Granting Rights to Rivers in the Shadow of Extractivism

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INTRODUCTION

Law has been a fundamental tool to face the urgency of climate change. From granting rights to nature, to limiting the way we consume, legislation plays a central role regarding pressing debates about the use and preservation of the environment. These discussions have been central in Latin America, not only because of the protection of nature included in the Ecuadorian constitution of 2008\(^1\) and the Bolivian constitution of 2009\(^2\) but also because rivers and ecosystems have increasingly been granted rights in the region.\(^3\)

\(^{\text{1}}\) Ecuador First to Grant Nature Constitutional Rights, 19 CAPITALISM NATURE SOCIALISM 131 (2008).


In Colombia, the Atrato River, situated in the region of Chocó, was granted rights in a 2016 ruling. More than ten other rivers have been granted rights in the following years. This judicial intervention has been influenced by other jurisdictions where rights have been granted to rivers like New Zealand and India.

This Article situates itself within this trend by providing a more granular, local context. In particular, the goal is to foreground the structural characteristics—specifically the historical, economic, and social centrality of extractivism—within which granting rights to nature takes place. The objective will be to explore the possibilities and limitations this style of judicial intervention provides.

This Article’s main argument is that granting rights to rivers is a weak and mostly ineffective tool given the historical background, contemporary legal privileges, and economic relevance that mining has in a country like Colombia. As it will be discussed below through the case of the Atrato River, the judicial ruling (1) centralizes demands on what the state should provide, allowing global and local businesses to be left off the hook; (2) limits the ways in which harm (particularly environmental harm and cultural dispossession) are described and legally defined; (3) limits worth compensation; and (4) considers legal recognition as a triumph on its own without exploring the economic, social, and political conditions that paved the way for granting rights as an adequate remedy.

To advance these ideas, this text will have the following order: the first section will provide a synthesis of the recent trend of granting rights to rivers and how the Atrato River’s case fits within this trend. The next section provides a brief description of the historical and contemporary relevance of extractivism, as well as recent discussions regarding neo-extractivism. It also includes some examples from the legal architecture that creates the set of rules and regulations that privilege the mining sector in Colombia. The third part will describe in more detail the ruling, its influences, bright sides, dark sides, and where it stands today. The Article will end with some conclusions.

I. GRANTING RIGHTS TO RIVERS: A RECENT TREND

Adjudicating a right to a non-human entity is not new. Corporations and governments have had rights for a very long time. However, granting
personhood to a specific object in nature (as opposed to nature as a whole) is more of a recent occurrence. This intervention grants rivers and ecosystems, like the Amazon, or moorlands, like el Paramo de Pisba, in Colombia a fundamental set of rights, responsibilities, and duties. It is interesting to note that even though judges establish that nature has personhood (sujeto de derechos in Spanish), there are some rights that are excluded, such as civil and political rights. Such exclusions limit the environment’s (1) ability to exercise legal standing (or the possibility to sue and be sued in court), (2) capacity to engage in and enforce legal contracts, and (3) right to own property.⁶ In order to exercise such rights, the rulings establish a legal representative for the environment.

Despite the similar starting point embodied in granting rights to nature, there are important differences among countries. Countries like Ecuador, Bolivia, New Zealand, and Mexico have either (1) constitutional provisions, or (2) national or subnational laws that provide rights to nature. In Colombia (the Atrato being the first one in this jurisdiction) and India (Ganga and Yamuna), it was through judicial interpretation that personhood was adjudicated.⁷

Both cases are examples of how ideas travel around the world in legal systems that do not have particular constitutional or legal provisions that demand policies and actions from governments. In such systems, judges have used a combination of existing principles to demand action from the authorities when specific ecosystems and communities are in danger because of environmental degradation. These actions include the establishment of institutional arrangements and guardianship entities in charge of representing the interests of the river, advancing its rights, and preventing future degradation.⁸

