

Rights of Nature Case Study

Atrato River

In November 2016, the Constitutional Court of Colombia recognised the legal personhood of the Atrato River, its basin and tributaries, and its rights to protection, conservation, maintenance and restoration, in response to a claim by Indigenous and Afro-descendent groups for the protection of constitutional rights.

Location	Colombia
Date	November 2016
Source	Court judgment (Constitutional Court of Colombia) – <i>Center for Social Justice Studies and others v Presidency of the Republic and others</i> , Judgment T-622/16
Jurisdiction level	National
Context	<p>The largest river in Colombia, the Atrato River, runs for approx. 650 km through the Chocó department in north-western Colombia. It is the largest fresh water source in the country and its riverbanks form the ancestral lands of various Indigenous, Afro-descendent and other minority communities, whose subsistence and traditional ways of living depend on and are shaped by the river ecosystem. Despite being one of the world’s recognised biodiversity ‘hotspots’, it is one of Colombia’s poorest and geographically isolated areas, impacted by internal armed conflict, drug-trafficking and intensive illegal gold mining with minimal state intervention or services, resulting in significant rates of mercury and cyanide contamination.</p> <p>After years of social mobilisation in response to serious health, socio-environmental, ecological and humanitarian crises in the Atrato River basin, its tributaries and surrounding territories, in 2015 a coalition of Indigenous and Afro-descendent communities filed an action for the protection of constitutional rights (<i>acción de tutela</i>) before the Administrative Court of Cundinamarca in relation to the impact of illegal mining activities on the communities living alongside the river, asking the Court to protect the fundamental rights to life, health, water, food security, a healthy environment, the culture and the territory of the active ethnic communities, and to issue orders and measures to detail structural solutions to the persisting crises.</p> <p>The case was filed by the Center of Studies for Social Justice (Tierra Digna) on behalf of the Greater Community Council of the Popular Farmer Organization of the Alto Atrato (Cocomopoca), the Greater Community Council of the Integral Farmer Association del Atrato (Cocomacia), the Association of Community Councils of Bajo Atrato (Asocoba), the Inter-Ethnic Forum of Solidarity Chocó (FISCH) and others. The defendants included the Ministry of</p>

	<p>the Interior, the Ministry of the Environment and Sustainable Development, the Ministry of Mining and Energy, the Ministry of Defence, the Ministry of Health and Social Protection, the Ministry of Agriculture, the Ministry of Housing, Cities and Territory, the Ministry of Education, the Department of Social Prosperity, the National Planning Department, the National Mining Agency, the National Agency for Environmental Licenses, the National Health Institute, the Departments of Chocó and Antioquia, Codechocó (Autonomous Regional Agency for Sustainable Development in Chocó), the Sustainable Development Agency of Urabá (Corpourabá), the National Police Unit against Illegal Mining, the National Ombudsman, the Comptroller General, the Inspector General, various municipalities and others.</p> <p>The Administrative Court declared the case inadmissible. On second instance, the Council of State also declared the legal action inadmissible. The case then proceeded to the Constitutional Court of Colombia.</p>
<p>Rights of Nature recognition</p>	<p>On 10 November 2016, the Constitutional Court found in favour of the claimants, ruling that the government had committed a serious violation of the communities’ fundamental constitutional rights, including the rights to life, health, water, food security, healthy environment, culture and territory of the ethnic communities, due to the failure “...to provide an adequate, articulated, coordinated and effective institutional response to face the multiple historical, socio-cultural, environmental and humanitarian problems that afflict the region and that in recent years have been aggravated by the realisation of intensive activities of illegal mining.”</p> <p>In addition to the human rights violations, the Court also outlined the ecological nature of the Constitution and recognised the legal personhood of the Atrato River, its basin and tributaries (as an <i>entity sujeto de derechos</i>), with rights of protection, conservation, maintenance and restoration by the state and ethnic communities.</p> <p>The Court ordered the national government to exercise legal guardianship and representation of the rights of the river, as led by legal guardians comprised of one representative appointed by the government and one representative chosen by the Atrato River communities, within one month of the ruling. Additionally, in order to ensure the protection, recovery and due conservation of the river, the Court ordered the Atrato River guardians to establish, within three months following the ruling, a commission of guardians of the Atrato River, comprising the Atrato River guardians as well as an advisory team, created by the Humboldt Institute and WWF Colombia “who...developed the Bitá River protection project in Vichada, and therefore have the necessary experience to guide the actions to take”. The Court directed that the advisory team “...may be formed and receive support from all public and private entities, universities (regional and national), academic centres and research in natural resources and environmental organisations (national and</p>

	<p>international), community and civil societies wishing to link to the protection project of the Atrato River and its basin.”</p> <p>In addition, the Court ordered the government to take the following specific measures:</p> <ul style="list-style-type: none"> • Within a year, design and implement a plan to decontaminate the Atrato River basin and its tributaries, the riverine territories, recover their ecosystems and avoid additional damage to the environment in the region (including indicators to measure effectiveness and participation of local communities) • Within six months, design and implement a joint action plan to stop illegal mining activities throughout Chocó (including indicators to support effective evaluation and monitoring) • Within six months, design and implement a comprehensive action plan that allows the recovery of traditional forms of subsistence and food (including indicators to support effective evaluation and monitoring) • To commence within three months and complete within nine months, toxicological and epidemiological studies of the Atrato River, its tributaries and communities, to determine the degree of mercury and other contamination and the impact on human health (including a baseline of environmental indicators) • Carry out a process of monitoring and following-up on compliance with and execution of all orders, which must include the convening of a panel of experts to advise on follow-up and execution processes, with the participation of claimant communities and the establishment of timelines, goals and indicators of compliance, and the submission of semi-annual reports to both the Administrative Court of Cundinamarca and the Constitutional Court. <p>The Court noted that the panel of experts responsible for ensuring compliance with the orders may also supervise, accompany and advise the work of the Atrato River guardians.</p>
<p>Significance</p>	<p>The decision was the first to recognise legal personhood for a natural entity in Colombian jurisprudence. The Court introduced, with extensive analysis of both international law and its own historical constitutional interpretation, an explicitly ecocentric framing of the Constitution to complement the fundamental human rights provisions and highlight the interconnections between the realisation of such human rights, the preservation of traditional cultures and different forms of human life, and environmental wellbeing.</p> <p>The Court explained that:</p> <p>[a]ccording to this interpretation, the human species is only one more event within a long evolutionary chain that has lasted for billions of years and [humans] therefore, in no way, are the owner of other species, biodiversity or natural</p>

