to which these efforts have enabled justice for both humans and nature simultaneously.

The article offered a narrative of the implementation process of the rulings since their issuance, noting insignificant progress to date by responsible government authorities to remedy the conflicts brought forth by each lawsuit. The article then evaluated implementation of both rulings using an environmental and ecological justice framework to highlight to what degree the rulings have enabled justice for humans and nature to date. While the rulings carry the potential to enable the distributive, participatory and recognition elements of environmental and ecological justice in each case, neither decision has substantively enabled environmental-ecological justice. We argue that the Atrato ruling, however, provides a better blueprint toward achieving this aim, whereas the Amazon case has been leveraged to perpetuate injustices against vulnerable groups.

The article further identified primary barriers to enabling justice through the rulings by analyzing them within their historical and contemporary contexts—an incompatible political landscape of noncompliance and a militarized extractive complex. We conclude that both approaches have thus far fallen short of their aims to enable justice for either humans or nature, and many barriers remain toward enabling justice on-the-ground, leaving the burden on vulnerable communities as they pursue realization of their fundamental rights.

Court rulings in response to lawsuits are often sought as a transitional tool to prevent potentially irreversible harm and protect rights. While 'enabled' justice for humans and nature would be the most desirable outcome of nature's rights approaches, these emerging approaches are "part of contemporary global legal thought experiments, understood not as abstract, whimsical or fantastical, but as desperately serious conceptual interventions in a world

that urgently needs to reimagine itself and its institutions”.<sup>191</sup> Examination of the Atrato and Amazon approaches against their aim to enable justice for both humans and nature is an important step toward determining what a balanced, comprehensive justice for humans and nature could look like in practice if properly implemented.

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