A. A Transnational Project

As will be illustrated below with the analysis of the Colombian case, its Court was inspired by circulating transnational ideas about the rights of nature, including a concept developed in a distant jurisdiction: New Zealand. The transnational concepts invoked in the ruling were how to overcome the nature/human dichotomy and thus give legal personhood to non-human entities; how to define the limits of the river and its relationship to the

⁶ For more on these rights, see id. at 1, 1–2.
⁷ Id.
community (signaling how porous the environmental, cultural, and social configuration of its borders are); and the design of the guardianship figure.9

These ideas travelled as a consequence of specific transnational efforts set forth by global organizations, which include establishing the Rights of Nature Tribunal,10 fighting for the adoption of the Universal Declaration of Rights of Mother Earth in the United Nations,11 and advancing international conferences on the Rights of Nature.

The issue of legal personhood to nature was justified differently in diverse jurisdictions. In India, for example, the court argued that the rivers Ganga and Yamuna were spiritually relevant for Hindus by citing previous rulings that granted rights to deities and idols. In addition, environmental provisions were central.12

The guardianship established in the treaty between the New Zealand government and the indigenous group included a collaborative, participatory management institution. Several actors (representatives of local governments, corporations, recreation users and environmental groups) who have direct interests in the river are represented in it. They are in charge of guaranteeing the cultural, social, environmental, and economic welfare of the Whanganui River.13

B. Existing Critiques

Not everyone has celebrated this legal and jurisprudential move. John Page and Alessandro Pelizzon synthesize critiques in relation to the artificialness of the legal personhood of an ecosystem; they admonish the excessive individualization brought on by the language of rights and see the move as a way to avoid broader discussions about indigenous sovereignty and domain over natural resources:

Some authors raise concerns as to the potential (mis)alignment of these “natural” legal persons with the actual geographical boundaries of specific ecosystems,

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9 Corte Constitucional [C.C.] [Constitutional Court], noviembre 10, 2016, Sentencia T-622/16. (Colom.), https://redjusticiaambientalcolumbia.files.wordpress.com/2017/05/sentencia-t-622-de-2016-rio-atrato.pdf. Because this decision is not published, all subsequently cited page numbers correspond to the pdf version of the ruling.


12 O’Donnell & Talbot-Jones, supra note 5, at 3, 6.

13 Id. at 4.
while others argue that the expansion of the “traditional definition of legal person by conflating it with living person” is likely to increase a sense of individualistic disconnection that is ultimately antithetic to the very aspiration underpinning the original attribution of personhood.\textsuperscript{14}

II. THE LONG SHADOW OF EXTRACTIVISM

The economic relevance and violence produced by mining provides the context for the Atrato River case. In fact, the mining boom in Colombia has triggered displacement, land dispossession, and extensive human rights violations, which include assassinations, massacres, disappearances, and attacks on labor rights of miners. It is a well-documented fact that paramilitary forces were closely linked to mining interests.\textsuperscript{15}

A. What is Extractivism?

Eduardo Galeano in his 1971 influential book, \textit{Open Veins of Latin America}, argues that colonial production structures determine Latin America’s present:

The division of labor among nations is that some specialize in winning and others in losing. Our part of the world, known today as Latin America, was precocious: it has specialized in losing ever since those remote times when Renaissance Europeans ventured across the ocean and buried their teeth in the throats of the Indian civilizations. Centuries passed, and Latin America perfected its role. We are no longer in the era of marvels when face surpassed fable and imagination was shamed by the trophies of conquest—the lodes of gold, the mountains of silver. But our region still works as a menial. It continues to exist at the service of others’ needs, as a source and reserve of oil and iron, of copper and meat, of fruit and coffee, the raw materials and foods destined for