resources, or the fate of the planet...[c]onsequently, this theory conceives nature as a true subject of rights that must be recognised by states and exercised under the tutelage of their legal representatives, for example, by the communities that inhabit it or have a special relationship with it.

It also stated that:

In other words: nature and the environment are a cross-cutting element of the Colombian constitutional order. Its importance lies, of course, in attention to the human beings that inhabit it and the need to have a healthy environment to live a dignified life in decent conditions; but also in relation to the other living organisms with whom the planet is shared, which are understood to be worthy of protection in themselves. It is about being aware of the interdependence that connects us to all living beings on earth; that is, recognizing ourselves as integral parts of the global ecosystem - - the biosphere --, rather than from normative categories of domination, simple exploitation, or utility.

The development of an ecocentric interpretation of the Constitution, as well as the fact that the Court found a violation of the right to water despite there being no such right in the Constitution, demonstrates a trend towards understanding the human rights framework and the law more generally as embedded in ecological contexts. This is similar to the recognition of the implied right to water under the International Covenant on Economic, Social and Cultural Rights, which occurred some years ago, as well as the Human Rights Committee's recently updated general comment on the right to life, which provided a broad interpretation of the right, noting that that states must take appropriate measures to address the general conditions in society that may prevent individuals from enjoying their right to life with dignity including, among others, deprivation of land, territories and resources of Indigenous peoples.

The guardianship model proposed by the Court is similar to the Te Awa Tupua (Whanganui River) model from New Zealand, in that it is built upon a cooperative arrangement between community and government representatives, supported by a broader advisory group with members contributing relevant knowledge and expertise to the process.

Finally, the case highlights the importance of contextualising the realisation of the rights of nature within broader socio-economic-political challenges. In seeking to comply with the Court's orders, it will be necessary for the state to confront and transform the historical conflicts and informal economic practices, such as gold mining, that arose as a result. Attempting to restore the Atrato River ecosystem in the absence of broader state action in this regard will be challenging.

	<p>Following this decision, the rights of nature and ecocentric constitutional interpretation approach have been applied in quite a few subsequent cases in Colombia, including the following, among others:</p> <ul style="list-style-type: none"> • Amazon rainforest case: In April 2018, the Supreme Court of Justice in Colombia found in favour of 25 young claimants, supported by NGO Dejusticia, who sought protection of their constitutional rights to life, health, food and a healthy environment, as impacted by deforestation in the Amazon rainforest ecosystem. Building on the precedent set in the Atrato River case, the Court recognised the Colombian Amazon as an entity subject to rights, including the right to legal protection, preservation, maintenance and restoration, and ordered the government to develop an intergenerational pact with the aim of reducing deforestation and gas emissions. It also developed the ecocentric interpretation further, affirming that constitutional rights were also owed as duties to future generations. The decision marked a significant recognition of the rights of nature, through the entry point of constitutional rights protection and in the context of climate change. • Coello, Combeima and Cocora Rivers case: In June 2019, the Administrative Tribunal of Tolima recognised rights of nature in respect of the Coello, Combeima and Cocora rivers, their basins and tributaries as individual entities, including rights of protection, conservation, maintenance and restoration. The case had been brought to protect the collective rights of local inhabitants in response to mining impacts.
<p>Implementation</p>	<p>Following the judgment, a government representative and community representative were selected as the Atrato River guardians and the commission of guardians of the Atrato River then formed, composed of 14 people from seven organisation (six women and eight men).</p> <p>Challenges to implementation of the Court’s orders include the need for money, resources and determination of the most appropriate ways to act as guardians for the river. Restoration efforts in the context of mining require specialist knowledge and time to complete, as well as community engagement and support. Colombia continues to face challenges in terms of a tension between the recognition of an ecocentric constitutional framework and an economic model connected with the continuation of extractive activities. Within this context, the country also has one of the highest rates of environmental conflicts globally, as well as significant and ongoing attacks against human and environmental rights defenders.</p>
<p>Key documents and links</p>	<ul style="list-style-type: none"> ☼ <u>Judgment T-622-16</u>, Constitutional Court of Colombia (2016) (in Spanish) ☼ <u>Judgment T-622-16</u>, Constitutional Court of Colombia (2016) (in English – translation by Dignity Rights Project, Delaware Law School, USA) ☼ <u>Guardians of the Atrato River</u> website ☼ The <u>Constitution</u> of Colombia 1991

	<p>See also:</p> <ul style="list-style-type: none">☼ Colombian Amazon case: Judgment STC 4360-2018 (2018) (in Spanish)☼ Dejusticia webpage about the Colombian Amazon case
--	---

Updated February 2021

For more case studies and comparative analysis on the emerging global rights of nature movement, please visit www.animamundilaw.org