\textsuperscript{15} For a detailed description of the relationship between mining and dispossession in Colombia, see Kyla Sankey, \textit{Extractive Capital, Imperialism, and the Colombian State}, 45 LAT. AM. PERSPS. 52 (2018).
rich countries which profit more from consuming them than Latin America does from producing them.\footnote{16} Along with Galeano, many dependency-influenced academics dedicated their research to unpacking the long-lasting effects of colonialism in Latin America. These authors explored how, and under what circumstances, resource extraction created economic, social, and political imbalances between the Core and Periphery. The power differential produced by this imbalance has been translated into exploitation and expropriation in the region and determines the structural conditions that impede economic and social redistribution. Extractivism refers to a form of capital accumulation and resource production that started with the colonization of the Americas, Africa, and Asia. What is produced, how and where it is exported is determined by the needs and desires of industrialized nations. Extractivism includes not only minerals (the objective of this text) but also raw materials and includes farming, forestry, and fishing. It can be defined as the export of enormous quantities of natural resources that are lightly processed.\footnote{17}

B. The Legal Architecture of Extractivism in Colombia

Mining has been central to governmental policies for the last thirty years as Colombia has transitioned from mostly exporting coffee to becoming an oil, gas, and coal producer. Until the late twentieth century, the growth of Colombia’s economy was based on the export of coffee. Two interrelated events in the early 1990s led to the decentralization of coffee. First, the shift to neoliberal ideas among the ruling elite which were incompatible with the interventionist, protectionist style that had characterized coffee production, export, and foreign exchange management. Second, Colombian policy had been slowly shifting from promoting agricultural products (coffee, bananas, and flowers) to creating incentives for the export of oil and minerals.\footnote{18} During most of the twentieth century, coffee had been the determinant commodity in the country’s balance of payments and had been essential in terms of generating employment and in some cases rural property distribution (as small land plots were granted to face the lack of labor force).\footnote{19}
This shift to an export-led growth model based on minerals and hydrocarbons was translated into a range of governmental policies aimed at creating the necessary conditions to promote the sector. All governments since the early 2000s have bet heavily on mining. The exception is current President Gustavo Petro, who has said his goal is to move away from an extractivist model to a productive one. But his capacity to advance this agenda has been limited.

Colombia represents ten percent of global coal production and from the year 2000 through 2015, production almost doubled and was twelve percent of Colombian exports. During the two terms of the right-wing government of Alvaro Uribe, the area granted for mining was multiplied, going from 1.13 to 8.53 hectares. The trend continued during Juan Manuel Santos and was strengthened by the creation of institutions where private and public actors cooperated in granting mining and environmental titles (Agencia Nacional de Licencias Ambientales y Agencia Nacional Minera). As of the year 2016, coal was the second most important export product after oil.

Along with an exponential increase in mining licenses, the sector has benefitted from enormous tax benefits. In Colombia, as in many parts of the world, tax benefits are granted in order to promote certain sectors of the economy that are important because of their export capacity, import substitution potential, or as employment generators. The two sectors that have benefitted most from these incentives are the financial and mining sectors. Along with these benefits, mining companies can also deduce the resources they invest in social programs, social corporate responsibility, technological advancement, worker training programs, family subsidies, and

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24 Feline Gerstenberg & Paula Andrea Villegas González, La minería de carbón en Colombia y la situación económica de las mujeres rurales: la comunidad El Hatillo (Cesar, Colombia) [Coal Mining in Colombia and the Economic Situation of Rural Women: The El Hatillo Community (Cesar, Colombia)], AMBIENTE Y DESARROLLO [AMI. & DES.], Dec. 30, 2019, at 1.

the construction or repair of roads (even if these roads are only used by them). According to some academics, the Colombian government grants almost thirty percent of all tax deductions to mining companies.

### III. THE CASE OF THE ATRATO RIVER

The Atrato River is undoubtedly one of the most important water sources in Colombian territory. Not only is it the country’s third most navigable river, but also, situated within a very unique region, it is part of one of the most biodiverse ecosystems in the world. In addition, it plays a fundamental role in the lives of its inhabitants who are mainly indigenous communities that have shaped their traditions and identity around their interaction with the river.

Despite its significance, for more than two decades, the Atrato River has been the subject of environmental controversy, threatened by illegal mining, deforestation, and conflict. In response to this situation, the government has taken some protective measures, with the declaration of the river as a subject of rights being the most well-known Constitutional Court ruling, T622 of 2016. In it, the court declared the Atrato River a subject of rights.

The case was brought by the Center for Studies for Social Justice’s “Tierra Digna,” on behalf of various populations living in the areas adjacent to the river. It is worth noting that the organizations represented by Tierra Digna were mostly indigenous and Afro-descendant communities, who, as enshrined in the constitution, are endowed with special protection. Additionally, they have obtained their territories through collective titles and have experienced forced displacement, lack of state presence, and historical exclusion.

Plaintiffs filed for protection from the government through an “acción de tutela” (the “Tutela”), an expedited mechanism set in place when no

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26 Álvaro Pardo, Subsidios para la gran minería: dónde están, cuánto nos valen [Subsidies for Large Mining: Where They Are, How Much They Are Worth to Us], RAZ. PUB. (June 27, 2011), https://razonpublica.com/subsidios-para-la-gran-mineria-donde-estan-cuanto-nos-valen/ (Colom.).


28 C.C., noviembre 10, 2016, Sentencia T-622/16 (Colom.).

29 Greater Community Council of the Popular Peasant Organization of Alto Atrato (Cocomopoca), the Greater Community Council of the Integral Peasant Association of Atrato (Cocomacia), the Association of Community Councils of Bajo Atrato (Asocoba), the Choco Inter-ethnic Solidarity Forum (FISCH), etc.

30 The Presidency of the Republic, the Ministry of the Interior, the Ministry of Environment and Sustainable Development, the Ministry of Mines and Energy, the Ministry of National Defense, the Ministry of Health and Social Protection, the Ministry of Agriculture, the Department for Prosperity Social, the National Planning Department, the National Mining Agency, the National Environmental
other legal instrument is available in the face of constitutional rights violations. They claimed that the delicate and unique environmental landscape surrounding the Atrato River was being placed in imminent risk by intensive, indiscriminate mining and logging. As a consequence, the rights of the inhabited neighboring communities were being massively and systematically violated. Specifically, the rights to life, health, water, food security, a healthy environment, culture, and the survival of territories returned to ethnic communities as their collective property.

On January 27, 2015, the Administrative Court of Cundinamarca reviewed the Tutela and asked the relevant governmental entities to respond to the arguments presented by Tierra Digna. The ministries, one after another, rejected the demand for protection, stating that the matter did not fall under their jurisdiction and asserting that they lacked standing to be sued.

On October 14, 2015, the Constitutional Court admitted the case, and a special chamber within the Court carried out an inspection visit to the Atrato region to verify the claimants’ allegations. Additionally, the special chamber gathered various opinions from experts, organizations, and universities to fully grasp the characteristics of the case. Having reviewed these sources, the Court proceeds to deliver its ruling, dividing its analysis into: (I) procedural analysis, (II) theoretical analysis of the issues concerning the ruling, and (III) analysis of the specific case. In this last part, it delves into each of the violated rights (health, environment, food security, culture, and territory) and investigates their relationship to illegal mining.

A. Procedural Analysis

The Court established that the Tutela was the adequate mechanism by stating that the petitioners were subjects of special constitutional protection, and therefore, there is a higher duty to protect their rights as communities.

Licensing Agency, the National Institute of Health, the Departments of Chocó and Antioquia, the Regional Autonomous Corporation for the Sustainable Development of Chocó -Codechocó-, the Corporation for the Sustainable Development of Urabá -Corpourabá-, the National Police, the Unit against Illegal Mining, and the municipalities of Acandí, Bojayá, Lloró, Medio Atrato, Riosucio, Quibdó, Río Quito, Unguía, Carmen del Darién, Bagadó, Carmen de Atrato and Yuto -Chocó-, and Murindó, Vigía del Fuerte and Turbo -Antioquia.-

32 C.C., noviembre 10, 2016, Sentencia T-622/16, 4–8 (Colom.).
33 Id.
34 Id. at 15–158.
35 C.C., octubre 17, 2003, Sentencia T-955/03 (Colom.).
Furthermore, it stated that violations of collective rights also affect individual fundamental rights. Additionally, it reiterated that the collective procedure has proven to be ineffective in this case, as Tierra Digna had filed unsuccessful protection requests since 2014. It ended this section by reflecting upon the principles that articulate the Social Rule of Law (the foundational principle of interpretation contained in the 1991 Constitution), that demands the immediate protection of communities in extreme cases like this one by invoking the principles of material equality, distributive justice, ethnic and cultural diversity, autonomy of territorial entities, solidarity, and the prevalence of the general interest.36

B. Theoretical Analysis

Greatly inspired by other jurisdictions and foreign academics, the Court focused on the constitutional relevance of environmental protection, dividing its reflection into five issues: (1) the natural and cultural wealth of the nation, (2) the Ecological Constitution and biodiversity, (3) biocultural rights, (4) the special protection of rivers, forests, food sources, environment, and diversity, and (5) the territorial and cultural rights of ethnic communities.37

1. The Natural and Cultural Wealth of the Nation

The first theme analyzes the environment comprehensively, considering it as a source of both natural and cultural value. The Court argued that it is foundational to the Constitution, encapsulating the relationship between humans and their environment. In addition, the Tribunal established that there is an intricate relationship between the environment and the right to a dignified life. Therefore, the state has the duty to conserve, restore, and plan for sustainable development. To support these ideas, the Court relied on Articles 8, 79, 80, 95, and 366 of the 1991 Constitution.38

2. The Ecological Constitution and Biodiversity

The second theme focuses on the centrality of the right to a healthy environment and the measures that the government must adopt to guarantee it. The Court emphasized that because Colombia is internationally recognized

36 C.C., noviembre 10, 2016, Sentencia T-622/16, 15–43 (Colom.).
37 Id. at 43–51.
38 Id. at 51–75.
as a megadiverse country, the defense of the environment becomes a constitutional legal asset with a triple dimension. It is enshrined in the Constitution as a principle (in Articles 1, 2, 8, and 366), as a fundamental right (in Articles 86 and 88), and as an obligation (in Articles 78, 95, and 333). Additionally, environmental sanitation is considered a public service.

The Court once again insisted on the need for sustainable development, which balances economic growth, social well-being, and environmental protection. The Court provided an overview of three approaches that have emerged in the legal system regarding development and resource exploitation. First, it synthesized the anthropocentric view, rooted in naturalistic ideas, in which natural resources are objects at the service of subjects. According to the ruling, this perspective is now obsolete. Then the Court set forth the elements of the biocentric approach, which—according to the sentence—remains anthropocentric but considers future generations and the well-being of humanity in general. This is the building block of what should be understood as sustainable development. Finally, the Tribunal developed what is understood as the ecocentric view, which predominates the Court’s contemporary understanding of the matter. According to this view, Earth does not belong to man, but man belongs to the Earth, allowing nature to be a subject of rights, valued in and of itself and not merely as a resource.

The Court stated:

Therefore, respect for nature must start from a reflection on the meaning of existence, evolution, the universe, and the cosmos. This is a thought system that starts out by placing human beings as integral to and not as dominating nature. This would allow self-regulation of the humans and their impact on the environment, by recognizing their role within the circle of life and their evolution from an ecocentric perspective. It is from this idea, for example, that respect for certain animal rights has been enshrined. Thus, it is a matter of designing a legal instrument that offers nature and its relations with human’s greater justice based upon the collective recognition of biocultural rights.

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40 C.C., julio 16, 2015, Sentencia C-449/15 (Colom.); C.C, julio 27, 2010, Sentencia C-595/10 (Colom.); C.C., agosto 24, 2011, Sentencia C-632/11. (Colom.); C.C., febrero 20, 2015, Sentencia T-080/15 (Colom.).

41 C.C., noviembre 10, 2016, Sentencia T-622/16 (Colom.).
3. Biocultural Rights

The third topic focuses on biocultural rights. The Court stated that these are the rights possessed by ethnic communities to manage and be guardians of their territory with complete autonomy, thus recognizing the interdependence between nature, natural resources, and culture. It further highlighted that these rights are enshrined in Articles 7, 8, 79, 80, and 330 of the Constitution and delves into nuances inspired by theorists from across the globe. The ideas of Indian author Sanjay Kabir Bavikatte are central:

In this sense, Indian author Sanjay Kabir Bavikatte, one of the most important world theorists in this field, has highlighted that “the concept of biocultural rights is old. It has been widely used to indicate a way of life that develops within a holistic relationship between nature and culture. Biocultural rights reaffirm the deep link between indigenous, ethnic, tribal, and other communities, with the resources that comprise their territory, including flora and fauna.”

For its part, the philosophical foundation of biocultural rights is configured in a holistic vision, characterized by three approaches: (i) first, combining nature and culture, where biodiversity—understood as a broad catalog of biological resources—and cultural diversity—understood as the set of traditions, uses and cultural and spiritual customs of the peoples—are considered as inseparable and interdependent elements; (ii) second, analyzing the concrete experiences over time of ethnic communities, from a perspective that values the past and the present and that projects towards the future in order to establish an analysis of the current system, oriented exclusively to prioritizing concepts of development and sustainable development, with the aim of helping them to preserve their biocultural diversity for future generations; and, (iii) third, highlighting the singularity and at the same time the universality that represents the existence of ethnic peoples for humanity.


C.C., noviembre 10, 2016, Sentencia T-622/16, at 44–45 (Colom.).
4. The Special Protection of Rivers, Forests, Food Sources, Environment, and Diversity

The fourth axis delves into a review of rules contained in international treaties that encompass rights to water and food security in relation to environmental conservation. First, it addresses water,\(^{44}\) pointing out that it has three dimensions: as a common good, as a renewable natural resource, and as a public service, intimately linked to the preservation of life. Consequently, water becomes a fundamental right and an object of special protection.\(^{45}\)

To illustrate this, the Court brought up three cases from the Inter-American Court of Human Rights in which the right to water has been protected in connection with the right to life, involving ancestral communities.\(^{46}\) It also cites some reports from the Inter-American Commission on Human Rights, highlighting the case of contamination of the Pilcomayo River.\(^{47}\)

On the other hand, the Court addressed food security, which is clearly interconnected with water. Food security is related to a healthy environment and the state’s duty to provide a dignified life.\(^{48}\) It is also linked to the protection of traditional practices, which are a fundamental factor in the construction of the identity of communities. In this context, food security, which depends on resources such as rivers or forests, is related to the concept of food sovereignty.

5. Territorial and Cultural Rights of Ethnic Communities

The fifth issue deals with a topic previously outlined: how the environment is a fundamental factor in the preservation of the cultural

\(^{44}\) G.A. Res. 64/292 (July 28, 2010).

\(^{45}\) L. 99/93, diciembre 22, 1993, DIARIO OFICIAL [D.O.] (Colom.).


identity of indigenous people and Afro-descendant communities. It also explores how this relates to the territorial and cultural rights of ethnic communities. This led the Court to address the idea of Cultural Constitution, as it stated this concerns the cultural dimension of habitat\textsuperscript{49} and is constituted by what has been collected in some rulings.\textsuperscript{50}

The ruling also provides a historical overview of mining in Colombia and highlights two guiding principles of environmental law that are fundamental in this case due to their relation to mining. First, the preemptive principle, which addresses regulation in early stages. Second, the prevention principle, which is used to prevent further degradation of the situation. The Court analyzed the specific case, confirming, above all, the intensive use of mining extraction methods and forest exploitation in the Atrato River area. It highlighted the harmful effects that both processes generate through the use of heavy machinery and toxic substances. Additionally, the Court pointed out that this phenomenon is compounded by a structural and historical problem of inequality throughout the Chocó region. For example, state abandonment, lack of basic public services, and the presence of numerous armed groups outside the law exacerbate the situation around the river and fuel illegal mining intimately related to the local conflict.\textsuperscript{51}

According to the findings of the ruling, there are innumerable violations to the right to health as well. The Court presented the alarming levels of residual mercury found in the blood of the inhabitants of the area. It pointed out how these levels correspond to the health issues they face, such as malformations in children, cognitive damage, memory loss, skin conditions, and gynecological problems. Mercury is the most commonly used substance in illegal mining and accumulates in the river basin, water, fish, and edible algae. This is aggravated by the isolation experienced by these communities and their lack of access to safe drinking water or a water supply system.

In relation to attacks on environmental rights, the Court pointed out how forest exploitation and the diversion of the river’s course result in the desiccation of wetlands, pooling, subsoil contamination, and loss of vegetation cover. This, in turn, threatens the health of the inhabitants and leads to displacement.

Finally, the Court pointed out that public entities who are defendants have disregarded the serious environmental situation in the area. Due to lack of information, coordination, functional articulation, and clarity of


\textsuperscript{50} See C.C., agosto 30, 2006, Sentencia C-742/06 (Colom.); C.C., septiembre 16, 2009, Sentencia C-636/09 (Colom.).

\textsuperscript{51} C.C., noviembre 10, 2016, Sentencia T-622/16, 76–99 (Colom.).
competencies, they have not complied with existing state provisions aimed at alleviating the crisis and regulating the mining environment.52

Thus, the Constitutional Court, after thoroughly analyzing the case and having examined the concepts and gathered information and annexes, overturned the ruling issued by the Council of State and grants protection to the rights demanded by the plaintiffs. Likewise, it declared a grave violation of the fundamental rights to life, health, water, food security, a healthy environment, culture, and territory of the ethnic communities that inhabit the basin of the Atrato River and its tributaries, attributable to the Colombian State entities sued. The Court ordered the defendants to:

1) Recognize the Atrato River as a legal entity with rights and create the Commission of Guardians of the Atrato River.

2) Create the Plan for the Decontamination of Water Sources.

3) Create the Joint Action Plan to eradicate illegal mining.

4) Create the Comprehensive Action Plan to recover traditional means of subsistence and food.

5) Conduct toxicological and epidemiological studies in the area.

6) Urge the Attorney General’s Office, the Ombudsman’s Office, and the Comptroller General’s Office to carry out a semi-annual follow-up and evaluation of compliance with these orders.

7) Grant inter communis effect to this judgment.53

CONCLUSIONS

There is no denying that the content and structure of the ruling, which granted rights to the Atrato River, are creative and mark profound changes in the way the relationship between nature and humans is structured—the importance of water resources not only as a public service, but in its relation to the lifestyle of a community encapsulated in the term bio-culture.

Despite its jurisprudential advances, the ruling has had little impact on the ground as the guardian body has complained because of administrative hurdles and lack of resources. In fact, court orders do not mention the provision of any money to follow their demands, and the government has ignored or been slow in adjudicating any budget to take care of the river. Along the same lines, the contribution of local and global corporations

52 Id.
53 Id. at 159–62.
involved in gold mining are barely mentioned, placing all responsibility on peasants, artisanal miners, and strong illegal actors that the government does not control. At the end, the structural limitations imposed by the extractivist model cannot be faced with an individual, state centered solution translated into the language of rights.